

Hon. Representative Chaffetz
Chairman, Committee on Oversight and Government Reform
House of Representatives
United States Congress

Date: March 18, 2016

Chairman Chaffetz:

Thank you for allowing me the opportunity to clarify my testimony, given before the Committee on Oversight and Government Reform (“Committee”) on Tuesday, March 15, 2016. I greatly appreciate the Committee’s fact finding efforts following the Flint water crisis. Please consider the following:

Rep. Norton

Before Rep. Norton’s time expired on Tuesday, she referenced two separate documents. First, Rep. Norton referenced a letter sent by Detroit Water and Sewerage Department (“DWSD”) Director Sue McCormick to myself. In Rep. Norton’s words, “Sue McCormick of Detroit Water wrote to [me] offering to continue supplying water to Flint, Michigan, until the water authority’s project was complete.”

However, Rep. Norton then read excerpted language from an April 17, 2014, email sent by the Flint Water Plant Supervisor Mike Glasgow to Michigan Department of Environmental Quality (“MDEQ”) officials Adam Rosenthal, Mike Prysby, and Stephen Busch. In Rep. Norton’s words, “What about the warning that came – imagine receiving a warning from somebody in the line, saying ‘I have people above me making plans to distribute water ASAP. I was reluctant before, but after looking at the monitoring schedule and our current staffing, I do not anticipate giving the OK to begin sending water out anytime soon. If water is distributed from this plant in the next couple weeks, it will be against my direction.’”

I answered Rep. Norton’s question by explaining that I did not receive that email, but she exclaimed, “Your name is on the letter, Mr. Earley” while holding up the letter from DWSD Director McCormick.

Yes, my name was on Director McCormick’s letter, but I respectfully wish to clarify that the April 17, 2014, email, a separate and unrelated document, was sent only to those three MDEQ officials – Rosenthal, Prysby, and Busch. Neither that email, nor the warnings within were ever communicated to me. In fact, I did not even learn of the email’s existence until this investigation was well underway, nearly two years after its conception. Had that warning come to me, I would have immediately acted to ensure that we were not jeopardizing the health of Flint’s citizens.

Rep. Clay

Rep. Clay inquired as to correspondence between DWSD Director Sue McCormick and the City of Flint in January 2015. Director McCormick did address an offer letter to me, dated January 12, 2015. I wish to clarify that I did not receive this letter – my tenure in Flint concluded the next day, January 13, and this letter did not reach me before then. It is my understanding that my immediate successor, Emergency Manager Gerald Ambrose, received that letter and subsequently rejected its offer.

Rep. Connolly

Rep. Connolly asked a series of questions as to MDEQ’s inaction upon receiving warnings from EPA. Notably, he asked me, “Factually, did they – are you saying – by saying that – that they had multiple emphatic warnings from the EPA, the clear implication of that statement is: and they ignored them. Is that your testimony?” I answered, “No.”

While I replied in the negative, this verbal answer was issued from my own misinterpretation of Rep. Connolly’s multi-compound questions. Indeed, my written testimony states that MDEQ missed multiple warnings from EPA. It is my understanding that the first of those warnings came in February 2015, when EPA officials requested confirmation that the Flint Water Treatment Plant was implementing optimized corrosion controls. The second warning came from EPA water expert Miguel Del Toral, who issued a thorough report on Flint’s dangerous drinking water conditions in June 2015. This memorandum was ignored, dismissed, downplayed, and rejected by officials at all levels, including those at MDEQ. I respectfully request that my testimony be clarified to reflect this.

Rep. Lawrence

During her questioning, Rep. Lawrence spoke to two separate issues – treatment of bacteria in the water and use of corrosion controls in the water. However, I admittedly struggled at times to discern which of those issues she was referring to, and my answers reflect those misunderstandings.

To clarify my testimony at the hearing, please recognize that my position on these two matters is consistent with my written testimony. During my tenure as Emergency Manager, the City and I, together, took a number of steps to treat bacterial concerns in Flint’s drinking water:

Per MDEQ standards, the City issued a boil water advisory to residents so that further testing could be performed. While this advisory was in effect, MDEQ and the water treatment staff added chlorine and fresh water to the system. I was advised by these experts that total coliform was generally harmless and that it could be eradicated with these measures. Indeed, the advisory was lifted after a few days of testing revealed no sign of coliform bacteria in the samples.

