



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF  
ENVIRONMENT, GREAT LAKES, AND ENERGY  
LANSING



LIESL EICHLER CLARK  
DIRECTOR

March 25, 2020

CERTIFIED MAIL 7014 0150 0001 0741 9169

Mr. Craig Hupy, Public Services Area Administrator  
City of Ann Arbor  
301 East Huron Street, 6<sup>th</sup> Floor  
Ann Arbor, Michigan 48104

Dear Mr. Hupy:

SUBJECT: City of Ann Arbor, Administrative Consent Order (ACO)

Enclosed with this letter, please find two original copies of the ACO for signature between the Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division (WRD), and the City of Ann Arbor (City).

Please obtain the City's signature on both original documents and return them to me at the address below. Upon receipt of the signed ACO's, I will secure the required authorized signatures and promptly return one fully executed original document to you.

If you have any questions, please contact me at 517-388-3976;  
WysockiK@Michigan.gov; or EGLE, P.O. Box 30458, Lansing, Michigan 48909-7958.

Sincerely,

Katelyn Wysocki, Enforcement Specialist  
Enforcement Unit  
Water Resources Division

Enclosures

cc: Ms. Jennifer Lawson, City of Ann Arbor  
Mr. Jon Russell, EGLE  
Ms. Tiffany Myers, EGLE  
Ms. Claire Dijak, EGLE

**STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY  
WATER RESOURCES DIVISION**

In the matter of:

ACO-05354

Date Entered: \_\_\_\_\_

City of Ann Arbor  
301 East Huron Street  
Ann Arbor, Michigan 48107

\_\_\_\_\_ /

**ADMINISTRATIVE CONSENT ORDER**

This document results from allegations by the Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division (WRD). EGLE alleges that the City of Ann Arbor (City), with offices located at 301 East Huron Street, Ann Arbor, Michigan, Washtenaw County, violated Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 *et seq.* (Part 31); Part 41, Sewerage Systems, of the NREPA, MCL 324.4101 *et seq.* (Part 41); the Sewerage Systems Rules, Mich Admin Code, R 299.2901 *et seq.*, as amended (Sewerage Systems Rules); and the National Pollutant Discharge Elimination System Permit MI0022217 (NPDES Permit). The City is a municipality, as defined by Section 301 of the NREPA, MCL 324.301. The City and EGLE agree to resolve the violations set forth herein through entry of this Administrative Consent Order (Consent Order).

**I. STIPULATIONS**

The City and EGLE stipulate as follows:

- 1.1 The NREPA, MCL 324.101 *et seq.*, is an act that controls pollution to protect the environment and natural resources in the state.
- 1.2 Part 31 and the rules promulgated pursuant thereto provide for the protection, conservation, and the control of pollution of the water resources of the state.
- 1.3 Part 41 and the rules promulgated pursuant thereto provide for the proper planning, construction and operation of sewerage facilities to prevent unlawful pollution of the water resources of the state.

- 1.4 Section 3109 (2) of the NREPA, MCL 324.3109(2), states: "The discharge of any raw sewage of human origin, directly or indirectly, into any of the waters of the state shall be considered prima facie evidence of a violation of this part by the municipality in which the discharge originated unless the discharge is permitted by an order or rule of the department."
- 1.5 Section 3109(6) of the NREPA, MCL 324.3109(6), states: "A violation of this section is prima facie evidence of the existence of a public nuisance and in addition to the remedies provided for in this part may be abated according to law in an action brought by the attorney general in a court of competent jurisdiction."
- 1.6 Rule 55 of the Sewerage Systems Rules, Mich Admin Code, R 299.2955, states: "(1) Sewerage systems shall be operated and maintained at all times as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants."
- 1.7 EGLE is authorized by Sections 3106 and 3112(4) of Part 31, MCL 324.3106 and MCL 324.3112(4), and Section 4111 of Part 41, MCL 324.4111, to enter orders requiring persons to abate pollution or otherwise cease or correct activities in violation of Part 31 and Part 41. The director of EGLE may delegate this authority to a designee under Section 301(b) of the NREPA, MCL 324.301(b).
- 1.8 Executive Order 2019-06, signed by Governor Gretchen Whitmer on February 20, 2019, renamed the Department of Environmental Quality (DEQ) as EGLE effective April 22, 2019. This Consent Order uses EGLE to refer to DEQ prior to April 22, 2019.
- 1.9 The City consents to the issuance and entry of this Consent Order and stipulates that the entry of this Consent Order constitutes a final order of EGLE and is enforceable as such under Section 3112(4) of Part 31 and Section 4111 of Part 41. The City agrees not to contest the issuance of this Consent Order and that the resolution of this matter by the entry of this Consent Order is appropriate and acceptable. It is also agreed that this Consent Order shall become effective on the date it is signed by the director of the WRD, delegate of the director of EGLE, pursuant to Section 301(b) of the NREPA.
- 1.10 The City and EGLE agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the City that the law has been violated.

