

The EPA Should Determine How Its Elevation Policy Can More Effectively Address Risks to the Public

September 7, 2023 | Report No. 23-P-0031



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Abbreviations

C.F.R.	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
OIG	Office of Inspector General
PPB	Parts Per Billion
SDWA	Safe Drinking Water Act

Cover Image

Sign at the city limit in Benton Harbor, Michigan. (iStock by Getty Images photo. Credit: Roberto Galan)

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At a Glance

The EPA Should Determine How Its Elevation Policy Can More Effectively Address Risks to the Public

Why We Did This Audit

To accomplish this objective:

The U.S. Environmental Protection Agency Office of Inspector General initiated this audit to determine the extent to which the EPA followed its 2016 *Policy on Elevation of Critical Public Health Issues* when responding to evidence of drinking water lead contamination in the community water system for Benton Harbor, Michigan.

According to the EPA and the Centers for Disease Control and Prevention, there is no amount of lead that is safe for a child's bloodstream. Lead is persistent and bioaccumulates over time. Beginning in September 2018, Benton Harbor's community water system began exceeding the action level for lead of 15 parts per billion, ranging from 0 to 889 parts per billion. The EPA's elevation policy encourages staff to quickly raise their concerns about human health risks, such as lead exposure, to the Office of the Administrator so that the office can assess the situation and recommend corrective actions.

To support these EPA mission-related efforts:

- *Ensuring clean and safe water.*
- *Operating efficiently and effectively.*

To address this top EPA management challenge:

- *Managing business operations and resources.*

Address inquiries to our public affairs office at (202) 566-2391 or OIG.PublicAffairs@epa.gov.

[List of OIG reports.](#)

What We Found

EPA Region 5 drinking water staff overseeing Michigan did not use the Agency's elevation policy to alert the administrator when responding to the lead found in Benton Harbor's drinking water, which was above the 15 parts per billion action level. The Agency's elevation policy encourages EPA staff to elevate public health and environmental risks that require higher levels of attention than the Agency's usual processes could address, such as when normal enforcement and compliance tools are not appropriate or unlikely to succeed in the near term.

An EPA staff member involved with monitoring Michigan's response to Benton Harbor told us that the state was addressing the lead levels in a timely manner. However, elevated lead levels and other compliance issues at the Benton Harbor community water system met several of the elevation policy criteria. Still, EPA staff did not elevate these issues to alert the Office of the Administrator of health risks to Benton Harbor's residents. In order for the elevation policy to enhance public health and environmental protection, the Office of the Administrator should determine how this policy can more effectively achieve its purpose in situations like Benton Harbor.

Because the elevation policy was not used, the Office of the Administrator's senior-level team did not have an opportunity to assess and recommend steps for resolving elevated lead levels in the Benton Harbor water system.

Recommendations and Planned Agency Corrective Actions

We recommend that the Office of the Administrator determine how the elevation policy can more effectively achieve its purpose of elevating public health and environmental risks that require higher levels of attention than the Agency's usual processes could address. We also recommend that the Office of the Administrator, as necessary, develop and implement a strategy to enhance EPA staff understanding of the circumstances and process for implementing the elevation policy. The EPA disagreed with the first recommendation, which remains unresolved. The EPA agreed with the second recommendation, which is resolved with corrective actions pending. Where appropriate, we revised the report based on the EPA's technical comments.



OFFICE OF INSPECTOR GENERAL
U.S. ENVIRONMENTAL PROTECTION AGENCY

September 7, 2023

MEMORANDUM

SUBJECT: The EPA Should Determine How Its Elevation Policy Can More Effectively Address Risks to the Public
Report No. 23-P-0031

FROM: Sean W. O'Donnell, Inspector General

A handwritten signature in blue ink that reads "Sean W O'Donnell".

TO: Janet McCabe, Deputy Administrator

This is our report on the subject audit conducted by the U.S. Environmental Protection Agency Office of Inspector General. The project number for this audit was [OA-FY22-0068](#). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The Office of the Administrator is primarily responsible for the issues discussed in this report.

In accordance with EPA Manual 2750, your office provided acceptable planned corrective actions and milestone dates for Recommendation 2. This recommendation is resolved. A final response pertaining to this recommendation is not required; however, if you submit a response, it will be posted on the OIG's website, along with our memorandum commenting on your response.

