

**STATE OF MICHIGAN
IN THE CIRCUIT COURT OF THE COUNTY OF GENESEE**

STATE OF MICHIGAN,

Plaintiff,

Case No. 16- -NM

v.

VEOLIA NORTH AMERICA, INC.,
a Delaware Corporation,
VEOLIA NORTH AMERICA, LLC,
a Delaware Limited Liability Company,
VEOLIA WATER NORTH AMERICA OPERATING SERVICES, LLC,
a Delaware Limited Liability Company,
VEOLIA ENVIRONNEMENT, S.A.,
a French transnational corporation,
LOCKWOOD, ANDREWS & NEWNAM, P.C.,
a Michigan Corporation,
LOCKWOOD, ANDREWS & NEWNAM, INC.,
a Texas Corporation, and
LEO A. DALY COMPANY, a Nebraska Corporation

Defendants.

Bill Schuette
Attorney General
State of Michigan

Todd Flood
Special Assistant Attorney General
Office of Special Counsel

Noah D. Hall (P66735)
Special Assistant Attorney General
Office of Special Counsel
nhall@crisisflint.com
(517) 930-6258
Counsel of Record

Gary D. Reeves (P35902)
Donald R. Sheff, II (P78262)
155 W. Congress St., Suite 603
Detroit, MI 48226

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

STATEMENT REGARDING ASSIGNMENT OF RELATED CASES

There are numerous related cases that have been previously filed in this Court, assigned to Hon. Archie L. Hayman and Hon. Richard B. Yuille.

COMPLAINT FOR DAMAGES

The State of Michigan, by and through its Attorney General, Bill Schuette, brings this Complaint for Damages for harm to public health, destruction of public property, and cost to public resources.

INTRODUCTION

1. Plaintiff State of Michigan files this civil action against the named Defendant corporations for their roles in the events known as the Flint Water Crisis, including the corrosion of lead pipes, the leaching of lead into the water supply, and the lead poisoning of residents. Their acts and omissions constitute professional negligence, fraud, and public nuisance. They violated their legal duties and caused the Flint Water Crisis to occur, continue, and worsen. As a result, the State of Michigan suffered damages for past, ongoing, and future harm to public health, destruction of public property, and cost to public resources.

2. The City of Flint, the State of Michigan, and the citizenry relied heavily upon the hired expertise of the Defendant corporations to provide residents with safe water. The Defendant corporations, self-proclaimed leaders and experts in water supply, totally failed the citizens of Flint and the State of Michigan. As a direct result of the Defendant corporations' acts and omissions, Flint's lead pipes corroded, leaching lead into residents' drinking water, ultimately poisoning the residents themselves.

3. The Defendant corporations committed professional negligence and fraud, breaching the duties they owed to the public. The conduct of the Defendant corporations

constitutes a public nuisance, as it has produced a significant effect, long lasting and sometimes permanent, upon public rights including health, safety, peace, comfort, and convenience.

4. The acts and omissions of the Defendant corporations have caused past, ongoing, and future harm to public health, destruction of public property, and cost to public resources. The State of Michigan has standing to bring this action on behalf of its quasi-sovereign interests and the interests of its citizens, in *parens patriae*, to recover damages accordingly. The State of Michigan seeks to protect the interests of the public in health and well-being, and recover damages for harms to those interests. It seeks relief in this honorable Court in Flint, where the harms to citizens and costs to the public have been and will be the greatest. The State of Michigan requests a jury of Genesee County residents to render judgment against the Defendant corporations on the claims stated below.

PARTIES, JURISDICTION AND VENUE

5. Plaintiff State of Michigan has long-established interests in the health and well-being, both physical and economic, of its residents in general (known as ‘quasi-sovereign’ interests). To protect these quasi-sovereign interests and recover damages for past, ongoing, and future harms to them, the State of Michigan has standing to bring this *parens patriae* action. The State of Michigan is uniquely suited to bring a civil action on behalf of the interests of the public in health and well-being. The State of Michigan’s quasi-sovereign interests at issue in this *parens patriae* action are distinct and apart from the interests of particular private parties at issue in other civil actions.

