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March 23, 2004

The Honorable Michael O. Leavitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Leavitt:

On March 5, 2004, the Committee on Government Reform held a hearing entitled "Public Confidence, Down the Drain: The Federal Role in Ensuring Safe Drinking Water in the District of Columbia." At that hearing, we received testimony from both Benjamin Grumbles, Acting Assistant Administrator for Water at the Environmental Protection Agency, and Donald Welsh, Regional Administrator for EPA's Region III.

As a result of the hearing, the Committee has a number of questions for the hearing record concerning EPA's role in exercising its responsibilities under the Safe Drinking Water Act to prevent lead contamination in tap water in the District of Columbia. Those questions are as follows:

EPA Role in D.C. Lead in Drinking Water Problem

The monitoring officially reported by WASA to EPA for the District for 2000-2001 included four samples above the lead action level, with two of those samples registering above 100 ppb.

1. Did EPA Region III view these results as a matter for concern? If so, what did EPA do in response?

In August 2002, EPA Region III received WASA's monitoring report for lead sampling during 2001-2002. This report showed that out of 52 samples, about half were over the EPA action limit. Three of those samples were over 100 parts per billion, with two samples over 150 parts per billion, or 10 times the EPA action limit. EPA's prepared testimony for the hearing indicates that EPA contracted with Professor Marc Edwards of Virginia Polytechnic Institute and State University to start to study the problem in May 2003, eight months later. In addition, the *Washington Post* reported on March 16, 2004 that an EPA Region III liaison to the District,

Chris Ball, tried to alert the Region III Director of Water Quality, Jonathan Capacasa, in 2002 about the spike in D.C. lead levels.

2. What did EPA do in response to the August 2002 WASA test results between September 2002 and May 2003? Did EPA view these test results with any sense of urgency?

3. How did EPA react to Mr. Ball's warnings? Were any written documents prepared as a result of this situation? If so, please supply a copy of them.

In response to a question posed in a March 1, 2004, letter from Reps. Davis, Waxman and Norton, Mr. Donald Welsh, Regional Administrator, EPA Region III, appeared to justify EPA's very limited actions in response to the August 2002 report with the following statement: "Information indicating more widespread problems with corrosion were not provided to EPA Region III until October 17, 2003. EPA Region III did, however, act to ensure steps were taken to address *the problem as we understood it prior to that date.*" (Emphasis added.) But in August 2002, EPA already knew that half of the samples were over the action level and that some samples had extremely high lead levels. Moreover, had WASA not chosen to take an alternative compliance route, EPA never would have obtained the information it received on October 17, 2003.

4. Did the information in the August 2002 monitoring report in any way justify a limited or less urgent response?

5. Did EPA have reason to believe that WASA had an effort underway to determine the cause of this spike in lead levels and that WASA would be successful in solving this problem without EPA intervention?

In the summer of 2003, WASA significantly expanded its testing program as an alternate means of meeting the requirement to replace 7 percent of the lead service lines. By October 27, 2003, EPA received the first set of these results. These results were indisputably bad. Of the 4,613 lines tested through September 30, 2003, 73 percent were over the action level. As stated in the attachment to Mr. Welsh's prepared testimony, "[i]n many cases lead levels were very high, with nearly 3 percent of lines above 300 parts per billion and 18.5 percent above 100 parts per billion."

6. Did these results indicate definitively that the corrosion control program wasn't working?

7. Did EPA request or require immediate action by the Army Corps and WASA to investigate the problem? If so, what action did EPA request or require?

8. What, if anything, did EPA do to ensure that people who live and work in the District understood the scope and severity of the problem?

Invalidation of Test Results

Invalidation of samples taken by WASA in the 2001-2002 monitoring period was a subject at the hearing and of recent press reports. Mr. Michael Marcotte, Chief Engineer and Deputy General Manager, WASA, stated that initially seven samples had lead levels above 15 ppb, but that WASA invalidated several of those samples in consultation with EPA Region III. Mr. Welsh stated that EPA never received a request to invalidate samples, and did not invalidate any samples. Moreover, he stated that legally only EPA could invalidate a sample, and that EPA's review of the laboratory data indicated that no samples had been invalidated.

