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**From:** Jordan Chariton [jordanchariton@protonmail.com]  
**Sent:** 7/18/2018 9:52:35 PM  
**To:** Jones, Enesta [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=65b8e6c6e5ca4a7a9ae85d98a4c8eedb-EJones02]  
**CC:** Press [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b293283291dc44e0b5d1c36be9281d8a-Press]  
**Subject:** Re: VICE Investigation on Flint Water Testing Cheating By Michigan Department of Environmental Quality—EPA Comment

Yes, you've already provided the generic answer of what is and isn't a violation and I've read more LCR research than I'd care to admit. But this isn't just about generic definitions: I'm asking you about the specific findings I found on **MDEQ's improper testing** from dozens of homes tested.

In the case of Flint---one of the biggest government-caused disasters in American history--I'm asking for a more specific answer from the federal agency whose job it is to oversee state agencies (particularly one like MDEQ who, in large part, made decisions that caused the crisis in the first place and has lied to the EPA on multiple occasions).

Considering I found direct evidence of improper testing in a significant portion of homes canvassed, I would think the EPA would have something a little more specific to say about MDEQ's flushed testing in 30 homes whose data was used to claim Flint was now meeting...your regulations.

Straight up--you're dodging (or whomever above you dictating this response is). It's fine--I get how the game is played. Your call. But, it will be reflected in the report.

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----- Original Message -----

On July 18, 2018 5:43 PM, Jones, Enesta <Jones.Enesta@epa.gov> wrote:

Jordan,

Your questions broadly cover:

- a. Appropriate compliance sampling for Lead and Copper Rule (LCR)
- b. Definitions of Federal violations of the LCR

EPA's existing guidance documents should be able to provide the details you've requested on both concerns, as follows.

**Appropriate compliance sampling for Lead and Copper Rule (LCR)**

Please refer to excerpted text below from p.28-29 of EPA's "**Lead and Copper Rule Monitoring and Reporting Guidance for Public Water Systems**" (updated March 2010). Highlights have been added to point out particularly relevant sections. EPA also issued a [memo](#) February 2016 also provides additional recommended guidance on sampling procedures.

## **“G. How Do I Collect Lead and Copper Tap Water Samples?**

### **(40 CFR 141.86(b))**

When collecting lead and copper tap samples, you must follow the procedures listed below:

- Always collect a 1-liter sample in one container only (e.g., do not split the sample between two containers).
- Always collect a first-draw sample from a tap where the water has stood in the pipes for at least six hours (e.g., no flushing, showering, etc). However, make sure it is a tap that is used regularly, and not an abandoned or infrequently used tap.
- If your water system is a NTNCWS or CWS (such as a prison or hospital) that does not have enough inside taps where the water stands unused for at least six hours, you are allowed to use interior taps from which water is typically drawn for consumption and which are the most likely to have remained unused for the longest period of time. Your State will tell you whether you must submit a sampling plan for State approval prior to sampling at non-first-draw sample locations or if you can proceed with sampling and submit the plan with your sampling results. *Please check with your State before collecting any non-first draw samples.*
- First-draw samples collected at single-family residences must always be drawn from the cold-water kitchen tap or bathroom tap.
- First-draw samples collected from buildings other than single-family homes must always be drawn from an interior tap from which water is typically taken for consumption.
- You may allow residents to collect samples, but you must supply the residents with instructions as to the sample collection procedures. You can use the revised instruction form provided in Appendix D (refer to FYI box below). Be sure to properly label sample bottles prior to distributing them to residents.
- As a general rule, you should collect your lead and copper tap water samples early in the monitoring period in case you exceed the lead or copper action level. This is because you will be required to also collect WQP samples during the same monitoring period (refer to Section III for a more detailed discussion of WQP monitoring). In addition, you will need to submit your monitoring information to your State within 10 days after the end of the monitoring period (e.g., by October 10 for systems that monitoring during June - September).
- After the sample is drawn, acidification of the sample should be completed by the laboratory personnel upon receipt of the sample, but in no case later than 14 days after sample collection. Neither the homeowner nor the sample collector should handle the nitric acid used for sample acidification.”

