

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY
OFFICE OF THE DIRECTOR

In the matter of administrative proceedings
against **LANSING BOARD OF WATER AND
LIGHT**, an administrative agency of the City
of Lansing organized under the laws of the
State of Michigan and doing business at
1201 South Washington Avenue, in the City
of Lansing, County of Ingham, State of
Michigan

AQD No. 2021-13

SRN: B4001

STIPULATION FOR ENTRY OF FINAL ORDER
BY CONSENT

This proceeding resulted from allegations by the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Air Quality Division (AQD) against Lansing Board of Water and Light (LBWL), an administrative agency of the City of Lansing organized under the laws of the State of Michigan and doing business at 1201 South Washington Avenue, City of Lansing, State of Michigan, with State Registration Number (SRN) B4001 (Facility). EGLE alleges that LBWL is in violation of Title 40 of the Code of Federal Regulations (CFR) Part 63, Subpart UUUUU, National Emission Standards for Hazardous Air Pollutants: Coal and Oil-Fired Electric Utility Steam Generating Units (Subpart UUUUU); 40 CFR Part 60, Subpart Y, Standards of Performance for Coal Preparation and Processing Plants; and Renewable Operating Permit No. MI-ROP-B4001-2015 (ROP). Specifically, EGLE alleges that LBWL exceeded the mercury emission limit from the pulverized coal-fired boiler identified as EU001 in the ROP and failed to timely perform a visible emissions test for the coal handling equipment identified as EU001 in Permit to Install No. 43-20, as cited herein and in Violation Notices dated April 8, 2021, and May 11, 2021. LBWL and EGLE stipulate to the termination of this proceeding by entry of this Stipulation for Entry of a Final Order by Consent (Consent Order).

LBWL and EGLE stipulate as follows:

1. The Natural Resources and Environmental Protection Act (NREPA) MCL 324.101 *et seq.*, is an act that controls pollution to protect the environment and natural resources in this State.
2. Article II, Pollution Control, Part 55 of the NREPA (Part 55), MCL 324.5501 *et seq.*, provides for air pollution control regulations in this State.

3. Executive Order 2019-06 renamed the Michigan Department of Environmental Quality as EGLE, and EGLE has all statutory authority, powers, duties, functions, and responsibilities to administer and enforce all provisions of Part 55.

4. The EGLE Director has delegated authority to the Director of the AQD (AQD Director) to enter into this Consent Order.

5. The termination of this matter by a Consent Order pursuant to Section 5528 of Part 55, MCL 324.5528, is proper and acceptable.

6. LBWL and EGLE agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by LBWL that the law has been violated.

7. This Consent Order becomes effective on the date of execution (effective date of this Consent Order) by the AQD Director.

8. LBWL shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in this Consent Order.

COMPLIANCE PROGRAM AND IMPLEMENTATION SCHEDULE

9.A On and after the effective date of this Consent Order, LBWL shall comply with the applicable Subpart UUUUU mercury emission limits for the coal-fired boiler identified as EU001 in the ROP.

9.B On and after the effective date of this Consent Order, LBWL shall comply with the Mercury Malfunction Abatement and QA/QC Plan, which is attached as Exhibit A to this Consent Order. Any subsequent revision of the Mercury Malfunction Abatement and QA/QC Plan that is submitted and approved shall become enforceable under this Consent Order and replace Exhibit A.

GENERAL PROVISIONS

10. This Consent Order in no way affects LBWL's responsibility to comply with any other applicable state, federal, or local laws or regulations, including without limitation, any amendments to the federal Clean Air Act, 42 USC 7401 *et seq.*, Part 55, or their rules and regulations, or to the State Implementation Plan.

11. This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

12. LBWL shall pay to the General Fund of the State of Michigan, in the form of a check made payable to the "State of Michigan" and mailed to the Michigan Department of Environment, Great Lakes, and Energy, Accounting Services Division, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157, a settlement amount of \$30,000.00 which includes AQD costs for investigation and enforcement. This total settlement amount shall be paid within thirty (30) days after the effective date of this Consent Order. To ensure proper credit, all payments made pursuant to this Consent Order shall include the "Payment Identification Number AQD40266" on the front of the check and/or in the cover letter with the payment. This settlement amount is in addition to any fees, taxes, or other fines that may be imposed on LBWL by law.

13. On and after the effective date of this Consent Order, if LBWL fails to comply with paragraph 9.A of this Consent Order, LBWL is subject to a stipulated fine of up to \$4,000.00 per violation per day. On and after the effective date of this Consent Order, if LBWL fails to comply with paragraph 9.B of this Consent Order, LBWL is subject to a stipulated fine of up to \$500.00 per violation. The amount of the stipulated fines imposed pursuant to this paragraph shall be within the discretion of EGLE. Stipulated fines submitted under this Consent Order shall be made by check, payable to the State of Michigan within thirty (30) days after written demand and shall be mailed to the Michigan Department of Environment, Great Lakes, and Energy, Accounting Services Division, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments shall include the "Payment Identification Number AQD40266-S" on the front of the check and/or in the cover letter with the payment. Payment of stipulated fines shall not alter or modify in any way LBWL's obligation to comply with the terms and conditions of this Consent Order.

14. The AQD, at its discretion, may seek stipulated fines or statutory fines for any violation of this Consent Order which is also a violation of any provision of applicable federal and state law, rule, regulation, permit, or EGLE administrative order. However, the AQD is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.

