

NRDC

October 15, 2018

By ECF

Honorable Esther Salas
United States District Judge
District of New Jersey
50 Walnut Street
Newark, New Jersey 07101

Re: *NEW Caucus v. City of Newark*, 18-CV-11025-ES-CLW

Dear Judge Salas:

In filings submitted late last week, Newark and New Jersey finally acknowledged that Newark’s residents face an urgent public health crisis that requires immediate attention. Their filings describe extremely troubling factual developments, including that lead is “sloughing off into the drinking water supply,” that lead levels have reached hundreds of parts per billion in some Newark homes, and that “flushing will not be effective in reducing the risk of lead exposure.” *See* ECF No. 53 at 3-4; ECF No. 54 at 2. And while Newark’s plan to provide filters to certain residents is a necessary step forward, the measures Newark has disclosed thus far are facially inadequate to protect many of the City’s most vulnerable residents. As a result, Plaintiffs believe that the most direct and economical way forward is to seek immediate targeted discovery—two Rule 30(b)(6) depositions and associated limited document requests—to determine what impact, if any, Newark’s plan has on Plaintiffs’ request for preliminary injunctive relief. Once completed, Plaintiffs propose to confer with Defendants about the possibility of an enforceable settlement or, in the alternative, advise the Court of the extent to which they seek judicial intervention to address the ongoing, harmful lead exposures caused by Defendants’ violations of law.

Based on Plaintiffs' initial review of publicly available information, there are significant deficiencies in Newark's sudden measures to protect public health. First, Newark is misleading its residents about the geographic scope of the drinking water problem. During Friday's press conference, Mayor Baraka told residents that unsafe drinking water afflicts only certain areas of the City, that "there are parts of the City that are not affected at all," and that the East Ward is not affected.¹ Additionally, Newark's website currently states: "if your home is in the East Ward . . . then your water is safe and does not require an additional filter."² To the contrary, the State has found that Newark should provide filters "regardless of whether the household is located in the Pequannock or Wanaque service area." ECF No. 53, at 4. In fact, data available on New Jersey's Drinking Water Watch website³ show numerous East Ward homes with elevated lead levels, including one home in the heart of the East Ward's Ironbound District testing at 182 parts per billion (more than twelve times the 15 parts per billion action level). Plaintiffs are deeply troubled that Newark and its representatives continue to minimize the geographic scope of the problem. Newark residents rely on these assurances in making critical decisions about whether and how to protect themselves and their families. The City's public announcements must not contain misleading information; if they do, Newark residents will continue to be harmed.

Plaintiffs are also concerned by Newark's decision not to provide filters to residents who live in homes that have lead plumbing. Newark itself has acknowledged that "the lead issue . . . affects homes [with] plumbing that contains lead." ECF No. 54-2, at 9. Newark's sampling results prove as much. The data show elevated lead levels at homes that, according to Newark's

¹ Oct. 13 Press Conference at 2:02, 5:06, available at <https://www.facebook.com/CityofNewark/videos/1085506248276453/>.

² See Newark Lead Service Line Replacement Program, <https://www.newarklead serviceline.com/>.

³ While Drinking Water Watch does not list the location of sampling sites, Plaintiffs have used information obtained through public-records requests to match the sampling point IDs to addresses.

partial lead service line inventory, do not have a lead service line. At least one such home tested at 52 parts per billion.⁴ Despite these risks, Newark is making filters available only to residents who live in homes with lead service lines, not to homes with lead plumbing. To adequately address this crisis, any relief must include filters for homes that have lead plumbing.

Likewise, City officials are telling residents that “if your home was built in 1986 or later, then your water is safe and does not require an additional filter.”⁵ But many homes built after 1986 were constructed without excavating and replacing the pre-existing lead service lines that connect to the water main. Residents that live in newly-constructed homes, but that are served by a lead service line, are understandably confused about whether they face risks. These residents may very well be affected, yet the City has assured them that they do not need to take measures to protect themselves.

