

March | 2016

Flint Water Advisory Task Force

# FINAL REPORT

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Commissioned by the Office of Governor Rick Snyder  
State of Michigan

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March 21, 2016

Governor Rick Snyder  
Office of Governor  
P.O. Box 30013  
Lansing, Michigan 48909

Dear Governor Snyder:

We, the Flint Water Advisory Task Force (FWATF), offer in this report our findings and recommendations regarding the Flint water crisis. We have come to our conclusions largely through interviews of individuals involved and review of related documents now available in the public record. Our report includes 36 findings and 44 recommendations, offered to fulfill our charge of determining the causes of the Flint water crisis, identifying remedial measures for the Flint community, and safeguarding Michigan residents.

We hope that our report serves three fundamental purposes:

1. Clarify and simplify the narrative regarding the roles of the parties involved, and assign accountability clearly and unambiguously.
2. Highlight the causes for the failures of government that precipitated the crisis and suggest measures to prevent such failures in the future.
3. Prescribe recommendations to care for the Flint community and to use the lessons of Flint's experience to better safeguard Michigan residents.

We are encouraged by your focus and expressed commitment to address the Flint community's needs, and to learn from the failures that have transpired. This commitment is appropriate because, though it may be technically true that all levels of government failed, the state's responsibilities should not be deflected. The causes of the crisis lie primarily at the feet of the state by virtue of its agencies' failures and its appointed emergency managers' misjudgments.

Given the extensive investigative reporting on the Flint water crisis (from which we have benefited greatly), we have limited our explanatory narrative. Rather, our report builds on the ample public record and information yielded through over 60 interviews and discussions to prescribe recommendations that, we hope, will ultimately safeguard and benefit Michigan residents for years to come. We have approached our work with a solemn commitment to the charge you invested in us: to place Michigan residents' well-being first.

Respectfully,



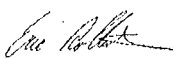
Matthew M. Davis, MD, MAPP



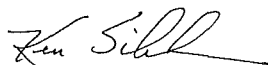
Chris Kolb



Lawrence Reynolds, MD



Eric Rothstein, CPA



Ken Sikkema

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# Executive Summary

## *Summary Statement*

The Flint water crisis is a story of government failure, intransigence, unpreparedness, delay, inaction, and environmental injustice. The Michigan Department of Environmental Quality (MDEQ) failed in its fundamental responsibility to effectively enforce drinking water regulations. The Michigan Department of Health and Human Services (MDHHS) failed to adequately and promptly act to protect public health. Both agencies, but principally the MDEQ, stubbornly worked to discredit and dismiss others' attempts to bring the issues of unsafe water, lead contamination, and increased cases of Legionellosis (Legionnaires' disease) to light. With the City of Flint under emergency management, the Flint Water Department rushed unprepared into full-time operation of the Flint Water Treatment Plant, drawing water from a highly corrosive source without the use of corrosion control. Though MDEQ was delegated primacy (authority to enforce federal law), the United States Environmental Protection Agency (EPA) delayed enforcement of the Safe Drinking Water Act (SDWA) and Lead and Copper Rule (LCR), thereby prolonging the calamity. Neither the Governor nor the Governor's office took steps to reverse poor decisions by MDEQ and state-appointed emergency managers until October 2015, in spite of mounting problems and suggestions to do so by senior staff members in the Governor's office, in part because of continued reassurances from MDEQ that the water was safe. The significant consequences of these failures for Flint will be long-lasting. They have deeply affected Flint's public health, its economic future,<sup>1</sup> and residents' trust in government.

The Flint water crisis occurred when state-appointed emergency managers replaced local representative decision-making in Flint, removing the checks and balances and public accountability that come with public decision-making. Emergency managers made key decisions that contributed to the crisis, from the use of the Flint River to delays in reconnecting to DWSD once water quality problems were encountered. Given the demographics of Flint, the implications for environmental injustice cannot be ignored or dismissed.

The Flint water crisis is also a story, however, of something that *did* work: the critical role played by engaged Flint citizens, by individuals both inside and outside of government who had the expertise and willingness to question and challenge government leadership, and by members of a free press who used the tools that enable investigative journalism. Without their courage and persistence, this crisis likely never would have been brought to light and mitigation efforts never begun.

## *A Series of Government Failures*

Flint water customers were needlessly and tragically exposed to toxic levels of lead and other hazards through the mismanagement of their drinking water supply. The specific events that led to the water quality debacle, lead exposure, heightened *Legionella* susceptibility, and

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<sup>1</sup> Direct and indirect economic impacts of the Flint water crisis include, for example, financial consequences to individuals and homeowners; impacts on economic development opportunities and on the revenue base for public services; and the costs of exacerbated requirements for water infrastructure repair and rehabilitation as well as long-term public health and social services.

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infrastructure damage are a litany of questionable decisions and failures related to several issues and events, including, but not limited to:

- Decisions related to the use of the Flint River as an interim water supply source.
- Inadequate preparation (for example, staffing, training and plant upgrades) for the switch to full-time use of the Flint Water Treatment Plant using the Flint River as the primary water supply source.
- Inadequate and improper sampling of distribution system water quality, potentially in violation of the Safe Drinking Water Act.
- Intransigent disregard of compelling evidence of water quality problems and associated health effects.
- Callous and dismissive responses to citizens' expressed concerns.
- Persistent delays in coordinating appropriate responses to the resultant public health crises once irrefutable evidence of exposure and poisoning was presented.

We cannot begin to explain and learn from these events—our charge—without also highlighting that the framework for this decision-making was Michigan's Emergency Manager Law. This law replaces the decision-making authority of locally elected officials with that of a state-appointed emergency manager. While one must acknowledge that emergency management is a mechanism to address severe financial distress, it is important to emphasize that the role of the emergency manager in Flint places accountability for what happened with state government.

Our complete findings and recommendations are provided throughout this report and also are summarized at the close of this Executive Summary. They are formulated to offer specific measures to better safeguard public health, enhance critical water system infrastructure, improve governmental decision-making and regulatory oversight, and mitigate the many negative health and economic effects facing the people of Flint. We hope that our findings and recommendations serve as a guide and template for remediation and recovery in Flint, and for safeguarding the health and well-being of residents across our state.

### ***FWATF Membership, Charge and Scope of Review***

The FWATF—composed of five members with experience and backgrounds in public policy, public utilities, environmental protection, public health, and health care—was appointed by Governor Rick Snyder on October 21, 2015.<sup>2</sup> We were charged with conducting an independent review of the contamination of the Flint water supply: what happened, why it occurred, and what is needed to prevent a reoccurrence in Flint or elsewhere in the state. We assessed ongoing mitigation efforts to help assure that short and long-term public health issues and water management concerns will be properly addressed to safeguard the health and well-being of the Flint community. We have developed findings and offer recommendations on the following:

- Roles of Government Entities in the Flint Water Crisis
  - State of Michigan
    - Michigan Department of Environmental Quality (MDEQ)
    - Michigan Department of Health and Human Services (MDHHS)
    - Michigan Governor's Office
    - State-Appointed Emergency Managers

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<sup>2</sup> Paragraph summaries of the FWATF members' backgrounds and experience are provided as Appendix I.

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- City of Flint
  - Genesee County Health Department (GCHD)
  - United States Environmental Protection Agency and the Lead and Copper Rule
  - Issues Presented by the Flint Water Crisis
    - The Reality of Environmental Injustice
    - Perspectives from Flint
    - Flint Recovery
    - State-Wide Recommendations

Before completing this report, the Task Force issued three interim letters to Governor Snyder offering findings and recommendations requiring immediate response, as follows:<sup>3</sup>

1. The first letter, issued December 4, 2015, identified our concerns about coordination of response measures and the need for a framework to measure results and clearly delineate responsibilities for continuing actions to protect public health.
2. The second letter, issued December 29, 2015, addressed the critical and urgent need to establish responsibility and ensure accountability for what happened in Flint.
3. Our third letter, issued January 21, 2016, addressed the need for the state to engage the scientific experts who overcame state and federal agency intransigence to expose the lead poisoning, and similarly to engage trusted, scientific experts drawn from independent institutions to address the implications of the Legionellosis outbreak.

In conducting our interviews, we have had complete independence and largely<sup>4</sup> unfettered access to local, state and federal government personnel. Interview subjects were not compelled to participate in our review, and the FWATF held no subpoena or judicial enforcement powers. We are grateful to the parties involved for their forthright willingness to discuss the events that transpired and their perspectives.

We acknowledge that other reviews and investigations are taking place, some with tools that the FWATF did not have, such as the subpoena and judicial enforcement powers mentioned above. We appreciate and support these reviews because the magnitude of this tragedy warrants deep and detailed investigation. It is our hope that these or other reviews examine certain issues we had neither the time nor investigative tools to fully explore, and that fell outside our immediate scope given the accelerated timeframe for our information gathering and rendering of judgments. These issues include, but are not limited to:

- State approval and permitting of the Karegnondi Water Authority (KWA) in a region that had ample water supply and treatment capacity, yet faced economic distress sufficient to warrant emergency management in its two largest urban centers.
- The appropriate role of regulatory agencies and the water utility industry in addressing the dangers presented by widespread use of lead in public and private plumbing systems.

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<sup>3</sup> The FWATF's interim letters to Governor Snyder are provided as Appendix II.

<sup>4</sup> The FWATF was not successful in scheduling an interview with representatives of the firm Lockwood, Andrews, & Newnam (LAN) despite several requests. LAN requested that questions be submitted to them in writing, and the questions we submitted are included in Appendix IV. As of the time of publication, the FWATF has not received responses to these questions.

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Historically, regulatory agencies and the water utility industry at large have been reluctant to address these dangers beyond use of corrosion control treatment.<sup>5</sup> Though the industry now endorses strengthening of the Lead and Copper Rule and ultimate replacement of lead service lines (LSLs),<sup>6</sup> the industry has not (with notable exceptions) been proactive in reducing risk through full LSL replacement programs and has highlighted utility customers' obligations to manage lead risks on private property. While the recommendations of the National Drinking Water Advisory Council (NDWAC) advance objectives of full LSL replacements, enhanced monitoring, and improved public education, concerns persist about accountability, oversight and enforcement.<sup>7, 8</sup>

- Protocols for environmental compliance enforcement when EPA has delegated primacy (authority to enforce federal law) to state agencies, yet retains ultimate responsibility for protection of public health and management of environmental risks.
- Budgets for public health activities at federal, state, and local levels to ensure that highly skilled personnel and adequate resources are available. The consequences of under-funding include insufficient and inefficient responses to public health concerns, which have been evident in the Flint water crisis.
- The need for greater clarity on local and state processes and procedures for declaring emergencies in response to man-made catastrophes (in contrast to natural disasters). The efforts of local, state, and federal emergency operations teams in Flint beginning in

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<sup>5</sup> Historically, water industry groups have maintained that removing lead from water and plumbing systems is not necessary and would involve significant difficulty and expense (see, for example, "Controlling Lead in Drinking Water," Water Research Foundation, 2015). Notably, when EPA's Lead and Copper Rule (LCR) was published in 1991, it required replacement of entire LSLs, and in 1994 the water industry sought in court to limit this requirement to only the publicly owned portions of service lines (40 F.3d 1266, AWWA vs. EPA, 1994). In response, EPA revised the LCR in 2000 to allow for partial service line replacement—a practice the CDC later maintained was associated with *increases* in blood lead levels ("Important Update: Lead-Based Water Lines," Howard Frumkin, MD; CDC, May 2010). The water industry historically has focused on controlling lead exposure risks through use of chemical corrosion control methods and has offered a number of related studies (as compiled in "Lead and Copper Corrosion: An Overview of WRF Research," Jonathan Cuppett, Water Research Foundation, updated January 2016). The American Water Works Association (AWWA) also has published communications guides on lead-in-water issues (see, for example, "Communicating About Lead Service Lines: A Guide for Water Systems Addressing Service Line Repair and Replacement," AWWA, 2014; and "Strategies to Obtain Customer Acceptance of Complete Lead Service Line Replacement," AWWA, 2005). Yet industry guidance has taken the position that managing lead-related risks associated with LSLs and plumbing fixtures on private property is largely the utility customers' responsibility. Many water utilities have not informed customers proactively (if at all) about the presence of LSLs. As a result, customers generally have limited awareness of the potential need to take action to protect themselves from lead in drinking water.

<sup>6</sup> See, for example, AWWA press release: "AWWA Board supports recommendation for complete removal of lead service lines," March 8, 2016.

<sup>7</sup> For example, there are concerns that the voluntary, customer-initiated sampling approach recommended by the NDWAC will substantially decrease public water systems' ability to track presence of lead over time, identify emerging public health threats, and inform LSL replacement programs. For more information on additional concerns, see, for example, "Strength of New EPA Lead Rule Depends on Accountability," by Brett Walton, Circle of Blue, February 10, 2016, [www.circleofblue.org/2016/world/strength-of-new-epa-lead-rule-depends-on-accountability/](http://www.circleofblue.org/2016/world/strength-of-new-epa-lead-rule-depends-on-accountability/).

<sup>8</sup> NDWAC and water utility industry representatives have highlighted concerns about the significant financial resources and time required to effect full LSL replacement, suggesting the need to support reasonable yet aggressive scheduling of LSL replacement through both enforcement measures (within the LCR) and resource commitments of local, state and federal entities.



January 2016<sup>9</sup> have demonstrated that emergency operations can be deployed appropriately and with multi-level coordination. However, delays in Flint occurred due to reluctance to elevate concerns, confusion and disagreement among authorities about how and what levels of emergency status were appropriate, and extensive application requirements.

We also note and acknowledge that additional information will continue to be revealed as other investigations and reviews of the crisis are conducted. The narrative, findings and recommendations in this report are based on our interviews and the public record available through February 2016. We believe this information alone warrants urgent and thorough response and supports our recommendations.

We hope that our earlier letters and this report contribute to the collective understanding of what transpired, evoke thoughtful consideration of our recommendations, and—most importantly—further motivate sustained response and support for the Flint community and more earnest and effective protection of all Michigan residents.

### *Acknowledgements*

The FWATF would not have been able to complete its work without the support of many individuals and organizations that dedicated their time, resources and passion to facilitate our review. We are indebted to the Michigan State University's Center for Local Government Finance and Policy for their administrative support and insights, particularly with regard to Michigan's emergency manager laws; and to Chris DeWitt of DeWitt Communications for keeping the task force informed regarding media coverage. We have been aided by technical insights from individuals in the water utility and public health communities, too numerous to name individually here, who have educated us on a broad range of issues. Where we have accurately stated the technical attributes of specific issues, it reflects on their guidance. We are responsible for any technical inaccuracies or unintentional misstatements of fact.

Perhaps most notably, we are deeply indebted to the members of the Flint community and safe drinking water and public health advocates who ultimately entrusted us with profound expressions of their frustrations, concerns, perspectives and hopes for the future. We are especially thankful to Flint residents for giving voice to the searing personal costs that are too often muted in the discourses about public policy implications. We are acutely aware that as we are a task force commissioned by the State of Michigan, their forthrightness was a leap of faith given what happened in Flint. We hope that our report honors their trust, advances their hopes for the future, and helps ensure that Michigan communities are safer.

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<sup>9</sup> The FWATF recommended to the Governor's office that an emergency be declared as early as November 2015 and issued its first letter to the Governor on December 4, 2015 noting the acute need for more effective coordination of activities.

### ***Findings of the Task Force***

**Note:** Footnotes and text supporting these findings and recommendations are provided in the individual sections of the report. The footnotes and text provide substantive detail and important context for our findings and recommendations. Also please note that the findings and recommendations are independent lists; the findings do not correlate one-to-one to the recommendations.

#### **Michigan Department of Environmental Quality (MDEQ):**

- F-1. MDEQ bears primary responsibility for the water contamination in Flint.
- F-2. MDEQ, specifically its Office of Drinking Water and Municipal Assistance (ODWMA), suffers from cultural shortcomings that prevent it from adequately serving and protecting the public health of Michigan residents.
- F-3. MDEQ misinterpreted the LCR and misapplied its requirements. As a result, lead-in-water levels were under-reported and many residents' exposure to high lead levels was prolonged for months.
- F-4. MDEQ waited months before accepting EPA's offer to engage its lead (Pb) experts to help address the Flint water situation and, at times, MDEQ staff were dismissive and unresponsive.
- F-5. MDEQ failed to move swiftly to investigate, either on its own or in tandem with MDHHS, the possibility that Flint River water was contributing to an unusually high number of Legionellosis cases in Flint.

#### **Michigan Department of Health and Human Services (MDHHS):**

- F-6. MDHHS's lack of timely analysis and understanding of its own data on childhood blood lead levels, along with its reliance on MDEQ and reluctance to share state data with Dr. Mona Hanna-Attisha and Professor Marc Edwards, prolonged the Flint water crisis.
- F-7. MDHHS bears ultimate responsibility for leadership and coordination of timely follow-up efforts in Flint and across the state regarding childhood lead poisoning. While local entities (for example, healthcare professionals, GCHD, health insurance plans) are partners in efforts to protect children from lead poisoning, MDHHS has the lead role and failed to exercise its responsibility.
- F-8. The consequences of lead exposure for Flint residents are expected to be long-term and will necessitate sustained investments in education, public and mental health, juvenile justice, and nutrition needs over the next 10 to 20 years.
- F-9. Too few children in Michigan are screened for lead through routine blood tests as recommended for children ages 1 and 2. Statewide screening goals for children enrolled in Medicaid are met in very few instances at the county level or within Medicaid health plans. This lack of information leaves parents, healthcare professionals, and local and state public health authorities uninformed about the possibility of lead poisoning for thousands of Michigan children.
- F-10. Coordination between MDEQ and MDHHS was inadequate to properly address the public health issues related to water quality in Flint. Communication was infrequent, and when it did occur, the default position was to conclude that the health problems were not related

to the water supply switch – rather than to assume that the problems might be related to the switch.

- F-11. Communication and coordination among local and state public health staff and leadership regarding Legionellosis cases in 2014-2015 was inadequate to address the grave nature of this outbreak. The fact that these cases occurred *while* there were several simultaneous concerns about quality and safety of water in Flint should have caused public health staff and leadership at local and state levels to coordinate their actions to ensure a prompt and thorough investigation.

**Michigan Governor’s Office:**

- F-12. Ultimate accountability for Michigan executive branch decisions rests with the Governor.
- F-13. The Governor’s knowledge, and that of Governor’s office staff, of various aspects of the Flint water crisis was compromised by the information—much of it wrong—provided by MDEQ and MDHHS.
- F-14. The Governor’s office continued to rely on incorrect information provided by these departments despite mounting evidence from outside experts and months of citizens’ complaints throughout the Flint water crisis, only changing course in early October 2015 when MDEQ and MDHHS finally acknowledged the extent of the problem of lead in the public water supply.
- F-15. The suggestion made by members of the Governor’s executive staff in October 2014 to switch back to DWSD should have resulted, at a minimum, in a full and comprehensive review of the water situation in Flint, similar to that which accompanied the earlier decision to switch to KWA. It was disregarded, however, because of cost considerations and repeated assurances that the water was safe. The need to switch back to DWSD became even more apparent as water quality and safety issues continued and lead issues began to surface in 2015, notwithstanding reassurances by MDEQ.
- F-16. The Flint water crisis highlights the risks of over-reliance—in fact, almost *exclusive* reliance—on a few staff in one or two departments for information on which key decisions are based.
- F-17. Official state public statements and communications about the Flint water situation have at times been inappropriate and unacceptable.

