(1)

Hardy, Andrew

From: David Pelletier <dpelletier@dishs.org>
Sent: Thursday, December 19, 2019 12:18 PM
To: Hardy, Andrew
Subject: Lead testing rule

Greetings Andrew,
I don't know if my comment here will make it in the Public Comment but here goes.
I feel it is totally unnecessary to test for lead annually when a system passes testing on a triennial basis and does so consistently. It is an unnecessary expense and burden on stressed school budgets. More testing is not going to change the results. If a system has an issue with lead or is having to treat for lead to be in compliance, I could see requiring annual testing. However, systems that do not have an issue with lead or don't need to treat for lead should not be required to test more frequently.
This change in legislation has nothing to do with Public Health but only seeks to appease Public Paranoia with "Do-Good, Feel-Good Legislation" that "We're doing something". There is no scientific basis for this requirement. Please Legislate on FACTS not Paranoia!
Dave

David Pelletier, Dir. of Maintenance
Deer Isle-Stonington School
249 North Deer Isle Road
Deer Isle, ME 04627
P:(207)348-6301 ex. 202
C:(207)664-9691
dpelletier@dishs.org

2

Comments of the Environmental Health Strategy Center
Public Hearing on Lead Testing in School Drinking Water Rule, January 8, 2020

Thank you for this opportunity to provide comments on this critical rule to protect children from brain-damaging lead in our schools. I'm Patrick MacRoy, Deputy Director, and I'm sharing these comments on behalf of the Environmental Health Strategy Center. The Strategy Center works to create a world where all people are healthy and thriving, with equal access to safe food and drinking water, and products that are toxic-free and climate-friendly. We were involved in stakeholder discussions in the drafting of the Act requiring this rule and have been involved in lead poisoning preventing and safe drinking water issues in Maine throughout our 18 year history.

While we appreciate the Maine CDC moving forward with proposing these rules and promptly implementing the requirements of the Act, we have several concerns that the proposed rules do not adequately protect children's health and meet the requirements of the Act. I will summarize a few of the concerns today and we will submit written comments more fully detailing our concerns and the basis for them.

First and foremost, the rule must be modified to ensure that parents, as well as teachers, staff, and the public, have access to information on the test results in their school. Access to information on toxics our children and ourselves are being exposed to should be a fundamental right, especially when discussing test results paid for with public dollars. Other than requiring the department to provide a fillable form, there are no actual requirements in Section 6, "Public Notification." The school quote-unquote "may" notify parents of extremely elevated results. The department quote-unquote "may" publish a notice four months later if the school doesn't. There is no requirement to make available test results under the state's standard. The rule must be revised to ensure that schools promptly make all test results available to parents, staff, prospective students, and all other stakeholders. Further, the rule should require the Maine CDC to maintain an easily accessible and searchable online repository of the test results to ensure ease of access.

The failure to provide access to all test results is especially galling considering the so called "MRL" or standard set by the rule at 15 ppb is far too high to be protective of children's health. Many experts, including the American Academy of Pediatrics, have called for requirements to ensure school water does not exceed 1 ppb. We strongly urge Maine CDC to adopt a more health protective "MRL" in the rule, and will provide a more in depth analysis of the MRL in our full comments. Regardless, at a bare minimum, Maine CDC must ensure that all results are made available so parents, teachers, and communities can make informed decisions and take action to reduce their lead exposures even if the state fails to mandate lower levels.

The rule must also be modified to ensure that it actually identifies potential sources of lead exposure and reflects the results of water as potentially consumed by children. The rule proscribes testing water that has sat in pipes for a maximum of 18 hours. This means that schools are required to conduct what is known as pre-stagnation flushing, or running all the water the day before a test. This has the effect of cleaning out of pipes and minimizing the likelihood of finding elevated lead in water levels, essentially gamming the testing process. For this reason, the US EPA specifically prohibited public water systems from directing a pre-stagnation flush for samples collected for Safe Drinking Water Act compliance. We

find it disturbing that Maine CDC is effectively directing schools to game the test in a manner that is already prohibited for assessing compliance with other rules. Further, this methodology is not reflective of how water is actually consumed in schools: It would be a rare situation in reality where a school staff member goes around and runs water from all the taps in the school the day before school starts after a weekend, break, or even summer vacation. This provision, and other problems in the sampling methodology we'll discuss in the written comments, must be revised to reflect best practices developed for the lead and copper rule.

The rule must also establish more specific criteria for ongoing testing, including at a minimum, routine re-testing on a periodic basis. As proposed, the rule is a "one-and-done" effort, unless the state determines the need for additional tests based on either unspecified or vague criteria like quote-unquote "major" changes in source water. The rule should more specifically identify changes to source water chemistry as well as alternations to the service line or internal plumbing that could release lead and suggest the need for additional testing. Additionally, given that little is known about the changes in lead leaching over time as well as the need to capture changes to the plumbing system or source water chemistry that has not been reported, a routine testing program should be required to be implemented on a rolling basis every several years.

In summary, while we will address additional points in more detailed written comments, we wanted to stress the importance of modifying the proposed rule as outlined to ensure it meets the legislative directive of providing safe drinking water to our children.

Thank you for your time and consideration and we look forward to continued dialogue on this critical issue.

2

Hardy, Andrew

From: Patrick MacRoy <pmacroy@preventharm.org>
Sent: Friday, January 17, 2020 6:16 PM
To: Hardy, Andrew
Subject: Comments on Lead Testing In School Drinking Water Rule, 10-144 CMR Ch 234
Attachments: Comments of the Environmental Health Strategy Center on Pb in School Water Rule.pdf

Mr. Hardy,

Please accept the attached comments on the proposed rule on behalf of the Environmental Health Strategy Center.

Thank you,

Patrick

Patrick MacRoy
Deputy Director

Environmental Health Strategy Center/Prevent Harm
565 Congress St., Ste. 204, Portland, ME 04101
(207) 699-5796 (direct)
www.ourhealthyfuture.org

ENVIRONMENTAL
HEALTH
STRATEGY CENTER
Healthy families, thriving in a healthy economy

Portland:
565 Congress Street, Suite 204
Portland, ME 04101

Bangor:
6 State Street, Suite 504
Bangor, ME 04401

January 17, 2020

Andrew Hardy
Maine Center for Disease Control

VIA ELECTRONIC MESSAGE

RE: Comments on Lead Testing In School Drinking Water Rule, 10-144 CMR Ch. 234

Dear Mr. Hardy:

The Environmental Health Strategy Center is please to present these comments on this critically needed rule to help protect children from brain-damaging lead in our schools. The Strategy Center works to create a world where all people are healthy and thriving, with equal access to safe food and drinking water, and products that are toxic-free and climate-friendly. We were involved in stakeholder discussions leading to the drafting of "An Act to Strengthen Testing for Lead in School Drinking Water" (Act) requiring this rule and have been involved in lead poisoning preventing and safe drinking water issues in Maine throughout our 18 year history.

While we appreciate the Maine CDC and the Department of Health and Human Services (Department) moving forward with proposing these rules and promptly implementing the requirements of the Act, and as we noted in oral comments at the public hearing for the rule on January 8, we have several concerns that the proposed rules do not adequately protect children's health and meet the requirements of the Act as outlined in greater detail in the following sections.

Increasing Public Notification and Ensuring Rapid Communications

First and foremost, the rule must be modified to ensure that parents, as well as teachers, staff, and the public, have timely access to information on the test results in their school. Access to information on the toxics our children and ourselves are being exposed to should be a fundamental right, especially for test results paid for with public dollars. Other than requiring the department to provide a fillable form, there are no actual requirements in Section 6, "Public Notification." The school "may" notify parents of extremely elevated results. The department "may" publish a notice ***four months later*** if the school doesn't inform its stakeholders. There is no requirement to make available test results that fall below the state's standard.