Link to excerpted guidance document:

<https://nepis.epa.gov/Exe/ZyNET.exe/P100DP2P.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2006+Thru+2010&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C06thru10%5CTxt%5C00000032%5CP100DP2P.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL#>

## Definitions of Federal violations of the LCR

Please refer to excerpted text below from p.B-36 - B-37 of EPA's "**Appendix B – LCRMR Reporting Guidance**" (October 2001) for specific definitions of the routine monitoring and reporting (M/R) violations under the LCR. Highlights have been added to point out particularly relevant sections:

### **“FOLLOW-UP OR ROUTINE LEAD AND COPPER TAP M/R (Violation Code: 52)**

Failure to meet any of the following:

- Use appropriate sampling procedures in accordance with §§141.86(a) and (b),
- Collect required number of samples during the required time frames in accordance with §§141.86(c) & (d)(2)-(4),
- Ensure samples are analyzed properly in accordance with §141.89(a), or
- Submit all required monitoring information on time in accordance with §141.90(a).

The LCRMR expand the definition to include:

- Those new monitoring provisions listed above, under the initial tap “Less stringent provisions” (e.g., sample invalidation, non-first draw samples, State calculation of 90th percentile values, and monitoring waiver compliance)
- Systems on reduced monitoring which fail to report a change in treatment, or an addition of a new source, within 60 days or within the time frame which you specify (violation type code 52).
- Systems on reduced monitoring, and placed on alternate lead and copper tap schedules, which do not meet the monitoring deadline when transitioning to the alternate period, if your regulations include this provision (violation type 52).”

Link to excerpted guidance document:

[https://www.epa.gov/sites/production/files/2015-09/documents/2001\\_12\\_4\\_lcrmr\\_guidance\\_lcmr\\_state\\_implementation\\_reporting\\_appendix\\_b.pdf](https://www.epa.gov/sites/production/files/2015-09/documents/2001_12_4_lcrmr_guidance_lcmr_state_implementation_reporting_appendix_b.pdf)

On Jul 18, 2018, at 5:38 PM, Jordan Chariton <[jordanchariton@protonmail.com](mailto:jordanchariton@protonmail.com)> wrote:

Enesta,

Following up again to ask again directly:

- 1) Was MDEQ's flushed sampling in sentinel homes (found 30 of them) cheating?
- 2) In light of these findings, does the entire sentinel testing now need to be investigated to see if the violations were more widespread and testing needs to be redone?

If you don't want to answer that's fine--but it will be written as the EPA refused to answer repeated follow-up questions on MDEQ's improper testing.

Jordan

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----- Original Message -----

On July 17, 2018 12:58 PM, Jordan Chariton <[jordanchariton@protonmail.com](mailto:jordanchariton@protonmail.com)> wrote:

Enesta,

Following up on my flow ups (see you were out of office). I have quite a lot of people and officials on record—wanted to give EPA opportunity to offer more specific responses to the testing violations I found at 40+ homes.

Jordan

Sent from ProtonMail Mobile

On Fri, Jul 13, 2018 at 5:51 AM, Jones, Enesta <[Jones.Enesta@epa.gov](mailto:Jones.Enesta@epa.gov)> wrote:

Jordan, I'm not sure I'll have responses today. Can you wait until next week? When is the story slated to run?

On Jul 12, 2018, at 7:46 PM, Jordan Chariton <[jordanchariton@protonmail.com](mailto:jordanchariton@protonmail.com)> wrote:

Hey Enesta,

Thanks so much for responding so quickly. I have follow ups for you. Would appreciate if you can get back to me by COB tomorrow.

***From your answer: "Lead and copper tap samples used to determine compliance with the LCR must be collected as 1-liter, first-draw samples after the water has stood motionless in the plumbing system for at least six hours."***

1) As I said, 17 homes of the 30 we found direct flushing right before the sample was taken were state sentinel homes (and the flushing came from BOTH MDEQ OFFICIALS AND CORE OFFICIALS VISITING THE HOME AND SAMPLING THEMSELVES--NOT RESIDENTS SAMPLING THEMSELVES). The state has repeatedly reported that sentinel homes were what they were using for LCR testing and compliance (and it's the data that was used to shut down the water pods in April). **So more straightforwardly, were these sentinel homes—in the state's own words used for LCR testing—where flushing occurred right before drawing the sample a violation of the EPA's LCR? I'd appreciate a yes or no.**

2) If this is a violation, is it accurate to say this was cheating?