1.11 The signatories to this Consent Order certify that they are fully authorized by the City to enter into the terms and conditions of this Consent Order and to execute and legally bind the City to this document. The City hereby agrees to comply with the requirements of this Consent Order to resolve the violations stated in Section II of this Consent Order and agrees to achieve compliance with Part 31, Part 41, the Sewerage Systems Rules and the NPDES Permit by fulfilling the terms of Section III of this Consent Order.

**II. FINDINGS**

2.1 The City owns and operates a sewage collection system and wastewater treatment plant (WWTP). The sewage collection system collects and conveys sanitary sewage from the City, Ann Arbor Township, Pittsfield Township, and Scio Township and then routes it to the City’s WWTP for treatment.

2.2 The City is authorized to discharge treated municipal wastewater through Outfall 001 from the WWTP to the Huron River in accordance with the effluent limitations and monitoring requirements and other conditions as set forth in the NPDES Permit.

2.3 The WRD sent the City Violation Notice (VN) number VN-007418 dated July 11, 2017, for five self-reported sanitary sewer overflow (SSO) events in 2016 and 2017 that were discharged into the waters of the state, in violation of Section 3109 of the NREPA, MCL 324.3109, Rule 55 of the Sewerage Systems Rules and the City’s NPDES Permit. The events included:

<b>Date(s)</b>	<b>Volume Discharged</b>	<b>Location</b>	<b>Reason for Discharge</b>
3/17/16	~500 gallons (~20 gallons to storm sewer)	325 Washtenaw Avenue	Broken sanitary sewer line
3/23/16-4/6/16	~400,000 gallons to Malletts Creek	1979 Huron Parkway	Tree roots clogged a 10” sanitary line
5/13/16-5/16/16	~36,000 gallons (unknown amount to Huron River)	2180 Downup Circle	Tree roots clogged an 8” sanitary line
9/17/16-9/19/16	~600,000 gallons to Huron River	Geddes Avenue at Devonshire Park	Broken sanitary sewer line/contractor error
6/22/17	~13,500 gallons to Malletts Creek	South State Street at Hidden Valley Club Drive	Failure and collapse of sanitary sewer liner

2.4 VN-007418 directed the City to submit a written response to include:

- a. The City's written general procedures for responding to and notifying of sanitary sewer overflows;
- b. The City's contractor oversight procedures when dealing with or working in the areas where active sanitary sewer lines are present; and
- c. A description of the City's general program for assessing the quality of sanitary sewer lines, and more specifically the City's plans and schedules for assessing sanitary sewer lines present in primarily wooded areas where the likeliness of tree root incursions is increased.

2.5 The City's August 28, 2017, response included the requested items, including a statement that the City, "...is currently completing a Holistic System-wide Asset Management Program for the sanitary sewer collection system. This plan will include a proactive maintenance schedule as well as identifying key areas for increased proactive maintenance and inspection. As of this date, the City has cleaned and inspected 177 miles of the sewage collection system, to assist in the completion of the Asset Management Plan. It is anticipated that the entire sewage collection system will be inspected in the next several years."