6. Defendant Veolia North America, Inc. is a Delaware corporation with its principal place of business at 200 East Randolph Drive, Suite 7900, Chicago, Illinois 60601.

7. Defendant Veolia North America, LLC is a Delaware Limited Liability Company with its principal place of business at 200 East Randolph Drive, Suite 7900, Chicago, Illinois 60601.

8. Defendant Veolia Water North America Operating Services, LLC is a Delaware Limited Liability Company with its principal place of business at 101 West Washington Street, Suite 1400 East, Indianapolis, Indiana 46204.

9. Defendant Veolia Environnement, S.A. is a transnational corporation incorporated in the Republic of France with its principal place of business at 36/38 avenue Kléber, 75116 Paris, France.

10. The four above named Defendants (individually and collectively Veolia) performed professional engineering services and/or engaged in other conduct in Flint in 2015. Veolia holds itself out as a “leading water services provider in [the] North American market, with more projects, operations, resources, expertise and demonstrated success than any other services provider.”

11. Veolia maintains multiple offices in Michigan, regularly conducts business in Michigan, and has committed torts in Michigan, which are among the bases for personal jurisdiction under MCL 600.705.

12. Defendant Lockwood, Andrews & Newnam, P.C. is a Michigan professional corporation with its principal place of business located at 1311 South Linden Road, Suite B, Flint, Michigan 48532. Lockwood, Andrews & Newnam, P.C. held itself out to the world as a Leo A. Daly Company. In 2008 Lockwood, Andrews & Newnam, P.C. was incorporated by Lockwood, Andrews & Newnam, Inc., in connection with work to be performed in Flint.

13. Defendant Lockwood, Andrews & Newnam, Inc. is a Texas corporation with its principal place of business in Houston, Texas. At all relevant times, Lockwood, Andrews & Newnam, Inc. conducted business in Genesee County, Michigan, with offices at 1311 South Linden Road, Suite B, Flint, Michigan 48532.

14. Defendant Leo A. Daly Company is a Nebraska corporation with its principal place of business at 8600 Indian Hills Drive, Omaha, Nebraska 68114. According to its website, Leo A. Daly Company's "[s]ervices are extended through Lockwood, Andrews & Newnam, Inc."

15. The three above named Defendants (individually and collectively LAN) performed professional engineering services and/or engaged in other conduct in Flint in from 2011 through 2016. LAN holds itself out as "a full-service consulting firm offering planning, engineering and program management services" with "firsthand knowledge of the Flint Water Treatment Plant" and its operations.

16. LAN maintains an office in Flint, Genesee County, Michigan, regularly conducts business in Michigan, and has committed torts in Michigan, which are among the bases for personal jurisdiction under MCL 600.705.

17. Venue is proper in this Court because the original injury and damage occurred in Genesee County; Defendant corporations reside and/or conduct business in Genesee County; the State of Michigan and its citizens have suffered harms and incurred costs in Genesee County; and many of the occurrences described herein occurred in Genesee County.

18. The amount in dispute is in excess of \$25,000.00, exclusive of costs and attorney fees, and all of the parties have transacted business in Genesee County, Michigan at all times relevant herein such that jurisdiction is properly with this Court.

STATEMENT OF FACTS

19. The City of Flint's Water Treatment Plant was constructed in 1917. It used the Flint River as the primary water supply for Flint customers for drinking and industrial uses for approximately 50 years. Because of continued concerns regarding the adequacy of the Flint River for meeting the future water supply needs of the area, the City of Flint evaluated alternatives for a new water supply. It ultimately contracted with the City of Detroit in 1967 to receive treated water via a pipeline from Lake Huron. Nearly 50 years later, the City of Flint was considering updating and upgrading its water treatment plant to again provide Flint River water to serve its residents. And it would rely heavily on the professional services of the Defendant corporations from planning to operation to evaluation.

20. In 2011, Flint Mayor Dayne Walling commissioned LAN (in cooperation with Rowe Engineering, Inc., a local firm) to conduct a feasibility study with respect to whether the Flint Water Treatment Plant could once again use the Flint River as a primary water supply for Flint, consistent with modern "rules and regulations for the treatment of surface water." LAN (again jointly with Rowe) ultimately produced in July 2011 a report for Flint titled "Analysis of the Flint River as a Permanent Water Supply for the City of Flint" (LAN's 2011 Report¹).

