

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

February 10, 2022

In Reply Refer to:

EPA Complaint No. 01RNO-22-R1

Laura Brion, Executive Director
Childhood Lead Action Project
laura@leadsafekids.org

Dwayne Keys, President
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Christopher Samih-Rotondo, Interim Director
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Amanda L. Reddy, Executive Director
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Tom Neltner, Senior Director, Safer Chemicals
Environmental Defense Fund
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Re: Acceptance of Administrative Complaint

Dear Directors and President:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation your administrative complaint filed against the Providence Water Supply Board (Providence Water) received by the EPA on January 5, 2022. The complaint alleges that Providence Water discriminated against Black, Latinx and Native American residents of Providence, Rhode Island, on the basis of race and national origin in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.*, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7. Specifically, the complaint alleges Providence

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Water's Water Main Replacement/Rehabilitation Program (WMR), and its general policy and practice for private-side lead service line (LSL) replacements, disproportionately increases the risk of lead exposure for Black, Latinx, and Native American residents.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, **a complaint must meet the jurisdictional requirements** described in the EPA's nondiscrimination regulation. First, the **complaint must be in writing**. *See* 40 C.F.R. § 7.120(b)(1). Second, it must **describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability)**. *Id.* Third, it must be **filed within 180 days of the alleged discriminatory act**. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be **filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act**. *See* 40 C.F.R. § 7.15.

After careful consideration, ECRCO has determined that the complaint meets the jurisdictional requirements stated above. First, the allegation is in writing. Second, it alleges that discrimination occurred in violation of EPA's nondiscrimination regulation. Third, the alleged discriminatory acts occurred within 180 days of the filing this complaint as the WMR and general policy and practice for private-side lead service line (LSL) replacements is ongoing.¹ Finally, it alleges discriminatory acts by the Providence Water, which is a recipient of EPA financial assistance.

ECRCO will investigate the following issues:

1. Whether Providence Water Supply Board discriminates on the basis of race and national origin in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation at 40 CFR Part 7 through its Water Main Replacement/Rehabilitation Program and general policy and practice for private-side lead service line (LSL) replacements; and
2. Whether **Providence Water has and is implementing the procedural safeguards** required under 40 C.F.R. Parts 5 and 7 that **all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations**, including specific policies and procedures to ensure meaningful access to the Providence Water's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether the Providence Water has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.²

¹ **As recently as November 2021, Providence Water conducted infrastructure work of partial line replacements in Providence and Cranston, RI, and applied its policy and practice for private-side LSL replacements.**

² *See* Title VI, 42 U.S.C. 2000(d) *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin); 40 C.F.R. § §

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The initiation of an investigation of the issues above is not a decision on the merits. ECRCO is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and Providence Water, and determine next steps utilizing ECRCO's internal procedures. Generally, the investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and ECRCO's Case Resolution Manual (CRM) will be utilized for the complaint investigation process. We invite you to review ECRCO's Case Resolution Manual for a more detailed explanation of ECRCO's complaint resolution process, available at https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

ECRCO is providing Providence Water with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of this letter notifying Providence Water of the acceptance of Administrative Complaint No. 01RNO-22-R1. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that ECRCO shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, ECRCO will contact you and Providence Water within 10 days of the date of this letter to provide information about ECRCO's complaint process, and to offer and discuss the alternative dispute resolution (ADR)³ and informal resolution agreement⁴ processes as potential options for resolution of the issues which ECRCO has accepted for investigation. If Providence Water (and you with respect to ADR) agree to engage in either of these potential resolution processes, ECRCO will suspend the issuance of preliminary findings within 180 days. In the event that either of these potential resolution processes fails to result in an agreement, ECRCO will notify you and Providence Water that ECRCO has resumed its process to issue preliminary findings within 180 days of the

7.30, 7.35. *See also* U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 69 FR 35602 (June 25, 2004) (available at https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf); U.S. EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 FR 14207 (March 21, 2006) (available at https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf); U.S. EPA, Procedural Safeguards Checklist for Recipients, at https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf (rev. Jan. 2020) (which provides a more detailed explanation of nondiscrimination obligations and best practices); U.S. EPA, Disability Nondiscrimination Plan Sample, at https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf. (2017).

³ EPA ECRCO's Alternative Dispute Resolution (ADR) process involves the formal mediation of a complaint or complaint allegations between the complainant and recipient, through the use of a professionally trained mediator. *See* U.S. EPA, ECRCO Case Resolution Manual, Section 3.3, p.24 (https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf).

⁴ Informal Resolution occurs between ECRCO and the recipient. *See* Case Resolution Manual, Section 3.1, p.22 (https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf).

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start of the investigation – excluding any days spent in either of these potential resolution processes.⁵

Please be advised that a copy of the complaint has been provided to Providence Water, consistent with 40 C.F.R. § 7.120(e). ECRCO is releasing the complaint with appropriate redactions consistent with the Freedom of Information Act (FOIA) and the Privacy Act and will only release identifying information to the extent necessary to comply with 40 C.F.R. Parts 5 and 7.⁶

The EPA regulation prohibits applicants, recipients, and other persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they have either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. See 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with ECRCO.

If you have questions about this letter, please feel free to contact me at (202) 564-9649, by email at dorka.lilian@epa.gov; or Zahra Khan, Case Manager, at (202) 564-0460, by email at khan.zahra@epa.gov.

Sincerely,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Ariadne Goerke
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Deb Szaro
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 1

Carl Dierker
Regional Counsel
U.S. EPA Region 1

⁵ See 40 C.F.R. § 7.115(c).

⁶ Freedom of Information Act, 5 U.S.C. § 552(b)(6) and (7)(c) and the Privacy Act of 1974, 5 U.S.C. § 552a.