2.6 The WRD sent the City VN-008982 dated December 19, 2018, for five self-reported SSO events that occurred in 2018 that were discharged into the waters of the state, in violation of Part 31 and the NPDES Permit. The events included:

<b>Date(s)</b>	<b>Volume Discharged</b>	<b>Location</b>	<b>Reason for Discharge</b>
February 20, 2018	~180 to 300 gallons	At the wastewater treatment plant from an overflow pipe between the north and south interceptor chamber	The overflow structure from the plant gravity lines had heavy flow and a small amount of the overflow spray was being released
February 22, 2018	~6000 gallons	To the rear yard of a home on Foxhunt Drive	Tree roots
April 3, 2018	~1100 gallons	From a manhole at the intersection of Warwick Road and Glenwood Road	Tree roots

June 10, 2018	~300,000 gallons	To the ground in the Dow Prairie area of the University of Michigan Arboretum	Contractor left 300 feet of rope in the sanitary sewer and it caused a blockage
October 31, 2018	~150,000 gallons	To the ground on Concordia College's campus	Sanitary sewer blocked with flushable wipes

- 2.7 The City reported another SSO event on January 5, 2019, that occurred on January 5, 2019, that discharged 675 gallons of sewage to the Malletts Creek, a surface water of the state. The City reported that the SSO occurred as a result of tree roots blocking a sanitary sewer line.
- 2.8 On May 1, 2019, the City reported a 75,000-gallon overflow of partially treated wastewater from the tertiary filter backwash wet well at the WWTP to a storm water outfall that flowed directly to the Huron River on May 1, 2019. The partially treated wastewater that was discharged did not receive ultraviolet disinfection.
- 2.9 On May 9, 2019, the City reported an SSO event that occurred on May 8, 2019. The SSO event was an estimated 1,800 gallons of raw sewage from a sanitary sewer manhole onto the ground due to a blockage of gravel in the sanitary sewer pipe.
- 2.10 On July 5, 2019, the City reported a discharge of about 3,000 gallons of raw sewage onto the ground and into the waters of the state, specifically into the Huron River, via Allen Creek, from the City's sewage collection system. The reported reason for the discharge was a sanitary sewer main break and storm water sewer failure. Allen Creek is an underground channelized creek that flows directly into the Huron River.
- 2.11 On August 28, 2019, the City reported a discharge of about 2,000 gallons of raw sewage onto the ground and into the Huron River, via Allen Creek, from the City's sanitary sewer system. The reported reason for the discharge was concrete chunks within the sanitary sewer that caught debris and blocked the flow of raw sewage in the sanitary sewer, resulting in a sewage discharge from a manhole lid that flowed along the street gutter and into the storm water inlet in the street curb, ultimately discharging into Allen Creek and the Huron River.

- 2.12 On January 15, 2020, the City reported two discharges of raw sewage onto the ground and into the waters of the state, named Mallets Creek and Swift Run Creek, from the City's sewer system, that occurred on January 11, 2020. The two discharges totaled about 4,800 gallons of raw sewage. The reported reason for the discharges was wet weather. These violations were summarized in VN-010367 dated January 31, 2020.
- 2.13 On March 16, 2020, the City reported a discharge of about 450 gallons of raw sewage onto the ground from the City's sewer system that occurred on March 14, 2020. The reported reason for the discharge was a blockage of the sewer from a chunk of concrete. This violation was summarized in VN-0150516 dated March 20, 2020.

### III. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT the City shall take the following actions to comply with and prevent further violations of Part 31, Part 41, the Sewerage Systems Rules, and the NPDES Permit:

- 3.1 Not later than **April 30, 2020**, the City shall submit a plan for EGLE review and approval for managing high volume WWTP flows. The plan shall include equipment and staff procedures for managing the high flows to prevent discharges of untreated or partially treated sewage from the WWTP. The City shall implement the plan after EGLE approval, and the plan shall be incorporated into this Consent Order by reference and enforceable hereunder.
- 3.2 Not later than **May 15, 2020**, the City shall submit to EGLE for review and approval a written report with map detailing the total number of miles of the sewage collection system that have been cleaned and inspected by the City since 2016.
- 3.3 Not later than **May 15, 2020**, the City shall submit a plan with implementation and completion schedule not to exceed **May 15, 2022**, to EGLE for review and approval for the City to evaluate the remainder of sewage collection system that the City has not evaluated in the last six years (Evaluation Plan). The Evaluation Plan shall include the identification of sewage collection system impairments that have caused or are likely to cause blockages, breaks or overflows of sewage. The Evaluation Plan shall also include the commencement and completion date of the sewage collection system evaluation. The

City shall implement the Evaluation Plan after EGLE approval, and the Evaluation Plan shall be incorporated into this Consent Order by reference and enforceable hereunder.

