

**Testimony of Conservation Law Foundation  
re: LD 206, Resolve, Regarding Legislative Review of Portions of Chapter 234: Lead Testing in School  
Drinking Water Rule, a Major Substantive Rule of the Department of Health and Human Services,  
Maine Center for Disease Control and Prevention**

**February 9, 2021**

Senator Claxton, Representative Meyer and members of the Health and Human Services Committee:

My name is Phelps Turner and I am a Senior Attorney at Conservation Law Foundation (CLF), a non-profit, member-supported organization that protects New England's environment for the benefit of all people. 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 contaminants, including lead, throughout New England.

CLF has concerns about LD 206 because it seeks to authorize Chapter 234, "Lead Testing in School Drinking Water Rule," a flawed rule developed by the Maine Department of Health and Human Services (DHHS), Maine Center for Disease Control and Prevention (CDC). Because Chapter 234 fails to provide adequate protections for Maine's children from childhood lead poisoning and its harmful health effects, the rule must be amended before it is authorized by LD 206.

**Childhood Lead Poisoning is a Major Health Threat to Maine's Children**

In January 2019, the Maine CDC submitted a report to this Committee concerning lead poisoning, indicating that it is "one of the major environmental health threats for children in Maine."<sup>1</sup> The report also indicates 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. Every year, hundreds of children in Maine become lead poisoned. This poisoning remains primarily a consequence of exposure to dust from lead paint found in our state's old housing stock. Childhood lead poisoning can also result from exposure to lead in water, a scenario we've seen play out in Flint, Michigan.

**Chapter 234 Fails to Adequately Protect Maine's Children from Lead Poisoning**

Chapter 234 was developed pursuant to 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

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<sup>1</sup> 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>.

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.

The CDC conducted a rulemaking process to develop Chapter 234. On January 17, 2020, CLF submitted comments on the draft rule, the majority of which were not acted upon by the CDC. CLF's comments identified several ways in which the rule failed to protect our children's health, failed to reflect the consensus that there is no safe level of lead in a child's body and failed to advance the state's goal of eradicating childhood lead poisoning by 2030. 22 M.R.S. § 1314-A. Two key flaws in Chapter 234 must be resolved before LD 206 can be enacted:

- The lead standard in the rule should be changed from 15 parts per billion (ppb) 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.<sup>2</sup> Thus, Chapter 234 sets a response level that is 15 times higher than the American Academy of Pediatrics' recommendation. In order to protect our children from the serious risks posed by lead poisoning, the proposed rule should be revised to set the standard at 1 ppb.
- The requirement in the rule that schools test drinking water outlets at their building(s) only once should be changed to require testing at least once every 5 years, in order to account for changing lead levels from the aging of pipes in our schools and in the systems that serve our schools. In its response to CLF's comments on this issue, the CDC indicated that it could not require schools to perform "ongoing" or "routine" testing. This position is inconsistent with the plain language of the Act, which requires the CDC to adopt rules establishing the "frequency of testing."<sup>3</sup> By frequency, the Legislature could not have meant once.

### **Before LD 206 Can Be Enacted, Chapter 234 Must Be Amended to Protect Maine's Children**

Because lead poisoning poses serious health risks to Maine's 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 it be revised so that it is protective of our children's health, reflects the consensus that there is no safe level of lead in a child's body and advances the state's goal of eradicating childhood lead poisoning by 2030. The revisions outlined above must be implemented before Chapter 234 can be authorized under LD 206.

Thank you for your time and attention to this important matter.

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<sup>2</sup> 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>

<sup>3</sup> 22 M.R.S. § 2604-B(3). Meriam-Webster defines "frequency" as "the number of repetitions of a periodic process in a unit of time," <https://www.merriam-webster.com/dictionary/frequency>.