The rule must be revised to ensure that schools promptly make ***all*** test results available to parents, staff, prospective students, and all other stakeholders. It is worth noting that in the US Environmental Protection Agency's (USEPA) recently proposed revisions to the Lead and Copper Rule (LCR) that governs lead testing of public water supplies, the agency has proposed requiring water systems to notify its customers within ***24 hours*** of finding an elevated level.[1] We find it unconscionable that an individual family would be required to be informed of elevated results in their home within a day, but the Department is allowing an entire classroom or school to continue to drink water with a demonstrated health risk without so much as an (optional) notification for four months. We strongly urge that the rule require schools to disclose to staff, families, and stakeholders elevated results within 24 hours, just as public water systems are likely to be required to do, and to share all test results within ten days.

If, in the Department's view, there is inadequate authority in the statute to require that schools themselves disclose the results, the rule must require, not suggest, that the state promptly take action to publicize the findings. In the event of elevated results, we would recommend allowing the school a 24-hour window to make its own announcement, and if the school has not certified it has done so, the Department immediately issue a public statement with the findings and cause them to be published. In the event of results below the state level, we suggest the Department publish a notice within ten days if the school has not certified they have shared the results with stakeholders. Further, the rule should require the Department to maintain an easily accessible and searchable online repository of ALL test results collected from schools to ensure ease of access to parents as well as researchers and members of the public. Ensuring access to all data is especially critical if the Department does not set a more health protective standard, as discussed below, to provide the information families may use to insist on local action to increase the safety of their schools' drinking water.

Setting More Health Protective Standards

The rule must be modified to lower the so called Maine Response Level (MRL) or standard set by the rule at which action is required, which, at 15 ppb, is far too high to be protective of children's health. It is widely accepted by health scientists as well as Federal agencies including the U.S. Centers for Disease Control and Prevention[2] as well as the USEPA,[3] that there is no identifiable safe level of lead. While lead-based paint may be the most significant source of exposure for most children with very high blood lead levels, lead in drinking water is a substantial contributor to the total lead burden of the average child, with the USEPA estimating it as the source of about

[1] 84 FR 61689 – this would apply to both results of samples from individual customers AND to all customers if the 90th percentile level of a set of samples exceeds the action level.
[2] "No safe blood lead level in children has been identified. Even low levels of lead in blood have been shown to affect IQ, the ability to pay attention, and academic achievement." https://www.cdc.gov/nceh/lead/prevention/default.htm Accessed 1/15/20
[3] "No safe level of lead exposure has been identified." 84 FR 61724

20% of a person's lead intake.[4] Given the lack of a "safe" level and the fact that all children with lead exposure, not only those with "elevated" blood lead levels are being harmed, addressing the significant contribution of drinking water lead to the average child should be an important public health objective. It is therefore unsurprising that experts, including the American Academy of Pediatrics (AAP),[5] have called for requirements to ensure school water does not exceed 1 ppb of lead. Other states have heard this call and taken action to ensure that their schools are providing drinking water with much lower lead levels. Last year, the Vermont legislature set that state's action level for school drinking water at 4 ppb.[6] In 2017, the Illinois legislature required comprehensive school testing with "prompt" notification to parents of all levels in excess of 5 ppb.[7] In 2018, the District of Columbia also decided to use the level of 5 ppb for triggering action in their schools.[8]

USEPA has always made clear that its lead in water standards are not sufficient to protect health,[9] but are rather based on what it viewed as feasible for water systems to address. In the proposed revisions to the LCR, however, the agency is now acknowledging that there are feasible actions for water systems to take at levels under 15 ppb. The agency proposed the creation of a "trigger level" of 10 ppb at which water supplies must start to do more to monitor and control lead levels in their systems. [10] It is especially noteworthy that the trigger level requirements are based the fact that the agency believes there are systematic changes that may be done *at the utility level* to lower lead in water levels. In assessing the results from the schools, the Department will have water outlet specific data, providing it with a much more granular set of information than has been available to water systems. Additionally, schools have the ability to implement changes on a tap to tap basis. This makes it feasible to take targeted and cost effective action to reduce lead exposures to a much lower level. Therefore, in keeping with the fundamental concept that the goal is to reduce water concentrations of lead to the greatest extent feasible since there is no safe level, it is evident that the rule must require actions at a level substantially below the 15 ppb action level and 10 ppb trigger level. We strongly believe that the Department should use 1 ppb, in line with the AAP

---

[4] 84 FR 61690 – For formula fed infants, USEPA estimates as much as 60% of lead intake is via water. While it is less likely that many school taps are being utilized for formula mixing, it's also not without precedence.

[5] AAP calls for, "legal requirements... to ensure water fountains in schools do not exceed water lead concentrations of more than 1 part per billion." https://www.aap.org/en-us/about-the-aap/aap-press-room/pages/With-No-Amount-of-Lead-Exposure-Safe-for-Children,-American-Academy-of-Pediatrics-Calls-For-Stricter-Regulations.aspx Accessed 1/16/20

[6] Act 66 (2019). See also: https://www.healthvermont.gov/environment/school/lead-drinking-water-schools Accessed 1/16/20

[7] 225 ILCS 320/35.5(c)(3)

[8] https://dcps.dc.gov/page/water-testing-lead Accessed 1/16/20

[9] "The EPA established the lead action level in the 1991 based *[sic]* on feasibility and not based on impact on public health. The proposed trigger level is also not a health based standard." 84 FR 61691

[10] 84 FR 61691 – the specific actions in response to the trigger level vary based on the size of the system.

recommendation, as the trigger for exploring opportunities and evaluating to feasibility of lowering lead levels from a particular tap.[11]

Ensuring Sample Collection That Accurately Assesses Potential Hazards

The rule must also be modified to ensure that it actually identifies potential sources of lead exposure and reflects the results of water as potentially consumed by children. The rule proscribes testing water that has sat in pipes for a maximum of 18 hours. This would strongly imply that schools are required to conduct what is known as pre-stagnation flushing, or running all the water the day before a test. This has the effect of "cleaning out" pipes and has been shown to reduce lead levels, even after a 6-8 hour stagnation period, thus minimizing the likelihood of finding elevated lead in water levels. For this reason, the USEPA specifically directed public water systems to NOT instruct samplers to perform a pre-stagnation flush for samples collected for LCR compliance in 2016.[12] The agency is further proposing to codify this requirement as part of its proposed changes to the LCR.[13] Further, this methodology is not reflective of how water is actually consumed in schools: It would be a rare situation in reality where a school staff member goes around and runs water from all the taps in the school the evening before school resumes after a weekend, break, or even summer vacation.

This is not a minor or theoretical concern. The very real impact of pre-stagnation flushing on school lead sample results was clearly demonstrated in New York City. The city first tested its school water outlets in 2016, requiring a pre-stagnation flush before sampling. In response to criticism from experts[14] and pressure from parents, the city re-sampled the schools without a pre-stagnation flush. The second round

---

[11] Some have argued that having a "MRL" or school "trigger level" below the LCR's regulatory action level (AL) will create confusion or conflict. Not only is fear of "creating confusion" a poor reason to avoid implementing health-protective policies, but it also misses the fact that the LCR AL of 15 was created, as discussed, as a point where EPA believed it became feasible to implement *system wide changes* (e.g. corrosion control) to reduce lead. It is inappropriate to apply the 15 ppb AL, as the Department seems to be doing, as a metric of where it is feasible to identify and implement controls for an identified school water outlet as no longer is systemic corrosion control the primary follow-up action. There are options as simple as just disconnecting or replacing a single fixture, or perhaps identifying a particular leaded connection or service line. Given the depth of data available from the school testing and the fact that the responsible entity is the school, with direct control over its facilities, rather than a utility with no authority to replace individual fixtures, it is very feasible and comparatively inexpensive to require much lower levels. Or, in other words, it shouldn't be "confusing" because the AL and the "MRL" are actually different standards with different purposes.

