April 24, 2018

By Certified Mail, Return Receipt Requested

City of Newark
Att: Mayor Ras J. Baraka
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Newark, New Jersey 07102
4311newark@ci.newark.nj.us

Mayor Ras J. Baraka
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barakara@ci.newark.nj.us

City of Newark
Department of Water and Sewer Utilities
Att: Director Andrea Hall Adebowale
920 Broad Street Room B-31F
Newark, New Jersey 07102
waterandsewer@ci.newark.nj.us

Director Andrea Hall Adebowale
920 Broad Street Room B-31F
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Acting Commissioner Catherine R. McCabe
New Jersey Department of Environmental Protection
401 E State Street, Fl. 7, East Wing
Trenton, New Jersey 08625
Catherine.McCabe@dep.nj.gov

Re: Notice of Intent to Sue under the Safe Drinking Water Act, 42 U.S.C. § 300j-8(b)(1)(a) for failure to comply with regulations for the control of lead in drinking water in Newark, New Jersey

We write on behalf of the Newark Education Workers Caucus (NEW Caucus) and the Natural Resources Defense Council (NRDC), nonprofit citizens' organizations concerned about the elevated levels of lead in the City of Newark's drinking water, and the effects those levels have on residents' health. This letter provides notice under 42 U.S.C. § 300j-8(b)(1)(a) that NEW Caucus and NRDC intend to sue the City of Newark, Mayor Ras J. Baraka, the Newark Department of Water and Sewer Utilities, and Director Andrea Hall Adebowale for their continuing failure to comply with the Lead and Copper Rule's requirements for controlling corrosion from lead pipes, monitoring tap water for lead, providing notification to customers, and completing a materials evaluation with a lead service line inventory, in violation of the Safe Drinking Water Act.[1] Additionally, we intend to sue Acting Commissioner of the New Jersey Department of Environmental Protection (NJDEP), Catherine R. McCabe, for NJDEP's continuing failure to designate optimal corrosion control treatment and optimal water quality parameters, in violation of the Safe Drinking Water Act and the Lead and Copper Rule.[2] We

[1] 42 U.S.C. § 300f *et seq.*; 40 C.F.R. § 141.80 *et seq.*

[2] 42 U.S.C. § 300f *et seq.*; 40 C.F.R. § 141.80 *et seq.*

intend to sue the above-described entities and officials if the violations described in this letter are not remedied within sixty days.[3]

NEW Caucus is an association of educators who teach in Newark's public schools, some of whom are Newark residents. New Caucus is dedicated to ensuring children's safety and capacity for learning. NRDC is a national membership organization, with members in Newark, committed to defending public health and the environment, and to protecting communities from exposure to toxic chemicals. These groups continue to be harmed by the City of Newark and NJDEP's violations of the Safe Drinking Water Act's Lead and Copper Rule, as detailed below.

I. Newark residents are exposed to dangerous levels of lead in the City's drinking water

The levels of lead in the City of Newark's drinking water are among the highest recorded by a large water system in the United States in recent years.[4] In March 2016, NJDEP released a statement indicating that thirty schools recorded lead levels above the 15 parts per billion federal action level.[5] This news prompted many schools to disconnect from the City water supply, shut off water fountains and post "do not drink" notices.[6] While Newark's schools have now reconnected to the City's water supply, Newark's recent drinking water test results show that the City's residents remain at risk. For two consecutive six-month monitoring periods in 2017, Newark's self-reported lead levels reached at least 26.7 parts per billion at the 90th percentile of water samples collected.[7] These levels far exceed the 15 parts per billion federal action level set by the U.S. Environmental Protection Agency.[8]

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[3] Mayor Ras J. Baraka, Director Andrea Hall Adebowale, and Acting Commissioner Catherine R. McCabe are each noticed in their official capacities.

[4] U.S. Envtl. Prot. Agency, Safe Drinking Water Info. Sys., *Federal Reports Advanced Search*, https://ofmpub.epa.gov/apex/sfdw/f?p=108:20035:::NO::: (select "Lead ALE Samples" under "Choose a report" and ">50,000" under "Population Served Categories") (last accessed April 15, 2018) (attached as Ex. 1) (showing Newark's lead levels are among the highest out of systems serving over fifty thousand people, in the past three years).

