NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION

COUNTY OF DARE

IN THE MATTER OF	)	
NORTH CAROLINA	)	SPECIAL ORDER BY CONSENT
NON-DISCHARGE PERMIT	)	EMC SOC S09-011
NUMBER WQ0000910	)	
HELD BY CAROLINA WATER	)	
SERVICE INC. OF NORTH CAROLINA	)	

Pursuant to provisions of North Carolina General Statutes (G.S.) 143-215.2, this Special Order by Consent is entered into by Carolina Water Service, Inc. of North Carolina, hereinafter referred to as the Permittee, and the North Carolina Environmental Management Commission, an agency of the State of North Carolina created by G.S. 143B-282, and hereinafter referred to as the Commission:

1. The Permittee and the Commission hereby stipulate the following:

   (a) The Permittee holds North Carolina Non-Discharge permit Number WQ0000910 for operation of an existing wastewater treatment works. The Permittee is unable to produce effluent of adequate quality and comply with final effluent limitations for BOD, total suspended solids and ammonium nitrogen as set forth in Permit Number WQ0000910. Compliance will require construction of additional treatment equipment and/or modification of the existing wastewater treatment plant.

   (b) Noncompliance with permit conditions constitutes causing and contributing to pollution of the waters of this State, and the Permittee is within the jurisdiction of the Commission as set forth in G.S. Chapter 143, Article 21.

   (c) The Permittee has secured grants or otherwise will secure financing for planning, design, and construction of some portion of the construction necessary to achieve compliance with permit conditions.

   (d) Since this Special Order is by Consent, neither party will file a petition for a contested case or for judicial review concerning its terms.

2. The Permittee desiring to comply with the Permit identified in paragraph 1(a) above, hereby agrees to do the following:

(a) As settlement of all alleged violations of Permit WQ0000910 occurring over the summer period of 2009, the Permittee agrees to pay the sum of $55,000. Of the $55,000, $26,000 shall be paid initially as specified below. A certified check for $26,000 must be made payable to the Department of Environment and Natural Resources and forwarded to the Director of the Division of Water Quality at 1636 Mail Service Center, Raleigh, North Carolina 27699-1636 no later than fifteen (15) days following the date on which this Order is approved and executed by the Commission and received by the Permittee.

The balance of the penalty ($29,000) shall be temporarily forgiven until July 1, 2010. At such time, should the conditions of Sections 2(b)(3) and (4) of this Special Order by Consent have been satisfied, the balance of the penalty ($29,000) shall be permanently forgiven in total. Should the Permittee fail to satisfy Section 2(b)(3) or (4), a certified check for $29,000.00 must be made payable to the Department of Environment and Natural Resources and forwarded to the Director of the Division of Water Quality at 1636 Mail Service Center, Raleigh, North Carolina 27699-1636 no later than fifteen (15) days following the specified milestone date.

Should conditions of Sections 2(b)(3) or (4) not be satisfied, the balance ($29,000) shall be paid in addition to stipulated penalties as outlined in Section 3 below. Any extension of the specified milestone dates in Section 2(b)(3) or (4) of this Special Order by Consent shall be considered a violation of the original agreement, at which time the balance will be paid.

(b) Undertake the following activities in accordance with the indicated time schedule:

(1) **On or before November 1, 2009**, submit application for permit for the construction/modification of the wastewater treatment system.

(2) **On or before February 1, 2010**, begin construction of the proposed system.

(3) **On or before May 30, 2010**, complete construction of the proposed modifications to the wastewater disposal system.

(4) **On or before July 1, 2010**, achieve compliance with all permit conditions.

(5) **Provide the Washington Regional Office with quarterly progress reports.** Reports are due within 30 days following the end of each calendar quarter. The first quarterly report is due prior to February 28, 2010 and then reports are due as noted above.

(c) No later than fourteen (14) calendar days after any date identified for accomplishment of any activity listed in Section 2(b) above, submit to the Director of DWQ written notice of compliance or noncompliance therewith. The

notification under this Section 2(c) shall be required only for activities listed in Section 2(b) above that occur after the execution and approval of this Special Order by Consent by the Permittee and the Commission.

In the case of noncompliance, the notice shall include a statement of the reason(s) for noncompliance, remedial action(s) taken, and a statement identifying the extent to which subsequent dates or times for accomplishment of listed activities may be affected.

3. The Permittee agrees that unless excused under Section 4, the Permittee will pay the Director of DWQ, by check payable to the North Carolina Department of Environment and Natural Resources, the remaining balance specified in Section 2(a) above in addition to stipulated penalties according to the following schedule for failure to meet deadlines set out in Sections 2(b) and 2(c).

Failure to meet a schedule date	**$100/day for the first 7 days; $500/day thereafter**
Failure to achieve final compliance date	**$10,000.00**
Failure to submit a progress report	**$1,000.00/first violation; penalty doubles with each SUBSEQUENT ASSESSMENT**

4. The Permittee and the Commission agree stipulated penalties are not due if the Permittee satisfies the Division of Water Quality that noncompliance was caused solely by:

   a. An act of God;

   b. An act of war;

   c. An intentional act or omission of a third party, but this defense shall not be available if the act or omission is that of an employee or agent of the defendant or if the act or omission occurs in connection with a contractual relationship with the Permittee;

   d. An extraordinary event beyond the Permittee's control. Contractor delays or failure to obtain funding <u>will not</u> be considered as events beyond the Permittee's control; or

   e. Any combination of the above causes.

Failure within thirty (30) days of receipt of written demand to pay the penalties, or challenge them by a contested case petition pursuant to G.S. 150B-23, will be grounds for a collection action, which the Attorney General is hereby authorized to initiate. The only issue in such an action will be whether the thirty (30) days has elapsed.

5. This Special Order by Consent and any terms, conditions and interim effluent limitations contained herein, hereby supersede any and all previous Special Orders, Enforcement Compliance Schedule Letters, terms, conditions, and limitations contained therein issued in connection with Permit No.WQ0000910.

6. Noncompliance with the terms of this Special Order by Consent are subject to enforcement action in addition to the above stipulated penalties, including injunctive relief pursuant to G.S. 143-215.6C.

7. The Permittee, upon signature of this Special Order by Consent, will be expected to comply with all schedule dates, terms, and conditions of this document.

8. This Special Order by Consent shall expire October 1, 2010.

For Carolina Water Service Inc. of North Carolina:

_____ Date _____

Signature of Signing Official

For the North Carolina Environmental Management Commission:

_____ Date _____

Chairman of the Commission