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March 1, 2004

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

Dear Administrator Leavitt:

The Environmental Protection Agency has a statutory obligation to ensure the safety of drinking water in the District of Columbia. Unlike the situation in most of the United States, where a state agency has primary responsibility for enforcing the Safe Drinking Water Act, this responsibility falls to EPA in the District of Columbia. We are writing to elicit definitive information regarding whether EPA adequately carried out its responsibility under the Safe Drinking Water Act to prevent lead contamination in tap water in the District of Columbia.

Our review on this matter to date suggests that EPA may have known for some time about the serious lead contamination problem in the District's drinking water without taking action to alleviate the problem or notifying the public. In fact, EPA has apparently been working on one specific aspect of the problem, the corrosivity of the water, for 15 months without any clear results. We expect to examine these issues in detail at the Committee's upcoming hearing on lead contamination in the District.

On February 2, 2004, the Chairman wrote to EPA seeking information about EPA's response to the lead contamination in the District. EPA's reply, which was sent on February 11, 2004, indicates that EPA may have been notified by September 2002 that there was a serious problem with lead levels in the District's drinking water. Specifically, on August 27, 2002, EPA received the D.C. Water and Sewer Authority (WASA's) Lead and Copper Program Report for Monitoring Period July 1, 2001, to June 30, 2002. This report revealed that lead levels exceeded the EPA action level of 15 parts per billion in 26 of the 53 samples taken. A 10 percent rate of exceedence of the action level triggers requirements to remediate the lead levels. The 50 percent rate of exceedence reported by WASA to EPA was an indisputable warning of a potentially widespread and serious lead contamination problem.

EPA's receipt of this early report of lead problems in District drinking water raises questions regarding the effectiveness of EPA's response in protecting District residents from from exposure to lead in their drinking water. EPA's response says: "EPA has been working closely with WASA and the Aqueduct to reduce the lead levels in the District's drinking water by improving the corrosion control treatment." Yet, it took over a year, until November 2003, before "plans were developed" to test various treatment methods. Even then, these tests were not supposed to occur until "the first half of 2004."

In addition, we understand that as of October 17, 2003, EPA was in receipt of a report commissioned by EPA that pointed to changes in the disinfection treatment process as being a likely cause of increased corrosivity of the District's drinking water, and hence of the spike in lead levels. This report was prepared by a professor at Virginia Tech, who examined the potential causes of and remedies for the elevated lead readings in the District's tap water. Among other possible causes, the report cites the decision by the Army Corps of Engineers in November 2000 to switch from chlorine to chloramines as a disinfection agent at the Washington Aqueduct. The report found that chloramines "can have profound impacts on corrosion of lead bearing plumbing materials."[1] It also found a "strong suggestion" that implementing phosphate inhibition as a corrosion control treatment could stop the problem.

It is unclear what EPA did in response to the recommendations in the report on corrosivity between October 17, 2003, when EPA received the report, and January 31, 2004, when the *Washington Post* broke the story.

In addition, there is a question as to EPA's oversight role in implementing the corrosion control program over a longer time period. For example, it is not clear whether EPA was notified of the change in the disinfection procedure in 2000. If EPA knew of the change, it is unclear whether EPA required WASA or the Corps to institute any precautions in light of the change, such as monitoring for any effects of the new treatment on the corrosivity of the drinking water.

Finally, we are concerned about the magnitude of this public health crisis. Based on testing of just 6,118 homes, WASA found more than 150 homes with lead levels of over 300 parts per billion. These levels are over 20 times the EPA action level. Almost three-quarters of the homes likely to have lead service lines had not been tested, so the final number of homes with these extremely high lead levels is likely to be larger. EPA's February 11 letter to Chairman Davis reflects that EPA's response has been limited to (1) providing some funding for lead service line replacement, (2) continuing efforts with WASA and the Washington Aqueduct on corrosivity, (3) working with WASA on the next

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[1] Marc Edwards, Professor, Virginia Tech, Draft Report at 2 (Oct. 17, 2003).

annual water quality report due in July 2004, and (4) enhancing EPA's web site and telephone hotline education efforts. None of these actions appear likely to provide safe drinking water to District residents any time soon.