3) When you say must be collected as a 1 liter, first-draw sample, does that mean must be tested straight out of the tap, with no flushing before water is placed into the 250ml bottle and then when that bottle is filled to the marker, the 750ml bottle?

**From your answer: "Running the water right before collecting a sample could result in a change in the amount of metals in the sample, though this would depend on the plumbing materials in the home and whether the home is served by a lead service line, as well as other factors."**

4) When you say it could result in a "change," can you be more specific? Would flushing for several minutes—**in an LCR sample, not a test to see where the lead is coming from**—more likely lower the quantity of lead detected in homes connected to a lead service line? How about a copper service line with lead solder?

5) What about beyond a few minutes of flushing (I found homes that had 5 minutes, 10 minutes, and 15 minutes of flushing).

6) I assume flushing right before LCR sampling can lower the quantity of lead significantly, which is why the LCR stipulates first draw sampling after a six-hour stagnation period?

7) What is EPA's reaction a specific home where MDEQ's flushed testing produced a range of 2ppb-10ppb, but the EPA's test (presumably without flushing) in the same home produced 85ppb?

**Let me re-ask question number 4 in a different, more specific way:**

8) Is there any scenario where flushing right before an LCR compliance water sample would be acceptable?"

**From your answer: "There are no SDWA regulatory requirements related to sample chain of custody. SDWA requirements are limited to the analytical methods required for analysis of samples used for compliance with the NPDWRs."**

9) Does it concern the EPA that one of the homes I uncovered had an MDEQ official come himself, run water for 2-3 minutes before taking a sample, and the official left the field blank for who collected the sample? (The result came out well below 15ppb).

10) Does it concern the EPA that one of the homes I uncovered (sentinel home), the MDEQ official is the one who drew the sample (several different occasions), but put down the resident as the one who did? Why would an official put down the wrong information?

***From your answer: "State personnel do not collect the LCR compliance samples. Water systems leave the sample bottles with the residents and the residents collect the compliance samples. Since EPA and MDEQ were sampling in Flint at the same time for different reasons, some residents might recall being instructed to flush the water before the collection of samples."***

11) I have 17 residents on the record from sentinel homes (as per above, the homes MDEQ cited were used for LCR compliance) saying either an MDEQ official or a CORE official **trained by MDEQ** (or in some cases both at the same time), came in, ran their water for several minutes, and then took the samples and left. These were not cases of residents being instructed to run their water (that is a separate 10 residents) or doing the sampling themselves. If you are saying state personnel do not collect the LCR compliance samples, **are you saying the EPA was unaware that MDEQ officials and CORE officials were going into sentinel residents homes and drawing samples for sentinel homes/LCR compliance?**

12) Piggybacking off of that, was this a violation on MDEQ's part?

13) As per the point at the the top of this email that MDEQ itself reported sentinel homes were being used to satisfy the LCR—and evidence that in many sentinel homes, testing was done improperly (I only knocked on 400 doors, could potentially be more examples of violations)—**does the Governor hold any accountability?** It's his agency and he said the "buck stops with him." I would think considering the history here, the EPA would have a comment on who is at fault for testing violations?

Jordan

Sent with [ProtonMail](#) Secure Email.

----- Original Message -----

On July 12, 2018 5:46 PM, Jones, Enesta  
<[Jones.Enesta@epa.gov](mailto:Jones.Enesta@epa.gov)> wrote:

Jordan,

1) Is running water **right before** taking a water sample for lead and copper a violation of the EPA Lead and Copper Rule?

