

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

*In re* Flint Water Cases

Judith E. Levy

United States District Judge

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This Order Relates To:

*Bellwether I Cases*

Case No. 17-10164

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**OPINION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS VEOLIA NORTH AMERICA, LLC, VEOLIA NORTH AMERICA, INC., AND VEOLIA WATER NORTH AMERICA OPERATING SERVICES, LLC’S MOTION IN LIMINE TO EXCLUDE BONE LEAD REFERENCE VALUES [504]**

Before the Court is one of thirteen motions *in limine* filed by Veolia North America, LLC, Veolia North America, Inc., and Veolia Water North America Operating Services, LLC’s (collectively “VNA”) in anticipation of the first Flint Water bellwether trial. VNA seeks the

exclusion of bone lead “reference values” which were included in drafts of Dr. Aaron Specht’s expert reports.

The reference values to which VNA objects were drawn from studies involving the exposure of adults to leaded gasoline. (ECF No. 431, PageID.32904-32907.) Dr. Specht explained in his deposition that he did not include them in the final versions of his report because they were not sufficiently relevant to children to be a valuable comparator. (*Id.* at PageID.32904.)

Several other expert witnesses initially relied on the reference values provided in Dr. Specht’s draft reports. (*See, e.g.*, ECF No. 330-34, PageID.15510 (Dr. Bithoney referencing Dr. Specht’s reference values)). Because Dr. Specht has disclaimed reliance on these reference values, Plaintiffs’ other experts may not rely on them in their testimony. Nor may Plaintiffs rely on them during argument at trial to establish that they were subjected to a “persistent” exposure.

There is no reason to pre-emptively bar Dr. Specht himself from referencing studies involving the exposure of adults to leaded gasoline, however. To the extent such studies become relevant to (otherwise

proper) questions posed to him at trial, Dr. Specht may refer to them. It is clear that Dr. Specht will not use these studies as reference values to evaluate the lead exposure of the bellwether Plaintiffs. (ECF No. 431, PageID.32904.) Because there is no indication that the studies at issue are unreliable, an order barring Dr. Specht from using them in response to relevant questions at trial is unnecessary.

Accordingly, VNA's motion to exclude evidence regarding Dr. Specht's reference values is GRANTED IN PART and DENIED IN PART.

IT IS SO ORDERED,

Dated: January 13, 2022  
Ann Arbor, Michigan

s/Judith E. Levy  
JUDITH E. LEVY  
United States District Judge

### **CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on January 13, 2022.

s/William Barkholz  
WILLIAM BARKHOLZ  
Case Manager