Action Required

Recommendation 1 is not resolved. EPA Manual 2750 requires that recommendations be resolved promptly. Therefore, we request that the EPA provide us within 60 days its responses concerning specific actions in process or alternative corrective actions proposed on the recommendations. Your response will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification. The Inspector General Act of 1978, as amended, requires that we report in our semiannual reports to Congress on each audit or evaluation report for which we receive no Agency response within 60 calendar days.

We will post this report to our website at www.epaoig.gov.

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Purpose

The U.S. Environmental Protection Agency Office of Inspector General [initiated](#) this audit to determine the extent to which the EPA followed its 2016 *Policy on Elevation of Critical Public Health Issues* when responding to evidence of drinking water lead contamination in the community water system for Benton Harbor, Michigan.

Top Management Challenge Addressed

This audit addresses the following top management challenge for the Agency, as identified in the OIG's *U.S. Environmental Protection Agency Fiscal Year 2023 Top Management Challenges [report](#)*, issued October 28, 2022:

- Managing business operations and resources.

Background

According to the EPA and the Centers for Disease Control and Prevention, there is no amount of lead that is safe for a child's bloodstream. Lead is a persistent contaminant and can bioaccumulate in the human body over time. Children exposed to lead can experience behavior and learning problems, lower IQs, hyperactivity, slowed growth, hearing problems, and anemia. In 1986, Congress amended the Safe Drinking Water Act, or SDWA, to prohibit the use of pipes, solder, or flux that are not lead free in public water systems or in plumbing where facilities provide water for human consumption. A public water system provides water to at least 15 service connections or serves an average of at least 25 people for at least 60 days a year. In 1991, the EPA issued the Lead and Copper Rule, under SDWA, as amended, which establishes a maximum contaminant level goal of zero lead in drinking water and outlines a water treatment technique to reduce corrosion of lead and copper in distribution systems.¹

Per 40 C.F.R. § 141.2, a maximum contaminant level goal is the "maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. Maximum contaminant level goals are nonenforceable health goals."

To check whether corrosion control treatment techniques are working, the EPA requires community water systems, or simply water systems, to test tap water for lead in certain homes, including those with lead service lines. The EPA defines community water systems as public water systems that serve the same people year-round.

The water systems compare the tap water test results to the EPA's action level of 15 parts per billion, or ppb. The lead action level is a measure of the effectiveness of the corrosion control treatment technique in the water system. If more than 10 percent of customer taps that were tested have lead levels that are

¹ "Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper," 56 Fed. Reg. 26460 (June 7, 1991).

greater than the action level, then the system must inform the public about steps it can take to reduce its exposure to lead, as well as optimize corrosion control and remove lead service lines under the water system’s control.

The EPA and states, territories, and one tribal nation implement the Lead and Copper Rule, under SDWA as amended. This Act authorizes the EPA administrator to set standards and enforce regulations. The EPA has delegated to nearly all states—including Michigan—primary enforcement authority, also referred to as primacy, which includes the authority to regulate contaminants and implement other requirements under SDWA. The EPA regional offices oversee these state drinking water programs by providing guidance, assistance, and public information about drinking water, as well as collecting drinking water data.

The Benton Harbor Water System

In October 2018, the State of Michigan notified the Benton Harbor water system that it had exceeded the lead action level of 15 ppb in water samples collected from its residents’ taps, which are listed as compliance locations in Table 1. Levels ranged from 0 to 889 ppb in the water collected from September 2018 through June 2022.

Table 1: Lead levels in Benton Harbor drinking water

Monitoring period	Number of compliance locations sampled	Number of locations over 15 ppb	Locations over 15 ppb (%)	Range of results (ppb)
2016–September 2018*	30	8	27	0–60
January–June 2019	46	12	26	0–59
July–December 2019	39	10	26	0–72
January–June 2020	63	9	14	0–440
July–December 2020	67	11	16	0–240
January–June 2021	79	11	14	0–889
July–December 2021	63	6	10	0–48
January–June 2022	63	5	8	0–53

Source: Michigan Department of Energy, Great Lakes, and the Environment. (EPA OIG table)

*September 2018 was the end of the three-year water sampling and reporting period for the Lead and Copper Rule. Semiannual sampling began when elevated lead levels were detected.

