



March 31, 2022

Rhode Island Department of Health  
Drinking Water Program  
[DOH.RIDWQ@health.ri.gov](mailto:DOH.RIDWQ@health.ri.gov)

Re: Proposed Categorical Exclusion for Providence Water

To whom it may concern:

We appreciate the opportunity to comment on the Department of Health's notice announcing its intent to issue Providence Water a categorical exclusion from the environmental assessment requirements for the utility's main rehabilitation practices. The proposal was posted on March 23, 2022, at <https://www.ri.gov/press/view/43251>.

On January 5, 2022, the [Childhood Lead Action Project](#) (CLAP), [South Providence Neighborhood Association](#), [Direct Action for Rights and Equality](#), [National Center for Healthy Housing](#), and [Environmental Defense Fund](#) (EDF) submitted to the Environmental Protection Agency (EPA) a civil rights complaint<sup>1</sup> against Providence Water Supply Board (Providence Water). The complaint demonstrated that Providence Water's main rehabilitation practices disproportionately and adversely affect the health of low-income, Black, Latinx, and Native American residents by increasing their risk of exposure to lead in drinking water. EPA has already begun to investigate the issues raised by the complaint.<sup>2</sup>

We respectfully request that the Department reconsider its proposal and require that Providence Water either:

- Demonstrate that its planned water main rehabilitation work and the partial lead service line replacements that will be done through this work do not disproportionately and adversely affect the health of low-income, Black, Latinx, and Native American residents; or
- Revise its water main rehabilitation practices to ensure the disproportionate impacts from the increased risk of lead exposure does not occur, by requiring the utility to conduct full lead service line replacements whose cost is shared equitably among all rate payers or, better, by using federal funds made available through the Bipartisan Infrastructure Law.

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<sup>1</sup> The Childhood Lead Action Project, South Providence Neighborhood Association, Direct Action for Rights and Equality, National Center for Healthy Housing, and Environmental Defense Fund, Complaint Under Title VI of the Civil Rights Act of 1964, 41 U.S.C. § 2000d, 40 C.F.R. Part 7 against Providence Water, January 5, 2022, [http://blogs.edf.org/files/2022/01/Utility-Level-LSLR-Complaint\\_ProvidenceFINAL.pdf](http://blogs.edf.org/files/2022/01/Utility-Level-LSLR-Complaint_ProvidenceFINAL.pdf).

<sup>2</sup> EPA's Lilian Dorka, Director, External Civil Rights Compliance Office, Office of General Counsel, Acceptance of Administrative Complaint, February 10, 2022, <http://blogs.edf.org/health/files/2022/03/2022.02.10-FINAL-Acceptance-Letter-Complainants-Providence-Water-EPA-Complaint-No.-01RNO-22-R1-NOTES.pdf>.

If the Department does not take this action, we request a public hearing. The Environmental Defense Fund also has almost 15,000 members who reside in Rhode Island so this request should be sufficient to meet the threshold.

**The “extraordinary circumstances” provisions of EPA’s rules apply to Rhode Island’s DWSRF projects.**

Pursuant to Chapter 46.12-8 of the General Laws of Rhode Island and the Department’s regulations at [216-RICR-50-05-6](#), the Rhode Island Infrastructure Bank (Bank) needs a Certificate of Approval from the Department. To issue a Certificate of Approval, the Department must follow the State Environmental Review Process (SERP) described in Section 6.11 of those regulations. The SERP addresses compliance with the National Environmental Policy Act (NEPA) and the federal Safe Drinking Water Act (SDWA).

According to EPA’s current [Program Operations Manual](#)<sup>3</sup> for DWSRF programs, SERPs like Rhode Island’s must be a “NEPA-like procedure” that evaluates possible negative environmental outcomes. The procedure must be at least as protective as those required by NEPA or SDWA. See 3.11.2 of the Manual.

Rhode Island’s SERP at Section 6.11(C) allows applicants to be exempted from the substantive environmental review requirement. Like the federal regulations, the Department’s regulations refer to these exemptions as “categorical exclusions.” Section 6.11(C)(2) lists “Repairing or replacing water mains” as a categorical exclusion.

Section 6.11(C)(3) provides “general categories of actions not eligible for exclusions.” It explains that the “full environmental review procedures of this section shall be followed if the undertaking of a project consistent with allowable categories in Section 6.11(C)(2) of this Part involves a serious local or environmental issue” or meets one of three criteria.

While Section 6.11(C)(2) does not use the federal term of “extraordinary circumstances,” the “serious local or environmental issue” term serves the same purpose. In essence an “extraordinary circumstance” under the federal regulation is a “serious local or environmental issue” that voids the categorical exclusion. If that were not the case, Rhode Island’s SERP process would be less stringent than the NEPA and SDWA requirements.