21. According to LAN's 2011 Report, "This study evaluates the feasibility of utilizing the City of Flint's Water Treatment Plant and Flint River as the primary water supply for the City of Flint. The study evaluates whether the Flint River is an adequate source of water for the City of Flint and identifies upgrades needed to reliably supply water on a continuous basis."

¹ Available at http://www.greatlakeslaw.org/Flint/LAN_2011_Report.pdf.

22. LAN's 2011 Report recognizes: "There have been many new rules and regulations for treatment of surface water since 1967 when Flint's [Water Treatment Plant] was last used as a primary water supply."

23. LAN's 2011 Report continues: "Available records provide a good understanding of the characteristics of the raw water and ranges of variances, and will be helpful to design water treatment processes and estimate operating costs."

24. LAN's 2011 Report ultimately concludes: "Preliminary analysis indicates that water from the river can be treated to meet current regulations; however, additional treatment will be required than for Lake Huron water. ... Although water from the river can be treated to meet regulatory requirements, aesthetics of the finished water will be different than that from Lake Huron."

25. LAN also prepared an additional analysis, attached to LAN's 2011 Report as an Appendix ("Technical Memorandum Cost of Service Study Flint Water treatment Plant"), that details over \$69,000,000 in capital improvements that would have to be made to bring the Flint Water Treatment Plant up to current standards. LAN's Technical Memorandum specifically projected costs for corrosion control chemicals ("phosphate") that would be required.

26. LAN eventually offered and provided its professional engineering services to the City of Flint to design and implement improvements to the Flint Water Treatment Plant to treat Flint River water and deliver it to residents.

27. On June 10, 2013 LAN submitted a Proposal to the City of Flint for "Flint Water Treatment Plant Rehabilitation – Phase II" (LAN's 2013 Proposal²). The proposal was to make "improvements ... intended to help the City operate[] the plant on a full time basis using the

² Available at http://www.greatlakeslaw.org/Flint/LAN_2013_Proposal.pdf.

Flint River.” The proposal was signed by J. Warren Green, Professional Engineer (Project Director), and Samir F. Matta, Professional Engineer (Senior Project Manager).

28. LAN’s 2013 Proposal stated: “LAN’s staff has the knowledge, expertise and the technical professionals to handle all aspects of the project. Our staff has firsthand knowledge of the Flint Water Treatment Plant....”

29. LAN’s 2013 Proposal includes a “Scope of Services” that acknowledges that the “project involves the evaluation and upgrade of the Flint Water Plant to provide continuous water supply service to the City of Flint (Flint) and its customers.” The upgrades and improvements would allow the use of the Flint River for water supply.

30. LAN’s 2013 Proposal states that “the estimated construction cost to prepare the water plant for continuous operation using Flint River water for the interim period is on the order of \$33 to \$34 million.”

31. LAN’s 2013 Proposal establishes “Standards of Performance”: “Engineer [LAN] agrees to exercise independent judgment and to perform its duties under this contract in accordance with sound professional practices.”

32. On June 26, 2013, the City of Flint engaged the professional services of LAN through a “Resolution Authorizing Approval to Enter into a Professional Engineering Services Contract for the Implementation of Placing the Flint Water Plant into Operation.” Pursuant to the resolution, the City would “enter into a Professional Engineering Services contract with Lockwood, Andrews & Newnam, Inc. for the administration of placing the Flint Water Plant into operation using the Flint River as a primary drinking water source at a cost of \$171,000.00.”

33. From July 2013 through April 2014, LAN provided the above described professional services, but failed to meet its duty of care and competence at a professional

standard. When the Flint Water Treatment Plant, with upgrades designed and implemented by LAN, began distributing Flint River water on April 25, 2014, it did so without implementing a corrosion control program. LAN's failure to design and implement corrosion control breaches the duty of a professional engineer in this field and falls far short of the standard of care and practices of a professional engineer of ordinary learning, judgment and skill given the circumstances. Further, the failure to implement optimal corrosion control violated the Safe Drinking Water Act, M.C.L. § 325.1001 *et seq.* These failures and breaches directly caused the Flint water crisis.