- 3.4 After EGLE approval of the Evaluation Plan, not later than **60 days** after identifying sewage collection system impairments that are likely to cause blockages, breaks or overflows of sewage pursuant to the Evaluation Plan, the City shall submit to EGLE for review a written report of the impairments and either their causes or likely causes, where the impairments are located, how the City plans to correct the impairments, and the timeline for correcting the impairments, or the details for how the City corrected the impairment. The City shall implement the impairment corrections, as described in the written report.
- 3.5 Not later than December 31 each year after the effective date of this Consent Order, the City shall submit to EGLE for review a status report of the sewage collection system impairment corrections completed in the previous year, as are identified in the written reports that are required by Paragraph 3.4 of this Consent Order.
- 3.6 The City shall develop and implement a Sewage Collection System Asset Management Program (Asset Management Program) in accordance with the requirements of this paragraph. The Asset Management Program shall be drafted and implemented for properly operating and maintain the sewage collection system and control systems installed or used by the City to operate the sewage collection system. The goals of the Asset Management Program are effective performance, adequate funding, and adequate operator staffing and training. Asset management is a planning process for ensuring that optimum value is gained for each asset and that financial resources are available to rehabilitate and replace those assets when necessary. Asset management is centered on a framework of five (5) core elements: (1) the current state of the assets; (2) the required sustainable level of service; (3) the assets critical to sustained performance; (4) the minimum life-cycle costs; and (5) the best long-term funding strategy.

The Asset Management Program requirements are as follows:



a. **Sewage Collection System Asset Management Plan**

Not later than **June 30, 2020**, the City shall submit to EGLE a Sewage Collection System Asset Management Plan (Asset Management Plan) for review and approval. The Asset Management Plan shall contain a schedule for the development and implementation of an Asset Management Program that meets the requirements outlined below in i-iv. A copy of any Asset Management Program requirement already completed by the City shall be submitted to EGLE as part of the Asset Management Plan. Upon approval by EGLE, the City shall implement the Asset Management Plan. The plan shall be incorporated into this Consent Order by reference and enforceable hereunder.

i. Core Element 2: Required Sustainable Level of Service. Maintenance Staff.

The City shall provide adequate staff to carry out the operation, maintenance, repair, and testing functions required to ensure compliance with the terms and conditions of the NPDES Permit and Part 31. The level of staffing needed shall be determined by considering the work involved in operating the sewage collection system, planning for and conducting maintenance, and complying with this Consent Order.

ii. Core Element 1: The Current State of the Assets. Collection System Map.

The City shall complete a map of the sewage collection system it owns and operates. The map shall be of sufficient detail and at a scale to allow easy interpretation. The collection system information shown on the map shall be based on current conditions and shall be kept updated and available for review by EGLE. Such map(s) shall include:

1. all sanitary sewer lines and related manholes;
2. all known or suspected connections between the sanitary sewer or combined sewer and storm drain systems;
3. all outfalls, including the treatment plant outfall(s), and any known SSOs for the past six years;
4. all pump stations and force mains;

5. the wastewater treatment facility(ies), including all treatment processes;
6. all surface waters (labeled);
7. other major appurtenances such as inverted siphons and air release valves;
8. a numbering system which uniquely identifies manholes, catch basins, overflow points, regulators, and outfalls;
9. the scale and a north arrow;
10. the pipe diameter, date of installation, type of material, distance between manholes, and the direction of flow; and
11. the manhole interior material, rim elevation (optional), and invert elevations.

iii. Core Element 1: The Current State of the Assets and Core Element 3: Assets Critical to Sustained Performance. Inventory and Assessment of Fixed Assets.

