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EXHIBIT 1

INTERIM

COLLECTION

RULES

AND

PROCEDURES



City of Detroit
Water & Sewerage Department

DETROIT WATER & SEWERAGE DEPARTMENT

INTERIM

COLLECTION RULES AND PROCEDURES

Revised January 22, 2003

CITY OF DETROIT

KWAME M. KILPATRICK, MAYOR

DETROIT WATER AND SEWERAGE

VICTOR M. MERCADO, DIRECTOR

COLLECTION RULES AND PROCEDURES

APPROVED BY THE BOARD OF

WATER COMMISSIONERS ON

January 22, 2003

REVISED AND APPROVED

JANUARY 17, 1979

OCTOBER 1, 1980

OCTOBER 3, 1984

FEBRUARY 6, 1985

DECEMBER 15, 1999

JANUARY 22, 2003

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PART I. BILLING AND BILLS

Rule 1: Frequency

- (1) Residential accounts and accounts with meters two (2) inches and smaller are billed quarterly, but are approved for monthly billings.

Large volume consumers will be billed monthly. Monthly billed accounts will include meters three (3) inches or larger and large volume accounts, regardless of meter size.

- (2) Bills will be mailed at least twenty (20) calendar days before the due date.
- (3) The service address shall be the billing address. Upon written request, the Detroit Water and Sewerage Department (DWSD) will mail bills to an address other than the service address. It is the responsibility of the owner to keep account mailing information current. An obsolete address will not be a reason for non-payment of the bill.

Rule 2: Rates

- (1) The DWSD will bill accounts using the Rate Schedule approved by the Board of Water Commissioners. Rate Schedules will be provided to a customer upon request.
- (2) Bills will include charges for: water, monthly meter service, sewage disposal, monthly sewage service monthly drainage and, as appropriate, high strength pollutant surcharges, industrial waste control, and monthly fire line service. Bills may also include charges, as appropriate, for water meter repairs, unrecovered meters, illegal usage, meter violations, service line repairs, or any other charges approved by the Board of Water Commissioners.

Rule 3: Actual Reads – Estimated Reads

- (1) The utility will strive to use actual meter reads for billing purposes. Bills will be based upon actual readings obtained from the water meter and/or Outside Reading Device (ORD) by DWSD personnel or from customers via telephone, in person, or by dial postcards marked and returned by the customer, when possible.
- (2) When necessary, bills will be based upon estimated reads by DWSD.

- (3) If a previous bill (s) was based upon an estimated read, all water metered, but not already billed, will be billed when the next actual read is obtained. No adjustment to the consumption billed will be granted if the meter is found to be accurate.
- (4) Upon request and following payment of a Real Estate Closing Read fee, DWSD will secure an actual read from the meter and issue a *guaranteed* closing bill.
- (5) The Customer is solely responsible for all water that flows through the meter. DWSD will not assume responsibility for wastage caused by faulty plumbing, fixtures or pipes.

Rule 4: Payment

- (1) The date the payment is received by DWSD will be the date used for posting purposes.
- (2) Payments received will be applied as credits to the oldest balance(s) shown on the account.

Rule 5: Late Payment

Bills paid after the due date will be charged a five (5) percent late payment charge on the unpaid portion of the current bill and on the following charges, when applicable:

- (a) Meter repair charges
- (b) Service repair charge
- (c) Unrecovered meter charge

Rule 6: Billing Information

(1) **Current Bills**

Current bills will include the following information:

- (a) Service address
- (b) Mailing address
- (c) Account number
- (d) Account classification

- (e) Number of service months
- (f) Meter size
- (g) Meter read date
- (h) Meter read
- (i) A statement including the bill type
- (j) Consumption in hundred cubic feet
- (k) Previous balance
- (l) Separate charges for water, sewage, and miscellaneous debits and credits as appropriate
- (m) Due date
- (n) Amount to be paid by the due date
- (o) Amount to be paid after the due date

(2) **Delinquent Bills:** DWSD will prepare two (2) delinquent bills as follows:

- (a) **Past Due Notice:** When a current bill is not paid in full by its due date, a notice requesting payment will be issued (11) days after the bill becomes due.
- (b) **Final Notice:** A WATER SHUT OFF-FINAL NOTICE, will be issued when an account is unpaid thirty-two (32) days after the billing date. The notice will be mailed to the service address and mailing address, if applicable. The WATER SHUT OFF – FINAL NOTICE will contain the following information:
 - (a) The address of the property served.
 - (b) A clear and concise statement of the reasons for the proposed shut off.
 - (c) A statement that water will be shut off in ten (10) days, or any time thereafter, unless the customer takes appropriate action.
 - (d) A statement informing the customer of the opportunity to enter into a Payment Plan Agreement (PPA) with DWSD, if the amount of the bill

is not in dispute and the customer is presently unable to pay in full the amount due.

- (e) A statement informing the customer of the right to file a complaint disputing the bill within ten (10) days of the date the “WATER SHUT OFF – FINAL NOTICE” was issued.
- (f) A statement informing the customer of the right to request a Hearing, if the disputed billing cannot be resolved.
- (g) A statement informing the customer of the right to represent himself/herself or to be represented by counselor other person(s) of his/her choice, at a Hearing.
- (h) A statement informing the customer that service will not be shut off pending resolution of the disputed bill(s).
- (i) The telephone number and address of the Department where the customer may make inquiry, enter into a PPA, or file a complaint.
- (j) A customer who alleges that a serious illness exists, has the right to postpone shut off for 21 days, or have the service restored, if someone living in the house has a medical emergency verified by a statement from a doctor or public health official.