**State-Appointed Emergency Managers:**

- F-18. Emergency managers, not locally elected officials, made the decision to switch to the Flint River as Flint’s primary water supply source.
- F-19. Treasury officials, through the terms of the local emergency financial assistance loan executed by the Flint emergency manager on April 29, 2015, effectively precluded a return to DWSD water, as Flint citizens and local officials were demanding, without prior state approval.
- F-20. The role of the emergency managers in Flint (in combination with MDEQ’s failures) places primary accountability for what happened with state government.

- F-21. Emergency managers charged with financial reform often do not have, nor are they supported by, the necessary expertise to manage non-financial aspects of municipal government.
- F-22. Michigan's Emergency Manager Law and related practices can be improved to better ensure that protection of public health and safety is not compromised in the name of financial urgency.

**City of Flint:**

- F-23. Flint Public Works personnel were ill-prepared to assume responsibility for full-time operation of the Flint WTP and distribution system.
- F-24. The Flint Water Treatment Plant (WTP) and installed treatment technologies were not adequate to produce safe, clean drinking water at startup of full-time operations. Flint's lack of reinvestment in its water distribution system contributed to the drinking water crisis and ability to respond to water quality problems.
- F-25. Flint Public Works personnel failed to comply with LCR requirements, including the use of optimized corrosion control treatment and monitoring for lead. Flint personnel did not identify residences with LSLs, secure an adequate number of tap water samples from high-risk homes, or use prescribed sampling practices (for example, line and tap flushing methods and sample bottle sizes).
- F-26. Flint Public Works acted on inaccurate and improper guidance from MDEQ.
- F-27. Many communities similarly rely on MDEQ to provide technical assistance and guidance on how to meet regulatory requirements. In the case of Flint, MDEQ assistance was deeply flawed and lax, which led to myopic enforcement of regulations designed to protect public health.
- F-28. The emergency manager structure made it extremely difficult for Flint citizens to alter or check decision-making on preparations for use of Flint River water, or to receive responses to concerns about subsequent water quality issues.

**Genesee County Health Department (GCHD):**

- F-29. Communication, coordination and cooperation between GCHD, the City of Flint and MDHHS were inadequate to protect Flint residents from public health threats resulting from inadequately treated Flint River water.
- F-30. The rate of follow-up on children with elevated blood lead levels through January 2016 was unacceptable, illustrating a low level of coordination between GCHD and MDHHS and insufficient resources devoted to this task.
- F-31. Management of the Flint River-sourced water supply may have contributed to the outbreaks of Legionellosis in 2014 and 2015 in Genesee County. Although the definitive cause of the outbreaks is uncertain at the time of publication, GCHD and MDHHS did not notify the public of the outbreaks in a timely fashion in order to urge caution.

**United States Environmental Protection Agency (EPA):**

- F-32. EPA failed to properly exercise its authority prior to January 2016. EPA's conduct casts doubt on its willingness to aggressively pursue enforcement (in the absence of

widespread public outrage). EPA could have exercised its powers under Section 1414 and Section 1431 of the SDWA or under the LCR, 40 CFR 141.82(i).

F-33. Despite the clear intent of the LCR, EPA has accepted differing compliance strategies that have served to mute its effectiveness in detection and mitigation of lead contamination risks. These strategies have been adopted at water systems and primacy agencies across the country. Though there may be some ambiguity in LCR rule, none of it relates to what MDEQ should have done in Flint. There was and remains no justification for MDEQ not requiring corrosion control treatment for the switch of water source to the Flint River.

F-34. EPA was hesitant and slow to insist on proper corrosion control measures in Flint. MDEQ misinformation notwithstanding, EPA's deference to MDEQ, the state primacy agency, delayed appropriate intervention and remedial measures.

F-35. EPA tolerated MDEQ's intransigence and issued, on November 3, 2015, a clarification memo on the LCR when no such clarification was needed.

**Issues Presented by the Flint Water Crisis:**

F-36. The Flint water crisis is a clear case of environmental injustice.

### ***Recommendations of the Task Force***

**Note:** Footnotes and text supporting these findings and recommendations are provided in the individual sections of the report. The footnotes and text provide substantive detail and important context for our findings and recommendations. Also please note that the findings and recommendations are independent lists; the findings do not correlate one-to-one to the recommendations.

#### **Michigan Department of Environmental Quality (MDEQ):**

- R-1. Implement a proactive, comprehensive cultural change program within MDEQ, specifically its ODWMA, to refocus the department on its primary mission to protect human health and the environment. MDEQ should aspire to become a national leader through a proactive program designed to detect and address contaminants in public water supplies in a timely manner.
- R-2. Establish an apprenticeship/certification program for MDEQ ODWMA employees that requires direct, hands-on experience with public water system operations. MDEQ ODWMA employees responsible for water system regulation and SDWA enforcement should be, or have access to, certified operators and subject matter experts (including, for example, those at EPA).
- R-3. Strengthen SDWA enforcement, most notably for the LCR. The state has the ability to strengthen its own enforcement of the SDWA and not wait for action to occur at the federal level.
- R-4. Participate in the Flint Water Inter-Agency Coordinating Committee's (FWICC's) work team established to oversee conversion from DWSD-supplied to KWA-delivered water. MDEQ should draw from that work to revise its policies and procedures for approval of water treatment and distribution system operating regimens, particularly when source water changes are contemplated.
- R-5. Participate in EPA's ongoing review and revision of the LCR, conveying lessons learned from the Flint water crisis.

#### **Michigan Department of Health and Human Services (MDHHS):**

- R-6. Establish policies and procedures at MDEQ and MDHHS to ensure input by health experts and scientists when permit decisions may have a direct impact on human health.
- R-7. Establish and maintain a Flint Toxic Exposure Registry to include all the children and adults residing in Flint from April 2014 to present.
- R-8. Re-establish the Michigan Childhood Lead Poisoning Prevention and Control Commission.
- R-9. Ensure that MDHHS is transparent and timely in reporting and analysis of aggregate data regarding children's blood lead levels. MDHHS data regarding lead levels shall be provided to individuals and organizations, based on their expertise, upon request and in cases when the interpretation of data by MDHHS is questioned.
- R-10. Establish a more aggressive approach to timely clinical and public health follow-up for all children known to have elevated blood lead levels, statewide. MDHHS should expand its local efforts and partnerships to accomplish this goal. Whenever possible, routine

screening for lead and appropriate follow-up should occur in children’s primary care medical homes.

- R-11. Strive to be a national leader in monitoring and responding to exposure of children to lead by converting the Childhood Lead Poisoning Prevention Program (CLPPP) from passive collection of test results into an active surveillance and outreach program.
- R-12. Improve screening rates for lead among young children through partnerships with county health departments, health insurers, hospitals, and healthcare professionals.
- R-13. As the state authority on public health, and as the organization that conducted the epidemiologic study of Legionellosis cases in Genesee County in 2014-15, take responsibility for coordinating with GCHD and CDC to protect Michigan residents from further outbreaks of Legionellosis.
- R-14. In cases of switches in drinking water supplies in the future, assume that outbreaks of Legionellosis cases may be related to changes in water source and communicate the potential risk to the public, rather than assuming and communicating the opposite.

**Michigan Governor’s Office:**

- R-15. Expand information flow to the Governor so that information providing the foundation for key decisions comes from more than one trusted source—and is verified.
- R-16. Create a culture in state government that is not defensive about concerns and evidence that contradicts official positions, but rather is receptive and open-minded toward that information. View informed opinions—even if critical of state government—as an opportunity for re-assessing state positions, rather than as a threat.
- R-17. Ensure that communications from all state agencies are respectful, even in the face of criticism, and sensitive to the concerns of diverse populations.
- R-18. The Governor must assume the leadership of, and hold state departments accountable for, long-term implementation of the recommendations in this report, including but not limited to the need for cultural changes across multiple state agencies, the need for health mitigation and LSL replacement in Flint, and the need for a funding strategy to address replacement of LSLs statewide.
- R-19. Review budget requests for MDEQ to ensure adequate funding is provided to the ODWMA. EPA audit and interviews indicate that Michigan’s drinking water program might have one of the lowest levels of financial support within EPA Region V while having one of the largest, if not the largest, number of community water systems to regulate.

**State-Appointed Emergency Managers:**

- R-20. Review Michigan’s Emergency Manager Law (PA 436) and its implementation, and identify measures to compensate for the loss of the checks and balances that are provided by representative government.
- R-21. Consider alternatives to the current emergency manager approach—for example, a structured way to engage locally elected officials on key decisions; an Ombudsman function in state government to ensure that local concerns are a factor in decisions made by the emergency manager; and/or a means of appealing emergency manager decisions to another body.

R-22. Ensure proper support and expertise for emergency managers to effectively manage the many governmental functions of a city. Decisions on matters potentially affecting public health and safety, for example, should be informed by subject matter experts identified and/or provided by the state.

**City of Flint:**

R-23. Establish and fund a team of subject matter experts in water system operations (treatment and distribution system management) to support and train water system personnel, guide safe system operation under current conditions, and prepare for successful conversion to KWA.

R-24. Implement a programmatic approach to Flint WTP and distribution system operations, maintenance, asset management, water quality, capital improvements and public engagement (including risk communication) to ensure that the disparate ongoing efforts to address Flint water system infrastructure needs are coordinated, fully documented, and structured to sustain high-quality potable water service over the long term.

R-25. Implement a robust public engagement and involvement program in conjunction with the anticipated conversion to KWA-delivered water and provide for regular reporting to the Flint Water Inter-Agency Coordinating Committee (FWICC).

**Genesee County Health Department (GCHD):**

R-26. Improve follow-up on public health concerns between GCHD, MDHHS and the City of Flint now and in the future, to effect timely, comprehensive, and coordinated activity and ensure the best health outcomes for children and adults affected.

R-27. Presume that the risk of *Legionella* may remain elevated in the Flint water distribution system and must take appropriate steps with public and private partners to monitor and mitigate that risk as concerns about water quality continue in the City of Flint.

R-28. Coordinate with state officials (MDHHS) and with local healthcare professionals and healthcare institutions in Genesee County and the City of Flint to mitigate the risk of Legionellosis in 2016 and beyond.

**United States Environmental Protection Agency (EPA):**

R-29. Exercise more vigor, and act more promptly, in addressing compliance violations that endanger public health.

R-30. In collaboration with the NDWAC and other interested partners, clarify and strengthen the LCR through increased specificity and constraints, particularly requirements related to LCR sampling pools, sample draw protocols, and LSL replacements—and, more generally, strengthen enforcement protocols with agencies delegated primacy.

R-31. Engage Michigan representatives in ongoing LCR revisions and development of enforcement protocols at EPA and MDEQ.



## Issues Presented by the Flint Water Crisis

### Environmental Injustice:

- R-32. Issue an Executive Order mandating guidance and training on Environmental Justice across all state agencies in Michigan, highlighting the Flint water crisis as an example of environmental injustice. The state should reinvigorate and update implementation of an Environmental Justice Plan for the State of Michigan.

### Flint Recovery and Remediation:

- R-33. Sustainably fund the Flint Water Inter-Agency Coordinating Committee (FWICC) to provide adequate resources to engage supporting sub-committees for delivery of public health and water system services.
- R-34. Clarify and effectively communicate the roles, work and expected outcomes of the City of Flint, FWICC and Mission Flint.
- R-35. Through collaboration among MDHHS, GCHD, local healthcare professionals, and health insurance plans, ensure 100 percent clinical and environmental follow-up with Flint families whose children have been found to have elevated blood lead levels since April 2014, and work together to ensure that follow-up occurs in children's medical homes.
- R-36. Offer all children listed in the recommended Flint Toxic Exposure Registry timely access to age-appropriate screening and clinically indicated follow-up for developmental and behavioral concerns by licensed healthcare professionals, as well as access to early childhood education and nutrition services.
- R-37. Consider establishing a dedicated subsidiary fund in the Michigan Health Endowment Fund to facilitate funding of health-related services for Flint.
- R-38. Establish a comprehensive Flint public health program, coordinated with county and state-level public health initiatives, that can serve as a model for population health across the state. This program should provide assessment, interventions, and support not only regarding the health effects of water contamination but also more broadly regarding the health effects of chronic economic hardship and other social determinants of poor health.

### State-wide Recommendations:

- R-39. Conduct an investigative review of the development and approval of the Karegnondi Water Authority and of the City of Flint's commitments to KWA water purchases.
- R-40. Institute a school and daycare water quality testing program (which could serve as a model for the U.S.), administered collaboratively by MDEQ and MDHHS, that includes appropriate sampling and testing for lead contamination for all schools and childcare centers in the state and effective reporting of test results.
- R-41. Develop a model LSL replacement program and funding mechanisms for financing work on private property.
- R-42. Revise and enhance information distributed by public water systems on the implications of widespread use of lead in public and private plumbing.

- R-43. Use the occasion of the Flint water crisis to prompt local and state re-investment in critical water infrastructure, while providing mechanisms to advance affordability and universal access to water services.
- R-44. Prioritize health matters across all state agencies with establishment of a new Cabinet-level post focused on public health.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

CONCERNED PASTORS FOR SOCIAL  
ACTION, et al.,

Plaintiffs,

v.

NICK A. KHOURI, et al.,

Defendants.

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Case No. 16-10277

Hon. Mark A. Goldsmith

Mag. J. Stephanie Dawkins Davis

**PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR A PRELIMINARY  
INJUNCTION**

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## INTRODUCTION

Tap water in Flint remains unsafe to drink. Current data show that lead contamination in Flint's drinking water will not be controlled for several months or longer. Although federal, state, and local governments have taken some steps to provide interim assistance to Flint residents, many people in the community still lack reliable access to safe drinking water.

This is a paradigmatic case for preliminary relief.

First, Plaintiffs are likely to succeed on their claims. Flint's drinking water is contaminated with lead because of Defendants' continuing violations of the Safe Drinking Water Act. Defendants are not maintaining adequate water treatment to prevent the corrosion of lead pipes and solder. Defendants also are not complying with the Act's requirements for sampling tap water in residents' homes to monitor for lead. Despite public pressure and media attention, Defendants have failed to remedy these violations.

Second, absent preliminary relief, Plaintiffs and other Flint residents will continue to be irreparably harmed by their lack of reliable access to safe drinking water. Although the City and State have made bottled water and faucet filters available for pick up at a handful of distribution centers, these efforts are inadequate. Some residents do not have cars or access to adequate transportation, and cannot easily travel to water distribution centers. Others are elderly,



homebound, or are simply not strong enough to carry cases of water on buses back to their homes and families. Still others have been unable to install and maintain faucet filters effectively without help from city or state officials. The result is that many Flint residents still lack access to safe water.

Court intervention is urgently needed, and the preliminary relief Plaintiffs seek is tailored and reasonable. Until Defendants comply with the requirements of the Safe Drinking Water Act, they should be required to provide every household served by Flint's water system with consistent access to safe drinking water by delivering bottled water door to door. They also should ensure that all Flint residents receive comprehensive information, in multiple languages, to help them understand and respond to this crisis.

Because of Defendants' actions, the residents of Flint are facing a situation that should be unthinkable in the United States: they cannot reliably obtain safe drinking water. Plaintiffs respectfully urge the Court to grant preliminary relief.

## **BACKGROUND**

### **I. Michigan state officials have controlled all aspects of Flint's operations since November 2011**

For more than four years, the City of Flint has been managed and controlled by Michigan state officials. In November 2011, Governor Rick Snyder declared a financial emergency in Flint and placed the City in a state-controlled receivership.

PA 2, 6, 10.<sup>1</sup> The Governor appointed an Emergency Manager to govern Flint's finances and operations in the place of the City's democratically elected officials. *Id.* at 10; Mich. Comp. Laws §§ 141.1542(q), .1549(2), .1552(1)(ee).

In April 2015, the Emergency Manager determined that Flint's financial emergency had been "sufficiently addressed." PA 13; Mich. Comp. Laws § 141.1562(1). Governor Snyder removed the Emergency Manager and, in his place, appointed the Receivership Transition Advisory Board (RTAB or the Board) to manage the City's affairs for the duration of the receivership. PA 18-19; Mich. Comp. Laws § 141.1563(1). The Board must approve new ordinances and resolutions adopted by the City Council before they can take effect, and must approve all purchases and contracts over \$75,000. PA 23-24, 28-29, 44-48. Similarly, the Mayor and City Council cannot amend the budget adopted by the Emergency Manager without approval of both the Board and the State Treasurer. PA 23; Mich. Comp. Laws § 141.1561. Flint remains in receivership today.

## **II. The Water System distributed water from the Flint River to residents without treatment to reduce lead contamination**

Under Flint's receivership, the Emergency Manager targeted water-supply contracts for cost cutting. Flint's water system (Water System or the System) is a

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<sup>1</sup> Plaintiffs' Appendix (PA) is a compilation of the exhibits attached to the Declaration of Dimple Chaudhary. The appendix has been paginated as a single document for the Court's convenience. All declarations are hereinafter referred to using the convention "[Last Name] Decl."

governmental entity that provides drinking water to nearly 100,000 people. PA 56. For decades prior to April 2014, Flint purchased drinking water from the Detroit Water & Sewerage Department (Detroit). *See id.* at 58, 64. Detroit provided the Water System with pretreated or “finished” water that was ready for distribution to residents without further treatment. *Id.* at 87; *see* 40 C.F.R. § 141.2.

As part of this process, Detroit treated its water with chemicals to protect against the corrosion of metallic pipes and solder and reduce the release of lead into drinking water, in accordance with federal guidelines. PA 87; *see* 40 C.F.R. § 141.80(d); Giammar Decl. ¶¶ 11-15, 23-26. Lead is a powerful toxin that is devastating to human health. It is particularly harmful to children. PA 108-13; Lanphear Decl. ¶¶ 9-27. Because there is no safe level of lead in drinking water, Lanphear Decl. ¶ 21; *infra* p. 25, the Safe Drinking Water Act’s Lead and Copper Rule requires public water systems to treat drinking water to control the release of lead from pipes and solder. *See* 40 C.F.R. § 141.80(b), (d); Giammar Decl. ¶¶ 9-12.

In March 2013, Flint’s City Council voted to join a new water supply system, the Karegnondi Water Authority (KWA). PA 115-16. The KWA plans to distribute water from Lake Huron to the Flint area through a new pipeline. *Id.* at 118, 124-25. The City Council’s vote to join the KWA did not take effect until authorized by the Emergency Manager and State Treasurer. *Id.* at 127-28, 130. Flint’s existing water contract with Detroit was then terminated, with the

termination to take effect in April 2014 – at least eighteen months before the KWA pipeline was expected to be ready. *Id.* at 58. Although Detroit offered to negotiate a short-term contract with Flint for the interim period, the Emergency Manager declined the proposal. *See id.* at 132-33. The KWA pipeline is still under construction. *Id.* at 124-25.

In early 2014, the Emergency Manager, with the approval of the State Treasurer, decided that the Water System would use the Flint River as its primary drinking water source until the KWA pipeline was complete. *Id.* at 135-39. The Water System did not, however, prepare for how it would treat the corrosive Flint River water to prevent the release of lead from the City's thousands of lead service lines. *See id.* at 141. When the Water System began pumping Flint River water through its pipes on April 25, 2014, it did not treat the water to prevent the corrosion of lead pipes and the subsequent contamination of the City's drinking water. *Id.* at 144; *see infra* pp. 12-15.