Congress gave EPA emergency authority under section 1431 of the Safe Drinking Water Act to deal with situations such as this. If a contaminant in drinking water "may present an imminent and substantial endangerment to the health of persons," EPA has authority to order WASA to take actions "as may be necessary to protect the health of persons" using the water system. The statute explicitly states that EPA may order alternative water supplies to be provided, as well as other actions. We urge EPA to evaluate the adequacy of the response by WASA and the Corps, and to consider invoking the section 1431 authority if additional action is warranted.

The Committee has scheduled a hearing for March 5, 2004, at which we expect to explore these and other related issues in depth. To help focus this hearing, we have attached a set of additional questions, which we expect to be addressed in EPA's testimony for the hearing.

Sincerely,

Tom Davis	Henry A. Waxman	Eleanor Holmes Norton
Chairman	Ranking Member	Member of Congress

Questions

1. According to the *Washington Post*, WASA had early indications of a lead problem from a test of 50 houses conducted from July 2000 to June 2001, which found seven houses with lead levels in drinking water above the EPA action level of 15 parts per billion. By invalidating some of the results and retesting some of the houses, WASA brought the number of houses with exceedences down to four, which is below the EPA 10% trigger point for action.

   a. Did WASA report the initial test results to EPA, prior to the invalidation of some of those results?

   b. If so, did EPA view these test results with concern, although WASA subsequently presented test results barely below the 10% trigger point?

   c. Did WASA obtain EPA's approval for invalidating test results? Was such approval required under the regulations?

2. WASA states that the information from the expanded testing program was available to WASA management in December 2003.

   a. When did EPA first receive any information from the expanded testing program? When did EPA receive the full and final results from the expanded testing program?

   b. Was any of the testing under the expanded testing program conducted prior to June 30, 2003? If so, was that data included in WASA's Lead and Copper Program Report to EPA, which EPA received July 30, 2003?

   c. Were any test results from the expanded testing program incorporated in WASA's Lead Service Line Replacement Program Report for October 1, 2002 to September 30, 2003, which EPA received October 27, 2003? For example, did WASA state how many homes were tested to produce the number of "cleared" lines reported? Could EPA tell from this report that the lead problem was widespread throughout the District?

3. The drinking water reporting requirements at 40 CFR §141.90 require a water system to report to the state (here to EPA) on any change in water treatment within 60 days of the change.

   a. Did the Washington Aqueduct report to EPA on the change to chloramine treatment in November 2000? If so, when?

   b. Was EPA preapproval of this change required?

c. Did EPA evaluate the potential effect of this change on corrosivity, and did EPA approve the change (if required)?

d. If so, did EPA require any change in WASA's monitoring frequency to quickly pick up on any changes in corrosivity?

e. Did EPA have any indication prior to receiving the report on October 17, 2003 that the switch to chloramines might have the effect of making the water more corrosive for lead? If so, please describe what information EPA had and when EPA acquired such information?

4. What action did EPA take upon receiving the technical report on corrosivity on October 17, 2003? Did EPA share this report with the Washington Aqueduct? If so, when?

5. The Region 3 response states regarding corrosivity that "plans were developed in November 2003 to test and evaluate alternative treatment methods during the first half of 2004." However, Regional Administrator Welsh also states that "the team which EPA has convened has been researching these issues and will report preliminarily to me within 30 days."

   a. When did EPA convene a team?

   b. Are the plans developed in November 2003 still being carried out? If so, what steps are being taken? If not, why not?

   c. Were the plans developed in November deemed insufficiently responsive in light of the intense public concern?

   d. What did EPA do to address corrosivity concerns between September 2002 and October 17, 2003? Please be specific, and include dates of activities.

6. Please provide a copy of each of the Lead and Copper Rule compliance reports sent by WASA to EPA R3 since July 1, 2001.