[5] News Release, N.J. Dep't Envtl. Prot., Joint Release from DEP and Newark Public Schools on Temporary Use of Alternate Water Sources After Elevated Levels of Lead Found in Recent District Testing (Mar. 9, 2016), http://www.nj.gov/dep/newsrel/2016/16_0012.htm (attached as Ex. 2).

[6] Karen Yi, *Drinking Water at These 9 Newark Schools Will Return in April After Lead Crisis*, NJ.com (Mar. 30, 2017, 11:25 AM), http://www.nj.com/essex/index.ssf/2017/03/newark_schools_lead_update.html (attached as Ex. 3); *see also* Emma Brown, *Newark Turns off Water at 30 Schools After Tests Show Elevated Lead Levels*, Wash. Post (Mar. 10, 2016), https://www.washingtonpost.com/news/education/wp/2016/03/10/newark-turns-off-water-at-30-schools-after-tests-show-elevated-lead-levels/ (attached as Ex. 4).

[7] N.J. Dep't Envtl. Prot., Drinking Water Watch, *Lead/Copper Summaries*, https://www9.state.nj.us/DEP_WaterWatch_public/index.jsp (enter "0714001" for PWSID and click "Search," then click "NJ0714001," then click "Lead/Copper" under "Chemical Results") (last accessed April 15, 2018) (attached as Ex. 5).

[8] 40 C.F.R. § 141.80(c)(1).

In the first six months of 2017, over twenty-two percent of drinking water samples across the City of Newark exceeded 15 parts per billion.[9] In that same period, the City's drinking water reached 27 parts per billion of lead at the 90th percentile of samples collected.[10] In other words, ten percent of samples collected exceeded 27 parts per billion of lead, almost doubling the federal action level.[11] At certain individual homes, lead levels reached much higher concentrations. For example, six Newark addresses tested above 50 parts per billion and one address tested at 137 parts per billion.[12] In response to Newark's elevated lead levels, NJDEP notified Andrea Hall Adebowale, Director of the Newark Department of Water and Sewer Utilities on July 11, 2017 that Newark exceeded the federal lead action level, and was not in compliance with the Lead and Copper Rule.[13]

Newark's elevated lead levels have not abated, notwithstanding NJDEP's July 11, 2017, notice of non-compliance. In December 2017, at the close of the second six-month monitoring period of 2017, the City's drinking water reached 26.7 parts per billion at the 90th percentile.[14] Many samples exceeded that high level, with 13 addresses testing above 30 parts per billion, and four addresses testing above 50 parts per billion.[15] On January 23, 2018, NJDEP issued a second notice of non-compliance to the City relating to the City's failure to comply with the Lead and Copper Rule.[16]

The high levels of lead in Newark's drinking water put the City's residents at risk of serious and irreversible health effects. According to the U.S. Environmental Protection Agency, "low levels of exposure [to lead] have been linked to damage to the central and peripheral

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[9] *See* N.J. Dep't Envtl. Prot., Drinking Water Watch, ***Lead/Copper Results for Monitoring Period: 01/01/2017 – 06/30/2017***, https://www9.state.nj.us/DEP_WaterWatch_public/index.jsp (enter "0714001" for PWSID and click "Search," then click "NJ0714001," then click "Lead/Copper" under "Chemical Results," then click "01/01/2017 – 06/30/2017") (last accessed April 15, 2018) (attached as Ex. 6) (showing twenty-nine samples with lead levels over the action level).

[10] N.J. Dep't Envtl. Prot., ***Lead/Copper Summaries***, ***supra*** note 7 (Ex. 5).

[11] ***Id.***

[12] N.J. Dep't Envtl. Prot., ***Lead/Copper Results for Monitoring Period: 01/01/2017 – 06/30/2017***, ***supra*** note 9 (Ex. 6).

[13] Letter from Felicia Fieo, Section Chief, Bureau of Safe Drinking Water, N.J. Dep't Envtl. Prot., to Newark Water Dep't (July 11, 2017) (attached as Ex. 7).