[12] https://www.epa.gov/sites/production/files/2016-02/documents/epa_lcr_sampling_memorandum_dated_february_29_2016_508.pdf Accessed 1/16/20.

[13] 84 FR 61705 – Although we recognize that the agency did not extend a clear pre-stagnation flushing prohibition to the additional school testing in the proposed LCR amendments. This is a topic that will likely be a subject of much comment and we are hopefully the agency will make improvements before the rule is finalized.

[14] Taylor, Kate. "Lead Tests on New York City Schools' Water May Have Masked Scope of Risk." *New York Times.* 9/1/2016. https://www.nytimes.com/2016/09/01/nyregion/lead-tests-on-new-york-city-schools-water-may-have-masked-scope-of-risk.html

without the pre-stagnation flush found ***nine times*** as many water outlets with levels over 15 ppb.[15]

In the same memo directing water systems to avoid instructing a pre-stagnation flush for LCR compliance, USEPA also directed systems to avoid two other techniques that have been shown to produce lower lead in water results: using narrow neck collection bottles and removing or cleaning aerators prior to sampling.[16] Lead particles are more likely to be dislodged with high flow rates, and therefore samples should be collected with as high a flow rate as possible, which is facilitated by a wide neck bottle. Cleaning or removing aerators before sampling may remove lead particles that may have otherwise collected, potentially reducing the lead concentrations that would otherwise be present.

We believe the Department should approach the testing required by the rule as a screening test collected under the worst-case scenario, erring whenever possible on the side of risking a "false positive" over a "false negative." Given the relative ease of taking action to pull any particular water outlet from service and resolve the source of lead contamination or re-test, there is no need to risk missing potential sources of lead exposure in our schools.[17] Additionally, an unstated, but perhaps self-evident goal of the Act is to provide reassurance of the safety of school water to parents and the public at large. Even if the Department disagrees on the merits of the arguments, there is no question that pre-stagnation flushing has been widely criticized by some experts and highlighted as "masking" lead in the media. Allowing these techniques would be counter to the goal of reassurance, and (rightly in our view) only open the Department and our schools to further questions about the safety of school water that the Act was intended to put to rest. Therefore, we urge the Department to amend the rule to strike the "maximum" stagnation time, specifically prohibit pre-stagnation flushing, mandate the collection of samples at the highest flow rate practicable in wide-mouth containers, and prohibit the removal or pre-sample cleaning of aerators.

The Need for Ongoing Testing

The rule must also establish more specific criteria for ongoing testing, including at a minimum, routine re-testing on a periodic basis. As proposed, the rule is a single time effort, unless the state determines the need for additional tests based on either unspecified or vague criteria like "major" changes in source water. The rule should more specifically identify changes to source water chemistry as well as alterations to the service line or internal plumbing that could release lead and suggest the need

---

[15] Taylor, Kate. "New York Changes How It Tests for Lead in Schools' Water, and Finds More Metal." *New York Times.* 2/3/2017. https://www.nytimes.com/2017/02/03/nyregion/new-york-dept-education-lead-water.html

[16] https://www.epa.gov/sites/production/files/2016-02/documents/epa_lcr_sampling_memorandum_dated_february_29_2016_508.pdf Accessed 1/16/20.

[17] This is especially critical should the Department decline to accept our advice as presented elsewhere in this comment to continue sampling in the future. Should this be the only comprehensive testing ever performed, the importance of erring towards false positives is even more obvious since there will not be another chance to discover a "false negative."

for additional testing. Additionally, given that little is known about the changes in lead leaching over time as well as the need to capture changes to the plumbing system or source water chemistry that has not been reported, a routine testing program should be required to be implemented on a rolling basis every three to five years. It is noteworthy that the Act itself clearly envisions ongoing testing, not a once-and-done approach, as evident from the fact that it requires *annual* reports to the legislature.[18] It is hard to fathom the legislature desiring an annual reminder of the activity the Department did a single time.

It also has been suggested that ongoing testing under this rule will not be necessary because the USEPA's proposed LCR amendments add new requirements for water systems to conduct testing in schools. We strongly discourage the department from accepting this view. First and foremost, the proposed LCR changes are just that: proposed. USEPA may not follow through with the proposal, not follow through promptly, or decide to abandon the school testing requirements. The Department should not write regulations speculatively presuming eventual federal action. Further, Maine should set rules and procedures for the testing that meet the highest standards as previously discussed, rather than defer to what may be weaker standards of the USEPA. Finally, it is critical to note that there is little risk of duplication of regulation since the proposed revisions to the LCR allow states to waive the school testing requirements of the LCR if the state has a separate program that is at least as stringent, which these rules could or would be.[19]

Additional Concerns

We would also like to highlight several additional areas for the Department to improve the proposed rule:

- The first draw 250ml samples specified are best suited for assessing lead contamination from the fixture and immediately adjacent pipes. Past studies have shown that when multiple samples are instead collected in series, there is a great deal of variation in when highest lead levels are found, likely depending on the specific plumbing of a structure. In residences it is accepted that in most cases, lead service lines are a larger contributor than fixtures, and impacts of a lead service line would be poorly and inconsistently captured in a first draw 250ml sample. We would recommend, on a per-school, rather than per-tap basis, adding a modest number of additional samples beyond the first draw to assess the potential for leaded pipes or connections "deeper" in the plumbing system, and, if the service line material cannot be readily determined, a larger non-first draw sample that would best capture stagnated water from the service line.
- Section 5 is lacking significant detail in what would constitute adequate "abatement or mitigation methods" as required the Act. While we appreciate the Department may wish to draw on its experts to address site specific findings, there is still value in providing more detailed standard approaches to help guide school administrators or consultants that may be hired by schools who have the resources to "outsource" some

[18] 22 MRSA §2604-B(5)

[19] "If a State has in place a program that requires CWSs to sample at all schools and child care facilities, or a program requiring schools and child care facilities to collect samples themselves, that is at least as stringent as the proposed LCR requirements, the State may use that program in lieu of the proposed requirement." 84 FR 61707

of the work in responding to identified problems. Most importantly, in order to be adequately health protective, the rule must have mechanisms to ensure that "mitigation" methods – those that do not actually "abate" the hazard by removing the source of lead – are actually adhered to over time. If the solution is to take an outlet out of service, it must be permanently disabled, such as through disconnection and capping of the pipe, not merely allowed to have a "do not drink" sign hung over it. Signs may be removed over time, especially when staff change and no one remembers why it was put there in the first place. Further, if a mitigation involves regular flushing or use of filters, there must be provisions for the creation and regular review of records that demonstrate the flushes were conducted and filters replaced.

- Section 7 should be modified to make clear that in addition to schools maintaining records, these records must be shared with the Department. Specifically, the Department should receive from schools: the documentation created for sections 2B and 2C (as it may be difficult or impossible to interpret lab results without the more detailed documentation of sample location, in addition to providing a mechanism for ensuring compliance with the identification of drinking water outlets); copies of all laboratory results; plans created under section 5A(2); ongoing documentation of compliance with mitigation efforts; and all notices under section 6C. The Department receiving these records is vital if the Department is going to be able to conduct meaningful oversight monitoring by allowing it to efficiently perform "desk audits" without visiting school locations. Additionally, having a single repository increases the ease of access to members of the public under public records law and allows the Department to have possession of the information to create an online portal as we have suggested.
- Sections 2B and 2C should provide more detailed instructions for how schools document and standardize across schools the recording of the locations and identities of water outlets.[20] This may include marking and labeling locations on a diagram of the school, using room numbers, or using cardinal directions or other fixed references to identify locations. The reason a school decided an outlet is not for drinking or culinary purposes must be made clear. We fear that without more detailed instructions, the Department is at risk of getting sampling locations with labels such as "Mrs. Krabappel's room, sink by bookshelf," that will make it difficult to reference the location over time or for the Department to conduct meaningful reviews of completeness. Additionally, standardized location labels would facilitate public presentation of the data such as through an online portal.
- Section 3A notes the state will pay for sample bottles and analyses, but leaves open the question of covering the cost of shipping or delivering the samples to the laboratory, which may be a significant cost for a large batch of samples.
- The Department may wish to clarify the length of the "collection period" referenced in section 3B to better allow schools to plan their scheduling of the sampling project. The rules note that schools will have at least thirty days' notice in 3B(8) but that they have to request assistance within 60 days of their sampling start date in 3B(6). That would imply the "collection period" must be at least 30 days (unless schools are expected to be clairvoyant) but could benefit from a clear range.

