May 4, 2018

FACT SHEET

Natural Resources Defense Council (NRDC) and Newark Education Workers (NEW) Caucus Notice of Intent to Sue NJDEP over Failure to Properly Implement the Lead and Copper Rule (LCR), dated April 24, 2018

Plaintiffs: NRDC and NEW Caucus

Defendants: City of Newark and NJDEP

NRDC/New Caucus Claims:

I. Newark residents are exposed to dangerous levels of lead in the City's drinking water. City and State officials are in violation of the Safe Drinking Water Act's (SDWA) Lead and Copper Rule.

II. The City is in violation of LCR's sampling requirements
   - A. The City is in violation of the requirement to install optimal corrosion control treatment (CCT).
   - B. The City is in violation of the requirement to maintain optimal control treatment.
   - C. The City is in violation of the requirement to complete public education (PE).
   - D. The City is in violation of the requirement to complete a materials evaluation, including an inventory of its lead service lines (LSLs).
   - E. Acting Commissioner of NJDEP failed to designate optimal corrosion control treatment for the City in violation of the LCR.
   - F. Acting Commissioner of NJDEP failed to designate optimal water quality parameters (WQPs) for the City in violation of the LCR.

Civil Actions Under the SDWA: Section 1449 of the Safe Drinking Water Act authorizes any person to commence a civil action to enforce the Act against an alleged violator of any requirements prescribed by or under the Act, or against the Administrator for failure to perform any duty which is not discretionary under the Act. No citizen suit may be commenced prior to sixty days after giving notice of the alleged violation to the Administrator, any alleged violator, and to the State.

EPA's Role

EPA's Position: EPA is reviewing the claims contained in the Notice of Intent. *However, it appears the claims are based on past implementation deficiencies that NJ is currently addressing through implementation of their LCR Corrective Action Plan.*

EPA Oversight on NJDEP LCR Implementation:

- June 2015: Region 2 met with NJDEP after our inspection of Trenton's large drinking water system in 2014 identified LCR implementation issues. NJDEP outlined their plan to request data from the system and set optimal WQPs.
- April 2016: Region 2 conducted an LCR file review on 55 small and medium Public Water Systems (PWS) with Action Level Exceedances (ALEs). *Based on findings from the file reviews conducted at systems with recorded ALEs and inspections, it was determined that*

implementation of the LCR by public water systems in the State was inadequate for the following reasons:

- Proper documentation was not being maintained or available at time of the file review. This includes documenting:
    - Determinations of compliance and violations in the Safe Drinking Water Information System (SDWIS).
    - Designation of optimal WQPs.
    - CCT optimization after an ALE.
- Tier 1 sampling sites were not being used.

- EPA issued a report with its findings in September 2016.

- *Region 2 also provided the following 6 recommendations:*
    - Address deficiencies found in the review by updating Action Plan.
    - Approve and document all WQPs and CCT approvals within 6 months.
    - Document Tier 1 sites and tap sampling plans within 6 months.
    - Report all missing violations to SDWIS.
    - File all approved WQPs and CCT documents appropriately.
    - Create implementation schedule for follow-up of recommendations.

<u>NJDEP Response to EPA Oversight:</u>

- *November 2016: NJDEP submitted a corrective action plan to correct the identified deficiencies, required public water systems to reevaluate and reestablish compliance with the LCR, and committed additional staff for implementation.*
    - December 2016: NJDEP completed evaluation of large systems.
    - October 2017 (current): The corrective action plan is currently being implemented, and includes the evaluation of all sampling pools and Water Quality Parameters (if applicable) for all systems in NJ.

Newark, NJ

<u>Response to EPA Oversight</u>: Prior to April 2016, Newark had no documented ALEs as specified in the LCR.

- In 2017 Newark collected required LCR samples at new, Tier 1 locations, which resulted in an ALE. Tier 1 sites, single family structures with copper with lead solder constructed between 1983 and 1988, lead pipes including goosenecks and pigtails, or lead service lines (LSLs).
- *NJDEP and Newark are taking the required actions after the 2017 ALE.*

<u>Lead Service Line Replacement in Newark, NJ</u>

- June 30, 2018 Newark will apply to use the SRF program to replace 7% or 1,600 of its 18,000-20,000 lead service lines (LSLs).
- This will be funded through the SRF with a $1,000,000 cap.
- 90% principal forgiveness.
- In Newark, LSLs are owned by the homeowner.

Background on Newark Public Water System

- Population Served: 273,000
- Essex County
- Drinking Water Sources:
  - Surface Water (Pequannock River Intake off the Charlotteburg Reservoir)
  - Purchases water from NJDWSC Wanaque North
- Treatment:
  - Direct Filtration at Pequannock Treatment Plant, coagulation, gas chlorination, pH adjustment and silicate inhibitor for corrosion control
  - Finished water storage at uncovered Cedar Grove Reservoir
- Lead 90th Percentile Results (2015-2017):
  - 10 ppb (01/01/2013 to 12/31/2015)
  - 27ppb (01/01/2017 to 06/30/2017)
  - 26.7ppb (07/01/2017 to 12/31/2017)
  - Newark is currently on 6-month sampling, as part of NJDEP's resumption of routine 6-month LCR monitoring.
- System Violations (2015-2017): *All violations have been returned to compliance.*

Violation Type	Contaminant Name/Rule	Result (ug/l)	Compliance Period Begin Date	Compliance Period End Date
Maximum Contaminant Level Violation, Average	TTHM	84.4	01-Jul-15	30-Sep-15
Monitoring, Repeat Major (TCR)	Coliform (TCR)		01-Nov-15	30-Nov-15
Maximum Contaminant Level Violation, Average	TTHM	86.0	01-Oct-15	31-Dec-15
Maximum Contaminant Level Violation, Average	TTHM	90.0	01-Jan-16	31-Mar-16
Treatment Technique (SWTR and GWR)	Surface Water Treatment Rule		01-Nov-15	30-Nov-15
Treatment Technique (SWTR and GWR)	Surface Water Treatment Rule		01-Dec-15	31-Dec-15
Treatment Technique (SWTR and GWR)	Surface Water Treatment Rule		01-Jan-16	31-Jan-16
Treatment Technique (SWTR and GWR)	Surface Water Treatment Rule		01-Feb-16	29-Feb-16
Maximum Contaminant Level Violation, Average	TTHM	82.0	01-Apr-16	30-Jun-16
Consumer Confidence Report Complete Failure to Report	Consumer Confidence Rule		01-Jul-16	
Water Quality Parameter M/R	Lead and Copper Rule		01-Jul-16	31-Dec-16
Monitoring, Regular	Cyanide		01-Jan-17	31-Dec-17

National LCR Compliance Issues

- Most discrepancies involve a lack of documentation of PWS-required actions taken post-ALE; missing WQPs, initial source water monitoring, public education certifications, optimal CCT recommendations and any necessary treatment installation verifications.
- Many PWSs lack documented sampling plans.
- Other deficiencies involve inconsistent determination and reporting of violations.
- There were several instances of sample invalidation decisions that did not appear to meet the allowable criteria to do so.