PART II. COMPLAINT PROCEDURES

Rule 7: Complaints and Disputes

It is the customer’s responsibility to inform the utility of any billing dispute. A quarterly billed customer may dispute a bill no later than forty-two (42) days after the billing date. A monthly billed customer may dispute a bill no later than twenty-eight (28) days after the billing date. After the period to dispute expires, the customer forfeits the right to dispute the bill. All amounts not in dispute are due and payable. When a bill is disputed, DWSD will:

- (1) Provide the customer with a copy of the rules and procedures for disputing a bill.
- (2) Record the service address, account number, complainant’s name, telephone number, date and nature of the complaint.
- (3) Reread the meter and examine plumbing fixtures and pipes, if necessary.
- (4) At the request of the customer, test the meter for accuracy. The test will be conducted in the DWSD’s meter shop in accordance with the American Water

Works Association Standards. The customer may witness the meter test. The request to do so must be made at the time that the meter test is requested.

- (5) Allow the meter to be tested in an independent laboratory at the expense of the customer, if DWSD test results are disputed. A representative of DWSD must be present during the testing. The customer is responsible for the meter throughout the testing process.
- (6) Advise the customer in writing of the results of the examination and the right to request a Hearing within ten (10) days if the examination results are disputed.
- (7) Advise the customer that failure to request a Hearing within ten (10) days of the date on which the Hearing was offered, gives DWSD the ability to exercise its rights pursuant to these rules, including termination of service for nonpayment.
- (8) Attempt to resolve the dispute informally and in a manner mutually satisfactory to both parties.

PART III. ADMINISTRATIVE HEARING PROCEDURES

Rule 8: Opportunity for Hearing

- (1) If billing complaints are not resolved to the customer's satisfaction by staff investigation, the customer will be afforded the opportunity for a Hearing before an impartial Hearing Officer. Only the owner of record or a tenant with a valid landlord/tenant agreement may request a Hearing with DWSD.
- (2) A Hearing request must be personally submitted in writing at a DWSD Customer Service Office. All requests for Hearings will be recorded and scheduled by DWSD staff members.
- (3) If the customer fails to request a Hearing within ten (10) days of the date on which the Hearing was offered, then DWSD may exercise its rights pursuant to these rules, including termination of service for nonpayment.
- (4) A customer requesting a Hearing must pay all bills not in dispute, in order to avoid water being shut for nonpayment.
- (5) The DWSD is not required to offer a Hearing more than once for the same billing dispute.

Rule 9: Payment of Undisputed Billings

- (1) A customer requesting a Hearing must pay all bills not in dispute.
- (2) If the customer fails to pay a bill which is not in dispute, DWSD may proceed to shut off the service.
- (3) DWSD may not terminate water services for a customer if the only arrearage on the account is the disputed amount.

Rule 10: Notice of Hearing

- (1) The customer will be notified by certified letter of the time, date, and place of the Hearing at least ten (10) days before the scheduled Hearing. Receipt of the certified letter will serve as date of notification.
- (2) The notice will include a copy of the Collection Rules and Procedures and will further state that the customer must pay subsequent billings which are not in dispute; otherwise, the water may be shut off.
- (3) Current information as to the status of the account will be included with the Hearing notice.
- (4) Hearings will be scheduled by DWSD according to availability of the Hearing Officer(s).

Rule 11: Adjournment

- (1) A complainant who cannot attend a scheduled Hearing must request an adjournment at least 48 hours prior to the scheduled Hearing date.
- (2) Only one (1) adjournment will be granted.
- (3) Failure of the complainant to attend the Hearing as scheduled will constitute a waiver of the right to a Hearing. In this case, the disputed bill becomes due and payable immediately.

Rule 12: Procedure

- (1) The Hearing Procedure shall provide that the complainant and DWSD.
 - (a) have the right to represent themselves or be represented by counsel or other person(s). The customer should notify the DWSD Hearings Unit at least five (5) days prior to the Hearing date if being represented by an attorney;

- (b) have the right to present witnesses, evidence, testimony, and/or written arguments;
 - (c) have the right to question and cross-examine witnesses appearing on behalf of the other party;
 - (d) have the right to examine, no later than two (2) days prior to the Hearing, a list of all witnesses who will testify and have the right to examine all documents, records, files, and other material which may be used at the Hearing. The customer will be charged a nominal fee for copies of records.
- (2) The Hearing shall be held during normal business hours.
 - (3) All witnesses appearing for either party will testify under oath
 - (4) The Hearing shall be informal and will be recorded by DWSD. Person(s) desiring a transcript must furnish their own stenographic service at their expense.

Rule 13: Burden of Proof

- (1) DWSD will have the burden of showing that reasonable grounds exist requiring payment of the disputed bill(s).
- (2) Metered water consumption/usage is reasonable grounds for requiring payment.
- (3) The person(s) who requested the Hearing will have the burden of showing that the disputed bill is incorrect and that sufficient extenuating circumstances exist to prevent water shut off.

