



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF  
ENVIRONMENT, GREAT LAKES, AND ENERGY  
LANSING



LIESL EICHLER CLARK  
DIRECTOR

November 3, 2021

VIA E-MAIL

The Honorable Ed McBroom  
State Senator  
State Capitol  
P.O. Box 30036  
Lansing, Michigan 48909-7536

Dear Senator McBroom:

I greatly appreciate your patience, understanding, and reasonable response to the approach we proposed for fulfilling your October 18, 2021, request for Michigan Department of Environment, Great Lakes, and Energy (EGLE) records related to elevated levels of lead in drinking water sampled at city of Benton Harbor (Benton Harbor) homes.

As I promised in my October 26, 2021, response to your request, EGLE is providing the Senate Oversight Committee today more than 11,000 pages of documents made public in response to the 28 Freedom of Information Act (FOIA) requests processed over the last 18 months. These documents have been shared with you and your colleagues and are publicly available in a searchable format here: [Benton Harbor Public Document Releases](#).

EGLE will add additional records in periodic installments as they progress through the review process, which is necessary to serve vital interests such as protecting members of the public from disclosure of personal information unnecessarily identifying them. We will present new installments in a format that allows readers to distinguish updates from records previously provided. That will continue until our response is complete.

I wholeheartedly agree with the statement in your letter that a thorough review of EGLE's response to high lead levels in Benton Harbor drinking water samples "is necessary and will help strengthen and preserve the Department's effectiveness moving forward." EGLE oversees and enforces the compliance of nearly 2,700 community water supplies and nontransient noncommunity water supplies with the Safe Drinking Water Act, 1976 PA 399, as amended (SDWA), and Michigan's most-protective-in-the-nation Lead and Copper Rule (LCR). Public confidence in our oversight and enforcement underpins public confidence in the safety of community drinking water across the state, which is vital to protecting public health, our environment, and quality of life.

I believe the records we are providing today and will continue to share in the coming weeks, along with your corresponding oversight activities, will strengthen that critical public confidence and serve our shared interest in ensuring all Michiganders have access to safe water. In the process, I hope we will take advantage of this opportunity to identify changes to state policy, agency programs and procedures, and funding approaches that will accelerate Michigan's progress statewide in reducing drinking water lead exposure risk.

To start that important conversation and clear up some of the misinformation that has been aired publicly in recent weeks, I want to briefly summarize three key lessons I am learning from the current action around drinking water in Benton Harbor:

1. A range of actions were taken by multiple entities to inform Benton Harbor residents about elevated lead levels in community water samples, but given that many residents were not fully reached and engaged by those efforts, we should consider potential improvements to our whole-of-government approach to communications.
2. The situation in Benton Harbor is unique and particularly urgent, but it is also part and parcel of a statewide lead drinking water challenge that Michigan must more fully acknowledge and address.
3. State, local, and federal agencies are partnering to implement effective, well-researched, and vetted strategies for reducing the risk of residential exposures to lead in drinking water—in Benton Harbor and elsewhere—but we should continue working together to apply those strategies more broadly, rapidly, and comprehensively.

I believe you will share those conclusions after reviewing the thousands of records you will receive from EGLE in the coming weeks. Together, they point to renewed opportunities for us to collaborate on vital drinking water issues.

- 1. A range of actions were taken by multiple entities to inform Benton Harbor residents about elevated lead levels in community water samples, but given that many residents were not fully reached and engaged by those efforts, we should consider potential improvements to our whole-of-government approach to communications.**

Benton Harbor is a strong, proud, welcoming majority Black city with a rich history. Like many similar Midwestern cities; however, its population has declined significantly—by roughly half—in recent decades as employers and people moved elsewhere. And according to the 2021 U.S. Census, more than 45 percent of Benton Harbor residents live under the poverty line.

Recognizing those realities, EGLE and partners took the extra steps described below to inform and engage residents about elevated lead levels in drinking water sampled in their community, in addition to fulfilling our regulatory role in overseeing Benton Harbor as it met its statutory requirements to notify residents about Action Level Exceedances (ALE) for lead.

