



## CITY OF FLINT, MICHIGAN

Angela Wheeler  
City Attorney

Dr. Karen W. Weaver  
Mayor

August 9, 2018

Mr. Richard S. Kuhl  
Assistant Attorney General  
Michigan Department of Attorney General  
Environment, Natural Resources, and Agriculture Division  
525 West Ottawa Street  
P.O. Box 30755  
Lansing, MI 48909

Re: Settlement Agreement in *Concerned Pastors v. Khouri*; Case No. 2:16-cv-10277-DML-SDD (Response to State of Michigan cost concerns of the usage of traditional excavation over hydro-excavation)

Dear Richard:

I am in receipt of your August 1, 2018 letter expressing the State of Michigan's ("State") concerns relative to its financial obligation to provide \$97,000,000 to the City for the purpose of replacing service lines. Pursuant to ¶ 22 of the *Concerned Pastors* Settlement Agreement, the State may satisfy this obligation with direct appropriations from the State Legislature, federal appropriations or grants for which the State of Michigan acts as an administrator, or any state or federal forgivable loan program. The letter contends that the City's decision to suspend the use of hydro-excavation for the identification of the composition of the service line is unreasonable and that it will cause Flint to exceed the cap for reimbursement as set forth in ¶ 23(b) of the Settlement Agreement. The City strongly disagrees with the State's position.

**A. The City is Not Over Budget on Service Line Replacement and the State/MDEQ's Concern is Premature**

Since at least March of 2017, and even prior to the entry of the Settlement Agreement, the City has set forth budgetary parameters in the lead service line replacement contracts pursuant to ¶ 23 of the Settlement Agreement outlining reimbursements. Through its MDEQ staff, the State was privy to the City's bid package for service line replacement including hydro-excavation, making the State aware of the

expenses to be drawn down from the WIIN funds for service line replacements, installation of copper service lines, extension of service lines into the interior of households, pavement and yard restoration.

As you are aware, on June 22, 2018 the City placed a temporary moratorium on hydro-excavation to address public health concerns. However, instead of reaching out to the City to work on safety measures to solve the problem, the MDEQ has inundated the City with letters with innuendos and conclusory statements accusing the City of taking an unreasonable position on hydro-excavation. Worse yet, the State has even used the City's own Chief Financial Officer's cost spreadsheets multiple times as a means of attacking the financial credibility of the City.

This type of activity is counterproductive, and contrary to the MDEQ and the City's common purpose of upholding safe drinking water standards for the public water system. The City will abide by the terms of the settlement agreement to protect the public from further exposure to harm in the water systems. Consequently, if we need to request prior authorization from the MDEQ to exceed the cap to protect public health, then the request will be made. But presently, the City's service line replacement program is not over budget.

**B. The Health and Safety of the Residents Must Unequivocally Take Precedence Over State/MDEQ Financial Mandates, and the City's Decision to Temporarily Cease the Use of Hydro-Excavation is Reasonable to Protect Public Health.**

On July 19, 2018, the United States Environmental Protection Agency Office of Inspector General (OIG) issued Report No. 18-P-0221 entitled 'Management Weaknesses Delayed Response to Flint Water Crisis,' determining that the MDEQ gave the City inaccurate direction on corrosion control treatment requirements. The MDEQ informed the City that it did not require corrosion control treatment, but instead told the City to monitor the water system for two 6-month periods to evaluate whether or not corrosion control treatment was necessary. The OIG concluded corrosion control treatment should have been implemented immediately and that this bad advice from the MDEQ resulted in damage to the City's service lines and extended the period of exposure to lead in drinking water.

It is the City's concern that we are now receiving bad advice from the MDEQ yet again. The MDEQ – the primacy agency for enforcement of the Safe Drinking Water Act – continues to ignore the facts relative to public health and safety favoring cost savings, to the detriment of the public.

On August 2, 2018, Mayor Weaver provided Eric Oswald with a more-detailed letter on the benefits of traditional excavation over hydro-excavation, which included supporting photographic evidence. The letter also describes licensed plumber Max Elisner's professional opinion on the discovery of spliced lines, and his professional opinion that service lines that were identified as copper-to-copper are not truly copper. These discoveries necessitate the usage of a more extensive verification process.