Rule 14: Hearing Officers

- (1) Hearing Officers shall be approved by the Board of Water Commissioners.
- (2) Hearing Officers will be qualified arbitrators or attorneys who may be contractually hired by DWSD.
- (3) Upon approval by the Board of Water Commissioners, DWSD will execute a contract to provide that Hearing Officers will be paid for services rendered on a per diem basis, or services will be provided on a pro-bono basis.

Rule 15: Duties of the Hearing Officer

- (1) The Hearing Officer will determine whether or not the customer is liable for the disputed bill.
- (2) The Hearing Officer's decision will be based upon evidence presented at the Hearing and applicable Legislative, Judicial and Administrative Law.
- (3) The Hearing Officer will allow both parties to present their respective positions relative to the dispute.
- (4) The Hearing Officer's decision will be in writing and a copy will be mailed to DWSD, the customer and/or their representatives, within thirty (30) calendar days of the Hearing date.
- (5) The Hearing Officer's decision will state his/her findings and decision in writing, which will include:
 - (a) A concise summary of the evidence and arguments presented.
 - (b) The reasons for the decision, based upon the evidence presented.

Rule 16: Payment Subsequent to Hearing

- (1) If the Hearing Officer rules that DWSD is entitled to a sum of money, the customer will have thirty (30) days after the date on the Hearing Officer's decision to pay the outstanding bill, or enter into a PPA. If payment in full or a PPA has not been made at the end of the 30th day, water service will be shut.
- (2) If the Hearing Officer determines that the customer is liable for all or part of the disputed bill, and the customer is unable to pay the bill in full, DWSD will consider the following factors when negotiating a PPA:
 - (a) the amount due
 - (b) ability to pay
 - (c) other factors which may be relevant to the proposed extended Payment Plan Agreement.

Rule 17: Decision Binding Upon the Parties

The Hearing Officer's decision is binding upon both parties.

Rule 18: Public Access to Procedure

- (1) DWSD will prepare and distribute a pamphlet in laymen's terms summarizing the rights and responsibilities of its customers in accordance with these regulations.
- (2) The pamphlet will be displayed prominently and will be available at all DWSD Customer Service locations.

PART IV. SHUT OFF OF SERVICE

Rule 19: Discontinuation of Service

- (1) Subject to the requirements of these Rules, DWSD may discontinue service, if a bill is not paid within ten (10) days of the date specified as "Notice Date" on the WATER SHUT OFF –FINAL NOTICE, or anytime thereafter.
- (2) Service will not be discontinued on a day immediately preceding a day when DWSD offices will be closed to the general public, for the purpose of making payment and having service restored.

Rule 20A: Shut Off Procedure for Delinquent Water Bill Collectors

- (1) Upon arriving at the premises, the Delinquent Water Bill Collector (DWBC) will identify himself/herself to the customer or other responsible person residing on the premises and request payment of the delinquent amount.
- (2) The DWBC will have in his or her possession the past due water account of the customer. The DWBC will request verification that the outstanding bill(s) have been paid; a valid PPA has been entered into, or that the bill is in dispute. Upon presentation of such evidence, service will not be shut off.
- (3) If there is no verification that the outstanding bill(s) have been paid or other such evidence, the DWBC will be authorized to accept payment of the outstanding delinquent bill(s). Payment may be made by cash, money order, or personal check. However, payment by personal check will not be accepted if on a previous occasion, within the past twelve months, the customer's check or other instrument for payment was returned for any reason by the institution upon which it was drawn.
- (4) If the customer is unable to pay the outstanding bill(s), the DWBC will shut off the water and leave notice upon the premises, in a manner conspicuous to the customer that the service has been shut off. The notice will include the address and telephone number where the customer may pay the bill to have the

service restored. Full payment of the delinquent amount and any associated fees are due, in order to restore the service.

- (5) If the water is not shut, the DWBC will leave notice upon the premises, in a manner conspicuous to the customer stating that the account will be referred to the DWSD Field Service Representatives or Maintenance and Repair personnel for shut off at a later date.
- (6) The DWBC will post a notice upon the premises in a conspicuous location regarding the proposed shut off of water to a multiple-unit apartment, if the delinquent balance is not paid in ten (10) days.
- (7) A site visit fee, in the amount specified in the schedule of rates, will be assessed when a DWBC is sent to the premises.

Rule 20B: Shut Off Procedure for Field Service Representatives

- (1) Upon arriving at the premises, the Field Service Representative (FSR) will identify himself/herself to the customer or other responsible person residing on the premises.
- (2) The FSR will have in his or her possession the past due account of the customer. The FSR will request verification that the outstanding bill(s) have been paid; a PPA entered into, or that the bill is in dispute. Upon present of such evidence, service will not be shut off.
- (3) If there is no verification that the outstanding bill(s) have been paid or other such evidence, the FSR will shut off the water and leave notice upon the premises, in a manner conspicuous to the customer, that the service has been shut off. The notice will include the address and telephone number where the customer may pay the bill to have the service restored. Full payment of the delinquent amount and any associated fees are due, in order to restore the service
- (4) If the water is not shut, the FSR will leave a notice at the premises, in a manner conspicuous to the customer stating that the account will be referred to DWSD Maintenance and Repair personnel for shut off at a later date.
- (5) The FSR will post a notice upon the premises in a conspicuous location regarding the proposed shut off of water to a multiple-unit apartment, if the delinquent balance is not paid in ten (10) days. Full payment of the delinquent amount and any associated fees are due, in order to restore the service.
- (6) A site visit fee, in the amount specified in the schedule of rates, will be assessed when a FSR is sent to the premises.

