

## SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement (hereinafter "Settlement") is made as of the last date of execution below (the "Effective Date") between the City of Ann Arbor, City of Dexter, City of Chelsea, and the Loch Alpine Authority of Webster and Scio Townships (the "Permittees") and the Department of Environment, Great Lakes, and Energy ("EGLE"), formerly the Department of Environmental Quality, which are collectively referred to as the "Parties."

### RECITALS

WHEREAS, the Parties to this Settlement have had a dispute regarding the Permittees' National Pollutant Discharge Elimination System ("NPDES") permits for discharges from their waste water treatment plants ("WWTP"), hereinafter referred to as "NPDES Permits";

WHEREAS, the Parties have the following legal proceedings currently pending for purpose of resolving their dispute: (1) *In the Matter of Petitioners of City of Dexter, et al*, Docket No. 18-023004, in the Michigan Office of Administrative Hearings and Rules, (2) *Village of Dexter, et al v EGLE*, Case No. 2020-000131-MZ, in the Michigan Court of Claims, and (3) *Village of Dexter, et al v EGLE*, Case No. 17-1291-AA, in the Circuit Court for the 22<sup>nd</sup> Judicial Circuit Washtenaw County. The above three proceedings will hereafter be called the "Legal Proceedings."; and,

WHEREAS, the Parties have reached a resolution in connection with the Legal Proceedings, and whereas the Parties wish to enter into this Settlement to resolve any such dispute and settle any claims that could have been raised related to Permittees' phosphorous discharge limits in their NPDES Permits and the City of Ann Arbor's Whole Effluent Toxicity ("WET") testing in its NPDES Permit.

NOW THEREFORE, for good and valid consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

**1. Issuance of New NPDES Permits and Dismissal.** Within six months after receipt of all Permittees' permit applications, EGLE shall issue new NPDES permits to the Permittees that conform with the terms of this Settlement and shall take other actions specified in this Settlement. The newly issued NPDES permits, based on updated permit applications submitted within 30 days of the Effective Date of this agreement, shall be effective no later than seven months after application submittal and shall expire on October 1, 2025.

At such time that the Parties execute this Settlement, the Legal Proceedings identified above will be dismissed with prejudice (by stipulation of the Parties' counsel, and except as set forth in paragraph 2.C.v.), and each party will be liable for their own attorneys' fees and costs. The stipulation sent to the Washtenaw County Circuit Court shall state that Washtenaw County Circuit Court will retain jurisdiction for purposes of enforcing this agreement, although the case will still be closed in the meantime.

**2. New NPDES Permits.** For valuable consideration, EGLE agrees to incorporate the following into the new NPDES permits identified in Paragraph 1, above:

- A. Except as otherwise specified in this Settlement, the new NPDES permits shall be based on EGLE's current form for NPDES permits, a typical example of which is hereto attached as **Exhibit A**, though site specific situations may necessitate certain revisions.
- B. The new NPDES permits shall comply with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act ("NREPA"), being MCL 324.3101 *et seq.*, shall be subject to public notice and comment in accordance with Part 31 of the NREPA, and shall comply with all other legal requirements.
- C. Phosphorus Limits: The phosphorus limits in the Permittees' new NPDES permits shall be based on the following schedule:

- i. **Tier 1. On or before October 30, 2021 to October 1, 2023:** During this time period, the Permittees' Total Phosphorus limits shall be based on the Permittees' Existing Effluent Quality ("EEQ"). "Existing Effluent Quality" or "EEQ," for purposes of this Settlement, is defined as the 30-day average concentration based on a review of monthly discharge data since each Permittee's respective WWTP was most recently upgraded (as of the Effective Date), and calculating this limit based on a normally distributed 95 percent level. 30-day loads will be established based on this calculated 95 percent concentration and the design annual average flow of each WWTP. The Permittees shall be authorized to discharge Total Phosphorus at their Existing Effluent Quality until October 1, 2023. The EEQ for each Permittee, as used throughout this Settlement and while the limits in this Settlement are in effect, is as follows:

Limits (Year Round)	EEQ (mg/l)
Ann Arbor	0.8
Chelsea	0.3
Dexter	0.4
Loch Alpine	0.35

- ii. **Tier 2. October 2, 2023 to October 1, 2048:** From October 2, 2023 to October 1, 2048, the Permittees' Total Phosphorus limits shall be based on the waste load allocations identified in the September 2004 Total Maximum Daily Load for Phosphorus in Ford and Belleville Lakes, hereto attached as **Exhibit B**.

The Total Phosphorus limits for the Permittees during this time period are reflected in the below table. The "monthly maximum load" means

that daily loads over the course of a calendar month are averaged to determine compliance with the limit.

