



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF  
ENVIRONMENT, GREAT LAKES, AND ENERGY  
GRAND RAPIDS DISTRICT OFFICE



LIESL EICHLER CLARK  
DIRECTOR

May 5, 2022

VIA EMAIL AND U.S. MAIL

Ellis Mitchell, City Manager  
City of Benton Harbor  
200 Wall Street  
Benton Harbor, Michigan 49022

WSSN: 00600  
County: Berrien

Dear Ellis Mitchell:

**SUBJECT:** City of Benton Harbor Compliance update for  
Amended Administrative Consent Order (AACO) AACO-399-07-2019;  
Technical, Managerial, and Financial Capacity Report

The Department of Environment, Great Lakes, and Energy (EGLE), Drinking Water and Environmental Health Division (DWEHD) has reviewed the draft Technical, Managerial, and Financial Capacity Report (TMF), completed by Fleis & VandenBrink Engineering (F&V), and submitted by the City of Benton Harbor Water Supply (City), on February 7, 2022. The TMF is intended to meet specific requirements in Paragraph 2.14 of Section II – Compliance Schedule, of the first amended Administrative Consent Order (AACO) entered on August 7, 2020. Below we provide a summary of EGLE review of the TMF based on requirements in the AACO.

### **Objective of the TMF**

The stated purpose of the TMF as outlined in the AACO is to ensure the City has adequate staffing and financial mechanisms to carry out the operation and maintenance of the water system in compliance with the Michigan Safe Drinking Water Act, 1976 PA 399, as amended (Act 399). The TMF is required by EGLE to create a path forward for achieving and sustaining the Technical, Managerial, and Financial capacity that has contributed to a pattern of non-compliance with Act 399.

### **Deliverables in the TMF**

The AACO contains specific requirements for the TMF, which are necessary in order to approve the study. The TMF must identify the organizational structure, and the required funding, to operate and manage the system in compliance with Act 399. It also must make a comparison to current staffing levels, and identify gaps in the

staffing levels, as well as organizational structure. Lastly, it must include an implementation plan to gather sufficient resources and qualified personnel.

### **EGLE Review Summary**

The draft TMF, as submitted, follows an established workflow as discussed with EGLE, however, the financial component of the TMF remains a significant and fundamental concern and the TMF is not able to be approved at this time. The TMF does include a financial assessment of the current water system revenues and expenditures, including three scenarios to forecast the financials into the future. However, it does not include a financial assessment of the proposed implementation plan to close the gaps on staffing and organizational structure.

The draft TMF concludes, substantial funding sources beyond user rate increases are necessary to sustain operation and maintenance of the water system and cites state or federal grant options. EGLE acknowledges the significant financial challenges to not only sustain current operations, but also improve them. However, this aspect of the TMF does not meet the stated objective and deliverables as outlined in the AACO.

### **Action Needed**

EGLE has generated detailed comments on the TMF, however the above review summary represents a significant hurdle for compliance with Paragraph 2.14 of the AACO. EGLE is requesting the City revisit the TMF for additional assessment of the financial gaps identified. The following steps should be considered to submit a revised TMF that meets the requirements of the AACO:


1. Conduct a detailed financial analysis of the proposed implementation plan and present findings.
2. Incorporate steps into the implementation plan that will result in closing the financial gap.

If a sustainable method of closing the financial gap cannot be identified for the current water supply model, the study must recommend evaluation of alternatives to achieve solvency.

Please respond to this letter in writing, no later than 30 days after receipt, to acknowledge the City's intent to conduct additional study and revise the TMF as noted. **EGLE requests a revised TMF be submitted for review no later than August 3, 2022.**

If you have any questions regarding the AACO or Sanitary Survey requirements and deadlines, please contact me at 616-307-0261; or by email at SarkipatoE@Michigan.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Ernie Sarkipato". The signature is written in a cursive style with a large initial "E".

Ernie Sarkipato, P.E.  
Surface Water Treatment Specialist  
Drinking Water and Environmental Health  
Division

cc: Mayor Marcus Muhammad, City of Benton Harbor (via email)  
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