Rule 21: Turn On

- (1) Following a shut off and upon full payment of the delinquent amount, service will be restored by DWSD within twenty-four (24) hours.
- (2) Service will not be turned on in the absence of a responsible person at the premises.
- (3) A turn-on fee, in the amount specified in the schedule of rates, will be assessed when service is restored following shut off for non-payment.

Rule 22: Tampering with DWSD Property

No person other than an authorized representative of DWSD shall at any time or in any manner operate or cause to be operated any valve in or connected with a water main, water service, or fire hydrant, or tamper with or otherwise interfere with any water meter, detector check valve, or other part of the water system.

Unauthorized tampering with DWSD equipment, property or fixtures will result in prosecution under Michigan Public Act 37-1984, Michigan Compiled Laws Annotated, section 750.282 and application of such other sanctions as may be approved by the Board of Water Commissioners of the City of Detroit.

Rule 23: Penalty for Unauthorized Use of Water

No person, other than an authorized representative of DWSD may turn water on or cause water to be turned on at the control box, or at a meter valve which has been turned off and sealed by the Department. A penalty charge for violation of this rule will be assessed for such unauthorized use of water service. The penalty charge shall be computed by applying double the effective water rate to the consumption registered on the meter or estimated by DWSD, for the period of unauthorized usage as determined by the DWSD. Additionally, other sanctions may occur as approved by the Board of Water Commissioners including prosecution under Michigan Public Act 37-1984 and Michigan Compiled Laws Annotated, section 750.282.

Rule 24: Grounds for Shut Off

- (1) Subject to the requirements of these Rules, DWSD may shut off service, with notice, to a customer for the following reasons:
 - (a) nonpayment of a delinquent balance, provided that DWSD has notified the customer of the delinquency and made diligent effort to have the

customer pay the outstanding or delinquent balance, either in whole or through a reasonable PPA.;

- (b) fraud or misrepresentation in obtaining water service;
 - (c) unauthorized tampering with pipes, meter by-pass seals, meter by-passes, water or sewer meters or other equipment of DWSD;
 - (d) where the furnishing of service would be in contravention of any orders, laws, or ordinances of the Federal Government, State of Michigan or Municipal Law;
 - (e) failure to comply with the terms and conditions of a PPA;
 - (f) refusal of the customer to grant DWSD access, at reasonable times, to its equipment for the purpose of inspecting the meter, meter reading, maintenance, or replacement.
- (2) Service may be shut off without notice for reasons of health, safety, or state of emergency. In the event DWSD has advance knowledge of a proposed emergency shut off, customers will be notified, if possible.

Rule 25: Shut Off of Service to Tenants

- (1) DWSD may shut off service to a tenant in the absence of a PPA or valid Landlord Tenant Agreement, when the account is more than one bill delinquent.
- (2) Where the responsibility for payment is with the landlord, the tenant has the right to continue service in accordance with the following provisions:
 - (a) Within ten (10) days of receiving notice of the proposed shut off, the tenant must contact DWSD to have service continued.
 - (b) Service shall be continued if the tenant executes a statement indicating responsibility for all future bills, pays the required deposit and provides the documentation required by DWSD.
 - (c) If the tenant fails to pay future bills as agreed, DWSD may proceed with the shut off.
 - (d) If the tenant signs a statement agreeing to pay future bills, the tenant shall be afforded all the rights and protections as set forth in these rules and procedures.

Rule 26: Medical Emergency

- (1) Notwithstanding any other provision of these rules, DWSD shall not shut off or refuse to restore service to a customer, if the shut off will aggravate a medical emergency of anyone residing in the home.
- (2) Upon the customer informing DWSD of a medical emergency, the customer will be required to provide documentation from a physician or public health official. When such documentation is submitted and approved by DWSD personnel, a twenty-one (21) day extension will be given and a payment plan agreement will be made that will commence at the expiration of twenty-one (21) day extension.

PART V. PAYMENT PLAN AGREEMENT

Rule 27: Right of Customer to be Offered Payment Plan Agreement

DWSD may negotiate a reasonable PPA with a customer when extenuating circumstances exist and payment in full cannot be made.

- (1) Payment Plan in Writing – PPA’S will be in writing on the Payment Plan Agreement form and will indicate:
 - (a) account number
 - (b) service address
 - (c) amount due
 - (d) billing period ending date
 - (e) down payment required
 - (f) payment amounts and frequency
 - (g) payment due dates
 - (h) customer address and telephone number
 - (i) customer name
 - (j) customer signature
 - (k) authorized DWSD signature
- (2) Confirmation of Telephone Payment Plan Agreement
 - (a) A DWSD representative and a customer may discuss the terms of an extended PPA over the telephone.
 - (b) Such an agreement will not take effect until it has been put in writing and signed in accordance with Rule 27-1.
- (3) The PPA will be mailed to the customer with instructions to sign a confirming copy and return it in a pre-paid, self-addressed envelope provided by DWSD.