Limits (Period)	Ann Arbor (monthly maximum load, lb/d, unless otherwise noted)	Dexter (monthly maximum load, lb/d, unless otherwise noted)	Chelsea (monthly maximum load, lb/d, unless otherwise noted)	Loch-Alpine (monthly maximum load, lb/d, unless otherwise noted)
April	150	3.0	9.5	1.5
May	60	0.9	2.2	0.6
June	60	0.9	2.2	0.6
July	50	0.8	1.8	0.5
August	50	0.8	1.8	0.5
September	60	0.9	2.2	0.6
Oct-March	0.8 mg/l	0.4 mg/l	0.3 mg/l	0.35 mg/l

The Parties hereby agree and state that it is their expectation that the Permittees will be able to comply with the waste load allocations identified in this subpart, including if operational changes need to be made at the Permittees' respective WWTPs.

- iii. **Tier 3. After October 1, 2048:** After October 1, 2048, the Permittees' Total Phosphorus limits shall be based on the waste load allocations identified in the November 2019 Total Maximum Daily Load for Total Phosphorus in Ford and Belleville Lakes, hereto attached as **Exhibit C**.

The Total Phosphorus limits for the Permittees during this time period are reflected in the below table.

Limits (year round)	Ann Arbor WWTP	Dexter WWTP	Chelsea WWTP	Loch-Alpine WWTP
Monthly maximum load (lb/d)	25	0.5	1.5	0.3
Monthly maximum concentration (mg/l)*	0.2	0.2	0.2	0.2

iv. Compliance Schedule for Tier 3: The Permittees shall abide by the following compliance schedule to ensure that they are able to meet the Tier 3 Total Phosphorus limits on or before October 1, 2048:

- a. By October 1, 2040, Permittees shall complete a feasibility study to assess potential treatment technologies needed to comply with the Tier 3 limits (unless a Permittee already has the ability or planned ability to satisfy the Tier 3 limits, in which case a feasibility study is not necessary).

In the event any Permittee believes that implementation of treatment technologies needed to comply with the Tier 3 limits are economically infeasible, then Permittee may assess its financial capability for implementation of necessary treatment technologies using the U.S. EPA's Financial Capability Assessment, hereto attached as **Exhibit D**, or similar U.S. EPA financial capability matrix. If the U.S. EPA's Financial Capability Assessment matrix places the Permittee in the "High Burden" category, then Permittee may request a modification of the deadlines contained in the Tier 3 compliance schedule to EGLE, or may proceed in accordance with paragraph 2.C.v, below. Although any Permittee may use the above approach, nothing in this paragraph obligates any Permittee to use the U.S. EPA's Financial Capability Assessment (or similar U.S. EPA financial capability matrix) to determine whether or not treatment technologies are economically feasible or before proceeding in accordance with paragraph 2.C.v below.

- b. By October 1, 2043, the Permittees shall commence basis of design reports for any necessary upgrades at their respective WWTPs to ensure that each WWTP has the capability of meeting the Total Phosphorus limits outlined in Tier 3.
- c. By October 1, 2044, the Permittees shall submit a permit application pursuant to Part 41, Sewerage Systems, being MCL 324.4101 *et seq.*, for any necessary upgrades at their respective WWTPs identified in the basis of design identified in paragraph 2.iv.a., above.
- d. By March 1, 2045, the Permittees shall commence construction of any approved upgrades at their respective WWTPs.
- e. By October 1, 2048, the Permittees shall have completed construction of any approved upgrades at their respective WWTPs and shall achieve the Total Phosphorus limits identified in Tier 3.

- v. Nothing in this agreement prevents the Permittees from challenging the 2019 TMDL or the phosphorus limits based on the 2019 TMDL in accordance with law (including through a contested case process, a civil action, and/or related appeals) if and when the limits in Tier 3 become effective or after a Permittee completes a feasibility study under Paragraph 2.iv.a (including on the bases that any upgrades are economically or technologically infeasible). If any Permittee initiates such a challenge, the Permittee shall be allowed to raise any argument permitted by law.

**3. City of Ann Arbor's WET Testing.** For the City of Ann Arbor's NPDES permit that is to expire on October 1, 2025 (as identified in Paragraph 1 above), acute and chronic Whole Effluent Toxicity testing shall be included in the Additional Monitoring Requirements Section of the permit, which shall include and be limited to 4 scans using both *C. dubia* and fathead minnow as test species (for a total of 8 tests).

