

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT
COUNTY OF INGHAM

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY, and
STEVEN E. CHESTER, Director of the
Michigan Department of Environmental
Quality,

Docket No. 06-1465-CE

Hon. JAMES R. GIDDINGS

Plaintiffs,

v.

CITY OF PONTIAC,
A Michigan Municipal Corporation

Defendant.

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Assistant Attorney General
Attorney for the Plaintiffs
Environment, Natural Resources, and
Agriculture Division
P.O. Box 30755
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CONSENT JUDGMENT

At a session of said Court, held in the courthouse, in the City
of Lansing, County of Ingham, and State of Michigan on

July 24, 2009
PRESENT: Hon. James R. Giddings
Circuit Court Judge

This matter having come on before the Court upon the Parties' agreement to enter this
Consent Judgment to resolve the matters raised by the Michigan Department of Environmental
Quality in the Complaint in the above-entitled cause and to establish conditions wherein the City
of Pontiac will complete specified activities pursuant to Part 31 of the Natural Resources and

Environmental Protection Act (NREPA) and the Court being otherwise fully advised in the premises;

The Michigan Department of Environmental Quality ("MDEQ") and Steven E. Chester ("Chester") (collectively "Plaintiffs") and the City of Pontiac ("City" or "Defendant") (collectively Plaintiffs and Defendant are the "Parties") agree that settlement of this action is in the public interest and consent to the entry of this Consent Judgment ("Judgment"), without further litigation, as the most appropriate means of resolving the allegations raised by Plaintiffs in the Complaint filed with the Court on November 17, 2006. As evidenced by the signatures below, the Parties agree to, and shall be bound by, the terms of this Judgment.

Neither the execution nor entry of this Judgment shall be construed as an admission or a denial of liability by the Defendant with respect to any issue dealt with in this Judgment or an admission or denial of any factual allegations or legal conclusions stated or implied herein.

This Judgment requires the completion of specified activities by Defendant pursuant to Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA); MCL 324.3101 et seq., at Defendant's Municipal Corporation located at 47450 Woodward Avenue, Pontiac, Oakland County, Michigan 48342, that is the subject of the Complaint.

NOW, THEREFORE, before the taking any testimony, without trial of any issue of fact or law, and upon the consent of the Parties, by their attorneys, it is hereby ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION AND VENUE

A. This Court has jurisdiction over the subject matter under Section 711 and 715 of the Revised Judicature Act (RJA), MCL 600.711 and MCL 600.715, and has subject matter jurisdiction pursuant to MCL 324.3115(1) and Section 605 of the RJA, MCL 600.605. This

Court also has personal jurisdiction over the Defendant. For the purposes of this Judgment only, Defendant waives all objections and defenses that it may have with respect to the jurisdiction of the Court.

B. Venue is proper in this circuit under Section 1631 of the RJA, MCL 600.1631 and MCL 324.3115(1)

C. The Court determines that the terms and conditions of this Consent Judgment are reasonable, adequately resolve the environmental issues raised in the Complaint, and properly protect the interests of the people of the State of Michigan.

D. The Court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Judgment and to resolve disputes arising under the same, including those that may be necessary for its construction, execution, or implementation.

II. PARTIES BOUND

A. Plaintiff, Michigan Department of Environmental Quality (“MDEQ”) avers that it is a principal department within the Executive Branch of the State of Michigan pursuant to Executive Order 1995-18. The MDEQ is the state agency mandated to provide for the protection of the natural resources of the state from pollution, impairment, and destruction. MCL 324.101, MCL 324.301, MCL 324.501, and Executive Orders 1973-2, 1976-8, and 1995-18.

B. Plaintiff, Chester avers that he is the Director of the MDEQ as appointed by Governor Jennifer M. Granholm.

C. Defendant, city of Pontiac (City), is a Michigan Corporation. Defendant owns and operates a Wastewater Treatment Plant (WWTP) located at 155 North Opdyke Road, Pontiac, Michigan 48342, and provides sewerage service to the community. The City is authorized to discharge treated municipal wastewater from the WWTP to the Clinton River in accordance with effluent limitations, monitoring requirements and other conditions set forth in

the National Pollutant Discharge Elimination System (NPDES) Permit No. MI0023825, issued to the City by the MDEQ on September 19, 2001.

