



Todd & Weld LLP

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August 27, 2018

VIA ELECTRONIC MAIL

[\(benjamin.smith@buzzfeed.com\)](mailto:benjamin.smith@buzzfeed.com)

Benjamin E. Smith
Editor-in-Chief
BuzzFeed, Inc.
111 East 18th Street
New York, NY 10003

VIA ELECTRONIC MAIL

[\(monica.mark@buzzfeed.com\)](mailto:monica.mark@buzzfeed.com)

Monica Mark
West African Correspondent
BuzzFeed, Inc.
Dakar, Senegal

Re: Veolia North America, LLC/BuzzFeed, Inc.

Dear Mr. Smith and Ms. Mark:

Please be informed that this office acts as counsel to Veolia North America, LLC¹ ("VNA") in connection with its claims against BuzzFeed, Inc. d/b/a BuzzFeed News ("BuzzFeed") and Ms. Mark arising from your false and defamatory August 9, 2018 publication bearing the headline: **"A Company at the Center of Flint's Water Crisis Is On The Shortlist To Serve Millions In Africa."** The article appeared, and remains, on the Internet in at least two different forms, one of which features a highly inflammatory, false, and defamatory sub-headline comprising the following statement from an unnamed source: **"They have a history of poisoning black communities in the U.S., and they should not be poisoning the largest African city on the continent."** A second version of the article features the same quote at the bottom of the first page of the story in enlarged, bolded letters set against a highlighted

¹ Although BuzzFeed's article does not distinguish between various "Veolia" entities, this letter is written on behalf of VNA, which is an indirect subsidiary of the French company, Veolia Environnement S.A. Veolia Water North America Operating Services, LLC ("VWNAOS"), which itself is an affiliate of VNA, is the entity that contracted with the City of Flint in 2015. Another VNA affiliated entity, Veolia Water North America – Northeast, LLC ("VWNA Northeast") served as a consultant to the Pittsburgh Sewer and Water Authority.



background. As discussed below, following the defamatory headline, the story publishes numerous other false and defamatory statements of and concerning VNA.

Simply put, your article is rife with outright falsehoods, published recklessly in the face of known and publicly available facts that, it is readily apparent, BuzzFeed chose to ignore before portraying VNA to the public as a company **“with a history of poisoning black communities in the U.S.”** I note as an initial matter that BuzzFeed failed to contact VNA (or any Veolia related entity) about this story prior to publication, even though it has previously contacted VNA for comment on other matters and is well aware of how to do so. I note further that BuzzFeed’s reporting was so reckless and false that BuzzFeed was forced to issue an immediate correction following the publication of the story because it had falsely represented—or in BuzzFeed’s own words, “mischaracterized”—that “Veolia” had been “indicted” criminally by the State of Michigan for its supposed role in Flint, Michigan.

Set forth below are examples of some, but by no means all, of the false and defamatory statements in the August 9, 2018 story that form the bases of VNA’s legal claims. We have provided immediately following each false and defamatory statement a brief explanation, including evidence of BuzzFeed’s knowledge of falsity and/or reckless disregard for the truth.

BuzzFeed Falsely Publishes that “Veolia” has “a history of poisoning black communities in the U.S.” “...the company whose alleged ‘botched’ role in the cities of Flint and Pittsburgh exposed residents to dangerously high lead levels in water...”

It is difficult to imagine a more inflammatory, defamatory, and economically harmful statement than BuzzFeed’s false claim that “Veolia,” a multi-national corporation that focuses its business on water, intentionally poisoned a community of color, let alone that it has a “history” of doing so in Flint and Pittsburgh. These statements are demonstrably false, as BuzzFeed would have known had it undertaken even a modicum of investigation before publishing them.

Putting aside VNAOS’ actual, limited role in Flint (*see* pages 4-5, *infra*), there is no evidence that VNA “poisoned” the Flint community or any other community. To the contrary, as has been widely and publicly reported, blame for the water crisis in Flint has been assigned to the failings of federal, state, and local officials in Michigan. A number of formal and published investigations into the Flint water crisis have confirmed this conclusion.