Benton Harbor is in Berrien County, Michigan, which is located in the southwest corner of the state. The State of Michigan has identified the city of approximately 9,000 residents as a distressed area due to greater-than-statewide average poverty and unemployment rates, a lower-than-statewide average in personal property value, and a declining population. Approximately 85 percent of its residents are Black or African American, and the 2019 median household income was \$21,916.

Benton Harbor, the State of Michigan, and the EPA responded to the lead in drinking water. According to local media reports, beginning in October 2018, Benton Harbor provided bottled water to residents whose homes tested above the Lead and Copper Rule action level for lead. By February 2019, the Berrien County Health Department made available water filters to Benton Harbor residents, and in March 2019,

the Benton Harbor water system began adding corrosion control chemicals to prevent lead from leaching into the drinking water from the pipes. In October 2020, the EPA announced a \$5.6 million grant to the water system to replace its lead service lines and support a study to optimize lead corrosion control treatment; the grant was awarded in June 2021. In August 2021, the EPA met with local community organizations about the lead in drinking water and in September 2021, conducted a joint water system inspection with the State of Michigan. In November 2021, EPA Region 5 issued a Unilateral Administrative Order to Benton Harbor that required the water system to inform consumers when lead action level exceedances are detected in drinking water.

Benton Harbor's water system experienced other drinking water issues along with elevated lead levels. From January 2018 through August of 2020, the State of Michigan cited the water system for additional drinking water violations, including a significant deficiency violation notice from a September 2018 sanitary survey regarding water system managerial oversight, insufficient revenue, treatment, distribution, monitoring, and reporting issues. The state also issued an Administrative Consent Order to address these deficiencies. In October 2021, Michigan officials announced that residents should use bottled water for cooking and drinking.

The EPA's Policy on the Elevation of Critical Public Health Issues

In 2016, in response to the Flint, Michigan water crisis in which residents were exposed to lead in their drinking water, the EPA administrator issued the *Policy on Elevation of Critical Public Health Issues*, an agencywide policy encouraging staff to elevate issues of significant public health risk. In this report, we refer to this policy as the elevation policy. The elevation policy urged Agency staff to consider elevating public health risks that require higher levels of attention than the Agency's usual processes could address. The 2016 policy stated that EPA leaders should encourage staff to elevate issues that have the following characteristics, any of which, according to one Office of Administrator staff member, can be used to elevate issues of concerns:

- "There appears to be a substantial threat to public health;
- EPA is or can reasonably be expected to be a focus of the need for action; and/or
- Other authorities appear to be unable to address or unsuccessful in effectively addressing such a threat;
- Recourse to normal enforcement and compliance tools is not appropriate or unlikely to succeed in the near term;
- High and sustained public attention is possible."

Through the elevation policy, the administrator asked staff to consider whether focusing too narrowly on legal, technical, or protocol issues or concerns would miss opportunities to heighten public awareness of risks. Subsequent administrators have modified the elevation policy but always reaffirmed the importance of elevating human health and environmental risks. While the administrators offered

their own unique messages regarding elevation and the policy, each retained virtually the same five characteristics meriting elevation.

In 2018, the Office of the Administrator issued an elevation memorandum reaffirming the importance of elevating human health and environmental risks. It also deployed an internal web-based reporting tool that allowed EPA staff to report directly to the Office of the Administrator perceived unaddressed issues of significant risk to public health or the environment that are within the scope of EPA authorities. These concerns are shared within the Office of the Administrator and with a senior-level team that includes representatives from regional and national offices. The team's role is to promptly assess the reported concerns and recommend steps to resolve them.

In the four years since the EPA implemented its internal web-based reporting tool in 2018, EPA staff have raised 11 concerns: four about drinking water, four about air quality, and one each about waste at a Superfund site, fish consumption rates for Alaskan citizens and natives, and per- and polyfluoroalkyl substances. The EPA's internal website contains a summary of each report and how the Office of the Administrator addressed it.

Responsible Offices

The Office of the Administrator implements the elevation policy and assesses and recommends next steps to staff concerns submitted via its internal web-based reporting tool. The Office of Groundwater and Drinking Water, which is within the Office of Water, oversees the implementation of SDWA. EPA Region 5 oversees the State of Michigan's implementation of the Act, and the Michigan Department of Environment, Great Lakes, and Energy has primary enforcement responsibility for drinking water systems in the state.