Not later than **July 1, 2021**, the City shall complete an inventory and assessment of sewage collection system operations-related fixed assets, including the portions of the collection system owned and operated by the City. Fixed assets are assets that are normally stationary, like pumps, blowers, buildings, manholes, and sanitary sewer lines. The inventory and assessment shall be based on current conditions and shall be kept updated and available for review by EGLE.

1. The fixed asset inventory shall include the following:
  - A. a brief description of the fixed asset, its design capacity (e.g., pump: 120 gallons per minute), its level of redundancy, and its tag number if applicable;
  - B. the location of the fixed asset;

- C. the year the fixed asset was installed;
  - D. the present condition of the fixed asset (e.g., excellent, good, fair, poor) and the cause of the current condition if less than good; and
  - E. the current fixed asset replacement cost in dollars for year specified in accordance with approved schedules;
2. The fixed asset assessment shall include a "Business Risk Evaluation" that results in a "Business Risk Factor" derived from multiplying the probability of failure of the fixed asset and the criticality of the fixed asset, as follows:
- A. Rate the probability of failure of the fixed asset on a scale of 1-5 (with 1 being the least critical) using criteria such as maintenance history, failure history, and remaining percentage of useful life or years remaining;
  - B. Rate the criticality of the fixed asset on a scale of 1-5 (with 1 being the least critical) based on the consequence of failure versus the desired level of service for the sewage collection system; and
  - C. Compute the Business Risk Factor of the fixed asset by multiplying the failure rating from A by the criticality rating from B.
- iv. Core Element 4: Minimum Life-Cycle Costs and Core Element 5: Best Long-Term Funding Strategy. Operation, Maintenance & Replacement (OM&R) Budget and Rate Sufficiency for the Sewage Collection System and Treatment Works.

The City shall complete an assessment of its user rates and replacement fund, including the following:

1. beginning and end dates of fiscal year;
2. name of the department, committee, board, or other organization that sets rates for the operation of the sanitary sewer system and treatment works;
3. amount in the City's replacement fund in dollars for year specified in accordance with approved schedules;
4. replacement fund strategy of all sewage collection system assets with a useful life of 20 years or less;
5. expenditures for maintenance, corrective action and capital improvement taken during the fiscal year;
6. OM&R budget for the fiscal year; and
7. rate calculation demonstrating sufficient revenues to cover OM&R expenses. If the rate calculation shows there are insufficient revenues to pay for OM&R expenses, the City shall document, within three (3) fiscal years after submittal of the Asset Management Plan, that there is at least one rate adjustment that reduces the revenue gap by at least 10 percent. The City may prepare and submit an alternate plan, subject to EGLE approval, for addressing the revenue gap. The ultimate goal of the Asset Management Program is to ensure sufficient revenues to fund OM&R expenses.

**b. Annual Reporting**

Not later than **December 1 of each year, beginning with December 1, 2020**, the City shall develop and submit to EGLE for review a written report that summarizes asset management activities completed during the previous year and planned for the upcoming year. The written report shall include:

- i. a description of the staffing levels, including contractors, maintained during the year;

- ii. a description of inspections and maintenance activities conducted and corrective actions taken during the previous year;
- iii. expenditures for collection system maintenance activities, treatment works maintenance activities, corrective actions, and capital improvement during the previous year;
- iv. a summary of assets/areas identified for inspection and action (including capital improvement) in the upcoming year based on the five (5) core elements and the Business Risk Factors computed in accordance with condition Paragraph 3.5 (a)(iii)(2)(C) of this Consent Order;
- v. a maintenance budget and capital improvement budget for the upcoming year that includes implementation of an effective Asset Management Program that meets the five (5) core elements;
- vi. an updated asset inventory based on the original submission; and
- vii. an updated OM&R budget with an updated rate schedule that includes the amount of insufficient revenues, if any.

