UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 29 2016

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

The Honorable Karen Williams Weaver
City of Flint
1101 South Saginaw Street, Room 101
City Hall
Flint, Michigan 48502

Mr. Keith Creagh
Director
Michigan Department of Environmental Quality
Constitution Hall
525 West Allegan Street
P.O. Box 30473
Lansing, Michigan 48909-7973

Dear Mayor Weaver and Director Creagh:

EPA received responses to its February 19, 2016 letter to Respondents from the Michigan Department of Environmental Quality (MDEQ) on March 8 and the City of Flint (City) on March 16. As discussed in our March 16, 2016 meeting in Flint, EPA agrees regular communication with and written responses from Respondents are necessary for the Agency to evaluate compliance with the January 2016 Safe Drinking Water Act (SDWA) Emergency Order (Order). We will continue to discuss Respondents' progress weekly via conference calls and in-person meetings.

One of the critical issues raised in EPA's February 19 letter is the Order's requirement for the City to develop a comprehensive plan to ensure optimal corrosion control treatment. Although Respondents' responses (both in their letters and postings on the MDEQ website) flag individual components the City has undertaken to control corrosion, these efforts (i.e., adding orthophosphate and residual chlorine) do not represent a comprehensive approach to minimize lead concentrations. The corrosion control treatment plan must apply to the entire distribution system; it must also address ongoing operation and maintenance to guide any necessary adjustments and set performance goals for determining optimized treatment. Further, EPA understands Respondents issued a Request for Proposal (RFP) on March 24 to hire qualified and experienced consultants to assist the City in its development of the corrosion control treatment plan. The Agency recognizes this is a step forward and will continue to monitor the awarding of such a contract, as committed to in the City's response.

EPA is aware MDEQ has appropriated funds to assist the City with its water supply and infrastructure. EPA remains concerned with the timing of dispersal of such funds. As we discussed in our prior meetings, a portion of these funds will be used by the City to hire qualified and experienced consultants to formally develop a comprehensive corrosion control and distribution system optimization plan. A consulting firm with extensive experience assessing, developing, and implementing corrosion control plans should be chosen and work should begin as soon as possible.

The second significant issue EPA raised in its February 19 letter concerned the inadequate number of qualified personnel to perform the duties and obligations required to ensure the City's public water system complies with SDWA and the National Primary Drinking Water Regulations (NPDWRs). To try and address the concern, in its March 16 letter the City confirmed its near term staffing plan:

- Begin interviews to fill the Director of Public Works position
- Add an MDEQ F-1 licensed operator as a Water Plant Supervisor on March 28, 2016
- Post 16 job openings for the Water Treatment Plant and Water Distribution System the week of March 21. This will facilitate the City filling four Water Plant Operator positions by early April 2016 and ten Water Distribution System Operators and two Lab Technicians by early June 2016. As of March 28, only the Lab Technician position has been posted.
- Issue for bid, an RFP for expert consulting for distribution system optimization

EPA recognizes MDEQ has committed staffing resources to a number of initiatives, such as identifying lead service lines, assisting in the State Revolving Fund application, and working on the above-referenced RFP. EPA recognizes the importance of these efforts to move expeditiously to achieve compliance with the Order. In addition to the critical issues identified within this letter, we have enclosed an Attachment identifying other concerns with responses to the Order. EPA looks forward to our standing weekly meetings and interactions to ensure your continuing progress to adequately staff the treatment plant, optimize corrosion control treatment, and to provide a reliable public drinking water system for the people of Flint.

Sincerely,

Mark Pollins
Director
Water Enforcement Division

Enclosure

Attachment

EPA is still concerned with other issues in terms of the response to the Order. Such issues are identified below.

1. *Respondents have not provided a written response to all of the EPA Flint Task Force (Task Force) requests and recommendations pursuant to Paragraph 52 of the January 21, 2016 Emergency Order (Order).*

Upon review, EPA has determined that the response provided to ¶52 of the Order is not yet complete. There is an ongoing obligation to provide a written response to all Task Force recommendations as they are made. EPA reviewed and on March 24 discussed with Respondents its March 15 response. EPA expects Respondents to update their responses posted on the MDEQ website and to continue to update as necessary.

2. *Respondents have not provided all lead in water testing results for the City since January 2013 (Paragraph 53(b)).*

Paragraph 53.b. of the Order required that in 14 days of the effective date of the Order the Respondents submit "[a]ll lead in water testing results for the City since January 2013, including those not used for LCR compliance." Respondents provided a Flint lead and copper history PDF that supplied the lead and copper sampling sites used through July 2015. EPA raised concerns that not all data was provided, to which Respondents provided follow-up information indicating that it was complete. However, upon further review, EPA found that the lead and copper data submitted in response, and those data which continue to be submitted, do not contain information on invalidated samples that were not included in the 90th percentile compliance calculation. Specifically, EPA knows of two samples collected by the City, which had results at 104 ppb and 397 ppb. These two samples were collected between January 2015 and June 2015 and were not used to calculate the 90th percentile. They are also not listed in the historical data PDF submitted to EPA by the Respondents. . EPA stresses that Respondents must submit to EPA all lead tap sample results that date back to January 2013, *including those not used for LCR compliance,* in order for EPA to determine that Paragraph 53(b) of the Order is satisfied. This includes information on all occasions where samples were submitted, but the analyses were not finalized or reported.