Scope and Methodology

We conducted this performance audit from February 2022 to June 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We assessed the internal controls necessary to satisfy our audit objective.² In particular, we assessed the internal control components—as outlined in the U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government*—significant to our audit objective. Any internal control deficiencies we found are discussed in this report. Because our audit was limited to the internal control

² An entity designs, implements, and operates internal controls to achieve its objectives related to operations, reporting, and compliance. The U.S. Government Accountability Office sets internal control standards for federal entities in GAO-14-704G, *Standards for Internal Control in the Federal Government*, issued September 10, 2014.

components deemed significant to our audit objective, it may not have disclosed all internal control deficiencies that may have existed at the time of the audit.

We interviewed staff and managers from the Office of the Administrator, Office of Water, Office of Enforcement and Compliance Assurance, and Region 5. Two key Region 5 staff—the state program manager for Michigan and the Drinking Water Branch manager—retired before the start of this audit, and we therefore could not definitively conclude why concerns regarding Benton Harbor were not elevated. The EPA provided us a timeline of events at Benton Harbor. We reviewed the state and the EPA’s Administrative Order against the Benton Harbor water system; communications from 2022 about Benton Harbor that were a part of the administrator’s weekly briefings; the EPA’s requirements under SDWA, the Lead and Copper Rule, the Agency’s elevation policy; and subsequent administrator reaffirmations of the elevation policy in 2017, 2018, and 2021. We also reviewed the Office of Water’s *Protocol For Conducting A PWSS Program Data File Review, Region 5 Public Water System Supervision State Program Managers Desk Guide (Draft)* and the EPA’s *Drinking Water Enforcement Response Policy*.

Prior Reports

The EPA OIG has issued three reports about lead in drinking water:

- EPA OIG Report No. [17-P-0004](#), *Management Alert: Drinking Water Contamination in Flint, Michigan, Demonstrates a Need to Clarify EPA Authority to Issue Emergency Orders to Protect the Public*, issued on October 20, 2016, recommended that the Office of Enforcement and Compliance Assurance update the EPA’s 1991 guidance on SDWA section 1431. We also recommended that all relevant EPA drinking water and water enforcement program management and staff attend training on SDWA section 1431 authority. The Agency certified in August 2018 that all corrective actions were completed.
- EPA OIG Report No. [18-P-0221](#), *Management Weaknesses Delayed Response to Flint Water Crisis*, issued July 19, 2018, reported that Flint did not adhere to Lead and Copper Rule requirements to identify and maintain a pool of Tier 1 sampling sites and to install and maintain continuous corrosion-control treatment throughout its water-distribution system. Our report made nine recommendations, including that Region 5 implement a system for regional drinking water staff, managers, and senior leaders that incentivizes staff elevating and managers addressing important and emerging issues in accordance with the EPA’s 2016 elevation policy. Beginning on December 21, 2018, the Agency issued three separate certification memorandums to the EPA chief financial officer certifying that it had completed corrective actions to address all nine recommendations.
- EPA OIG Report No. [22-P-0046](#), *The EPA Needs to Fully Address the OIG’s 2018 Flint Water Crisis Report Recommendations by Improving Controls, Training, and Risk Assessments*, issued May 17, 2022, stated that although the EPA certified that it completed corrective actions to address all nine recommendations issued in our 2018 Flint report, the EPA’s corrective actions for three recommendations did not fully address the identified deficiencies in oversight. Our 2022 report

recommended that the Office of Enforcement and Compliance Assurance document and monitor attendance at SDWA training events to ensure that the appropriate staff members, managers, and senior leaders attend and are aware of the EPA’s oversight and enforcement tools and authorities. We also recommended that the Office of Enforcement and Compliance Assurance incorporate controls into the Report a Violation system to assess the risks associated with tips retained by the EPA and to track when and how the retained tips are resolved.

Results

The Region 5 drinking water staff overseeing Michigan did not use the Agency’s elevation policy to alert the administrator when responding to the lead found in Benton Harbor’s drinking water, which was above the 15-ppb action level. The elevation policy encourages EPA staff to elevate critical public health and environmental risks that require higher levels of attention than the Agency’s usual processes could address, such as when normal enforcement and compliance tools are not appropriate or are unlikely to succeed in the near term. An EPA staff member involved with monitoring Michigan’s response told us that the state was addressing the lead levels in a timely manner. Even still, elevated lead levels and other compliance issues at the Benton Harbor water system met several of the elevation policy criteria, and Region 5 drinking water staff did not elevate these issues to alert the Office of the Administrator of health risks to Benton Harbor’s residents. In order for the elevation policy to enhance public health and environmental protection, the Office of the Administrator should determine how this policy can more effectively achieve its purpose in situations like Benton Harbor.

