

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

FIRST AMENDED ADMINISTRATIVE CONSENT ORDER

In the matter of:

DWEHD Order No. AACO-399-07-2019

SECTION I

FACILITY OWNER/OPERATOR

NAME City of Benton Harbor		OWNER <input checked="" type="checkbox"/>	OPERATOR <input checked="" type="checkbox"/>
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS BUSINESS IDENTIFICATION NUMBER			
ADDRESS 200 East Wall Street			
CITY Benton Harbor	STATE Michigan	ZIP CODE 49022	
CONTACT NAME/TITLE Ellis Mitchell, City Manager		PHONE # 269-927-8457	

FACILITY NAME AND LOCATION

FACILITY NAME Benton Harbor Public Water Supply		WATER SUPPLY SERIAL NUMBER 00600
FACILITY OWNER IF NOT IDENTIFIED ABOVE Ellis Mitchell, City Manager		
ADDRESS 200 East Wall Street		
CITY Benton Harbor	STATE Michigan	ZIP CODE 49022
COUNTY Berrien		
CONTACT NAME Ellis Mitchell, City Manager		PHONE # 269-927-8457

Executive Order 2019-06, signed by Governor Gretchen Whitmer on February 20, 2019, renamed the Michigan Department of Environmental Quality (MDEQ) as the Department of Environment, Great Lakes, and Energy (EGLE). Effective April 22, 2019, a reference to the MDEQ will be deemed a reference to EGLE. After April 22, 2019, a reference to the Director of the MDEQ will be deemed to be a reference to the Director of EGLE. The Drinking Water and Municipal Assistance Division (DWMAD) was renamed the Drinking Water and Environmental Health Division (DWEHD). A reference to the DWMAD will be deemed a reference to the DWEHD and a reference to the Director of the DWMAD will be deemed to be a reference to the Director of the DWEHD.

Administrative Consent Order (ACO) ACO-399-07-2019, entered on March 5, 2019, between the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Drinking Water and Environmental Health Division (DWEHD), and the City of Benton Harbor (City), is hereby amended, as follows. Upon the consent of the parties and by the authority granted to EGLE by the Safe Drinking Water Act, 1976 PA 399, as amended (Act 399), and the administrative rules promulgated thereunder, it is hereby agreed and ordered:

COMPLIANCE SCHEDULE

Paragraphs 2.1(a & b), 2.2, 2.3, 2.4, 2.5, 2.6, 2.9 have been completed and removed from ACO-399-07-2019. Reference Exhibit A, attached.

A number of the items below refer to a "Capacity Study." In this Amended Consent Order, under Paragraph 2.14, a Capacity Study refers to an assessment of a water system owner's technical, managerial, and financial capacity to consistently provide safe water to the public.

Paragraphs 2.7, 2.8, 2.10-2.13 of ACO-399-07-2019 shall be amended as specified below:

- 2.7 **Not later than September 30, 2020**, the City shall formally adopt a consistent and equitable rate collection program to minimize the number of unpaid bills and streamline the collections process.
- 2.8 **Not later than August 15, 2020**, the City shall submit the current cross connection program to the DWEHD for review. The DWEHD's review and comments on the current program will assist the City in completing the Capacity Study in paragraph 2.14. **No later than three (3) months following the completion of the Capacity Study**, an updated cross connection program must be submitted to the DWEHD for review to address any implementation changes as a result of the study.
- 2.10 (a) **Not later than six (6) months following the completion of the Capacity Study** in paragraph 2.14, the City shall submit a plan to the DWEHD for inventorying and ongoing maintenance of distribution fire hydrants. The plan must address fixing known broken hydrants, as well as preventative maintenance, such as hydrant inspections and flushing.
- (b) **Not later than six (6) months following the completion of the Capacity Study** in paragraph 2.14, the City shall submit a plan to the DWEHD for inventorying and ongoing maintenance of distribution valves. The plan must address fixing known broken valves, as well as preventative maintenance, such as valve turning.
- 2.11 **Not later than August 1, 2021**, the City shall conduct professional inspections of the City of Benton Harbor water system's elevated tank, or complete the repairs and upgrades recommended during the 2008 Dixon inspection, as included in the City's asset management program dated December 2017.
- 2.12 **Not later than November 1, 2020**, the City shall submit to the DWEHD a plan for maintaining the raw water intake system, including mussel control, based on inspection findings of the intake and mussel control system during June of 2020.
- 2.13 **Not later than December 31, 2020**, the City shall repair filter to waste valves at the water plant, and train operators on their use.

The following paragraphs shall be added to Section II – Compliance Schedule:

- 2.14 **Not later than September 30, 2020**, The City shall submit to the DWEHD, for review and approval, a project scope for completion of a technical, managerial, and financial capacity study to ensure, at a minimum, that the City has adequate staffing and financial mechanisms to carry out the operation and maintenance of the City of Benton Harbor's

water system, in compliance with Act 399. The City shall contract with a qualified consultant to complete the Capacity Study. The Capacity Study scope shall identify the organizational structure, and the required funding, to operate and manage the system, in compliance with Act 399. The Capacity Study shall also identify current staffing levels, including the number of full- and part-time employees currently dedicated to the water system, the number of employees from other departments within the City who currently provide assistance, the nature of that assistance, and the hours of assistance committed from those departments. Last, the Capacity Study shall identify any technical needs, such as development and storage of water system records to facilitate compliance with Act 399.

Not later than six (6) months following approval of the project scope, the City shall submit a completed Capacity Study for DWEHD approval.

To address any gaps identified by the Capacity Study, the Capacity Study shall include an **implementation plan** to gather sufficient resources and qualified personnel to carry out the authorities and procedures for daily operation, maintenance, and management of the City's water system. **Not later than August 1, 2021 and every six (6) months after the DWEHD approves the Capacity Study, the City shall submit a signed statement describing the City's progress** towards completing the implementation plan to achieve adequate capacity.