### **III. Flint's tap water is unsafe to drink**

Since the Water System's switch to the Flint River, problems have plagued Flint's drinking water. Soon after the switch, residents complained that their water was discolored and foul-smelling. PA 149, 151. Residents also reported health problems from drinking and bathing in the water, including skin rashes, hair loss, and vomiting. *Id.* at 151, 155, 158-59. In summer 2014, the Water System issued a

“boil water” advisory to some customers due to bacterial contamination of the water. *See id.* at 168. The City’s water also became contaminated with total trihalomethanes – carcinogenic byproducts of disinfectants – at levels exceeding those allowed by the Safe Drinking Water Act. *Id.* at 171.

After the Water System’s switch to the Flint River as a water source, the Michigan Department of Environmental Quality (MDEQ) instructed the System to conduct tap water monitoring for lead during two six-month periods. *Id.* at 342-43; 40 C.F.R. §§ 141.81(b)(2)(iv), .86(d)(4)(vii), .86(d)(3). The System initiated the first six-month period in July 2014, and the second in January 2015. PA 176, 184, 277. In collecting samples, the System used procedures designed to systematically underestimate the occurrence of lead – including directing residents to “pre-flush” their taps by running the water for five minutes the night before drawing a water sample. *Id.* at 87, 190. Nonetheless, some samples still showed high levels of lead. *Id.* at 323-26. By February 2015, the System was aware of elevated lead levels in some residents’ tap water. *Id.* at 325-26. Despite this knowledge, the System took no meaningful action to address these signs of lead contamination.

In March 2015, in response to continued community complaints, the City Council voted to do “all things necessary” to end the use of the Flint River as a water source. *Id.* at 192, 195. The Emergency Manager, however, refused to approve the vote, insisting that Flint’s tap water was safe to drink. *Id.* at 195.

In summer 2015, two independent studies helped reveal the extent of the lead crisis in Flint. Researchers from Virginia Tech found that more than 10% of over 250 tap water samples contained lead levels over 25 parts per billion (ppb), well above the Lead and Copper Rule's action level of 15 ppb.<sup>2</sup> *Id.* at 199; *see* 40 C.F.R. § 141.80(c)(1). On September 24, 2015, a local pediatrician released findings from a study showing that the percentage of Flint children with elevated blood lead levels had nearly doubled since the Water System's switch to Flint River water. PA 208-30; *see also id.* at 232-39.

On September 25, 2015, at least seven months after learning of potential lead contamination in residents' drinking water, the City issued its first Lead Advisory. *Id.* at 241. While the Advisory described precautions residents could take to reduce lead exposure and City efforts to address the contamination, it did not tell residents that Flint's water was unsafe to drink. *Id.* at 241-43. Several days later, the Genesee County Board of Commissioners declared a Public Health Emergency, advising Flint residents not to drink unfiltered tap water unless it first had been tested to confirm it did not contain elevated lead levels. *Id.* at 245-46.

On October 12, 2015, following a request from the City Administrator, the

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<sup>2</sup> U.S. EPA has found that lead levels of 15 ppb or less are representative of effective corrosion control treatment. 56 Fed. Reg. 26,460, 26,490 (June 7, 1991). When more than 10% of tap water samples collected by a water system exceed this 15 ppb threshold, known as the "lead action level," additional treatment of drinking water is "appropriate to protect public health." *Id.* at 26,491.

RTAB decided the City could amend its budget to allow the Water System to return to Detroit water; that same day, the RTAB also decided that the City Administrator could enter into agreements necessary to make the switch. *Id.* at 249, 251. On October 16, 2015, the System resumed distributing Detroit's pretreated water to Flint residents. *Id.* at 253.

Flint's drinking water, however, remains unsafe. *Id.* at 257. Defendants' extended failure to treat the Flint River water with corrosion-inhibiting chemicals damaged the System's pipes. Giammar Decl. ¶¶ 28-35. As a result, even though the System is receiving pretreated water from Detroit and supplementing that treatment with additional chemicals, Flint's pipes continue to release high levels of lead into residents' tap water. *Id.* ¶¶ 38-47.

#### **IV. Flint residents currently lack reliable access to safe drinking water**

In late 2015, government officials at all levels finally began to publically recognize the extent of the crisis in Flint. On December 14, 2015, Flint Mayor Karen Weaver declared a State of Emergency. PA 260. In early January 2016, Governor Snyder declared a State of Emergency in Genesee County, activated the National Guard, and requested federal assistance to address the crisis. *Id.* at 262-68. And on January 16, President Obama declared a federal emergency. *Id.* at 272. Five days later, EPA issued an Administrative Order finding that the lead crisis in Flint posed an endangerment to human health and directed the City, MDEQ, and

other state officials to take certain actions.<sup>3</sup> *Id.* at 275-92.

In recent months, city and state officials have made some efforts to provide alternative sources of safe drinking water to Flint residents. Free bottled water and faucet water filters certified for lead removal are available for pickup at certain locations around the City, and a United Way helpline is available for residents to call if they need help obtaining water or information. *Id.* at 318. City and state officials are also relying on non-profit organizations and volunteers to supplement government efforts. *See infra* pp. 31-32.

However, as Plaintiffs show below, these relief efforts are inadequate and leave many Flint residents without reliable access to safe drinking water. Distribution centers are insufficient for Plaintiffs and other residents who lack the means or physical ability to travel to the centers to pick up water. Filter distribution is inadequate because some residents cannot install, maintain, and monitor filters on their own. And the efforts and resources contributed by other organizations and volunteers do not fill existing gaps in government services and cannot be sustained indefinitely. Accordingly, Plaintiffs seek preliminary injunctive relief to ensure that Plaintiffs and all Flint residents are assured access to safe drinking water.

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<sup>3</sup> Plaintiffs had petitioned EPA months earlier to take this same action using its emergency authority under the Safe Drinking Water Act, to no avail. PA 294-316; 42 U.S.C. § 300i.



## STANDARD OF REVIEW

Courts balance four factors when reviewing a request for a preliminary injunction: “(1) whether the plaintiff has established a substantial likelihood of success on the merits; (2) whether there is a threat of irreparable harm to the plaintiff; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by granting injunctive relief.” *Entm’t Prods., Inc. v. Shelby Cnty.*, 588 F.3d 372, 377 (6th Cir. 2009).

## ARGUMENT

### **I. Plaintiffs are likely to succeed on the merits of their Safe Drinking Water Act claims**

Plaintiffs can show a likelihood of success on the merits by “rais[ing] questions going to the merits so serious, substantial, difficult, and doubtful as to make them a fair ground for litigation and thus for more deliberate investigation.” *Six Clinics Holding Corp., II v. Cafcomp Sys., Inc.*, 119 F.3d 393, 402 (6th Cir. 1997). Although Plaintiffs must show more than a mere possibility of success, they need not “prove [their] case in full” to obtain preliminary relief. *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981).

#### **A. Plaintiffs have standing to bring their claims**

Organizational plaintiffs Concerned Pastors for Social Action, Natural Resources Defense Council (NRDC), and American Civil Liberties Union of Michigan have associational standing to bring this case on behalf of their members,

and plaintiff Melissa Mays has standing on her own behalf. Ms. Mays and many of the organizational plaintiffs' members (collectively, Plaintiffs) are served by the Water System and are concerned about the effect that lead-contaminated water has already had and will continue to have on their health and the health of their families, congregations, and community. They are burdened physically, emotionally, and financially by the struggle to secure alternative sources of safe water.<sup>4</sup> Their exposure to lead-contaminated water and the related uncertainty and burdens associated with finding alternative sources of safe water are concrete injuries, traceable to Defendants' Safe Drinking Water Act violations, and redressable by the relief Plaintiffs seek.<sup>5</sup> *See Am. Canoe Ass'n, Inc. v. City of Louisa Water & Sewer Comm'n*, 389 F.3d 536, 541-43 (6th Cir. 2004) (citations omitted).

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<sup>4</sup> *See* Collins Decl. ¶¶ 1-2, 6-28, 31-33, 38-40; Fordham Decl. ¶¶ 1-2, 5-17; Harris Decl. ¶¶ 6-10, 13-19, 21; Hasan Decl. ¶¶ 4-32; Mays Decl. ¶¶ 1-3, 9-28, 39-42, 44, 72; McClanahan Decl. ¶¶ 2, 4-13, 16; Rasool Decl. ¶¶ 4-39, 42-43.

<sup>5</sup> The organizational plaintiffs satisfy the remaining requirements for associational standing. Ensuring access to safe drinking water for Flint residents is germane to the interests of the organizational plaintiffs, *see* Harris Decl. ¶¶ 4-5, 11-12; Trujillo Decl. ¶¶ 5-11; Moss Decl. ¶¶ 5-9, and the declaratory and injunctive relief requested does not require participation of their members. Concerned Pastors also has organizational standing. Its mission is "to unify against injustices and to provide a voice for those without resources." Harris Decl. ¶ 4. In response to the water crisis, the organization has had to divert significant time and resources to water-related advocacy, education, and relief efforts. *Id.* ¶¶ 12-20. Such an "all-consuming," *id.* ¶ 21, "drain on an organization's resources . . . constitutes a concrete and demonstrable injury for standing purposes," *Miami Valley Fair Hous. Ctr., Inc. v. Connor Grp.*, 725 F.3d 571, 576 (6th Cir. 2013).

**B. Defendants are failing to maintain “optimal” treatment to control corrosion of lead pipes and solder**

**1. The Lead and Copper Rule required the Water System to maintain treatment that minimized lead levels in tap water when it distributed water from the Flint River**

In 1991, pursuant to the Safe Drinking Water Act, EPA promulgated the Lead and Copper Rule (the Rule). *See* 56 Fed. Reg. 26,460, 26,462 (June 7, 1991). The Rule established requirements for monitoring and controlling lead in drinking water. *See id.* at 26,478. Lead contamination in drinking water results primarily from corrosion of components of water infrastructure. These include lead service lines (pipes connecting homes to distribution pipes under the street) and lead-containing materials in home plumbing, such as lead solder and brass. Giammar Decl. ¶¶ 9-12. To prevent lead contamination, the Rule requires water systems to implement treatment measures to reduce corrosion. 40 C.F.R. § 141.80(d).

The Rule required all large public water systems to have “optimal” corrosion control treatment programs in place by 1997. *Id.* § 141.81(d)(4). Corrosion control treatment is “optimal” if it minimizes lead levels in household tap water. *Id.* § 141.2. Once a water system has optimized its corrosion control treatment, it must “continue to operate and maintain” optimal treatment. *Id.* § 141.82(g).

During the 1990s, the Water System coordinated with Detroit to identify an optimal treatment to control corrosion. After conducting a multi-year study, Detroit concluded that adding a corrosion-inhibiting chemical called orthophosphate to

drinking water at Detroit's water treatment plant was the most effective way to minimize lead levels in tap water. PA 62-64, 70-71. MDEQ agreed. *Id.* at 328. Orthophosphate promotes the formation of a protective layer (scale) on the interior surface of lead pipes. Giammar Decl. ¶¶ 15, 19. This scale reduces the amount of lead released from the pipe's surface into water. *Id.* In the 2000s, MDEQ allowed the Water System to reduce the frequency of its tap water monitoring to once every three years, which the Lead and Copper Rule permits only for water systems that have optimized corrosion control. 40 C.F.R. § 141.86(d)(4)(iii); *see* PA 332, 335. For years, orthophosphate-treated water flowed through Flint's lead pipes, forming a stable protective scale that reduced the amount of lead entering the City's drinking water and optimized the System's corrosion control. Giammar Decl. ¶ 25.

**2. The Water System is not maintaining optimal corrosion control treatment**

After implementing optimal corrosion control treatment, the Water System was required to "operate and maintain" that treatment. 40 C.F.R. § 141.82(g). The Water System is violating the Safe Drinking Water Act by failing to maintain optimal corrosion control treatment.

The Water System's decision not to add orthophosphate to the Flint River water it distributed to residents significantly damaged the protective scale that had built up inside the System's lead pipes. Giammar Decl. ¶ 29. The absence of orthophosphate in the river water caused the scale to deteriorate, which is exposing

portions of the pipes more prone to releasing lead when in contact with water. *Id.* ¶¶ 29-30. Sampling by Virginia Tech in August 2015 revealed dangerously high lead levels in the City's tap water, confirming damage to the System's pipes, and indicating that the System was not effectively controlling corrosion. *Id.* ¶¶ 33-34.

Tap water monitoring data collected since the Water System resumed its use of pretreated water from Detroit confirms that the System is not maintaining optimized corrosion control. While orthophosphate treatment eventually will help rebuild a protective scale inside the System's lead pipes, a stable scale does not form immediately. *Id.* ¶¶ 37-39. Rather, it could take at least six months for the scale to become sufficiently stable and thick to minimize the release of lead from pipes in the System. *Id.*

According to treatment experts, to conclude a stable protective scale has formed, the System should collect six months of data showing consistently low lead levels at the 90th percentile<sup>6</sup> that are decreasing over time. *Id.* ¶ 41. Samples collected by Flint residents from October 16 through November 2015, and in December 2015, January 2016, and February 2016 show 90th percentile lead levels of 8 ppb, 11 ppb, 9 ppb, and 11 ppb, respectively. *Id.* ¶ 43 & tbl.1. These 90th

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<sup>6</sup> The 90th percentile lead level in a group of tap water samples means the lead level higher than 90% of the samples in the group. In other words, if the 90th percentile lead level is 15 ppb, then 90% of the samples in the group have lead levels less than 15 ppb.

percentile values do not show a downward trend as would be expected of a system beginning to optimize its corrosion control treatment. *Id.* ¶ 44. They are also well above the levels that the System was able to maintain consistently prior to 2014. *Id.* ¶¶ 25, 44. Further, the 90th percentile values may be biased low because the samples may not have been collected from homes with lead service lines or lead-containing interior plumbing, as required by the Safe Drinking Water Act. *Id.* ¶ 46; 40 C.F.R. § 141.86(a)(8).

These elevated 90th percentile values indicate that lead is still being released from the interior surfaces of the System's pipes, and that a stable protective scale has not yet re-formed. That nearly 200 of these samples show lead levels at or above 100 ppb likewise indicates that a protective scale is not yet stable. *Id.* ¶ 45.<sup>7</sup> Because the Water System's treatment is not yet minimizing lead levels in tap water, the Water System is not maintaining optimal corrosion control treatment, and remains in violation of the Safe Drinking Water Act.<sup>8</sup>

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<sup>7</sup> Data collected by MDEQ as part of its "sentinel site" monitoring similarly does not indicate that the System is effectively controlling corrosion. *Id.* ¶¶ 48-50. MDEQ selected sentinel sites as a means of conducting repeated sampling at the same homes to determine the effectiveness of the System's corrosion control treatment over time. PA 337, 339-40.

<sup>8</sup> The Water System's ongoing violation of the requirement to maintain optimal corrosion control is reasonably likely to continue in the future. Although the Water System plans to switch water sources to the KWA when the new pipeline is complete, *see supra* pp. 4-5, the System has not yet completed the steps necessary to ensure that optimal corrosion control treatment is maintained during and after

**C. Defendants are not complying with the Safe Drinking Water Act's monitoring requirements**

**1. The Lead and Copper Rule requires the Water System to systematically sample residents' tap water for lead**

The Lead and Copper Rule requires water systems to conduct

comprehensive tap water sampling for lead at residents' homes. 40 C.F.R.

§ 141.86; 56 Fed. Reg. at 26,514. Water systems must collect samples from "high-risk" homes that are served by a lead service line or contain interior lead pipes or copper pipes with lead solder. 56 Fed. Reg. at 26,514-15; 40 C.F.R. § 141.86(a)(3).

The Rule's monitoring protocol requires a water system first to establish a sampling pool of high-risk homes. 40 C.F.R. § 141.86(a)(1), (a)(3). The sampling pool must be large enough to ensure that a water system can collect a required number of tap water samples.<sup>9</sup> *Id.* § 141.86(a)(1). For systems like Flint's, the sampling pool must consist entirely of homes that are served by a lead service line or contain interior lead plumbing. *Id.* § 141.86(a)(3). If the system contains lead service lines, half of its samples must come from homes serviced by those lines

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the switch. For instance, the System has not yet collected at least a year of data from a pipe-loop test to determine whether its planned corrosion control treatment is effective. Giammar Decl. ¶¶ 54-56.

<sup>9</sup> The Rule requires water systems serving more than 100,000 people to collect a set of at least 100 tap water samples twice each year, unless the system qualifies for reduced monitoring. 40 C.F.R. § 141.86(c), (d)(1). Systems serving between 10,001 and 100,000 people must collect at least 60 samples twice each year. *Id.*

and the other half from homes with lead solder or interior lead plumbing. *Id.* §§ 141.86(a)(8), 141.80(c). A water system must collect tap water samples every six months if it does not qualify for monitoring on a reduced schedule. *Id.*

§ 141.86(d)(3).<sup>10</sup> The state may require a water system to resume six-month sampling when it introduces a new drinking water source. *Id.* § 141.86(d)(4)(vii).<sup>11</sup>

The Rule requires water systems to collect a set of samples from homes within a pre-established pool. *Id.* § 141.86(a)(1). The pool is pre-established so that credible comparisons can be made across monitoring periods and results cannot be diluted by adding new homes likely to have lower lead levels, or by dropping homes with previously high levels. Therefore, the system may collect a sample from another home that was not part of the initial sampling set only if the system can no longer gain entry into a previously sampled home, or if that home no longer fits the Rule's high-risk criteria. *Id.* § 141.86(b)(4). The replacement sampling site must be part of the system's sampling pool, located near the previously sampled home, and must meet the same high-risk criteria. *Id.*

Taken together, these requirements prevent water systems from

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<sup>10</sup> A water system may reduce the frequency of monitoring only if less than 10% of samples exceed the lead action level for two consecutive monitoring periods (in other words, for a full year) and the system demonstrates that it is maintaining optimal corrosion control treatment. *Id.* §§ 141.86(d)(4)(ii), 141.82(f).

<sup>11</sup> A water system also must resume sampling every six months if its sampling results exceed the lead action level, or if water-quality data reveal problems with corrosion control treatment. *Id.* § 141.86(d)(4)(vi)(B).



manipulating their sampling pools to report inaccurately that lead levels have been controlled in tap water.

**2. Since April 2014, the Water System has not complied with the Lead and Copper Rule's monitoring requirements**

The Water System is violating the Lead and Copper Rule's monitoring requirements. After the Water System began using the Flint River as a water source, MDEQ required the System to collect tap water samples for two six-month monitoring periods, July to December 2014 and January to June 2015. PA 141, 342-43, 347. During both monitoring periods, the System failed to establish and maintain an adequate sampling pool of high-risk homes, draw its samples from those homes, and sample the same homes from one monitoring period to the next.

Indeed, during these monitoring periods, the System's Utilities Administrator requested that city employees submit tap water samples from their own homes or even solicit samples on Twitter – without regard to whether those employees or volunteers lived in homes that were part of the System's sampling pool or were served by a lead service line or contained lead plumbing. *Id.* at 353-56, 362. The Utilities Manager later observed that the System “throw[s] bottles out everywhere” to collect the required number of samples, *id.* at 364, instead of following the protocol mandated by the Lead and Copper Rule.

The System also failed to collect samples from the same homes across monitoring periods. For the 2015 period, the System collected tap water samples

from only 14 of the 100 homes used during the previous six-month monitoring period. *Id.* at 366-68. Each of these fourteen sampling sites had lead levels below the lead action level during the previous period. *Id.* Similarly, for the 2014 period, the System sampled from only eleven homes it had previously sampled, again all with reported lead levels below 15 ppb. *Id.* at 366-67. By consistently failing to sample the same sites in consecutive monitoring periods, the System has distorted its sampling results by essentially creating a new sampling pool for each monitoring period.