[20] Massachusetts, for example, has guidance that may provide a starting point at https://www.mass.gov/guides/sampling-for-lead-and-copper-at-schools-and-childcare-facilities#-how-to-label-taps-

We once again thank you for the Department's work in rapidly moving these rules forward and appreciate your thoughtful consideration of these comments. If we can provide any additional clarity on our thoughts or addition information, please to not hesitate to contact Patrick MacRoy at 207-699-5796 or PMacRoy@PreventHarm.org

Sincerely,

Patrick MacRoy
Deputy Director

KWD
Kennebec Water District
SINCE 1899

3

January 8, 2020

Andrew Hardy
11 SHS-286 Water Street
Augusta, ME 04333-0011

Subject: Comments on 10-144 CMR Chapter 234, Lead Testing In School Drinking Water

Dear Mr. Hardy:

Please accept the following comments on the proposed Lead Testing In School Drinking Water Rule.

During the 2019 legislative session LD 153 - An Act To Strengthen Testing for Lead in School Drinking Water was passed by the legislature and signed into law by the Governor as Public Law (PL) 2019 Chapter 158. Within this new law, the Department of Health and Human Services (Department) was charged with adopting rules to include *establishing water lead levels; testing protocols, including the frequency of testing; abatement or mitigation methods; procedures for the issuance of guidance to reduce exposure to lead; and public notification procedures.*

Additionally, the department was charged with considering *the United States Environmental Protection Agency's recommendations for reducing lead in drinking water in schools.*

PL 2019 Chapter 158 constrained the department's authority to require schools to act if the department funds the action or in cases where there is no additional expenditures from local revenues. The legislature provided no additional funding to the department or to schools to implement this new legislation. Consequently, the legislature placed the department the unenviable position of attempting to reduce the risk of lead exposure to children with no additional funding.

I offer the following comments:

1. **Impact on Department Resources.** Because the legislature failed to provide any addition resources to the Department to administer this new rule, the existing other legislatively mandated work done by the department will suffer.
    a. Among other priorities, the department regulates approximately 1,900 public water systems. There are more than 700 private and public schools in Maine. The department already regulates over 200 of these schools. Therefore, there are approximately 500 new entitles (more than a 25 percent increase in regulated entities) for the department to regulate. To implement a new rule affecting 700 entities (500

of which have never been subject to the department's water quality regulations) will be a significant burden on a staff that is already working near or at maximum capacity.

2. Comments on specific sections of the rule can be found in the attached document.

Thank you for the opportunity to provide comments. Please feel free to contact me at (207)872-2763 or at rcrouse@kennebecwater.org if you need additional information.

Yours for safe drinking water,

Roger Crouse,
General Manager
Kennebec Water District

3

Comments and edits from Roger Crouse

STATE OF MAINE

LEAD TESTING IN
SCHOOL DRINKING WATER RULE

10-144 CODE OF MAINE RULES
Chapter 234

Department of Health and Human Services
Maine Center for Disease Control and Prevention
11 State House Station
Augusta, Maine 04333-0011

Effective: *[date]*

TABLE OF CONTENTS

SECTION 1. PURPOSE AND DEFINITIONS

A. Purpose. The purpose of this rule is to ensure that the Department meets the requirements of 22 MRS §2604-B to provide the necessary resources to Maine schools testing drinking water for lead levels. This rule sets requirements for all schools in Maine to test any water used for drinking or culinary purposes and outlines the resources provided by the Department to assist these schools in such efforts. If a school's drinking water contains lead in excess of the water lead levels described in this rule, then the Department will issue specific guidance to help reduce exposure to lead.

B. Definitions. The definitions in this rule are in addition to the definitions in the applicable statutes.

1. Building means any structure, facility, addition, or wing of a school that may be occupied or used by children, students, and faculty or staff.

2. Department means the State of Maine Center for Disease Control and Prevention Drinking Water Program, the agency responsible for regulating public water systems.

3. Drinking Water Outlet means a water fixture currently or potentially used for drinking, cooking or culinary purposes. Examples of drinking water outlets include but are not limited to drinking water fountains, bubblers, bathroom faucets, nurse office faucets, home economics faucets, teacher lounge faucets, cafeteria faucets kettled, ice machines, or water bottle fill stations.

Commented [RC1]: Is a bubbler just another name for drinking water fountain? Is it needed here if drinking water fountain is already listed?

Commented [RC2]: This is confusing.

4. First-Draw Sample means a lead water sample that is collected from an outlet where the water has sat motionless in the school's plumbing for a minimum of eight hours and a maximum of 18 hours.

5. Mixing Faucet means a single outlet for water that contains both hot and cold water.

6. MRL for Lead means the Maine Response Level for lead. For samples collected from a school that exceed 15 parts per billion (ppb), equivalent to 0.015 milligrams per liter (mg/L).

Commented [RC3]: MRL is an acronym used by the Laboratory Accreditation Program to mean method reporting limit. I recommend a different acronym such as LRL (Lead Response Level) to avoid confusion.

7. Outlet means any fixture that dispenses water.

8. School means a private school as defined in 20-A MRS §1 (22) or a public school as defined in 20-A MRS §1 (24).

SECTION 2. IDENTIFICATION OF SAMPLE SITES

A. The Department will designate those laboratories authorized to analyze lead samples and report lead results for Maine schools. The Department will provide a list of those laboratories to all Maine schools identified by the Maine Department of Education.

Commented [RC4]: "The Department will make a list of designated laboratories available for schools." This will enable the Department to simply post the list on a website rather than sending the list to each school.

B. Every school must identify all drinking water outlets on its property.

C. All schools must also identify water outlets that do not meet the definition of a drinking water outlets, by identifying outlets not used for consumption.

1. Examples of outlets that may not do not meet the definition of drinking water outlets may include mop sinks faucets, some science lab faucets, eye wash stations, and/or outdoor spigots, sill cocks/hose bibs that are not used for filling water bottles for athletics.

2. Indoor outlets that may be reasonably interpreted as drinking water outlets but were determined by the school to not be a drinking water outlet may be identified by signage stating that the outlet's water is not intended for consumption, in order to avoid potential consumption.

B. To test the drinking water outlets for lead, each school must contact a designated laboratory from the list provided by the Department, referred to in Section 2(A) above. Each school must report the number of drinking water outlets to the laboratory, so that the laboratory may send the appropriate number of sample bottles to the school for collection from each identified drinking water outlet.

SECTION 3. TESTING PROTOCOLS

A. The Department will provide funds to the designated laboratory for the cost of sample bottles and analyses. All laboratories designated by the Department will be accredited by the State of Maine for testing lead in drinking water, in accordance with the *Maine Comprehensive And Limited Environmental Laboratory Accreditation Rule* (10-144 CMR Ch. 263).

B. Upon receipt of the sample bottles, each Schools must collect one first-draw sample from each drinking water outlet identified by the school.

1. Each school must determine the person who will collect samples from the school's drinking water outlets and who will be listed as the contact to receive documents and training material supplied by the Department for lead sampling.

2. Schools must collect first-draw samples in accordance with the requirements of this section and any specific guidance that the school has received from the Department.

3. For each identified drinking water outlet, the school must collect a first-draw sample of 250 milliliters (mL) in volume. The school must ensure that the water has been motionless in the pipes for at least eight hours, but no longer than 18 hours, before the collection of samples begins.