34. LAN continued to provide engineering services to Flint after the re-start of the Flint Water Treatment Plant and switch to the Flint River for water supply. Problems with the Flint Water Treatment Plant's supply of Flint River water were soon evident and public.

35. In August 2014, Flint's water first violated the Safe Drinking Water Act's acute coliform Maximum Contaminant Level due to the presence of fecal coliform bacteria, or E.coli, in the water. The Maximum Contaminant Level is defined as "the maximum permissible level of a contaminant in water that is delivered to any user of a public water supply" under the Safe Drinking Water Act, Rule 325.10106(c).

36. In August and September 2014, Flint's water violated the Safe Drinking Water Act's monthly coliform Maximum Contaminant Level, and boil water advisories were issued due to the presence of fecal coliform bacteria, or E.coli, in the water.

37. On September 10, 2014, the Michigan Department of Environmental Quality issued a Compliance Communication to Flint. The Compliance Communication notified Flint that it had exceeded safe levels for trihalomethane, a byproduct of disinfection that poses health risks. Further, as stated in the Compliance Communication, exceedance of trihalomethane "is an

indicator of operational performance.” Due to the exceedance of trihalomethane, the Michigan Department of Environmental Quality requested that Flint complete an operational evaluation and submit a report pursuant to the Safe Drinking Water Act (Rule 325.107191). Flint would hire LAN to conduct this operational evaluation and prepare and submit the report.

38. On October 13, 2014, it was publicly reported that General Motors announced it would no longer use Flint River water at its Flint Engine Operations plant due to high levels of chlorine in Flint’s water, which had begun to corrode its products. General Motors arranged to buy Lake Huron water from Flint Township, rather than rely on the Flint Water Treatment Plant and the Flint River for its water supply. This news was reported in the media, and the City of Flint responded with an official statement.

39. In November 2014, LAN issued a Draft Operational Evaluation Report for the City of Flint, titled “Trihalomethane Formation Concern” (LAN’s 2014 Report³). LAN’s 2014 Report was prepared in response to the September 10, 2014 request by Michigan Department of Environmental Quality due to the exceedance of trihalomethane and the operational performance problems that indicates.

40. LAN’s 2014 Report should have identified the likely causes of increased trihalomethane levels and provided appropriate recommendations to lower the trihalomethane to safe levels. However, LAN failed to identify the root cause of the trihalomethane problem and its recommendations would cause continued and worsened harm.

41. Violations of trihalomethane levels are not only a health risk on their own, but are also an indicator of more serious problems with water treatment and supply. A professional engineer of ordinary learning, judgment and skill in this community would view the high trihalomethane levels, along with all other publicly known and available information at the time

³ Available at http://www.greatlakeslaw.org/Flint/LAN_2014_Report.pdf.

(including but not limited to media reports of corrosive water), as reason for concern about the corrosivity of the water, the likely corrosion of pipes (including lead pipes), and resulting lead poisoning of the water supply and related health risks. However, LAN's 2014 Report completely failed to do this.

42. On January 9, 2015, the University of Michigan's Flint campus announced it found high levels of lead in its campus drinking fountains.

43. On January 21, 2015, over one hundred residents gathered for a public meeting with state and local officials at Flint City hall to express concerns with reported violations, observed drinking water quality, and health risks. Media reports include photographs of jugs of brown water.

44. In January 2015, in response to the repeated violations of Safe Drinking Water Act standards, the public problems with corrosivity at the General Motors factory, the high lead levels at the University of Michigan Flint campus, visually discolored water coming out of residents' taps, and growing public concerns over water quality and public health, the City of Flint solicited a proposal for a water quality consultant.

45. On January 29, 2015, Veolia, acting as Veolia Water North America Operating Services, LLC, through Mr. David Gadis, its Senior Vice President, Sales, Municipal and Commercial Development, submitted to the City of Flint its "Response to Invitation to Bid for Water Quality Consultant," Proposal No.: 15-573 (Veolia's 2015 Bid⁴). Veolia proposed "to address the immediate reliability and operational needs" of the City's water system.