D. The provisions of this Consent Judgment shall be binding on the Parties, their officers, agents, successors and assigns. No change or changes in the ownership or other legal status of the Defendant, including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter the Defendant's responsibilities, agreement and obligations under this Judgment unless expressly agreed to by the MDEQ as an amendment to this Judgment. Defendant shall provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Property and shall also provide a copy of this Judgment to any subsequent owners or successors prior to the transfer of any ownership rights.

E. Defendant shall provide a copy of this Judgment to all contractors, subcontractors, and consultants that are retained to conduct any portion of the compliance activities to be performed pursuant to this Judgment, and to the employees overseeing environmental management of the Property, within three calendar days of the effective date of such retention.

F. Notwithstanding the terms of any contract(s) that Defendant may enter with respect to the compliance activities to be performed pursuant to this Judgment, Defendant is responsible for compliance with the terms of this Judgment and shall ensure that its contractors, subcontractors, consultants, and employees perform all compliance activities in full conformance with the terms and conditions of this Judgment.

III. STATEMENT OF PURPOSE

A. In entering into this Judgment, it is the mutual intent of the Parties that Defendant will do the following

1. Prevent unlawful discharges to waters of the state;

2. Assure compliance with the terms and conditions of any duly effective NPDES permit issued by the MDEQ to the City for activities conducted at the Property;
3. Partially reimburse Plaintiff for Costs of Surveillance and Enforcement as well as for reasonable attorney's fees.
4. Pay civil penalties as set forth in this Judgment and in the future pay stipulated penalties as provided by this Judgment where applicable.
5. Provide for the loss of natural resources alleged in the Complaint as set forth in this Judgment.

IV. DEFINITIONS

- A. "Effective Date" means the date that the Court enters this Judgment.
- B. "Enhanced Sewer System Evaluation Survey" means strategic sewer system evaluation surveys, survey activities to locate and quantify I/I sources that includes focus on residential and commercial downspouts, statistically measured footing drain flows, capacity analysis modeling based on I/I control alternatives, development of technically sound alternatives that include public involvement report with the intent to achieve a more accurate and dependable final Sewer System Evaluation Survey to address the goals and objectives set forth in Paragraph I of this section.
- C. "I/I" means inflow and infiltration.
- D. "Party" means the Plaintiffs or Defendant. "Parties" means the Plaintiffs and Defendant.
- E. "Phase I Corrective Action Program" means those cost-effective measures intended to rehabilitate the collection system by reducing I/I, set forth in MDEQ's Sanitary

Sewer Overflow (“SSO”) Policy Statement of 2002 and the Clarification Statement of 2003, into the collection system and includes disconnection of downspouts, disconnection of catch basins, and similar measures. Phase I Corrective Action does not include construction or reconstruction of the collection system or wastewater treatment plant improvements.

F. “Phase II Corrective Action Program - Wastewater Collection System Analysis and Rehabilitation Program” means identification and construction of relief sewers, storage, and disconnection of any additional conductors of storm water to reduce I/I as required by MDEQ’s Sanitary Sewer Overflow (“SSO”) Policy Statement of 2002 and the Clarification Statement of 2003.

G. “Project Performance Certification Program” means a flow monitoring report and analysis that verify certification that the wastewater treatment plant and collection system will convey and treat the MDEQ approved weather designed event eliminating SSOs consistent with the 2002 Sanitary Sewer Overflow Policy Statement and the 2003 Clarification Statement.

H. “Property” means the location where the Defendant owns and operates a Wastewater Treatment Plant (WWTP) located at 155 North Opdyke Road, Pontiac, Michigan 48342, and provides sewerage service to the community. It also includes locations where the City is authorized to discharge treated municipal wastewater from the WWTP to the Clinton River in accordance with effluent limitations, monitoring requirements and other conditions set forth in the National Pollutant Discharge Elimination System (NPDES) Permit No. MI0023825, issued to the City by the MDEQ on September 19, 2001.