For example, five days before the end of the 2015 monitoring period, MDEQ told the System that the 90th percentile value of the samples it had collected to date exceeded the Rule's lead action level, and that MDEQ hoped that the System had "more lead/copper samples collected and sent to the lab by 6/30/15." *Id.* at 371. The System then collected fifteen more samples, none drawn from a pre-established sampling pool, and all with lead levels below 15 ppb. *Id.* at 185-88, 366-69. MDEQ accepted these samples as valid. *Id.* at 184-88; 373-74.

Compounding these problems, during both the 2014 and 2015 monitoring periods, the Water System falsely certified to the State that it drew the required number of samples from homes with lead service lines. *Id.* at 176-81, 184-88. The Water System could not confirm that it drew samples from homes with lead service lines – and thus could not establish and maintain an adequate sampling pool –

because it lacked accurate information on the locations of its lead service lines. Of the 324 monitoring sites used by the System for Lead and Copper Rule compliance from 1992 to 2015, only 6 homes were confirmed to have lead service lines as of November 9, 2015. *Id.* at 376. Even now, after an attempted inventory, there are more than 10,000 homes and businesses in Flint with service lines of unknown composition. *Id.* at 379.

At around the same time that testing from independent researchers found 90th percentile lead concentrations of 25 ppb – nearly double the federal lead action level – the Water System was reporting 90th percentile concentrations of only 11 ppb. *Id.* at 199, 373. The System’s disregard for the Rule’s monitoring protocol prevents the prompt detection of elevated levels of lead in Flint’s drinking water and delays notification to residents of the health risks they face. *Id.* at 382-83; 40 C.F.R. § 141.85; *see supra* p. 18.

### **3. The Water System continues to violate the Lead and Copper Rule’s monitoring requirements**

Flint’s Water System is obligated to conduct tap water sampling now, for the six-month monitoring period of January to June 2016. PA 386-88. The monitoring activities presently under way in Flint still do not comply with the Rule. The sampling pool used by MDEQ for its sentinel site monitoring does not consist entirely of homes that meet the Rule’s high-risk criteria. *Id.* at 403-04 (showing that 35 of over 600 homes tested have lead service lines); 40 C.F.R. §141.86(a)(3).

Similarly, resident-initiated testing does not comply with the Rule because it is voluntary and not based on a pre-established pool of high-risk homes. PA 412.

However, even if the sentinel site testing currently complied with the Rule, the Water System remains in violation of the Safe Drinking Water Act because noncompliance is likely to recur. *See Chesapeake Bay Found. v. Gwaltney of Smithfield, Ltd.*, 844 F.2d 170, 171-72 (4th Cir. 1988). MDEQ – and not the Water System – is conducting the sentinel site testing. PA 339-40, 412. According to EPA, “the City has not yet demonstrated it has an adequate number of qualified personnel to perform the duties and obligations required to ensure the City’s public water system complies with” the Lead and Copper Rule. *Id.* at 416. In view of the System’s long-standing noncompliance, and its failure to demonstrate operational ability to comply, the Water System has not come close to “completely eradicat[ing]” the risk of recurrent violations. *Gwaltney*, 844 F.2d at 172.

**D. Defendants are liable for violations of the Safe Drinking Water Act as owners and operators of the Water System**

The “owners and operators” of a public water system are responsible for ensuring that the system complies with the Safe Drinking Water Act. *See United States v. Ritz*, 772 F. Supp. 2d 1017, 1021 (S.D. Ind. 2011); *United States v. Alisal Water Corp.*, 114 F. Supp. 2d 927, 937-38 (N.D. Cal. 2000). Although the Act does not define the term “operator,” the Supreme Court, construing another federal environmental statute, has held that the ordinary meaning of “operator” is

“someone who directs the workings of, manages, or conducts the affairs of a facility” relating to environmental contamination or “decisions about compliance with environmental regulations.” *United States v. Bestfoods*, 524 U.S. 51, 66-67 (1998) (construing 42 U.S.C. § 9607(a)(2)). Courts apply the same ordinary meaning of “operator” in the Safe Drinking Water Act context. *See, e.g., United States v. Cnty. of Westchester*, No. 13-CV-5475 NSR, 2014 WL 1759798, at \*6 (S.D.N.Y. Apr. 28, 2014); *Ritz*, 772 F. Supp. 2d at 1022; *Alisal Water Corp.*, 114 F. Supp. 2d at 937-38. Under the *Bestfoods* standard, Defendants are owners and operators of the Water System and are liable for the System’s violations of the Safe Drinking Water Act.

**1. Defendants City of Flint and the City Administrator are owners and operators of the Water System**

The City owns and operates the Water System. PA 431. The City’s Utilities Division within the Department of Public Works is responsible for the “operation, maintenance and management” of Flint’s water supply. Flint, Mich., Code § 46-7. City employees monitor water quality at Flint’s Water Treatment Plant, PA 440, 442, 444, 446, and work with MDEQ to address Safe Water Drinking Act compliance concerns, *e.g., id.* at 465-67. The City Administrator is also an operator because she is actively involved in managing the Water System. *See Bestfoods*, 524 U.S. at 66-67; PA 471-73 (City Administrator “direct[s] and supervis[es] the day-to-day operations of the City”); *id.* at 477 (City Administrator developed a

“comprehensive plan” to “show[] the City’s commitment to deliver high quality water, address its aging infrastructure, and maintain a qualified staff”).

**2. State Defendants are operators of the Water System because they exercise substantial control over the System’s finances and operations**

Defendant Board Members are operators of the Water System because they conduct its financial affairs and exercise “substantial control” over major decisions relating to drinking water quality. *See United States v. Twp. of Brighton*, 153 F.3d 307, 325-27 (6th Cir. 1998) (Moore, J., concurring in the result). The Board exercises decision-making power over the System’s purchases of treatment chemicals, repair parts for water distribution pipes, and engineering services for upgrades to the System. PA 481, 485, 490, 493. No resolution, ordinance, or budget amendment adopted by the City Council can take effect without Board approval. *See supra* p. 3. Therefore, the System could not resume distributing water from Detroit until the Board provided the City with the necessary authorization. PA 249, 251. Because the Board’s “approval [i]s necessary for any decisions involving large expenditures” or major operational decisions, the Board Members are operators for purposes of the Safe Drinking Water Act. *K.C. 1986 Ltd. P’ship v. Reade Mfg.*, 472 F.3d 1009, 1020 (8th Cir. 2007); *see Exxon Mobil Corp. v. United States*, 108 F. Supp. 3d 486, 531 (S.D. Tex. 2015).

Likewise, Defendant State Treasurer is an operator of the System because he

makes critical decisions about the source of Flint's drinking water and exercises ultimate decision-making power over the System's large expenditures. *See, e.g., K.C. 1986 Ltd. P'ship.*, 472 F.3d at 1020. Because the City remains in receivership, the State Treasurer ultimately decides whether the City can amend its budget to allow for significant unplanned expenditures. *See supra* p. 3. The Treasurer, for example, authorized the City to enter a contract to join the KWA in 2013. PA 130. The Treasurer was further involved in the City's decision to join the KWA by hiring a consulting firm to evaluate water-supply options and consulting with MDEQ about the impact of Flint River water on drinking water quality. *Id.* at 496, 499, 546-48, 550-53; *cf. Litgo N.J. Inc. v. Comm'r N.J. Dep't of Env'tl. Prot.*, 725 F.3d 369, 381 (3d Cir. 2013) (fact that party hired and oversaw work of environmental consultants was relevant to finding of operator liability).

The Treasurer also authorized a \$3 million upgrade to Flint's Water Treatment Plant in 2014, which was necessary to allow the Water System to begin distributing Flint River water. PA 139. And in 2015, the Water System could not resume distributing water from Detroit until the Treasurer approved a budget amendment allowing the switch. *See id.* at 23, 249. The Treasurer's management of the Water System supports the finding that he is an operator. *See GenCorp, Inc. v. Olin Corp.*, 390 F.3d 433, 449 (6th Cir. 2004) (finding defendant's participation

alongside other decision-makers in approving the design plans, capital appropriations, and budgets of a facility relevant to operator liability).

For the foregoing reasons, Plaintiffs are likely to succeed on the merits of their Safe Drinking Water Act claims against Defendants.

**II. Plaintiffs are suffering irreparable harm and will continue to suffer irreparable harm absent preliminary injunctive relief**

**A. Tap water in Flint is not safe to drink and will not be safe to drink for the immediate future**

There is no safe level of lead in drinking water. Lanphear Decl. ¶ 21; *see also* PA 241, 323. Even low levels of exposure to lead can have harmful effects on numerous organ systems in both adults and children. Lanphear Decl. ¶¶ 9, 21, 27; *see also* 56 Fed. Reg. at 26,467-68. Infants and children are particularly vulnerable to lead. Lanphear Decl. ¶¶ 21, 23; *see also id.* ¶¶ 16-17. Childhood lead exposure is associated with irreversible developmental harm, including lower IQs and academic achievement and increased risk of behavioral problems related to criminality. *Id.* ¶¶ 24-25. Children with elevated blood lead levels may never reach the same peak cognitive ability as children who have less lead exposure. *Id.* ¶ 26.

The release of lead from Flint's pipes cannot be controlled for at least a period of months. Giammar Decl. ¶¶ 38-41. The City and State have conceded that lead contamination renders Flint's water unsafe to drink. *See* PA 241, 562.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE  
WASHINGTON, D.C.



IN THE MATTER OF: : Proceedings Pursuant To  
: Section 1431 of the Safe Drinking  
City of Flint, Michigan; Michigan : Water Act, 42 U.S.C. § 300i  
Department of Environmental :  
Quality; and the State of Michigan, : **SDWA-05-2016-0001**  
: **EMERGENCY**  
Respondents. : **ADMINISTRATIVE ORDER**

I. INTRODUCTION

1. The Safe Drinking Water Act ("SDWA" or "Act") provides the U.S. Environmental Protection Agency ("EPA" or "Agency") with the authority to order actions when an imminent and substantial endangerment exists and the actions taken by the state and/or local authorities are inadequate to protect public health. EPA has determined that the City of Flint's and the State of Michigan's responses to the drinking water crisis in Flint have been inadequate to protect public health and that these failures continue. As a result, EPA is issuing this SDWA Emergency Order ("Order") to make sure that the necessary actions to protect public health happen immediately. The Order requires that necessary information be provided promptly to the public in a clear and transparent way to assure that accurate, reliable, and trustworthy information is available to inform the public and decisions about next steps. In addition to the issuance of this Order, EPA will promptly begin sampling and analysis of lead levels in tap water in the City of Flint's public water system ("PWS"). EPA will publish these sampling results on its website to provide the public with transparency into the process to abate the public health emergency in the City of

Flint. In the coming weeks, EPA may take additional actions under the SDWA to address the situation in the City of Flint.

## II. STATUTORY AUTHORITY

2. This Order is issued under the authority vested in the Administrator of the EPA by Section 1431 of the SDWA, 42. U.S.C. § 300i. This Order is issued for the purpose of protecting the health of persons who are supplied drinking water by a PWS with conditions that may present an imminent and substantial endangerment to human health.

## III. FINDINGS OF FACT

3. The City of Flint, Michigan ("City") owns and operates a PWS that provides piped drinking water for human consumption to its nearly 100,000 citizens.
4. From December 2011 through April 2015, an emergency manager was appointed by the State of Michigan ("State") under Public Act 436 to oversee the management of the City during its financial crisis. During that time, the City became a partner with the Karegnondi Water Authority ("KWA") and decided to no longer purchase treated drinking water from the Detroit Water and Sewerage Department ("Detroit").
5. The Michigan Department of Environmental Quality ("MDEQ") has primary responsibility for the implementation and enforcement of the public water system program in Michigan.
6. Before April 2014, the City purchased finished drinking water from Detroit.
7. On or around April 25, 2014, the City ceased purchasing treated drinking water from Detroit and began drawing water from the Flint River as its source water.

8. Between July and December 2014, the City conducted the first of two rounds of six month lead sampling under the Lead and Copper Rule ("LCR"), 40 C.F.R. § 141.80 *et seq.*
9. The City conducted the second of two rounds of six month lead sampling under the LCR between January and June 2015. These rounds of sampling showed that the levels of lead in the City water supply were rapidly rising.
10. On or about April 24, 2015, MDEQ notified EPA that the City did not have corrosion control treatment in place at the Flint Water Treatment Plant.
11. During May and June, 2015, EPA Region 5 staff at all levels expressed concern to MDEQ and the City about increasing concentrations of lead in Flint drinking water and conveyed its concern about lack of corrosion control and recommended that the expertise of EPA's Office of Research and Development should be used to avoid further water quality problems moving forward.
12. On July 21, 2015, EPA Region 5 discussed with MDEQ the City's lead in drinking water issues and implementation of the LCR and MDEQ agreed to require corrosion control as soon as possible.
13. On August 17, 2015, MDEQ sent a letter to the City recommending the City implement corrosion control treatment as soon as possible, but no later than January 1, 2016, and to fully optimize its treatment within six months.
14. On August 31, 2015, EPA Region 5 had a call with MDEQ to discuss outreach to citizens to reduce exposures to high lead levels in Flint drinking water and reiterate EPA's offer of technical assistance in implementing corrosion control treatment.

15. On September 3, 2015, Flint Mayor Dayne Walling announced that the City will implement corrosion control treatment and invited EPA corrosion control experts to join the Flint Technical Advisory Committee ("Flint TAC").
16. On September 27, 2015, EPA Region 5 Administrator Susan Hedman called MDEQ Director Dan Wyant to discuss the need for expedited implementation of corrosion control treatment, the importance of following appropriate testing protocols, urged MDEQ to enlist Michigan Department of Health and Human Services' involvement and discussed options to provide bottled water/premixed formula/filters until corrosion control is optimized.
17. On October 7, 2015, the Flint TAC met about the City's corrosion control and treatment. The Flint TAC recommended returning to Detroit water as the best course of action for the City.
18. On October 16, 2015, EPA established the Flint Safe Drinking Water Task Force ("EPA Flint Task Force") to provide the Agency's technical expertise through regular dialogue with designated officials from MDEQ and the City.
19. On or around October 16, 2015, the City switched back to purchasing finished water from Detroit, now called the Great Lakes Water Authority.
20. On November 25, 2015, the EPA Flint Task Force requested information that would allow EPA to determine the progress being made on corrosion control in the City; this information has not been received by EPA. This information includes water quality parameter measurements (pH, total alkalinity, orthophosphate, chloride, turbidity, iron, calcium, temperature, conductivity) in the distribution system. The EPA Flint Task Force has also made subsequent requests and recommendations.

<http://www.epa.gov/mi/flint-drinking-water-documents> The City is required by its MDEQ permit to monitor for these parameters at 25 sites quarterly and at 10 of these sites weekly. Because the City has not provided the information requested by the EPA Flint Task Force EPA does not have the information that would provide any assurance that contamination in the City's water system has been controlled.

21. On or around December 9, 2015, the City began feeding additional orthophosphate at the Flint Water Treatment Plant to begin optimizing corrosion control treatment. Notwithstanding the orthophosphate addition, high levels of lead and other contaminants are presumed to persist in the City's water system until LCR optimization process, utilizing sampling and monitoring requirements, have confirmed lead levels have been reduced.
22. On December 14, 2015 the City declared an emergency.
23. On January 14, 2016, the Governor of the State requested a declaration of major disaster and emergency and requested federal aid.
24. On January 16, 2016, the President of the United States declared a federal emergency in the City.
25. The presence of lead in the City water supply is principally due to the lack of corrosion control treatment after the City's switch to the Flint River as a source in April 2014. The river's water was corrosive and removed protective coatings in the system. This allowed lead to leach into the drinking water, which can continue until the system's treatment is optimized.
26. Lead occurs in drinking water from two sources: lead in raw water supplies and corrosion of plumbing materials in the water distribution system (i.e., corrosion

byproducts). Most lead contamination is from corrosion byproducts. The amount of lead in drinking water attributable to corrosion byproducts depends on a number of factors, including the amount and age of lead bearing materials susceptible to corrosion, how long the water is in contact with the lead containing surfaces, and how corrosive the water in the system is toward these materials. *Final Rule: Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper*, 56 *Fed. Reg.* 26460, 26463 (June 7, 1991).

27. EPA has set the Maximum Contaminant Level Goal ("MCLG") at zero for lead because (1) there is no clear threshold for some non-carcinogenic lead health effects, (2) a substantial portion of the sensitive population already exceeds acceptable blood lead levels, and (3) lead is a probable carcinogen. 56 *Fed. Reg.* at 26467. Pregnant women, unborn children, and children under the age of six are particularly sensitive to lead exposure.
28. The concentration of lead in whole blood has been the most widely used index of total lead exposure. Lead exposure across a broad range of blood lead levels has been associated with a spectrum of patho-physiological effects, including interference with heme synthesis necessary in the formation of red blood cells, anemia, kidney damage, impaired reproductive function, interference with vitamin D metabolism, impaired cognitive performance (as measured by IQ tests, performance in school, and other means), delayed neurological physical development, and elevation in blood pressure. 56 *Fed. Reg.* 26467-68.
29. EPA finds that consumption of lead in water contributes to increase in blood lead levels. The Centers for Disease Control and Prevention uses a reference level of 5

micrograms per deciliter to identify children with elevated blood lead levels. This new level is based on the U.S. population of children ages 1 – 5 years who are in the highest 2.5% of children when tested for lead in their blood.

[http://www.cdc.gov/nceh/lead/acclpp/blood\\_lead\\_levels.htm](http://www.cdc.gov/nceh/lead/acclpp/blood_lead_levels.htm)

30. Under the LCR, the “action level” for lead is the concentration of lead at which corrective action is required. 40 C.F.R. § 141.2.
31. EPA’s LCR includes requirements for corrosion control treatment, source water treatment, lead service line replacement, and public education. These requirements are triggered, in some cases, by lead and copper action levels measured in samples collected at consumers’ taps. The action level for lead is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during the monitoring period conducted in accordance with 40 C.F.R. § 141.86 is greater than 0.015mg/L (i.e., if the “90<sup>th</sup> percentile” is greater than 0.015mg/L). 40 C.F.R. § 141.80(c). When a large system exceeds this action level, the LCR requires the system to: 1) implement public education requirements; 2) implement all applicable source water treatment requirements specified by the primacy agency under 40 C.F.R. § 141.83; and (3) if the system is exceeding the action level after implementation of all applicable corrosion control and source water treatment requirements, then the system must replace lead service lines in accordance with 40 C.F.R. § 141.84.
32. All large systems (over 50,000 persons) are required to either complete corrosion control treatment steps in 40 C.F.R. § 141.91(d) or be deemed to have optimized corrosion control treatment under 40 C.F.R. § 141.81(b)(2) or (b)(3).

33. Based on the foregoing, EPA finds that water provided by the City to residents poses an imminent and substantial endangerment to the health of those persons. Those persons' health is substantially endangered by their ingestion of lead in waters that persons legitimately assume are safe for human consumption. This imminent and substantial endangerment will continue unless preventive actions are taken.
34. The City, MDEQ and the State have failed to take adequate measures to protect public health. Although some progress has been made in addressing the drinking water crisis in the City, there continue to be delays in responding to critical EPA recommendations and in implementing the actions necessary to reduce and minimize the presence of lead and other contaminants in the water supply both now and in the near future. The Respondents have failed and continue to fail to provide the information necessary for EPA, the EPA Flint Task Force and the City's PWS customers to fully understand and respond promptly and adequately to the current deficiencies. EPA remains concerned that the City lacks the professional expertise and resources needed to carry out the recommended actions and to safely manage the City's PWS.
35. In accordance with SDWA Section 1431(a), 42 U.S.C. § 300i(a), to the extent practicable EPA has consulted with state and local authorities regarding the information on which this EPA action is based.
36. This Order and the requirements set forth herein are necessary to ensure adequate protection of public health in the City.



