

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 AMENDING SETTLEMENT AGREEMENT

Based on the stipulation of the parties (ECF No. 210),

It is **ORDERED** that Paragraphs 72 through 77 and Paragraph 85 of the Settlement Agreement (ECF No. 147-1) are **AMENDED** as follows:

1. **Paragraph 85 End Date.** Paragraph 85 of the Settlement Agreement provides that the State's CORE Program "shall make all reasonable efforts to complete an Initial Visit to [new Flint Water System customers] (as defined in Paragraphs 72-73) within 14 days" of receiving notice from the City that the new water account has been activated. Agmt. ¶ 85. The obligations of the City, the State, and the plaintiffs under Paragraph 85 of the Settlement Agreement as amended by this Order shall continue until December 31, 2019, or until the conditions of Paragraph 45 of the Settlement Agreement have been satisfied, whichever is sooner.

2. **Third-Party Provider.** The State intends to enter into a contract with a third-party provider ("Third-Party Provider") to carry out the State's obligations under Paragraph 85 of the

Settlement Agreement. The State's contract with the Third-Party Provider shall incorporate the requirements of this Order. Under the contract, the Third-Party Provider shall provide compliance reports to the State every 14 days. The State shall send the first compliance report it receives from the Third-Party Provider to the plaintiffs within seven days of receipt. For all subsequent compliance reports, the State shall send those reports to the plaintiffs with the quarterly status reports required under Section X of the Settlement Agreement. The compliance reports shall include, at minimum, for each new water customer eligible for an Initial Visit, (i) the address of the household; (ii) the date, time, and outcome of any telephone call made by the Third-Party Provider; and (iii) the date(s), time(s), and outcome(s) of any attempts to make in-person contact with the resident.

3. **The State's Obligations.** The State shall retain, train, and manage the Third-Party Provider; ensure that the Third-Party Provider implements the requirements set forth in this Order; and provide funding necessary for the Third-Party Provider to complete all requirements set forth in this Order. If the State does not enter into a contract with a Third-Party Provider or any such contract is cancelled prior to the End Date, the State shall be responsible for carrying out any obligation imposed by this Order on the Third-Party Provider. At the plaintiffs' request, the State shall make the Third-Party Provider available for discussions with the plaintiffs concerning approaches to promote the effectiveness of the Filter Inspection and Education visits to new water customers.

4. **The Plaintiffs' Obligations.** The plaintiffs shall review and assist with the development and production of the flyers, door hangers, and Education elements described in Paragraphs 8 through 10 of this Order.

5. **The City's Obligations.** The City shall continue to notify the plaintiffs and the State of any new Flint Water System customers within 30 days after activation of a new water account for the customer's household. The City shall provide to the plaintiffs and the State, within 30 days after activation of a new water account, the new water customer's name, address, parcel identification number, and telephone number if provided by the resident. The City shall distribute filter-education flyers to new water customers as set forth in Paragraph 9 of this Order. The City or its program manager shall also continue to provide updates to the State on the FAST Start Pipe Replacement Program every 14 days.

6. **Initial Visits.** An Initial Visit under Paragraph 85 of the Settlement Agreement shall be deemed completed if: (i) the requirements described in Paragraph 72.a of the Settlement Agreement have been satisfied, (ii) a resident refuses inspection when the Third-Party Provider makes telephone or in-person contact with a resident of the household, or (iii) a reasonable effort to complete an Initial Visit has been made as defined in Paragraph 7 of this Order. An Initial Visit under Paragraph 85 of the Settlement Agreement shall not be required for households that already have had their water service lines replaced or if an excavation confirmed that the public and private portions of the service line are made of copper.

7. **Reasonable Efforts to Complete an Initial Visit.** The Third-Party Provider will have made all reasonable efforts to complete an Initial Visit as required under Paragraph 85 of the Settlement Agreement, as modified in Paragraphs 1 through 6 of this Order, if the Third-Party Provider makes one attempt to contact the resident by telephone (if a telephone number has been provided by the City for that resident) to schedule a Filter Inspection and Education appointment, and visits the household at least twice to conduct the Filter Inspection and Education set forth in Paragraph 10 of this Order, but is unable to make in-person contact with a resident of the

household. If the resident does not answer the telephone, the Third-Party Provider shall leave a voicemail message that includes information about how to schedule a Filter Inspection and Education visit with the Third-Party Provider.

8. **Door Hangers.** The Third-Party Provider shall leave a door hanger at a household where they are unable to make in-person contact during an attempted Initial Visit. The content of the door hangers shall be subject to the plaintiffs' review and approval, and shall include information on the purpose of water filters and how to schedule an appointment for a visit from the Third-Party Provider to assist with filter installation. The door hanger shall include Spanish language information on the purpose of water filters and how to schedule an appointment for a visit from the Third-Party Provider.