*There were many different types of samples collected in Flint, for different reasons and different purposes. In some cases, sampling involved flushing the night before taking the sample and in some cases even right before sampling, but these samples were not Lead and Copper Rule (LCR) compliance samples. Lead and copper tap samples used to determine compliance with the LCR must be collected as 1-liter, first-draw samples after the water has stood motionless in the plumbing system for at least six hours. The LCR does not contain specific requirements pertaining to pre-stagnation flushing (i.e., flushing the tap prior to starting the minimum 6-hour stagnation time).*

*Although not required under the LCR, EPA recommends collecting samples without pre-stagnation flushing. This practice is recommended to better reflect the state of knowledge about the fate and transport of lead in distribution systems, and because pre-stagnation flushing may potentially lead to samples that erroneously reflect lower lead concentrations.*

2) Does running water **right before** taking a water sample for lead lower the potential quantiles of lead, copper, and other heavy metals that might be detected. If so, by how much? And how specifically does flushing lower the potential for lead to be detected?

*Running the water right before collecting a sample could result in a change in the amount of metals in the sample, though this would depend on the plumbing materials in the home and whether the home is served by a lead service line, as well as other factors.*

3) The EPA instructed/advised MDEQ to stop the practice of pre-flushing the night before a water test in 2016. EPA official Miguel Del Toral was shown through FOIA'd emails in 2015 to be sounding the alarm on this practice when Flint city officials were doing it. Does the agency consider day-of flushing right before a water test worse than pre-flushing?

*As mentioned in the response to the first question, there were many sampling protocols used in Flint, some of which involved flushing the night before and some also involved flushing right before taking*

*the sample, but these samples were for different assessment purposes, not LCR compliance. For LCR compliance samples, EPA recommends against the use of pre-stagnation flushing.*

4) Is there any scenario where flushing right before a water test for lead and copper is an acceptable practice?

*Yes. EPA has implemented flushing of lines prior to collecting samples for metals, phosphorus, chloride and sulfate levels to measure water quality within the water main. In addition, EPA has directed residents to pre-flush the night before the collection of sequential samples the following morning. The pre-flushing was done to intentionally clear the lines as much as possible and then let the water sit for six-hours before collecting the sequential sampling which captures all of the water from the kitchen tap to the water main (usually 12 or more samples in a row). This was done to try to identify the source(s) of the lead. Finally, EPA's contractor collected samples after running the water as part of a research project to determine if flushed sampling results could be used to identify the presence of lead service lines.*

5) Is it a violation of chain of custody issue if an MDEQ official left the field for "sample collected by" blank or wrongly put down a resident collected e sample when it was in fact an MDEQ official?

*There are no SDWA regulatory requirements related to sample chain of custody. SDWA requirements are limited to the analytical methods required for analysis of samples used for compliance with the NPDWRs.*

6) With 30 residents on the record that their water was flushed before testing, 10 more on the record that they were instructed to flush when they tested, and the other violations found, how can Flint residents or the wider American public believe that the entire Flint water testing done by MDEQ was valid, credible, and without more widespread cheating that makes the testing data null and void? After all, these numbers came only from knocking on 400 doors.

*State personnel do not collect the LCR compliance samples. Water systems leave the sample bottles*

*with the residents and the residents collect the compliance samples. Since EPA and MDEQ were sampling in Flint at the same time for different reasons, some residents might recall being instructed to flush the water before the collection of samples.*

7) Stemming off of question 6, with these violations and wider doubt on all of the testings integrity, should Flint be retested citywide by an **independent**, non-federally or state funded scientist. If so, when should that testing occur and who should pay for it?

*See responses to questions 1-6.*

8) Since we found a large number of sentinel homes had this cheating occur, should the water pods be reopened (the sentinel home data was what MDEQ cited to declare lead levels were meeting EPA regulations along with Governor Snyder citing sentinel data when he shut down water pods).

*See responses to questions 1-6.*

8) Lastly, Governor Snyder declared during his 2016 State of the State that "the buck stops with me" and he'd "fix it." Should he be held accountable for what seems like pretty blatant cheating from his environmental agency on an issue as important and sensitive as lead in Flint's water?