4. Schools must collect samples from cold water. If a mixing faucet is being sampled, then schools must collect the water in the same way that it would be consumed during normal use.

5. Schools must complete all documentation required by the assigned laboratory at the time of sampling, including chain of custody forms.

6. Schools wanting assistance with sampling or with meeting any other provisions of this rule must request such assistance from the Department within 60 days of their sampling start date.

2

Commented [RC5]: Shower heads should be included in this list.

Commented [RC6]: The Department should have the ability to negotiate pricing for all labs participating in the lead in school drinking water testing.

There doesn't appear to be a clear mechanism for the Department to get the laboratory data. I recommend: "To receive payment from the Department, laboratories must submit sample result data to the Department in a format prescribed by the Department."

Commented [RC7]: It is unclear how will the Department get this information.

Commented [RC8]: This could be problematic. A school could reasonably state that "normal use" is to open the faucet for several seconds before placing a container under the faucet. Additionally, some children may use the hot water side while others use the cold-water side. The sample collector may not have enough information to determine what is "normal use."
I recommend that the Department require the use of the cold water side of the faucet consistent with the instructions in the previous sentence.

Commented [RC9]: The Rules Relating to Drinking Water uses "Laboratory Sampling Form" rather than chain of custody form. The two sets of rules should be consistent.

7. All sSchools must test all drinking water outlets at their school building(s) at least once, in accordance with this section and within the collection period set by the Department in its notification to each school.

8. The Department will notify each school of its sample collection period's start and end date using the list of schools provided by the State of Maine Department of Education. The Department will inform each school of its collection period at least 30 days prior to the start of the collection period.

9. The Department may recommend additional sampling, if the Department determines that testing of more samples would help identify the source of lead contamination, confirm lead mitigation results, or confirm that major changes in source water did not negatively impact water quality. The Department will pay expenses for additional testing conducted as a result of its determination that more sampling should occur.

SECTION 4. WATER LEAD LEVELS

A. A school that reports any drinking water outlet with a first-draw lead level exceeding the MRL for lead of 15 parts per billion (ppb) may refer to Section 5 of this rule, to reduce lead exposure.

B. All schools regulated by the Department as public water systems must continue to meet the standards requirements of this rule, as well as the *Rules Relating to Drinking Water* (10-144 CMR Ch. 231).

SECTION 5. ABATEMENT AND MITIGATION

A. If a school reports a lead concentration of water at a drinking water outlet that exceeds the 15 ppbparts per billion MRL, then the following actions will occur:

1. The Department will provide outreach materials to detail possible mitigation measures available to reduce the risk of lead exposure at the school.

2. Utilizing that information, the school must develop and submit a lead remediation plan to the Department. The Department may aid the school in developing this plan. The Department's assistance to the school may include the following:

   a. Guidance on collecting additional water samples to determine the source of the elevated lead levels; and/or

   b. Recommendations for abatement and mitigation, which may include a routine flushing program, fixture removal/replacement, installation of physical or chemical treatment.

3. The Department will recommend that a school prohibit use of any drinking water outlet exceeding the lead MRL by physically disconnecting the outlet or by posting "Do Not Drink" signs at each affected outlet until a lead remediation plan is successfully implemented to mitigate the lead level of such outlet. Successful implementation is

Commented [RC10]: How long is the collection period? In item 6. above a school has to contact the Department at least 60 days before sampling if they need assistance but in this section the Department doesn't have to notify the school until 30 days before sampling begins. Does this create a potential problem for the school?

Commented [RC11]: Does a school have to follow the Department's recommendation?

Commented [RC12]: How would the Department determine that more sampling would help?

I recommend that paragraph #9 be replaced with the following:
The Department may recommend additional sampling to help identify the source of lead contamination or confirm lead mitigation results. The Department will pay the cost of sample bottles and analyses for additional testing conducted as a result of its recommendation.

Commented [RC13]: Under the SDWA's Lead and Copper Rule, the Department already has the authority to require additional lead and copper sampling when there is a water source change. I think this should be removed from these rules and leave this type of analysis to just the Lead and Copper Rule.

Commented [RC14]: What expenses will be paid by the department? Staff time expenses? Other expenses?

Commented [RC15]: When? Why not just tell schools that this is available on the Department's website. This will enable schools to consider their mitigation options before their sampling results are received.

Commented [RC16]: When? There should be deadlines established if the department is going to tell the school they must do something.

demonstrated by two results reporting lead levels at or below the MRL at that drinking water outlet.

SECTION 6. PUBLIC NOTIFICATION TO PARENTS

A. The Department will provide schools with a fillable public notice document to complete and distribute to parents, students and staff, in the event of a drinking water report of lead above the MRL.

B. The school may distribute public notice to all staff and persons in parental relation to children of students, enrolled or employed at the school. The public notification form may be distributed electronically. This form from the Department includes the following information:

1. The total number of sites sampled;

2. The number of sites exceeding the MRL;

3. The concentration of lead in the sites exceeding the MRL;

4. The location description of the sites that are exceeding the MRL;

5. Mitigation measures completed thus far;

6. Mitigation measures planned, with the expected completion date;

7. Location where parents may find a list of all lead test results (ex. bulletin board or school's website); and

8. Lead education materials provided by the Department.

C. Schools may certify to the Department that public notification to parents and staff was completed by submitting a written certification to the Department. Proper certification requires a copy of the public notification document distributed, the date that the school performed the public notification, and identification of the person responsible for the public notification.

D. If the Department does not receive certification within 120 days of the school receiving notification of high lead results, then the Department may post the school's lead results in the local newspaper in the school's area.

SECTION 7. RECORDKEEPING

A. The school must retain all records of test results and lead remediation plans for 12 years following the creation of such documentation. Copies of such documentation may be made available to the Department upon request.

STATUTORY AUTHORITY: 22 MRS §2604-B

EFFECTIVE DATE: [date]

Commented [RC17]: Under what circumstances would the Department not recommend prohibiting the use of the drinking water outlet? Why a recommendation not a requirement? How soon after the notification? Does the school have to wait for the Department to tell them or are they responding to the lab results?

Commented [RC18]: Could a school permanently label the faucet "Do Not Drink" as the long-term solution? If yes, then success does not require additional testing.

Commented [RC19]: When? How soon after the department gets the results will the department provide this fillable public notice document? The department just put the fillable form on its website and tell schools of its availability.

Commented [RC20]: Notification from the Department or the lab? If the lab, how will the Department know when the 120 day time window starts?

This sentence indicates that the Department "may" post lead results. This lack of certainty doesn't seem to be in harmony with the intent of the legislation. I recommend that the "may" be replaced with "shall."

Commented [RC21]: How about "The Department recommends that schools distribute …"

4

January 8, 2020

Carol White – Chebeague Island School/CAW LLC, Drinking Water Commission, Oral Comments.

Will be submitting written comments as well.

"incredible burden upon the staff of the drinking water program. In order for this to be done properly and for the data to be meaningful, there needs to be a lot of technical support. This is a new process for the schools as most do not have a water operator and even trying to determine which taps to sample within the school will be a challenge.

The DWP has many other responsibilities, so there are concerns about how this program will be supported so that data obtained for this rule is reliable, accurate and meaningful to the objective of the legislation.

The use of use "MRL" as terminology when others use it differently and agrees with Roger's recommendation to use a different term.

There should be a system of naming conventions developed by the DWP for the samples that relates to the location of where the sample was taken from within the school. A systematic naming convention would help the facility to know where the sample came from and use within in an overall larger database maintained by the DWP. This would help facilitate sample management. Otherwise schools may come up with naming conventions that may not be helpful to themselves or the program.