9. Did EPA give authorization for WASA to invalidate any test results, either in 2001 or any other time? If so, who authorized the invalidation? Was EPA informed in any manner of WASA's intent or desire to invalidate some samples? Please provide any records relating to communications between WASA and EPA or within EPA on this point.

Corrosion Control

Corrosivity of the Washington Aqueduct water supply has received substantial attention as a potential culprit of the spike in lead levels in the District of Columbia water. The focus of this controversy is the Aqueduct's conversion to chloramines in 2000.

10. What oversight of such decisions does EPA exert?

11. What changes in EPA's role are being considered or implemented?

12. How does or should EPA manage the "simultaneous compliance" or synergistic effects of different decisions on a system's water supply?

Oversight of Notification Requirements

EPA received WASA's Lead and Copper Public Education Program Report for 2002 on January 24, 2003, and WASA's Lead and Copper Public Education Program Report for 2003 on October 14, 2003. It is undisputed that WASA's notification efforts detailed in these reports were inadequate to actually put the public on notice of the problem or encourage people to take action to protect themselves and their children. At the hearing, Mr. Welsh indicated that it appeared that WASA may have also failed to comply with the notification requirements spelled out in the regulations.

13. Did EPA Region III staff review each of these reports? In each case, did Region III find that WASA's notification efforts met the requirements of the regulations? Did Region III consider whether WASA's notification in fact was adequate to inform the public, and if so, what was Region III's conclusion? Did Region III have any communications with WASA regarding the adequacy of each of these reports? If so, please indicate the dates, form, and substance of all such communications.

14. Is EPA Region III's oversight of the WASA notification process any different from how states oversee their jurisdictions' notification activities? If not, is EPA concerned that notification efforts may also be inadequate in other jurisdictions? If so, what steps is EPA taking to address this concern?

Partial Lead Service Line Replacement

Test results in the District indicate that partial lead service line replacement may raise rather than lower lead levels at the tap. If further monitoring confirms that this is a long term effect, replacing portions of lead service lines would further endanger public health, as well waste money.

15. If it is confirmed that partial lead service line replacement raises lead levels, how will EPA address this problem? Will EPA require WASA to replace the full lead service lines? Is any federal funding potentially available to help fund full lead service line replacements?

Oversight and Enforcement Resources

EPA's Region III office has primary oversight and enforcement responsibilities for the SDWA in the District of Columbia. EPA must have adequate resources to carry out these responsibilities.

16. What resources does EPA Region III have, in terms of funding levels and personnel (in full-time equivalents or FTEs), for overseeing and enforcing the SDWA? What are the equivalent resource levels for these activities in the other EPA regions?

17. How much of those resources are devoted to SDWA oversight and enforcement for the District of Columbia? Specifically, how many staff are dedicated full-time to drinking water oversight and enforcement for the District of Columbia? How many positions, if any, are dedicated part-time to SDWA enforcement for the District of Columbia?

18. What were the funding levels and FTEs for EPA SDWA enforcement activities in fiscal years 2000-2004?

Emergency Enforcement Powers

At the hearing, EPA indicated its willingness to use its authority to ensure that WASA provides alternative supplies of drinking water to those who need it. On March 4, 2004, Mr. Welsh sent a letter to the City Administrator and Deputy Mayor of the District laying out the "specific interim actions that EPA believes WASA must undertake to respond to the immediate threat."[1] One of these actions is to "[m]ake available as soon as feasible, but within 30 days, an interim alternative supply of drinking water to all users supplied by WASA who are believed to receive their water through known or suspected lead service lines. The goal is to provide an alternate water source or filters to the 23,000 homes with lead service lines." EPA demanded that WASA commit to carry out the listed actions. In a clear reference to EPA's emergency enforcement powers, EPA stated "[i]n the event you are not able to make such a commitment, EPA is prepared to exercise its authorities to address these issues."

