

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755
LANSING, MICHIGAN 48909

November 1, 2018

VIA EMAIL AND U.S. MAIL

William Kim
City of Flint Department of Law
1101 South Saginaw Street, 3rd Floor
Flint, MI 48502

Re: Notice of City of Flint's Violations of the Settlement Agreement in
Concerned Pastors v Khouri, Case No. 2:16-cv-10277-DML-SDD

Dear Bill:

Pursuant to Section XIII. Dispute Resolution and Judicial Enforcement of the Settlement Agreement, State Parties hereby provide written notice that the City of Flint is violating the terms of that Agreement and they seek a meeting with the City to discuss resolution of those violations within the next 14 days. Flint's violations are set forth below:

1. Flint's Open-Trench Excavations

The stated purpose of the Settlement Agreement is to "replac[e] all lead and galvanized steel water service lines in the City of Flint . . ." Although the parties' best estimate during the settlement negotiations was that significantly less than 18,000 such service lines existed in Flint, the State Parties agreed to provide up to \$97,000,000 so that at least 18,000 "excavations" could be performed to identify and replace all lead or galvanized steel service lines in the City. Predictive modeling by the University of Michigan-Flint has now confirmed that only 10,000–11,000 lead and galvanized steel service lines exist in Flint that require replacement.

"Excavations" is defined in the Settlement Agreement as "digging a hole or channel through a method approved by the City at the location of a curb stop and box and exposing several inches of the service line in each direction . . ." Flint originally used hydro-excavation as the means of identifying service line compositions. The hydro-excavation method uses high-pressure water to dig a hole roughly 24 inches wide, so the composition of the service line could be determined on each side of the curb stop. It is efficient and does not require a major disturbance to the area. As a result, it costs roughly \$77–\$228 per property.

On June 18, 2018, Flint announced its decision to suspend use of hydro-excavation and instead conduct open-trench excavations that would reveal at least 10 feet of the service lines. The cost of open-trench excavation is roughly \$1,700–\$1,800 per residence. As I expressed in my August 1, 2018 letter, the State Parties believe that Flint's decision was unreasonable and could not be explained as an attempt to protect public health.

Despite the State Parties' request that Flint re-think its strategy, the City has refused to revoke the moratorium on the 24-inch hydro-excavations and continues to use the 10-foot open-trench excavations. But as noted above, the settlement agreement defines "excavation" to mean exposing several inches of a service line. The State Parties have no obligation to reimburse costs for a 10-foot open-trench excavation rather than the "several inches" of excavation required by the Settlement Agreement.

While the State Parties obviously desire to avoid any conflict with Flint, the Settlement Agreement is clear on the limits of the State Parties' obligations. Consequently, the State Parties will not reimburse Flint for costs incurred after the date of this letter associated with the unnecessary 10-foot open-trench excavations. But in the spirit of good faith the State Parties will reimburse Flint for the cost of open-trench excavations conducted prior to the date of this letter, subject to two conditions: (1) Flint agrees to comply with the three requirements set forth in the next section; and (2) any reimbursement will be subject to the \$5,000 per address average cap set forth in the Settlement Agreement.

2. Flint's Failure to Look for Lead and Galvanized Steel Service Lines

During 2016–2017, the City used available information and predictive modeling to identify lead or galvanized steel service lines and focused its excavation efforts on the areas most likely to contain those lines. The City's efforts were successful. It conducted 8,843 excavations and uncovered 6,356 service lines requiring replacement, which roughly equates to a 71.8% hit rate.

But in 2018, without consulting with the State Parties, the City made a policy decision to stop prioritizing excavations at homes where lead or galvanized steel service lines were expected to be found, and to instead dig up every residential service line in the City (roughly 28,400) without regard to where lead or galvanized steel lines were likely to be located. The City's new random excavation plan has resulted in the hit rate dropping from over 70% in 2017 to less than 20% in 2018.

The State Parties have significant concerns that the City's new excavation plan to dig up all service lines without regard to where lead or galvanized steel lines are likely located, combined with the City's decision to use a much more expensive

(but not more effective) excavation method, cannot be implemented for the \$97,000,000 available under the Settlement Agreement. If that happens, under Flint's current random excavation plan, a real possibility exists that not all lead and galvanized steel service lines in the City will be identified and replaced. To avoid that result, State Parties demand that the City (1) resume hydro-excavations, (2) stop unnecessary open-trench excavations, and (3) use all resources available to it to prioritize identification and removal of lead and galvanized service lines in the City.

3. Ongoing Problems with Flint's Reimbursement Requests

The State Parties are obligated under the Settlement Agreement to reimburse Flint for certain specified costs up to a \$5,000 per address average cap where replacements take place. First, Flint has submitted numerous invoices for reimbursement that are incomplete, involve duplicative costs, or are not covered under the terms of the Settlement Agreement. The State Parties object to the payment of any such costs. We have communicated our concerns, questions, and requests relating to invoice review nearly daily to the City's project manager. State Parties reserve the right to object to and not reimburse Flint for any costs not covered under the Settlement Agreement.

Second, Flint's piecemeal and delayed submittal of invoices makes it virtually impossible to calculate whether Flint is exceeding the \$5,000 per address average cap. Please be advised that the State Parties reserve their right to rely upon that cap and seek back any excess amounts paid due to Flint's delay in submitting costs.

Please confirm that Flint will take the three actions demanded above to meet its obligations under the Settlement Agreement. Otherwise, please contact me at your earliest convenience to set up the meet and confer required under the Settlement Agreement.

Sincerely,



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RSK:rah

cc: Angela Wheeler, COF
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Todd Mendel, BSDD

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