46. The City of Flint had requested professional engineering services (1) to review and evaluate "the City's water treatment process...and procedures to maintain and improve water quality;" (2) to develop a report with recommendations "to maintain compliance with both State

⁴ Available at http://www.greatlakeslaw.org/Flint/Veolia_2015_Bid.pdf.

of Michigan and federal agencies;” and (3) to assist the City in implementing the recommendations. Veolia, however, responded that “addressing the fundamental issues concerning water quality compliance and operational reliability is much more complex than the recommendations study and advisory services approach outlined in [the City of Flint’s request].” Veolia proposed to respond to the City’s requested scope of work by (1) calibrating “daily water quality samples with the City’s hydraulic model;” (2) refining “the operational strategies for the plant and distribution system;” (3) coordinating “daily efforts across plant, operations and maintenance staff;” and (4) alleviating “continued concerns from the public through the public communications process.”

47. On February 4, 2015, the City of Flint engaged the professional services of Veolia through a “Resolution to Veolia Water for Water Quality Consultant.” The resolution incorporates a standard of performance clause: “The city is relying upon the professional reputation, experience, certification, and ability of Contractor [Veolia].”

48. On February 10, 2015, the City of Flint announced publicly that it would be retaining Veolia’s water experts. Veolia Vice President David Gadis stated: “We are honored to support your community with our technical expertise so that together we can ensure water quality for the people of the city of Flint.” Mr. Gadis further stated that Veolia has “extensive experience handling challenging river water sources, reducing leaks and contaminants and in managing discolored water.”

49. On February 12, 2015, Veolia’s Vice President Rob Nicholas stated: “We’re going to look at the numbers, we’re going to look at the plant, we’re going to decide how the equipment’s functioning, look at the raw water, look at the finished water, decide how it’s

getting through the pipe to the house, and from that, decide how to fix each of those problems as we go forward.”

50. On February 18, 2015, Veolia presented its “Interim Water Quality Report” (Veolia’s 2015 Interim Report⁵) to the Flint City Council Public Works Committee. Veolia’s 2015 Interim Report was made public and was reported in the media.

51. According to Veolia’s 2015 Interim Report, the only issue not in Veolia’s scope of study was “why the change from [Lake Huron water via the Detroit system pipeline] or the history of the utility.”

52. Veolia’s 2015 Interim Report began with the headline: “Everybody is Checking the Safety of Water.” It further states: “Safe = compliance with state and federal standards and required testing. Latest tests show water is in compliance with drinking water standards.”

53. Veolia’s 2015 Interim Report then explains that residents are seeing discolored water because of “old cast iron pipes.” Veolia again states that there is no health or safety problem, as discoloration “[d]oesn’t mean the water is unsafe but it is not appealing and raises questions.” Veolia provided a map of reported water quality complaints over the past 12 months with the statement “fewer than you think.”

54. Veolia’s 2015 Interim Report responded to questions about “[m]edical problems” by stating that “[s]ome people may be sensitive to any water.”

55. Veolia’s representations made in its 2015 Interim Report and public presentation regarding the nature and cause of the water quality problems in Flint, the safety of Flint’s water, and the public health risks were false and material. Veolia knew the representations were false, or were made recklessly without any knowledge of the potential truth. Veolia made the representations with the intention that the public would act and rely on them, which it did. As a

⁵ Available at www.greatlakeslaw.org/Flint/Veolia_2015_Interim_Report.pdf.

direct result of Veolia's fraudulent statements, the public and the State of Michigan suffered terribly.

56. Veolia's 2015 Interim Report encouraged residents to contact the City of Flint to have the water in their home tested. Flint resident Leanne Walters did just that. Michael Glasgow, Flint's water treatment plant manager, visited the resident's home at 212 Browning Avenue and tested the water. On February 18, 2015 (the same day that Veolia issued its Interim Report discounting residents' complaints about discolored water and concerns about medical problems), Mr. Glasgow suspected and tested for lead at 212 Browning Avenue based on discoloration and high levels of iron.

57. On February 20, 2015, the Michigan Department of Environmental Quality Drinking Water Laboratory tested the 212 Browning Avenue sample (LF54945) and detected lead at 104 parts per billion (ppb). The Maximum Contaminant Level and related Action Level for lead is 15 ppb. A follow-up sample collected March 3, 2016 found lead at 397 ppb.