9. **Flyers.** The State shall provide filter-education flyers to the City, and the City shall provide these flyers to all Flint residents who come to City Hall to apply for water service with the City. The content of the flyer shall be written by the plaintiffs and shall include information on the purpose of water filters and how to schedule an appointment for a visit from the Third-Party Provider to assist with filter installation. The flyer shall include Spanish language information on the purpose of water filters and how to schedule an appointment for a visit from the Third-Party Provider. The State shall provide sufficient copies of the flyer to the City to enable it to carry out the requirements of this Paragraph.

10. **Filter Inspection and Education.** The "Filter Inspection and Education" conducted by the Third-Party Provider during an Initial Visit must, at a minimum, include the following elements:

- a. Engagement

i. The Third-Party Provider will explain to a resident of the household that they are visiting to inspect the household's Faucet Filter to ensure it is properly installed and working and to provide information and training related to Faucet Filters. A "Faucet Filter" means a point-of-use faucet-mounted filter certified by the National Sanitation Foundation to remove lead up to 150 ppb, such as the Brita faucet filter, model SAFF-100, or a PUR Faucet Mount, model number FM-3700B.

b. Inspection

i. The Third-Party Provider will inspect the household's kitchen faucet to determine whether a Faucet Filter has been installed.

ii. If a Faucet Filter has been installed on a kitchen faucet, the Third-Party Provider will determine whether that filter is properly installed and is operating properly. If the Third-Party Provider determines that the Faucet Filter is properly installed and is operating properly, the Inspection is complete.

iii. If no Faucet Filter has been installed on a kitchen faucet, or if the Third-Party Provider discovers that a Faucet Filter is installed improperly or is not operating properly, the Third-Party Provider will attempt to provide and install, at no cost to the household, a new Faucet Filter and/or appropriate filter cartridge on a kitchen faucet. If the Third-Party Provider installs a Faucet Filter and/or filter cartridge, and determines that the Faucet Filter is properly installed and operating properly, the Inspection is complete.

iv. In the event that the Third-Party Provider is unable to install a new Faucet Filter because the household's faucet is not working or is not compatible with the Faucet Filters, the Third-Party Provider shall provide the household with a Pitcher Filter. A "Pitcher

Filter” means a water pitcher filter certified by the National Sanitation Foundation to remove lead up to 150 ppb.

c. Education

i. During the Inspection described in Paragraph 10.b, the Third-Party Provider will train the resident, through demonstration if possible, how to properly install a Faucet Filter and how to properly install a filter cartridge. The Third-Party Provider shall provide manufacturer’s instructions for any Faucet Filter, Pitcher Filter, or filter cartridge provided to the household.

ii. The Third-Party Provider will educate the resident about the following topics relating to filter maintenance: (a) how to maintain the filter assembly; (b) how to identify if the filter cartridge for the installed Faucet Filter needs replacement; (c) how to install the appropriate replacement filter cartridges; (d) how and why to flush the filter following installation of a new filter cartridge; and (e) how to remove, inspect, and clean an aerator.

iii. The Third-Party Provider will educate the resident about the following topics relating to filter use: (a) how to operate the “bypass” valve of the Faucet Filter to switch between filtered and unfiltered water flowing through the filter assembly; (b) that hot water should never be run through the filter unless the “bypass” valve is turned on because hot water can ruin the filter cartridge; (c) to check before running cold water through the filter assembly to ensure that the “bypass” valve is turned off; and (d) to stop using, remove, and replace the Faucet Filter if the “bypass” valve, or any other part of the filter, breaks or begins leaking water.

iv. The Third-Party Provider will also provide the following information to the resident: (a) the locations where replacement filter cartridges are available for pick-up; (b) a set of written instructions, including images, for filter and replacement cartridge

installation (which shall be an updated version of Exhibit H to the Settlement Agreement); and (c) the telephone number to schedule an appointment for a visit by the Third-Party Provider for filter inspection and education services. These materials shall be available in English and Spanish, and shall be provided in whichever of those languages the residents of that household speak.

v. If, during the provision of the Education elements in Paragraph 10.c.i-iv, a resident refuses any element, the provision of the refused Education element will be deemed complete.

vi. If, during the provision of the Education elements in Paragraph 10.c.i-iv, a resident requests termination of the Visit, the Education requirements of the Initial Visit will be deemed complete.

11. **Backlog of New Water Customer Visits.** Within 60 days of the date of this Order, the Third-Party Provider shall complete the requirements in Paragraphs 6 through 8 and Paragraph 10 of this Order for new water customers for which the City provided notice between March 18, 2019, and the date of this Order.

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

Date: May 23, 2019