The investigations conducted to date include one by a Task Force commissioned by the Governor of Michigan to review the Flint water crisis. I attach a copy of the Task Force’s report at Tab 1. The purpose of the Task Force’s review was to “[c]larify and simplify the narrative regarding the roles of the parties involved, and assign accountability clearly and unambiguously...” After completing its work, the Task Force placed primary blame for the crisis on the failings of the Michigan Department of Environmental Quality (“MDEQ”). The Task Force report describes the crisis as “a story of *government* failure, intransigence, unpreparedness,



delay, inaction, and environmental injustice.” It concludes that “MDEQ bears primary responsibility for the water contamination in Flint” and finds that other *governmental actors* contributed to prolonging the crisis. *Nowhere in the Task Force report is any Veolia entity cited as a contributing party.*

The report also lays out a timeline of “the events most critical to development of our findings and recommendations.” VWNAOS’ brief engagement is not mentioned. In fact, the only mention of Veolia anywhere in the report is in the detailed timeline of events set forth in Appendix V. The timeline states merely that Veolia’s Water Quality Report was, as explained above, an “evaluation providing advice *primarily on TTHM control and other operational issues in the City’s water system...*[which] states that Flint’s water meets state and federal standards for TTHM control, *but does not address lead.*”

Another publicly available report on the Flint water crisis, “Learning from the Flint Water Crisis: Protecting the Public’s Health During a Financial Emergency,” published by the University of Michigan School of Public Health in January 2018, “agree[d] with the Governor’s Task Force that ‘MDEQ caused this crisis to happen[.]’” The report likewise does not mention any Veolia entity as a contributing or responsible party, and the report’s timeline of “key decisions” does not even mention VWNAOS’ engagement in Flint. I attach a copy of this report at Tab 2.

An even more recent report published by the Office of the Inspector General of the EPA on July 19, 2018, blames the state and local governments for improperly implementing the EPA’s Lead and Copper Rule and also blames the EPA for its own lapses on oversight. Veolia is mentioned just once in the report, in a table listing “Evidence of growing risk in Flint.” VWNAOS’ report is cited as something that the EPA ignored in failing to act. Like other reports, the EPA report also includes a timeline of key events that makes no mention of any Veolia entity.

There is likewise no basis in fact for the assertion that VNA (or any related Veolia entity) exposed Pittsburgh residents to dangerously high levels of lead. As in Flint, Veolia’s role in Pittsburgh was far more limited than your article suggests. Another VNA affiliated entity, Veolia Water North America – Northeast, LLC (“VWNA Northeast”) served as a consultant to the Pittsburgh Sewer and Water Authority (“PSWA”), filling only three of the PSWA’s 250 positions. Pittsburgh’s elevated lead levels long predated any involvement by VWNA Northeast with the City. Public statements by the chairman of the PSWA Board, Alex Thomson, reflect that VWNA Northeast bore no responsibility for the elevated lead levels.

For example, on October 12, 2016, Thomson stated in the Pittsburgh Tribune Review that, while the City expressed criticism of Veolia’s management of the PSWA, “**Veolia’s not responsible for the lead issue PSWA has – these lead issues are the result of the fact that we have 75- to 100-year-old infrastructure.**” The article is attached here at Tab 3. Indeed, VWNA Northeast asserted claims in arbitration against the City of Pittsburgh for defamation based, in



part, on its false allegation that VVNA Northeast caused increased lead levels by altering corrosion chemicals in the water. An investigative report by local news station WPXI revealed email communications showing that PWSA employees made the change at issue without ever informing VVNA Northeast. This report is publicly available at <https://www.wpxi.com/news/investigates/company-that-previously-ran-pwsa-speaks-out-about-controversial-chemical-switch-1/638359655>.

Following the settlement of that arbitration matter, the parties issued a joint, public statement that confirmed VVNA Northeast's lack of responsibility for the lead issues in Pittsburgh: **"The parties' resolution was aided by indications that increased lead levels reflected in testing since 2015 are attributable to a range of factors including aging lead service lines in the system and plumbing in the buildings connected to the system and factors such as sampling cohorts, rather than any particular actions taken by PWSA or Veolia."** I attach one of the many articles reporting the joint settlement statement at Tab 4. Your story recklessly published the opposite despite the availability of this known public information. Very simply, there is no basis anywhere for BuzzFeed to publish statements that VVNA Northeast (or any other Veolia entity) "poisoned" the minority community in Pittsburgh or that it exposed residents of Pittsburgh to dangerously high levels of lead.

BuzzFeed Falsely States As Fact That Veolia Is The "Company At the Center of Flint's Water Crisis" and "...the company behind Flint"

The story falsely portrays VNA as being at "the center of" and "behind" the issues experienced by the City of Flint, Michigan ("Flint" or the "City") with lead in its water supply. In fact, and as the public record makes clear, VVNAOS's work in Flint was limited in both duration and scope and included neither measuring lead levels in the distributed water nor collecting samples for making such measurement.