But, only one month later, in September 2014, tests revealed yet another positive indication of total coliform in a localized portion of the distribution system ... Another boil water advisory was issued, and again, MDEQ and the water treatment staff determined to add chlorine and increase flushing.

(See Written Testimony, p. 7). Further, I not only implemented these treatments, but additionally sought to prevent future organic bacterial threats to the City's drinking water:

I additionally sought to address the growing concerns of water quality in September and October of 2014 by monitoring hydrant flushing and repairs to the City's broken water mains and valves. The water treatment staff maintained that opening the fire hydrants to flush the system would enhance circulation and reduce stagnation in the system. As for the water line repairs, they were a key part of the City's newly adopted Master Plan and the staff deemed them to be long overdue.

(See Written Testimony, p. 8).

The addition of corrosion controls to the water is a separate issue. Let me be clear--at no time during my tenure did anyone inform me that the Water Treatment Plant was not adding optimized corrosion controls to the City's water. In fact, MDEQ even hid this fact from EPA in February 2015, a month after I left Flint, when it misled EPA into believing that such controls were in fact being added to the water. We all now know that this was not the case, and that the exclusion of those controls was a horrendous mistake. With all due respect, if MDEQ was misleading the EPA about corrosion controls as late as February 2015, surely the same inaccurate guidance was being transmitted to me and the water treatment staff during my time in Flint.

Warnings and concerns about corrosion control and lead were never brought to my attention during my tenure as Emergency Manager in Flint.

Rep. Plaskett

During her questioning, Rep. Plaskett asked a series of questions regarding conversations I had with my attorney surrounding this Committee's prior invitation and subpoenas to testify.

For example, Rep. Plaskett asked, "You told the attorney, and asked him, to refuse to accept the service of the Chairman's subpoena because you said you did not have time to coordinate your testimony, but you had time to coordinate on Oct 26, your Op Ed in which you said don't blame the Emergency Manager for the Flint water disaster and outlined reasons why that was your position at that time." She also asked, "Did you have a discussion with your attorney about service and acceptance of this subpoena, potential subpoena?"

I wish to clarify that I did consult with an attorney upon receiving the Committee's invitation to testify. We did have conversations about the invitation, potential subpoenas, and the subpoena

that was subsequently issued. The contents of those conversations are, however, protected by the attorney-client privilege.

Rep. Plaskett also asked, “So, you didn’t refuse – tell your attorney to refuse service of the subpoena?” I answered her in the negative, and she responded, “That’s important for us to note for the record. We have an email that says that you were being told that a subpoena was going to be issued to you at that time, you are aware of that? So now you’re saying that the attorney didn’t tell you that you were supposed to potentially be subpoenaed to testify before this committee?”

Again, while I did have conversations about a pending subpoena from this Committee with my attorney, I respectfully decline to reveal the contents of those conversations as they are protected by the attorney-client privilege. However, as a result of those conversations, my attorney refused service of the subpoena on my behalf.

The email correspondence Rep. Plaskett referenced is between my attorney and Committee staff. I was not a part of that correspondence. In that email exchange, Committee staff asked my attorney whether he would accept service of the subpoena, via email, on my behalf on February 2, 2015, shortly before 5:00 pm. My attorney declined and offered to discuss alternative dates for my appearance. To clarify, my attorney was not required to accept or deny service of the subpoena on my behalf, nor was he at all required to confer with me prior to responding to the Committee staff’s request because the subpoena was for me—not for my attorney.

In this regard, the terms of complying with this initial subpoena were not only unreasonable, but physically impossible to honor. Had my attorney accepted service of the subpoena that evening, on February 2, I would have been compelled to appear and testify in Washington, D.C., at 9:00 am the following morning. This turnaround was physically and practically impossible to accomplish and left me without any time to meaningfully prepare for the Committee’s questions. Nor was the Committee subpoena enforceable, as issued, because it did not even allow me 24 hours to appear in Washington, D.C., let alone prepare for such a hearing. To be sure, this Committee issued a new subpoena for March 15, 2016, rather than attempt to enforce the Committee’s first subpoena,

Drafting an Op Ed is one thing, but testifying before Congress is another. Moreover, given the gravity of this situation and its inherent need for thorough factual review, my presence on February 3, without sufficient preparation, would have served little use for the Committee.

Again, I thank you and the Committee for the opportunity to testify at Tuesday’s hearing, and for the additional opportunity to clarify my testimony. Your diligence in this critical matter is most appreciated.

Sincerely,

/s/ Darnell Earley

Darnell Earley