A. **Standard notification requirements and procedures were followed in Benton Harbor.** When EGLE validates that the required LCR sampling and testing conducted by a community water supply in a given monitoring period shows an ALE, it sends the water supply an **ALE letter**. EGLE also sends an advance e-mail notifying key stakeholders, including a range of state and local officials, that the ALE letter will soon be sent. According to our records, for example, two members of your committee have recently received these notices for communities in their districts. Those communications for Benton Harbor ALEs will be posted on our website as part of upcoming installations of records responding to your request.

In turn, the primary responsibility for informing customers of an ALE lies with the water supply in the form of two legal requirements:

- A federal requirement under the SDWA to provide **Public Education** materials about lead drinking water exposures to all customers within 60 days of the end of the monitoring period in which an ALE occurred (which Benton Harbor has recently done via direct mail to city residents); and
- A relatively recent State of Michigan rule designed to provide residents more immediate notification, which requires a water supply to issue a **Public Advisory** within three business days from the date it receives an ALE letter from EGLE. These advisories must make a reasonable attempt to reach all people served by the supply and often take the form of press releases, social media posts, and/or notices in broadcast media or local newspapers.

The table at [Clean Water - Benton Harbor Public Notifications \(michigan.gov\)](#) links to the Public Education and Public Advisory documents Benton Harbor used—and the corresponding certifications Benton Harbor provided EGLE—for each of the six LCR monitoring periods from October 2018 to August 2021 in which it experienced ALEs.

Additionally, the SDWA requires community drinking water supplies to notify individual households of the test results from LCR samples taken at their residences within 30 days of receiving them. EGLE provides community water supplies a template for implementing this requirement, which includes the test results and guidance/resources for residents to protect themselves and their families from lead exposures. EGLE's Drinking Water and Environmental Health Division (DWEHD) proactively reminds community water supplies of this legal requirement when tests from individual residences show lead levels at or above 15 parts per billion (ppb)—the current ALE threshold in Michigan's LCR.

Additionally, the SDWA requires all community water supplies to provide their customers an annual **Consumer Confidence Report** or CCR (often referred to as an Annual Water Quality Report). These reports are required to provide specific information/language on the supply's water quality, including lead and copper levels. Benton Harbor's recent CCRs are available [here](#).

**B. Community engagement in Benton Harbor beyond legal requirements.** In addition to the above steps EGLE takes statewide as a regulatory agency to ensure community water supplies notify their customers when an ALE occurs, the department has taken the following added steps (among others) to engage Benton Harbor residents over the past three years:

- Collaborated with the Michigan Department of Health and Human Services (DHHS) and local partners to host two townhall meetings attended by residents, community leaders, and city officials (an in-person event at City Hall in early 2019 and virtual gathering during the summer of 2020). In the process, EGLE and partners directed community members to updated communication materials and dedicated content on the statewide [Mi Lead Safe](#) website.
- Joined partners in February 2020 to create a [Benton Harbor Water Outreach Task Force](#) with the express purpose of informing residents about lead in drinking water. This task force of community residents and key stakeholders has remained in place since.
- Proactively communicated with residents and stakeholders in Benton Harbor around the February 2021 launch of our [Water Leak Pilot](#), which provided the opportunity for 100 Benton Harbor residents to receive free in-home plumbing repairs and new fixtures.
- Engaged Benton Harbor Area Schools in our school drinking water lead testing program, which includes a plumbing assessment at each school, sampling of all potable fixtures, and assistance developing water management plans.

Local press coverage over the past three years provides further indication that state and local efforts to get the word out about drinking water lead exposure risk were having an impact. It is also important to note that the above summary is relatively narrowly focused on EGLE's role. Among the other complementary efforts, it does not include the engagement and communications conducted by the DHHS and the Berrien County Health Department (BCHD) as part of their public health response in Benton Harbor.