[14] New Jersey Dep't Envtl. Prot., Drinking Water Watch, ***Lead/Copper Results for Monitoring Period: 07/01/2017 – 12/31/2017***, https://www9.state.nj.us/DEP_WaterWatch_public/index.jsp (enter "0714001" for PWSID and click "Search," then click "NJ0714001," then click "Lead/Copper" under "Chemical Results," then click "07/01/2017 – 12/31/2017") (last accessed April 15, 2018) (attached as Ex. 8) (showing twenty-eight samples with lead levels over the action level).

[15] ***Id.***

[16] Letter from Felicia Fieo, Section Chief, Bureau of Safe Drinking Water, N.J. Dep't Envtl. Prot., to Newark Water Dep't (Jan. 23, 2018) (attached as Ex. 9).

nervous system, learning disabilities, shorter stature, impaired hearing, and impaired formation and function of blood cells."[17] Exposure to low levels of lead early in life has "been found to affect behavior and intelligence," according to the Centers for Disease Control and Prevention.[18] The World Health Organization has found that the effects of lead exposure are typically irreparable.[19] "Because the human brain has little capacity for repair, these effects are untreatable and irreversible. They cause diminution in brain function and reduction in achievement that last throughout life."[20]

Lead exposure is also associated with reproductive and kidney problems in otherwise healthy adults.[21] Exposure to lead is associated with miscarriages in pregnant women, as well as fertility issues, cardiovascular and kidney effects, cognitive dysfunction, and elevated blood pressure.[22] For both children and adults, the U.S. Environmental Protection Agency, the Center for Diseases Control and Prevention, and the American Academy of Pediatrics maintain that there is no safe level of lead exposure.[23]

The high lead levels in Newark's drinking water are especially concerning because they compound long-standing community concerns about Newark children's exposure to toxic levels of lead. Exposure to lead from multiple sources presents a cumulative toxicological threat to

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[17] U.S. Envtl. Prot. Agency, ***Basic Information About Lead in Drinking Water***, https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water (last updated Mar. 30, 2018) (attached as Ex. 10); ***see also*** U.S. Envtl. Prot. Agency, ***Integrated Science Assessment for Lead*** lxxxiii-lxxxvii tbl.ES-1 (2013) (attached as Ex. 11); National Ambient Air Quality Standards for Lead, 80 Fed. Reg. 278, 290 (Jan. 5, 2015) (attached as Ex. 12).

[18] U.S. Ctrs. for Disease Control & Prevention, ***Lead: Information for Workers: Health Problems Caused by Lead***, www.cdc.gov/niosh/topics/lead/health.html (last updated Apr. 19, 2017) (attached as Ex. 13).

[19] World Health Org., ***Childhood Lead Poisoning*** 12 (2010) (attached as Ex. 14).

[20] ***Id.***

[21] U.S. Envtl. Prot. Agency, ***supra*** note 17 (Ex. 10).

[22] U.S. Dep't of Health & Human Servs., Nat'l Toxicology Program, Health Effects of Low-Level Lead xvii (2012), https://ntp.niehs.nih.gov/ntp/ohat/lead/final/monographhealtheffectslowlevellead_newissn_508.pdf (attached as Ex. 15).

[23] Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper, 56 Fed. Reg. 26,460, 26,467 (June 7, 1991) (attached as Ex. 16); U.S. Ctrs. for Disease Control & Prevention, ***Water***, https://www.cdc.gov/nceh/lead/tips/water.htm (last updated Feb. 18, 2016) (attached as Ex. 17) ("CDC reiterates . . . : because no safe blood level has been identified for young children, all sources of lead exposure for children should be controlled or eliminated. Lead concentrations in drinking water should be below the EPA action level of 15 parts per billion."); Am. Acad. of Pediatrics, ***With No Amount of Lead Exposure Safe for Children, American Academy of Pediatrics Calls For Stricter Regulations*** (June 20, 2016), https://www.aap.org/en-us/about-the-aap/aap-press-room/pages/With-No-Amount-of-Lead-Exposure-Safe-for-Children,-American-Academy-of-Pediatrics-Calls-For-Stricter-Regulations.aspx (attached as Ex. 18).

children and adults.[24] For example, older cities, like Newark, have a high proportion of housing built before 1978, when the federal government prohibited consumer uses of lead-containing paint.[25] Thus, many Newark residents may be exposed to lead through multiple sources, including through their drinking water and because of lead paint in their homes. A 2016 study showed that elevated blood lead levels affect Newark children at a rate three times greater than children in the State of New Jersey overall.[26]

