



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONAL ADMINISTRATOR
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

Dear Petitioners:¹

This letter is a follow up to the October 5, 2021 letter in which the U.S. Environmental Protection Agency acknowledged petitioners' correspondence, dated September 9, 2021, to Administrator Michael Regan, Assistant Administrator for Water Radhika Fox, Acting Assistant Administrator for Enforcement and Compliance Assurance Lawrence Starfield, and Acting Regional Administrator Cheryl Newton. The letter transmitted a petition requesting that EPA take action using emergency authority in Section 1431 and authority in Section 1442(b) of the Safe Drinking Water Act (SDWA) to investigate and address elevated lead levels in Benton Harbor's ("Benton Harbor's" or "the City's") drinking water. We appreciate the time that petitioners have taken to meet with EPA on numerous occasions since September 9, 2021, including meetings on September 15, 2021, October 21, 2021, October 26, 2021, November 8, 2021, and December 2, 2021. In addition to those meetings, EPA and petitioners have engaged on many other occasions regarding issues raised in the petition as well as several of the EPA response actions detailed below.

In response to EPA's observations made during a joint federal-state inspection of the Benton Harbor Public Water System ("Benton Harbor" or "the PWS") conducted September 20-27, 2021, and the urgent concerns raised in your petition, EPA, in coordination with the Michigan Department of Environment, Great Lakes, and Energy (EGLE), the Michigan Department of Health and Human Services (MDHHS), and the Berrien County Health Department (BCHD), mobilized a comprehensive response to address the community's urgent public health needs, including, but not limited to, the following actions:

Provision of Free Emergency Water and Filters

- Distribution of bottled water to the community – EPA is providing ongoing oversight and support of Michigan's commitment to "ensure residents of Benton Harbor have immediate access to free bottled water for consumption through distribution sites and drop-off delivery until further notice."²

¹ Reverend Edward Pinkney, Benton Harbor Community Water Council; Nicholas Leonard and Erin Mette, Great Lakes Environmental Law Center; Jeremy Orr and Cyndi Roper, NRDC; Nayyirah Shariff, Flint Rising; Sylvia Orduño, People's Water Board Coalition; Maureen Taylor, Michigan Welfare Rights Organization; Melissa Mays, Water You Fighting For; Elin Betanzo, Safe Water Engineering, LLC; Marian Kramer, Highland Park Human Rights Coalition; Michelle Martinez, Michigan Environmental Justice Coalition; Gail Philbin and Rhonda Anderson, Sierra Club Michigan Chapter; Dr. Mona Hanna-Attisha; Mary Brady Enerson, Clean Water Action; Mara Herman, Ecology Center; Jill Ryan, Freshwater Future; Daryl Jordan, East Michigan Environmental Action Council; Linda Campbell, Detroit People's Platform; Yanna Lambrinidou and Paul Schwartz, Campaign for Lead Free Water; Liz Kirkwood, For Love of Water; and Mona Monroe-Younis, Environmental Transformation Movement of Flint.

² Michigan Executive Directive No. 2021-6 "Ensuring safe drinking water for residents of Benton Harbor" (October 14, 2021). Additional details regarding the State's bottled water distribution plan can be found at: <https://www.epa.gov/system/files/documents/2021-11/2021-10-28-egle-dhhs-response-to-epa.pdf>. Dates and locations for bottled water pick up are provided at: <https://www.michigan.gov/mileadsafe/0,9490,7-392-109022---,00.html>.

- Distribution of bottled water to schools and daycares – Deliveries to schools and daycares began the week of October 18, 2021 and included a total of 16 schools, daycare centers, and in-home childcare sites, as well as 4 housing complexes. Michigan has committed to identify additional sites to be served on an ongoing basis.³
- Distribution of filters to the community – Active distribution and education on filters have been paused in the community while a filter efficacy study is underway.⁴ Before active filter distribution was paused, BCHD reported that approximately 2,500 water filters had been distributed between January/February 2019 and September 24, 2021 at no cost to Benton Harbor residents. In September 2021, the State reported planning for an enhanced program to contact every household in Benton Harbor through direct engagement (door-to-door) to provide access to a working filter, material on the proper use of the filter, instructions on getting replacement cartridges, hotline phone number for questions, and current information on the health risk of lead in the tap water of homes. Pending the results of the filter study, the State anticipates resuming proactive filter education and distribution. EPA will provide technical assistance to the State on developing filter efficacy materials, and EPA is available to work with the State to develop a filter operation and maintenance education program.
- Funding for local organizations – To ensure the continued success of bottled water distribution locations in Benton Harbor, the State has partnered with local agencies to pay city residents who volunteer at state-supported bottled water distribution sites, retroactive to October 1, 2021.⁵

EPA Enforcement Order Requiring Immediate Action

- On November 2, 2021, EPA issued a SDWA Section 1414(g) Unilateral Administrative Order⁶ to the Benton Harbor PWS based on violations and deficiencies observed during the September 20-27, 2021 joint federal-state inspection of the PWS.⁷ The SDWA Section 1414(g) Unilateral Administrative Order was deemed the most appropriate response given the totality of the circumstances and requires the City to take several immediate and longer-term actions to protect residents in Benton Harbor, including:
 - Informing consumers when lead action level exceedances are detected in drinking water;
 - Improving the application of chlorine for disinfection and orthophosphate for corrosion control;
 - Implementing stricter requirements for better monitoring of residual disinfectants

³ Letter from EGLE Director Clark/MDHHS Director Hertel to EPA Region 5 Regional Administrator Shore (October 28, 2021), <https://www.epa.gov/system/files/documents/2021-11/2021-10-28-egle-dhhs-response-to-epa.pdf>.

