

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONCERNED PASTORS FOR SOCIAL
ACTION, MELISSA MAYS, AMERICAN
CIVIL LIBERTIES UNION OF MICHIGAN,
and NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

Plaintiffs,

v.

Case Number 16-10277

Honorable David M. Lawson

NICK A. KHOURI, FREDERICK HEADEN,
MICHAEL A. TOWNSEND, JOEL
FERGUSON, MICHAEL A. FINNEY,
SYLVESTER JONES, and CITY OF FLINT,

Defendants.

ORDER MODIFYING SETTLEMENT AGREEMENT

Based on the stipulation and notice of the parties (ECF No. 216),

It is **ORDERED** that:

1. The City will complete excavations of the approximately 2,500 remaining service lines at replacement eligible homes, and replace those made of lead or galvanized steel, by November 30, 2020. The City must make best efforts to complete all excavation and replacement work (excluding restoration work) by October 16, 2020. For purposes of the Settlement Agreement (as amended) and this Order, completion of an excavation or service line replacement includes completion of restoration work at the address. For the subset of these 2,500 homes that appear on the 2019 Lists, the City must complete the required excavations and replacements for those homes by October 31, 2020. By November 30, 2020, the City will also complete an excavation and service line replacement (if necessary) for any resident who gives the City permission to conduct a service line excavation or replacement by the deadline in Paragraph 4

below (September 18, 2020) and who resides at an address that has not yet responded to the City's requests for permission, or at an address where City records indicate a resident has declined a service line excavation or replacement.

The purposes of this extension are to (1) provide the City with additional time to complete the required service line excavation and replacement work that was temporarily halted as a result of the coronavirus pandemic; and (2) ensure that the City has time to both undertake additional efforts to notify Flint residents of their right to a service line excavation and replacement and obtain consent for this work from as many Flint residents as possible. This amended deadline will supersede any previously applicable timeframe for the completion of service line excavation and replacement under the Settlement Agreement, including but not limited to those included in Paragraphs 19, 20(c), and 33 of the Settlement Agreement and in Paragraph 3 of the 2019 Stipulation. This amended deadline (November 30, 2020) may be further extended by agreement of all Settling Parties upon further approval from the Court. Nothing in this Stipulation shall obligate State Parties to provide funding beyond the \$97 million of Allocated and Reserve Monies provided by the Settlement Agreement, ECF No. 147-1, for excavations or service line replacements conducted by the City pursuant to the Settlement Agreement as modified by this Stipulation and the 2019 Stipulation, ECF No. 208.

2. The obligation to complete an excavation and replacement (if necessary) at a specific address under Paragraph 1 above will be deemed complete, even if the City has not conducted an excavation at that address, if: (i) the City has completed all outreach activities as to that address required by Paragraph 15 of the Settlement Agreement, as modified on July 19, 2018, and as further modified by Paragraphs 14 and 15 of the 2019 Stipulation and Paragraphs 5 and 6 below, including by documenting and reporting to Plaintiffs all such outreach activities as

described in Paragraph 6 of the 2019 Stipulation (ECF No. 208) and Paragraphs 5 and 6 below; and either (ii) the resident has not provided consent to the City to complete the work as of the date when the City stops accepting consent forms pursuant to Paragraph 4 below; or (iii) the City has not been able to schedule a time to complete the excavation and/or replacement work, despite having completed the outreach activities required by Paragraph 6 below.

3. Within 14 days after the City completes all excavations and replacements (excluding restoration) required by the 2019 Stipulation, the City will provide the plaintiffs with a list of all addresses on the 2019 Lists at which the City has completed an excavation and/or replacement. For each address, the City will provide the informational elements listed in Paragraph 6.i and 6.ii of the 2019 Stipulation. At that time, the City will also provide the plaintiffs with a list of all addresses on the 2019 Lists where the resident declined to have their service line excavated and/or replaced, and a list of all addresses on the 2019 Lists where the City was otherwise unable to obtain permission from the resident to conduct an excavation despite undertaking all required outreach activities as to that address. Within 14 days of when the City completes restoration work at all eligible addresses, the City shall provide a list of all homes where restoration has been completed.