58. In February 2015, based on the exceedance of the Maximum Contaminant Level and related Action Level for lead at 212 Browning Avenue, the City of Flint issued a Consumer Notice of Lead & Copper Results in Drinking Water. The notice contained the following warning: "Lead can cause serious health problem [sic] if too much enters your body from drinking water or other sources. It can cause damage to the brain and kidneys, and it can interfere with the production of red blood cells that carry oxygen to all parts of your body. The greatest risk of lead exposure is to infants, young children, and pregnant women. Scientists have linked the effects on the brain with lower IQ in children. Adults with kidney problems and high blood pressure can be affected by low levels of lead more than healthy adults. Lead is stored in the

bones, and can be released later in life. During pregnancy, the child receives lead from the mother's bones, which may affect brain development.”

59. On February 27, 2015, LAN prepared a Final Operational Evaluation Report titled, “Trihalomethane Formation Concern” (LAN’s February 2015 Report⁶). Trihalomethane levels continued to violate the Safe Drinking Water Act. LAN recommended additional ferric chloride to address the water quality problems, as adding ferric chloride could “easily be implemented without the need for additional equipment.” However, as is widely known in the profession, ferric chloride is highly acidic and would increase the corrosivity of Flint’s water, worsening the corrosion of lead pipes, the resulting leaching of lead into the water supply, and the poisoning of Flint residents.

60. Unlike the Defendant corporations, whose reports were completely ignoring the warning signs of corrosion, several public officials correctly identified the corrosion problem and implications for lead poisoning.

61. The publicly available Consumer Notice of Lead & Copper Results in Drinking Water February for the residence at 212 Browning Avenue was a clear warning sign for staff at the U.S. Environmental Protection Agency’s Chicago, Illinois office.

62. On February 26, 2015, EPA’s Jennifer Crooks stated in an email that the lead testing results in a home with “2 children under the age of 3” were cause for “[b]ig worries here.” In a simple email, Ms. Crooks diagnosed the Flint water problems more accurately and effectively than the numerous Defendant corporations’ studies and reports. She stated: “the different chemistry water is leaching out contaminants from the insides of the biofilms inside the pipes” and that “[l]ead is a good indication that other contaminants are also present in the tap water.”

⁶ Available at http://www.greatlakeslaw.org/Flint/LAN_February_2015_Report.pdf.

63. The EPA's Miguel Del Toral followed-up in an email the next day (February 27, 2015), stating that "where you find [lead] values [as high as 104 ppb], it is usually due to particulate lead" and that the leaching of particulate lead in the water supply "is a normal part of the corrosion process." Mr. Del Toral went on to emphasize that a "particulate can contain very high concentrations of lead (hundreds to thousands [parts per billion of lead]) which is a much higher concentration than lead paint, so even small particles can result in high lead values."

64. In the February 27, 2015 email, Mr. Del Toral pointed out that high levels of orthophosphates (a method of corrosion control) "seem to reduce the amount of particulate [lead] that is released in the absence of physical disturbances to the lead lines." Mr. Del Toral then correctly diagnosed the root cause of Flint's water supply problems – lack of corrosion control: "If I remember correctly, Detroit is feeding [orthophosphate] for [compliance with] the [Safe Drinking Water Act's Lead and Copper Rule], but since Flint is no longer part of that interconnection, I was wondering what their [optimized corrosion control technique] was. They are required to have [optimized corrosion control technique] in place which is why I was asking what they were using."

65. With far more limited information than was available to the Defendant corporations (which were in Flint as paid consultants that same week), and working from his office in Chicago with no additional resources, Mr. Del Toral spotted the emerging lead crisis in Flint, diagnosed the root cause, and questioned why the appropriate engineering response was not being implemented.

66. On March 12, 2015, Veolia (through Veolia North America) submitted to Flint its Water Quality Report (Veolia's 2015 Report⁷). By this time, EPA officials such as Mr. Del Toral had correctly identified the problem, the root cause, and the solution to the Flint lead crisis.

⁷ Available at www.greatlakeslaw.org/Flint/Veolia_2015_Report.pdf.

