

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY
DRINKING WATER AND ENVIRONMENTAL HEALTH DIVISION

ADMINISTRATIVE COMPLIANCE AGREEMENT

In the matter of:

DWEHD Agreement No. ACA-399-13-2023

SECTION I

FACILITY OWNER/OPERATOR

NAME City of Muskegon Heights		OWNER <input checked="" type="checkbox"/>	OPERATOR <input checked="" type="checkbox"/>
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS BUSINESS IDENTIFICATION NUMBER			
ADDRESS 2724 Peck Street			
CITY Muskegon Heights	STATE Michigan	ZIP CODE 49444	
CONTACT NAME/TITLE Melvin Burns, Interim City Manager		PHONE # 231-733-8870	

FACILITY NAME AND LOCATION

FACILITY NAME Muskegon Heights		WATER SUPPLY SERIAL NUMBER 04580
FACILITY OWNER IF NOT IDENTIFIED ABOVE		
ADDRESS 2724 Peck Street		
CITY Muskegon Heights	STATE Michigan	ZIP CODE 49444
COUNTY Muskegon		
CONTACT NAME Khi Guy		PHONE # 231-237-2797

- 1.1 This document results from allegations by the Department of Environment, Great Lakes, and Energy (EGLE), Drinking Water and Environmental Health Division (DWEHD). EGLE alleges that the City of Muskegon Heights (Owner/Operator), owner/operator of the above-referenced facility, is in violation of the Safe Drinking Water Act, 1976 PA 399, as amended (Act 399), and the administrative rules promulgated thereunder.
- 1.2 Specific alleged violations are referenced in EGLE Significant Deficiency Violation Notice (SDVN) attached to this Administrative Compliance Agreement (Compliance Agreement) as Exhibit A. The Owner/Operator and EGLE agree to resolve the alleged violations set forth therein through entry of this Compliance Agreement. The Owner/Operator agrees to resolve all compliance issues set forth in Exhibit A in accordance with the requirements contained in this Compliance Agreement. This Compliance Agreement, in its entirety, shall consist of Section I, the attached Sections II, III, and IV, Exhibit A, and any other referenced attachments, exhibits, or appendices. This Compliance Agreement shall be considered null and void if it does not include, at a minimum, Sections I, II, III, and IV and Exhibit A. The Owner/Operator further agrees that this Compliance Agreement shall become effective on the date it is signed by the DWEHD Director, designee of the EGLE Director.

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- 1.3 The Owner/Operator agrees to pay a civil fine of \$500 per day and provide public notification for failure to complete corrective actions as specified in Section II, Compliance Schedule, unless an extension has been approved under Paragraph 4.14, of this Compliance Agreement. Failure to make a timely payment constitutes a violation of this Compliance Agreement.
- 1.4 The Owner/Operator agrees to make payment of all funds due pursuant to this agreement by certified check made payable to the "State of Michigan" and mailed to the Accounting Services Division, Cashier's Office for EGLE, P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments made pursuant to this Compliance Agreement must include "Payment Identification Number RMD90110" on the check. The Owner/Operator agrees not to contest the legality of the civil fine.
- 1.5 The Owner/Operator agrees to provide a Special Notice in its annual Consumer Confidence Report until all items in Section II, Compliance Schedule, are resolved.

Signatories

DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

Eric J. Oswald, Director
Drinking Water and Environmental Health Division

Date

I, the undersigned, CERTIFY that I am fully authorized by the party identified above to enter into this Compliance Agreement to comply by consent and to EXECUTE and LEGALLY BIND that party to it. I further attest that all information provided herein is accurate and true.

CITY OF MUSEKGON HEIGHTS

Melvin Burns, Interim City Manager

Date

SECTION II - COMPLIANCE SCHEDULE

IT IS THEREFORE AGREED AND ORDERED THAT the Owner/Operator shall take the following actions to prevent further violations of Act 399 and the administrative rules promulgated thereunder and/or to correct the significant deficiencies identified in the SDVN attached to this Compliance Agreement as Exhibit A.

