

# OVERVIEW OF STATE'S "COMMUNITIES-ONLY" SETTLEMENT

Presented by:

The Legal Subcommittee  
Intergovernmental Cooperation  
Committee

Greenfield City Hall

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# OVERVIEW OF SETTLEMENT PROPOSAL

- No fines or penalties for alleged past violations.
- No admission of liability for alleged past violations.
- Settlement shield for future sanitary sewer overflows (“SSOs”).
- Broad release for past violations.

# OVERVIEW OF SETTLEMENT PROPOSAL continued

- General community control obligations for I/I.
- Community specific I/I control obligations for six communities.
- Stipulated penalties for failure to perform agreed I/I obligations and non-exempt SSOs.
- Relief valve for I/I control obligations for future TABOR type laws.

# SETTLEMENT SHIELD FOR SSOs

- No fines/penalties for future “Covered SSOs” during term of settlement.
- Exempt SSOs defined very broadly.
  - All SSOs within the entire distribution system of all communities.
  - All SSOs within the entire sewerage system of MMSD.

## SETTLEMENT SHIELD FOR SSOs continued

- Non-exempt SSOs are those caused by:
  - negligent operation of the Community's system.
  - failure of Community to meet an agreed deadline for I/I control obligations.
  - non-weather related events NOT anticipated by this stipulation creating imminent and substantial endangerment.
- State has burden of proof to establish non-exempt SSOs.

# BROAD RELEASES FOR PAST VIOLATIONS

- Releases all communities and employees from covered liability.
- Covered liability includes:
  - violations alleged in the Complaint.
  - all other violations that State knew or should have known as of the date of the filing of the Stipulation based upon documentation.

## BROAD RELEASES FOR PAST VIOLATIONS cont.

- Each settling community releases other settling community from contribution claims arising from 2004 events.
- Each settling community is solely responsible for its I/I obligations.

# GENERAL COMMUNITY OBLIGATIONS

- Encourage and support MMSD adoption of:
  - Flow monitoring
  - Rain gauge installation
  - Peak flow performance standards
- Community retains all legal rights to object/appeal such MMSD actions.
- By 12/31/06, correct (as required by MMSD rules), all defects listed in 2010 LSSES\*  
(\*Greendale given 1 year extension).



## GENERAL COMMUNITY OBLIGATIONS continued

- By 09/30/06, externally inspect all sanitary sewer manholes and install necessary seals.
- By 06/30/06, adopt plan to internally inspect each manhole once every 5 years, provide cost-effective correction of defects within 18-24 months.
- By 06/30/09, develop and implement CMOM programs contemplated by pars. 6 through 7 of 2002 Settlement.

## STIPULATED PENALTIES

- \$200/day for failure to comply with scheduled deadline.
- Non-exempt SSOs:
  - \$1,000/day for first non-exempt SSOs up to \$5,000 max.
  - \$3,000/day for second non-exempt SSOs up to \$9,000 max.
  - \$5,000/day for all future non-exempt SSOs up to \$50,000 max.

## STIPULATED PENALTIES continued

- All stipulated penalties paid into MMSD Conservation Easement Fund.
- Force Majeure defenses available.
- State has burden of proof for all stipulated fines.
- No penalty calculated during dispute resolution period.

## TABOR RELIEF

- Enactment of future Federal or State TABOR laws grounds for seeking relief from Court from I/I obligations.
- Burden on community to prove that future legislation constitutes TABOR type law.
- TABOR type law: significantly impairs community's financial ability to meet I/I obligations in light of all other governmental responsibilities.