37. As a result of the emergency, EPA will promptly begin sampling and analysis of lead levels and other contaminants in the City to assure that all regulatory authorities and the public have accurate and reliable information.

38. EPA will make its LCR sampling results available to the public on the Agency's website.

#### IV. CONCLUSIONS OF LAW

39. Section 1431 (a), 42 U.S.C. § 300i(a), specifies that the EPA Administrator, upon receipt of information that a contaminant which is present in or likely to enter a public water system that may present an imminent and substantial endangerment to the health of persons, and that State and local authorities have not acted to protect the health of such persons, may take such actions as she may deem necessary in order to protect the health of such persons.

40. The City owns and operates a "public water system" within the meaning of SDWA Section 1401.

41. MDEQ is an instrumentality of the State.

42. The City, State and MDEQ are "persons" as defined in SDWA Section 1401(c)(12).

43. Respondents' cessation of purchased water from Detroit and switch to the Flint River as its source water triggered a cascade of events that directly resulted in the contribution of lead and other "contaminants" that are within the meaning of SDWA Sections 1401(c)(6) and 1431 of the Act.

44. The contaminants introduced by Respondents are present in or likely to enter a PWS.

45. Based upon the information and evidence, EPA determines that Respondents' actions that resulted in the introduction of contaminants, which entered a public water system

and have been consumed and may continue to be consumed by those served by the public water system, present an imminent and substantial endangerment to the health of persons.

46. The lead and other contaminants will remain present in the PWS and will continue to present an imminent and substantial endangerment to the health of persons until the underlying problems with the corrosion control treatment and fundamental deficiencies in the operation of the PWS are corrected and sampling results confirm the lead and other contaminants are adequately treated.
47. Respondents have failed to take adequate measures to protect public health.
48. The EPA has consulted with the State and local authorities, to the extent practicable, to confirm the correctness of the information upon which this ORDER is based and to ascertain the actions which such authorities are or will be taking. All requisite conditions have been satisfied for the EPA action under SDWA Section 1431(a)(1), 42 U.S.C. § 300i(a)(1).
49. The EPA finds that there is an imminent and substantial endangerment to the people drinking water from the public water system of the City of Flint and that the actions taken by the State and/or the City are inadequate to protect public health. The actions required by this ORDER are necessary to protect the health of persons who are currently consuming or who may consume or use water from the City's PWS.

#### V. ORDER

Based on the foregoing Findings and Conclusions, and pursuant to Section 1431 of the Act, 42 U.S.C. 300i,

IT IS ORDERED:

**Intent to Comply**

50. Within one day of the effective date of this Order, Respondents shall notify EPA in writing of their intention to comply with the terms of this Order. For the purposes of this Order, "day" shall mean calendar day.

**Reporting Requirements**

51. Within five days of the effective date of this Order, the State shall create, and thereafter maintain, a publicly available website. Respondents must post on this website all reports, sampling results, plans, weekly status reports on the progress of all requirements and all other documentation required under this Order. The Respondents shall not publish to this website any personally identifiable information.

**Response to EPA Flint Task Force Recommendations, Requests for Information and Sampling Activities**

52. The Respondents shall within 10 days of the effective date of this Order respond in writing, in accordance with Paragraph 51, to all of the EPA Flint Task Force's requests and recommendations made on November 25, 2015 and subsequent dates. The response shall include all actions Respondents have taken and intend to take in response to those requests and recommendations. The EPA Flint Task Force's requests and recommendations are publicly available at <http://www.epa.gov/mi/flint-drinking-water-documents>.
53. Within 10 days of the effective date of the Order the Respondents shall provide the following information in accordance with Paragraph 51:
- a. Water quality parameter measurements (pH, total alkalinity, orthophosphate, chloride, turbidity, iron, calcium, temperature, conductivity) in the distribution

system. The City is required by the MDEQ permit to monitor for these parameters at 25 sites quarterly and at 10 of these sites weekly;

- b. All lead in water testing results for the City since January 2013, including those not used for LCR compliance; and
- c. Identification of areas (e.g., zip codes, neighborhoods) in the City with elevated blood lead levels.

54. Within 10 days of the effective date of the Order, the Respondents shall provide, without publicly disclosing any personally identifiable information, the following directly to the EPA in accordance with Paragraph 66:

- a. Existing inventory of homes with lead service lines in Excel or a similar format;
- b. Addresses of homes that have had water service interruptions or street disturbances (e.g., water main breaks, road/sidewalk construction, etc.) within the last year; and
- c. Addresses of currently unoccupied homes.

55. Respondents shall cooperate with EPA as the Agency conducts LCR sampling and other diagnostic activities in the City.

**Treatment and Source Water**

56. To ensure that treated water meets finished water quality goals and is consistently maintained throughout the distribution system, that existing and potential plant operational and mechanical start-up issues are identified and addressed, and that water plant operations staff are proficient in treating the existing and new source water, Respondents shall comply with Paragraphs 57, 58 and 59.

57. Respondents shall maintain chlorine residual in the distribution system in accordance with SDWA and the National Primary Drinking Water Regulations ("NPDWRs").
58. The City shall continue to add corrosion inhibitors (e.g., orthophosphate booster) at levels sufficient to re-optimize corrosion control in the distribution system.
59. To address optimization of corrosion control for the system as operated with its current water source, within 14 days of the effective date of this Order the Respondents shall submit to MDEQ and post in accordance with Paragraph 51:
- a. Submit a plan and schedule to the MDEQ to review and revise as needed designated optimal corrosion control and water quality parameters as well as monitoring plans for LCR compliance and all other monitoring plans developed to ensure that the treatment plant is consistently and reliably meeting plant performance criteria and all other NPDWRs;
  - b. Submit a sampling plan for daily monitoring of water quality parameters in the distribution system with results compiled in a weekly report in an approved format; and
  - c. Submit an operations plan for the corrosion control equipment (storage day tanks, feed/injection systems), with results compiled in a weekly format, that includes monitoring, calibration, verification (pump catch, etc.) as well as daily monitoring of finished water corrosion control parameters. Results shall be submitted and posted weekly.
60. Respondents shall not effectuate a transition to a new water source for the City's PWS (e.g., from KWA) until such time as they have submitted a written plan, developed through consultation with appropriate experts and after providing adequate

advanced notice and an opportunity for public comment, to MDEQ and in accordance with Paragraph 51, demonstrating that the City has the technical, managerial and financial capacity to operate its PWS in compliance with SDWA and the NPDWRs and that necessary infrastructure upgrades, analysis, and testing have been completed to ensure a safe transition. Such plans shall include, but not be limited to, provisions addressing:

- a. The impacts on corrosion control for any new source water and an operations plan for periodic use of existing sources of water;
- b. Completion of corrosion control study for any new sources;
- c. Implementation of a "performance period" that allows for the demonstration of the adequacy of treatment of the new water source to meet all NPDWRs before it can be distributed to residents; and
- d. The City's technical, managerial and financial capacity to meet SDWA's applicable requirements, including the NPDWRs, during and after the transition to any new water source.

**Treatment and Distribution System Management**

61. Within 15 days of the effective date of this Order, the City must demonstrate, and the MDEQ and State must ensure, the City has the necessary, capable and qualified personnel required to perform the duties and obligations required to ensure the PWS complies with the SDWA and the NPDWRs.
62. To ensure the City's PWS is adequately operated to meet SDWA and all NPDWRs, within 30 days of the effective date of this Order, the Respondents shall submit the steps they will take to develop and implement a distribution system water quality

optimization plan to MDEQ and in accordance with Paragraph 51, to evaluate and improve its programs that affect distribution system water quality, including: evaluating conditions within the distribution system; creating better documentation; and enhancing communication between the various utility functions that impact distribution system water quality. The MDEQ must ensure that this plan is adequate to ensure SDWA compliance and the State must ensure it is executed.

**Independent Advisory Panel ("IAP")**

63. Within seven days of the effective date of this Order, the MDEQ and State, with the City's input and concurrence, shall engage a panel of independent, nationally-recognized experts on drinking water treatment, sampling, distribution system operation, and members of the affected community to advise and make public recommendations to the City on steps needed to mitigate the imminent and substantial endangerment to the health of persons and general operation of the City's PWS to ensure compliance with SDWA and the NPDWRs.
64. The charge to the IAP will include the following:
- a. Make recommendations to the Respondents, and for consideration by the EPA, to ensure the safe operation of the City's PWS.
  - b. Make other recommendations to the Respondents, and for consideration by the EPA, to better serve the community served by the City's PWS.

**VI. PARTIES BOUND**

65. The provisions of this Order shall apply to and bind Respondents and their officers, employees, agents, successors and assigns.

**VII. GENERAL PROVISIONS**

66. All submittals and inquiries pursuant to this Order shall be addressed to:

Mark Pollins, Director  
Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
William Jefferson Clinton South Building  
1200 Pennsylvania Avenue NW  
Room 3104  
Washington, DC 20460  
pollins.mark@epa.gov

67. All plans, reports, notices or other documents submitted by Respondents under this Order shall be accompanied by the following statement signed by a responsible official.

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

68. Record preservation. Respondents shall retain, during the pendency of this Order, and for a minimum of six years after its termination, all data, records and documents in its possession or control, or which comes into its possession or the possession of its divisions, officers, directors, employees, agents, contractors, successors, and assigns, which relate in any way to this Order. After the above mentioned six year period, Respondents shall provide written notification to EPA 60 calendar days before the destruction of any data, records, or documents that relate in any way to this Order or its implementation. At the EPA's request, Respondents shall then make records available to the EPA for inspection and/or retention, or shall provide copies of any such records to EPA before discarding.



69. Within 10 days of the effective date of this Order, or at the time of retaining any agent, consultant, or contractor for the purpose of carrying out terms of this Order, Respondents shall enter into an agreement with any such agents, consultants, or contractors whereby such agents, consultants, or contractors will be required to provide Respondents a copy of all documents produced under this Order.
70. EPA retains all of its information gathering and inspections authorities and rights, including the right to bring enforcement actions related thereto, under SDWA and any other applicable statutes or regulations.
71. Pursuant to SDWA Section 1431(b), 42 U.S.C. § 300i, in the event Respondents violate, fail or refuse to comply with any of the terms or provisions of this Order, EPA may commence a civil action in U.S. District Court to require compliance with this Order and to assess a civil penalty of up to \$21,500 per day of violation under SDWA, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.
72. Compliance with the terms and conditions of this Order shall not in any way be construed to relieve Respondents of their obligations to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a determination of any issue related to any federal, state, or local permit. Compliance with this Order shall not be a defense to any actions subsequently commenced for any violation of federal laws and regulations administered by EPA, and it is the responsibility of Respondents to comply with such laws and regulations.

73. EPA may modify this Order to ensure protection of human health and the environment. Such modification shall be in writing and shall be incorporated into this Order.

74. This Order shall constitute final agency action by EPA.

VIII. EFFECTIVE DATE

75. Under SDWA Section 1431, 42 U.S.C. § 300i, this Order shall be effective immediately upon Respondents' receipt of this Order. If modifications are made by the EPA to this Order, such modifications will be effective on the date received by Respondents. This Order shall remain in effect until the provisions identified in the Order have been met in accordance with written EPA approval.

IX. TERMINATION

76. The provisions of this Order shall be deemed satisfied upon Respondents' receipt of written notice from the EPA that Respondents have demonstrated, to the satisfaction of the EPA, that the terms of this Order, including any additional tasks determined by EPA to be required under this Order or any continuing obligation or promises, have been satisfactorily completed.

1/21/16

Date

Cynthia Giles

CYNTHIA GILES  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
William Jefferson Clinton South Building  
1200 Pennsylvania Avenue N.W.  
Washington, DC 20460

<b>STATE OF MICHIGAN</b> 67th JUDICIAL DISTRICT 7th JUDICIAL CIRCUIT	<b>COMPLAINT</b> <b>FELONY</b>	<b>CASE NO.</b>  <b>DISTRICT</b> <b>CIRCUIT</b>
District Court ORI: MI-		Circuit Court ORI: MI-
THE PEOPLE OF THE STATE OF MICHIGAN v (1) STEPHEN BUSCH      01/15/1976 (2) MICHAEL PRYSBY    01/11/1963 (3) MICHAEL GLASGOW   10/20/1975		Victim or complainant LEEANNE WALTERS  Complaining witness JEFF SEIPENKO
Codefendant(s)		Date: On or about January 2013 through Present
City/Twp./Village Flint	County in Michigan Genesee	Defendant TCN
		Defendant CTN
		Defendant SID (3) 1774645M
		Defendant DOB
Police agency report no. 16-0001	Charge Misconduct Office, Conspiracy, Tampering w/Evidence	Maximum penalty 5 years
<input type="checkbox"/> A sample for chemical testing for DNA identification profiling is on file with the Michigan State Police from a previous case.	<input type="checkbox"/> Oper./Chauf. <input type="checkbox"/> CDL	Vehicle Type
		Defendant DLN

**STATE OF MICHIGAN, COUNTY OF GENESEE**

The complaining witness says that on the date and at the location described, the defendant, contrary to law,

**COUNT 1 DEFENDANTS (01) (02) – COMMON LAW OFFENSES – MISCONDUCT IN OFFICE**

did between February 2015 and November 2015, commit misconduct in office, an indictable offense at common law, by willfully and knowingly misleading federal regulatory officials in the Environmental Protection Agency, including, but not limited to, Miguel Del Toral, and/or Genesee County Health Department officials, including, but not limited to, James Henry, in violation of his duty to provide clean and safe drinking water to the citizens of the County of Genesee, State of Michigan and to protect the public health; contrary to MCL 750.505. [750.505]

FELONY: 5 Years and/or \$10,000.00

**COUNT 2 DEFENDANT (02) – COMMON LAW OFFENSES – MISCONDUCT IN OFFICE**

did on or about April 4, 2014, commit misconduct in office, an indictable offense at common law, by authorizing a permit to the Flint Water Treatment Plant knowing the Flint Water Treatment Plant was deficient in its ability to provide clean and safe drinking water for the citizens of the County of Genesee, State of Michigan; contrary to MCL 750.505. [750.505]

FELONY: 5 Years and/or \$10,000.00

**COUNT 3 DEFENDANTS (01) (02) – CONSPIRACY - TAMPERING WITH EVIDENCE**

did between January 2015 and November 2015, unlawfully conspire, combine, confederate and agree together and with persons, both known and unknown to the People of the State of Michigan, to commit an offense prohibited by law, to wit: Tampering with Evidence, including but not limited to, manipulating monitoring reports mandated by law; contrary to MCL 750.157a. [750.483A6A][C]

FELONY: 4 Years and/or \$10,000.00

**COUNT 4 DEFENDANTS (01) (02) – TAMPERING WITH EVIDENCE**

did knowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence, to wit: reports titled "Lead and Copper Report and Consumer Notice of Lead Result" dated February 27, 2015 and/or July 28, 2015 and/or August 20, 2015; contrary to MCL 750.483a(6)(a). [750.483A6A]

FELONY: 4 Years and/or \$5,000.00

Approved, SCAO

COUNT 5 DEFENDANTS (01) (02) – TREATMENT VIOLATION - MICHIGAN SAFE DRINKING WATER ACT  
did cease the utilization of optimal corrosion control treatment at the Flint Water Treatment Plant after the Plant switched to the Flint River as a water source and/or did refuse to mandate optimized corrosion control treatment at the Flint Water Treatment Plant in a timely manner after the lead action level was exceeded; contrary to MCL 325.1001. [325.1001]  
MISDEMEANOR: 1 Year and/or \$5,000.00 for each day of violation

COUNT 6 DEFENDANTS (01) (02) – MONITORING VIOLATION - MICHIGAN SAFE DRINKING WATER ACT  
did improperly manipulate the collection of water samples by directing residents to "pre-flush" their taps by running the water for five minutes the night before drawing a water sample and/or did fail to collect required samples included in the Tier 1 category of service lines and/or did remove test results from samples to be included in the Lead and Copper Report and Consumer Notice of Lead Result; contrary to MCL 325.1001. [325.1001]  
MISDEMEANOR: 1 Year and/or \$5,000.00 for each day of violation

COUNT 7 DEFENDANT (03) – TAMPERING WITH EVIDENCE  
did knowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in an official proceeding, to wit: the report titled "Lead and Copper Report and Consumer Notice of Lead Result" dated February 27, 2015 and/or July 28, 2015 and/or August 20, 2015; contrary to MCL 750.483a(6)(a). [750.483A6A]  
FELONY: 4 Years and/or \$5,000.00

COUNT 8 DEFENDANT (03) – WILLFUL NEGLECT OF DUTY  
did willfully neglect to perform a duty enjoined upon him by Michigan Safe Drinking Water Act, to wit: by failing to perform the duties of an F-1 Certified Operator employed by the Flint Water Treatment Plant; contrary to MCL 750.478. [750.478]  
MISDEMEANOR: 1 Year and/or \$1,000.00

The complaining witness asks that defendant be apprehended and dealt with according to law.

Warrant authorized on _____ by: Date
Prosecuting official
<input type="checkbox"/> Security for costs posted

\_\_\_\_\_  
Complaining witness signature

Subscribed and sworn to before me on \_\_\_\_\_  
Date

\_\_\_\_\_  
Judge/Magistrate/Clerk Bar no.