3.7 The City shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to their MiWaters account and, if required, to the WRD, Jackson District Office Supervisor, at EGLE, 301 East Louis Glick Highway, Jackson, Michigan 49201-1556. The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.

#### **IV. EGLE APPROVAL OF SUBMITTALS**

- 4.1 For any work plan, proposal, or other document, excluding applications for permits or licenses, that are required by this Consent Order to be submitted to EGLE by the City, the following process and terms of approval shall apply.
- 4.2 All work plans, proposals, and other documents required to be submitted by this Consent Order shall include all the information required by the applicable statute and/or rule, and all of the information required by the applicable paragraph(s) of this Consent Order.

- 4.3 In the event EGLE disapproves a work plan, proposal, or other document, it will notify the City, in writing, specifying the reasons for such disapproval. The City shall submit, within 30 days of receipt of such disapproval, a revised work plan, proposal, or other document which adequately addresses the reasons for EGLE's disapproval. If the revised work plan, proposal, or other document is still not acceptable to EGLE, EGLE will notify the City of this disapproval.
- 4.4 In the event EGLE approves with specific modifications a work plan, proposal, or other document, it will notify the City, in writing, specifying the modifications required to be made to such work plan, proposal, or other document prior to its implementation and the specific reasons for such modifications. EGLE may require the City to submit, prior to implementation and within 30 days of receipt of such approval with specific modifications, a revised work plan, proposal, or other document which adequately addresses such modifications. If the revised work plan, proposal, or other document is still not acceptable to EGLE, EGLE will notify the City of this disapproval.
- 4.5 Upon EGLE approval, or approval with modifications, of a work plan, proposal, or other document, such work plan, proposal, or other document shall be incorporated by reference into this Consent Order and shall be enforceable in accordance with the provisions of this Consent Order.
- 4.6 Failure by the City to submit an approvable work plan, proposal, or other document, within the applicable time periods specified above, constitutes a violation of this Consent Order and shall subject the City to the enforcement provisions of this Consent Order, including the stipulated penalty provisions specified in Paragraph 9.3 of this Consent Order.
- 4.7 Any delays caused by the City's failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter the City's responsibility to comply with any other deadline(s) specified in this Consent Order.
- 4.8 No informal advice, guidance, suggestions, or comments by EGLE regarding reports, work plans, plans, specifications, schedules or any other writing submitted by the City will be construed as relieving the City of its obligation to obtain written approval, if and when required by this Consent Order.

## **V. EXTENSIONS**

- 5.1 The City and EGLE agree that EGLE may grant the City reasonable extensions of the specified deadlines set forth in this Consent Order. Any extension shall be preceded by a written request in duplicate to the WRD, Enforcement Unit Supervisor, at EGLE, P.O. Box 30458, Lansing, Michigan 48909-7958, and the WRD, Jackson District Office Supervisor at the address in Paragraph 3.7 of this Consent Order, no later than ten business days prior to the pertinent deadline, and shall include:
- a. Identification of the specific deadline(s) of this Consent Order that will not be met.
  - b. A detailed description of the circumstances that will prevent the City from meeting the deadline(s).
  - c. A description of the measures the City has taken and/or intends to take to meet the required deadline.
  - d. The length of the extension requested and the specific date on which the obligation will be met.

The WRD, Jackson District Office Supervisor or a designee, in consultation with the WRD, Enforcement Unit Supervisor, shall respond in writing to such requests. No change or modification to this Consent Order shall be valid unless in writing from EGLE, and if applicable, signed by both parties.

## **VI. REPORTING**

- 6.1 The City shall verbally report any violation(s) of the terms and conditions of this Consent Order to the WRD, Jackson District Office Supervisor by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s). The City shall report any anticipated violation(s) of this Consent Order to the above-referenced individual in advance of the relevant deadlines whenever possible.

## VII. RETENTION OF RECORDS

- 7.1 Upon request by an authorized representative of EGLE, the City shall make available to EGLE all records, plans, logs, and other documents required to be maintained under this Consent Order or pursuant to the NREPA or its rules. All such documents shall be retained by the City for at least a period of five years from the date of generation of the record unless a longer period of record retention is required by the NREPA or its rules.

