



**CITY OF FLINT, MICHIGAN**  
**Department of Law**

**Angela Wheeler**  
Chief Legal Officer

**Dr. Karen W. Weaver**  
Mayor

November 26, 2018

Richard Kuhl  
State of Michigan, Department of Attorney General  
Environment, Natural Resources, and Agriculture Division  
PO Box 30755  
Lansing, MI 48909

RE: Notice of State of Michigan's Violation of the Settlement Agreement in *Concerned Pastors et al v. Khouri et al*, Case No. 16-cv-10277

Dear Richard,

This letter is in response to your letter dated November 21, as well as in response to statements made in your November 14 letter and at our November 16 Meet and Confer. As has been the practice since at least 2017, the City has submitted its SLR invoices to MDEQ for pre-approval. On November 7, MDEQ Project Manager Eric Pohan emailed the City, regarding the City's September 25 submission of those invoices for MDEQ's review, and stated unequivocally that "[t]he exploration charges will be withheld on this request."<sup>1</sup> To require that the City request reimbursement for invoices that the State has already declared it will deny elevates form over substance and is not required under the Settlement Agreement.

Instead, Paragraph 23(b) of the Settlement Agreement clearly states that the "Michigan Department of Environmental Quality" shall not unreasonably withhold reimbursements or payments." Instead, it provides only that reimbursements may not exceed \$5,000 per address. Nothing in that paragraph, or in any other paragraph of the Settlement Agreement, allows MDEQ to deny of reimbursement based on the cost of excavation. The City demands that the State fulfil its obligations under the Settlement Agreement and reimburse the City for its 2018 service line replacement activities, including the open-cut excavations that were the City's approved method of excavation in 2018.

In 2018, the use of open-cut excavation identified nine households with spliced service lines that would have been misidentified as copper using hydrovac excavation. To the City, that represents nine families who would have been unnecessarily exposed to lead had the City not switched to open-cut excavations. It is clear that the State believes that relying on a method that would have exposed nine households in the City of Flint to lead is acceptable. Mayor Weaver strongly disagrees. The City, pursuant to Paragraph 2(l) the Settlement Agreement, has the authority to select the method of excavation used, and nothing gives the State any right to override the decision of the City on appropriate excavation methods.

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<sup>1</sup> See Attachment A.

Based on our discussions to date, all parties to the *Concerned Pastors* settlement agreement appear to agree that appropriate prioritization of service line replacements in 2019 is important to protecting the public health of Flint's residents. To that end, we appreciate and are currently reviewing the NRDC's proposal. However, NRDC's proposal was received on November 16, *after* your November 1 and November 14 letters and my November 5 letter. The City thus considers NRDC's proposal to be a separate issue from the State's clearly expressed intention to deny reimbursement for already-completed work. While we expect to complete our review of NRDC's proposal and are willing to discuss these matters further later this week, the City cannot agree to formally tie any agreement on appropriate prioritization of SLR activity in 2019 to the reimbursement of expenses that have already been incurred in 2018.

As you may be aware, the City submitted its formal reimbursement request on Wednesday, November 21. This morning, Mr. Pocan notified the City that the request should be to the penny and not rounded, and that the only requests that should be rounded are for WIIN funds. This is a new requirement that the State has not previously imposed on the City's reimbursement requests, and about which the City was not notified until Mr. Pocan's email. By the time that you receive this letter, the City will have either submitted or intends to submit an amended reimbursement request, and expects that the State will promptly process and reimburse the City for the costs that it has incurred to date.

If the State is truly interested in ensuring that the 2019 service line replacement efforts are conducted in an efficient and effective manner, MDEQ should be directed to approve reimbursements of excavations conducted in 2018, unless those reimbursements are otherwise objectionable under the Settlement Agreement. Indeed, MDEQ has previously determined that a number of reimbursement requests were "ineligible" for various reasons, and the City has accepted those determinations where appropriate. Here, they clearly are not, and the State's express intention to deny reimbursement violates the terms of the *Concerned Pastors* Settlement Agreement.



William Kim, Assistant City Attorney  
City of Flint, Department of Law

cc: Angela Wheeler, CoF  
Dimple Chaudry, NRDC  
Sarah Tallman, NRDC  
Michael Steinberg, ACLU  
Nate Gambill, MDAG-ENRA  
Todd Mendel, BSDD

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**Fwd: (IMPORTANT) Fwd: Phase 5 Request 1**

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William Kim <wkim@cityofflint.com>  
Draft

Mon, Nov 26, 2018 at 5:16 PM

----- Forwarded message -----

From: **Pocan, Eric (DEQ)** <POCANE@michigan.gov>

Date: Wed, Nov 7, 2018 at 12:37 PM

Subject: Phase 5 Request 1

To: Yolanda Gray <ygray@cityofflint.com>

Cc: Turk, LaTonya <latonya.turk@eholdings.biz>, Hughey Newsome <hnewsome@cityofflint.com>, Green, Kelly (DEQ) <GreenK1@michigan.gov>, Hartman, Izabel (DEQ) <HARTMANI@michigan.gov>, Patton, Karol (DEQ) <PATTONK@michigan.gov>

Yolanda,

Attached is my table detailing the Phase 5 Request 1 review. At this time the state has only agreed to reimburse service line invoice charges related to service line replacement. The exploration charges will be withheld on this request. The first 5 invoices listed from AECOM were paid with the \$5 million advance and the last invoice on the table from AECOM 2000081651 had Phase 4 and Phase 5 breakdown costs that didn't match the service line replacement invoice total. We will have to figure out that split between phases before the state can make a reimbursement. I have columns in the table for State and CHIP replacement costs that can be paid at this time and columns for State and WIIN total eligible costs that include the excavations, as well as ineligible costs. Later on if the state authorizes payment of the non-replacement addresses we can use this table to calculate the amount left to be paid. The amounts in the state replace column and CHIP replace column can be submitted on a disbursement request form. If you have any questions feel free to contact me.

Eric Pocan, Project Manager

Department of Environmental Quality

Drinking Water and Municipal Assistance Division

Revolving Loan Section

517-284-5416



**Phase5request1.xlsx**

13K