

April 4, 2016

# FLINT, MICHIGAN RESIDENTS SUE GOVERNMENT OVER LEAD CONTAMINATION

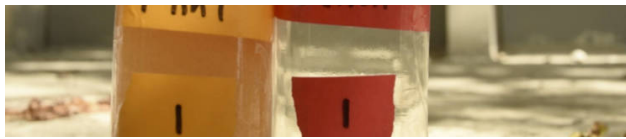
By: Amanda Connors

“Water, water every where, Nor any drop to drink.”—Samuel Taylor Coleridge

In April 2014, Flint switched its tap water source from Lake Huron to the Flint River, and its drinking water became contaminated with lead.<sup>[i]</sup> Government officials made the switch even though there was evidence that the Flint River’s “corrosive nature” could cause old pipes to secrete lead into the city’s tap water.<sup>[ii]</sup> Government officials knew the water was lead-tainted, yet they assured Flint residents that their water was safe to drink.<sup>[iii]</sup> Currently, Flint water once again comes from Lake Huron, but the damage to the city’s water has already been done.<sup>[iv]</sup>

Residents of Flint sued Governor Snyder, “the state, state officials and city employees” in federal court on March 7.<sup>[v]</sup> Plaintiffs allege violations of the Safe Drinking Water Act (SDWA) and also gross negligence.<sup>[vi]</sup> They argue that the Michigan Department of Environment Quality (MDEQ) was required to approve use of the Flint River under the Lead and Copper Rule (LCR) before switching the city’s water supply.<sup>[vii]</sup> Although defendants considered “corrosion control optimization for lead,” plaintiffs allege that defendants did not conduct enough research before sourcing tap water from the Flint River and knowingly supplied Flint residents with contaminated water.<sup>[viii]</sup> Furthermore, plaintiffs contend that once the Flint River became the city’s water source, Defendant Lockwood Andrews & Newman P.C., Lockwood Andrews & Newman Inc. and Leo A. Daly Co. did not treat the water “with anti-corrosive measures” despite having knowledge that the untreated water would cause deleterious effects “to the health and welfare of the community.”<sup>[ix]</sup>





([http://www.democracynow.org/2016/1/8/poisoned\\_democracy\\_how\\_an\\_unelected\\_official](http://www.democracynow.org/2016/1/8/poisoned_democracy_how_an_unelected_official))

As a result, Flint residents sustained “hair loss, nausea, and skin rashes” after drinking and using the city’s tap water.<sup>[x]</sup> Additionally, there are ten reported deaths attributed to *Legionella* bacteria that was found in the Flint water supply.<sup>[xi]</sup> In August and September 2014 alone, three boil water advisories were issued because *E. coli* was discovered in the city’s water.<sup>[xii]</sup> To remedy this, defendants treated the water with trihalomethanes (TTHM), which is “intended to kill dangerous pathogens.”<sup>[xiii]</sup> Plaintiffs argue, however, that TTHM can be lethal, and its use violates the SDWA.<sup>[xiv]</sup> Defendants continued to mask the problem by treating Flint’s water with ferric chloride, a coagulant, in an effort reduce levels of TTHM and increase elimination of organic matter.<sup>[xv]</sup> Despite knowledge of an impending water crisis, defendants did little to prevent such crisis and diminished the concern of the contamination to the public.<sup>[xvi]</sup>

Flint residents face a major obstacle in litigation: governmental immunity. Governmental immunity exempts government agencies from lawsuits when a claim arises out of compulsory governmental functions.<sup>[xvii]</sup> Although the government as an entity is almost totally immune to lawsuits, individual employees may be held accountable if they are grossly negligent.<sup>[xviii]</sup> Despite general immunity, the government itself may be held liable if the act in question is a proprietary function, i.e. the government profits from the activity.<sup>[xix]</sup> Flint residents do pay for water service, but Michigan law forbids cities to profit from their water services.<sup>[xx]</sup> Water providers may only cover their cost.<sup>[xxi]</sup>

The governmental immunity issue in this case is a close one. It’s evident that Flint residents sustained irreversible injuries, but they may not have legal recourse against the governmental entities that caused the harm. This case is an opportunity to set precedent regarding governmental immunity because of the sheer scale of damages and the long-term negative effects the government’s negligence has had on an entire community. The poverty rate in Flint is 41.6%, and 14.1% of the city’s residents do not have health insurance.<sup>[xxii]</sup> Many residents likely cannot afford to move out of Flint in order to avoid the contaminated water. Additionally, the Flint community lacks the political power or capital to remedy the situation. If the court finds governmental immunity applies, it could dissolve any fiscal responsibility on the part of the government.

[i] Amanda Bronstad, *Who will Pay for the Flint Fiasco?; Lawyers See Many to Blame in Water Crisis*, Nat’l L. J. (Mar. 21, 2016), <https://advance.lexis.com/api/permalink/c45ea5b4-36ca-4c05-a2a3-114f4609fd2?context=1000516>; Kris Maher, *Flint Families Sue Michigan Governor, Other Officials Over Tainted Water; Mounting Lawsuits Force Gov. Snyder to Hire Outside Counsel*, Wall St. J. (Mar. 7, 2016, 3:45 PM), <http://www.wsj.com/articles/flint-families-sue-michigan-governor-other-officials-over-tainted-water-1457383508>.

[ii] Bronstad, *supra* note 1.

[iii] *Id.*

[iv] *Id.*

[v] *Class Sues State of Michigan, Its Governor and Others for Flint Water Crisis*, Mealey’s Litig. Rep.: Class Actions (March 18, 2016), <https://advance.lexis.com/api/permalink/40a4bf5a-4570-4ec2-bE3a-61105ca8b697?context=1000516>.

[vi] *See id.*

[vii] *Id.*

[viii] *Id.*

[ix] *Id.*

[x] *Id.*

[xi] Judy Stone, *Legionnaires' Disease Compounds Flint's Lead Poisoning Water Crisis*, Forbes (Jan. 14, 2016), <http://www.forbes.com/sites/judystone/2016/01/14/legionnaires-disease-compounds-flints-lead-poisoning-water-crisis/#252ee9a5702d>.

[xii] *Class Sues State of Michigan*, *supra* note v.

[xiii] *Id.*

[xiv] *Id.*

[xv] *Id.*

[xvi] *Id.*

[xvii] Mich. Comp. Laws Serv. § 691.1407(1) (LexisNexis 2016); *see also* John Wisely, *Why Lawsuit over Flint Water is a Long Shot*, Detroit Free Press (Oct. 15, 2015, 2:09 PM), <http://www.freep.com/story/news/local/michigan/2015/10/15/can-flint-residents-sue-over-bad-water/3946936/>.

[xviii] Mich. Comp. Laws Serv. § 691.1407(2)(c) (LexisNexis 2016)

[xix] Mich. Comp. Laws Serv. § 691.1413 (LexisNexis 2016)

[xx] *See* Wisley, *supra* note xviii.

[xxi] *See id.*

[xxii] *QuickFacts: Flint City, Michigan*, U.S. Census Bureau, <http://www.census.gov/quickfacts/table/HEA775214/2629000>.

Source: <http://www.nbcnews.com/storyline/flint-water-crisis/lead-crisis-flint>...

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