Maine Chapter

American Academy of Pediatrics
DEDICATED TO THE HEALTH OF ALL CHILDREN®

5

Chapter Executive Director
Dee Kerry
dakerry@aap.net

30 Association Drive, Box 190
Manchester, ME 04351
office: 207-480-4185

www.maineaap.org
MAAP Facebook Page
Twitter: @MaineAAP

AAP National Headquarters
345 Park Boulevard
Itasca, Illinois 60143
www.aap.org

1/8/2020

Tera Pare, Manager Regulations & Enforcement
Department of Health and Human Services - DHHS, Maine CDC
286 Water Street, 11 State House Station
Augusta, ME 04333

CHAPTER NUMBER AND RULE TITLE:
10-144 CMR Chapter 234, Lead Testing In School Drinking Water Rule

STATUTORY AUTHORITY: 22 MRS § 2604-B

Dear Members of the Joint Standing Committee on Health and Human Services,

On behalf of the Maine Chapter of the American Academy of Pediatrics (AAP), a non-profit professional organization of primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety and well-being of infants, children, adolescents, and young adults, I am writing to share our strong support for the DHHS, Maine CDC new rule to comply with 2019 P.L. Ch. 158, An Act to Strengthen Testing for Lead in School Drinking Water.

The last half century has witnessed important advances in the understanding of lead's adverse effects on children's developing brains and other organs and ways in which to reduce children's exposure via the implementation of highly effective public health regulations and other activities. These activities, along with the deleading of gasoline, have resulted in a remarkable decrease in the average blood lead levels among children in the United States. In the early 1970s, the average blood lead level of US children aged 1 to 5 years was 16 µg/dL; today it is approximately 1 µg/dL.

The adverse effects of lead are now known to occur at the very lowest levels of children's exposure. The Centers for Disease Control and Prevention, the National Toxicological Program, the Environmental Protection Agency, and the American Academy of Pediatrics agree that children's blood lead levels above 5 µg/dL can cause decreased school achievement, attention-deficit/hyperactive disorder, lower IQ scores, impaired executive functioning, and behavior problems. Each of these groups also now recognizes that there is no level of exposure that is safe. Furthermore, there is no evidence that the adverse health effects, once a child is exposed, are reversible.

Children exposed to lead also experience other impairments to their developing cardiovascular, immune, and endocrine systems. Despite progress in reducing lead exposure, the risk continues, particularly in older homes and disproportionately affecting low-income and racial and ethnic minority communities. Lead can remain in household dust, in soil that children unintentionally ingest through developmentally normal hand-to-mouth behavior, or in water that is supplied through pipes containing lead. The most critical step we can take is to prevent lead exposure before it occurs.

Approximately 120 of Maine's 700 schools are regulated as public water systems by the Maine CDC Drinking Water Program, because they serve water to at least 25 people for at least 60 days in a year from their own source of water, usually a well. These 120 schools that are public water systems must also comply with State and federal requirements for lead. 10-144 CMR Chapter 234, Lead Testing In School Drinking Water Rule focuses on identifying and mitigating lead problems in all Maine schools, including the approximate 580 schools that receive their water from a water utility, because they are not currently required to sample their water for lead. This rule will help reduce lead exposure in all Maine schools.

We, the pediatricians of Maine, thank the Maine CDC for taking this significant step in reducing lead exposure for all the children in Maine.

Sincerely,

Stephen Meister MD, MHSA
President
Maine Chapter, American Academy of Pediatrics

6

Hardy, Andrew

From: DHHS.Rulemaking.Comments@informe.org
Sent: Friday, January 10, 2020 1:17 PM
To: Hardy, Andrew
Subject: Comment on Lead Testing In School Drinking Water Rule, 10-144 CMR Ch 234

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

The following comment was submitted in regards to Lead Testing In School Drinking Water Rule, 10-144 CMR Ch 234

Name: Roger S Shaw
Title:
Organization: Easton School Department
Phone: 2072271040
Fax:
E-mail: roger.shaw@eastonschools.org
Address:P.O.Box 418
105 Country Club Road

Comments:
I fully support the testing of potable water and the sources for lead contamination. My only concern is the potential for unbudgeted remediation that may be excessive. Will there be any remediation funding made available through DOE, DHS, etc.?

7

Hardy, Andrew

From: DHHS.Rulemaking.Comments@informe.org
Sent: Tuesday, January 14, 2020 8:59 AM
To: Hardy, Andrew
Subject: Comment on Lead Testing In School Drinking Water Rule, 10-144 CMR Ch 234

The following comment was submitted in regards to Lead Testing In School Drinking Water Rule, 10-144 CMR Ch 234

Name: Steve Nolan
Title: Superintendent
Organization: Regional School Unit 40
Phone: 2077852277
Fax:
E-mail: steve_nolan@msad40.org
Address:1070 Heald Highway

Comments:
Please do not impose another expectation without providing the funding necessary to fully implement. While I support efforts to promote health and safety, I also recognize that we already have several mandates we struggle to implement due to a lack of adequate funding.

8

msba MAINE SCHOOL BOARDS ASSOCIATION
PUBLIC EDUCATION ADVOCATES

49 Community Drive, Augusta, ME 04330
Telephone: (207) 622-3473 Fax: (207) 626-2968
Website: *www.msmaweb.com*

MSSA
Maine School Superintendents Association

Testimony in Regard to Chapter 234, Lead Testing in School Drinking Water Rule

Maine School Management Association solicited feedback on this proposed rule and support its intent with some questions around process. Of greater concern is the cost and potential funding sources if major mitigation is required. Below are some comments from school leaders who are committed to making sure the drinking water in our schools is safe.

- Members responding feel that lead testing is important, particularly in older schools. Is there any exemption for brand new systems or school buildings where it can be verified that no lead piping or fixtures were used?
- One recommendation was exempting the testing requirement for new construction or piping less than five years old.
- We would like more information on flushing on page 3. Section 5, A, 2-b., seems to suggest flushing is an acceptable abatement and mitigation in some instances. What would be the parameters?
- In the case where no unacceptable lead levels are found, what is the requirement around future testing? On page 3, Section 3, number 7, the rule says that all schools must test at least once. If the initial test shows no unacceptable level, when and if is future testing required and how will that be determined?
- On mitigation, if internal piping needs to be replaced, what time frame is allowed for this to occur and who pays the cost? Is there an identified source?
- One source cited in the lead testing legislation was the School Revolving Renovation Fund. While money was put into the fund last year, it is still woefully underfunded for school projects already on a waiting list. Adding lead mitigation will require more resources.
- Concerns were raised around the public disclosure process on page 4, Section 6. It is very detailed for the general public. We would recommend and would be happy to participate in a discussion with your agency and the Department of Education to come up with a communication protocol that appropriately informs the public without causing undo alarm or confusion.
- We would suggest training sessions or at least training materials be created around these rules to assure when testing is done, it is done properly.
- Does the state have staff that can assist schools on site?

Finally, the Maine School Boards Association and Maine School Superintendents Association supported the lead testing bill, L.D. 153, that was the basis for this rulemaking. We stand ready to work with your agency to make sure these rules are implemented properly.

Steven W. Bailey
MSBA Executive Director

Eileen E. King
MSSA Executive Director

9 8

Hardy, Andrew

From: Phelps Turner <pturner@clf.org>
Sent: Friday, January 17, 2020 4:11 PM
To: Hardy, Andrew
Subject: CLF's Comments re: Lead Testing in School Drinking Water Rule (10-144 CMR Ch. 234)
Attachments: CLF Comments re Lead in School Drinking Water Rule 1.17.2020.pdf

Dear Mr. Hardy,

Please find attached Conservation Law Foundation's Comments on the Lead Testing in School Drinking Water Rule, 10-144 CMR Ch. 234. Thank you for the opportunity to comment, and thank you in advance for considering our comments.