⁴ Letter from EGLE Director Clark/MDHHS Director Hertel to EPA Region 5 Regional Administrator Shore (October 28, 2021), <https://www.epa.gov/system/files/documents/2021-11/2021-10-28-egle-dhhs-response-to-epa.pdf>.

⁵ Michigan Press Release “State to begin paying Benton Harbor residents and sites distributing bottled water” (October 28, 2021), https://content.govdelivery.com/attachments/MIDHHS/2021/10/28/file_attachments/1980193/Benton%20Harbor%20update%20102821%20NR.pdf.

⁶ EPA SDWA Section 1414(g) Unilateral Administrative Order (November 2, 2021), https://www.epa.gov/system/files/documents/2021-11/mi000600_bentonharbor_uao_final.pdf.

⁷ EPA SDWA Drinking Water Inspection Report (October 27, 2021), https://www.epa.gov/system/files/documents/2021-11/mi000600_bentonharbor_insp_20211027.pdf.

- and their byproducts;
 - Making filter repairs at the treatment plant; and
 - Using an independent third-party to conduct an analysis of alternatives for the long-term operation and maintenance of the PWS.
- EPA makes compliance advisors available to small and medium, under-resourced drinking water systems nationwide that may lack sufficient expertise. In connection with its oversight role over the Benton Harbor PWS, EPA offered Benton Harbor the services of a compliance advisor to provide direct, one-on-one technical assistance to the PWS operator. The compliance advisor is among those now assisting Benton Harbor with the third-party alternatives analysis required by the federal Order.
- EPA continues to meet with EGLE, the primacy agency, and Benton Harbor on a technical level on a weekly basis to monitor the City’s compliance with the federal Order.
- EPA is also closely collaborating with EGLE regarding the City’s compliance with an existing state Administrative Consent Order to ensure there is a coordinated enforcement strategy to return the PWS to full compliance.⁸

Filter Efficacy Study

- According to the most recent science and studies, certified filters that are properly installed and maintained are very effective in reducing lead concentrations in drinking water. EPA is evaluating the state of the science and acting to further understand filter effectiveness in relation to Benton Harbor’s specific water chemistry.
- On November 8, 2021, EPA deployed a team of more than 15 scientists and supporting personnel to Benton Harbor to start its filter study to better understand Benton Harbor’s drinking water.⁹ Water sampling helps EPA and its partner state agencies to understand:
 - Where the lead in the water in residences comes from;
 - Whether lead particles are present and, if so, the properties of those particles, including size; and
 - How well filters work to reduce lead in Benton Harbor drinking water.
- As of January 20, 2022, EPA and MDHHS had sampled water in approximately 240 homes and have provided preliminary results to residents as they become available by phone and letter. EPA is in ongoing contact with state and local agencies in support of the study.

Lead and Copper Rule Implementation

- EPA supports Michigan’s October 14, 2021 commitment to “expediting lead service line replacements using additional federal, state, and local resources, with the goal of replacing

⁸ On March 4, 2019, EGLE and Benton Harbor entered into an Administrative Consent Order, ACO-399-07-2019, to address violations and significant deficiencies of Michigan Safe Drinking Water Rules (MSDWRs). On August 7, 2020, EGLE and Benton Harbor agreed to amend the 2019 state Order to acknowledge completion of several activities required by the 2019 state Order and to require Benton Harbor to take additional actions to correct MSDWR violations and significant deficiencies. On November 2, 2021, EGLE issued a Significant Deficiency Violation Notice based on observations made during the September 20-27, 2021 joint federal-state inspection of the PWS.

⁹ Drinking water sampling protocols for the Benton Harbor filter study are available at: https://www.epa.gov/system/files/documents/2021-11/field-collection-protocols_revision_2021-11-12-web.pdf.

100% of lead service lines in Benton Harbor in 18 months.”¹⁰ In October 2020, EPA awarded \$5.6 million to Benton Harbor under a Water Infrastructure Improvements for the Nation (WIIN) Act grant for lead service line replacement, along with a corrosion control study.