I. “Sewage System Evaluation Survey” means investigation of public and private infrastructure that is connected to the collection system, including but not limited to downspouts, catch basins, manholes and sewers, footing drains, laterals, bulkheads, for disconnection, defects,

or leaks to reduce I/I. The survey also includes flow monitoring data, rainfall simulation, I/I estimates and a plan for cost-effective I/I removal and/or storage intended to provide the basis for a plan which will lead to certification that the wastewater treatment plant and the collection system will meet the standards the set forth by MDEQ for a 25-year - 24-hour storm event consistent with the department's 2002 Sanitary Sewer Overflow (SSO) Policy Statement and the 2003 Clarification Statement.

J. "WWTP" means wastewater treatment plant.

K. "Water Bureau" or "WB" means the Water Bureau of the MDEQ and any successor entities charged with implementing Part 31 of the NREPA.

L. Unless otherwise defined herein, all terms used in this document, which are defined in pertinent parts of the NREPA and associated administrative rules and/or permits or the federal Clean Water Act, shall have the same meaning in this document as in those pertinent parts, rules, and/or permits.

V. COMPLIANCE WITH STATE AND FEDERAL LAWS

All actions required to be taken pursuant to this Judgment shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws, rules, and regulations including the procurement of all necessary permits and approvals.

VI. COMPLIANCE PROGRAM

A. The City shall provide for proper containment and storage facilities for any and all polluting materials at the WWTP in accordance with Part II.D.6 of its NPDES permit requirements and any and all applicable laws, rules and regulations.

B. The City shall continue work efforts in its collection and/or treatment systems to identify and reduce sources of excessive I/I in the collection system to eliminate sanitary sewer overflows (SSOs) from the collection system and bypasses at the WWTP, consistent with the

MDEQ's current SSO Policy dated December 27, 2002, and the MDEQ SSO Clarification Statement dated October 23, 2003 (Attachment A) until such time as the City certifies to the MDEQ in accordance with Paragraph D of this section.

1. For flows entering the collection system, there will be no raw or partially treated sewage bypasses/SSOs in the collection system and at the WWTP at less than the 25-year - 24-hour storm event (3.9 inches of rain in a 24-hour period using SCS Type II rainfall distribution) using growth conditions (April 1 – October 31) and normal soil moisture, consistent with the Department's current SSO Policy and Clarification Statement, and
2. Peak hour hydraulic loading at system design flows are within the transportation capacity of the collection system and treatment capacity of the WWTP.

C. The City shall continue to implement the MDEQ reviewed and approved first phase of the Wastewater Collection System Analysis and Rehabilitation Program (Phase 1 Corrective Action Program (CAP)). The Phase 1 CAP shall include a full capacity analysis of the entire collection system with associated I/I reduction and sewer rehabilitation. Phase 1 CAP shall include the following schedule of compliance dates:

1. On or before September 1, 2009, the City shall submit to the MDEQ for review and approval a final combined report for the Sewer System Evaluation Survey (SSES) and Enhanced SSES.

2. On or before November 1, 2009, the City shall submit to MDEQ for review and approval a basis of design for the rehabilitation work in accordance with the SSES and Enhanced SSES final report.
3. On or before June 1, 2010, the City shall submit to the MDEQ for review and approval final plans and specifications consistent with the MDEQ approved basis of design.
4. On or before November 1, 2010, the City shall commence construction for rehabilitation work in accordance with the MDEQ approved final plans and specifications.
5. On or before November 1, 2012, the City shall complete construction for rehabilitation work in accordance with the final MDEQ approved plans and specifications.
6. On or before January 1, 2013, the City shall submit to the MDEQ for review and approval a work plan for conducting a Project Performance Certification (PPC) Program in the collection system and at the WWTP.
7. On or before April 1, 2013, the City shall commence the PPC Program in accordance with the MDEQ approved work plan.

8. On or before September 1, 2014, the City shall complete the PPC Program in accordance with the MDEQ approved work plan and submit an evaluation report. The report shall include additional flow monitoring necessary to demonstrate the effectiveness of implemented control measures.

