



(4) On August 1, 2024, Woodland reservoir draining was completed.

(5) On August 2, 2024, the Regulated Party's Parks Department was notified of a fish kill occurring on Tischer creek via email. The Regulated Party reported the water release to the Minnesota Duty Officer on August 2, 2024.

(6) On August 2, 2024: MPCA and Minnesota Department of Natural Resources (DNR) staff mobilized field staff to the Tischer Creek to collect fish samples and field data. According to the testing and analysis completed by the DNR, the DNR staff found that the level of chloramine in the City of Duluth's drinking water, while within safe and normal limits for human consumption, was four times the immediately lethal level for the fish killed in this incident.

(7) On August 2, 2024, the MPCA staff observed and documented a fish kill that occurred on July 31, 2024, in Tischer Creek located in the City of Duluth.

(8) On October 30, 2024, the Regulated Party submitted an updated Standard Operating Procedure (SOP) that the Regulated Party added to its Stormwater Pollution Prevention Program (SWPPP) to prevent planned discharges of potable water into the Regulated Party's MS4 system.

(9) On January 7, 2025, the MPCA staff mailed Mayor Roger Reinert the Alleged Violation Letter via first class mail.

**Part 6. ALLEGED VIOLATIONS.** The MPCA alleges that the Regulated Party has violated the following requirements of state statute, rule, and/or permit condition:

**1. Minn. R. 7050.0210, GENERAL STANDARDS FOR WATERS OF THE STATE.**

Subp. 2. **Nuisance conditions prohibited.** No sewage, industrial waste, or other wastes shall be discharged from either point or nonpoint sources into any waters of the state so as to cause any nuisance conditions, such as the presence of significant amounts of floating solids, scum, visible oil film, excessive suspended solids, material discoloration, obnoxious odors, gas ebullition, deleterious sludge deposits, undesirable slimes or fungus growths, aquatic habitat degradation, excessive growths of aquatic plants, or other offensive or harmful effects.

On August 2, 2024, the MPCA staff observed and documented a fish kill that occurred on July 31, 2024, in Tischer Creek located in the City of Duluth. During the investigation, the City of Duluth (Regulated Party) stated that on July 31, 2024, they released approximately 1.7 million gallons of potable water into Tischer Creek. The Regulated Party also stated that the potable water contained chloramine, used to disinfect drinking water. According to the testing and analysis completed by the DNR, the DNR staff found that the level of chloramine in the City of Duluth's drinking water was four times the immediately lethal level for the fish killed in this incident. The Regulated Party discharged chloramine (other wastes) into Tischer Creek and caused harmful effects to that creek (fish kill).

**Part 7. CIVIL PENALTY.**

**OPTION 1: SINGLE PAYMENT PENALTY WITH LATE CHARGES.**

The Regulated Party agrees to pay \$12,000.00 to the MPCA as a civil penalty for the violations alleged in Part 6 within 30 days of receipt of an invoice from the MPCA. An invoice for the civil penalty will be sent to the Regulated Party upon the effective date of the Agreement. Payment of the penalty amount of \$12,000.00 is to be payable by check to the Minnesota Pollution Control Agency and should not be submitted until an invoice from the MPCA is received.

The check should reference "City of Duluth" in the memo line and must be mailed to MPCA, P.O. Box 64893, St. Paul, Minnesota, 55164-0893. To pay with Visa, MasterCard, American Express, or electronic check, visit <https://www.pca.state.mn.us/data/e-services>. To make an Automated Clearing House or wire transfer payment, contact MPCA Fiscal Services at 651-757-2182.

If the Regulated Party fails to make the required payment within 30 days after receipt of the above-referenced invoice, the Regulated Party agrees to pay a late payment charge in an amount equal to ten percent of the unpaid civil penalty. Sixty days after receipt of the above-referenced invoice, the Regulated Party agrees to pay an additional late charge in an amount equal to 20 percent of the unpaid civil penalty. If the payment, including late charges, is not received by the MPCA within 60 days after receipt of the above-referenced invoice, the MPCA may immediately exercise any and all administrative and judicial remedies available to it to collect the amount due. The Regulated Party agrees to pay and shall also be indebted to the MPCA for its attorneys' fees and cost incurred by the MPCA in connection with its collection of the amounts owed pursuant to this Agreement.

**Part 8. REGULATED PARTY REQUIREMENTS.** The Regulated Party agrees to the following requirements:

- a. Within 30 days of receipt of this document, update the city's Stormwater Pollution Prevention Program (SWPPP) to prevent the planned discharge of potable water containing chloramine (or other disinfectants) into the city stormwater system. Provide documentation of this corrective action to the MPCA at [kevin.strauss@state.mn.us](mailto:kevin.strauss@state.mn.us).

**...This corrective action has been completed.**

**Part 9. PENALTIES FOR VIOLATIONS OF THIS AGREEMENT.**

- a. If the Regulated Party fails to comply with requirements of Part 8 of this Agreement, the Regulated Party shall pay to the MPCA a penalty in the amount of \$500.00 per requirement for each day of failure.