## VIII. RIGHT OF ENTRY

- 8.1 The City shall allow any authorized representative or contractor of EGLE, upon presentation of proper credentials, to enter upon the premises of any portion of the sewage collection system and WWTP at all reasonable times for the purpose of monitoring compliance with the provisions of this Consent Order. This paragraph in no way limits the authority of EGLE to conduct tests and inspections pursuant to the NREPA and the rules promulgated thereunder, or any other applicable statutory provision.

## IX. PENALTIES

- 9.1 Within 30 days after the effective date of this Consent Order, the City shall pay to the State of Michigan **\$6,500** as partial compensation for the cost of investigations and enforcement activities arising from the violations specified in Section II of this Consent Order. Payment shall be made in accordance with Paragraph 9.5 of this Consent Order.
- 9.2 Within 30 days after the effective date of this Consent Order, the City shall pay to the State of Michigan a civil fine of **\$38,500** for the violations specified in Section II of this Consent Order. Payment shall be made in accordance with Paragraph 9.5 of this Consent Order.
- 9.3 For each failure to comply with a provision contained in Section III of this Consent Order, the City shall pay a stipulated penalty of **\$5,000**. If, after 30 days from the original deadline, the City has not fully corrected the violation, the City shall pay stipulated penalties of \$200 per violation per day for one to seven days of violation, \$300 per violation per day for eight to 14 days of violation, and \$500 per violation per day for each day of violation thereafter. Payments shall be made in accordance with Paragraph 9.5 of this Consent Order.



- 9.4 For each failure to comply with any provision of this Consent Order other than the provisions contained in Section III of this Consent Order, the City shall pay stipulated penalties of **\$200** per violation per day for one to seven days of violation, **\$300** per violation per day for eight to 14 days of violation, and **\$500** per violation per day for each day of violation thereafter. Payments shall be made in accordance with Paragraph 9.5 of this Consent Order.
- 9.5 The City shall pay all stipulated penalties within 30 days after receipt of a written demand for payment of stipulated penalties from EGLE. The City agrees to pay all funds due pursuant to this Consent Order by check made payable to the State of Michigan and delivered to the Accounting Services Division, Cashier's Office for EGLE, P.O. Box 30657, Lansing, Michigan 48909 8157, or hand-delivered to the Accounting Services Division, Cashier's Office for EGLE, 425 West Ottawa Street, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include the **Payment Identification Number WRD40170**.
- 9.6 The City agrees not to contest the legality of the civil fine or costs paid pursuant to Paragraphs 9.1, and 9.2, above. The City further agrees not to contest the legality of any stipulated penalties assessed pursuant to Paragraphs 9.3 or 9.4, above, but reserves the right to dispute the factual basis upon which any demand by EGLE for stipulated penalties is made.
- 9.7 EGLE reserves its rights to seek interest on any unpaid sums due pursuant to the terms of the Consent Order. Subject to the other provisions of this Section IX, EGLE may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Consent Order. This interest penalty shall be based on the rate set forth at MCL 600.6013(8), using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full.

#### **X. FORCE MAJEURE**

- 10.1 The City shall perform the requirements of this Consent Order within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall

not be deemed a violation of the City's obligations under this Consent Order in accordance with this section.

- 10.2 For the purpose of this Consent Order, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of the City, such as: an Act of God, untimely review of permit applications or submissions by EGLE or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by the City's diligence and that delay the performance of an obligation under this Consent Order. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of the City's actions or omissions.
- 10.3 The City shall notify EGLE, by telephone, within 48 hours of discovering any event that may cause a delay in its compliance with any provision of this Consent Order. Verbal notice shall be followed by written notice within ten calendar days and shall describe, in detail, the anticipated length of delay, the precise cause or causes of delay, the measures taken by the City to prevent or minimize the delay, and the timetable by which those measures shall be implemented. The City shall adopt all reasonable measures to avoid or minimize any such delay. Nothing in this paragraph obviates the need to report violations as required by Paragraph 6.1 of this Consent Order.
- 10.4 Failure of the City to comply with the notice requirements and time provisions under Paragraph 10.3 above shall render this Section X void and of no force and effect as to the particular incident involved. EGLE may, at its sole discretion and in appropriate circumstances, waive in writing the notice requirements of Paragraph 10.3, above.
- 10.5 If the parties agree that the delay or anticipated delay was beyond the control of the City, this may be so stipulated, and the parties to this Consent Order may agree upon an appropriate modification of this Consent Order. However, EGLE is the final decision-maker on whether or not the matter at issue constitutes a Force Majeure. The burden of proving that any delay was beyond the reasonable control of the City, and that all the requirements of this Section X have been met by the City, rests with the City.