A Region 5 drinking water state program manager emailed Michigan about Benton Harbor’s lead levels in October 2018 and began monitoring the state’s response. As displayed in Table 2, the EPA, State of Michigan, Berrian County, and the Benton Harbor water system conducted various activities from October 2018 through November 2021 in response to elevated lead levels in Benton Harbor’s drinking water.

Table 2: Selected actions in response to Benton Harbor lead levels in drinking water

Date	Action
October 2018	A Region 5 state program manager contacted Michigan about Benton Harbor’s lead levels, inquiring why the system exceeded the lead action level.
December 2018	Michigan notified Region 5 that the state had developed a lead corrosion control study.
February 2019	The Berrien County Health Department provided water filters to Benton Harbor residents.
March 2019	The Benton Harbor water system began corrosion control treatment.
December 2019	The EPA requested state updates on local action level exceedance follow-up activities for recent lead exceedances throughout region, including Benton Harbor
February 2020	Michigan ordered Benton Harbor to increase corrosion control treatment chemical levels.
October 2020	The EPA administrator announced a \$5.6 million grant to the Benton Harbor water system to fund the removal of lead service lines and a study to optimize the city’s lead corrosion control treatment.
April 2021	The EPA requested state updates on lead action level exceedance follow-up activities for recent lead exceedances throughout the region. The request included Benton Harbor.
June 2021	The EPA awarded the \$5.6 million grant.

Date	Action
August 2021	The EPA's regional drinking water program and enforcement staff, state staff, the Benton Harbor Community Water Council, and other groups met about drinking water quality and efforts to treat water with elevated lead levels.
September 2021	The EPA and Michigan conducted a joint water system inspection upon the state's request.
November 2021	Region 5 issued a Unilateral Administrative Order to Benton Harbor to take additional actions to correct violations and significant deficiencies, including public notification of elevated lead levels.
June 2023	Benton Harbor demonstrated to the EPA that all the terms of the Unilateral Administrative Order had been satisfactorily completed and the order was terminated. There had been no lead action level exceedances in the prior three monitoring periods and all of the lead service lines in Benton Harbor were replaced.

Source: The EPA; Michigan Department of Energy, Great Lakes, and the Environment; and Berrien County. (EPA OIG table)

While the Region 5 drinking water staff were monitoring the state's response to lead sample results above the 15-ppb lead action level, Michigan cited the water system for additional drinking water violations, including a significant deficiency violation notice regarding water system managerial oversight, insufficient revenue, treatment, distribution, monitoring, and reporting issues. The state issued an Administrative Consent Order to address these deficiencies. These enforcement actions, combined with the elevated lead levels, indicated that there were larger public health risks because the water system was not operating in a manner that ensured it was providing safe drinking water to residents, as shown in Table 3.

Table 3: Other public health risks at the Benton Harbor water system

Date	Additional indicators of increased risks to public health
January to March 2018	Benton Harbor violated two drinking water regulations: monitoring requirements for the Long Term 2 Enhanced Surface Water Treatment Rule and treatment technique requirements for the Stage 1 Disinfectants and Disinfection Byproducts Rule.
October 2018	Michigan issued a significant deficiency violation notice to Benton Harbor after a September 2018 sanitary survey. The notice discussed insufficient revenues to cover capital improvement costs; insufficient managerial oversight; and various significant deficiencies related to drinking water treatment, distribution, monitoring, and reporting.
October 2018	Region 5 included Benton Harbor on the Enforcement Targeting Tool list because of water system deficiencies.*
March 2019	Michigan issued an Administrative Consent Order to Benton Harbor to address deficiencies from the 2018 sanitary survey. This included ordering the city to conduct and submit a drinking water rate study, install metering capabilities on finished water, obtain a licensed operator in charge, and submit a proposal for optimal corrosion control treatment or a corrosion control study.
August 2020	Michigan amended the 2019 Administrative Consent Order to require Benton Harbor to assess its technical, managerial, and financial capacity to provide safe water to the public.
October 2021	Michigan officials announced that residents should use bottled water for cooking and drinking.