- 2.1 Not later than 60 days from the effective date of this Compliance Agreement, the Owner/Operator shall submit payment of the outstanding 2022 Community Water Supply (CWS) interest fees in accordance with the attached invoice (Exhibit B: Invoice Number: 11047585). As of the effective date of this Compliance Agreement, the Owner/Operator has paid the outstanding 2022 CWS fees, however, a remaining balance of \$99.86 in accrued interest is owed.
- 2.2 Not later than 60 days from the effective date of this Compliance Agreement, the Owner/Operator shall submit to the EGLE, for review and approval, a short-term staffing plan. The plan shall include, at a minimum, an organizational chart, current job descriptions and duties, the estimated number of staff necessary to maintain shift coverage for the water treatment plant, as well as to perform basic maintenance at the plant and in the distribution system. The plan should also outline recruitment and retention efforts. A long-term staffing plan shall be conducted after evaluating the results of the Alternatives Assessment and Technical, Managerial and Financial (TMF) Capacity Study.
- 2.3 The Owner/Operator shall maintain a properly certified Operator-in-Charge and adequate number of shift operators for the duration of the water treatment plant (WTP) in operation. If the Owner/Operator is unable to maintain proper staffing for operations, implementation of the contingency plan (opening the interconnects) shall commence.
- 2.4 Not later than 180 days from the effective date of this Compliance Agreement, the Owner/Operator shall submit to EGLE, for review and approval, a short-term preventive maintenance program. At a minimum, the program shall include a schedule for the maintenance, repair, and replacement for the following: coagulation, flocculation, sedimentation, filter, pump equipment, chlorine residual analyzers, online turbidimeters, chemical feed equipment, WTP valve exercising schedules, distribution system valve exercising/turning schedules, and hydrant flushing schedules.
- 2.5 Not later than 120 days from the effective date of this Compliance Agreement, the Owner/Operator shall submit to EGLE, documentation that a minimum of two operational units for each treatment process for disinfection, coagulation, rapid mix, flocculation, and filtration to meet maximum day demands are maintained.
- 2.6 Not later than 270 days from the effective date of this Compliance Agreement, the Owner/Operator shall submit to EGLE, in writing, a status report and summary of the repairs made to the inoperable pumps at the pumping facilities and Sherman reservoir to maintain sufficient capacity to meet the service demands, with the largest unit removed from service.
- 2.7 Not later than October 31, 2024, in accordance with the Drinking Water Asset Management (DWAM) grant deadline, the Owner/Operator shall submit to EGLE, for review and approval, an updated Asset Management Plan (AMP) to include an inventory of assets, methods used to determine the asset criticality and consequence of failure, level of service

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goals, and a Capital Improvements Plan that identifies system needs for 5- and 20-year planning periods.

- 2.8 Not later than 30 days from the effective date of this Compliance Agreement, the Owner/Operator shall submit to EGLE photographic documentation of installation of size 24 mesh screen on the overflow discharge pipe between the weir and manhole at the WTP.
- 2.9 Not later than 60 days from the effective date of this Compliance Agreement, the Owner/Operator shall submit to EGLE photographic documentation of installation of size 24 mesh screen on vents and overflow discharge pipe and installation of a flush flapper valve at the Sherman reservoir.
- 2.10 Not later than 180 days from the effective date of this Compliance Agreement, the Owner/Operator shall submit to EGLE photographic documentation of the removal of the extended mesh venting on the wet interior access hatch, and replacement with an overlapping lid and watertight gasket at the Getty elevated tank.
- 2.11 Not later than 60 days from the effective date of this Compliance Agreement, the Owner/Operator shall submit to EGLE, for review and approval, an updated Emergency Response Plan (ERP). At a minimum, the ERP shall outline the program for rapid correction or mitigation of emergencies, a current list of contacts, and all elements outlined in Rule 2303.
- 2.12 Not later than 120 days from the effective date of this Compliance Agreement, the Owner/Operator shall submit to EGLE, for review and approval, an implementation plan to ensure basic cross connection control in the distribution system. By this date, Muskegon Heights will also add a page to the monthly operation report which details the cross-connection control efforts for the month.
- 2.13 Not later than 30 days from the effective date of this Compliance Agreement, the Owner/Operator shall submit to EGLE, in writing, a request for a waiver for conducting a Reliability Study. If no request is submitted, an updated Reliability Study shall be submitted to EGLE by October 31, 2024, in accordance with the DWAM grant deadline.
- 2.14 Not later than 180 days from the final submission of the Technical, Managerial, and Financial (TMF) study, the Owner/Operator shall develop and submit to EGLE, for review and approval, standard operating procedures (SOPs) for, at a minimum, the following areas:
 - pump maintenance
 - Sherman Street pump operation
 - storage management and high service pump rotation
 - intake maintenance (including backwash)
 - chemical pump calibration
 - turbidimeter calibration
 - emergency power operation
 - chemical delivery procedures
 - bypassing storage tanks