Despite this significant communication over the past three years, however, I know firsthand from recent visits with residents at water distribution sites and other venues that the desired information has not fully reached and connected with many Benton Harbor residents. This gap should serve as an important point of reflection and discussion for officials and stakeholders at all levels of government. I hope you will join my state agency colleagues and me in a forward-looking conversation about how we can improve the whole-of-government approach to engaging communities like Benton Harbor on vital public health issues such as this one.

**2. The situation in Benton Harbor is unique and particularly urgent, but it is also part and parcel of a statewide lead drinking water challenge that Michigan must more fully acknowledge and address.**

The population loss and disinvestment mentioned above has left Benton Harbor to manage and maintain a century-old water system built for a bigger community, but with a much smaller population and ratepayer base to share the costs. Communities throughout Michigan of all demographic profiles and financial means have not invested in their water infrastructure at a steady enough rate to avoid decline and disrepair. Sustained economic distress has only deepened that challenge in Benton Harbor.

As the documents responding to your request and posted on our website over time will demonstrate, EGLE has responded to this reality by engaging in sustained efforts—well above and beyond legal requirements—to assist Benton Harbor in fulfilling its legal responsibility to comply with the federal Safe Drinking Water Act and state rules. However, despite continuous efforts, the lasting impacts of decades of underinvestment in water system maintenance and upgrades has led to relatively steady and pronounced violations of the SDWA in Benton Harbor and triggered multiple EGLE enforcement actions, our department's determination that the system lacked the technical, managerial, and financial (TMF) capacity to meet state and federal rules, and the decertification of the supply's Operator-in-Charge (OIC) in January 2021.<sup>1</sup>

In addition to these challenges rooted in structural inequities and sustained economic distress, the situation in Benton Harbor is also urgent and unique because the water supply's ALEs for lead have persisted for three years (see relevant data [here](#)).

As mentioned above, under Michigan's new most-protective-in-the-nation LCR, the action level for lead is 15 ppb.<sup>2</sup> In its most recent testing cycle, Benton Harbor's level was 24 ppb. While Benton Harbor's ALE values in 2021 are not the highest for a community water supply in Michigan this year, Benton Harbor has been above the action level for six straight monitoring cycles, while most communities return below the action level more quickly. Additionally, some community samples have shown particularly high lead levels. For example, three samples collected during the first sampling period of 2021 showed levels above 150 ppb.<sup>3</sup>

The confluence of the above factors has led to the more intense State of Michigan public health response you see today, including communitywide [bottled water distribution](#).

Still, while the Benton Harbor situation is unique and urgent, it is also part of a broader statewide lead in drinking water problem. Just last week, EGLE announced seven new ALEs for the current cycle of LCR testing, including Hamtramck, Manchester, and Wayne. The 90<sup>th</sup> percentile value for those ALEs ranged from 16 ppb to 92 ppb. In the monitoring periods since Michigan strengthened its LCR in 2018, approximately 50 different community water supplies have had ALEs. Those revisions to the LCR, which

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<sup>1</sup> This decertification was upheld on appeal by the Advisory Board of Examiners, and the OIC withdrew a contested case he filed with an administrative law judge.

<sup>2</sup> The ALE determination process lines up the results from the compliance samples taken in the community from lowest to highest. If the 90<sup>th</sup> percentile value in that ordinal list is greater than 15 ppb, the community has an ALE.

<sup>3</sup> At the same time, roughly 33 percent of the samples showed no detectable lead levels.

were designed to better identify problems and spur more urgent action, are having the desired effect.

However, too much focus on the binary distinction between communities with and without ALEs can skew our view of Michigan's lead drinking water challenge. The LCR, as a whole, is designed to detect corrosion issues in a drinking water system, not all lead exposure in a community. The ALE process provides a "canary in the coal mine" of where risk of exposures is likely higher. But a community can have households showing lead in their drinking water without exceeding the ALE threshold of 10 percent of samples testing above 15 ppb.