Source: The EPA and the State of Michigan. (EPA OIG table)

* The Enforcement Targeting Tool identifies public water systems having the highest total noncompliance across all rules, within a designated period of time.

Beginning in 2018, Benton Harbor's water system experienced elevated lead levels and other violations and operational deficiencies, which resulted in an October 2021 announcement from Michigan officials that residents should use bottled water for cooking and drinking. During that time, Region 5 staff did not elevate Benton Harbor's drinking water issues to the Office of the Administrator. The lead levels and other compliance issues at Benton Harbor met four out of five elevation policy criteria listed below, although an Office of the Administrator staff member explained that any of the criteria could qualify to elevate a concern:

- There appears to be a substantial threat to public health, because, according to the Centers for Disease Control and Prevention, there is no amount of lead that is safe for a child, and lead is a persistent contaminant that can bioaccumulate in the human body over time.
- The EPA could reasonably be expected to be a focus for the need for action since the Agency awarded a grant to remove lead service lines and issued an Administrative Order addressing water system deficiencies.
- Normal enforcement and compliance tools, such as the 2018 sanitary survey and subsequent violation notices, seem to be unlikely to succeed in the near term, as evidenced by Michigan's announcement in 2021 that residents should use bottled water for cooking and drinking.
- There was a possibility for high and sustained public attention because of previous issues of lead in drinking water, such as the Flint water crisis.

The Office of the Administrator developed the elevation policy so staff could raise critical public health and environmental issues that the Agency could properly assess and respond to in an appropriate manner. Furthermore, the elevation policy was issued in response to the Flint water crisis so that EPA staff could quickly alert the Office of the Administrator to human health and environmental risks facing communities. It is uncertain whether the response at Benton Harbor would have been different with the Office of the Administrator's senior-level team involvement via the policy. Nevertheless, EPA staff did not use the policy as the Office of the Administrator appears to have intended to alert the office to the human health risks facing Benton Harbor residents.

Conclusions

While Region 5 staff members monitored the state and local response to lead action level exceedances at Benton Harbor and issued a Unilateral Administrative Order, they did not use the elevation policy to alert the Office of the Administrator about these lead levels and other compliance issues facing the water system. The situation at Benton Harbor met four of the five elevation policy criteria, which calls into question the circumstances under which staff would elevate any concern via the policy. As a result, the EPA should determine how this policy can more effectively achieve its purpose.

Recommendations

We recommend that the deputy administrator:

1. Determine how the Policy on *Elevation of Critical Public Health Issues* can more effectively achieve its purpose of elevating public health and environmental risks that require higher levels of attention than the Agency's usual processes could address.
2. As necessary, develop and implement a strategy to enhance EPA staff understanding of the circumstances and process for implementing the Policy on Elevation of Critical Public Health Issues.

Agency Response and OIG Assessment

The Office of the Administrator's May 30, 2023 response to our draft report is in Appendix A. The Office of the Administrator did not concur with Recommendation 1 but concurred with Recommendation 2 and provided corrective actions with planned completion dates. In response to Recommendation 1, the office stated that the reaffirmed policy from the administrator, distributed December 28, 2022, is effective and working as intended. The office also indicated that it modified the reaffirmed policy to include feedback the OIG provided during the audit, which corrected an error on the EPA's public website regarding one of the five elevation policy criteria. While the Office of the Administrator stated that the policy is effective and working as intended, Recommendation 1 stated for the Agency to determine how this policy can more effectively achieve its purpose of elevating human health and environmental risks that require higher levels of attention than the Agency's usual processes could address. The Agency's reaffirmation and statement, and correction of an error on the EPA's public website, do not meet the intent of our recommendation because an analysis is necessary to determine the policy's effectiveness. Therefore, Recommendation 1 is unresolved.

On Recommendation 2, the Office of the Administrator proposed to look at ways to expand outreach of this policy to the workforce through various means—including introducing it to new employees, adding the policy to the agenda of an all-staff meeting, and incorporating the policy into a weekly newsletter. When completed, these corrective actions should address the intent of Recommendation 2. Therefore, we consider this recommendation resolved with corrective actions pending.

