



STATE OF RHODE ISLAND
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February 2, 2022

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Re: Letter in Support of the Childhood Lead Action Project, South Providence Neighborhood Association, Direct Action for Rights and Equality, National Center for Healthy Housing, and Environmental Defense Fund January 5, 2022 Complaint Under Title VI of the Civil Rights Act of 1964, 41 U.S.C. § 2000d, 40 C.F.R. Part 7

Dear Administrator Regan and Director Dorka:

On January 5, 2022, the Childhood Lead Action Project, South Providence Neighborhood Association, Direct Action for Rights and Equality, National Center for Healthy Housing, and Environmental Defense Fund (hereinafter collectively referred to as “the Complainants”) filed with the Environmental Protection Agency’s (“EPA”) External Civil Rights Compliance Office a complaint (the “Complaint”) against the Providence Water Supply Board (“Providence Water” or the “Utility”) alleging violations of Title VI of the Civil Rights Act of 1964 and EPA implementing regulations. As more fully described in

the Complaint, the Complainants allege that Providence Water has failed to protect thousands of Providence County residents from harmful toxins in their drinking water, with the Utility's water meeting or exceeding the lead action level for at least 15 of the last 16 years.¹ This exposure can be attributed, at least in part, to the lead pipes that service many homes in Providence Water's service area.² The Complaint demonstrates that Providence Water has adopted the practice of partial lead service line ("LSL") replacement to respond to these conditions, replacing service lines from the water main to a home's property line/curb stop with non-lead pipes ("public side replacement") and requiring a homeowner to pay for any lead pipe replacement from the curb stop to their home ("private side replacement"). The Complainants allege that this practice has been ineffectual for and has had discriminatory effects on communities of color served by Providence Water.

The Rhode Island Office of the Attorney General (the "Office" or "Attorney General") has a profound interest in the subject matter of the Complaint. The Attorney General is required by law to maintain an Office of the Lead Advocate to ensure that Rhode Islanders are protected from lead poisoning.³ The Office recognizes the danger that unremediated lead hazards present to the health of Rhode Island residents, particularly those living in disadvantaged communities. By investigating and litigating cases involving childhood lead poisoning, the Attorney General has sought to combat the persistent problem of lead exposure in Rhode Island. The Complainant's allegations, therefore, are clearly significant to a core mission of this Office: to protect, and advocate for, all Rhode Islanders' health and safety, and "to represent the public interest." *State v. Lead Industries, Ass'n, Inc.*, 951 A.2d 428, 471 (R.I. 2008) (internal citations omitted).

The Attorney General therefore offers this letter in support of the Complaint. Creating a cost barrier to private side replacement has caused disparate harm to Black, Latinx,⁴ and Native American Providence Water customers who are more likely to live in homes serviced by lead pipes, live in poverty, rent their homes, and experience the compounding effects of disparate exposure to other environmental hazards. The Attorney General strongly encourages the EPA to thoroughly investigate the claims alleged in the Complaint and impose appropriate measures to remediate harm to the impacted communities.

¹ See January 5, 2022 Complaint of Complainants at p. 2; see also *Lead and Drinking Water*, Providence Water, https://www.provwater.com/water_quality/lead-center (last visited Jan. 24, 2022).

² See *id.* Providence Water serves the retail areas of Providence, North Providence, Cranston, Johnston, and East Smithfield. *Providence Water FAQ*, Providence Water, <https://www.provwater.com/faq> (last visited Jan. 24, 2022).

³ See R.I.G.L. § 23-24.6-23(c).

⁴ Throughout this letter the term 'Latinx' will be used to refer to individuals who identify as Hispanic, Latino/a, or more generally as being of Latin American cultural or ethnic origin.

I. Providence County residents are at considerable risk of lead exposure via drinking water.

Residents of Providence County, and the City of Providence in particular, are at a considerable risk of being exposed to lead through their drinking water. According to a United States Government Accountability Office report from December 2020, “[i]n Providence, the chances of a household having a lead service line were 56% where the median home construction year was about 1939 or earlier.”⁵ More than 26,700 homes in the City of Providence have LSLs that could harm residents, particularly those who are most susceptible to lead poisoning such as children or pregnant individuals.⁶ There is an obvious need for LSL replacement, but Providence Water’s practice of partial LSL replacements has adverse consequences.

II. The risk of lead poisoning through drinking water is disproportionately born by Providence Water’s Black, Latinx, and Native American Customers, particularly in the City of Providence.

