



GRETCHEN WHITMER
GOVERNOR

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



LIESL EICHLER CLARK
DIRECTOR

December 17, 2021

VIA EMAIL

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

Dear Senator McBroom:

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) has now fulfilled your October 18, 2021, request for records related to elevated levels of lead in drinking water sampled at city of Benton Harbor homes.

On November 3, 2021, EGLE provided the Senate Oversight Committee more than 11,000 pages of documents made public in response to the 28 Freedom of Information Act (FOIA) requests the department had processed over the preceding 18 months relating to Benton Harbor. Today, EGLE is providing the remaining public records we have identified as responsive to your October 18 request. Similar to our November 3, 2021 submission, these documents have been shared with you and your colleagues and are publicly available in a searchable PDF format here: [Benton Harbor Public Document Releases](#).

EGLE employed an eDiscovery vendor and licensed attorneys to assist with this document collection, review, and production. The department's original search yielded 30,730 electronic records based on the established search terms. After eliminating duplicative records and those containing entirely non-unique information, EGLE's team reviewed the remaining 12,268 records in detail. In that review, 6,412 documents were deemed non-responsive to your request (i.e., Lead and Copper Rule communications and materials unrelated to Benton Harbor).

Today's document production consists of the remaining 5,856 bates-labelled documents and the associated privilege log. Those records are provided in chronological order with attachments appearing immediately after the corresponding email. When records are withheld, slip sheet placeholders are provided stating the reason.

Of the 5,856 total records, EGLE produced 4,282 documents in their entirety without redaction and 66 records with redaction.¹ Roughly three-quarters of the redactions protect personally identifiable and/or personal health information. We also withheld

¹ Of the 66 documents with redactions, 12 records contain redactions for attorney-client privilege; 48 records contain redactions to protect personally identifiable and/or personal health information; and 6 records contain redactions for deliberative process.

83 records in their entirety based on legal privilege as described in the privilege log.² Roughly three-quarters of those documents withheld were attorney-client privileged communications between EGLE and the Michigan Department of Attorney General. Today's production also contains slip sheet placeholders for 1,425 non-responsive ("children") attachments to ("parent") emails that were responsive to your request.

In a broad-brush, the documents in today's production include:

- Notices and minutes of meetings EGLE held and/or attended related to lead levels in Benton Harbor's drinking water;
- A range of responsive email communications between EGLE employees, their department colleagues, and other officials and stakeholders;
- Formal and informal communications between EGLE and Benton Harbor officials, including Violation Notices and ongoing exchanges about compliance activities; and
- Documents related to water infrastructure grant programs (e.g., State Revolving Fund Intended Use Plan).

As I have said previously, I wholeheartedly agree with the statement in your October 18, 2021, letter that a thorough review of EGLE's response to elevated lead levels in Benton Harbor drinking water samples "is necessary and will help strengthen and preserve the Department's effectiveness moving forward." As that process continues, my team and I are available to you and the Committee anytime to answer your questions about our document production and our related activities.

Thank you again for showing the patience and flexibility EGLE needed to support your invaluable oversight responsibility in a timely and pragmatic manner.

Sincerely,



Liesl Eichler Clark
Director
517-284-6712

cc: Senator Mike Shirkey, Senate Majority Leader
Mr. Aaron B. Keatley, Chief Deputy Director, EGLE
Ms. Amy Epkey, Senior Deputy Director, EGLE
Mr. James Clift, Deputy Director, EGLE
Ms. Kristina Donaldson, Clean Water Public Advocate, EGLE
Mr. Travis Boeskool, Legislative Liaison, EGLE
Mr. Eric J. Oswald, Director, DWEHD, EGLE

² Of these 83 documents, 61 records were withheld for attorney-client privilege; 2 records were withheld as attorney work product; 2 records were withheld for attorney-client privilege and attorney work product; and 18 records were withheld for deliberative process privilege.