II. City and State officials are in violation of the Safe Drinking Water Act's Lead and Copper Rule

The Safe Drinking Water Act authorizes citizens to sue any governmental entity "who is alleged to be in violation of any requirement" under the statute.[27] These requirements include national primary drinking water regulations for lead and copper set forth in the Lead and Copper Rule.[28] The Lead and Copper Rule obligates water systems to monitor and control for lead in drinking water.[29]

NEW Caucus and NRDC intend to allege that the City of Newark and the Newark Department of Water and Sewer Utilities; and Mayor Ras J. Baraka, Director Andrea Hall Adebowale, and Acting Commissioner Catherine R. McCabe, all acting in their official capacities, violated, and are continuing to violate, the Lead and Copper Rule's requirements for controlling lead in drinking water, as described below.

A. The City's violation of the Lead and Copper Rule's sampling requirements

Under the Lead and Copper Rule, water systems are required to identify a pool of sampling sites prior to commencing sampling.[30] Large water systems serving over 50,000 people, like Newark, must collect and test at least 100 tap water samples during each six-month

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[24] U.S. Ctrs. for Disease Control and Prevention, Preventing Lead Poisoning in Young Children: Chapter 3, https://www.cdc.gov/nceh/lead/publications/books/plpyc/chapter3.htm (1991) ("Lead entering the body from different sources and through different pathways presents a combined toxicological threat . . . Multiple, low-level inputs of lead can result in significant aggregate exposure.") (attached as Ex. 19).

[25] U.S. Env't Prot. Agc'y, Protect Your Family From Exposures to Lead, https://www.epa.gov/lead/protect-your-family-exposures-lead (last updated Aug. 30, 2017) (attached as Ex. 20).

[26] Jessica Mazzola, Largest Blood Lead Study Yet Finds 'Concern' in Newark Kids, NJ.com (June 22, 2016), http://www.nj.com/essex/index.ssf/2016/06/largest_study_ever_of_kids_blood_lead_levels_revea.html (attached as Ex. 21).

[27] 42 U.S.C. § 300j-8(a)(1).

[28] *See id.* § 300g-1(b)(1)(A); 40 C.F.R. § 141.80(a)(1).

[29] *See, e.g.*, 40 C.F.R. § 141.86.

[30] *See id.* § 141.86(a).

monitoring period.[31] Water systems must prioritize testing of sites that are most at risk for elevated lead levels, called Tier 1 sites.[32] In meeting the 100-tap-water-sample requirement, water systems must first sample available Tier 1 sites.[33] Systems may use lower priority Tier 2 or Tier 3 sites to meet the 100-sample quota only if they do not have sufficient Tier 1 sites.[34]

Newark has impermissibly sampled lower-priority sites that are less likely to have high lead concentrations, masking the extent of lead in the City's drinking water. During the first six-month monitoring period of 2017, Newark's water system listed at least 131 Tier 1 sites in its sampling pool. However, sampling site certification forms show that it sampled only 40 Tier 1 sites.[35] Newark's insufficient sampling of high-risk sites continued in the second monitoring period of 2017. Between July and December 2017, Newark sampled only 88 Tier 1 sites. A series of exchanges between the Newark Department of Water and Sewer Utilities and NJDEP reveal that Newark had repeatedly failed to submit lead sampling plans and certifications forms in compliance with the Lead and Copper Rule in the past.[36]

The City's dilution of its sampling pool with Tier 2 and Tier 3 sites calls into question the reliability of its measured levels of lead, and suggests that the City may be routinely underestimating lead levels in drinking water. This violation is continuing and is likely to recur.

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[31] *Id.* § 141.86(c).

[32] *Id.* § 141.86(a)(3).

[33] *Id.*

[34] *Id.* § 141.86(a)(4), (5).

