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United States Senate

February 3, 2016

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The Honorable Gina McCarthy
Administrator, Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator McCarthy:

As Ranking Democrat on the Superfund, Waste Management and Regulatory Oversight Subcommittee of the Environment and Public Works Committee, I write to request information regarding the steps EPA is taking to determine whether there may be additional communities at risk of drinking water contamination similar to what has been experienced in Flint, Michigan.

In an apparent effort to save money during a state of financial emergency in a city in which 40% of residents live in poverty¹, a state-appointed official decided to switch Flint's drinking water supply from Lake Huron to the Flint River without requiring the water to be treated with an anti-corrosive agent before it entered the city's iron water mains and lead pipe delivery system. Although city and state officials were repeatedly made aware that lead had leached from the pipes into the drinking water supply and that children had been found to have dangerously elevated blood lead levels, they continued to maintain that the drinking water was safe to drink². The State also failed to act on an EPA report and EPA warnings³ that described the problems that would be caused by the failure to add the appropriate anti-corrosive chemicals. Moreover, a report that investigated the State's response to complaints about the water found that it "was often one of aggressive dismissal, belittlement and attempts to discredit these efforts and the individuals involved."

Since the city of Flint is not the only economically stressed city in the United States, many cities still have older lead pipe drinking water delivery systems⁴, and there exist many potential drinking water contaminants besides lead, I request the answers to the following questions:

- 1) How does EPA monitor decisions made by state or local officials to alter their drinking water supplies or water treatment systems or processes? Are State and local officials

¹ <http://www.nytimes.com/2016/01/10/us/flint-wants-safe-water-and-someone-to-answer-for-its-crisis.html>

² <http://www.nytimes.com/2016/01/24/us/when-the-water-turned-brown.html>

³ <http://www.nytimes.com/2016/01/24/us/when-the-water-turned-brown.html>

⁴ http://www.huffingtonpost.com/entry/lead-pipes-everywhere_us_56a8e916e4b0f71799288f54

required to notify EPA in advance of such a switch? If so, how far in advance must such notifications be made, and if not, how long do state or local governments have before such notifications must be made?

- 2) For each of the past 5 years, please list and briefly describe each instance a) EPA was made aware of a state or local decision related to drinking water that caused EPA to warn the state or local government about the potential health or other consequences of its planned action or action taken, b) the response of the state or local government to that warning, c) whether the state or local government action was initiated as a cost-saving measure and d) whether EPA's warning was made public by either EPA or the state or local government, and if so, when.
- 3) Please describe the actions EPA is taking to pro-actively identify additional economically distressed or other communities that may be at risk of problems similar to what occurred in Flint and ensure that additional oversight and guidance is provided to them in order to avoid a similar outcome. Are states with primary enforcement responsibility for implementing the Safe Drinking Water Act (SDWA) currently required to periodically provide EPA with information regarding drinking water systems that have persistently violated SDWA requirements or drinking water systems whose violations caused or could have caused a serious risk to public health? If not, could such reports be useful for EPA in efforts to focus its resources for SDWA enforcement and inspections?
- 4) Section 1413 of SDWA describes the requirements that a state with primary enforcement responsibility for implementing, inspecting and enforcing drinking water standards in their state must meet in order to obtain and retain that responsibility. Specifically, the statute says that EPA must prescribe regulations setting forth "the manner in which the Administrator may determine that such requirements are no longer met. Such regulations shall require that before a determination of the Administrator that such requirements are met or are no longer met with respect to a State may become effective, the Administrator shall notify such State of the determination and the reasons therefor and shall provide an opportunity for public hearing on the determination." Please list and briefly describe each instance in which EPA has notified a state of its determination that the state's requirements for maintaining primary enforcement responsibility for SDWA are no longer being met, whether EPA removed each such state's primary enforcement responsibility, and whether the state subsequently applied (and received) its reinstatement.
- 5) For each of the past 5 years, please list EPA's budget request for SDWA inspection and enforcement activities, as well as what was actually appropriated by Congress.

Thank you very much for your attention to this important matter. Please provide your response no later than close of business on February 26, 2016. If you have any questions or concerns, please have your staff contact Michal Freedhoff of my staff at 202-224-2742.

Sincerely,

A handwritten signature in blue ink that reads "Edward J. Markey". The signature is written in a cursive style with a large, prominent "E" and "M".

Edward J. Markey
Ranking Democrat
Subcommittee on Superfund, Waste Management and
Regulatory Oversight