Approved, SCAO

Information - Circuit court  
Original complaint - Court  
Warrant - Court

Bindover/Transfer - Circuit/Juvenile court  
Complaint copy - Prosecutor  
Complaint copy - Defendant/Attorney

STATE OF MICHIGAN 67th JUDICIAL DISTRICT 7th JUDICIAL CIRCUIT	COMPLAINT FELONY	CASE NO.  DISTRICT CIRCUIT
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District Court ORI: MI-

Circuit Court ORI: MI-

THE PEOPLE OF THE STATE OF MICHIGAN		Defendant's name and address ADAM ROSENTHAL 6100 Coleman Rd. East Lansing Michigan 48823	Victim or complainant J. SEIPENKO
Codefendant(s) (if known)			Complaining witness J. SEIPENKO
			Date: On or about April 2014 through November 2015
City/Twp./Village City of Flint	County in Michigan Genesee	Defendant TCN	Defendant CTN
		Defendant SID	Defendant DOB 01/04/1973
Police agency report no.	Charge Misconduct Office, Conspiracy, Tampering w/Evidence	Maximum penalty 5 years	
<input type="checkbox"/> A sample for chemical testing for DNA identification profiling is on file with the Michigan State Police from a previous case.	<input type="checkbox"/> Oper./Chauf. <input type="checkbox"/> CDL	Vehicle Type	Defendant DLN R 253 031 125 012

Witnesses

S/A J. Seipenko  
S/A W. Cousins  
S/A A. Wimmer  
Miguel Del Toral  
Marc Edwards  
Dr. Mona Hanna-Attisha  
James Henry  
Brian Steglitz  
LeeAnne  
Walters Brent  
Wright Victor  
Yu Michael  
Glasgow

STATE OF MICHIGAN, COUNTY OF Genesee

The complaining witness says that on the date and at the location described, the defendant, contrary to law, COUNT 1 - COMMON LAW OFFENSES - MISCONDUCT IN OFFICE did, on or about April 2014 through on or about August 2015, said dates being approximate, commit misconduct in office, an indictable offense at common law, by willfully and knowingly participating in the manipulation of testing results for a state mandated lead and copper report; and falsely reporting to the City of Flint Water Treatment Plant that the 90th percentile of the results of water monitoring for lead was below the federal action level of 15 parts per billion; all in violation of his duty to provide clean and safe drinking water to the citizens of the County of Genesee, State of Michigan; contrary to MCL 750.505. [750.505] FELONY: 5 Years and/or \$10,000.00

COUNT 2 - CONSPIRACY - TAMPERING WITH EVIDENCE OR MISCONDUCT IN OFFICE

did, between on or about January 2015, through November 2015, unlawfully conspire, combine, confederate and agree together with persons, both known and unknown to the People of the State of Michigan, to commit an offense prohibited by law, to wit: Tampering with Evidence or Misconduct in Office, including but not limited to manipulating monitoring reports mandated by law; contrary to MCL 750.157a. [750.483A6A][C] FELONY: 4 Years and/or \$10,000.00

COUNT 3 - TAMPERING WITH EVIDENCE

did knowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence, to wit: reports entitled "Lead and Copper Report and Consumer Notice of Lead Result" dated February 27, 2015 and/or July 28, 2015 and/or August 20, 2015; contrary to MCL 750.483a(6)(a). [750.483A6A] FELONY: 4 Years and/or \$5,000.00

Approved, SCAO

Information - Circuit court  
Original complaint - Court  
Warrant - Court

Bindover/Transfer - Circuit/Juvenile court  
Complaint copy - Prosecutor  
Complaint copy - Defendant/Attorney

**COUNT 4 - PUBLIC OFFICER - WILLFUL NEGLECT OF DUTY**

did willfully neglect to perform the duty of providing clean, safe drinking water, a duty enjoined upon him by the Michigan Safe Drinking Water Act; contrary to MCL 750.478. [750.478]  
MISDEMEANOR: 1 Year and/or \$1,000.00

The complaining witness asks that defendant be apprehended and dealt with according to law.

Warrant authorized on _____ by: Date
Prosecuting official
<input type="checkbox"/> Security for costs posted

\_\_\_\_\_  
Complaining witness signature

Subscribed and sworn to before me on \_\_\_\_\_  
Date

\_\_\_\_\_  
Judge/Magistrate/Clerk Bar no.

Approved, SCAO

Information - Circuit court  
Original complaint - Court  
Warrant - Court

Bindover/Transfer - Circuit/Juvenile court  
Complaint copy - Prosecutor  
Complaint copy - Defendant/Attorney

STATE OF MICHIGAN 67th JUDICIAL DISTRICT 7th JUDICIAL CIRCUIT	COMPLAINT FELONY	CASE NO.  DISTRICT CIRCUIT
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District Court ORI: MI-

Circuit Court ORI: MI-

THE PEOPLE OF THE STATE OF MICHIGAN	v	Defendant's name and address LIANE SHEKTER-SMITH 540 North Marshall Avenue Marshall, Michigan 49068-1272	Victim or complainant J. SEIPENKO
Codefendant(s) (if known)			Complaining witness J. SEIPENKO
			Date: On or about April 2014 through November 2015
City/Twp./Village City of Flint	County in Michigan Genesee	Defendant TCN	Defendant CTN
			Defendant SID
			Defendant DOB 06/27/1960
Police agency report no.	Charge Misconduct in Office, Neglect of Duty		Maximum penalty 5 years
<input type="checkbox"/> A sample for chemical testing for DNA identification profiling is on file with the Michigan State Police from a previous case.		<input type="checkbox"/> Oper./Chauf. <input type="checkbox"/> CDL	Vehicle Type
			Defendant DLN M

Witnesses  
S/A J. Seipenko  
S/A W. Cousins  
S/A A. Wimmer  
Miguel Del Toral  
Marc Edwards  
Dr. Mona Hanna-Attisha  
James Henry  
Brian Steglitz  
LeeAnne Walters  
Brent Wright  
Victor Yu  
Sarah Lyon-Cullo  
Cristin Larder

STATE OF MICHIGAN, COUNTY OF Genesee

The complaining witness says that on the date and at the location described, the defendant, contrary to law,  
**COUNT 1 - COMMON LAW OFFENSES - MISCONDUCT IN OFFICE**  
 did, on or about April 2014 through on or about August 2015, said dates being approximate, commit misconduct in office, an indictable offense at common law, by willfully and knowingly misleading public health officials and others regarding the existence of lead in the drinking water in the City of Flint; in violation of her duty to ensure the provision of clean, safe drinking water for the citizens of the County of Genesee, State of Michigan; contrary to MCL 750.505. [750.505]  
**FELONY: 5 Years and/or \$10,000.00**

**COUNT 2 - PUBLIC OFFICER - WILLFUL NEGLECT OF DUTY**  
 did willfully neglect to perform the duty of ensuring the provision of clean, safe drinking water to the citizens of the County of Genesee, State of Michigan, a duty enjoined upon her by the Michigan Safe Drinking Water Act; contrary to MCL 750.478. [750.478]  
**MISDEMEANOR: 1 Year and/or \$1,000.00**

The complaining witness asks that defendant be apprehended and dealt with according to law.

Warrant authorized on _____ by: Date
Prosecuting official
<input type="checkbox"/> Security for costs posted

Complaining witness signature

Subscribed and sworn to before me on \_\_\_\_\_  
Date

Judge/Magistrate/Clerk

Bar no.

MCL 764.1 et seq., MCL 766.1 et seq., MCL 767.1 et seq., MCR 6.110

Approved, SCAO

Information - Circuit court  
Original complaint - Court  
Warrant - Court

Bindover/Transfer - Circuit/Juvenile court  
Complaint copy - Prosecutor  
Complaint copy - Defendant/Attorney

STATE OF MICHIGAN 67th JUDICIAL DISTRICT 7th JUDICIAL CIRCUIT	COMPLAINT FELONY	CASE NO.  DISTRICT CIRCUIT
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District Court ORI: MI-

Circuit Court ORI: MI-

THE PEOPLE OF THE STATE OF MICHIGAN	Defendant's name and address PATRICK COOK v 503 West Brunswick Drive Dewitt, Michigan 48820	Victim or complainant J. SEIPENKO
Codefendant(s) (if known)		Complaining witness J. SEIPENKO
		Date: On or about April 2014 through November 2015
City/Twp./Village City of Flint	County in Michigan Genesee	Defendant TCN
		Defendant CTN
		Defendant SID 1291791B
		Defendant DOB 11/06/1963
Police agency report no.	Charge Misconduct in Office, Conspiracy, Neglect of Duty	Maximum penalty 5 years
<input type="checkbox"/> A sample for chemical testing for DNA identification profiling is on file with the Michigan State Police from a previous case.	<input type="checkbox"/> Oper./Chauf. <input type="checkbox"/> CDL	Vehicle Type
		Defendant DLN C 200 676 507 853

Witnesses  
S/A J. Seipenko  
S/A W. Cousins  
S/A A. Wimmer  
Miguel Del Toral  
Marc Edwards  
Dr. Mona Hanna-Attisha  
James Henry  
Brian Steglitz  
LeeAnne Walters  
Brent Wright  
Victor Yu

STATE OF MICHIGAN, COUNTY OF Genesee

The complaining witness says that on the date and at the location described, the defendant, contrary to law, COUNT 1 - COMMON LAW OFFENSES - MISCONDUCT IN OFFICE did, on or about April 2014 through on or about August 2015, said dates being approximate, commit misconduct in office, an indictable offense at common law, by willfully and knowingly interpreting the Michigan Safe Drinking Water Act contrary to the requirements of the Lead and Copper Rule contained therein; in violation of his duty to ensure the provision of clean, safe drinking water to the citizens of the County of Genesee, State of Michigan; contrary to MCL 750.505. [750.505]  
FELONY: 5 Years and/or \$10,000.00

COUNT 2 - CONSPIRACY - MISCONDUCT IN OFFICE did unlawfully conspire, combine, confederate and agree together and with others, both known and unknown to the People of the State of Michigan, to commit an offense prohibited by law, to wit: Misconduct in Office as alleged in Count I; contrary to MCL 750.157a. [750.505C]  
FELONY: 5 Years and/or \$10,000.00

COUNT 3 - PUBLIC OFFICER - WILLFUL NEGLECT OF DUTY did willfully neglect to perform the duty of ensuring the provision of clean, safe drinking water to the citizens of the County of Genesee, State of Michigan enjoined upon him by the Michigan Safe Drinking Water Act; contrary to MCL 750.478. [750.478]  
MISDEMEANOR: 1 Year and/or \$1,000.00

The complaining witness asks that defendant be apprehended and dealt with according to law.

Warrant authorized on _____ by: Date
Prosecuting official
<input type="checkbox"/> Security for costs posted

Complaining witness signature

Subscribed and sworn to before me on \_\_\_\_\_  
Date

Judge/Magistrate/Clerk

Bar no.

MCL 764.1 et seq., MCL 766.1 et seq., MCL 767.1 et seq., MCR 6.110



Approved, SCAO

Information - Circuit court  
Original complaint - Court  
Warrant - Court

Blindover/Transfer - Circuit/Juvenile court  
Complaint copy - Prosecutor  
Complaint copy - Defendant/Attorney

STATE OF MICHIGAN 67th JUDICIAL DISTRICT 7th JUDICIAL CIRCUIT	COMPLAINT FELONY	CASE NO.  DISTRICT CIRCUIT
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District Court ORI: MI-

Circuit Court ORI: MI-

THE PEOPLE OF THE STATE OF MICHIGAN v NANCY PEELER 4304 Partridge Lane Midland, MI 48640-2169		Defendant's name and address	Victim or complainant J. SEIPENKO
Codefendant(s) (if known) Robert Scott, Corinne Miller			Complaining witness J. SEIPENKO
			Date: On or about April 2014 through November 2015
City/Twp./Village City of Flint	County in Michigan Genesee	Defendant TCN	Defendant CTN
			Defendant SID 07/21/1962
Police agency report no.	Charge Misconduct in Office, Conspiracy, Neglect of Duty		Maximum penalty 5 years
<input type="checkbox"/> A sample for chemical testing for DNA identification profiling is on file with the Michigan State Police from a previous case.	<input type="checkbox"/> Oper./Chauf. <input type="checkbox"/> CDL	Vehicle Type	Defendant DLN P 460 622 067 574

Witnesses  
S/A J. Seipenko  
S/A W. Cousins  
S/A A. Wimmer  
Miguel Del Toral  
Marc Edwards  
Dr. Mona Hanna-Attisha  
James Henry  
Brian Steglitz  
LeeAnne Walters  
Brent Wright  
Victor Yu  
Sarah Lyon-Callo  
Cristin Larder

STATE OF MICHIGAN, COUNTY OF Genesee

The complaining witness says that on the date and at the location described, the defendant, contrary to law, COUNT 1 - COMMON LAW OFFENSES - MISCONDUCT IN OFFICE did, on or about April 2014 through on or about August 2015, said dates being approximate, commit misconduct in office, an indictable offense at common law, by willfully and knowingly misleading employees of the Department of Health and Human Services regarding reports of the increase in blood lead levels of children in Genesee County; in violation of her duty to promote and protect the health of the citizens of the County of Genesee, State of Michigan; contrary to MCL 750.505. [750.505]  
FELONY: 5 Years and/or \$10,000.00

COUNT 2 - CONSPIRACY

did unlawfully conspire, combine, confederate and agree together with one another and others, both known and unknown to the People of the State of Michigan, to commit an offense prohibited by law, to wit: Misconduct in Office as alleged in Count 1; contrary to MCL 750.157a. [750.505C]  
FELONY: 5 Years and/or \$10,000.00

COUNT 3 - PUBLIC OFFICER - WILLFUL NEGLIGENCE OF DUTY

did willfully neglect to perform the duty of promoting and protecting the health of the citizens of the County of Genesee, State of Michigan enjoined upon her by the Michigan Public Health Code, MCL 333.5111(1), MCL 333.5111(2)(f) and MCL 333.20531 and the Critical Health Problems Reporting Act, MCL 325.71, et seq.; contrary to MCL 750.478. [750.478]  
MISDEMEANOR: 1 Year and/or \$1,000.00

The complaining witness asks that defendant be apprehended and dealt with according to law.

Warrant authorized on _____ by: Date
Prosecuting official
<input type="checkbox"/> Security for costs posted

Complaining witness signature

Subscribed and sworn to before me on \_\_\_\_\_  
Date

Judge/Magistrate/Clerk

Bar no.

MCL 764.1 et seq., MCL 766.1 et seq., MCL 767.1 et seq., MCR 6.110

Approved, SCAO

Information - Circuit court  
Original complaint - Court  
Warrant - Court

Bindover/Transfer - Circuit/Juvenile court  
Complaint copy - Prosecutor  
Complaint copy - Defendant/Attorney

<b>STATE OF MICHIGAN</b> 67th JUDICIAL DISTRICT 7th JUDICIAL CIRCUIT	<b>COMPLAINT FELONY</b>	<b>CASE NO.</b>  <b>DISTRICT CIRCUIT</b>
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District Court ORI: MI-

Circuit Court ORI: MI-

Defendant's name and address <b>THE PEOPLE OF THE STATE OF MICHIGAN</b> v <b>ROBERT LAWRENCE SCOTT</b> 6051 Redondo Drive Haslett, Michigan 48840-9721		Victim or complainant <b>J. SEIPENKO</b>
Codefendant(s) (if known) Nancy Peeler, Corinne Miller		Complaining witness <b>J. SEIPENKO</b>
		Date: On or about April 2014 through November 2015
City/Twp./Village City of Flint	County in Michigan Genesee	Defendant TCN  
		Defendant CTN  
		Defendant SID  
		Defendant DOB 08/01/1957
Police agency report no.	Charge Misconduct in Office, Conspiracy, Neglect of Duty	Maximum penalty 5 years
<input type="checkbox"/> A sample for chemical testing for DNA identification profiling is on file with the Michigan State Police from a previous case.		<input type="checkbox"/> Oper./Chauf. <input type="checkbox"/> CDL
		Vehicle Type  
		Defendant DLN S 300 745 488 603

Witnesses  
 S/A J. Seipenko  
 S/A W. Cousins  
 S/A A. Wimmer  
 Miguel Del Toral  
 Marc Edwards  
 Dr. Mona Hanna-Attisha  
 James Henry  
 Brian Steglitz  
 LeeAnne Walters  
 Brent Wright  
 Victor Yu  
 Sarah Lyon-Callo  
 Cristin Larder

**STATE OF MICHIGAN, COUNTY OF Genesee**

The complaining witness says that on the date and at the location described, the defendant, contrary to law, **COUNT 1 - COMMON LAW OFFENSES - MISCONDUCT IN OFFICE** did, on or about April 2014 through on or about August 2015, said dates being approximate, commit misconduct in office, an indictable offense at common law, by willfully and knowingly misleading employees of the Department of Health and Human Services regarding reports of the increase in blood lead levels of children in Genesee County; in violation of his duty to promote and protect the health of the citizens of the County of Genesee, State of Michigan; contrary to MCL 750.505. [750.505] **FELONY; 5 Years and/or \$10,000.00**

**COUNT 2 - CONSPIRACY**

did unlawfully conspire, combine, confederate and agree together with one another and others, both known and unknown to the People of the State of Michigan, to commit an offense prohibited by law, to wit: Misconduct in Office as alleged in Count 1; contrary to MCL 750.157a. [750.505C] **FELONY; 5 Years and/or \$10,000.00**

**COUNT 3 - PUBLIC OFFICER - WILLFUL NEGLECT OF DUTY**

did willfully neglect to perform the duty of promoting and protecting the health of the citizens of the County of Genesee, State of Michigan enjoined upon him by the Michigan Public Health Code, MCL 333.5111(1), MCL 333.5111(2)(f) and MCL 333.20531 and the Critical Health Problems Reporting Act, MCL 325.71, et seq.; contrary to MCL 750.478. [750.478] **MISDEMEANOR; 1 Year and/or \$1,000.00**

The complaining witness asks that defendant be apprehended and dealt with according to law.

Warrant authorized on _____ by: Date
Prosecuting official  <input type="checkbox"/> Security for costs posted

\_\_\_\_\_  
 Complaining witness signature

Subscribed and sworn to before me on \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Judge/Magistrate/Clerk

\_\_\_\_\_  
 Bar no.

MCL 764.1 et seq., MCL 766.1 et seq., MCL 767.1 et seq., MCR 6.110

Approved, SCAO

Information - Circuit court  
Original complaint - Court  
Warrant - Court

Bindover/Transfer - Circuit/Juvenile court  
Complaint copy - Prosecutor  
Complaint copy - Defendant/Attorney

<b>STATE OF MICHIGAN</b> 67th JUDICIAL DISTRICT 7th JUDICIAL CIRCUIT	<b>COMPLAINT</b> <b>FELONY</b>	<b>CASE NO.</b>  <b>DISTRICT</b> <b>CIRCUIT</b>
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District Court ORI: MI-

Circuit Court ORI: MI-

THE PEOPLE OF THE STATE OF MICHIGAN v Defendant's name and address CORINNE MILLER 411 West Washington St. Dewitt, Michigan 48820-8925		Victim or complainant J. SEIPENKO
Codefendant(s) (if known) Robert Scott, Nancy Peeler		Complaining witness J. SEIPENKO
		Date: On or about April 2014 through November 2015
City/Twp./Village City of Flint	County in Michigan Genesee	Defendant TCN  
		Defendant CTN  
		Defendant SID  
		Defendant DOB 08/23/1950
Police agency report no.  	Charge Misconduct in Office, Conspiracy, Neglect of Duty	Maximum penalty 5 years
<input type="checkbox"/> A sample for chemical testing for DNA identification profiling is on file with the Michigan State Police from a previous case.		<input type="checkbox"/> Oper./Chauf.
		<input type="checkbox"/> CDL
		Vehicle Type  
		Defendant DLN M

Witnesses  
 S/A J. Seipenko  
 S/A W. Cousins  
 S/A A. Wimmer  
 Miguel Del Toral  
 Marc Edwards  
 Dr. Mona Hanna-Attisha  
 James Henry  
 Brian Steglitz  
 LeeAnne Walters  
 Brent Wright  
 Victor Yu  
 Sarah Lyon-Callo  
 Cristin Larder

STATE OF MICHIGAN, COUNTY OF Genesee

The complaining witness says that on the date and at the location described, the defendant, contrary to law, COUNT 1 - COMMON LAW OFFENSES - MISCONDUCT IN OFFICE did, on or about April 2014 through on or about August 2015, said dates being approximate, commit misconduct in office, an indictable offense at common law, by willfully and knowingly instructing employees of the Department of Health and Human Services to ignore valid reports of the increase in blood lead levels of children in Genesee County; in violation of her duty to promote and protect the health of the citizens of the County of Genesee, State of Michigan; contrary to MCL 750.505. [750.505] FELONY: 5 Years and/or \$10,000.00

COUNT 2 - CONSPIRACY did unlawfully conspire, combine, confederate and agree with others, both known and unknown to the People of the State of Michigan, to commit an offense prohibited by law, to wit: Misconduct in Office as alleged in Count I; contrary to MCL 750.157a. [750.505C] FELONY: 5 Years and/or \$10,000.00

COUNT 3 - PUBLIC OFFICER - WILLFUL NEGLIGENCE OF DUTY did willfully neglect to perform the duty of promoting and protecting the health of the citizens of the County of Genesee, State of Michigan enjoined upon her by the Michigan Public Health Code, MCL 333.5111(1), MCL 333.5111(2)(f) and MCL 333.20531 and the Critical Health Problems Reporting Act, MCL 325.71, et seq.; contrary to MCL 750.478. [750.478] MISDEMEANOR: 1 Year and/or \$1,000.00

The complaining witness asks that defendant be apprehended and dealt with according to law.