[35] Lead and Copper Sampling Pool Certification for Newark Water System, Form BWSE-14, certified by Andrea Hall Adebowale & Andrew Pappachen (Sept. 12-14, 2016) (attached as Ex. 22) (showing only 40 Tier 1 sites, and 112 Tier 2 and Tier 3 sites, out of a total of 152 sites); *see also* Email from Andrew Pappachen, Dir. of Pub. Works for the City of Newark, to Michael Bleicher, Bureau of Water Sys. Eng'g., N.J. Dep't Envtl. Prot. (July 20, 2017) (attached as Ex. 23) ("Fw: BWSE15 Forms September 2016 NJDEP Submission (152 Sites) and Customer Request (1/1/17 – 6/30/17) . . . Mike: Forwarded are the copies of the BWSE15 forms created for all the samples collected from 1/1/2017 till 6/30/2017.").

[36] *See, e.g.*, Letter from Kathleen Burkhard, Bureau of Water Sys. Eng'g, N.J. Dep't Envtl. Prot., to Andrea Hall Adebowale, Dir., Newark Water Dep't 1-2 (Nov. 2, 2016) (attached as Ex. 24) (stating that Newark's September 2016 Lead and Copper sampling plan "remains deficient" and asking the Newark Department of Water and Sewer Utilities to "provide full documentation as to how [it] has exhausted all of its Tier 1 and 2 sites, allowing for Tier 3 sites to be incorporated into the sampling pool."); Letter from Kathleen Burkhard, Bureau of Water Sys. Eng'g., N.J. Dep't Envtl. Prot. to Andrea Hall Adebowale, Dir., Newark Water Dep't 1 (May 25, 2016) (attached as Ex. 25) (identifying "several deficiencies" with Newark's April 2016 Lead and Copper Sampling Plan, Sample Site Selection Certification Form, and Sampling Site Materials Evaluation forms).

B. The City's violation of the requirement to install optimal corrosion control treatment

Under the Lead and Copper Rule, all water systems must install optimal corrosion control treatment.[37] The Lead and Copper Rule defines "optimal" corrosion control treatment as treatment that "minimizes" lead levels at users' taps.[38] This is often accomplished by adding corrosion-inhibiting chemicals to the water. The Lead and Copper Rule sets forth specific steps and deadlines that must be followed to achieve installation of optimal corrosion control treatment, including the requirement to "install optimal corrosion control treatment . . . by January 1, 1997."[39]

Upon information and belief, Newark did not meet the initial January 1, 1997, deadline for the installation of optimal corrosion control treatment, and still has not installed optimal corrosion control treatment. This violation is continuing and likely to recur.

C. The City's violation of the requirement to maintain optimal corrosion control treatment

Under the Lead and Copper Rule, all water systems must "operate and maintain optimal corrosion control treatment."[40] To adequately maintain optimal corrosion control treatment, a system must minimize lead concentrations to the maximum extent feasible.[41] NJDEP has found that the "Newark Water Department is deemed to no longer have optimized corrosion control treatment."[42] Additionally, Newark's substantial and sustained action level exceedances show that the City's efforts to control corrosion are inadequate.[43] Upon information and belief, the City of Newark has failed, and is continuing to fail, to meet this requirement.

D. The City's violation of the requirement to complete public education

Under the Lead and Copper Rule, Newark is required to notify each "bill paying customer" with printed materials containing specified language when samples collected in a

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[37] 40 C.F.R. §§ 141.2; 141.80(d).

[38] *Id.*

[39] *Id.* § 141.81(d).

[40] *Id.* § 141.81(b).

[41] *See id.* § 141.2; Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper, 56 Fed. Reg. 26,460, 26,491 (June 7, 1991).

[42] Letter from Felicia Fieo to Andrea Hall Adebowale, *supra* note 13, at 3 (Ex. 7).

[43] An action level exceedance is indicative of a water system's failure to optimize corrosion control treatment. However, to adequately optimize corrosion control treatment, a system must minimize lead concentrations to the maximum extent feasible. *See* 40 C.F.R. § 141.2; 56 Fed. Reg. at 26,491. Thus, a system that tests below the 15 parts per billion action level, but that does not have low, stable, lead levels, has still failed to optimize corrosion control treatment.

monitoring period exceed the lead action level.[44] These public education materials must include information about the health effects of lead and advise customers on how to get water tested for lead.[45] Email correspondence between the City and NJDEP show that Newark failed to notify at least two hundred, and as many as 20,000, service account holders about its July 2017 action level exceedance, in violation of the Lead and Copper Rule.[46] The City of Newark has failed and, upon information and belief, is continuing to fail, to meet this requirement.