Fortunately, any homes that serve as lead sampling sites and come back with lead tests above the action level are referred to the DHHS and their local public health partners for inclusion in their programs offering a whole house response.<sup>4</sup> In addition, the DHHS implements a number of programs that help promote statewide awareness of lead risks and helps eliminate sources of lead, irrespective of whether an ALE exists in a community.

Still, ALEs are based on a small subset of all households in a community that is not sufficient to show a statistically representative picture. In Benton Harbor, the 60 samples the city is required to collect semi-annually represent approximately 2 percent of the 3,000 households in the community. For the other 98 percent of homes, the level of risk for drinking water lead exposure remains unknown unless occupants test their water and depends on potential sources of lead in each home's service line and household plumbing.

So, as we have this critical conversation about Benton Harbor and the State of Michigan's ramped up and urgent response there, we need to broaden our perspective as well. Drinking water lead exposure risk is a challenge we need to take seriously virtually everywhere in Michigan where lead pipes and plumbing remain. I hope we can explore together how to more comprehensively and expeditiously apply the mitigation strategies described below on a broader statewide basis.

**3. State, local, and federal agencies are partnering to implement effective, well-researched, and vetted strategies for reducing the risk of residential exposures to lead in drinking water—in Benton Harbor and elsewhere—but we should continue working together to apply those strategies more broadly, rapidly, and comprehensively.**

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<sup>4</sup> This response includes distribution of certified lead reducing filters and replacements (in conjunction with filter usage and maintenance education efforts); surveillance of child and adult blood lead data, and use of nurse case management practices on identified children with elevated lead in blood; conducting additional tap water testing; home lead investigations to identify other lead sources within the community; and the Health Education and Community Outreach program (DHHS and area partnering agencies conducting targeted health education and community outreach to help families protect themselves from lead hazards).

While people with deep technical expertise can argue the finer points, we know the path to reducing the risk of drinking water lead exposures in Michigan.

- We ultimately must **remove lead from the systems**, which move drinking water from treatment plants through various pipes to our premise plumbing and faucets.
- Communities should **evaluate adding corrosion control treatment** to their water if they are not already required to do so (as some communities already have voluntarily).
- Residents in homes with lead service lines and/or old premise plumbing should strongly consider **correctly installing and maintaining NSF-certified water filters and flushing their water before consuming it**.
- In some circumstances, temporary provision and use of alternative water sources (i.e., bottled water) may be advised.

As indicated in the records EGLE is providing today—and will provide in subsequent installments—the State of Michigan and local partners have been highly active in these areas in response to Benton Harbor’s persistent ALEs for lead.

A. **Removing lead service lines.** Michigan’s LCR requires community water supplies to remove an average of 5 percent of their total lead service lines per year, although many are being more aggressive. When a community water supply with corrosion control treatment has an ALE, it must increase that rate to 7 percent. In response to the current situation, Governor Gretchen Whitmer committed to replacing all lead service lines in Benton Harbor by March 2023—a dramatically compressed timeframe relative to what the law requires.<sup>5</sup>

Over the past three years, securing resources to assist communities in meeting this public health imperative—lead service line replacement—has consistently been a top priority for the Whitmer Administration and EGLE. We have placed a special emphasis on supporting disadvantaged communities, and Benton Harbor has been a community of particular focus.

The centerpiece of this effort is Governor Whitmer’s \$700 million MI Clean Water Plan.

As part of that plan, **\$35 million has recently been secured for Benton Harbor’s water infrastructure needs, including \$18.6 million for lead service line replacements.** The latter lead service line figure includes a dedicated \$10 million allocation adopted by the State Legislature and signed by the Governor as part of the fiscal year 2022 budget, as well as a **\$5.6 million grant Benton Harbor**

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<sup>5</sup> Benton Harbor’s engineer, Abonmarche, recently indicated that 17 lead service lines were replaced in 2019, 89 in 2020, and 53 so far in 2021. Benton Harbor is required to replace at least 211 service lines (lead or galvanized previously connected to lead) between July 1, 2021, and June 30, 2022.