9. Upon MDEQ approval, all submittals in subsection C. 1. through 8. shall be incorporated in this judgment by reference and enforceable hereunder.

D. Subject to Paragraph E of this section, on or before October 1, 2014, the City shall certify to the MDEQ there shall not be SSOs and bypasses in the collection system and at the WWTP as set forth in Paragraph B of this section.

E. In the event that the Phase 1 CAP improvements do not allow the City to certify that the threat of future SSOs and bypasses in the collection system and at the WWTP are eliminated as set forth in Paragraph B of this section, the City shall submit to the MDEQ for review and approval a second phase of the Wastewater Collection System Analysis and Rehabilitation Program (Phase 2 CAP) no later than February 1, 2015. The Phase 2 CAP shall include the following schedule of compliance dates:

1. On or before March 1, 2015, the City shall submit to the MDEQ for review and approval a basis of design consistent with the approved Phase 2 CAP.
2. On or before March 1, 2016, the City shall submit to the MDEQ an administratively complete Part 41 permit application along with

approvable final plans and specifications consistent with the MDEQ approved basis of design.

3. On or before August 1, 2016, the City shall commence construction in accordance with the approved final plans and specifications.
4. On or before June 1, 2018, the City shall complete construction in accordance with the issued Part 41 permit and MDEQ approved final plans and specifications.
5. On or before September 1, 2018, the City shall submit to the MDEQ for review and approval a work plan for conducting a PPC Program in the collection system and at the WWTP.
6. On or before January 1, 2019, the City shall commence the PPC Program in accordance with the MDEQ approved work plan.
7. On or before January 1, 2020, the City shall complete the PPC Program in accordance with the MDEQ approved work plan and submit an evaluation report. The report shall include additional flow monitoring necessary to demonstrate the effectiveness of implemented control measures.
8. Upon MDEQ approval, all submittals in subsection E. 1. through 8. shall be incorporated in this judgment by reference and enforceable hereunder.

F. On or before March 1, 2020, the City shall submit to the MDEQ the Phase 2 CAP certification that there shall not be SSOs and bypasses in the collection system and at the WWTP as set forth in Paragraph B of this section.

VII. EMERGENCY RESPONSE

A. In the event of a discharge to surface waters or other spill of polluting materials to the ground or water attributable to Defendant's activities, Defendant shall undertake the following measures:

1. Upon the discovery of a discharge of any waste, wastewater, or other spill of polluting materials to the ground or water, Defendant shall take immediate corrective measures to contain any losses of waste, wastewater, or other polluting material to prevent any further discharge or spill to waters of the state.
2. Defendant shall immediately upon discovery of any discharge of waste, wastewater, or other polluting material to surface waters of the state notify the WB Southeast Michigan District Office. Emergency notification shall be as follows:
 - a. Monday through Friday, during the hours of 8:00 AM to 5:00 PM, contact the MDEQ WB Southeast Michigan District Office at 586-753-3700.
 - b. at all other times, contact the Pollution Emergency Alerting System (PEAS) Hotline at 800-292-4706.
3. In addition to the verbal notification requirement above, Defendant shall provide written notification to the WB Southeast Michigan District Office Supervisor and the Chief of WB Enforcement Unit within ten calendar

days following the discovery of any discharge of waste, wastewater, or other spill of polluting materials to the ground or water. The written notification shall include:

- a. a description and cause of the discharge or other spill, including an estimate of the discharge volume, and any analytical data in the possession of the Defendant related to the discharge or spill;
- b. the estimated duration of the discharge or other spill, including the date and time of the commencement and cessation of the discharge to the extent known;
- c. the corrective measures that were or will be implemented to prevent a future occurrence; and
- d. copies of all pertinent records maintained pursuant to Section IX. of this Judgment.