Best,
Phelps

Phelps Turner
Senior Attorney
Conservation Law Foundation
53 Exchange Street, Suite 200
Portland, ME 04101
207-210-6439
pturner@clf.org

For a thriving New England

clf
conservation law foundation

clf
conservation law foundation

For a thriving New England

CLF Maine 53 Exchange Street, Suite 200
Portland, ME 04101
P: 207.210.6439
F: 207.221.1240
www.clf.org

Submitted by E-mail

January 17, 2020

Andrew Hardy
Maine Center for Disease Control and Prevention
286 Water Street
11 State House Station
Augusta, ME 04333-0011
andrew.hardy@maine.gov

Re: Conservation Law Foundation's Comments on the Lead Testing in School Drinking Water Rule, 10-144 CMR Ch. 234

Dear Mr. Hardy:

Pursuant to the Notice of Agency Rulemaking Proposal issued by the Maine Department of Health and Human Services (DHHS), Maine Center for Disease Control and Prevention (Maine CDC) for the Lead Testing in School Drinking Water Rule, 10-144 CMR Ch. 234, Conservation Law Foundation (CLF) submits the following comments on the proposed new rule.

The Lead Testing in School Drinking Water Rule is being proposed in order to comply with An Act to Strengthen Testing for Lead in School Drinking Water, 2019 P.L. Ch. 158, codified at 22 M.R.S. § 2604-B, which requires schools to test drinking water for lead and, if the water is found to violate the water lead levels established by DHHS, requires DHHS to issue specific guidance to the schools on reducing exposure to lead. The Act also requires DHHS to adopt rules to implement the mandated testing and guidance.

CLF protects New England's environment for the benefit of all people. Founded in 1966, CLF is a non-profit, member-supported organization with offices in Maine, Massachusetts, Vermont, Rhode Island and New Hampshire. CLF uses the law, science and the market to create solutions that protect public health, preserve natural resources and sustain a vibrant economy. CLF has been a leading advocate for healthy communities and safe drinking water in Maine and throughout New England and is engaged in numerous efforts to address the threat of emerging drinking water contaminants, including lead, throughout New England.

1. **The Proposed Rule Fails to Adequately Address the Major Childhood Health Risks Posed by Lead in School Drinking Water and Fails to Advance the State's Goal of Eradicating Childhood Lead Poisoning by 2030.**

As the DHHS and the Maine CDC stated in a January 2019 report to the Maine Legislature, lead poisoning is "one of the major environmental health threats for children in

Maine."[1] The report also indicated that, in young children, exposure to lead, even at very low levels, causes brain damage that can result in learning and behavioral problems, and that the national scientific consensus is that there is no safe level of lead in a child's body. Childhood lead poisoning is primarily a consequence of exposure to lead paint and lead dust, but the U.S. Environmental Protection Agency (EPA) estimates that 10 to 20 percent of human exposure to lead may come from the water we drink.[2]

Because lead poisoning poses serious health risks to our children, and because the proposed rule will regulate the water our children drink at our schools—the places we send them to learn and be safe—it is critical that Maine CDC adopt a rule that is protective of our children's health, that reflects the consensus that there is no safe level of lead in a child's body and that advances the state's goal of eradicating childhood lead poisoning by 2030. 22 M.R.S. § 1314-A. As set forth below, the proposed rule fails to do so in a number of ways, and therefore requires a number of revisions.

2. The Proposed Response Level for Lead Must be Lowered to 1 ppb in Order to Protect Childhood Health.

The proposed Maine Response Level (MRL) for Lead of 15 parts per billion (ppb) is far too high to be protective of childhood health and must be lowered to 1 ppb. According to the American Academy of Pediatrics, schools should take remedial action when lead is found in water at any level greater than 1 ppb.[3] Thus, the proposed rule sets a response level that is 15 times higher than the American Academy of Pediatrics' recommendation. Further, to the extent Maine CDC is relying on the U.S. EPA's 15 ppb standard in its Lead and Copper Rule, it is critical to note that that standard is not a health-based standard, but rather an administrative tool used by EPA to assess overall public water systems.[4] EPA has established a maximum contaminant level goal (MCLG) of 0 ppb lead in drinking water, but has not yet stablished this as a federal standard.[5]

---

[1] Maine Department of Health and Human Services, Maine Center for Disease Control and Prevention, "Update on Childhood Lead Poisoning Prevention in Maine 2018, A Report to the State of Maine Legislature Committee on Health and Human Services," January 2019, https://www.maine.gov/dhhs/mecdc/environmental-health/eohp/lead/documents/screening-report-2018.pdf.

[2] U.S. Environmental Protection Agency, "3Ts for Reducing Lead in Drinking Water in Schools," https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=20017JM2.txt.

[3] American Academy of Pediatrics, "With No Amount of Lead Exposure Safe for Children, American Academy of Pediatrics Calls For Stricter Regulations," June 20, 2016, https://www.aap.org/en-us/about-the-aap/aap-press-room/pages/With-No-Amount-of-Lead-Exposure-Safe-for-Children,-American-Academy-of-Pediatrics-Calls-For-Stricter-Regulations.aspx.

[4] NPR, "Where Lead Lurks, and Why Even Small Amounts Matter," August 12, 2016, https://www.npr.org/sections/health-shots/2016/08/12/483079525/where-lead-lurks-and-why-even-small-amounts-matter.

[5] U.S. Environmental Protection Agency, "Lead and Copper Rule," https://www.epa.gov/dwreginfo/lead-and-copper-rule; "National Primary Drinking Water Regulations," https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations.

In addition, New Hampshire and Massachusetts are both considering legislation that will establish 1 ppb as the standard for lead in water.[6] For all these reasons, and in order to protect our children from the serious risks posed by lead poisoning, the proposed rule should be revised to set the MRL for lead at 1 ppb.

3. Schools with Water Lead Level Exceedances Should be Required to Take Action.

The "Water Lead Levels" provisions should be strengthened. Under Section 4(A) of the proposed rule, a school that reports any drinking water outlet with a first-draw lead level exceeding the MRL for lead of 15 ppb "may" refer to Section 5 of this rule, to reduce lead exposure. Given the risks posed by childhood lead poisoning, the rule should be revised to state that the schools "shall" refer to Section 5 of this rule, to reduce lead exposure, so that they are required to take the abatement and mitigation actions outlined in Section 5 to reduce lead exposure. This revision would make Section 4(A) consistent with Section 5(A), which provides that if a school reports lead in water above the MRL, then certain actions "will" occur.

4. Maine CDC Should Require that Schools Prohibit the Use of Contaminated Outlets.

The "Abatement and Mitigation" provisions should also be strengthened. Section 5(A)(3) states that Maine CDC will "recommend that a school prohibit use of any drinking water outlet exceeding the lead MRL by physically disconnecting the outlet or by posting 'Do Not Drink' signs." First, in order to protect children from future lead poisoning, the rule should be revised to remove the option for posting signage, and instead require physical disconnection in all cases of water lead level exceedance. Second, in order to ensure that any contaminated outlet is immediately removed from service, and that the health risk is thereby immediately eliminated, either permanently or temporarily until a lead remediation plan is successfully implemented, the rule should be revised to state that Maine CDC will "require that a school prohibit use of any drinking water outlet exceeding the lead MRL by physically disconnecting the outlet."

Further, Section 5(A)(1) and (2) of the proposed rule fail to set any deadlines by which Maine CDC must provide guidance on mitigation measures, and by which schools must develop and submit lead remediation plans. In order to avoid delayed abatement and mitigation, the rule should be revised to add deadlines for these critical steps. In New Hampshire, for instance, schools and child care facilities where there have been exceedances must implement a remediation plan, as approved by the state, within 30 days of notification of parents or, in consultation with the state, as soon as practicable. N.H. R.S.A. § 485:17-a(I). The deadlines added to Sections 5(A)(1) and (2) of the proposed rule should be no later than 30 days.