- (4) The PPA will be signed by the customer and the DWSD representative who is authorized to enter into the agreement.
- (5) The PPA shall contain in bold type, the following information:

IF YOU ARE NOT SATISFIED WITH THIS AGREEMENT, DO NOT SIGN IT. YOU MAY FILE FOR A HEARING AND HAVE A HEARING BEFORE YOUR SERVICE MAY BE SHUT OFF. HOWEVER, IF YOU SIGN THIS AGREEMENT AND FAIL TO FOLLOW IT, YOUR SERVICE MAY BE SHUT OFF AND YOU MAY BE DENIED THE OPPORTUNITY TO MAKE FUTURE AGREEMENTS.

- (6) DWSD will shut off service provided that the terms of the PPA are not met by the customer.
- (7) DWSD shall offer to the customer a PPA which is reasonable. For the purposes of determining reasonableness under these rules, the parties shall consider the factors set forth in Rule (16).

Rule 28: Default of Payment Plan Agreement

- (1) If a customer fails to comply with the terms and conditions of a PPA, DWSD may discontinue service after notifying the customer by telephone or first class mail. The default notice shall contain the following information.
 - (a) a statement that the customer is delinquent or did not otherwise comply with the terms of the PPA;
 - (b) a statement that unless missed payment(s) is made within ten (10) days of the DEFAULT NOTICE date, DWSD will shut off service;
 - (c) the date, or reasonable time period thereafter, within which service is disconnected;
 - (d) a statement that the customer has a right to request a Hearing before an impartial Hearing officer if the customer alleges the Department failed or refused to follow the terms of the PPA;
 - (e) an address and a telephone number where the customer may file a request a Hearing.
- (2) DWSD is not required to offer a PPA more than once for the same billing charges.

PART VI. MISCELLANEOUS

Rule 29: Final Determination

DWSD may treat a decision or resolution of a particular dispute or claim as a final determination and is not required to comply with these Rules more than once with respect to the same facts and issues.

Rule 30: Obligation of Owners to Pay

Except as provided by Rule 15, nothing contained in these rules shall be construed as relieving the owner of properties served by DWSD from the responsibility of paying all charges for services billed.

As provided by Michigan Statute, MCL 123.162 and Ordinance Number 106-D of the City of Detroit, water rates, assessments or charges of the Board of Water Commissioners are a lien against the property served.

EXHIBIT 2

MDHHS Declaratory Ruling Form

Michigan Department of Health & Human Services Request for Declaratory Ruling	
Applicants' full name: <ul style="list-style-type: none"> • American Civil Liberties Union of Michigan • Edwards & Jennings, P.C. • Maurice & Jane Sugar Law Center for Economic and Social Justice • Detroit Justice Center • Moratorium Now • Marine-Adams Law, P.C. • Great Lakes Environmental Law Center 	Applicant's degree or title (if applicable):
Applicant's mailing address: Correspondence to all Applicants will be received by: ACLU of Michigan Attn: Mark P. Fancher 2966 Woodward Ave. Detroit, MI 48201	Professional/occupational license no. (if applicable):
Daytime telephone no.: Mark P. Fancher (313) 578-6822	Name and address of legal counsel (if applicable): Mark P. Fancher, Esq. (ACLU of Michigan) Bonsitu Kitaba-Gaviglio, Esq. (ACLU of Michigan) Alice Jennings, Esq. (Edwards & Jennings) John Philo, Esq. (Sugar Law Center) Desiree Ferguson, Esq. (Detroit Justice Center) Jerome Goldberg, Esq. (Moratorium Now) Anthony Adams, Esq. (Marine-Adams Law, P.C.) Erin Mette, Esq. (Great Lakes Environmental Law Center)
Statement of facts: (Please provide a complete, accurate and concise statement of the facts or situation upon which the request is based. The statement shall include all facts known to you which are or may be relevant to a determination of the applicability of statute, rule, final order or decision.) See the Attachment for the Statement of Facts.	

Attachment to
REQUEST FOR MDHHS DECLARATORY RULING

Submitted by:

- American Civil Liberties Union of Michigan
- Edwards & Jennings, P.C.
- Maurice & Jane Sugar Law Center for Economic and Social Justice
- Detroit Justice Center
- Moratorium Now
- Marine-Adams Law, P.C.
- Great Lakes Environmental Law Center

Pursuant to MCL 24.263 and Administrative Rule 325.1211, Applicants request a Declaratory Ruling from the Michigan Department of Health and Human Services (MDHHS) because ongoing water shutoffs in Detroit are causing widespread health problems and there is a high likelihood that shutoffs will lead to outbreaks of disease. This circumstance constitutes an “imminent danger” as defined by the Public Health Code. Applicants seek voluntary restraint or injunctive relief to stop the termination of water services to thousands of Detroit households pursuant to Michigan’s Public Health Code sections 333.2251 and 333.2253. Applicants respectfully request an accelerated ruling from MDHHS on this request.