4. The City will allow residents to participate in the service line replacement program by providing the City with consent to complete an excavation and service line replacement (if necessary) at their household for as long as practicable, and at least through September 18, 2020. (A “consent form,” also referred to by the parties as an “opt-in form,” is a form created by the City that Flint residents can complete to give the City permission to conduct a service line excavation at their household.) The City will provide the parties with at least 21 days’ written notice before the City intends to stop accepting consent forms. For any household that has granted the City

permission to complete an excavation and service line replacement (if necessary) before or on the date on which the City stops accepting consent forms pursuant to this Paragraph, the City will complete an excavation and, if necessary, replacement at the household by November 30, 2020. Pursuant to Paragraph 18 of the Settlement Agreement, the City will continue to maintain a list of all residents who have completed a consent form for service line excavation and replacement and will promptly provide that list to the plaintiffs within seven days of a request for the list.

5. The City will conduct additional outreach to residents at all addresses that have not responded to the City's written and/or in-person request for permission to conduct a service line excavation or replacement. In every outreach element conducted pursuant to this Paragraph, the City will include language explaining that if a resident submitted a consent form to the City prior to March 15, 2019, the resident must resubmit a new consent form to the City. The required outreach under this Paragraph must include, at minimum: (i) a mailing to these addresses, notifying residents that they can participate in the Service Line Replacement Program by providing the City with consent and providing information about how to provide consent to the City; (ii) a press release; (iii) a press conference to be held by the Mayor; and (iv) revising the City's Service Line Replacement Program webpage. In advance of the press conference, the City will undertake best efforts to ensure that local media, including TV and radio stations, are present to promote earned media coverage of the event. The City must complete outreach elements (ii), (iii), and (iv) required by this Paragraph no later than August 25, 2020. The City shall complete outreach element (i) required by this Paragraph no later than August 31, 2020. The City must include, in its reports submitted under Paragraph 6 of the 2019 Stipulation, the date and recipient address of any mailing sent under this Paragraph.

6. For addresses where the resident has given the City permission to conduct an excavation and replacement (if necessary), the City must undertake reasonable efforts to schedule a time with the resident to complete the work at that address. These reasonable efforts shall include, at minimum: (i) three in-person outreach attempts, and (ii) one telephone call to the resident if the City has a contact phone number for the household. For all addresses requiring more than one in-person attempt, at least one attempt shall be made during the evening (after 5 p.m.) or on a weekend (Saturday or Sunday). For any address at which the first in-person contact attempt is unsuccessful, the City must leave a door hanger with information explaining that the City is trying to contact the resident to schedule a time to conduct the excavation and replacement (if necessary) and providing information about how the resident can schedule the work. In submitting reports under Paragraph 6.v of the 2019 Stipulation, the City must include a list of addresses where the resident has not responded to an attempt by the City to schedule an excavation or replacement (if necessary), the date and time of any in-person outreach conducted pursuant to this Paragraph during the reporting period, and the result of any such outreach, including documentation confirming a door hanger was left after the first unsuccessful in-person attempt and confirming whether a phone call was made, including the date, time, and result.

7. With each monthly report required under Paragraph 6 of the 2019 Stipulation, the City must provide (i) an updated list of all addresses where the resident and/or property owner declined to have their service line excavated and/or replaced, (ii) an updated list of all addresses where the City was otherwise unable to obtain permission from the resident and/or property owner to conduct an excavation despite undertaking all required outreach activities as to that address; and (iii) an updated list of all homes where restoration has been completed.

8. All provisions in the Settlement Agreement, as modified by the Court, that are applicable to the City's service line replacement program, including but not limited to the obligations in Paragraphs 34 through 39 of the Settlement Agreement, as further clarified by ECF No. 192, remain in full force and effect until the City has completed its obligations required by this Stipulation.

9. There is a dispute among the parties concerning the duration of State Parties' obligations under Paragraphs 39 and 59 of the Settlement Agreement to provide filter replacement cartridges and tap water test kits to the City. The parties will confer to attempt to resolve this dispute. The parties reserve all rights to raise arguments and defenses concerning the duration of State Parties' obligations under Paragraphs 39 and 59 of the Agreement.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Date: August 24, 2020