Warrant authorized on _____ by: Date
Prosecuting official  <input type="checkbox"/> Security for costs posted

Complaining witness signature \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_  
Date

Judge/Magistrate/Clerk \_\_\_\_\_ Bar no. \_\_\_\_\_

MCL 764.1 et seq., MCL 766.1 et seq., MCL 767.1 et seq., MCR 6.110

# Columbia Journalism Review.

(<http://www.cjr.org/Index.php>)



How an  
investigative  
journalist helped  
prove a city was  
being poisoned  
with its own water

*Photo courtesy Curt Guyette*

**IT WAS NOT A TYPICAL EVENING OF REPORTING.** In early September, Curt Guyette was knocking on unfamiliar doors in Flint, Michigan—not to ask for interviews, but to ask residents to test their water for lead. Local activists were doing the same thing on sidewalks nearby, and in other parts of town. The task: Muster tests from as many ZIP Codes as possible to give a complete picture of what, exactly, was flowing out of the taps in Flint.

Guyette had been following the story of lead in Flint's water for months, even as officials assured residents and the media that everything was under control. Over the summer, he'd helped produce a mini (<https://www.youtube.com/watch?v=27K54-JV-Z4>)-documentary ([http://www.mlive.com/news/flint/index.ssf/2015/06/aclu\\_video\\_details\\_flints\\_hard.html](http://www.mlive.com/news/flint/index.ssf/2015/06/aclu_video_details_flints_hard.html)) about concerns with the water for the ACLU of Michigan, where he works as an investigative reporter. That led to a scoop (<http://www.aclumich.org/democracywatch/index.php/entry/corrosive-impact-leaded-water-and-one-flint-family-s-toxic-nightmare>)—a leaked memo from a US Environmental Protection Agency official that explained how Michigan's process for lead testing in Flint's water delivered artificially low results.

Now, a researcher from Virginia Tech was conducting an independent evaluation, and Guyette wasn't just following the story, he was in the middle of it. Initial assessments by the researcher, Marc Edwards, had already found dangerously high levels ([http://www.mlive.com/news/flint/index.ssf/2015/09/new\\_testing\\_shows\\_flint\\_water.html](http://www.mlive.com/news/flint/index.ssf/2015/09/new_testing_shows_flint_water.html)) of lead in the water in many Flint homes—the consequence of a series of questionable government decisions. More tests, taken with the samples collected by Guyette and others, confirmed ([http://www.mlive.com/news/flint/index.ssf/2015/09/virginia\\_tech\\_researcher\\_says.html](http://www.mlive.com/news/flint/index.ssf/2015/09/virginia_tech_researcher_says.html)) the problem with the water. Soon, a local doctor was reporting (<http://www.freep.com/story/news/local/michigan/2015/09/24/water-lead-in-flint/72747696/>) elevated blood-lead levels in Flint children, too, and county officials were declaring ([http://www.gc4me.com/docs/public\\_health\\_emergency\\_announcement\\_10\\_1\\_15.pdf](http://www.gc4me.com/docs/public_health_emergency_announcement_10_1_15.pdf)) a public health emergency.

Finally, in early October, Gov. Rick Snyder announced (<http://www.nytimes.com/2015/10/09/us/flint-michigan-detroit-water-supply-lead.html>) that the state and other entities would spend \$12 million to reconnect Flint to a safer water supply. The switch happened less than a week later, right around the time the state removed (<http://www.freep.com/story/news/local/michigan/2015/10/19/michigan-official-federal-water-rules-not-followed-in-flint/74207204/>) its top water quality official and publicly admitted mistakes.

The episode amounts to a tale of startling government failure that created serious public health risks. Calling out that failure took a group effort that included a scientist who lives hundreds of miles away, a collection of private citizens-turned-activists, and Guyette, a veteran reporter who doesn't even work for a news organization anymore.

"I've been doing [journalism] for more than 30 years," he said in a recent interview. "I'm not sure I've ever been involved in anything more important."

After the end

([http://www.deadlinedetroit.com/articles/6255/metro\\_times\\_fires\\_veteran\\_staffer\\_curt\\_guyette\\_-\\_for\\_talking\\_to\\_the\\_press#.VjFISIRI](http://www.deadlinedetroit.com/articles/6255/metro_times_fires_veteran_staffer_curt_guyette_-_for_talking_to_the_press#.VjFISIRI)) to a long tenure at *Metro Times*, a Detroit alt-weekly, Guyette signed on to run the ACLU's Michigan Democracy Watch Project in 2013. His stories are featured in the ACLU's Democracy Watch (<http://www.aclumich.org/democracy-watch-blog>) blog, and, in an effort to reach more readers, occasionally in *Metro Times* (<http://www.metrotimes.com/Blogs/archives/2015/09/01/independent-water-tests-show-lead-problems-far-worse-than-flint-claims>), *The Nation* (<http://www.thenation.com/article/in-flint-michigan-overpriced-water-is-causing-peoples-skin-to-erupt-and-hair-to-fall-out/>), or other outlets (<http://www.truth-out.org/author/itemlist/user/51497>). The Michigan branch is the only ACLU in the country to have an investigative reporter on staff—the position is supported by a Ford Foundation grant (<http://www.aclumich.org/curt-guyette>)—and Guyette has a broad mandate to cover shifts in democratic governance under emergency management, a system in which the governor appoints an official to oversee financial decisions for struggling local jurisdictions.

That mandate led to a focus on Flint, an economically distressed city of about 100,000 people, an hour northwest of Detroit, that has been in and out of emergency management. Flint has also long been connected to the Detroit water system, which uses treated Lake Huron water. Primarily in an effort to save money, the city has made plans to join a new regional water authority. While that is being constructed, the city, while under the supervision of a state-appointed emergency manager, opted to use water from the Flint River, rather than sign a pricey short-term contract with Detroit.

The move drew praise at the time. "Let's raise our drinking water glasses and cheers to a new direction for the next 40 years," declared an editorial ([http://www.mlive.com/opinion/flint/index.ssf/2014/04/editorial\\_switch\\_to\\_flint\\_rive.html](http://www.mlive.com/opinion/flint/index.ssf/2014/04/editorial_switch_to_flint_rive.html)) in the *Flint Journal* from April 2014.

But complaints about poor water quality

([http://www.mlive.com/news/flint/index.ssf/2014/06/treated\\_flint\\_river\\_water\\_meet.html](http://www.mlive.com/news/flint/index.ssf/2014/06/treated_flint_river_water_meet.html)) and a hike ([http://www.mlive.com/news/flint/index.ssf/2014/06/post\\_386.html](http://www.mlive.com/news/flint/index.ssf/2014/06/post_386.html)) in water rates were immediate; soon after, E.coli was detected ([http://www.mlive.com/news/flint/index.ssf/2014/08/second\\_postvie\\_ecoli\\_test\\_mea.html](http://www.mlive.com/news/flint/index.ssf/2014/08/second_postvie_ecoli_test_mea.html)). Those concerns drew ([http://www.mlive.com/news/flint/index.ssf/2015/06/water\\_tests\\_show\\_high\\_levels\\_o.html](http://www.mlive.com/news/flint/index.ssf/2015/06/water_tests_show_high_levels_o.html)) some media notice (<http://www.nytimes.com/2015/03/25/us/a-water-dilemma-in-michigan-cheaper-or-clearer.html>), and initial reports of lead ([http://www.mlive.com/news/flint/index.ssf/2015/02/water\\_testing\\_at\\_um-flint\\_show.html](http://www.mlive.com/news/flint/index.ssf/2015/02/water_testing_at_um-flint_show.html)) and other contaminants ([http://www.mlive.com/news/flint/index.ssf/2015/06/water\\_tests\\_show\\_high\\_levels\\_o.html](http://www.mlive.com/news/flint/index.ssf/2015/06/water_tests_show_high_levels_o.html)) popped up, too. The news mostly simmered in the background, though, tamped down by official declarations that the water was fine.

The leak of the EPA memo over the summer made clear more scrutiny was needed. Then, suddenly, the story broke open in September, after the tests by Edwards' lab confirmed the presence of lead in the water of scores of Flint homes—the result of corrosive river water interacting with the city's aging lead pipes, and officials' failure to treat the water to make it potable.

As the evidence mounted, Michigan Radio (<http://michiganradio.org/term/flint-water>) and the *Detroit Free Press* (<http://www.freep.com/story/opinion/columnists/nancy-kaffer/2015/10/03/life-flint-sickening-water/73219988/>) were among the news outlets with the quickest and strongest follow-up reporting, including a damning Freep report (<http://www.freep.com/story/opinion/columnists/nancy-kaffer/2015/09/26/state-data-flint-lead/72820798/>) on how the state was misinterpreting its own data, putting the pressure on the state to act, and a Freep feature (<http://www.freep.com/story/news/local/michigan/2015/10/10/hanna-attisha-profile/73600120/>) on the doctor who conducted the key blood analysis. The *Flint Journal* has delivered follow-up (<http://topics.mlive.com/tag/flint-water/>) coverage ([http://www.mlive.com/news/flint/index.ssf/2015/09/flint\\_water\\_lead\\_levels\\_spiked.html](http://www.mlive.com/news/flint/index.ssf/2015/09/flint_water_lead_levels_spiked.html)), too. (The *Journal's* editor and the director of content of MLive, the umbrella site for Advance papers in the state, both declined to comment for this story.)

But it was Guyette and the ACLU who played key roles in getting the story to this point.

“What they did [in making the EPA memo public] was critical,” said Nancy Kaffer, a columnist for the *Free Press*. “When you look at it now, the memo really laid out all the problems.... Along with Marc Edwards' data from the lead testing, it provided a counterpoint to what the state was saying and made it very difficult [for officials] to respond.”

Kaffer added that the memo and lead tests gave other reporters an entry point into a convoluted story full of obscure jargon about water treatment. Even when she reached out to experts to help her navigate the wonky details, the political reach of the story prevented many of them from talking with her, even on background. But the information from the ACLU and Edwards “set the ground to move forward and ask questions, for both reporters and regular citizens.”

Along with Edwards, the ACLU also submitted FOIA requests (<http://flintwaterstudy.org/2015/10/new-freedom-of-information-act-foia-request-documents-answer-our-earlier-question-where-is-the-us-epa/>) that revealed a troubling indifference among officials about water quality concerns. (“Apparently it's going to be a thing now,” a spokesperson for a state agency wrote a colleague (<http://www.freep.com/story/opinion/columnists/nancy-kaffer/2015/10/21/indifference-characterized-state-approach-flint-water/74289430/>), when Michigan Radio began following up on Guyette's inquiries.)

And Guyette was out there, knocking on doors, collecting samples. In a little over two weeks, he and the others distributed 300 lead-testing kits to Flint residents and collected 277 back—an astonishing rate of return.

“I was really walking a line in my own role as a journalist and activist,” said Guyette, who has continued to cover the fallout (<http://www.aclumich.org/democracywatch/index.php/blogger/listings/cguyette>) himself. “I'm not just observing the story; I'm participating in it. In my mind, I'm just trying to get to the truth.”

The ACLU is an advocacy group, of course, and Guyette's role has prompted some familiar skepticism about advocacy journalism. A June email between city officials discussing an interview request by Guyette, obtained via a FOIA request, describes (<http://flintwaterstudy.org/2015/10/new-freedom-of-information-act-foia-request-documents-answer-our-earlier-question-where-is-the-us-epa/>) him as “one of the coproducers of the [short film on the water crisis], which somewhat discredits his objectivity.” Another internal email from a state official reads: “I got a weird call from a ‘reporter’ at the ACLU asking about Flint drinking water...”

Guyette said that meant the team (<http://flintwaterstudy.org/>) knew it needed to make the lead testing “bulletproof,” because “we knew [skeptics] would come after us.” He also emphasized that if the testing found that the city and state were telling the truth about the water, “we’d do a story on that and put people’s minds at ease. Because at this point, there was so much worry and confusion, it’d still be of value.”

“The bottom line is that as important as credibility is to any journalist, it’s even more important when you’re pushing things the way we push them,” Guyette said. “You cannot be wrong, because you’re so easy to discredit as just having an agenda.”

It turns out that they weren’t wrong. Had they not interceded, poisoned water might still be flowing out of the taps. That’s a big win, but not a complete one: The full consequences of the crisis won’t be known for decades. And there remain questions (<http://www.aclumich.org/democracywatch/index.php/entry/flint-water-and-the-no-blame-game>) about who bears responsibility (<http://www.freep.com/story/news/politics/2015/10/24/emergency-manager-law-blame-flint-water-crisis/74048854/>).

“It’s a bittersweet victory, god knows,” Guyette said. “I’m glad we were able to force this change and help keep people from being lead-poisoned. But it’s hard to feel joy knowing the damage that’s already been done.”

*Love news about local news? Then sign up (<http://eepurl.com/OpARj>) for the United States Project weekly email.*

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Anna Clark is CJR's correspondent for Michigan, Wisconsin, Ohio, and Pennsylvania. A 2011 Fulbright fellow, Clark has written for *The New York Times*, *The American Prospect*, and *Grantland*. She can be found online at [www.annaclark.net](http://www.annaclark.net) (<http://www.annaclark.net>) and on Twitter @annaleighclark (<http://twitter.com/annaleighclark>). She lives in Detroit.

# BOSTON REVIEW

## The Struggle for Accountability in Flint

*Michigan law shields decision-makers from public scrutiny*

Anna Clark

February 02, 2016



*Since acknowledging the contamination of Flint's water supply, Michigan has provided residents with bottled water. Accountability for the crisis has proven harder to come by. / Michigan State Police*

What is unfolding in Flint, Michigan, is not just a public health crisis. Faith in the public sector, too, is at risk of being irreparably shaken.

Lead-contaminated water has flowed since the spring of 2014 into this city of roughly 100,000 people, despite residents' repeated complaints. Several investigations and class-action lawsuits are underway, highlighting the contempt in which the people of Flint were held by the very state officials tasked with protecting their safety. Governor Rick Snyder has apologized and promised support not just to fix Flint's corroded pipes, but also to expand special education and mental health services.

Snyder also pledged accountability for the decisions that led to the poisoning of Flint's tap water. That includes the release of his 2014 and 2015 emails relating to the crisis. "Most of all, you deserve to know the truth and I have a



responsibility to tell you the truth,” Snyder said in his recent State of the State address. Nearly 300 pages of emails are now freely available online.

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## **In Michigan, the legislature, governor, supreme court, attorney general, and secretary of state are all exempt from public records requests.**

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That is an important step in rebuilding public faith in government. But secrecy runs deep in Michigan. The lack of transparency that characterized the official handling of the water crisis—itsself a product of bungled choices by a series of technocratic state managers un beholden to voters—is pervasive in in the state, as a matter of law.

Michigan is the rare state where both the legislature and the governor’s office are exempt from public records requests. The Michigan Supreme Court, the attorney general’s office, and the secretary of state’s office are also exempt. There are additional FOIA exemptions for information about trade secrets, security, medical records, and attorney-client privilege; a new bill seeks further exemptions for energy infrastructure and cyber-security. In Michigan, no independent entity monitors the use of open access laws to ensure that they are fair and effective. While the law requires a response time of five to fifteen business days for FOIA requests, in practice, a one-to-three month wait is not uncommon.

So it is no surprise that Michigan ranks dead last in the most recent State Integrity Report Card from the Center for Public Integrity, which was issued about a month after the state was forced to admit the legitimacy of water concerns in Flint. And the usual public watchdogs—local journalists—have struggled to do their jobs in the face of steep cuts. There are fewer feet on the street after significant buyouts late last year at the *Detroit Free Press* and the *Detroit News*, the state’s largest news outlets, and only a handful of reporters work at the *Flint Journal* these days. (It, too, was hit with cuts recently.) Lindsey Smith, Michigan Radio’s lead reporter on the water story, did excellent work—even though she is based in Grand Rapids, on the other side of the state.

Still, it doesn’t help that FOIA requests by reporters come with hefty price tags, sometimes in the thousands of dollars. In Flint, many of the illuminating FOIA requests made to the Michigan Department of Environmental Quality were issued not by news organizations but by a Virginia Tech engineering professor, Marc Edwards, who was studying lead levels in the town’s water. Those requests cost \$3,180 to date, and Edwards paid for them out of pocket.

Meanwhile, Snyder is still making controversial use of state-appointed emergency managers, who are now in charge of distressed school districts in Detroit, Highland Park, and Muskegon Heights. When the city of Lincoln Park exited emergency management in December, it marked the first time in fifteen years that Michigan was without a city run by a state appointee. Such are Flint’s financial problems that it has been in receivership off and on since 2002. Its emergency managers could, and did, supersede the wishes of the city’s own elected officials. That included overruling the city council which, alarmed by the diminished water quality after the switch, voted in March 2015 to “do all things necessary” to reconnect to a safe water source. The then-manager called the city council’s vote “incomprehensible.” Because no one votes for emergency managers, they have little incentive to share the reasoning behind their decisions.

Snyder’s actions to date have done little to peel back the layers of secrecy. As revealing as the release of his emails from 2015 and 2014 has been, it is striking that he did not also release messages from 2013—the year when the emergency manager changed Flint’s water source. While Flint elected officials supported the move to a new independent water system, there is no indication that they were in favor of using untreated river water as a short-term source. That nuance has been muddled in statements from both the governor and the then-emergency manager, seemingly to sidestep culpability. The 2013 emails would clarify who was responsible for the fateful decision.

Although one might expect conservative leaders to back Snyder, they have joined liberals in demanding transparency from among elected officials. Currently openness is an at-will gesture for which Michigan residents and newspaper editorial boards must plead. Consider that a newly issued subpoena seeks access the 2013 emails and more: in most of the country, bringing this information to light is ordinary business; in Michigan, extraordinary measures must be taken.

The emergency management system that the state imposes on beleaguered cities is also overdue for transparency reform. The law allows managers autocratic control to rebalance the books. But that comes at a cost to civic involvement. While the governor has boasted about Detroit's genuine success in navigating municipal bankruptcy while in state receivership, the grave mistakes in Flint raise questions about the system's oversight. In his State of the State address, Snyder mentioned emergency management only once, and did not call for reform. He apparently does not see in the water crisis a compelling rationale for increased accountability among emergency managers. It is telling that even as the state has made a massive effort to distribute water and filters in Flint, citizen activists have continued independent initiatives to provide each other safe water. People simply don't trust a system in which accountability is so hard to come by.

As it stands, the Flint crisis did not even cause a speed bump in the career of Darnell Earley, the emergency manager who presided over the ill-fated water switch. He is now the emergency manager of Detroit Public Schools. This month, the schools have seen a massive wave of "sick-outs" to protest unsafe physical conditions, resulting in dozens of closures affecting tens of thousands of people. It is a serious interruption in instruction time—not to mention school-provided meals—for students. But after years under emergency management, with the democratic system suspended indefinitely, how else are teachers and staff to be heard?

While Snyder campaigned—and twice won election—by championing his competence as a businessman, in the end, Michigan is not a business. It is—or at least it is supposed to be—a democracy. Businesses strive for every efficiency, but we have decided as a society that transparency, accountability, checks-and-balances, and the equitable participation of all citizens are worth the inefficiencies they can cause. As the Flint crisis demonstrates, it is simply not good enough for state officials to say, "Trust us."