E. The City's violation of the requirement to complete a materials evaluation, including an inventory of its lead service lines

The Lead and Copper Rule requires water systems to perform a materials evaluation before beginning lead and copper tap monitoring.[47] As part of that evaluation, each water system must "identify the initial number of lead service lines in its distribution system."[48] The U.S. Environmental Protection Agency requested that NJDEP ensure that water systems in New Jersey, particularly large water systems like Newark, post the "materials inventory that systems were required to complete under the [Lead and Copper Rule], including the locations of lead service lines" on the water system's website.[49]

NRDC has requested copies of Newark's materials evaluation and lead service line inventory from Newark and NJDEP, through the New Jersey Open Public Records Act. Newark has not produced its materials evaluation or lead service line inventory in response to NRDC's requests. Instead, Newark has stated that a report on its lead service lines is not available, but that it is providing NJDEP with updates.[50] Likewise, NJDEP stated its "understanding that

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[44] 40 C.F.R. § 141.85(b)(2)(i).

[45] *Id.* § 141.85(a)(1).

[46] Email from Michael Bleicher, Bureau of Water Sys. Eng'g., N.J. Dep't Envtl. Prot., to Andrew Pappachen, Dir. of Pub. Works for the City of Newark (Sept. 18, 2017) (attached as Ex. 26) (raising a query about a mismatch between the number of Newark public education postal receipts received by NJDEP (23,590) and the number of service connections (57,616)); Email from Andrea Hall Adebowale, Dir., Newark Water Dep't, to Michael Bleicher, Bureau of Water Sys. Eng'g., N.J. Dep't Envtl. Prot. (Sept. 21, 2017) (attached as Ex. 27) (claiming that Newark has only 37,000 service accounts); Email from Andrew Pappachen, Dir. of Pub. Works for the City of Newark, to Michael Bleicher, Bureau of Water Sys. Eng'g., N.J. Dep't Envtl. Prot. (Sept. 21, 2017) (attached as Ex. 28) (stating that a total of 36,800 public education notices were mailed by Newark in response to the July 2017 lead action level exceedance); N.J. Dep't Envtl. Prot., Newark Water Dep't, Drinking Water Watch, *Water System Information*, https://www9.state.nj.us/DEP_WaterWatch_public/index.jsp (enter "0714001" for PWSID and click "Search," then click "NJ0714001") (last accessed April 15, 2018) (attached as Ex. 29) (showing a total of 57,616 service connections).

[47] 40 C.F.R. §§ 141.86(a), 141.42(d).

[48] *Id.* § 141.84(b)(1).

[49] Letter from Joel Beauvais, Dep. Asst. Admin., U.S. Envtl. Prot. Agency, to Commissioner Bob Martin, N.J. Dep't Envtl. Prot. (February 29, 2016) (attached as Ex. 30).

[50] Email from Tiffany Stewart, Newark Dept. of Water and Sewer Util., to Claire Woods, Natural Resources Defense Council (April 13, 2017) (attached as Ex. 31).

materials evaluations and sampling plans were not submitted [by the City] to NJDEP following the Lead and Copper Rule effective date."[51] Any materials evaluations that were submitted by the City of Newark did not address all requirements under the Lead and Copper Rule, including the requirement to prepare a lead service line inventory. Thus, upon information and belief, Newark is in violation of the requirement to complete a materials evaluation, including the preparation of a lead service line inventory.

F. Acting Commissioner of NJDEP's failure to designate optimal corrosion control treatment for the City in violation of the Lead and Copper Rule

Under the Lead and Copper Rule, NJDEP was required to "either approve the corrosion control treatment option recommended by the system, or designate alternative corrosion control treatment(s)" by January 1, 1995.[52] NJDEP was required to provide notice of its decision on optimal corrosion control treatment in writing and explain the basis for its determination.[53]

In a November 16, 2017, email to NRDC, NJDEP's records custodian admitted that NJDEP was not in possession of any records documenting its designation of optimal corrosion control treatment designation for the City of Newark.[54] On information and belief, NJDEP is in violation of its obligation to designate optimal corrosion control treatment for Newark.