As you are no doubt aware or could have become aware through even the most modest investigation, VVNAOS first became involved with the City's water issues when it executed a contract with the City for consulting services on February 10, 2015. That \$40,000 contract with the City was for a total of 160 hours of services, and VVNAOS's involvement with the City ended a short time thereafter. The undisputed and well-known facts are that no Veolia company had any involvement with either the decision to switch to the Flint River as the source for Flint's water or the preparations that were (and were not) made for that change. Indeed, it is beyond any dispute that VVNAOS's involvement with the City of Flint thus began long after the decision to switch to the Flint River was made, long after the switch was in fact made, and ended long before much of the misconduct by state and City employees became known to people outside governmental entities.

Under the parties' contract, the City had the right to direct, and indeed did direct, VVNAOS to undertake certain specified work. In particular, the City directed VVNAOS to analyze the level of *trihalomethanes* ("TTHMs") in Flint's water. At the City's direction,



VWNAOS also devoted attention to the taste, color, odor, and hardness issues about which many Flint residents were complaining. As the Task Force's report emphasizes, the limited directive by the City to VWNAOS did not contemplate investigation of all possible issues with the City's municipal water system. *See* page 3, *supra*.

VWNAOS' final report, which has been publicly available for years, *nowhere* suggested that VWNAOS had itself sampled or tested water from Flint residents' taps rather than relying on the City and MDEQ's data reporting the results of such sampling and testing. A copy of VWNAOS' report titled "Flint, Michigan Water Quality Report" is attached at Tab 5. As noted in a widely disseminated June 24, 2015 Memorandum written by a government employee and shared with the EPA and others entitled "High Lead Levels in Flint, Michigan – Interim Report" June 24, 2015, "[VWNAOS] reports were written prior to the recent discovery of high lead results in Flint drinking water. As such, the reports do not take into account the potential effects on lead levels in drinking water." The memorandum is attached here at Tab 6.

As we note above, the entities at "the center of Flint's water crisis" were agencies and officials of the Flint and Michigan state governments. They are the ones who are being criminally prosecuted, and they are the ones called out by the US EPA in its July 19, 2018 Report.

Given that multiple governmental officials are being criminally prosecuted for their roles in Flint and the fact that problems with the water had arisen well before VWNAOS's very brief engagement, it is beyond reckless to characterize VWNAOS as being "the company at the center of Flint's water crisis" and being "the company behind Flint."

BuzzFeed Falsely Claims That "the complaint filed by Michigan against the company... alleges that Veolia deliberately falsified reports about the quality of the drinking water, allowing lead to leach into drinking water pipes"

This statement mischaracterizes the Attorney General's complaint referenced in the article. The complaint alleges, erroneously, that "Veolia" knew that certain representations made in its interim report were false or reckless. The complaint does not allege that Veolia "deliberately falsified reports" or that it "allow[ed] lead to leach into drinking water pipes." It was reckless for the article to state otherwise.

BuzzFeed Falsely Asserts that "the case of Veolia in Flint provides evidence of the pitfalls of putting public utilities in the hands of unelected people."

This statement falsely suggests that "Veolia," rather than the state and local government, controlled the water supply in Flint. I will not repeat the facts concerning VWNAOS's actual work in Flint set forth above. I will add only that under Michigan law, the Emergency Manager was responsible for overseeing Flint public utilities at all times, Mich. Com. Laws §



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141.1549(2), and that VVNAOS did not have ownership or control over the public utilities at any time.

BuzzFeed Falsely States that "it's a question of when, and how soon are you able to find out when they [Veolia] fuck up."

This statement suggests that based upon its track record of, among other things, "poisoning black communities," "Veolia" is a company that commits serious wrongs and then hides them. There exists no factual support for this inflammatory falsehood.

In fact, VNA and its affiliated entities are highly successful companies that have ample reason to be proud of the work they have accomplished. Indeed, publicly available information makes clear the following: VNA's affiliates have worked with over 530 clients in the United States alone and have an outstanding track record of achievement for those clients. Many of the communities and businesses that VNA serves have been recognized with awards for excellence in water treatment service, including facilities in Massachusetts and Rhode Island, while these companies have consistently been relied on for expertise in helping communities and businesses improve existing infrastructures to ensure safe and reliable drinking water. In light of this record of excellence, it is unfair that you have chosen to defame VNA in a manner intended to incite backlash against the company and deprive it of economic opportunities.

The damage caused by your false and defamatory article is still being assessed, and suffice it to say VNA will hold BuzzFeed responsible for, among other things, every lost contract caused by your story and its republication by others. In an effort to stop the damage you are causing, VNA hereby demands, with a full reservation of its rights, that BuzzFeed forthwith remove the story from the Internet and issue an announcement of the withdrawal of the story together with an apology to VNA, the contents of which VNA will approve.

I ask that I hear from your legal counsel as soon as possible.

Very truly yours,

Howard M. Cooper

cc: David H. Rich, Esquire