3. *The existing inventory of homes with lead service lines (LSLs) submission is not adequate (Paragraph 54(a)) of the Order.*

To date, Respondents have not provided a complete and adequate inventory of homes with LSLs as required in Paragraph 54(a) of the Order. While EPA understands Respondents have submitted the existing LSL inventory, we believe all parties recognize that the inventory is not representative of the true LSL inventory of the City. Additionally, EPA was informed in the letter submitted by MDEQ on March 8, 2016 that a data sharing meeting took place between the State of Michigan and the University of Michigan-Flint. We request that you provide the notes and decisions that resulted from this meeting. EPA has concerns with the data pertaining to identified LSLs, and needs quality-assured verification from Respondents that all service lines have been correctly identified. To date, EPA has not received any written documentation as to the procedures of MDEQ for identifying unknown LSLs and verification of known LSLs. Additionally, it is obvious to EPA that some of the previously identified "known" LSLs are incorrectly identified. At the March 16 meeting, EPA requested a formal letter from

MDEQ to lay out what has been done thus far to identify LSLs and where issues with identification have arisen, as well as the procedures MDEQ plans to employ in the future for identifying LSLs. EPA understands that it will receive this letter this week. A complete and adequate inventory is crucial to the pursuit of activities to identify LSLs and the development of LSL replacement, notwithstanding Respondents' submission of the existing inventory.

As it relates to LSL identification, EPA reminds Respondents of the February 20, 2016 letter from the Administrator to Mayor Weaver that Respondents shall coordinate with EPA in the removal of LSLs during its application of the "Fast Start" program. EPA remains supportive and committed to the success of this effort.

4. *Respondents have not adequately demonstrated (e.g., using daily sampling information) that they are maintaining chlorine residual in the distribution system (Paragraph 57) or continuing to add corrosion inhibitors at levels sufficient to optimize corrosion control in the distribution system (Paragraph 58).*

EPA previously raised the concern that the current sampling sites may not be appropriate because these sites may not be representative of the distribution system, particularly in terms of chlorine residual sampling. EPA is aware of conflicting data with samples pulled by EPA's Office of Research and Development versus samples pulled by Respondents. The City must ensure to the satisfaction of EPA that all sampling is performed in accordance with 40 CFR Part 136, is occurring at Tier 1 sites in accordance with 40 CFR Part 141, Subpart I, and is transported and analyzed appropriately.

5. *Respondents have not provided plans and schedules to ensure the treatment plant is consistently and reliably meeting plant performance criteria (Paragraph 59(a)).*

EPA received the draft engineering documentation provided by Respondents. However, upon EPA review, this submission is not responsive to the requirement of Paragraph 59(a) of the Order.

The documentation provided speaks only to how the City is going to connect to the KWA water source, and not how the City will ensure the treatment plant is consistently and reliably meeting plant performance criteria. EPA expressed these concerns at the March 16, 2016 meeting. The "Supplemental Information Weekly Conference Call…" report outs are not a substitute for the requirements of Paragraph 59(a) of the Order.

6. *Respondents have not submitted a plan for daily monitoring of water quality parameters in the distribution system with results compiled in a weekly report in an approved format (Paragraph 59(b)).*

EPA acknowledges the receipt of weekly monitoring reports. However, such reports are submitted as PDFs and EPA requires this report be submitted as an Excel spreadsheet. Additionally, Respondents are still required to submit a sampling plan for daily monitoring of water quality parameters in the distribution system.

7. *Respondents have submitted an inadequate operations plan for the corrosion control equipment and daily monitoring of finished water corrosion control parameters (Paragraph 59(c)).*

Respondents have not provided an adequate operations plan for the corrosion control equipment and daily monitoring of finished water corrosion control parameters. EPA acknowledges the receipt of daily monitoring of the finished water corrosion control parameters; however, such reports are submitted in PDF format and EPA requires reports to be submitted as an Excel spreadsheet.

8. *Respondents submitted a list of staff, but have not adequately demonstrated the City has the necessary, capable and qualified personnel required to perform the duties and obligations required to ensure the public water system complies with the SDWA and the National Primary Drinking Water Regulations (Paragraph 61).*

Respondents have not adequately demonstrated that it has the necessary, capable, and qualified personnel as required by Paragraph 61 of the Order. The City has indicated in a letter dated March 16, 2016 to EPA that it commits to hiring necessary staff to properly operate the public water system. The City said it intends to fill ten positions to help run the distribution system and six positions for the water treatment plant. During our March 24 meeting, EPA learned that the City has to re-post job openings for four Water Plant Operators because none of the people that previously applied remained interested. EPA still expects that the positions for hire indicated in the March 16 letter and at the meeting will be filled no later than the beginning of June 2016. EPA stresses the importance of hiring to be done expeditiously. EPA is also aware that the City issued an RFP on March 24 to hire an experienced civil engineering firm to provide additional technical support. In addition, a component of that RFP includes the requirement for an analysis of best practices and estimation of staffing at the Flint Water Plant to properly implement corrosion control treatment and EPA expects that any identified staffing needs will be addressed.

9. *Respondents have not yet provided a list of the "Independent Advisory Panel" (IAP) membership (Paragraphs 63-64).*

The IAP membership list has not been updated since the departure of the City of Flint's City Administrator. Additionally, there is a long list of subcommittee members who are not on the IAP membership list. EPA needs to know the roles of the IAP versus the IAP subcommittees and would like clarification on the differences between the IAP and the IAP subcommittees. EPA has yet to receive any recommendations from the IAP, as required by Paragraphs 63 -64.

10. *Respondents must identify the 25 sites within the distribution system for which water quality parameter measurements are taken (Paragraph 53(a)).*

While EPA appreciates that such sites have been provided, it continues to be concerned with the adequacy of the sites chosen. EPA wishes to further discuss the appropriateness of the sites.