

From: [Benzie, Richard \(DEQ\)](#)
To: [Wurfel, Brad \(DEQ\)](#); [Busch, Stephen \(DEQ\)](#); [Shekter Smith, Liane \(DEQ\)](#); [Prysby, Mike \(DEQ\)](#)
Cc: [Cook, Pat \(DEQ\)](#)
Subject: RE: june 24 memorandum
Date: Wednesday, September 09, 2015 6:36:27 PM

Sorry this reply is so long. I didn't plan to do so, but I wanted to provide you with some information in case you feel the need to reply in part today.

Brad,

Mike Prysby is on annual leave for a couple of weeks, Steve Busch was in his Jackson office today and probably on his way home now, Liane took this afternoon off to attend to personal business in Marshall, and Pat Cook is gone for the day. Do you need an answer today?

Since this memo is based on the unofficial draft report, do we want to comment? We should probably meet to discuss before anyone responds.

As you know, we have agreed to disagree with EPA on a couple of the issues raised by this memo covering an unofficial EPA report.

To begin, when the lead and copper rules (LCR) were first implemented, large systems were allowed to collect two sets of lead and copper samples in consecutive 6 month monitoring periods and if their 90th percentile lead level was within 5 milligrams per liter of the lead level in their source water, they did not have to further "optimize" corrosion control treatment. When Flint changed water sources from the Great Lakes to an inland river and employed water treatment that was significantly different (precipitative softening vs. direct filtration) than that supplied by Detroit, we granted Flint as a "new supply" the same consideration to determine if their treatment already provided optimal corrosion control.

As you know, their first 6 month monitoring results complied with the Action Level for lead and were close to demonstrating optimal corrosion control treatment (OCCT). Since the city would be averaging results from the two consecutive monitoring periods for the purposes of OCCT determination, we awaited their second set of results to see what they would reveal. After getting the second set, it was determined that Flint was again in compliance with the lead and copper Action Level but they did not qualify as already practicing OCCT.

Under the original regulatory schedule for implementing OCCT, a community serving more than 50,000 people was given a year to conduct treatment studies and submit them to DEQ. We then have 6 months to review their studies and designate their OCCT. They then have 2 years to install that treatment. During all that time, no monitoring is required. Our response to the concerns raised in that memo but also more significantly, in formal discussions with Region 5 EPA Managers, was to encourage Flint to not take the time we believe they were entitled to have for this process but to move as quickly as possible to implement some OCCT.

Second, we continue to disagree with EPA on sampling protocols. We have attempted to

ensure compliance with EPA guidance (I believe it was provided in the preamble to their lead and copper regulations) that said that household use should be “typical” for a residential customer on the day before sample collection for lead and copper. Early in the implementation of the LCR, we had encountered too many situations where compliance samples had been collected from kitchen and bathroom taps that had not been used in days and in some cases, even weeks, resulting in excessively stagnated water and correspondingly high lead levels that did not represent typical exposure expected after overnight stagnation. Further complicating this issue was the media spectacle that was arising over EPA’s direct implementation of the LCR in Washington, D.C., where lead results were not always being included in compliance calculations and subsequently, invalidation of samples was becoming more difficult. In order to avoid that complicated process, we devised our current recommendations for ensuring appropriate but not excessive stagnation for LCR monitoring.

We continue to believe it is appropriate to flush these taps the day before sample collection to simulate and/or ensure typical household use before the tap is allowed to sit overnight to achieve the expected stagnation time the regulation stipulates (~8 hours) prior to collecting the first draw sample. The LCR does not say the result should represent the “absolute worst case” condition – it talks about sampling the highest risk locations (lead plumbing, lead service lines, high lead content solder piping, etc.) after overnight stagnation and then collecting a first draw sample so as not to flush elevated lead from that tap at that point in time. Until EPA changes this rule, we are satisfied with our sampling protocol.

I am leaving now, so you can use this information as you see fit, or wait until tomorrow to discuss with Steve, Liane, Pat and me. We have an all-day ODWMA managers meeting starting at 9 AM Thursday, although Liane is also attending a meeting first thing in the morning with Jim Sygo, Bob Wagner and Jon Allen.

Richard

From: Wurfel, Brad (DEQ)
Sent: Wednesday, September 09, 2015 4:52 PM
To: Busch, Stephen (DEQ); Benzie, Richard (DEQ); Shekter Smith, Liane (DEQ); Prysby, Mike (DEQ)
Subject: FW: june 24 memorandum

Heads up
b

From: Ronald Fonger [<mailto:RFONGER1@mlive.com>]
Sent: Wednesday, September 09, 2015 1:28 PM
To: Wurfel, Brad (DEQ)
Subject: june 24 memorandum

Brad:

I know you said the state would not comment on unofficial draft reports from U.S. EPA staff, but since the attached June 24 memorandum was sent to four DEQ staff members, can you comment about what – if anything – the state has done in response?

Was the city of Flint notified of the issues raised in the memorandum directly by DEQ?

Was there a written response from DEQ to U.S. EPA to the memo?

Thanks, we are looking further into some of the issues raised in this document.

Ron Fonger

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