- EPA is providing EGLE with technical assistance regarding corrosion control treatment in Benton Harbor. A portion of the \$5.6 million WIIN grant EPA recently awarded to Benton Harbor has been dedicated to an ongoing corrosion control treatment study. In addition, EPA’s Office of Research and Development has offered to assist the City and State by providing an analysis of the pipe scale.
- On November 23, 2021, EPA provided comments on the ongoing corrosion control treatment study to the State.¹¹ EPA will continue to evaluate new information in providing technical assistance to the State, as well as continue evaluating the need for EPA to utilize other authorities necessary to ensure compliance with the Lead and Copper Rule (LCR).
- EPA LCR guidance sets forth procedures for calculation of the 90th percentile by primacy agencies. Since 2020, under Michigan’s revised LCR, EGLE has added its own requirements to improve quality assurance for LCR sampling data. It has required water systems to submit LCR site sampling plans to EGLE along with service line material inventories. EGLE also provides systems with example Drinking Water Lead and Copper Sampling Instructions, including the additional fifth liter sample required by the Michigan LCR.

Public Education and Community Engagement

- As noted above, EPA’s SDWA Section 1414(g) Unilateral Administrative Order requires the PWS to comply with LCR public education requirements.
- From November 8, 2021 through the date of this letter, EPA and its partners have contacted over 600 residents, distributed over 270 doorhangers, and met with residents in over 200 households regarding the filter efficacy study. EPA will provide a summary of our community engagement recommendations as a component of the study.
- EPA participates in weekly calls with EGLE, MDHHS, and the City to engage with Benton Harbor residents and community organizations on lead in drinking water issues. EPA staff provide progress updates on the filter and water studies, respond to questions, and are available to connect residents to other federal resources if needed. We understand that representatives of the petitioners are invited to participate in these calls which provide an opportunity for ongoing engagement for the Benton Harbor community.
- EPA participated with local and state agencies in City of Benton Harbor Water Response Resource Fairs on November 4, 2021 and December 16, 2021 for residents to learn about the health impacts of lead and resources available to help reduce or eliminate lead from their homes.
- EPA will coordinate with the State to organize additional resource fairs or other types of community outreach as needed going forward.
- The State will continue its ongoing program to supply residents with bottled water while additional assurance testing is ongoing in Benton Harbor to increase the community’s

¹⁰ Michigan Press Release “Gov. Whitmer Signs Directive to Coordinate All Available State Resources to Deliver Safe Drinking Water to Residents in Benton Harbor” (October 14, 2021), <https://www.michigan.gov/whitmer/0,9309,7-387-90499-570500--00.html>.

¹¹ EPA letter to EGLE (November 23, 2021), https://www.epa.gov/system/files/documents/2021-12/mi_benton-harbor_cct-study-plan-feedback_ltr_2021-11-23.pdf.

confidence in the safety of their drinking water and ensure it meets state and federal safe drinking water standards.¹²

- EPA is working with the State and local partners to develop clear, consistent, and up-to-date information, including notifications to inform and advise residents. The State has provided notifications to the community in several languages, including English, Spanish, and American Sign Language.
- EPA is committed to working with the State to develop a filter operation and maintenance education program, once we confirm that filters are effective.

Thank you for raising awareness regarding the urgent public health needs of this community. We share your commitment to ensuring that Benton Harbor residents have safe drinking water flowing from their taps, and we look forward to continuing to engage on important matters, including filter efficacy study results, water treatment status, and comprehensive filter education and outreach. In addition, we will continue to work closely with our state and local partners to provide outreach directly to the Benton Harbor community via a number of approaches, such as community resource fairs and comprehensive updates of EPA's Benton Harbor website:

<https://www.epa.gov/mi/benton-harbor-drinking-water>. This Administration is committed to ensuring robust and meaningful community engagement at all points as the Benton Harbor PWS returns to compliance. This is a key part of the Administration's commitment to environmental justice. To that end, we will continue to update the website as soon as possible once new information is available and deliverables have been submitted to EPA.

We also welcome your ongoing engagement with the national and regional environmental justice programs on advancing EPA's environmental justice practice and policy, including through the NEJAC, WHEJAC, and regular community engagement calls hosted by EPA's Office of Environmental Justice. In particular, we welcome comment on EPA's national lead strategy, which is open for public comment through March 2022, and focuses attention on overburdened communities with environmental justice concerns. For details regarding EPA's environmental justice programs, please contact Alan Walts at 312-353-8894 or walts.alan@epa.gov. We look forward to regular and ongoing engagement with you and other environmental justice leaders in Michigan and across the region.

Finally, EPA will continue to monitor the situation in Benton Harbor and take further actions as appropriate and necessary as we work to ensure that the residents of Benton Harbor are protected from exposure to lead in drinking water.

Sincerely,

Debra Shore
Regional Administrator & Great Lakes National Program Manager

¹² Michigan Press Release "Most recent Lead and Copper Rule testing shows reduced Benton Harbor lead levels" (December 15, 2021), <https://www.michigan.gov/som/0,4669,7-192-47796-574022--,00.html>.

cc:

Eric Oswald, EGLE

Michael Regan, EPA

Radhika Fox, EPA OW

Lawrence Starfield, EPA OECA

Alan Walts, R5 EPA

bcc:

Jacquie Clark

Matt Russo

Victoria Anderson

Taylor Girouard

Valerie Bosscher