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Department of Environmental Protection

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August 14, 2019

Andrew Wheeler, Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Wheeler,

Thank you for agreeing to meet with me tomorrow, August 15, 2019, to discuss efforts to address lead in drinking water in Newark, New Jersey. Since many other states are also concerned with obtaining clear guidance from EPA as soon as possible on an issue that affects all of us, the officers of the Environmental Council of the States (ECOS) have offered to send ECOS Executive Director Don Welsh to join us as well. I understand that EPA's preference is to meet with New Jersey alone at this time, and to follow up with later meetings that include ECOS.

As you know, on August 9, 2019 EPA Regional Administrator Peter Lopez sent a letter to me and to Newark Mayor Ras Baraka that called on the city, in addition to other actions, to provide bottled water to the residents of Newark who live in residences with drinking water service lines that are known or suspected to contain lead. Both Mayor Baraka and I responded to Mr. Lopez on August 12, 2019, notifying him that bottled water is being distributed to city residents as of August 12.

Mr. Lopez' August 9 letter and EPA's direction to provide bottled water was based on concerns with the effectiveness of the PUR filters previously distributed by Newark to its residents, arising from recent water sampling tests at three residences in Newark. At the request of the state, the city had collected samples to assess the efficacy of the filters at those residences. EPA's regional laboratory analyzed the samples and provided the test results on Friday afternoon, August 9. The results showed that the filters were removing most of the lead, but post-filter water at 2 of the 3 residences continued to exceed EPA's regulatory action level of 15 parts per billion (ppb). Specifically, the post-filter water contained a range from 1.2 to 55.9 ppb of lead in samples at one residence and 7.9 to 50.0 ppb in samples at the other residence.

The test results and Mr. Lopez' letter were a surprise to all of us, in two critical respects. First, EPA had advised us, based on previous studies, that the PUR water filters could reliably remove lead to below the action level. We understand that EPA technical experts were surprised and remain puzzled by the test results. We appreciate their assistance in focusing attention on this as quickly as possible to develop a broader assessment of the filters, that will allow us all to have a better understanding than the limited information provided by the initial testing at three residences.

Second, we were surprised to receive a letter from EPA late Friday night, without advance warning. We had been conferring with EPA just hours earlier and already had agreed on the next steps we would take together. The letter further surprised us by threatening to invoke EPA's enforcement authority under Section 1431 of the Safe Drinking Water Act to compel the city and state to comply with EPA's demands. As you know, this authority is only available to EPA in situations where the state has "failed to act" – which is most assuredly not the case here.

The State of New Jersey has been acting strongly to protect the health of the residents of Newark since receiving the first indication of lead action level exceedances in Newark residents' drinking water in 2017. We have been working closely in cooperative partnership with EPA's Region 2 office, as well as EPA's Office of Research and Development. We have taken all the actions that EPA has advised. The city has even gone beyond what EPA has required by providing free filters to Newark residents. The state exercised its enforcement authority in 2018 and again in 2019 by issuing orders on consent that confirm and make enforceable the city's commitments.

This is the first time that we have heard a recommendation from EPA that bottled water be provided to the residents of Newark. We immediately took action, providing the state's entire emergency water supply to the City of Newark for distribution to residents. As we have advised Mr. Lopez, neither the city nor the state has sufficient emergency water supplies nor financial resources to continue supplying bottled water to so many residents indefinitely. We request that EPA provide us its best estimation as to how long it will take to complete broader testing of the PUR water filters, and to advise us as to whether residents can continue to rely on those filters to remove lead to below 15 ppb.

We also renew our call to EPA and the federal government to provide a backup bottled water supply for Newark residents, in the event that city's and the state's water supplies run short before EPA is able to provide us with final answers regarding the reliability of the PUR water filters. While we expect Newark's new corrosion control system to become effective in stopping the leaching of lead from residents' water lines, that process is likely to take six to twelve months. The state will not consider the new treatment to be effective until two consecutive rounds of sampling show that lead levels have reliably returned to below 15 ppb.

As you no doubt realize, EPA's August 9, 2019 letter raises implications for many other drinking water systems in New Jersey and other states that have lead action level exceedances. Newark is one of many older cities where some residents continue to rely on lateral lead service lines. We seek guidance and clarity from EPA as to what actions it expects states, municipalities and water providers to take when the Lead and Copper Rule action level continues to be exceeded despite the fact that the city has gone beyond its requirements by providing filters to residents.

We look forward to meeting with you, and to your response and assistance with this urgent matter of public health.

Respectfully,



Catherine R. McCabe
Commissioner

c: Hon. Ras Baraka, Mayor, City of Newark
Peter Lopez, Regional Administrator, EPA Region 2