- 10.6 An extension of one compliance date based upon a particular Force Majeure incident does not necessarily mean that the City qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

#### **XI. GENERAL PROVISIONS**

- 11.1 With respect to any violations not specifically addressed and resolved by this Consent Order, EGLE reserves the right to pursue any remedies to which it is entitled for any failure on the part of the City to comply with the requirements of the NREPA and its rules.
- 11.2 EGLE and the City consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Part 31 and Part 41.
- 11.3 This Consent Order in no way affects the City's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 11.4 The WRD reserves its right to pursue appropriate action, including injunctive relief to enforce the provisions of this Consent Order, and at its discretion, the WRD may also seek stipulated fines or statutory fines for any violation of this Consent Order. However, the WRD is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.
- 11.5 The parties agree to diligently and in good faith pursue informal negotiations to resolve any disputes arising out of this Consent Order prior to resorting to judicial enforcement. Such negotiations shall proceed in a timely manner.
- 11.6 Nothing in this Consent Order is or shall be considered to affect any liability the City may have for natural resource damages caused by the City's ownership and/or operation of the sewage collection system and WWTP. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
- 11.7 In the event the City sells or transfers any portion of the sewage collection system and WWTP, it shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within 30 calendar days, the City shall also notify the WRD, Jackson District Office Supervisor, in writing, of such sale or transfer, the identity

and address of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser and/or transferee. The purchaser and/or transferee of this Consent Order must agree, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the WRD, Jackson District Office Supervisor within 30 days of assuming the obligations of this Consent Order.

- 11.8 The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their successors and assigns.
- 11.9 This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.
- 11.10 The effective date of this Consent Order is the date it is signed by the director of the WRD.

## **XII. TERMINATION**

- 12.1 This Consent Order shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by EGLE. Prior to issuance of a written TN, the City shall submit a request consisting of a written certification that the City has fully complied with the requirements of this Consent Order and has made payment of any fines, including stipulated penalties, required in this Consent Order. Specifically, an acceptable certification shall include:
- a. The date of compliance with each provision of the compliance program in Section III of this Consent Order, and the date any fines or penalties were paid.
  - b. A statement that all required information has been reported to the WRD, Jackson District Office Supervisor.
  - c. Confirmation that all records required to be maintained pursuant to this Consent Order are being maintained by the City.

EGLE may also request additional relevant information. EGLE shall not unreasonably withhold issuance of a TN.

**Signatories**

The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

**DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY**

\_\_\_\_\_  
Teresa Seidel, Director  
Water Resources Division

\_\_\_\_\_  
Date

**FOR THE CITY OF ANN ARBOR**

\_\_\_\_\_  
Christopher Taylor, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Howard S. Lazarus, City Administrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jacqueline Beaudry, City Clerk

\_\_\_\_\_  
Date

**APPROVED AS TO SUBSTANCE,  
FOR THE CITY**

\_\_\_\_\_  
Craig A. Hupy, PE, Public Services Area Administrator

\_\_\_\_\_  
Date

**APPROVED AS TO FORM AND CONTENT,  
FOR THE CITY**

\_\_\_\_\_  
Stephen K. Postema, City Attorney

\_\_\_\_\_  
Date

**APPROVED AS TO FORM, FOR EGLE**

\_\_\_\_\_  
By: Neil Gordon, Assistant Attorney General  
For: S. Peter Manning, Chief  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General

\_\_\_\_\_  
Date