



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
LANSING



PHILLIP D. ROOS
DIRECTOR

October 13, 2023

VIA EMAIL

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

WSSN: 00600
County: Berrien
System: Benton Harbor

SUBJECT: Technical, Managerial, and Financial (TMF) Capacity Study
EGLE Review Comments

Dear Ellis Mitchell:

The Michigan Department of Environment, Great Lakes, and Energy (EGLE), Drinking Water and Environmental Health Division (DWEHD), received the subject study via email on March 10, 2023, completed by Fleis and Vandenbrink Engineering (F&V) with input from the city of Benton Harbor's (Benton Harbor) independent water consultant, John Young.

Significant progress has been made to improve the water system in Benton Harbor to protect the health and safety of every family. With the support of state and federal grants, Benton Harbor has made critical investments into the system, including:

- Rehabilitating the water tower.
- Establishing effective corrosion control treatment.
- Utilizing contract operations to improve standard operating procedures and drinking water monitoring and reporting.
- Improving practices for drinking water disinfection.
- Accelerating replacement of lead service lines and other water distribution improvements.

A concerted approach by the state, Benton Harbor, and their drinking water team ensured that all accessible lines, nearly 4,500, were replaced or verified as non-lead five months ahead of schedule, on budget, and at no cost to residents. This response also resulted in the water system currently meeting the stringent water quality standards of the Michigan Safe Drinking Water Act, 1976 PA 399, as amended (Act 339). The most recent six-month monitoring period for lead in drinking water showed a 90th percentile calculation of one part per billion (ppb), well below the state and federal limit of 15 ppb for the fourth consecutive time in two years. However, challenges remain, and more must be done to achieve compliance with all aspects of Act 399.

Prior to completion of the TMF study, Benton Harbor conducted a water supply alternatives study by order of the United States Environmental Protection Agency (USEPA). The alternatives study was made available for public review, and comments were collected through December 1, 2022. The alternatives study and public comment process led to a city commission vote to select Alternative 1C from the alternatives study. Alternative 1C is similar to the current process of operating the existing water treatment plant using city-employed and contracted staff and was the focus of the TMF capacity study.

The TMF study was a requirement of the First Amended Administrative Consent Order (AAO-399-07-2019) signed by Benton Harbor on August 5, 2020. The applicable excerpt is included in italics for context.

“2.14 ... 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...”

*...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...”*

TMF Study Review Comments

The overall approach and scope of the study is sufficient. As the consent order excerpt indicates above, the primary objective is to identify the capacity necessary to support Benton Harbor’s supply selected alternative. The study states, *“The gap analysis prepared by Plante Moran indicates that operating expenses are higher than the operating revenues. There is currently an annual operating revenue shortfall of approximately \$2.5 million.”* Because of affordability limitations, Benton Harbor’s study indicates the financial implementation plan is not attainable through improving collections and rate adjustments alone. Gap Closure Option D allows for rates to be affordable and calls for securing state and federal funding through grants of \$2 to \$3 million per year for many years to cover gaps in annual operating expenses. The study did not provide any details or documentation that the necessary funds are in hand nor demonstrate how they will be secured. Due to the lack of a feasible Gap Closure Plan, EGLE has no assurance the water system can be managed and operated into the future in a manner that is protective of public health, nor any basis for approving the implementation plan under Section 2.14 of Consent Order AAO-399-07-2019. Because of this deficiency, the TMF study submitted by Benton Harbor is not approved.

Next Steps

In accordance with Section 4.13 of AACO-399-07-2019, Benton Harbor must revise the TMF study. Because Benton Harbor has not been able to demonstrate that there is adequate TMF capacity to implement the previously city-selected alternative, Alternative 1C, Benton Harbor must identify a different alternative. Three options that Benton Harbor can consider when identifying a different alternative could include: 1) determine a way to treat and distribute drinking water at a lower cost; 2) find additional sources of water system revenue; and/or 3) procure drinking water from another source at a lower cost. Option 3 was not fully explored in the alternatives analysis that Benton Harbor previously prepared for the USEPA. This option would likely require formal negotiations with other water suppliers to identify new ownership models such as a water authority partnership and/or formal negotiations to identify true costs of wholesale purchase rates. Benton Harbor shall notify EGLE which of these options it intends to pursue no later than December 31, 2023. A revised TMF study focused on how to satisfy TMF obligations under the newly selected method of supplying water to Benton Harbor shall be submitted to EGLE no later than June 30, 2024.

We are committed to ensuring all Michiganders have access to clean, healthy drinking water and are pleased with the progress we have made in Benton Harbor and are making in other communities across the state. We look forward to continuing to work toward an affordable solution that ensures that Benton Harbor's drinking water continues to meet all Safe Drinking Water Act standards, as it has for two consecutive years. If you have any questions regarding this letter, please contact me at the phone number listed below, or by email at OswaldE1@Michigan.gov.

Sincerely,



Eric J. Oswald, Director
Drinking Water and Environmental
Health Division
517-284-6544

cc: Marcus Muhammad, Mayor, City of Benton Harbor
Elaine J. Venema, PE, F&V Engineering
Darold Harlan, F&V Operations
John Young
George L. Krisztian, EGLE
Mike Bolf, EGLE
Erin Russell, EGLE