15. To ensure timely payment of the settlement amount assessed in paragraph 12 and any stipulated fines assessed pursuant to paragraph 13 of this Consent Order, LBWL shall pay an

interest penalty to the State of Michigan each time it fails to make a complete or timely payment under this Consent Order. The interest payment shall be determined at a rate of interest that is equal to one percent (1%) plus the average interest rate paid at auctions of 5-year United States treasury notes during the six months immediately preceding July 1 and January 1, as certified by the state treasurer, compounded annually, and using the full increment of amount due as principal, calculated from the due date specified in this Consent Order until the date that delinquent payment is finally paid in full. Payment of an interest penalty by LBWL shall be made to the State of Michigan in accordance with paragraph 13 of this Consent Order. Interest payments shall be applied first towards the most overdue amount or outstanding interest penalty owed by LBWL before any remaining balance is applied to subsequent payment amount or interest penalty.

16. LBWL agrees not to contest the legal basis for the settlement amount assessed pursuant to paragraph 13. LBWL also agrees not to contest the legal basis for any stipulated fines assessed pursuant to paragraph 14 of this Consent Order but reserves the right to dispute in a court of competent jurisdiction the factual basis upon which a demand by EGLE of stipulated fines is made. In addition, LBWL agrees that said fines have not been assessed by EGLE pursuant to Section 5529 of Part 55, MCL 324.5529, and therefore are not reviewable under Section 5529 of Part 55.

17. This compliance program is not a variance subject to the 12-month limitation specified in Section 5538 of Part 55, MCL 324.5538.

18. This Consent Order shall remain in full force and effect for a period of at least two (2) years. Thereafter, this Consent Order shall terminate only upon written notice of termination issued by the AQD Director. Prior to issuance of a written notice of termination, LBWL shall submit a request, to the AQD Director at the Michigan Department of Environment, Great Lakes, and Energy, Air Quality Division, P.O. Box 30260, Lansing, Michigan 48909-7760, consisting of a written certification that LBWL has fully complied with all the requirements of this Consent Order and has made all payments including all stipulated fines required by this Consent Order. Specifically, this certification shall include: (i) the date of compliance with each provision of the compliance program and the date any payments or stipulated fines were paid; (ii) a statement that all required information has been reported to the AQD Grand Rapids District Supervisor; (iii) confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facility; and, (iv) such information as may be requested by the AQD Director.

19. In the event LBWL sells or transfers the Facility, it shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within thirty (30) calendar days, LBWL shall also notify the AQD Grand Rapids District Supervisor, in writing, of such sale or transfer, the identity and address of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser and/or transferee. As a condition of the sale, LBWL must obtain the consent of the purchaser and/or transferee, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the AQD Grand Rapids District Supervisor within thirty (30) days after assuming the obligations of this Consent Order.

20. Prior to the effective date of this Consent Order and pursuant to the requirements of Sections 5511 and 5528(3) of Part 55, MCL 324.5511 and MCL 324.5528(3), the public was notified of a 30-day public comment period and was provided the opportunity for a public hearing.

21. Section 5530 of Part 55, MCL 324.5530, may serve as a source of authority but not a limitation under which this Consent Order may be enforced. Further, Part 17 of the NREPA, MCL 324.1701 *et seq.*, and all other applicable laws and any other legal basis or applicable statute may be used to enforce this Consent Order.

22. LBWL hereby stipulates that entry of this Consent Order is a result of an action by EGLE to resolve alleged violations of its facility located at 3725 S. Canal Road, Lansing, Michigan, with State Registration Number (SRN) B4001. LBWL further stipulates that it will take all lawful actions necessary to fully comply with this Consent Order, even if LBWL files for bankruptcy in the future. LBWL will not seek discharge of the settlement amount and any stipulated fines imposed hereunder in any future bankruptcy proceedings, and LBWL will take the necessary steps to ensure that the settlement amount and any future stipulated fines are not discharged. LBWL, during and after any future bankruptcy proceedings, will ensure that the settlement amount and any future stipulated fines remain an obligation to be paid in full by LBWL to the extent allowed by applicable bankruptcy law.

The undersigned certifies that he/she is fully authorized by LBWL to enter into this Consent Order and to execute and legally bind LBWL to it.

LANSING BOARD OF WATER AND LIGHT

Richard R. Peffley, General Manager
Print Name and Title

Richard R Peffley Dated: 8/5/21
Signature

Subscribed and sworn to by the above signatory before me on this 5 day of

August, 2021.

[Signature]
Notary Public Signature

Emiliana Laze
Notary Public Printed Name

10/18/21
My Commission Expires

[Signature]
APPROVED
BOARD OF WATER & LIGHT
LEGAL COUNSEL
Date 8/3/2021

Approved as to Content:

Approved as to Form:

Mary Ann Dolehanty
Mary Ann Dolehanty, Director
AIR QUALITY DIVISION
DEPARTMENT OF ENVIRONMENT,
GREAT LAKES, AND ENERGY

[Signature]
Neil Gordon, Section Head
AIR AND WATER SECTION
ENVIRONMENT, NATURAL RESOURCES,
AND AGRICULTURE DIVISION
DEPARTMENT OF ATTORNEY GENERAL

Dated: 8/18/2021

Dated: 8/17/2021

FINAL ORDER

The Director of the Air Quality Division having had opportunity to review this Consent Order and having been delegated authority to enter into Consent Orders by the Director of the Michigan Department of Environment, Great Lakes, and Energy pursuant to the provisions of Part 55 of the NREPA and otherwise being fully advised on the premises,

HAS HEREBY ORDERED that this Consent Order is approved and shall be entered in the record of EGLE as a Final Order.

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY


Mary Ann Dolehanty, Director
Air Quality Division

Effective Date: 8/10/2021