The risk of lead poisoning is influenced by the historical and enduring systemic discrimination of communities serviced by Providence Water. Evidence of historic discrimination and the effects of housing cost burden are found in various neighborhoods in the City of Providence, which remains heavily impacted by the legacy of redlining.⁷ Areas like Upper South Providence and Olneyville, which have the highest proportion of populations of color, have the lowest homeownership rates in Providence.⁸ This is not unique to these two neighborhoods. The City’s communities of color are “disproportionately low-income, reside in neighborhoods with the lowest homeownership rates, and experience higher rates of cost burden.”⁹

High density of individuals earning low incomes (which contributes to high rates of cost burden) is a common characteristic of neighborhoods in Providence that have higher concentrations of LSLs.¹⁰ In Providence, “households in Census tracts with higher rates

⁵ U.S. Gov’t Accountability Off., GAO-21-78, *EPA Could Use Available Data to Better Identify Neighborhoods at Risk of Lead Exposure*, 13 (2020), available at <https://www.gao.gov/assets/gao-21-78.pdf> (last visited January 24, 2022).

⁶ *See id.* at 52.

⁷ City of Prov. Dep’t of Planning and Dev., *2020-2024 Consolidated Plan 2020-2021 Annual Action Plan*, 134 (2021), available at <https://www.providenceri.gov/wp-content/uploads/2021/02/2020-2024-City-of-Providence-Consolidated-Plan.pdf> (last visited January 24, 2022).

⁸ *Id.*

⁹ *Id.* (defining as ‘cost burdened’ those households that pay between 30% and 50% of income toward housing costs).

¹⁰ *See* U.S. Gov’t Accountability Off., *supra* note 5, at 12.

of families living in poverty have a greater probability of having lead service lines, even after accounting for the median age of the area's housing stock"¹¹ This is evidenced most clearly in the southeastern portion of Providence, where LSLs, families living in poverty, and homes built in the 1940s and earlier are all concentrated.¹² Clearly, race is closely linked to income, cost burden, and geographic location, and, therefore, also linked to being serviced by lead pipes in the City of Providence.

III. Providence Water's partial LSL replacement program causes disproportionate harm to Black, Latinx, and Native American Residents.

No safe level of lead has been identified by the Centers for Disease Control or the EPA, and it is therefore imperative that the risk of lead exposure through drinking water be mitigated. Creating a cost barrier to replacement of private side LSLs while capitalizing a program for private side LSL replacement means prioritizing and valuing the health and safety of those who can afford to pay above and beyond the needs of Black, Latinx, and Native American residents who are disproportionately less able to afford a replacement. Providence Water's practices have a clear disparate impact, and have made safe, lead-free drinking water a commodity that is inaccessible to some of the most vulnerable communities in Rhode Island.

Providence Water currently offers a 10-year 0% interest loan program with a not-to-exceed price of \$4,500 for homeowners who need to finance their private side LSL replacement.¹³ This replacement model, which shifts the cost burden of safe drinking water from Providence Water to its customers, results in a disparate impact on customers of color who are more likely to both be serviced by lead pipes and live in communities with the highest rates of cost burden. These realities mean that the monthly payment amount required to pay off \$4,500 over 10 years is unaffordable to many Black, Latinx, and Native American homeowners.¹⁴ Furthermore, Providence Water – in financing 0%

¹¹ *Id.* at 14.

¹² *Id.* at 60-61.

¹³ *0% Interest Loan*, Providence Water, available at https://www.provwater.com/water_quality/lead-center/loan (last visited Jan. 24, 2022). The terms of this loan program have changed over the years; it was originally established in 2017 as a three-year 0% interest loan financed by \$250,000 in rates per year along with a \$1 million loan from the Rhode Island Infrastructure Bank. See Providence Water, *2017 Annual Report*, 1, available at <http://www.provwater.com/about-us/annual-reports/2017> (last visited January 24, 2022).

¹⁴ While the Attorney General's Office commends EPA for its recent award of a \$6.4 million grant to Providence Water to replace private side LSLs in low-income communities, the Utility itself estimates that the grant funding will only allow it to reduce LSL inventory by about 6% and will leave approximately 3,400 LSLs in need of replacement in disadvantaged communities. See U.S. Environmental Protection Agency, *WIIN Grant: Reduction in Lead Exposure Via Drinking*

interest loans and administering the partial LSL replacement program in part through increased rates on all Utility consumers – steers scarce lead remediation resources toward those who are most able to afford lead hazard abatement measures and away from potential solutions that could benefit lower-income communities, including communities of color.¹⁵ The partial LSL replacement program, financed by all Providence Water rate payers, thus doubly burdens low-income communities of color (alongside other low-income rate payers) with the costs of subsidizing LSL replacements for wealthier Utility customers.