**secured from the United States Environmental Protection Agency (EPA) for lead service line replacement.** Among the support EGLE provided Benton Harbor in securing that federal grant, we informed the city engineer of the opportunity and advocated for Benton Harbor via calls and a letter of support.<sup>6</sup>

- B. Applying corrosion control.** As communities work to remove lead from their water systems, corrosion control helps reduce exposure risk by altering the chemistry of the community's water, so it coats pipes over time and prevents the leaching of lead.

Prior to the 2018 testing under the new LCR that showed an ALE, Benton Harbor had not been adding corrosion control treatment to its water (which is not required by Michigan law prior to an ALE occurring). In response to the first ALE, EGLE used its oversight authorities—in conjunction with the EPA and expert technical consultants—to support and expedite Benton Harbor's installation of treatment. Our efforts included providing the necessary regulatory approvals, overseeing installation of a chemical feed system, and helping to quickly secure funding from the Lead Pilot Grant program for the necessary equipment, chemicals, and labor. Benton Harbor ultimately commenced treatment on March 25, 2019, less than six months after its first ALE was identified.

Monitoring the data as it has become available since, EGLE, the EPA, and other partners have continued to assist Benton Harbor in improving and enhancing its corrosion protection. EGLE also engaged its enforcement authorities in that process. In fact, failure to implement steps necessary to optimize corrosion protection was a primary reason EGLE revoked the certification of Benton Harbor's OIC.

While we remain highly vigilant and concerned about Benton Harbor's consistent ALEs over three years, EGLE is confident Benton Harbor's current approach to corrosion control is having its desired effects. As an example, the percentage of water samples detecting no lead has doubled since 2018 to 33 percent in the most recent sampling period.

To bolster our degree of confidence in our approach to corrosion control, EGLE recently announced the formation of a [corrosion control work group](#) of external experts to review the latest science and validate the best practices for Michigan communities to apply. As we continue to implement our stronger LCR and ramp up service line replacement statewide, that validation will provide valuable extra assurance we are proceeding in a protective manner.

- C. Promoting flushing and effective use of certified filters.** In communities where lead remains in the system—and particularly for households with lead service lines—the State of Michigan and its local public health partners recommend residents properly install and maintain point-of-use (faucet mounted) and/or pitcher water filters that are certified by NSF as effective in reducing lead. Filters are particularly effective when combined with running faucets for a period before

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<sup>6</sup> DWEHD staff also aided Benton Harbor in applying for a Drinking Water Asset Management grant for lead service line verification and asset management activities.



consumption to flush out water that may have been sitting for a time in service lines or premise plumbing containing lead.

In communities with ALEs and for households elsewhere that show elevated drinking water lead exposure risk, the DHHS works with local health departments to distribute certified filters. Starting in January 2019, free water filters—paid for by the DHHS—were offered to Benton Harbor residents through the BCHD. Additionally, communications and community engagement work in Benton Harbor consistently emphasized water filters and flushing, and a door-to-door canvass to distribute water filters to all households served by the city water supply was planned for early October 2021. To address concerns raised in the community, however, that canvass has been paused while the EPA conducts a study specifically focused on Benton Harbor's water and water system to further confirm filter efficacy.

As we continue to apply the above strategies in Benton Harbor, we will continue to reduce the risk of drinking water lead exposures in the community. I look forward to working with you and our fellow state leaders to accelerate the application of those proven strategies statewide and our progress in ensuring all Michigan residents have confidence in their drinking water.

Thank you again for working with EGLE to ensure we can support your invaluable oversight responsibility in a timely and pragmatic manner and for providing me this opportunity to share some lessons from the ongoing Benton Harbor situation that I consider critical in shaping our collaborative efforts moving forward. Please contact me any time if you have questions or need updates as EGLE provides you additional installments of documents responsive to your request.

Sincerely,



Liesl Eichler Clark  
Director  
517-284-6712

cc: Senator Mike Shirkey, Senate Majority Leader  
Mr. Aaron B. Keatley, Chief Deputy Director, EGLE  
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