Therefore, we maintain that the extraordinary circumstances listed at 40 C.F.R. § 6.204(b) applies to the Department’s evaluation of Providence Water’s proposed main rehabilitation work and the partial lead service line replacements that result from it.

**Providence Water’s main rehabilitation work represents an “extraordinary circumstance” making it not eligible for a categorical exemption.**

As described in the Department’s notice, Providence Water has applied for financial assistance from Rhode Island’s Safe Drinking Water State Revolving Loan Fund (DWSRF) to support its main rehabilitation work. It appears that Providence Water proposes to continue the same flawed practices at issue in our civil rights complaint.

From EDF’s perspective, these practices represent an “extraordinary circumstance” that results in disproportionate harm to low-income, Black, Latinx, and Native American residents – that under the NEPA and EPA’s implementing regulations at [40 C.F.R. § 6.204\(b\)](#) make Providence Water ineligible for a “categorical exclusion” from the need to conduct an environmental assessment.

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<sup>3</sup> EPA, Drinking Water State Revolving Fund, Program Operations Manual, 2006, <http://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1007ZKN.txt>.

EPA's 40 C.F.R. § 6.204(b) describes the extraordinary circumstances that the responsible official must review to determine eligibility for a categorical exclusion. Subparagraph (b)(2) states that:

The proposed action is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities.

As explained in the civil rights complaint, EPA has consistently made clear that there is no safe level of exposure to lead.<sup>4</sup> It is harmful to all people, but especially children, whose nervous systems are still developing, and to pregnant people, because lead can cross the placental barrier and harm the fetus.

A primary source of contamination comes from lead service lines (LSL) that connect many water mains in the street to plumbing in individual homes. Providence Water's service area contains an estimated 27,500 LSLs.<sup>5</sup> Full replacement of LSLs is the only way to eliminate this source of lead exposure from drinking water.

Providence Water's process to replace LSLs generally happens as part of its water main rehabilitation projects during which the utility replaces only the portion of the LSL that runs from the water main to the curb stop (a public-side or partial LSL replacement).<sup>6</sup> These partial replacements disturb the remaining private-side LSL that runs from the curb stop to the house meter, which can increase the release of lead particulates into residents' drinking water resulting in higher lead levels in the short- and medium-term with no long-term reduction in lead.<sup>7</sup>

To replace the full LSL, Providence Water requires homeowners to pay for replacing the private-side LSL, at a cost of up to \$4,500 through a 10-year, 0% interest loan program. When residents lack the resources to pay or borrow money to pay for the private-side LSL replacement, Providence Water proceeds with a partial LSL replacement, putting those residents at a higher risk of lead exposure from drinking water.

A study by American University, EDF, and the water utility for Washington, D.C. illustrates the discriminatory effect of LSL replacement practices like the one utilized by Providence Water. The study showed that low-income residents are less likely than their wealthier counterparts to opt to replace the

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<sup>4</sup> National Primary Drinking Water Regulations: Lead and Copper Rule Revisions, 86 Fed. Reg. at 4259.; EPA, *Integrated Science Assessment for Lead*, at lxxxviii (2013).; A working paper for the National Center for Environmental Economics reported that lead is also a risk factor for cardiovascular disease and mortality in adults. Ana Navas-Acien, *Lead and Cardiovascular Mortality: Evidence Supports Lead as an Independent Cardiovascular Risk Factor*, National Center for Environmental Economics at 9 (May 2021), <https://www.epa.gov/system/files/documents/2021-09/2021-03.pdf>.

<sup>5</sup> Providence Water, *Providence Water Supply Board's Lead Service Line Replacement Program for Disadvantaged Communities - Revised Application* at 5 (Jan. 19, 2021) <https://drive.google.com/file/d/1SUWLuFclJNftt9VsSZE2-JjNff7zAOw-/view?usp=sharing>.; The estimated 27, 500 LSLs is attained by adding the 350 public-side LSLs, 16,400 private-side LSLs, and 10,800 suspected full LSLs.

<sup>6</sup> Providence Water, *Water Main Rehabilitation Project Overview*, <https://www.provwater.com/sites/default/files/inline-files/WMR%20Handout%202021%20-%20Updated.pdf>.