- 2.15 The Owner/Operator shall complete the following to ensure adequate TMF capacity for the water system, in accordance with Act 399.
- a. Conduct a comprehensive analysis of water supply alternatives using a qualified third-party consultant. The consultant shall have experience with assessing the operation, management, and finances of public utilities and shall not have any conflicts of interest related to the Muskegon Heights water system. The scope of the study shall include both the water treatment and the water distribution systems. The analysis shall identify all feasible water supply options for Muskegon Heights and estimate the capital and ongoing operating costs of each option. The cost estimates must also be broken down in terms of impact to customer water bills and local affordability. Once complete, the study must be submitted to EGLE, announced to the public, and made available to the public for review by not later than 365 days from the effective date of the Compliance Agreement. The public shall have at least 45 days to submit comments and Muskegon Heights must compile and record all comments. Based on the study findings and public comments, the Muskegon Heights City Council (Council) must vote to determine the selected alternative and submit to EGLE the compiled public comments not later than 90 days from completion of the alternative analysis.
 - b. Conduct a comprehensive TMF capacity study using a qualified third-party consultant. The consultant shall have experience with assessing the operation, management, and finances of public utilities and shall not have any conflicts of interest related to the Muskegon Heights water system. The scope of the study shall include both the water treatment and the water distribution systems. The study must identify Muskegon Heights' level of service goals, the TMF capacity necessary to support the selected alternative, any gaps between the capacity *needed* to meet level of service goals and the *available* capacity and provide an implementation plan for closing any identified gaps in capacity. Paragraph 2.15(b) shall be completed, submitted to EGLE, announced, and made available to the public for review not later than 270 days following Council's vote of selected alternative.

Sections III and IV of this Compliance Agreement shall not be altered in any way, including adding or eliminating any language, striking terms or parts of terms, retyping in whole or in part, or using a different format. Any changes to this document without written approval from EGLE renders the Compliance Agreement null and void.

SECTION III - STIPULATIONS

The Owner/Operator and EGLE stipulate as follows:

- 3.1 EGLE is authorized to enter this Compliance Agreement requiring the Owner/Operator to comply with state law under Section 15 of Act 399.
- 3.2 The Owner/Operator consents to the issuance and entry of this Compliance Agreement and stipulates that the entry of this Compliance Agreement constitutes a final order of EGLE and is enforceable as such under the appropriate provisions of state law identified in this Compliance Agreement. The Owner/Operator agrees not to contest the issuance of this Compliance Agreement and that the resolution of this matter by the entry of this Compliance Agreement is appropriate and acceptable.

- 3.3 The Owner/Operator and EGLE agree that the signing of this Compliance Agreement is for settlement purposes only and does not constitute an admission by the Owner/Operator that the law has been violated.
- 3.4 The Signatory to this Compliance Agreement on behalf of the Owner/Operator agrees and attests that he/she is fully authorized to ensure that the Owner/Operator will comply with all requirements under this Compliance Agreement.
- 3.5 The Owner/Operator shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section II of this Compliance Agreement.

SECTION IV - GENERAL PROVISIONS

The Owner/Operator and EGLE further stipulate as follows:

- 4.1 With respect to any violations not specifically addressed and resolved by this Compliance Agreement, EGLE reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the Owner/Operator to comply with the requirements of Act 399 and the administrative rules promulgated thereunder.
- 4.2 EGLE and the Owner/Operator consent to enforcement of this Compliance Agreement in the same manner and by the same procedures for all final orders entered pursuant to the provisions of Act 399.
- 4.3 This Compliance Agreement in no way affects the Owner/Operator's responsibility to comply with any other applicable local, state, or federal laws or regulations.
- 4.4 EGLE reserves its right to pursue appropriate action, including injunctive relief to enforce the provisions of this Compliance Agreement, and applicable statutory fines for any violation of this Compliance Agreement.
- 4.5 Nothing in this Compliance Agreement is or shall be considered to affect any liability the Owner/Operator may have for natural resource damages caused by the Owner/Operator's acts or omissions at the facility. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
- 4.6 In the event the Owner/Operator sells or transfers the facility, he/she shall advise any purchaser or transferee of the existence of this Compliance Agreement in connection with such sale or transfer. Within 30 calendar days, the Owner/Operator shall also notify the DWEHD District 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 Compliance Agreement has been given to the purchaser and/or transferee. The purchaser and/or transferee of this Compliance Agreement must agree, in writing, to assume all of the obligations of this Compliance Agreement. A copy of that agreement shall be submitted to the DWEHD District Supervisor within 30 days of assuming the obligations of this Compliance Agreement.
- 4.7 The provisions of this Compliance Agreement shall apply to and be binding upon the parties to this action and their successors and assigns.