Plaintiffs also believe that the City’s efforts to educate residents about filter installation and maintenance are insufficient. Residents are experiencing ongoing confusion about the filters, such as which type of filter will be compatible with their home’s faucet, how to install and maintain filters, how to know if the filters are working, and when to change the filter cartridges. This confusion is consistent with Plaintiff NRDC’s experience working to address the drinking water crisis in Flint, Michigan. A YouTube video is inadequate to provide the support residents need. Additionally, during a townhall held this evening, in response to a resident’s question about difficulties with filter installation, a Newark official responded that the filters the City is providing may not be compatible if a resident has “a fancy type of faucet.” Such

⁴ See, e.g., New Jersey Drinking Water Watch, https://www9.state.nj.us/DEP_WaterWatch_public/JSP/PBCUSamples.jsp?tinwsys=127&tmnmprd=1092 (search for sampling point IDs PBCU12, PBCU26).

⁵ See Newark Lead Service Line Replacement Program, <https://www.newarklead serviceline.com/>.

installation instructions are plainly problematic. Plaintiffs require more information about how Newark intends to address these challenges.

A number of other questions remain unanswered. The City's corrosion control problem will not be addressed for several years—rendering Newark's water unsafe for the foreseeable future—yet on Friday, Mayor Baraka told residents that the City plans to provide replacement cartridges that will last only “six to eight months,” and that filter distribution will “only take us a few weeks,” and it appears that filters will be available only through November 1. *See* ECF No. 54-2, at 10. Meanwhile, the Mayor continues to assure residents that, in spite of Friday's developments, the “drinking water is safe.”⁶ The City has also stated that it will provide door-to-door delivery for “targeted populations,” but does not describe the scope of those efforts or which residents the City is targeting. And, based on the State's recommendation, the City acknowledges that pregnant women and children should drink bottled water until a filter is installed. *Id.* at 9. However, Newark makes no commitment to provide that bottled water for its most vulnerable residents.

Newark's track record for responding to residents' requests for basic services to address this crisis has been dilatory at best. ECF No. 19-1 at 27-30. One of Plaintiff NEW Caucus's members first requested to have his water tested in June, and has submitted numerous follow-up requests, but the City still has not tested his water. *Id.* at 28. Plaintiffs are concerned that, absent this Court's intervention, the efforts City officials announced late last week, under pressure of Plaintiffs' motion for preliminary injunctive relief, will be both inadequate and short lived, and residents' requests for water filters and other basic services will be ignored, as they have been in the past.

Finally, Plaintiffs have repeatedly asked counsel for Newark and New Jersey for the corrosion control studies they claim precipitated this action. *See* ECF Nos. 53, 54, 54-1 (together, describing a corrosion control desktop

⁶ Oct. 13 Press Conference at 22:10, available at <https://www.facebook.com/CityofNewark/videos/1085506248276453/>.

analysis, sequential sampling results, and a pipe loop study). These studies contain recommendations about the scope of relief required to address the crisis. *See* ECF No. 54 at 3 (noting that the study “recommended, *among other things*, that Newark provide point-of-use filters to the public”) (emphasis added). Plaintiffs must have an opportunity to review the studies, including any recommendations contained therein, to determine the effectiveness of Newark’s plan.

As noted above, Plaintiffs seek the Court’s permission to conduct limited discovery from Newark and New Jersey to address these unanswered questions, in order to determine what, if any, impact the recent measures may have on the pending preliminary injunction motion. For the Court’s reference, we enclose two Rule 30(b)(6) Notices of Deposition, with accompanying requests for relevant documents. While Plaintiffs believe the requested discovery can be completed under the current schedule, and that the public health crisis requires timely adjudication of Plaintiffs’ motion, they recognize that a short postponement of the October 26, 2018 hearing may be required. Plaintiffs are prepared to depose appropriate witnesses from Newark and New Jersey as early as next week.

We look forward to discussing these issues with Your Honor tomorrow.

Respectfully submitted,

s/ Sara E. Imperiale

Sara E. Imperiale

Claire Woods

Nancy S. Marks

Daniel N. Carpenter-Gold

Natural Resources Defense Council

Counsel for Plaintiffs