- b. Penalties for failure to comply with requirements of Part 8 of this Agreement shall accrue from the date the Regulated Party was to have fulfilled the requirement until the Regulated Party fulfills the requirement. Penalties shall not accrue while the MPCA considers a timely extension request under Part 14.

- c. The Regulated Party shall pay a penalty under this Part within 30 days after receiving written notice from the MPCA that the penalty is due. The written notice shall specify the provision of the Agreement that the Regulated Party has not fulfilled and indicate the date penalties began to accrue. If the Regulated Party fails to make timely payment, the Regulated Party agrees to pay a late payment

charge, in addition to the stipulated penalty, to be assessed as follows. Thirty days after receipt of written notice, the Regulated Party shall be obligated to pay a late charge in an amount equal to ten percent of the unpaid stipulated penalty. Sixty days after receipt of written notice, the Regulated Party shall be obligated to pay an additional late charge in an amount equal to 20 percent of the unpaid stipulated penalty.

d. The Regulated Party shall not be liable for payment of penalties for failure to comply with requirements of Part 8 of this Agreement covered by this Part if they have submitted to the MPCA a timely request for an extension of schedule under Part 14 and the MPCA has granted the request. The MPCA's grant of an extension of schedule waives the payment of penalties covered by this Part only on the requirements for which the MPCA granted an extension of schedule and only for the time period specified by the MPCA in the grant of an extension. An extension of schedule for one requirement of Part 8 does not extend the schedule for any other requirement of Part 8.

e. Any requirement of this Agreement may be enforced as provided in Minn. Stat. § 115.071. Payment of a stipulated penalty does not relieve the Regulated Party of its obligation to fulfill and complete requirements under the Agreement and to otherwise comply with the terms and conditions of the Agreement.

**Part 10. REIMBURSEMENT OF OVERSIGHT COSTS.** The Regulated Party agrees to reimburse the agency for all oversight costs associated with implementing the Agreement if the agency's costs exceed \$25,000.00. Oversight costs may include but are not limited to any costs associated with inspections, sampling, monitoring, modeling, risk assessment, permit writing, engineering review, economic analysis and review, and other record or document review. At this time, MPCA estimates that its anticipated oversight costs may be under \$25,000.00. MPCA agrees to periodically update its estimate, but no estimate limits the MPCA's oversight costs or its ability to recover the full amount of its actual oversight costs. MPCA will invoice the Regulated Party for payment of oversight costs once those costs exceed \$25,000.00, and the Regulated Party shall pay any such invoice within 30 days of receipt.

**Part 11. COVENANT NOT TO SUE AND RESERVATION OF REMEDIES.** With respect to the Regulated Party, the MPCA agrees not to exercise any administrative, legal or equitable remedies available to the MPCA to address the violations alleged and described in Part 6 as long as the Regulated Party performs according to and has complied with the terms and conditions contained in this Agreement.

The MPCA reserves the right to enforce this Agreement or take any action authorized by law, if the Regulated Party fails to comply with the terms and conditions of this Agreement. Further, the MPCA reserves the right to seek to enjoin violations of this Agreement and to exercise its emergency powers pursuant to Minn. Stat. § 116.11 in the event conditions or the Regulated Party's conduct warrant such action. Nothing in this Agreement shall prevent the MPCA from exercising these rights and nothing in this Agreement constitutes a waiver of these rights.

The MPCA reserves the right to pursue recovery for Natural Resources Damages pursuant to Minn. Stat. § 115.071, Minn. Stat. § 115B.04 or other laws. Nothing in this Agreement shall prevent the MPCA from exercising these rights and nothing in this Agreement constitutes a waiver of these rights.

The Regulated Party agrees to waive all claims they may now have, as of the effective date of this Agreement, under Minn. Stat. § 15.472 for fees and expenses arising out of matters leading up to and addressed in this Agreement.

**Part 12. REPEAT VIOLATIONS.** Federal and state environmental programs establish harsher penalties for violations of environmental laws or rules that constitute repeat violations. In a proceeding to resolve alleged violations by the Regulated Party, if any, occurring after the date of the alleged violations set out in Part 6 of this Agreement, the Regulated Party may argue about the extent to which the violations alleged in Part 6 of this Agreement should affect the penalty amount for the later violations, but waives the right: (1) to contend that the violations alleged in Part 6 of this Agreement did not occur as alleged and (2) to require the MPCA to prove the violations alleged in Part 6 of this Agreement.

**Part 13. VENUE.** Actions brought by the MPCA to enforce requirements and terms of this Agreement shall be venued in St. Louis County District Court.

**Part 14. EXTENSION OF SCHEDULES.** If the Regulated Party wants an extension of a deadline included in any schedule under this Agreement, including schedules established by approved submittals, the Regulated Party must request the extension in writing at least ten days before the scheduled deadline, or as soon as possible before that date if the reason for the extension request arises less than ten days before the deadline.

Each deadline extension request shall separately specify the reason why the extension is needed. No requested extension shall be effective until approved in writing by the MPCA, acting through the MPCA Case Contact or the Commissioner.

The MPCA shall grant an extension only for the period of time the MPCA determines is reasonable under the circumstances. The written approval or grant of an extension request shall be considered an enforceable part of the Agreement.