# Columbia Journalism Review

(<http://www.cjr.org/index.php>)



## How covering the Flint water crisis has changed Michigan Radio

*News director Vince Duffy, at right, joined Michigan Radio in 2007. Since then, its resources and ambitions have grown. (Photo courtesy Michigan Radio)*

Steve Carmody sometimes feels uneasy about the praise.

Carmody is a Flint-based reporter for Michigan Radio, the state's leading public radio service, which was among the earliest news outlets to report seriously on concerns that the city's residents were being poisoned by lead leaching from their water pipes—the result of a switch to a new water source in April 2014. Michigan Radio reported on a crucial Environmental Protection Agency internal memo that laid out the concerns in July 2015, tracked each new development as the scope of the problem became clear last fall, and, in December, produced an hour-long documentary that has become one of the leading accounts of the crisis.

For those efforts, Michigan Radio has won applause from listeners and industry peers. Carmody is proud of what the service

has done—but he also thinks about what might have been different.

“It just gnaws on me that when people were saying they can’t drink this water in May or June of 2014, I was taking, ‘Don’t worry, it’s safe’ as an answer” from state officials,” he said in recent interview. “It just sticks in my craw. I should’ve seen this earlier. That will bother me for the rest of my career.”

It’s a lesson worth taking seriously, and one for journalists to reflect on anytime a community keeps saying, despite official assurances, that something is wrong. In retrospect, Michigan Radio, like other news outlets, might have pushed harder, earlier, against claims from state environmental officials that the water was fine.

But it’s also fair to say that in its coverage of the story, Michigan Radio has staked a claim for itself as an increasingly important player in the state’s media ecosystem. That influential reporting stems from the outlet’s growth in recent years—and it has raised its ambitions for the journalism it will produce in the future.

It’s not that long ago that public radio in Michigan was primarily classical music. When Vincent Duffy, Michigan Radio’s news director, joined the outlet in 2007, there were “roughly five people on any given day gathering news,” he says. Now there is more than twice that; in total, 27 people work in content roles, including reporters, digital producers, and on-air hosts. In addition to the usual slate of national public radio fare, the service produces original programming like *Stateside* (<http://michiganradio.org/programs/stateside-cynthia-canty>), *The Environment Report* (<http://michiganradio.org/programs/environment-report#stream/0>), and *State of Opportunity* (<http://stateofopportunity.michiganradio.org>). (I’ve occasionally been a guest on-air.) Some of the editorial growth comes from moving around existing positions, but the station’s annual operating budget has also grown, in part due to rising audience support. Today, it’s about \$6.5 million, with nearly two-thirds coming from listener contributions.

The on-air programming reaches about 450,000 listeners each week via transmitters in Ann Arbor, Grand Rapids, and Flint—a blue-collar city of about 100,000 people, where the listening audience is by far the smallest. “Some of that has to do with it having a smaller population,” Duffy said, “but some is that an audience is more likely to listen to public radio if they are college-educated, and there’s just a lower percentage of college-educated people in Genesee County [where Flint is located], which probably makes us less appealing.”

*It just sticks in my craw. I should’ve seen this earlier. That will bother me for the rest of my career.*

Whatever the reason, that didn’t stop the Flint water story from becoming a priority for Michigan Radio—though when the first glaring sign of a major public health concern arrived, Carmody wasn’t the only one who had a hard time believing the severity of the situation. Curt Guyette ([http://www.cjr.org/united\\_states\\_project/flint\\_water\\_lead\\_curt\\_guyette\\_aclu\\_michigan.php](http://www.cjr.org/united_states_project/flint_water_lead_curt_guyette_aclu_michigan.php)), an investigative reporter for the ACLU of Michigan, had obtained the draft EPA report (<http://flintwaterstudy.org/2015/11/final-epa-report-high-lead-at-three-residences-in-flint-mi/>), and in early July he shared it with the public radio service in hopes of bringing it to a broader audience. The memo faulted the state’s methods for measuring lead levels, explained why the decision not to apply “corrosion-control” techniques created risks, and relayed almost unfathomably high concentrations of lead in one home.

“The day we had it, there was a disagreement in the newsroom,” Duffy recalled. “Some wanted to get it out right away, and others in the newsroom were saying, ‘These numbers can’t be right. This can’t actually be happening that the lead levels are this high in a municipal water system.’ Turned out that actually was the case.”

Michigan Radio’s Lindsey Smith reported (<http://michiganradio.org/post/leaked-internal-memo-shows-federal-regulator-s-concerns-about-lead-flint-s-water#stream/0>) on the memo a few days later. (“Let me start here—anyone who is concerned about lead in the drinking water in Flint can relax,” a spokesman for the state environmental department told her, a line that has since become infamous (<https://www.google.com/search?q=Let+me+start+here+%E2%80%93+anyone+who+is+concerned+about+lead+in+the+drinking+water+in+Flint+can+relax&aq=chrome..69i57.516j0j7&sourceid=c>)). But it was in the fall, as independent testing led by a Virginia Tech scientist and blood-lead analyses by a Flint pediatrician made the scale of the crisis clear, that the newsroom really pivoted to heavy coverage. Carmody reported the daily news (<http://michiganradio.org/term/flint-water-crisis>), but when feedback made it clear that audiences were having a difficult time

piecing the whole story together, the outlet decided to do the documentary. Smith, who covers West Michigan but had already done her share of FOIA requests for the Flint story, led the reporting, with support from web producer Mark Brush, environment reporter Rebecca Williams, Carmody, and editor Sarah Hulett. The station also paid for Smith to travel to Virginia Tech for interviews.

“Not Safe to Drink (<http://michiganradio.org/post/listen-not-safe-drink-special-documentary-about-flint-water-crisis>),” which focuses on Flint mother and citizen activist LeeAnne Walters, put a human face on a complex story, making good use of what Smith calls “the intimacy of the audio narrative.” It aired locally in mid-December, and, thanks to a partnership with the Center for Investigative Reporting, it was broadcast nationally that same month. Michigan Radio’s online traffic in January more than tripled from the average, Duffy said, and “the only thing we can attribute that to is... people are still sharing our documentary. Even though it’s dated now, with quotes from individuals who are no longer working in their jobs.”

It also helps that Michigan Radio’s digital presence is better than the norm for state public media. On average, the website (<http://michiganradio.org/>) gets about 300,000 unique visitors a month; what began as an archive of the outlet’s best work is now often the home for stories that haven’t been broadcast yet. “We’re not scooping ourselves,” Duffy said, because the website reaches a distinct audience. With a digital-first policy—“the story isn’t done until the web story is done,” Duffy says—the station was in position to deliver online coverage featuring (<http://michiganradio.org/post/flint-now-knows-where-4000-lead-service-lines-are-records-11000-homes-missing>) numbers (<http://michiganradio.org/post/flint-now-knows-where-4000-lead-service-lines-are-records-11000-homes-missing>) and (<http://michiganradio.org/post/timeline-heres-how-flint-water-crisis-unfolded#stream/0>) timelines (<http://michiganradio.org/post/timeline-heres-how-flint-water-crisis-unfolded#stream/0>) that don’t translate easily on air.

While Michigan Radio started out front with the Flint water story, it’s been difficult at times to sustain the pace. Despite the newsroom’s growth—and the continuing staff decline ([http://www.cjr.org/united\\_states\\_project/michigans\\_mlive\\_cuts\\_29\\_positions\\_in\\_latest\\_restructuring.php](http://www.cjr.org/united_states_project/michigans_mlive_cuts_29_positions_in_latest_restructuring.php)) at the state’s newspapers—the big papers can still put more people on a resource-intensive story that’s dominating the news, like the recent release of thousands of emails obtained from similar FOIA requests on the same day. “We do catch up there,” Duffy says.

*I’d like in three years to say, ‘Remember the Flint water crisis? That is what started all this other incredible work.’*

One other consequence of the coverage: a shift in the relationship with Governor Rick Snyder’s office, at least for a time. The office “has not been pleased with all our coverage,” said Duffy, referring in particular to elements of the documentary, and an accompanying reporters notebook (<http://michiganradio.org/post/reporter-s-notebook-some-state-officials-still-denial-or-misinformed-over-flint-river-decision>) posted online. After the documentary aired, he said, the governor’s office indicated it would communicate over email but would no longer agree to recorded phone interviews, including after the State of the State address in January.

I asked Dave Murray, Gov. Snyder’s press secretary, about this. “We had some concerns that we talked to them about, and we’re working on it together,” he said. In a follow-up email, he added: “We have great respect for the journalists at Michigan Radio. The organization’s coverage of the Flint Water Crisis has been thorough and impressive, and we appreciate the work the reporters there have done to bring attention to the problems at all three levels of government as well as the recovery efforts that are underway.” He pointed out that he frequently talks with public radio reporters in Lansing, who work for a capitol news network (<http://www.mprn.org>) that serves stations across the state, and says that he recently spoke with Michigan Radio’s arts and education reporter.

The Flint story, of course, is hardly over. Despite remediation efforts, lead levels in the water remain high; scores of children have been exposed, putting them at risk of developmental impairments and other consequences; and complex questions about government accountability are yet to be resolved. The Michigan Radio team balances getting to other big statewide stories—one of the prisoners released last month from Iran was from Flint, which Carmody (<http://michiganradio.org/post/flint-man-imprisoned-iran-4-years-flying-europe>) reported (<http://michiganradio.org/post/flint-man-imprisoned-iran-4-years-flying-europe>) about, while Smith (<http://michiganradio.org/post/grand-rapids-mayor-wants-new-initiatives-support-neighborhoods-affordable-housing>) covered (<http://michiganradio.org/post/grand-rapids-mayor-wants-new-initiatives-support-neighborhoods-affordable-housing>) the Grand Rapids mayoral election—and still staying on top of developments in the water story.

“For many of us, it’s seven days a week, almost every waking hour, trying to stay on top of the Flint story,” Duffy said. “We’ve had discussions on how long to continue this and when we scale back and partner with someone else or reach out to NPR or something. For six people to wake up and do nothing but Flint, it takes its toll.”

That said, he’s hopeful that this coverage is the start of a new era of important journalism at Michigan Radio—and that the Flint coverage can be leveraged into resources that will help support it.

“What I’d hate to have happen is three years from now we look back and say, ‘Remember the Flint water crisis? That’s the best news we’ve ever done.’” Duffy said. “I’d like in three years to say, ‘Remember the Flint water crisis? That is what started all this other incredible work.’ We’ve shown ourselves what we’re capable of and the talent we have in our newsroom.”

Carmody, the reporter in Flint, points to a more immediate hope: that the lead crisis in Flint will be solved. But he’s looking to the future, too.

In about sixteen years, he said, he expects to retire from journalism. “I know on my very last day, I’m going to do a story about Flint water. Not because it’s my last day, and I feel like I have to, or because it’s an anniversary, but because it’s still going to be hurting people in this community sixteen years from now.”

*Love news about local news? Then sign up (<http://eepurl.com/OpARj>) for the United States Project weekly email.*

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Anna Clark is CJR's correspondent for Michigan, Wisconsin, Ohio, and Pennsylvania. A 2011 Fulbright fellow, Clark has written for *The New York Times*, *The American Prospect*, and *Grantland*. She can be found online at [www.annaclark.net](http://www.annaclark.net) (<http://www.annaclark.net>) and on Twitter @annaleighclark (<http://twitter.com/annaleighclark>). She lives in Detroit.

## Great Lakes Law

A Blog on All Things Wet and Legal in the Great Lakes Region by Professor Noah Hall

October 16, 2016

### Flint water crisis litigation – a reading list

Professors tend to love reading lists. I do. Here's mine for Flint water crisis litigation, updated as needed.

#### 1. Background – what happened in Flint, how, and why:

U.S. EPA, Emergency Administrative Order re City of Flint, Michigan Department of Environmental Quality, and the State of Michigan (January 2016)

[http://www.greatlakeslaw.org/Flint/EPA\\_Emergency\\_Administrative\\_Order.pdf](http://www.greatlakeslaw.org/Flint/EPA_Emergency_Administrative_Order.pdf)

Flint Water Advisory Task Force, Final Report (March 2016)

[http://www.greatlakeslaw.org/Flint/FWATF\\_FINAL\\_REPORT\\_March\\_2016.pdf](http://www.greatlakeslaw.org/Flint/FWATF_FINAL_REPORT_March_2016.pdf)

Peter Hammer, The Flint Water Crisis, KWA and Strategic-Structural Racism, Written Testimony Submitted to the Michigan Civil Rights Commission (July 2016)

[http://www.greatlakeslaw.org/Flint/Hammer\\_Flint\\_MCRC\\_Testimony.pdf](http://www.greatlakeslaw.org/Flint/Hammer_Flint_MCRC_Testimony.pdf)

#### 2. Safe Drinking Water Act citizen suit enforcement:

Petition for Emergency Action under the Safe Drinking Water Act, 42 U.S.C. § 300i, to Abate the Imminent and Substantial Endangerment to Flint, Michigan Residents from Lead Contamination in Drinking Water, submitted by a coalition of public interest organizations to the EPA (October 2015)

[http://www.greatlakeslaw.org/files/aclu\\_nrdc\\_petition.pdf](http://www.greatlakeslaw.org/files/aclu_nrdc_petition.pdf)

Concerned Pastors for Social Action et al., Notice of Intent to Sue Under the Safe Drinking Water Act, 42 U.S.C. § 300j-8 (b)(1)(a), for Failure to Control Lead in Drinking Water in Flint, Michigan, and Failure to Assist Michigan Schools with Lead Testing and Remediation (November 2015)

[http://www.greatlakeslaw.org/files/aclu\\_nrdc\\_noi.pdf](http://www.greatlakeslaw.org/files/aclu_nrdc_noi.pdf)

Concerned Pastors for Social Action v. Khouri, Complaint (January 2016)

[http://www.greatlakeslaw.org/files/concerned\\_pastors\\_for\\_social\\_action\\_aclu\\_nrdc\\_v\\_khouri\\_complaint.pdf](http://www.greatlakeslaw.org/files/concerned_pastors_for_social_action_aclu_nrdc_v_khouri_complaint.pdf)

Concerned Pastors for Social Action v. Khouri, Motion for Preliminary Injunction (March 2016)

[http://www.greatlakeslaw.org/Flint/Concerned\\_Pastors\\_for\\_Social\\_Action\\_Motion\\_for\\_Preliminary\\_Injunction.pdf](http://www.greatlakeslaw.org/Flint/Concerned_Pastors_for_Social_Action_Motion_for_Preliminary_Injunction.pdf)

(Appendix documents available on Great Lakes Law website)

Concerned Pastors for Social Action v. Khouri, Opinion and Order Denying Defendants' Motions to Dismiss (July 2016)

[http://www.greatlakeslaw.org/Flint/Concerned\\_Pastors\\_for\\_Social\\_Action\\_Opinion\\_Denying\\_Motions\\_to\\_Dismiss.pdf](http://www.greatlakeslaw.org/Flint/Concerned_Pastors_for_Social_Action_Opinion_Denying_Motions_to_Dismiss.pdf)

#### 3. Criminal prosecution:

People v. Stephen Busch, Michael Prysby, and Michael Glasgow, Criminal Complaint (April 2016)

[http://www.greatlakeslaw.org/Flint/People\\_v\\_Busch\\_Prysby\\_Glasgow\\_Criminal\\_Complaint.pdf](http://www.greatlakeslaw.org/Flint/People_v_Busch_Prysby_Glasgow_Criminal_Complaint.pdf)

People v. Liane Shekter-Smith, Criminal Complaint (July 2016)

[http://www.greatlakeslaw.org/Flint/People\\_v\\_Shekter\\_Smith\\_Criminal\\_Complaint.pdf](http://www.greatlakeslaw.org/Flint/People_v_Shekter_Smith_Criminal_Complaint.pdf)

People v. Adam Rosenthal, Criminal Complaint (July 2016)

[http://www.greatlakeslaw.org/Flint/People\\_v\\_Rosenthal\\_Criminal\\_Complaint.pdf](http://www.greatlakeslaw.org/Flint/People_v_Rosenthal_Criminal_Complaint.pdf)

People v. Patrick Cook, Criminal Complaint (July 2016)

[http://www.greatlakeslaw.org/Flint/People v Cook Criminal Complaint.pdf](http://www.greatlakeslaw.org/Flint/People_v_Cook_Criminal_Complaint.pdf)

People v. Nancy Peeler, Criminal Complaint (July 2016)

[http://www.greatlakeslaw.org/Flint/People v Peeler Criminal Complaint.pdf](http://www.greatlakeslaw.org/Flint/People_v_Peeler_Criminal_Complaint.pdf)

People v. Robert Scott, Criminal Complaint (July 2016) –

[http://www.greatlakeslaw.org/Flint/People v Scott Criminal Complaint.pdf](http://www.greatlakeslaw.org/Flint/People_v_Scott_Criminal_Complaint.pdf)

People v. Corinne Miller, Criminal Complaint (July 2016)

[http://www.greatlakeslaw.org/Flint/People v Miller Criminal Complaint.pdf](http://www.greatlakeslaw.org/Flint/People_v_Miller_Criminal_Complaint.pdf)

#### **4. Civil suits:**

Attorney General Bill Schuette on behalf of the People of the State of Michigan v. Veolia North America, Inc. et al., Complaint (August 2016)

[http://www.greatlakeslaw.org/Flint/AG People v Veolia complaint.pdf](http://www.greatlakeslaw.org/Flint/AG_People_v_Veolia_complaint.pdf)

Mays v. Snyder, Complaint (November 2015)

[http://www.greatlakeslaw.org/files/mays v snyder fed complaint.pdf](http://www.greatlakeslaw.org/files/mays_v_snyder_fed_complaint.pdf)

Mays v. City of Flint, Complaint (January 2016)

[http://www.greatlakeslaw.org/files/mays v flint genesee complaint.pdf](http://www.greatlakeslaw.org/files/mays_v_flint_genesee_complaint.pdf)

(Numerous other Mays class pleadings available at Flint Water Class Action website -

<http://www.flintwaterclassaction.com/>)

Kidd v. McLaren Flint Hospital, Complaint (February 2016)

[http://www.greatlakeslaw.org/files/kidd v mclaren complaint.pdf](http://www.greatlakeslaw.org/files/kidd_v_mclaren_complaint.pdf)

Boler v. Earley, Complaint (January 2016)

[http://www.greatlakeslaw.org/files/boler v earley complaint.pdf](http://www.greatlakeslaw.org/files/boler_v_earley_complaint.pdf)

Gilcreast v. Lockwood, Andrews & Newman, P.C., et al., Class Complaint (March 2016)

[http://www.greatlakeslaw.org/Flint/Gilcreast v LAN complaint.pdf](http://www.greatlakeslaw.org/Flint/Gilcreast_v_LAN_complaint.pdf)

Walters v. Lockwood, Andrews & Newman, P.C., et al., Complaint (March 2016)

[http://www.greatlakeslaw.org/Flint/Walters v LAN complaint.pdf](http://www.greatlakeslaw.org/Flint/Walters_v_LAN_complaint.pdf)

Mason v. Lockwood, Andrews & Newman, P.C., et al., Amended Class Complaint (July 2016)

[http://www.greatlakeslaw.org/Flint/Mason v LAN Amended Class Complaint.pdf](http://www.greatlakeslaw.org/Flint/Mason_v_LAN_Amended_Class_Complaint.pdf)