*See responses to questions 1-6.*

On Jul 12, 2018, at 9:53 AM, Jordan Chariton <[jordanchariton@protonmail.com](mailto:jordanchariton@protonmail.com)> wrote:

Good Morning Enesta,

This is Jordan Chariton, a journalist who's reported on the ground in Flint 11 times since August 2016 and was just there for several weeks reporting. After knocking on nearly 400 doors, I uncovered that Michigan Department of Environmental Quality officials, and the workers in Flint's CORE program it trained to go door to door to test water, **improperly tested water for lead and copper in at least 30 homes** by running the water for several minutes before taking the sample (in some cases, for 10-20 minutes). I also found 10 other homes where residents were instructed by both MDEQ officials and CORE officials to run their water before they took water samples. I also found several homes where

testing occurred late in the day when water was already used.

Overall, **17 of the 30 homes** where I found improper testing were part of the state's sentinel testing program, which was the focus group of homes used to declare that the water was back below EPA regulations. That was also the data Governor Snyder cited when shutting down the city's water pods in April. Based on the Lead and Copper Rule, this testing is a blatant violation of the regulation which mandates water be stagnant for a minimum of six-hours before sampling. And tellingly, MDEQ's own sampling instruction video on it's YouTube channel said: "Remember, do not flush any water from the faucet before you take the sample"....**until MDEQ deleted that YouTube channel and the aforementioned sampling instruction video over the last 5 days** (weird timing—considering I publicly have said I was working on a story about the water testing and MDEQ flushing). Fortunately, I saved the video and have it downloaded.

**More details:** I found one home where an MDEQ official's flushed test produced lead ranging from 2ppb to 10ppb—but when the EPA came out, presumably without flushing before running the test— they found 85ppb. I also found a home where an EPA official came and tested late in the day after 3pm when water was already in use—and the homeowner conveyed that but the official tested anyway (at the moment, I don't plan on including that example in the story). I also found evidence of MDEQ leaving blank on testing results who collected the water sample at homes they did so (and putting down that residents collected the sample when they didn't).

This investigative story is currently scheduled to come out next week on [VICE.com](http://www.vice.com). Being that the EPA played a part in choosing the sentinel homes for water testing, and also played a role in having MDEQ take over the testing in 2016, and frankly—has been lied to before by MDEQ—I would like an official comment from the EPA on my findings. **All of the residents at these homes are on the record.** Here are some questions--I'd appreciate on the record answers by tomorrow morning.

1) Is running water **right before** taking a water sample for lead and copper a violation of the EPA Lead and Copper Rule?

2) Does running water **right before** taking a water sample for lead lower the potential quantiles of lead, copper, and other heavy metals that might be detected. If so, by how much? And how specifically does flushing lower the potential for lead to be detected?

3) The EPA instructed/advised MDEQ to stop the practice of pre-flushing the night before a water test in 2016. EPA official Miguel Del Toral was shown through FOIA'd emails in 2015 to be sounding the alarm on this practice when Flint city officials were doing it. Does the agency consider day-of flushing right before a water test worse than pre-flushing?

4) Is there any scenario where flushing right before a water test for lead and copper is an acceptable practice?

5) Is it a violation of chain of custody issue if an MDEQ official left the field for "sample collected by" blank or wrongly put down a resident collected the sample when it was in fact an MDEQ official?

6) With 30 residents on the record that their water was flushed before testing, 10 more on the record that they were instructed to flush when they tested, and the other violations found, how can Flint residents or the wider American public believe that the entire Flint water testing done by MDEQ was valid, credible, and without more widespread cheating that makes the testing data null and void? After all, these numbers came only from knocking on 400 doors.

7) Stemming off of question 6, with these violations and wider doubt on all of the testings integrity, should Flint be retested citywide by an **independent**, non-federally or state funded scientist. If so, when should that testing occur and who should pay for it?

8) Since we found a large number of sentinel homes had this cheating occur, should the water pods be reopened (the sentinel home data was what MDEQ cited to declare lead levels were meeting EPA regulations along with Governor Snyder citing sentinel data when he shut down water pods).

8) Lastly, Governor Snyder declared during his 2016 State of the State that "the buck stops with me" and he'd "fix it." Should he be held accountable for what seems like pretty blatant cheating from his environmental agency on an issue as important and sensitive as lead in Flint's water?

Look forward to your response.

Jordan

**Ex. 6**

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