Region 5's May 26, 2023 response to our draft report is in Appendix B. While the Region 5 regional administrator is not the action official for this report, the region did provide comments and technical corrections. The region stated that the draft report failed to acknowledge that drinking water concerns in Benton Harbor had been elevated to the Office of the Administrator via normal elevation channels. However, in the 2018 reaffirmation of the elevation policy, the administrator stated that it is important to raise concerns quickly and think creatively when a broader perspective would suggest that a larger public health or environmental issue is at stake. The EPA's regional staff could have used the elevation policy to alert the Office of the Administrator, as the policy is intended when there are risks to public health. We made technical corrections, where appropriate, based on the region's response to the draft report.

Status of Recommendations

Rec. No.	Page No.	Recommendation	Status*	Action Official	Planned Completion Date
1	9	Determine how the <i>Policy on Elevation of Critical Public Health Issues</i> can more effectively achieve its purpose of elevating public health and environmental risks that require higher levels of attention than the Agency's usual processes could address.	U	Deputy Administrator	
2	9	As necessary, develop and implement a strategy to enhance EPA staff understanding of the circumstances and process for implementing the <i>Policy on Elevation of Critical Public Health Issues</i> .	R	Deputy Administrator	6/30/24

* C = Corrective action completed.

R = Recommendation resolved with corrective action pending.

U = Recommendation unresolved with resolution efforts in progress.

Office of the Administrator's Response to Draft Report



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 30, 2023

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Response to Office of Inspector General (OIG) Draft Report, *The EPA Should Determine How Its Elevation Policy Can More Effectively Address Risks to the Public* (Project No. OA-FY22-0068), dated April 27, 2023

FROM: Wesley J. Carpenter
Deputy Chief of Staff, Management Carpenter, Wesley Digitally signed by Carpenter,
Wesley
Date: 2023.05.30 07:36:19 -0400

TO: Michael Davis
Director, Environmental Investment and Infrastructure Directorate
Office of Audit, Office of the Inspector General

The Office of the Administrator appreciates the opportunity to respond to the OIG's draft report titled, *The EPA Should Determine How Its Elevation Policy Can More Effectively Address Risks to the Public* (Project No. OA-FY22-0068).

I General Comments:

It is important to note that the elevation policy did not derive from a statutory or regulatory mandate, Congressional inquiry or report, or an Executive Order or OMB directive. Simply stated, it is a voluntary tool the agency has developed, and employs, to engage the EPA work force on alleged or perceived concerns an employee may feel is a threat to public health or the environment. This web-based tool allows an EPA employee to provide agency senior management with notice of a perceived unaddressed significant risk to public health or environment that is within the scope of the EPA's authorities. On a separate but related note, this is not the only means in which an employee can elevate a concern, risk, or vulnerability to agency senior leadership.

When a notice is received via the web-based tool, a small group of senior career executives quickly convene to review it and map out a strategy of how best to address and respond to the alleged or perceived concern. Depending on the nature of the alleged or perceived concern, subject matter experts from across the agency are called upon to assist in developing a response. Upon completion of a coordinated response, it is communicated back to the employee and subsequently uploaded on to the agency's intranet site, essentially closing out the feedback loop.

II Responses to the Recommendations:

Recommendation 1: We recommend that the Office of the Administrator determine how the elevation policy can more effectively achieve its purpose of elevation public health and environmental risks that require higher levels of attention than the Agency’s usual processes could address.

The Office of the Administrator respectfully disagrees with this recommendation. We believe, the recently reaffirmed policy from the Administrator, distributed December 28, 2022, is effective and working as intended. It should also be noted that this reaffirmed policy was tweaked to include feedback received from your team during this audit.

Recommendation 2: We also recommend that the Office of the Administrator, as necessary, develop and implement a strategy to enhance EPA staff understanding of the circumstances and process for implementing the elevation policy.

