

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755  
LANSING, MICHIGAN 48909

August 1, 2018

**VIA EMAIL AND FIRST CLASS MAIL**

Angela Wheeler, City Attorney  
City of Flint, Department of Law  
1101 South Saginaw Street, 3<sup>rd</sup> Floor  
Flint, MI 48502

William Kim, Assistant City Attorney  
City of Flint, Department of Law  
1101 South Saginaw Street, 3<sup>rd</sup> Floor  
Flint, MI 48502

Re: Settlement Agreement in *Concerned Pastors v Khouri*  
Case No. 2:16-cv-10277-DML-SDD

Dear Angela and Bill:

On June 18, 2018, the City of Flint announced its decision to suspend use of hydro-excavation as the means of characterizing service line compositions. The State of Michigan and Michigan Department of Environmental Quality (State Parties) believe that this decision is unreasonable and will cause Flint to exceed the \$5,000 per address average cap on reimbursements allowed for service line replacements under the Settlement Agreement. If that happens, the State Parties will deny reimbursement for any excess costs. Moreover, if State Parties are required to seek additional funds to replace service lines in Flint, we caution that Flint's decision to incur these unnecessary costs will make any such efforts more difficult to achieve. For these reasons, we request that Flint reconsider its decision.

**A. Relevant terms of the Settlement Agreement**

Under the Settlement Agreement, Flint is required to conduct 18,000 excavations and replace any discovered lead or galvanized steel service lines by January 1, 2020. (¶ 20.) State Parties are required to provide \$87,000,000 to reimburse Flint for costs associated with conducting the excavations and replacing lead and galvanized steel service lines. (¶ 22.) An additional \$10,000,000 is available if Flint's costs exceed \$87,000,000. (¶ 27.) Under specified circumstances, State Parties may be required to undertake efforts to secure additional funds if Flint's costs are likely to exceed \$97,000,000. (¶ 32.)

Flint may not obtain reimbursements above \$5,000 per address at which a service line is replaced without obtaining prior authorization from MDEQ. MDEQ is required to apply a reasonableness standard to any request for excess costs. The per address cost is also calculated on an average replacement cost for a relevant time period. (§ 23.b.)

**B. Flint's decision to stop the use of hydro-excavation is unreasonable**

As of July 2018, Flint had conducted roughly 8,500 excavations; virtually all those by hydro-excavations. On June 22, 2018, the City advised MDEQ that it was putting a moratorium on further use of hydro-excavations. The stated rationale for Flint's decision was hydro-excavation may not identify service lines that had been spliced with lead or galvanized materials between the curb stop and the residence. Because of its concern that undetected splices might present a public health hazard, the City decided to instead dig 10-foot-long excavations to determine service line compositions.

As MDEQ's Eric Oswald explained in his July 23, 2018 letter to Mayor Weaver, the City's solution will not solve the identified problem because the excavation will only uncover a relatively limited length of the typical service line. Any splice outside of the 10-foot-excavation will be undetected. Moreover, procedures are already in place that should identify any splices between the excavation (whether hydro or standard excavation) and the residence. Contractors conducting excavations are required to inspect the composition of the service line where it enters the residence. If a service line had been spliced between the excavation and the residence, it should be identifiable through those in-house inspections.

Two years of intensive sampling demonstrates that the drinking water in the City is protective of public health—regardless of the composition of a service line serving any residence. Any contention that those more destructive excavations will protect public health more than hydro-excavation is not only unfounded, but contrary to the established facts.

Compounding the problem is the substantially higher cost of standard excavation versus hydro-excavation. Flint's own estimates predict it will cost \$1,703 per residence for excavation as opposed to \$77 per residence for hydro-excavation. (July 12, 2018 email from Hughey Newsome attaching "Open-cut Program Cost 2018-07-03" at lines 5 and 41.) Using those figures to project the cost of conducting the roughly 9,000 remaining excavations required under the Settlement Agreement demonstrates a cost differential of \$15,327,000 for excavations versus \$693,000 for hydro-excavations.

Because there is no measurable public health benefit to excavation versus hydro-excavation, no valid justification exists for incurring the roughly \$14,600,000 in additional costs. Please be advised that the State Parties consider such excavation costs to be unreasonable and they will deny any request for reimbursement that exceeds the \$5,000 average cost cap under the Settlement Agreement due to these unnecessary costs.

I also draw your attention to the fact that if Flint's reimbursable costs for excavating and replacing lead and galvanized steel service lines exceed \$97,000,000, under certain circumstances the State Parties may be required to undertake efforts to secure additional funds from the Legislature. If there is a perception that cost effective approaches were available to reach the same result but were not utilized by Flint, it will make any attempts to secure additional funds more difficult.

We strongly urge Flint to reconsider its decision to halt the use of hydro-excavations. Please feel free to contact me at the below number or at [kuhler@michigan.gov](mailto:kuhler@michigan.gov) if you would like to further discuss this issue.

Sincerely,



Richard S. Kuhl  
Assistant Attorney General  
Environment, Natural Resources, and  
Agriculture Division  
(517) 373-7540

RSK:rah

cc: C. Heidi Grether, Director, MDEQ  
Keith Creagh, Director, MDNR  
Eric Oswald, Director, MDEQ-DWMAD  
Richard Baird, Governor's Office  
S. Peter Manning, Division Chief, MDAG-ENRA