However, while Veolia had conducted a “160-hour assessment of the water treatment plant, distribution system, customer service and communication programs, and capital plans and annual budget,” it totally failed to identify the problem, made no effort to understand the root cause, and recommended measures that made the situation far worse.

67. Veolia’s 2015 Report also again made fraudulent statements regarding the safety of Flint’s water supply: “[t]he review of the water quality records during the time of Veolia’s study shows the water to be in compliance with State and Federal regulations, and, based on those standards, the water is considered to meet drinking water requirements.”

68. Veolia’s 2015 Report only considered phosphate corrosion control to address discoloration, with no mention of the far more serious lead problem: “Many people are frustrated and naturally concerned by the discoloration of the water with what primarily appears to be iron from the old unlined cast iron pipes. The water system could add a polyphosphate to the water as a way to minimize the amount of discolored water.”

69. Veolia’s 2015 Report not only missed the problem, its root cause, and the public health implications, it also offered recommendations that made the problem worse: “Current ferric chloride dosages are too low and dosages of 100 mg/L or more are recommended. ... The increase in chemical costs could be up to \$1,000,000 per year. This change in dosage (using ferric chloride) can be made immediately without state permit review.”

70. Veolia knew or should have known that Flint had no corrosion control protocol and that corrosion was already a significant problem. Veolia’s recommendation that Flint double its dosage of ferric chloride, a powerful acid, was unqualified and in no way warned that ferric chloride could increase corrosion. Moreover, Veolia failed to inform Flint that in order to

increase the dosage of ferric chloride (or indeed to use any chloride at all) it must also raise the water's pH (making the water less acidic) and use phosphates to protect the pipes from corrosion.

71. The mistake of adding ferric chloride to already corrosive water was soon evident with objective data. Dr. Marc Edwards' Flint Water Study demonstrated that Flint's treated water became more acidic even as the Flint River's became less acidic. The Flint River had a pH (a measure of acidity) at or above 8.0 prior to June of 2015, and its pH steadily increased (meaning it became less acidic) after June. The pH in Flint's treated water, however, became steadily more acidic immediately after Veolia's recommendation to double the ferric chloride concentration. The pH dropped from 7.9 in March of 2015 to 7.3 by August. This is a dramatic difference because pH is measured on a logarithmic scale, meaning that a pH decrease by one whole number equates to a water supply that is ten times more corrosive. So despite the Flint River water supply becoming less acidic, the treated water became significantly and dangerously more acidic after and due to Veolia's and LAN's direction to add more ferric chloride.

72. On August 27, 2015, LAN issued another Operational Evaluation Report on the Trihalomethane Formation Concern (LAN's August 2015 Report). Again, LAN should have recognized the root cause of the trihalomethane levels. Again, LAN should have seen the trihalomethane levels along with the now overwhelming evidence of water quality issues as an indicator of a corrosion problem. Again, LAN should have been aware of the resulting leaching of lead into the water supply and harm to public health. And again, LAN failed to meet its duty of professional care and standards.

73. Instead, LAN's August 2015 Report continued to recommend additional ferric chloride, which again would make the water more corrosive and further the lead crisis: "Increasing the dose rate of ferric chloride is an operational change that can easily be

implemented without the need for any additional equipment. ... Increased dosing of ferric chloride would be most ideal” with regular monitoring to determine “the appropriate ferric chloride feed rate.”

74. On October 16, 2015, Flint stopped using the Flint River for its water supply and resumed use of Lake Huron water through the Detroit system. However, the damage had been done and lead has continued to leach from pipes into the water.

75. On January 5, 2016, Michigan Governor Rick Snyder issued a Declaration of Emergency for Flint, stating, “the damaged water infrastructure and leaching of lead into the city’s water caused damage to public and private water infrastructure, and has either caused or threatened to cause elevated blood lead levels, especially in the population of children and pregnant women, and causing a potential immediate threat to public health and safety and disrupting vital community services.”

76. On January 21, 2016, the United State Environmental Protection Agency issued an Emergency Administrative Order stating that “[t]he presence of lead in the City water supply is principally due to the lack of corrosion control treatment after the City’s switch to the Flint River as a source in April 2014. The river’s water was corrosive and removed protective coatings in the system. This allowed lead to leach into the drinking water, which can continue until the system’s treatment is optimized.” The Emergency Administrative Order further stated: “water provided by the City to residents poses an imminent and substantial endangerment to the health of those persons ... by their ingestion of lead in waters that persons legitimately assume are safe for human consumption.”