Furthermore, renters, who occupy nearly 55% of all homes in Providence¹⁶ and are disproportionately people of color, do not have access to the LSL replacement program unless their landlords choose to participate. Many landlords in low-income communities, like their tenants, face financial barriers that make participation in Providence Water’s LSL replacement program challenging, while other landlords have little interest in helping their tenants’ families avoid harmful lead poisoning at any increased expense.¹⁷ Under Providence Water’s practices, homeowners and landlords are responsible for initiating and paying for private side LSL replacement,¹⁸ leaving approximately 66, 67, and 42 percent of Black, Latinx, and Native American households respectively relying on their landlords to pay to replace the hazardous LSLs.¹⁹

Water, available at <https://www.epa.gov/dwcapacity/wiin-grant-reduction-lead-exposure-drinking-water> (last visited January 24, 2022) and Providence Water, *Providence Water Supply Board’s Lead Service Line Replacement Program for Disadvantaged Communities Revised Application*, 15 and 18 (2021), available at <https://drive.google.com/file/d/1SUWLuFclJNfft9VsSZE2-JjNff7zAOw-/view> (last visited February 2, 2022).

¹⁵ See Providence Water, *2020 Annual Report*, 20, available at <https://www.provwater.com/node/2892> (visited January 24, 2022). The 0% interest loan program is financed by \$1 million in rates annually, along with a \$3 million loan from the Rhode Island Infrastructure Bank. *Id.*

¹⁶ R.I. Exec. Off. of Com., *Preliminary Housing Submission: Initial Compilation of Housing Related Data, RI 2030 Recommendations and Process Related Recommendations*, 11 (2021), available at <https://commerceri.com/wp-content/uploads/2022/01/Preliminary-housing-submission-2021.pdf> (visited January 24, 2022).

¹⁷ It is the experience of this Office in handling lead poisoning matters that many landlords, including those with limited financial resources, strive to comply with Rhode Island’s lead poisoning prevention laws; however, this Office’s experience in civilly prosecuting landlords for failure to remediate lead hazards also demonstrates that voluntary compliance cannot be assured, even in cases in which landlords are able to afford remediation.

¹⁸ Providence Water, *Service Line Connection*, available at https://www.provwater.com/water_quality/lead-center/wslconnection (last visited Jan. 20, 2022).

¹⁹ *Census Table Results – Demographic Characteristics for Occupied Housing Units*, U.S. Census Bureau, available at <https://data.census.gov/cedsci/table?q=Table%20S2502&g=0500000US44007&tid=ACSS1Y2019.S2502&moe=false> (last visited Jan. 24, 2022).

IV. The disproportionate harm to Black, Latinx, and Native American residents caused by lead in drinking water is amplified by other environmental and social factors.

Cumulative impact, the adverse effects on health caused by compounding exposure to environmental and social stressors, “account[s] for the combined effects of all environmental impacts over time (both exposures and associated health effects), in addition to social and economic factors impacting the health of a community (racial and socioeconomic factors) and the presence of sensitive populations (children, people with asthma or other conditions rendering them more sensitive to environmental exposures).”²⁰ The disproportionate effects of lead exposure through drinking water may be amplified when considering its cumulative impact in conjunction with other environmental and social factors that Black, Latinx, and Native American communities are more likely to face. South Providence, for example, which has a large minority population, is heavily exposed to air pollution from the Port of Providence and nearby highways, putting residents at elevated risk of disease and premature death.²¹ Additionally, the ability of children to attend school is compromised when burdened by illness such as asthma. These factors, in combination with potential adverse health effects caused by lead exposure, such as neurological damage and cognitive impairment, by way of Providence Water’s partial LSL replacement practice, may amplify the disparate impact of environmental and social stressors in the community. For these reasons, lead exposure caused by Providence Water’s discriminatory LSL replacement policy is amplified by the combined effects of other environmental and social stressors in the community.

V. Conclusion

For the aforementioned reasons the Attorney General supports the EPA’s use of its broad investigative and remedial powers to address this situation.

Sincerely,



Keith D. Hoffmann

Lead Advocate

Rhode Island Office of the Attorney General

²⁰ Pre-filed Test. of Julian Drix before the R.I. Energy Facility Sitting Bd. 4:7-11, Nov. 12, 2021.

²¹ *Id.* at 2:26-28, 3:13-19, 6:8-15.

Cc:

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