G. Acting Commissioner of NJDEP's failure to designate optimal water quality parameters for the City in violation of the Lead and Copper Rule

The Lead and Copper Rule requires states to designate optimal values for water quality indicators, known as "parameters," both before and after installation of optimal corrosion control.[55] These parameters include optimal pH levels, and optimal levels of corrosion-inhibiting chemicals, such as silicate and orthophosphate, for the system.[56] According to guidance from the U.S. Environmental Protection Agency, optimal water quality parameters are measured to determine whether a system is operating its corrosion control treatment at a level that most effectively minimizes the lead and copper concentrations at users' taps.[57]

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[51] Letter from Ryan Atkinson, N.J. Atty. Gen. Office, to Susan Kraham, Columbia Environmental Law Clinic (April 6, 2018) (attached as Ex. 32).

[52] 40 C.F.R. §§ 141.81(d)(2); 141.82(d)(1).

[53] *Id.* § 141.82(d)(2).

[54] Email from Matt Coefer, Chief Records Custodian, N.J. Dep't Envtl. Prot., to Mekela Panditharatne, Nat. Res. Def. Council (Nov. 16, 2017) (attached as Ex. 33).

[55] 40 C.F.R § 141.82(f); *see also id.* § 141.81(d)(6).

[56] *Id.* § 141.82(f).

[57] *Id.* (directing states to designate parameters they "determine[] to reflect optimal corrosion control treatment for the system"); *id.* § 141.2 (defining "optimal corrosion control treatment" as "treatment that minimizes the lead and copper concentrations at users' taps"). *See also* U.S. Envtl. Prot. Agency, *Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Systems*

NJDEP has not designated optimal water quality parameter values for the City of Newark. In September 2015, NJDEP requested that Newark provide documentation of any "previously established OWQPs [optimal water quality parameters]."[58] Newark responded that the system had no such records.[59] In an email to NRDC on November 16, 2017, NJDEP's records custodian stated that neither NJDEP nor the City of Newark were in possession of any documents containing an optimal water quality parameter designation by NJDEP.[60]

III. Intent to Sue

The City of Newark, the Newark Department of Water and Sewer Utilities, and City of Newark officials have violated, and continue to violate, the Lead and Copper Rule's requirements for proper corrosion control, monitoring and sampling tap water for lead, public education, and preparation of a materials evaluation with a lead service line inventory. State of New Jersey official Catherine R. McCabe has violated, and continues to violate, the Lead and Copper Rule's requirement that NJDEP designate optimal corrosion control treatment and optimal water quality parameters for the City of Newark. These violations are likely to continue or recur in the future absent a judicial decree ordering City and State officials to comply with the Safe Drinking Water Act.

If the City and State officials identified above fail to cure their noncompliance with the Act within sixty days, NEW Caucus and NRDC will file suit in federal district court seeking declaratory relief, injunctive relief, and litigation costs, as appropriate.

The name, address, and telephone number of each entity giving notice pursuant to this letter are:

Newark Education Workers Caucus
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Natural Resources Defense Council
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111 Sutter Street, Fl. 21
San Francisco, California 94104
Tel: 415-875-6143

app. A, at A-4 (2016), https://www.epa.gov/sites/production/files/2016-03/documents/occtmarch2016.pdf (attached as Ex. 34).

[58] Letter from Diane E. Zalaskus, Bureau Chief, Bureau of Water Sys. Eng'g., New Jersey Dep't Envtl. Prot., to Andrew Pappachen, Dir. of Pub. Works for the City of Newark 1 (Sept. 11, 2015) (attached as Ex. 35).

[59] Letter from Andrew Pappachen, Dir. of Pub. Works for the City of Newark, to Diane E. Zalaskus, Bureau Chief, Bureau of Water Sys. Eng'g., N.J. Dep't Envtl. Prot. 1 (Oct. 20, 2015) (attached as Ex. 36).

[60] Email from Matt Coefer to Mekela Panditharatne, *supra* note 54, at 1 (Ex. 33).

We ask that the noticed entities let us know within the notice period of any documents or other evidence that would tend to disprove the claims described in this letter. Please contact us if you would like to discuss this matter.

Respectfully,

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