---

[6] An Act Relative to Testing for Lead in Water in Schools and Child Care Facilities, SB 599, http://www.gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=2804&sy=2020&txtsessionyear=2020&txttitle=lead&sortoption=; An Act Ensuring Safe Drinking Water in Schools, H.774, https://malegislature.gov/Bills/191/H774.

clf

conservation law foundation

5. The Actions Proposed for Public Notification to Parents Should be Mandatory.

The proposed "Public Notification to Parents" provisions fail to establish any mandatory actions, and should be strengthened in order to require notification. Under Section 6(B), in the event of a drinking water report of lead above the MRL, schools "may distribute" public notice. Under Section 6(D), if Maine CDC does not receive certification from the school within 120 days of the school receiving notification of high lead results, then Maine CDC "may post" the school's lead results in the local newspaper. Because immediate notification of MRL exceedances is critical to establishing parental knowledge of potential childhood lead poisoning, and potential sources thereof, the term "may distribute" in Section 6(B) should be changed to "shall distribute" and the term "may post" in Section 6(D) should be changed to "shall post."

Further, the proposed rule fails to set any deadline for mandatory notification concerning exceedances of the MRL for lead. The rule should require that in the event of an exceedance, either the school or Maine CDC notify the parents within 5 days. In New Hampshire, a school or child care facility at which there has been an exceedance must notify parents within 5 business days. N.H. R.S.A. § 485:17-a(I). Similarly, the 120-day period established in Section 6(D) is too long, in light of the immediate and long-lasting effects of childhood lead poisoning, and should be reduced to no more than 10 days.

Regardless of what the MRL for Lead is set at, parents should be notified about all the results of testing for lead in water, not just those that exceed the MRL.

6. The Amount of Testing for Lead in Water in Schools Should be Increased.

Under proposed Section 3(B)(7), "[a]ll schools must test all drinking water outlets at their school building(s) at least once," and under Section 3(B)(9), additional sampling may be required in certain circumstances (where Maine CDC determines that testing of more samples would help identify the source of lead contamination, confirm lead mitigation results or confirm that major changes in source water did not negatively impact water quality). In New Hampshire, schools and child care facilities are required to test once every 5 years, until at least 3 rounds are below the state standard. N.H. R.S.A. § 485:17-a(I). In order to account for changing lead levels from the aging of pipes in our schools and in the water supply systems that serve our schools, the proposed rule should be revised to require lead testing at least once every 5 years.

Thank you for the opportunity to comment on this proposed new rule.

Sincerely,

Phelps Turner
Senior Attorney
Conservation Law Foundation

10

Hardy, Andrew

From: Bradley Sawyer <bradley.sawyer@mainerwa.org>
Sent: Friday, January 17, 2020 4:32 PM
To: Hardy, Andrew
Subject: Maine Rural Water Association comments on Ch. 234
Attachments: MRWA Comments Chapter 234.pdf

Mr. Hardy,
Please see the attached comments from the Maine Rural Water Association regarding the rulemaking for Chapter 234. Should you have any questions please do not hesitate to contact me.

Best,

Bradley Sawyer
Director of Government Affairs
Maine Rural Water Association
207-737-9014
P.O. Box 263
254 Alexander Reed Rd.
Richmond, ME 04357

mrwa
MAINE RURAL WATER ASSOCIATION

PO BOX 263 • 254 ALEXANDER REED RD
RICHMOND, ME 04357
PHONE: 207-737-4092 • FAX: 207-737-7150
E-MAIL: MRWA@MAINERWA.ORG
WEBSITE: WWW.MAINERWA.ORG

January 17, 2020

Andrew Hardy
Department of Health and Human Services – Maine CDC
11 State House Station
286 Water Street
Augusta, ME 04333-0011

Re: Lead Testing in School Drinking Water Rule

The water utilities represented by the Maine Rural Water Association are committed to delivering safe, clean and potable water to the customers they serve. They actively work to ensure that the water distributed to all customers meets all state and federal regulations. Unfortunately, the water still must pass through other pipes and outlets before it reaches the end user, creating more risk and increasing the chances of contamination. Maine is not immune from this problem as we have an older building stock that contains materials once thought to be safe.

Time required:

This rule, as currently written, requires or will likely require a significant amount of time from entities that do not have much to spare. The rule specifies that "each school must determine the person who will collect the samples from the school's drinking water outlets" which include any fixture with the potential of providing drinking water or culinary purpose. In some schools the number of these fixtures will be in the hundreds. With the draining requirement added into the puzzle, the time required by a staff member or contracted entity is noteworthy.

Should the school seek outside help with this new mandate it is reasonable to assume that they would ask the local water utility to assist in this testing. Our members are community focused and have a fantastic track-record of assisting whenever they can, but a task of this size would consume considerable time.

The final entity with an unfunded increase in time is the Drinking Water Program. The people of that department undertake a massive amount of work to protect the quality of the water in Maine. They regulate around 1,900 public water systems, including the schools they monitor. This rule would add roughly 500 schools to their workload without an increase in funding. It is unreasonable to ask them to shoulder this additional responsibility without providing relief from other duties or an increase in staff.

Cost concerns:

The rule specifies that "The Department will provide funds to the designated laboratory for the cost of sample bottles." Does this provision apply to the first round of testing or all testing until an acceptable level is identified? Should multiple rounds of testing be required we believe it should be the state, not individual municipalities burdened with the cost.

This rule provides no financial assistance to support the schools in the testing process outside of the sample bottles and lab testing. We believe the time spent gathering all the samples is significant and should be accounted for.

Once the testing is complete it is reasonable to believe that some schools in Maine will require steps to decrease lead in their water and lower the risk to their students. Should schools

need immediate and costly renovations to ensure safe drinking water for the students, teachers, and staff it seems that funding assistance should be available.

Other questions and comments:

One question our membership has on a larger scale is regarding the new lead and copper rule from the EPA. Currently there is no sunset provision in this rule to phase these testing requirements out when a new LCR is approved. Is there a plan to do so or will this rule stand until changed by the Maine Legislature?

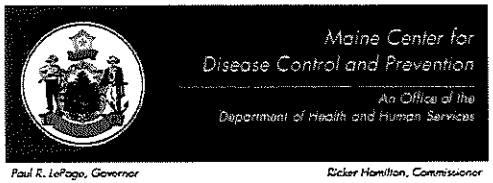
The proposed rule states that "the Department will provide outreach materials to detail possible mitigation measures." We respectfully request that should this rule be passed by the Legislature that a group of relevant parties be brought together to help craft such materials. As we know, the issue of toxins in water is quite complex and the Maine Rural Water Association believes that any material provided to the public should be written for the intended audience. Our organization would be more than happy to assist with this process.

It is common in Maine for school buildings to have wings or sections built in different decades to serve changing populations, yet a comprehensive list of the varied building stock does not exist. It is realistic to assume that should a lead level issue be found it would not be in a brand-new school with brand-new fixtures. We recommend that such a list is compiled, and the initial testing be concentrated in the highest risk schools.

MRWA and our members believe in safe, clean water and we appreciate the work that it takes to ensure this cornerstone of society. This rule, in its current form, is a noble goal but has numerous omissions including properly acknowledging and compensating the time required for testing, as well as the cost of subsequent tests and remediation. We urge the Department to identify the full cost of undertaking an effort of this size and properly identify the cost for the Legislature to consider.

Respectfully submitted,

Bradley Sawyer
Directory of Government Affairs
Maine Rural Water Association



Commenter Sign-In Sheet

Lead Testing In School Drinking Water
10-144 CMR Ch. 234
Public Hearing
January 8, 2020, 11 AM

	Name	Organization	Phone #	Email
1	Patrick MacRoy	E.N.V. Health Strategy Ctr.		PMacRoy@preventiveenvironmentalhealth.org
2	Roger Crouse	Kennebec Water Dist		rcrouse@kennebecwater.org
3	Carol White	Chebeague Is. School/CAW LLC	207.749.6906	cawhitemaine@gwi.net
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				

Name	Organization	Phone #	Email
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			
33			