A. Statement of Facts

1. The Detroit Water and Sewerage Department (DWSD), the municipal utility responsible for the delivery of water services to residents and businesses in Detroit, regularly engages in water shutoffs as a response to customers’ purported payment delinquency. The number of affected households has frequently numbered in the thousands. For instance, in 2014, 33,000 households had their water shutoff; in 2015, 23,000 residents were disconnected; in 2016, 27,552 residents were disconnected; in 2017, 17,665 residents were disconnected; and for 2018, as of August of that year, 11,422 residents were shut off from clean running water at their

homes.¹ The United Nations General Assembly formally recognized “the importance of equitable access to safe and clean drinking water as an integral component of the realization of all human rights.”²

2. Researchers and other public health experts are particularly concerned about the threat of large outbreaks of communicable diseases that can result from mass water shutoffs. While the occurrence of epidemics after mass water shutoffs is often sporadic and unpredictable, several other dangers to public health occur predictably and routinely whenever a water authority engages in mass water shutoffs to the scale seen in Detroit. This petition places special emphasis on such health hazards because too often the threat and significance of such health conditions are disregarded.

3. Providers of support services for low income residents of the Brightmoor neighborhood in northwest Detroit report that widespread water shutoffs in the area have triggered a variety of serious health problems.

4. One of the health problems observed in Brightmoor (that occurs in other communities as well), is low infant weight. When family households lose water service, mothers are unable to consistently prepare infant formula and feed their babies. As a direct result, infants do not receive adequate nourishment and the lack of nourishment is reflected in the babies’ physical condition.

5. Some persons who have lost water service experience elevated blood pressure brought on by the stress of not having water.

¹ Joel Kurth, “In Detroit, surviving without running water has become a way of life” (October 24, 2018), *Bridge Magazine*, <<https://www.bridgemi.com/detroit-journalism-cooperative/detroit-surviving-without-running-water-has-become-way-life>>.

² United Nations Resolution 64/292 (accessed October 26, 2018), <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/64/292>.

6. Service providers report that in some Brightmoor homes without clean running water, residents experience illnesses resulting from the consumption of rain water accumulated in barrels.

7. Persons with diabetes living without clean running water have been reported to suffer complications because they cannot prepare meals without clean water.

8. Brightmoor residents living without clean running water cope with a variety of other illnesses that include, among others: chronic urinary tract infections among women and children; upper respiratory illnesses; and chronic and infected eczema and other skin disorders.

9. While some might discount the seriousness of the health conditions described above, what makes the reported illness stand out is that they are all preventable. But because of the lack of access to clean running water, these illnesses occur needlessly and affect thousands of water customers with terminated service. Additionally, other observable consequences of water shutoffs can affect households that have not been shutoff. Because mass water shutoffs dramatically decrease the number of consumers using the water distribution system, shutoffs directly contribute to conditions that contaminate the water supply itself and create breeding grounds for communicable disease. This is because far fewer consumers are regularly flushing the distribution pipes and there are areas of the city where the water stagnates.

10. Researchers who study the effects of water interruptions on the water distribution system explain:

Increasingly, concern has been raised on contamination occurring within the distribution system. This can occur through cross-connections, contaminated storage facilities, backflow and during low and negative pressure incidents. There are many causes of pressure transients, such as turning on and off a pump, opening and closing valves, power failures, flushing of the network, fire fighting and **anything that causes a sudden change in demand**. Mains breaks, maintenance work and repair can cause loss of water pressure lasting for hours. Studies performed in the United States have shown that low-pressure incidents in otherwise

satisfactory water distribution pipes can cause aspiration of microorganisms from the surrounding soil. (Emphasis added.)³

11. There is also a measured correlation between poverty and lack of water. In Detroit, 35.7 percent of the population lives below the federal poverty line, meaning that among major U.S. cities, Detroit has one of the highest rates of poverty.⁴ Although the U.S. Environmental Protection Agency recommends that water services should cost no more than 4.5 percent of household income, Detroit residents often pay as much as 20 percent of their household income on water.⁵ Consequently, many Detroit residents are unable to afford clean running water.

12. In 2014, DWSD initiated a campaign to terminate the water services of city residents with bills delinquent by more than 60 days or with arrearages of over \$150.⁶ It is estimated that as of October 2018, DWSD had disconnected more than 112,000 homes as part of this ongoing program of mass water shutoffs.⁷

13. These mass water shutoffs have not gone unnoticed. Rapporteurs from the United Nations condemned the DWSD policy and issued a statement that the Detroit water shutoffs are “contrary to human rights.”⁸

³ *Breaks and Maintenance Work in the Water Distribution Systems and Gastrointestinal Illness: A Cohort Study*, by: Karin Nygard, et al., *International Journal of Epidemiology*, 36:873-880 (Feb. 7, 2007).

⁴ Frank Witsil, “Metro Detroit’s poverty gets worse despite city’s comeback” (April 26, 2018), *Detroit Free Press*, <<https://www.freep.com/story/news/local/michigan/detroit/2018/04/26/detroit-poverty-getting-worse/553439002/>>.

⁵ Cria Kay, et al, “Water Insecurity in Southesat Michigan: The Impacts of Unaffordability and Shutoffs on Resident Wellbeing” (April 2018), University of Michigan School for Environment and Sustainability, <https://deepblue.lib.umich.edu/bitstream/handle/2027.42/143169/Roadmap%20to%20Water%20Security_320%20%281%29.pdf?sequence=1&isAllowed=y>.

⁶ Mary M. Chapman, “Hundreds in Detroit Protest Over Move to Shut Off Water” (July 18, 2014), *New York Times*, <<https://www.nytimes.com/2014/07/19/us/protesters-picket-detroit-over-move-to-shut-off-water.html>>.

⁷ *Id.* at fn 1.