VIII. REPORTING

A. Defendant shall verbally report any violation of this Judgment, excluding discharges to surface waters or spill of any polluting materials to the ground or water reported in accordance with Section VII above, to the WB Southeast Michigan District Office Supervisor not later than the close of the next business day following detection of such violation, and shall provide a written report within fourteen business days after detection of such violation to both the WB Southeast Michigan District Office Supervisor and the Chief of the WB Enforcement Unit. The written report shall include a detailed description of the violation, the precise cause or causes of the violation, a detailed description of any action taken or proposed to correct the violation, and a schedule for the implementation of any proposed corrective action. Defendant shall report any anticipated violation of this Consent Judgment to the MDEQ, WB, Southeast

Michigan District Office Supervisor in advance of the relevant deadlines whenever reasonably practicable.

IX. RECORD RETENTION AND ACCESS TO INFORMATION

A. Until five years after the termination of this Judgment, Defendant shall retain, and shall instruct its contractors, agents, and representatives to preserve, all non-identical copies of records and documents, including records or documents in electronic form, that this Judgment requires Defendant to create or maintain.

B. Upon MDEQ request, Defendant shall provide to the MDEQ copies of all documents and information within the possession or control of Defendant, its employees, contractors, agents, or representatives that this Judgment requires Defendant to create or maintain. Defendant shall not prevent its employees, contractors, agents, or representatives from discussing with MDEQ any relevant facts, except for privileged information, concerning the performance of activities undertaken pursuant to this Judgment.

C. This Judgment in no way limits or affects any right to obtain information held by the MDEQ pursuant to applicable laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain records or information imposed by applicable laws, regulations, or permits.

X. ACCESS

A. Upon the Effective Date of this Judgment and to the extent of the property covered by this Judgment is owned, controlled by, or available to Defendant or successors in interest, the MDEQ as well as its authorized employees, contractors and consultants shall, upon presentation of proper credentials, have access at all reasonable times to the Property for the purpose of conducting any activity for which access is required for the implementation of this

Judgment or the continued evaluation of Defendant's compliance with Part 31 of the NREPA, including, but not limited to:

1. Monitoring activities taking place pursuant to this Judgment;
2. Verifying any data or information submitted to the MDEQ;
3. Conducting investigations relating to discharges of potentially injurious substances at or from the Property;
4. Obtaining samples;
5. Assessing the need for corrective action or other response activities at or near the Property;
6. Assessing pollution control structures to assure the effectiveness and integrity of the structure(s);
7. Inspecting and copying non-privileged records, inspection logs, contracts and other documents maintained pursuant to this Judgment;
8. Communicating with Defendant, Defendant's personnel, representatives, or consultants for the purpose of assessing compliance with this Judgment;
9. Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Judgment or Part 31 of the NREPA;
10. Assuring the protection of public health, safety, and welfare and the environment; and
11. Conducting tests and inspections pursuant to Part 31 of the NREPA.

B. To the extent that property where activities are performed by the Defendant under this Judgment is owned or controlled by persons other than Defendant, Defendant shall use its

reasonable best efforts to secure from such persons access for the Parties and their authorized employees, contractors and consultants. Defendant shall provide the MDEQ with a copy of each access agreement secured pursuant to this section. For purposes of this paragraph, "best efforts" includes, but is not limited to, providing reasonable consideration to the owner.

XI. NOTICES

A. Except where this Judgment already identifies the persons to whom a document or information is to be submitted, any submittal, notice, report, documentation, or recitation required by this Judgment shall be submitted to the attention of:

For Plaintiffs: Phil Argiroff
Southeast Michigan District Office Supervisor

and

Barry Selden
WB Field Operations Enforcement Unit Chief
525 West Allegan Street
P.O. Box 30273
Lansing, Michigan 48909-7773
517-373-6437

For Defendant: Mr. Allan Schneck
Director of Public Works
55 Wessen
Pontiac, Michigan 48342

Either party may substitute others for those designated to receive such notices by providing written notice to the other party.

XII. FORCE MAJEURE

A. Defendant shall perform the requirements of this Judgment within its time limits, unless events, which constitute a Force Majeure, prevent or delay performance or unless the WB Chief grants an extension pursuant to Paragraph G of this section.