- **Proposed Corrective Action 2:** The Office of the Administrator will look at ways to expand outreach of this policy to the workforce through various means—including but not limited to new employee on-boarding, adding the policy to the agenda of an all-staff meeting, and incorporating the policy into a weekly newsletter.
- **Target Completion Date:** June 30, 2024

We look forward to these comments being incorporated into the final report. If you have any questions regarding this memorandum, please contact Michael Benton, Office of the Administrator, AFC at 202-564-2860 or benton.michael@epa.gov.

cc: Radhika Fox, AA Office of Water
Debra Shore, Regional Administrator Region 5
Tim Roach, Supervisor Auditor, OIG
Denton Stafford, Analyst in charge, OIG
Dale Meyer, Comptroller, Region 5
Cameo Smoot, OW AFC
Nancy Grantham, PDAA, OPA
Robert Kaplan, Regional Counsel, Region 5
Tera Fong, OW Region 5
Nina Johnson, AFC Region 5
Lance McCluney, Director OAES
Susan Perkins, OCFO

Region 5's Response to Draft Report



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
W-15J

May 26, 2023

Mr. Tim Roach
Supervisory Analyst
EPA Office of Inspector General, Office of Audit
The Metcalfe Federal Building
77 W. Jackson Blvd. R1318
Chicago, IL 60604

Dear Mr. Roach:

The Environmental Protection Agency Region 5 (“Region 5” or “R5”) appreciates the opportunity to comment on the Office of Inspector General’s (“OIG’s”) draft report, “The EPA Should Determine How Its Elevation Policy Can More Effectively Address Risks to the Public,” Project No. OA-FY22-0068, April 27, 2023. The draft report discusses at length Region 5’s response to drinking water concerns in Benton Harbor, Michigan, and in October 2022, Region 5 commented on OIG’s statement of findings for this project, entitled “Public Health Risks at Benton Harbor’s Water System Could Have Been Reduced by Using Agency Elevation Policy.” Today, we are providing the attached list of comments on the draft report, many of which are repeat comments and factual corrections from the statement of findings, as well as the following overarching comments and recommendation.

We agree that safe and reliable drinking water is of paramount importance in Benton Harbor, across Michigan, and around the country, and that the EPA elevation policy is an important tool to address situations when public health risks are not receiving the appropriate level of awareness and action. However, by focusing on Region 5’s non-use of the elevation policy in Benton Harbor, the draft report is critically flawed in two significant ways.

First, a central premise of the report is factually incorrect. The draft report fails to acknowledge that drinking water concerns in Benton Harbor were in fact elevated to the Office of the Administrator (“OA” or “AO”) via normal elevation channels and that the AO’s senior-level team had ample opportunity to assess and recommend steps for resolving the issues in Benton

Harbor. Indeed, as early as October 2020, former Administrator Wheeler visited Benton Harbor to announce a \$5.6 million grant to fund lead service line replacement as well as a study to support the state primacy agency's ongoing efforts to optimize the city's lead corrosion control treatment. The same is true for the current leadership, as senior leadership in the Office of Water and the AO had even more extensive knowledge and involvement in Benton Harbor. Region 5 staff did not need a separate elevation channel in this instance.

Second, by concluding that Region 5 staff should have used the elevation policy because elevated lead levels and other compliance issues in Benton Harbor met several of the elevation policy criteria, the draft report damages the elevation policy and actually may keep it from serving its intended purpose. If Agency staff were to invoke the elevation policy to elevate any issue that meets some of the elevation policy criteria, the separate elevation channel would be completely overwhelmed. Some examples prove the point. For the standard at issue in Benton Harbor, there were 206 new or unresolved Action Level Exceedances in 2022 across Region 5. There were 343 measured ozone and 65 measured lead exceedances of ambient air quality standards in 2022. In a typical year, there are 40 time-critical removal actions of hazardous substances in Region 5. These exceedances and emergency response satisfy the criteria for elevation. These number do not reflect that national total, which would be multiplied by a factor of 10 to give a true picture of expected volumes. In short, if everything is a priority, then nothing is. This would defeat the purpose of the elevation policy – to provide Agency staff an extraordinary alternative elevation channel to report perceived unaddressed issues of significant risk to public health or the environment.

We share the OIG's interest in factual accuracy, and ultimately, preservation of the elevation of the elevation policy as a valuable alternative tool. We recommend that OIG revise its draft report in light of the above and attached comments.

If you have further questions, please contact Dale E. Meyer at (312) 886-7561, or meyer.dale@epa.gov.

Sincerely,

5/26/2023

X 

Tera L. Fong
Division Director, Water Division
Signed by: Environmental Protection Agency

5/26/2023

X 

Robert A Kaplan
Regional Counsel, Office of Regional Counsel
Signed by: ROBERT KAPLAN

Enclosure

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