**4. Artificial Mixing.** At any time, the Permittees may reduce blue-green algae blooms through legally enforceable engineered means (e.g. artificial mixing of Ford and Belleville Lakes, etc.). If Ford and Belleville Lakes are no longer designated as impaired waters due to nuisance algae blooms, then any legally enforceable engineered mean(s) used by the Permittees to eliminate the impairment shall be written into the Permittees' future NPDES permits. In the event Ford and Belleville Lakes are no longer designated as impaired waters and any legally enforceable engineered means are incorporated into the Permittees' future NPDES permits, then any phosphorus limits in the Permittees' future NPDES permits shall be based the Total Phosphorus limits outlined in Tier 2 of this Agreement.

This Settlement shall not be construed to create any affirmative duty, obligation, or any other requirement for EGLE to revise any Total Maximum Daily Load for Ford or Belleville Lakes. However, to the extent EGLE decides to revise any TMDL or complete a new TMDL, the Permittees reserve the right to participate in the TMDL process as allowed by law and the Permittees reserve the right to challenge the need for any such revisions or amendments, the resulting revisions or amendments, or any phosphorus limits based on such revisions or amendments, as allowed by law.

**5. Mutual Release.** Except as provided in paragraph 2.C.v., at such time that the parties dismiss the Legal Proceedings with prejudice, each party to this Settlement on behalf of themselves, any entity owned or controlled by any party, their past and present affiliated entities, members, shareholders, officers, directors, employees, agents, beneficiaries, heirs, successors, assigns, predecessors, affiliates, parents, subsidiaries, insurers, subcontractors, and consultants ("Interested Agents"), Settlements and forever discharges every other party and each other party's Interested Agents, and attorneys of each of them, from any claim, action, cause of action, liabilities, demands, rights, damages, costs, fees, expenses, bills, and controversies of any kind or description, whether at law or in equity, relating to Permittees' phosphorous discharge limits in their previously issued NPDES Permits (Permit Nos. MI0022829, MI0020737, MI0024066, and MI0022217, and all predecessor permits) and the City of Ann Arbor's Whole Effluent Toxicity ("WET") testing in its previously issued NPDES Permit (Permit No. MI0022217) effective October 1, 2018. The

Parties agree that the courts in which the Legal Proceedings are pending may retain jurisdiction to enforce the terms of this Settlement as appropriate.

**6. Reading of Settlement.** Each party represents and warrants that they have been fully advised concerning the execution of this Settlement, that each of them has fully read and understands the terms of this Settlement, and that each has freely and voluntarily executed this Settlement. The Parties also represent and warrant that they rely wholly upon their own understanding of this Settlement and enter into this Settlement of their own free will without reliance upon any statement, inducement, promise, or representation of the other not fully expressed herein. This Settlement shall constitute the entire agreement of the Parties with respect to the matters contained herein and shall supersede and replace all previous agreements, whether written or oral, relating to such matters. This Settlement shall be interpreted as if drafted jointly by the Parties.

**7. Binding Effect.** This Settlement shall be binding upon the Parties hereto, and all of their Interested Agents.

**8. Controlling Law.** This Settlement shall be interpreted in accordance with the laws of the State of Michigan.

**9. Entire Agreement.** This Settlement constitutes the entire agreement among the parties with respect to the subject matter of this Settlement and all claims that the Parties may have had against the other as described in the Mutual Settlement above.

**10. Counterparts.** This Settlement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Settlement and all of which, when taken together, will be deemed to constitute one and the same agreement. All executed copies are duplicate originals equally admissible into evidence. Neither this Settlement nor any other document executed in connection herewith may be changed, terminated or waived orally, but only by an instrument in writing signed by the parties hereto.

**11. Authority to Execute Agreement.** The parties represent to the other that the person executing this Settlement on behalf of each party has full authority to enter into this Settlement, including the Settlements specified hereinabove. Notwithstanding the above, this Settlement shall not be effective unless approved by the Attorney General or her authorized designee.

**12. Severability.** If any court shall determine that any provision in this Settlement is unenforceable, the Parties agree that any such provision or part thereof shall be construed consistent with the intent of the Parties so as to avoid unenforceability or, failing that, severed. In the event any provision is severed, all remaining provisions of this Settlement shall remain in full force and effect.

[SIGNATURE PAGE ON NEXT PAGE]

Dated: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, on behalf of the City  
of Ann Arbor

Dated: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, on behalf of the City  
of Dexter

Dated: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, on behalf of the City  
of Chelsea

Dated: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, on behalf of the Loch  
Alpine Authority of Webster and Scio  
Townships

Dated: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, on behalf of the  
Department of Environment, Great  
Lakes, and Energy

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Charles A. Cavanagh (P79171),  
approved as to form on behalf of the  
Michigan Department of Attorney  
General.