Capacity Study Phase	Description	Due Date
1: Project Scope and Outcomes	Submit to the DWEHD for input on the study scope and outcomes	September 30, 2020
2: Study Completion	Complete the Capacity Study based on project scope	Six months after approval of scope
3: Implementation	Progress reports to the DWEHD describing city's progress	August 1, 2021 and every six months thereafter

- 2.15 (a) **Not later than six (6) months following the completion of the Capacity Study** in Paragraph 2.14, as part of the implementation phase, the City shall submit to the DWEHD, a Staffing Plan to address findings from the Capacity Study. The Staffing Plan must indicate the number of staff, managerial oversight, as well as an outline of each position's duties needed to meet the operational and maintenance needs of the water system.

(b) **Not later than twelve (12) months following the DWEHD approval of the Staffing Plan**, the City shall submit to the DWEHD a certification that the staffing plan has been implemented and adequate staffing and managerial oversight is in place.

- 2.16 **Not later than December 31, 2020**, the City shall come into compliance with all monitoring and reporting requirements of Act 399, specifically Michigan Compiled Law (MCL) §325.1007, which requires every drinking water supply owner to collect water samples, or have them collected, and have those samples analyzed in the state laboratory or a laboratory certified by the DWEHD, or by the United States Environmental Protection Agency, for contaminants listed in the state drinking water standards. The City shall report the results of the analyses to the DWEHD in a timely manner. MCL §325.1007 also

authorizes the DWEHD to impose administrative fines for each failure to collect and analyze a water sample as required under Act 399.

- 2.17 **Not later than September 30, 2020**, the City shall have a qualified third-party consultant submit to the DWEHD, for review and approval, a corrosion control optimization study scope and completion schedule, in accordance with the February 13, 2020, letter the DWEHD issued to the City.

Not later than sixty (60) days following DWEHD approval of the corrosion control optimization study scope and completion schedule, the City shall secure a signed contract for the corrosion control optimization study.

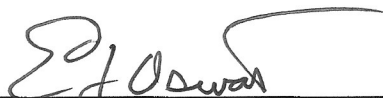
GENERAL PROVISIONS

All approved work plans required by this First Amended Administrative Consent Order shall be incorporated by reference into ACO-399-07-2019 and shall be enforceable in accordance with its provisions.

All other terms and conditions of ACO-399-07-2019 shall remain in full force and effect and are not altered by this Amended Consent Order, except as specifically prescribed in this document. The effective date of this Amended Consent Order shall be the date upon which the Division Director of EGLE, DWEHD signs this document.

Signatories

DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

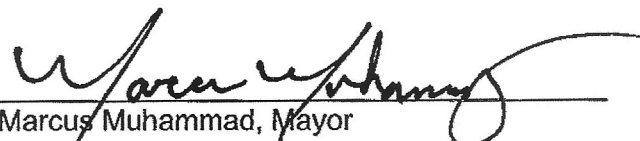


Eric J. Oswald, Director
Drinking Water and Environmental Health Division

7-August-2020
Date

I, the undersigned, CERTIFY that I am fully authorized by the party identified above to enter into this Consent Order 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 BENTON HARBOR



Marcus Muhammad, Mayor

8/5/2020
Date

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

FIRST AMENDED ADMINISTRATIVE CONSENT ORDER

DWEHD Order No. AACO-399-07-2019

EXHIBIT A

In the matter of the First Amended Administrative Consent Order between the City of Benton Harbor and the State of Michigan Department of Environment, Great Lakes, and Energy, below are listed compliance activities that have been completed and are shown for record of completion.

- 2.1 (a) Submit to the DWMAD a completed rate study from a qualified professional consultant. (This requirement was completed with the Asset Management Plan, dated December 2017, however, the second portion of 2.1 in the original ACO, requiring the City to submit an implementation rate increase plan, was not completed).

COMPLETION DATE: December 31, 2017

(b) Not later than December 31, 2020, the City shall begin implementation of a rate adjustment plan for the City of Benton Harbor, in accordance with the findings in the City's asset management program and rate study. The rate adjustment plan shall ensure rates are sufficient to operate and maintain the water system, in compliance with Act 399.

COMPLETION DATE: May 18, 2020

- 2.2 Upgrade the water plant supervisory and data acquisition (SCADA) system to allow for storage and easy access to required regulatory data, including turbidity and chlorine, alarming for regulatory minimum levels, and potentially automation of some water plant operations, no later than April 1, 2019.

COMPLETION DATE: August 12, 2019

- 2.3 Install metering capabilities on the finished water (completed as part of corrosion control treatment project).

COMPLETION DATE: August 12, 2019

- 2.4 Make necessary improvements to the water treatment facility in order to have a functioning and reliable continuous chlorine analyzer on the finished water tap, no later than April 1, 2019.

COMPLETION DATE: August 12, 2019

- 2.5 Obtain an adequately licensed operator-in-charge, solely dedicated to the water distribution system, no later than April 1, 2019.

COMPLETION DATE: May 7, 2019

- 2.6 Submit a proposal for optimal corrosion control treatment or a corrosion control study to the DWMAD, no later than April 30, 2019.

COMPLETION DATE: Treatment installed as of March 25, 2019. Corrosion control study insufficient as of June 2020, see First Amended ACO item 2.17.

- 2.9 Install necessary modifications at the water treatment plant to inject coagulant chemical at a DWMAD-approved rapid mix location, and develop a standard operating procedure for feeding coagulant, no later than June 1, 2019.

COMPLETION DATE: August 9, 2019