Plainly, the evidence suggests that hydro-excavation does not reveal the true composition of service lines. Additionally Mayor Weaver stated in her August 2, 2018 letter to Mr. Oswald:

“Depending on the period of installation, the composition of service line material, and oftentimes service lines are not installed in a straight line. The inspected service line may curve (as there was no previous requirement for the service line to be connected in a straight line). Other obstructions to the identification of the line composition, include but are not limited to large diameter tree roots, tube alloy, sidewalks, and driveways limiting the hydro-excavators’ ability to expose the service line. In addition, visibility can be obscured because of water covering the hole or filling the hole back up while the hydro-excavating is still underway. As a result, the hydro-excavation does not reveal an adequate portion of the service line to confirm that the line is completely copper.”

Insisting on hydro-excavation as the sole means of service line composition verification, at the potential expense of inaccurate results, is counterproductive to the purpose and intent of the Settlement Agreement. Although it is very important that the State and the City work collectively to get the 18,000 excavations completed/service line replaced in a timely fashion, it is equally important that there is a modicum of integrity built into the process that protects the public while also fulfilling the City and State’s duties. The City refuses to push the process forward at the expense of public health, and become the victim of bad information again.

If the State, through the MDEQ, is insistent that there is no measurable public health benefit to traditional excavation over hydro-excavation, then I would suggest that it look at the human element at risk in this process. For a moment, the State should look to the faces of the children, pregnant mothers, the immuno-compromised and senior citizens that live in Flint; and consider that if even one house with lead service lines is missed, it will not only fail the intent of the Settlement Agreement, but more importantly it will have a real and lasting impact on the lives of those residents. For reference, consider a copy of the cover of the *Time* magazine and photographs from this issue, featuring one of the youngest victims of bad information from the MDEQ<sup>1</sup> (See Attachments).

The State has mentioned “cost” no less than twelve (12) times in this August 1, 2018 correspondence. I think this is the wrong approach; and I sincerely hope that the State and the MDEQ carefully consider the human impact at stake, and work with the City to stop making cost its singular focus. The City and the MDEQ need to start working collectively on a solution to address this public health concern.

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<sup>1</sup> Photographs taken by Regina H. Boone-Detroit Free Press/TNS/Newscom/Zuma Press

Sincerely,



Angela Wheeler  
City Attorney

Encl.

Cc: Dr. Karen W. Weaver, Mayor, City of Flint  
Mr. Mark Adas, City Engineer, City of Flint  
Mr. Steve Branch, City Administrator, City of Flint  
Dr. Pamela Pugh, Chief Public Health Advisor, City of Flint  
Ms. Candice Mushatt, Communications and Public Information Officer, City of Flint  
Mr. Robert Bincsik, Director of Public Works, City of Flint  
Mr. Hughey Newsome, Chief Financial Officer, City of Flint  
Ms. Makini Jackson, Human Resources and Labor Relations Director, City of Flint  
Mr. Herbert Winfrey, City Council President, City of Flint  
Ms. Linda Holst, Acting Director, Water Division, Region 5, USEPA  
Mr. Tom Poy, USEPA  
Mr. Anthony Ross, Deputy Project Manager, Region 5, USEPA  
Ms. C. Heidi Grether, Director, MDEQ  
Mr. Eric Oswald, Director, Drinking Water Municipal Assistance, MDEQ  
Ms. Amy Epkey, Administration Deputy Director, MDEQ  
Mr. Aaron Keatley, Chief Deputy Director, MDEQ  
Mr. Michael McClellan, Environmental Deputy Director, MDEQ  
Ms. Sarah Tallman, NRDC  
Ms. Dimple Chaudhary, NRDC  
Mr. Keith Creagh, Director, MDNR  
Mr. Richard Baird, Governor's Office  
Mr. S. Peter Manning, Division Chief, Michigan Department of Attorney General  
Mr. Gary Peters, U.S. Senator  
Ms. Debbie Stabenow, U.S. Senator  
Mr. Dan Kildee, U.S. Congressman  
Mr. Jim Ananich, State Senator









