

Michigan government complicit in use of unsafe X-ray bone scanners on Flint residents

Sheila Brehm
5 September 2021

Documents obtained through the Freedom of Information Act (FOIA) by the *Detroit Free Press* reveal the Michigan government's criminal responsibility for failing to investigate and shut down the radiation-emitting bone lead testing on Flint residents. Without any oversight or regulation by the state for 18 months, beginning in August 2019, testing for lead contamination was not conducted in a medical facility, but in the local Flint law offices of New York-based law firm, Napoli-Shkolnik.

In a shocking revelation, a report issued by the Michigan Occupational Safety and Health Administration (MIOSHA) states the devices were administering dosages 48 times over the accepted limit: "The reported dose equivalent to the skin of 48.5 millisievert exceeds the limit of 1 millisievert (100 mrem)."

When health violations are uncovered at a restaurant, the facility is immediately closed. However, the state made no attempt to protect the health and well-being of Flint residents or inspect the Napoli-Shkolnik devices for a year and a half.

Democratic Governor Gretchen Whitmer's administration allowed thousands of Flint residents to unknowingly subject themselves to radiation from an X-ray XRF fluorescent hand-held scanning device manufactured for detecting metals and other elements in inanimate objects, such as scrap metal. The devices are explicitly not approved for use on humans according to Thermo Fisher, the manufacturer.

The bone lead test is a major part of the paltry \$641.25 million Flint water settlement for the victims of the lead-in-water poisoning which was triggered by the bipartisan decision to switch to Flint River water in April 2014 without any corrosion control. Thousands of residents were poisoned by lead that leached from the system's pipes and have suffered innumerable negative health effects in what is one of the worst social crimes in American history. The city's drinking water was rendered unusable, forcing residents to rely on bottled water while they continued to pay some of the highest water bills in the country.

Lead poisoning in the blood dissipates after 30 days but remains in the bones for decades. Lead bone testing is

included in the settlement's language. Erroneously described as "voluntary" by Attorney General Dana Nessel, the bone lead test is the way for residents to receive higher compensation. Without the tests, the remuneration is capped at only \$1,000 per household for most residents.

The FOIA report includes documents from the MIOSHA office within the Michigan Department of Labor and Economic Opportunity. They show that the government's first inspection of the bone scanning operation at the Napoli law office was not conducted until March 23, 2021—18 months after the bone scanning began!

The state's silence and inaction became impossible after Dr. Lawrence Reynolds submitted a court filing February 26, 2021 raising grave concerns about the safety and efficacy of the radiation-emitting device. He also noted the two devices being used by Napoli had never been registered with the state. Dr. Reynolds is a Flint pediatrician and former CEO of Mott Children's Health Center.

The court submission prompted Napoli to register the two devices at the end of February. An email sent March 18, 2021, from the State of Michigan to Napoli acknowledges that their application for registering the bone scanning devices was received and that the devices were registered and certified.

The state of Michigan's Radiation Safety Section (RSS) however did not inspect Napoli's offices until March 23, 2021. Two weeks later, on April 9, John Ferris, MIOSHA physicist supervisor, sent the following email to the Napoli law firm:

"Please describe the dose levels to the individual being irradiated and how the dose levels were determined and please provide any *supportive documentation such as copies of your research projects* that evaluated dose levels for this particular use of the hand-held x-ray fluorescent machines. *Are the machines are (sic) being used (including the results of the scans) as part of a medical research project?* " [Emphasis added]

To ask at this point if a medical research project is taking place is not credible and is an insult to the Flint population.

It is implausible that the state, which is the major party in the Flint water settlement, was unaware of the bone scanning. It is written into the language of the settlement and is included in the compensation grid. How was it possible that registration was granted for two radiation-emitting devices without inquiring about how they were used?

Furthermore, the Napoli law firm aggressively marketed itself and the bone lead test to sign up thousands of clients beginning in July 2018 when African American actor Hill Harper was featured in Flint television infomercials. Al Sharpton went to the city in the fall of 2018 and reportedly signed up 5,000 clients for Napoli. Benjamin Crump, known for representing the families of African American men and women brutalized and killed by the police, held two rallies in Flint with Napoli in fall 2019 advertising free bone scans if they signed up with the law firm. The settlement provides 32 percent for lawyers' fees from each award, making it highly lucrative to sign up clients who will get larger awards if the bone scan test demonstrates lead contamination.

On May 4, 2021, a week after all the bone lead testing ended on April 27, as stipulated in the settlement agreement, a letter from the State to Napoli referred to the March 23 inspection of "the x-ray facility" noting the items of non-compliance and requesting a deadline to comply by May 30. The letter also noted that if the non-compliance issues were remedied in a timely fashion, there would be no penalties: "...the Department has found it efficient to work with registrants to ensure the safe use of x-ray machines without the need to issue civil penalties."

Other non-compliance issues included the lack of finger or wrist radiation monitoring devices for the scanner operators, nor was there an on-site Michigan-licensed physician. None of those scanned, including at least one pregnant woman, were informed that radiation was being emitted—meaning that there was no informed consent.

The MIOSHA report also noted that no shields or protective measures were provided to residents, nor were there any signs advising people of the use of radiation equipment. Other serious non-compliance issues included the absence of automatic shutoff timers that terminate the exposure after a preset interval. Adding insult to injury, Napoli submitted a 40-page *Flint -XRF Analyzer- Radiation Safety Manual* which appears to have been produced in May 2021, well after thousands had been herded into their law offices and were unknowingly subjected to unacceptable levels of radiation.

In July 2021, Assistant Attorney General Margaret Bettenhausen told US District Judge Judith Levy at the public "Fairness Hearing" that the inspection of Napoli's office by MIOSHA only required "several minor changes to procedures, including some signage issues." Her statements

at the hearing were made on behalf of Democratic Attorney General Dana Nessel and should be viewed as nothing less than bald-faced lies.

Meanwhile, a deposition of Thermo Fisher was to have taken place last Thursday but was postponed. Judge Levy has not yet ruled on a motion submitted by Dr. Reynolds to hold an evidentiary hearing with a neutral radiation expert, before ruling on the present language of the water settlement.

The Democratic Party administration of Governor Whitmer as well as that of former Governor Rick Snyder's Republican administration who oversaw the switch to the toxic Flint River, and the Obama administration which joined in the coverup, are all responsible for harming the population and should be criminally prosecuted.

Justice for the people of Flint will not be secured through the capitalist courts or by appealing to the politicians from either capitalist party. They are all beholden and accountable to the financial oligarchs, who have responded to the COVID-19 pandemic by pursuing a "herd immunity" policy that has resulted in 660,000 preventable deaths in the US alone, repeating on a mass scale their homicidal hostility and indifference to the working class population of Flint.

The vast resources of society must be marshaled to meet the needs of Flint residents as part of a united fight of autoworkers, teachers, health care workers and logistics workers in the US and internationally. This requires a political struggle by the working class for socialism against the capitalist system.

We urge those who agree to form an independent Flint Workers Action Committee which will be affiliated with the International Workers Alliance of Rank-and-File Committees and will fight for what Flint residents need to be made whole.



To contact the WSWs and the Socialist Equality Party visit:

[wsws.org/contact](https://www.wsws.org/contact)