B. Any performance delay attributable to a Force Majeure shall not be deemed a violation of Defendant's obligations under this Judgment in accordance with this section. For this Judgment's purpose, Force Majeure means an occurrence or non-occurrence of the requirements under this Judgment arising from causes beyond the control of Defendant and for which Defendant is without fault for the occurrence or non-occurrence, including, but not limited to: an act of God; untimely review by the MDEQ of submissions required under this Judgment; and the acts or omissions of a third party not under contractual obligations to Defendant that could not have been avoided or overcome through Defendant's due diligence and that resulted in a delay of performance of an obligation under this Judgment. Force Majeure does not include, among other things, unanticipated or increased costs, changed financial circumstances (including a failure to obtain funding), or failure to apply for a permit or license as a result of Defendant's action or omission.

C. Defendant shall telephone the WB Southeast Michigan District Office Supervisor within 48 hours of discovering any event, which causes a delay in its compliance with any provision of this Judgment. Verbal notice shall be followed by written notice to both the WB Southeast Michigan District Office Supervisor and Chief of the WB Enforcement Unit within 10 calendar days and shall describe in detail the delay's anticipated length, the delay's precise cause or causes, the measures that Defendant has taken to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Defendant shall use all reasonable measures to avoid or minimize any such delay.

D. Defendant's failure to comply with the notice requirements of Paragraph C of this section shall render the Force Majeure provisions of this section void as to the particular incident

involved. The MDEQ may, at its sole discretion and in appropriate circumstances, provide Defendant with a written waiver of the notice requirements of Paragraph C of this section.

E. If the parties agree that the delay or anticipated delay was beyond the control of Defendant, this may be so stipulated, and the parties may petition the Court for an appropriate Consent Judgment modification. Defendant bears the burden of proving that any delay was beyond its reasonable control, and of showing that Defendant has met the requirements under this section.

F. A denial by the WB Chief that an event constitutes a Force Majeure constitutes a final decision on the matter and is not subject to appeal and review by the court.

XIII. EXTENSION OF TIME TO PERFORM

A. Except as otherwise provided in Section XII., Paragraph B, in the absence of a Force Majeure, Defendant and the MDEQ agree that the WB Chief may, but in no circumstances is obligated to, grant Defendant an extension of the specified deadlines set forth in this Judgment. Any extension shall be preceded by a timely written request, received by the MDEQ no later than 10 business days prior to the pertinent deadline, which shall include:

1. An identification of the specific deadline that will not be met.
2. A detailed description of what will prevent Defendant from meeting the deadline.
3. A description of the measures Defendant has taken or intends to take to meet the required deadline.
4. The length of the extension requested and the specific date on which the obligation will be met.

B. The WB Chief shall respond promptly to such requests and shall not unreasonably withhold approval for such requests.

C. Any extension of the specified deadlines or other modifications and amendments of this Judgment shall be signed by both parties, shall have as their effective date the date on which they are signed by the WB Chief, and shall be incorporated into and become an enforceable part of this Judgment upon approval of the Court.

D. An extension of one compliance date based upon a particular incident does not mean that Defendant qualifies for an extension of a subsequent compliance date without providing proof that an extension to a separate requirement under this Judgment is justifiable.

XIV REIMBURSEMENT OF COSTS AND PAYMENT OF CIVIL FINES

A. Defendant shall pay to the State of Michigan **\$6,000.00** as partial compensation for the Costs of Surveillance and Enforcement, as well as attorney's fees, to resolve alleged past violations of Part 31 of the NREPA set forth in the Complaint.

B. Defendant shall to pay a civil penalty of **\$15,000.00** to resolve liability allegedly arising from past violations of Part 31 of the NREPA set forth in the Complaint.

C. Defendant shall pay **\$15,000.00** to be deposited into the natural resources damages fund for the alleged loss of natural resources as set forth in the Complaint.

D. Defendant shall pay such penalties and Costs of Surveillance and Enforcement by certified or cashier's checks made payable to the State of Michigan and mailed to the Michigan Department of Environmental Quality, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157 within 30 days of the Effective Date of this Judgment. To ensure proper credit, all payments made pursuant to this Judgment must include the Payment Identification Number *WTR-3108* on the face of the checks, or in the cover letter with the payments.