At the hearing, Mr. Welsh repeated: "If affected residents are not promptly supplied with safe drinking water, we stand ready to exercise our authorities to compel action."[2] On March 10, 2004, EPA announced that WASA would implement an interim action plan to ensure safe drinking water in the District of Columbia. EPA stated that WASA had agreed, among other actions, to "[w]ithin 30 days, deliver an alternate interim water supply (bottled water or filters) to occupants in all the estimated 23,000 homes and businesses with lead service lines."[3]

WASA outlined its understanding of its commitments in a March 10, 2004, letter to EPA. This letter indicates that WASA had not, in fact, committed to deliver an alternate water supply to all homes and businesses with lead service lines. Rather, WASA committed to, over the next 30 days, procure (not deliver) an unspecified number of additional devices, to "allow distribution" to customers believed to have lead service lines. This suggests that WASA could comply by providing devices only to those who go to inconvenient distribution points and request them. Subsequently, the Mayor ordered WASA to mail filters to households with suspected lead service lines, and WASA developed an action plan for carrying out its commitments. WASA has not yet provided this action plan to the Committee.

19. If EPA determines that the action plan is sufficient, how will EPA monitor and enforce that action plan? If WASA does not agree to, or does not carry out, an action

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[1] Letter from Donald S. Welsh, Regional Administrator, U.S. EPA to Robert C. Bobb, City Administrator and Deputy Mayor, Government of the District of Columbia (Mar. 4, 2004).

[2] BNA, Daily Report for Executives, *EPA to Review 1991 Lead-Copper Rule After Elevated Levels Found in Capital City* (Mar. 8, 2004).

[3] U.S. EPA, *WASA agrees to implement interim plan for lead; Multi-agency corrosion team presents EPA with strategy* (Mar. 10, 2004) (press release).

called for by EPA in a timely manner, will EPA consider issuing an enforceable administrative order?

20. Is EPA considering providing other assistance to the District, such as helping to fund the provision of alternative water sources or expanded testing?

Scope of the Problem

21. Please describe the types of information that states are required to report to EPA under the lead and copper rule, or encouraged to report under any relevant EPA guidance. Please indicate any requirements to report lead levels in drinking water, response actions taken upon an exceedence of the action level, corrosion control activities, and changes to drinking water treatment methods.

22. With respect to the 90th percentile monitoring results, for which years does EPA currently have data? When is or was the deadline for reporting the 2003 data? Please provide a summary of the 90th percentile lead monitoring results nationwide since 2000 by state, to the extent that EPA has that information.

23. For each jurisdiction that exceeded the action level in or after the year 2000, please indicate whether the jurisdiction is still in exceedence and describe the actions that have been taken to notify the public and correct the problem.

24. Which jurisdictions nationwide have lead service lines? Have any of these jurisdictions experienced widespread elevated lead levels?

25. Which jurisdictions use chloramines for disinfection? To EPA's knowledge, have any of these jurisdictions seen an increase in lead levels after switching to chloramines? Is the District the only jurisdiction that has switched to chloromines with elevated levels of which EPA is aware?

26. Have any jurisdictions other than the District engaged in large-scale samplings for lead (*i.e.,* more than the required 50 or 100 samples per year)? Have any jurisdictions other than the District conducted samplings based on second draw rather than first draw samples? If so, please summarize the results of those samplings.

27. Is EPA aware of any studies or evaluations that call into question the adequacy of the current monitoring protocols under the lead rule as a means of detecting lead contamination problems in drinking water? If so, please provide copies of any such studies or evaluations.

28. Does EPA have adequate information at this time to determine whether other jurisdictions besides the District have widespread elevated lead levels?

Research Efforts and Funding

It appears that there are substantial gaps in our scientific understanding of this problem and that more research would be helpful.

29. Please provide the comparable budget requests for drinking water research, annual appropriations, and actual spending on research on corrosion and lead leaching for the years FY2000 through FY2004. What funding levels has the Administration requested for these areas in FY2005, and what level of funding does EPA anticipate may be available for research on corrosion and lead leaching?

Please provide answers to these questions by April 9, 2004.

Sincerely,

Tom Davis
Chairman

Henry A. Waxman
Ranking Member

Eleanor Holmes Norton
Member of Congress

Chris Van Hollen
Member of Congress