The Regulated Party has the burden of demonstrating to the satisfaction of the MPCA that the request for the extension is timely, and that good cause exists for granting the extension. Good cause can include, but is not limited to, the following:

- a. An act of god; and
- b. Delays caused by the MPCA in reviewing timely submittals required by this Agreement, submitted by the Regulated Party in complete and approvable form, which make it not feasible for the Regulated Party to meet the required schedules.

An “act of god” is defined as an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

If the Regulated Party shows good cause through the occurrence of an “act of god,” such a showing does not excuse the Regulated Party from compliance. An “act of god” constitutes good cause solely for the purpose of demonstrating that the Regulated Party is entitled to an extension of the disputed deadline.

Good cause does not include unanticipated costs; increases in the cost to comply with Agreement requirements, permit conditions, or federal or state rules; or delays in MPCA review of submittals when the submittals are not in complete and approvable form.

The Regulated Party may challenge a decision by the MPCA to deny a request for an extension under this Part.

**Part 15. CASE CONTACT.** The MPCA and the Regulated Party shall each designate a Case Contact for the purpose of overseeing the implementation of this Agreement. The MPCA Case Contact is Kevin Strauss. The address, telephone number, and email address of the MPCA's Case Contact is: 7381 Airport View Drive Southwest, Rochester, Minnesota 55902, 507-206-2624, and [kevin.strauss@state.mn.us](mailto:kevin.strauss@state.mn.us). The Regulated Party's Case Contact is Ryan Granlund, City Hall, Room 240, 411 West First Street, Duluth, Minnesota 55802; 218-730-4088; [rgranlund@duluthmn.gov](mailto:rgranlund@duluthmn.gov). Either party may change its designated Case Contact by notifying the other party in writing, within five days of the change. To the extent possible, communications between the Regulated Party and the MPCA concerning the terms and conditions of this Agreement shall be directed through the Case Contacts.

**Part 16. APPLICABLE LAWS AND PERMITS.** This Agreement does not relieve the Regulated Party of the duty to comply with the requirements of all applicable federal, state and local laws and regulations, including without limitation in the Regulated Party's undertaking actions to comply with this Agreement. Except when the MPCA has specifically authorized a different compliance method in Part 8, the Regulated Party must also comply with all applicable permits, orders, stipulation agreements and schedules of compliance. Nothing in this Agreement exempts or relieves the Regulated Party of its obligation to comply with local governmental requirements.

**Part 17. OTHER CLAIMS.** Nothing herein shall release the Regulated Party from any claims, causes of action or demands in law or equity by any person, firm, partnership or corporation not a signatory to this Agreement for any liability they may have arising out of or relating to the release of any pollutant or contaminant from its operations or from a facility. Neither the Regulated Party nor the MPCA shall be held as a party to any contract entered into by the other party to implement the requirements of this Agreement.

**Part 18. LIABILITIES.** Each party agrees that they will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. The State's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minn. Stat. §§ 3.732, et seq., and other applicable law.

**Part 19. SUCCESSORS, AGENTS AND CONTRACTORS.** This Agreement shall be binding upon the Regulated Party and its successors and assigns, and upon the MPCA, its successors and assigns. If the Regulated Party sells or otherwise conveys or assigns any of its right, title or interest in the Facility, the conveyance shall not release the Regulated Party from any obligation imposed by this Agreement, unless the party to whom the right, title or interest has been transferred or assigned agrees in writing to fulfill the obligations of this Agreement and the MPCA approves the transfer or assignment. The Regulated Party shall ensure that the Regulated Party's agents, contractors and subsidiaries comply with the terms and conditions of this Agreement.

**Part 20. AMENDMENTS.** Except with respect to extensions of schedules granted under Part 14 and approved submittals under Part 8, this Agreement may be amended only by written agreement between the parties.

**Part 21. EFFECTIVE DATE.** This Agreement shall be effective on the date it is signed by the MPCA.

**Part 22. TERMINATION.** The provisions of this Agreement shall be deemed satisfied and terminated when the Regulated Party receives written notice from the MPCA that the Regulated Party has demonstrated, to the satisfaction of the MPCA, that all terms of the Agreement have been completed. Termination of this Agreement does not release the Regulated Party from any duty to comply with any state statutes, rules or permit conditions, whether or not they are cited in this Agreement. The

Regulated Party agrees that they shall retain all records related to this Agreement for three years following its termination. Termination of this Agreement does not release the Parties from Parts 11 (Covenant Not To Sue And Reservation Of Remedies), 12 (Repeat Violations) and 18 (Liabilities), which terms shall survive the termination of this Agreement.

**BY THEIR SIGNATURES BELOW, THE UNDERSIGNED REPRESENT THAT THEY HAVE AUTHORITY TO BIND THE PARTIES THEY REPRESENT**

**City of Duluth**

**STATE OF MINNESOTA  
POLLUTION CONTROL AGENCY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Roger J. Reinert  
Mayor  
City of Duluth

Ryan Anderson  
Manager  
Municipal Division

Date: \_\_\_\_\_

Date: \_\_\_\_\_