XV. STIPULATED PENALTIES

A. The Parties stipulate to the payment of stipulated fines by the Defendant in the following manner should violations of this Judgment occur:

5. Any failure to comply with any compliance date in this Judgment shall result in stipulated penalties as follows:

- a. \$200.00 for the first day of violation;
- b. \$300.00 for the second consecutive day of violation; and
- c. \$500.00 for the third consecutive day of violation and every consecutive day thereafter.

6. A failure by Defendant to comply with any other provisions of Section VI of this Judgment shall result in a stipulated penalty of \$250.00 per day, per violation.

B. All stipulated penalties shall be paid within 30 days of Defendant's receipt of a demand from the MDEQ. Demands for payment shall be sent via certified mail to ensure accuracy regarding the date of receipt. Failure to make any payment required under this Judgment by the specified deadline constitutes a separate violation of this Judgment and is subject to an interest penalty calculated in accordance with Section 600.6013 of the Revised Judicature Act; MCL 600.6013.

C. Defendant shall pay all stipulated penalties and interest penalties by certified or cashier's check made payable to the State of Michigan and mailed to the Michigan Department of Environmental Quality, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments made pursuant to this Consent Judgment must include the Payment Identification Number **WTR-3108** on the face of the check, or in the cover letter with the payment.

D. Defendant agrees not to contest the legality of any stipulated penalty or interest penalty assessed under this section, but reserves the right to dispute the factual basis upon which MDEQ demands stipulated penalty or interest penalty.

E. Liability for or payment of stipulated penalty under this Judgment shall not preclude the MDEQ from seeking injunctive relief or other relief to which the MDEQ is entitled for Defendant's failure to comply with other specific requirements of this Judgment, or failure to comply with Part 31 of the NREPA or any other applicable law, except that Plaintiffs shall not seek additional monetary relief for any violations for which Plaintiffs have accepted stipulated penalty under this Judgment.

XVI. DISPUTE RESOLUTION

A. In accordance with Section XV, Paragraph D, Defendant may dispute the factual basis upon which MDEQ demands stipulated penalties as set forth below.

1. Defendant shall set forth in writing the basis for any factual dispute not later than 10 days following receipt of MDEQ's demand for payment as set forth in Section XV, Paragraph B. The written objections shall be addressed to the WB Southeast Michigan District Supervisor.
2. The Parties shall promptly engage in informal negotiations to resolve the dispute which may continue not more than 30 days.
3. In the event the parties cannot agree, the WB Southeast Michigan District Supervisor shall so state in writing setting forth the MDEQ's findings and resolution of the dispute. Defendant shall have 15 days to appeal the decision in writing and addressed to the WB, Field Operations Division Enforcement Unit Chief.

4. The WB Field Operations Division Enforcement Unit Chief shall promptly review the record and make a determination to accept, reject or modify the resolution of the District. The WB Field Operations Division Enforcement Unit Chief may, but is in no way obligated to, conduct an informal hearing between the parties to facilitate the decision-making process. The Resolution shall be stated in writing, setting forth MDEQ's findings and conclusions and delivered to the Defendant.
5. Upon receipt of the determination of the WB Field Operations Division Enforcement Unit Chief, the Defendant shall have 30 days to submit a written appeal to the Director of MDEQ. The Director of the MDEQ shall promptly review the record and make a written determination within 30 days to accept, reject or modify the determination of the WB Field Operations Division Enforcement Unit Chief.
6. The decision of the Director of the MDEQ shall be final and binding upon the Parties unless Defendant shall appeal such decision to this Court within 30 days of the Director's final decision. The appeal shall be made by motion and served upon the Plaintiffs in accordance with Michigan Rules of Civil Procedure and any local rules and orders of this Court.

B. All written documents referenced in paragraphs 1-6 above shall be delivered by certified mail or other private delivery method requiring verification of receipt.

XVII. RESERVATION OF RIGHTS

With respect to any violations not expressly addressed and resolved by this Judgment, the MDEQ reserves the right to pursue any other remedies to which it is entitled for any failure to comply with the requirements of any state or federal law, including the NREPA and its rules.