⁸ UN News, “In Detroit, city-backed water shut-offs ‘contrary to human rights,’ say UN experts,” (October 20, 2014), <<https://news.un.org/en/story/2014/10/481542-detroit-city-backed-water-shut-offs-contrary-human-rights-say-un-experts>>.

14. In April 2017, the Henry Ford Global Health Initiative and Division of Infectious Disease released the results of a study which found a significant association between water shutoffs and the spread of water-borne illnesses, even when controlling for socioeconomic status.⁹ Authors of the study included Alexander Plum, MPH and Dr. Marcus Zervos, MD. Their study -- "The Impact of Geographical Water Shutoffs on the Diagnosis of Potentially Water-associated Illness, with the Role of Social Vulnerability Examined" -- examined "the relationship between city-imposed water shutoff's and health outcomes among patients at its hospital in Detroit."

15. The study utilized block level data where the city-imposed water shutoffs occurred along with information about Henry Ford patient admissions and the diagnosis of certain gastrointestinal (GI) and soft tissue diseases. The research shows that "patients who are the most likely to be impacted by water-associated illness resulting from the shutoffs are also the most socially vulnerable. . . . [T]he effect of living on a block that has been affected by shutoffs results in increased likelihood that patients will be diagnosed with water-associated illness."

16. In July 2017, co-author Dr. Zervos publicly qualified the study's findings as "preliminary," and he cautioned against the politicization of the research. Specifically, he noted that available data identified only residential blocks where shutoffs occurred, and specific houses that lost water services could not be pinpointed. Consequently, researchers were unable to make specific findings regarding illnesses of specific individuals and the specific causes.¹⁰

⁹ Alexander Plum, MPH, CHES, Kyle Moxley, ABD, Marcus Zervos, MD, "The Impact of Geographical Water Shutoffs on the Diagnosis of Potentially Water-associated Illness, with the Role of Social Vulnerability Examined" (April 8, 2017), < <http://wethepeopleofdetroit.com/wp-content/uploads/2017/07/Water-ShutoffsIllnesses-Report.pdf>>.

¹⁰ Jennifer Chambers, "Experts: Water shutoffs causing public health emergency" (July 26, 2017), *The Detroit News*, < <https://www.detroitnews.com/story/news/local/detroit-city/2017/07/26/detroit-water-shutoffs-health-study/104016812/>>.

17. However, Dr. Zervos' co-author, Dr. Alexander Plum, wrote: "because bacteria can begin to grow when water shutoffs occur, neighbors of impacted shutoff residences can also become sick. For that reason, and while still imperfect, our level of analysis in the current research (i.e. the block level) is still an appropriate associative level for analysis."¹¹

18. Other health experts have concluded that the water shutoffs have caused a "public health crisis." These include Dr. Wendy Johnson, clinical assistant professor at the University of Washington;¹² Dr. Abdul El-Sayed, former health director of the City of Detroit;¹³ and George Gaines, MSW, MPH, who in a 2018 analysis found that the shutoffs caused "epidemic levels" of water-borne illness.¹⁴ In a document titled "Memorandum of Waterborne and Food borne Disease in Detroit 2015- 2017," Gaines, a former Deputy Director of the Detroit Health Department identified four diseases which are directly related to the absence of water in a community. They are: gastroenteritis, campylobacter, shigellosis, and giardiasis. Gaines compared annual data for the period 2012 through 2015 with data from 2016 and 2017 when as many as 80,000 shut offs occurred.

19. Additional research is in progress, and it is expected to add to the already disturbing evidence that mass water shutoffs trigger public health emergencies. These projects are being conducted by We the People of Detroit and the Community Research Collective in cooperation with other researchers. The projects include:

¹¹ Alexander Plum to Dr. Marcus Zervos and Dr. Joneigh S. Khaldun, "Re: Thanks & 2 next steps" (April 18, 2017). Email.

¹² *Supra.* fn 10.

¹³ Jonathan Oosting, "Gov hopeful pledges moratorium on shutoffs" (November 2, 2017), *The Detroit News*, <<https://www.detroitnews.com/story/news/politics/2017/11/02/el-sayed-water-shutoff-moratorium/107247470/>>.

¹⁴ George Gaines, MSW, MPH, "Three Waterborne Outbreaks in Detroit" (June 2018), <<https://www.peopleswaterboard.org/wp-content/uploads/2018/07/DetInfDisease.pdf>>.

- A collaborative effort with Michigan State University that focuses on water quality within the water distribution system of DWSD. The project seeks an answer to the question of how water shut offs impact the quality of water.
<https://engagedscholar.msu.edu/magazine/volume11/quality-water.aspx>
- A Youth-led project conducted in partnership with Freshwater Futures and the University of Michigan that involves, among other things, water sampling and testing for high lead and copper levels in Detroit water.
<https://vimeo.com/320809586>
- A project led by Prof. Nadia Gaber to examine the psychosocial impact of water shut-offs – specifically the mental and physical health impact of water insecurity. The results of this study will soon be released by the New England Journal of Medicine. The research includes surveys that examine the health impact of water insecurity on prenatal care, medical necessity and other health vulnerabilities.¹⁵

ANALYSIS AND CONCLUSION

Scientific studies and the actual circumstances of persons without water services as set forth in detail above provide the basis for a declaratory ruling from MDHHS for a moratorium on water shutoffs in Detroit. MCL 333.2251 provides in relevant part:

Upon a determination that an imminent danger to the health or lives of individuals exists in this state, the director immediately shall inform the individuals affected by the imminent danger and issue an order that shall be delivered to a person authorized to avoid, correct, or remove the imminent danger or be posted at or near the imminent danger. The order shall incorporate the director's findings and require

¹⁵ <http://www.urbanwaterslearningnetwork.org/water-as-a-human-right-public-health-research-and-advocacy-in-detroit/>
<http://www.urbanwaterslearningnetwork.org/author/kaitlin-popielarz>
(Pages 7 - 9/ highlight the WPD: CRC work on the psychosocial impacts of water insecurity)
<https://haasinstitute.berkeley.edu/detroitwaterequity>
<http://inthesetimes.com/article/21412/detroit-water-shutoffs-child-services-debt>
<https://www.npr.org/2019/02/08/691409795/a-water-crisis-is-growing-in-a-place-you-d-least-expect-it>

immediate action necessary to avoid, correct, or remove the imminent danger. The order may specify action to be taken or prohibit the presence of individuals in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger.

The statute further provides:

If the director determines that conditions anywhere in this state constitute a menace to the public health, the director may take full charge of the administration of applicable state and local health laws, rules, regulations, and ordinances in addressing that menace.

Given the facts and circumstances set forth above, this law minimally requires MDHHS to consider the facts and studies presented in this petition, and to make a determination of whether the conditions described pose an imminent danger to the people of Detroit.

The statute defines “imminent danger” as “...a condition or practice [that] exists that could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided.”

The existing and potential health crises demand an immediate official response. As provided by the statute, the Applicants request that MDHHS order correction of the imminent danger, specifically by the cessation of residential water shutoffs. If there is non-compliance or non-cooperation by the City of Detroit, and it is determined that conditions resulting from the water shutoffs are a menace to the public health, then Applicants urge “the director...[to]... take full charge of the administration of applicable state and local health laws, rules, regulations, and ordinances in addressing that menace.”

Finally, Applicants are concerned about actual or potential epidemics. MCL 333.2253 provides in relevant part:

If the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people

for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code.

Applicants conclude that water constitutes an “essential public health service” necessary to prevent the spread of water-borne illness, and therefore finds this statute applicable to the mass water shutoffs. Applicants further highlight the fact that the Director’s emergency procedure options “shall not be limited to” the statute, and the Director is authorized pursuant to MCL 333.2253 to suspend water shutoffs. We urge the Director to do so now.

Respectfully Submitted:

/s/ Mark P. Fancher

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Dated: July 23, 2019

EXHIBIT 3



STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES

LANSING

GRETCHEN WHITMER
GOVERNOR

ROBERT GORDON
DIRECTOR

September 23, 2019

Mark P. Fancher, Esq.
2966 Woodward Avenue
Detroit, MI 48201

Re: Request for Declaratory Ruling

Dear Mr. Fancher:

On July 29, 2019, the Michigan Department of Health and Human Services received your request for a declaratory ruling under the Michigan Administrative Procedures Act, MCL 24.263. Specifically, you have requested a declaratory ruling in response to the following questions as posed in your request:

- Whether mass water shutoffs are an "imminent danger" as defined in MCL 333.2251 requiring the health director take "immediate action" to suspend the shutoffs.
- Whether the spread of water-borne illness constitutes an "epidemic" as defined by MCL 333.2253 that requires the health director to suspend water shutoffs in order to "[i]nsure continuation of essential public health services" as defined by statute.

Michigan Administrative Code Rule 325.1211 governs requests for declaratory rulings. It gives the Agency full discretion to determine whether it will issue a declaratory ruling within 60 days of the receipt of a request. Specifically, Rule 325.1211(8) provides:

(8) The agency may deny a request for declaratory ruling if the applicant fails to follow the procedure for submission in this rule, if the statement of facts is incomplete or inaccurate, if the facts or circumstances relate to a changing situation, if the ruling would not be in the public interest or in furtherance of statutory objectives, or for any other stated reason. The agency shall set forth the reason or reasons for denial of the request in its written notification to the applicant.

Mark P. Fancher, Esq.
September 23, 2019
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The Department denies your Request for Declaratory Ruling for the following reasons:

1. "Imminent danger" as defined by MCL 333.2251(5)(b) means "a condition or practice exists that could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided." While the department believes that access to clean water is a priority for everyone in Michigan, and there are significant challenges faced by residents whose water has been shut off, these challenges do not rise to the level of an imminent danger under the Public Health Code. We have worked with the Detroit Health Department and have also evaluated state data. We have not identified data that suggest a causal association between water shutoffs and water-borne disease. We suggest that municipalities work diligently to prevent any water shutoffs from occurring, and that every effort be made by local authorities to make resources available to residents in the event they are at risk of having an interruption in water services due to inability to pay.
2. The applicants may seek, via counsel, legal remedies other than requesting a declaratory ruling from the Department of Health and Human Services.
3. MCL 333.2253 provides that "if the director of the department determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws." As noted above, there is insufficient data to show that water-borne diseases are specifically caused by water shutoffs, how the purported water-borne diseases caused by water shutoffs are an epidemic, or how a declaratory or emergency ruling by the department would control illness.

Sincerely,



Robert Gordon
Director

RG:llr