COUNT I – PROFESSIONAL NEGLIGENCE
All Defendants

77. The State of Michigan incorporates by reference all preceding allegations set forth above as if fully stated herein.

78. The acts and omissions of the Defendant corporations constitute professional negligence. Defendant corporations failed to address the problem of corrosion and resulting lead poisoning, which a professional engineer of ordinary learning, judgment or skill in this community would do. Defendant corporations failed to recognize the root cause of the observed water quality problems and further recommended actions that made the problems worse.

79. The Defendant corporations owed the State of Michigan and its citizens a duty of care and competence at a professional standard. The Defendant corporations' acts and omissions breached that duty. As a direct result, the State of Michigan and its citizens have been injured (and continue to be injured). These injuries were caused by the Defendant corporations' breaches of duty.

80. The Defendant corporations knew or should have known that high chloride levels in the Flint River would make the water corrosive without significant treatment, and that the corrosion would result in dangerous levels of lead for residents served by the City's many lead pipes. The Defendant corporations ignored information that a professional engineer would recognize as cause for concern and further investigation. Further, the Defendant corporations recommended increasing the use of ferric chloride, which made the water even more corrosive, accelerating and worsening the corrosion of lead pipes and resulting lead poisoning of drinking water.

81. The State of Michigan and its citizens relied on the professional expertise and paid work of the Defendant corporations to provide safe drinking water, and this reliance was based on assertions and statements by the Defendant corporations.

COUNT II – FRAUD
Veolia

82. The State of Michigan incorporates by reference all preceding allegations set forth above as if fully stated herein.

83. Veolia made false and material representations regarding the safety of Flint’s water, the nature and cause of the water quality problems in Flint, and the public health risks. The false and material representations include but are not limited to statements in Veolia’s 2015 Interim Report that (a) Flint’s water was “safe” and “in compliance with drinking water standards,” (b) the observed discoloration was merely aesthetic and not indicative of a water quality of health problem, and (c) medical problems are because “[s]ome people may be sensitive to any water.” These false and material representations were repeated in Veolia’s 2015 Report and other public statements.

84. The material representations and other acts and omissions of Veolia constitute fraud. Veolia knew the representations were false, or Veolia’s representations were made recklessly without any knowledge of the potential truth. Veolia made the representations with the intention that the public and the State of Michigan would act and rely on them, which they did. As a direct result, the State of Michigan and its citizens suffered and continue suffer injuries.

COUNT III – PUBLIC NUISANCE
All Defendants

85. The State of Michigan incorporates by reference all preceding allegations set forth above as if fully stated herein.

86. The acts and omissions of the Defendant corporations constitute a public nuisance, as an unreasonable interference with a right common to the general public – the right to safe, reliable public drinking water. The conduct of the Defendant corporations involves a significant interference with the public health, the public safety, the public peace, the public comfort and the public convenience. Some of the acts and omissions of the Defendant corporations violate state safe drinking water laws. The conduct of the Defendant corporations has in part continued, and has produced permanent and long-lasting effects upon the public right. One potential measure to prevent future public harms and abate the nuisance is the replacement of lead service lines and pipes.

WHEREFORE, the State of Michigan demands judgment in excess of \$25,000.00 for damages and such other relief as this Court may deem just and proper.

Bill Schuette
Attorney General
State of Michigan

Todd Flood
Special Assistant Attorney General
Office of Special Counsel

Noah D. Hall (P66735)
Special Assistant Attorney General
Office of Special Counsel
nhall@crisisflint.com
(517) 930-6258
Counsel of Record

Gary D. Reeves (P35902)
Donald R. Sheff, II (P78262)
155 W. Congress St., Suite 603
Detroit, MI 48226

Dated June 22, 2016

JURY TRIAL DEMAND

Plaintiff State of Michigan hereby demands a trial by jury for all claims so triable.

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State of Michigan

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Counsel of Record

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Donald R. Sheff, II (P78262)
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