B. This Judgment does not limit the rights of the Defendant or the State of Michigan against any third parties.

XVIII. GENERAL PROVISIONS

A. Severability

Should a court of competent jurisdiction declare any provision of this Consent Judgment to be unenforceable, the remaining provisions shall remain in effect.

B. Modification

Any party to this Judgment may petition the Court for modification of this Judgment including its termination prior to expiration of the effective period. Any modification must be in writing and approved by the Court. No party may petition the Court for a modification of this Judgment without first having made a good faith effort to reach agreement with the other party on the terms of any such modification. The parties may petition the Court to modify any requirement or provision of this Judgment by mutual agreement or may modify this Judgment through a writing signed by authorized representatives of the Parties.

C. Other Laws

This Judgment in no way affects the Defendant's responsibility to comply with any other applicable state or federal laws or local regulations or with any order of this or any other Court including without limitation, any amendments to Part 31 of NREPA or its rules or regulations.

D. Settlement

This Judgment is in settlement and satisfaction of all civil claims against Defendant alleged by the MDEQ in the Complaint.

XIX. RETENTION OF JURISDICTION

Prior to termination of this Judgment in accordance with Section XVII. below, this Court shall retain jurisdiction over this action to modify or enforce the terms of this Judgment, assess disputed stipulated fines, resolve all other disputes arising under its terms, or to take any action necessary or appropriate for construction or implementation of this Judgment.

XX. TERMINATION

This Judgment shall terminate upon written request of Defendant and written approval from the MDEQ along with approval of this Court through the issuance of a Satisfaction of Judgment. The written request of Defendant shall include a certification by Defendant that it has (1) paid in full all fines and costs owed to the State of Michigan under this Judgment and (2) has not received a Notice Letter or other document from the MDEQ alleging a violation of Part 31 or this Judgment for three consecutive years. Provided that such certification is made and not reasonably disputed, the MDEQ will not withhold agreement to terminate this Judgment.

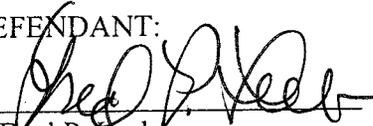
XXI. SEPARATE DOCUMENTS

This Judgment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Judgment may be executed in duplicate original

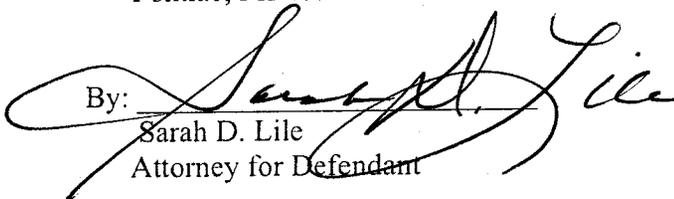
XXII. SIGNATORIES

The signatories to this Judgment certify that they are authorized to execute this Judgment and to legally bind the Parties they represent to the requirements of this Judgment.

FOR DEFENDANT:

By: 
Mr. Fred P. Lueb
Emergency Financial Manager
Office of the Mayor - City of Pontiac
47450 Woodward Avenue
Pontiac, MI 48342

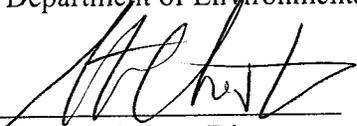
Dated: 6/25/09

By: 
Sarah D. Lile
Attorney for Defendant

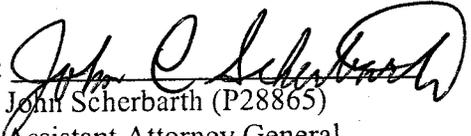
Dated: 07/09/09

FOR PLAINTIFFS:

Michigan Department of Environmental Quality

By: 
Steven E. Chester, Director

Dated: 7-21-09

By: 
John Scherbarth (P28865)
Assistant Attorney General
Michigan Department of Attorney General
Environment, Natural Resources, and
Agriculture Division

Dated: 7/10/09

IT IS SO ORDERED, ADJUDGED AND DECREED THIS 24 day of July, 2009.

JAMES R. GIDDINGS

Honorable James R. Giddings