



Legislation Text

File #: 10-0446, **Version:** 1

Resolution to Approve Consent Agreement to Resolve MDNRE Argo Dam Safety Order Contested Case

On August 6, 2009, the Michigan Department of Natural Resources and Environment (MDNRE; formerly MDEQ) issued a Safety Order that required the City to dewater the Argo Dam headrace and take other actions. The City disagreed with the determinations of the MDNRE and filed a contested case disputing the Order.

The City then negotiated with the MDNRE to allow the City to install a stop log to stop flow into the headrace from Argo Pond at the end of the canoe season while the City installed piezometers to measure water seepage and otherwise undertook further study of the condition of the embankment and the concerns asserted by the MDNRE as grounds for its Order.

Although the City and the MDNRE disagree as to whether there are deficiencies and/or as to the severity of the deficiencies identified by the MDNRE, the City and the MDNRE continued to negotiate and have reached agreement on a Consent Agreement that supersedes the August 6, 2009, Order and resolves the contested case, subject to approval by City Council. The Consent Agreement contains four substantial elements:

1. Provisions for vegetation management;
2. Provisions for emergency response actions;
3. Provisions for monitoring and reporting; and
4. A process and time line for selection of an option to repair the toe drain system and/or reconstruct the embankment.

Copies of the proposed Consent Agreement, Vegetation Management Plan and Triggers for Emergency Response are attached.

Upon execution of the Consent Agreement by both the City and the MDNRE, the City will be able to lift the stop log and resume canoe operations at the Argo livery.

Prepared by: Sue F. McCormick, Public Services Area Administrator, Sumedh Bahl, Interim Community Services Area Administrator

Reviewed by: Abigail Elias, Chief Assistant City Attorney

Approved by: Roger W. Fraser, City Administrator

Whereas, On August 6, 2009, the Michigan Department of Natural Resources and Environment (MDNRE) issued a Safety Order regarding Argo Dam;

Whereas, The City disagreed with the findings and conclusions of the Order and filed a contested case to dispute it; and

Whereas, The City and MDNRE negotiated and have reached agreement on the terms of a Consent Agreement that supersedes the August 6, 2009, Order and resolves the contested case, subject to

approval by City Council.

RESOLVED, That the proposed Consent Agreement between the City and the MDNRE be approved;

RESOLVED, That the Mayor and City Clerk be authorized and directed to execute said Consent Agreement; and

RESOLVED, That the City Administrator and City Attorney are authorized to take the necessary administrative actions to implement this resolution.

Sponsored by: Councilmembers Higgins and Derezinski