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- 4.8 This Compliance Agreement 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.

Reporting

- 4.9 The Owner/Operator shall make all submittals and written notifications required by this Compliance Agreement, to the Engineering Section Supervisor, EGLE, Marquette District Office, 1504 West Washington Street, Marquette, Michigan 49855. The cover letter with each submittal or notification shall identify the specific paragraph and requirement of this Compliance Agreement that the submittal or notification is intended to satisfy.
- 4.10 The Owner/Operator shall verbally report any violation(s) of the terms and conditions of this Compliance Agreement to the DWEHD Engineering Section Supervisor at 906-630-4107 by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with submittal of 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 Owner/Operator shall report any anticipated violation(s) of this Compliance Agreement to the above-referenced individual in advance of the relevant deadlines whenever possible.

Retention of Records

- 4.11 Upon request by an authorized representative of EGLE, the Owner/Operator shall make available to EGLE all records, plans, logs, and other documents required to be maintained under this Compliance Agreement or pursuant to applicable laws or rules. All such documents shall be retained by the Owner/Operator for at least a period of three years from the date of generation of the record unless a longer period of record retention is required by the applicable law or its rules.

Right of Entry

- 4.12 The Owner/Operator shall allow any authorized representative or contractor of EGLE, upon presentation of proper credentials, to enter upon the premises of the facility at all reasonable times for the purpose of monitoring compliance with the provisions of this Compliance Agreement. This paragraph in no way limits the authority of EGLE to conduct tests and inspections pursuant to Act 399 and the administrative rules promulgated thereunder or any other applicable statutory provision.

EGLE Approval of Submittals

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

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- b. In the event EGLE disapproves a work plan, proposal, or other document, it will notify the Owner/Operator, in writing, specifying the reasons for such disapproval. The Owner/Operator shall submit, within 30 days of receipt of such disapproval, a revised work plan, proposal, or other document that 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 Owner/Operator, in writing, of this disapproval.
- c. In the event EGLE approves with specific modifications, a work plan, proposal, or other document, it will notify the Owner/Operator, 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 Owner/Operator 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 that adequately addresses such modifications. If the revised work plan, proposal, or other document is still not acceptable to EGLE, EGLE will notify the Owner/Operator, in writing, of this disapproval.
- d. 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 Compliance Agreement and shall be enforceable in accordance with the provisions of this Compliance Agreement.
- e. Failure by the Owner/Operator to submit an approvable work plan, proposal, or other document, within the applicable time periods specified above, constitutes a violation of this Compliance Agreement and shall subject the Owner/Operator to the enforcement provisions of this Compliance Agreement.
- f. Any delays caused by the Owner/Operator's failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter the Owner/Operator's responsibility to comply with any other deadline(s) specified in this Compliance Agreement.
- g. No informal advice, guidance, suggestions, or comments by EGLE regarding reports, work plans, plans, specifications, schedules, or any other writing submitted by the Owner/Operator will be construed as relieving the Owner/Operator of his/her obligation to obtain written approval, if and when required by this Compliance Agreement.

Extensions

- 4.14 The Owner/Operator and EGLE agree that EGLE may grant the Owner/Operator a reasonable extension of the specified deadlines set forth in this Compliance Agreement. Any extension shall be preceded by a written request to the DWEHD District Supervisor no later than ten business days prior to the pertinent deadline and shall include:
- a. Identification of the specific deadline(s) of this Compliance Agreement that will not be met.
 - b. A detailed description of the circumstances that will prevent the Owner/Operator from meeting the deadline(s).

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- c. A description of the measures the Owner/Operator has taken and/or intends to take to meet the required deadline(s).
- d. The length of the extension requested and the specific date on which the obligation will be met.

No change or modification to this Compliance Agreement shall be valid unless in writing from EGLE and, if applicable, signed by both parties.

Termination

4.15 This Compliance Agreement 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 Owner/Operator shall submit a request consisting of a written certification that the Owner/Operator has fully complied with the requirements of this Compliance Agreement and has made payment of any fines required in this Compliance Agreement. Specifically, this certification shall include:

- a. The date of compliance with each provision of the compliance program in Section II of this Compliance Agreement, and the date any fines or penalties were paid.
- b. A statement that all required information has been reported to the DWEHD District Supervisor.
- c. Confirmation that all records required to be maintained pursuant to this Compliance Agreement are being maintained at the facility.

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

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Exhibit A

Enforcement Type

Issue Date

Significant Deficiency Violation Notice

February 17, 2023

Exhibit B

Invoice Number: 11047585