<sup>7</sup> EPA Science Advisory Board, *Evaluation of the Effectiveness of Partial Lead Service Line Replacements* (2011), [https://www.epa.gov/sites/production/files/2015-09/documents/sab\\_evaluation\\_partial\\_lead\\_service\\_lines\\_epa-sab-11-015.pdf](https://www.epa.gov/sites/production/files/2015-09/documents/sab_evaluation_partial_lead_service_lines_epa-sab-11-015.pdf).; Miguel A. Del Toral, Andrea Porter, & Michael R. Shock, *Detection and Evaluation of Elevated Lead Release from Service Lines: A Field Study*, ENVTL. SCI. & TECHNOLOGY 9300, 9304 (2013).; Rebecca Renner, *Reaction to the Solution: Lead Exposure Following Partial Service Line Replacement*, 118 ENVTL. HEALTH PERSP. A202, A206 (2010).

private-side LSL, presumably because they don't have the financial means to pay for the replacement.<sup>8</sup> In cities such as Washington, D.C. with a long history of underinvestment and redlining in predominately Black neighborhoods, there is a close correlation between income and race, resulting in Black residents being less able to afford the private-side LSL replacement.

In Providence County, which includes all of Providence Water's service area, low-income residents are more likely to be Black, Latinx,<sup>9</sup> and Native American residents, as demonstrated in the complaint. In practice, people with an ability to pay for a full replacement—who are disproportionately white—are able to reduce the lead exposure risk resulting from Providence Water's main rehabilitation practices, while those with less ability to pay—who are disproportionately Black, Latinx, and Native American—gain no such benefit and face increased lead exposure risks in the short- and medium-term with no assurance of long-term reduction in risk.

For these reasons, the Department cannot issue a Certificate of Approval to Providence Water's application for DWSRF financial assistance unless it is confident that the work is not "known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities."

### **The approach Providence Water should adopt to avoid the application of the "extraordinary circumstances" exception.**

It is important that Providence Water rehabilitate drinking water mains across the service area. It is also important that they do so in a way that results in no adverse health impacts. Rather than conduct a substantive environmental review, we think the most straightforward approach is for the utility to fully fund the replacement of all LSLs attached to the main. Fully funding the LSL replacements will eliminate the cost barrier that low-income, Black, Latinx, and Native American customers currently face. As a result, Providence Water's water main rehabilitation work won't pose adverse health risks once those LSLs are fully replaced.

The utility would also need to fund replacement of LSLs associated with the work where the LSLs are only on private property because the utility had previously removed the portion on public property, most likely through during previous water main rehabilitation projects. The disturbance caused by the main rehabilitation work will significantly increase the risk of exposure to lead in drinking water for those customers even though the public-side LSL is not directly connected to the main in these situations.

This approach has the added benefits of enabling the Bank to use Rhode Island's share of the \$15 billion provided by Congress for full LSL replacement through the Bipartisan Infrastructure Law.<sup>10</sup> Note that in a March 8, 2022 memorandum,<sup>11</sup> EPA stated that "any project funded under this \$15 billion appropriation for the replacement of LSLs must replace the entire LSL, not just a portion, unless a portion has already been replaced."

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<sup>8</sup> Karen J. Baehler, Marquise McGraw, Michele J. Aquino, Ryan Heslin, Lindsay McCormick, & Tom Neltner, *Full Lead Service Line Replacement: A Case Study of Equity in Environmental Remediation*, Sustainability 14, 352 (2022), <https://doi.org/10.3390/su14010352>.

<sup>9</sup> Latinx is the gender-neutral term for "Latino" and will be used in this complaint to be more inclusive.

<sup>10</sup> Infrastructure Investment and Jobs Act of 2021, P.L. 117-58.

<sup>11</sup> Radhika Fox, EPA Assistant Administrator for Office of Water, Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law, March 8, 2022, [https://www.epa.gov/system/files/documents/2022-03/combined\\_srf-implementation-memo\\_final\\_03.2022.pdf](https://www.epa.gov/system/files/documents/2022-03/combined_srf-implementation-memo_final_03.2022.pdf).

**The Department should consider the impact on all main rehabilitation projects associated with LSLs.**

Providence Water's work is not a unique situation. Other Rhode Island utilities may seek DWSRF financial assistance to rehabilitate mains that are associated with LSLs. Therefore, we respectfully ask that the Department consider this issue and any other practices in Rhode Island involving LSLs attached to drinking water mains that may disproportionately and adversely affect the health of low-income, Black, Latinx, and Native American residents.

We appreciate the Department's consideration of our request. Please contact us at [tneltner@edf.org](mailto:tneltner@edf.org) to discuss this issue further.

Sincerely,

A handwritten signature in black ink that reads "Tom Neltner". The signature is written in a cursive, slightly slanted style.

Tom Neltner  
Senior Director, Safer Chemicals Initiative  
Environmental Defense Fund