

Proposed Amendments and New Rule N.J.A.C. 7:10-5.9
Docket Number: 11-25-12
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Collaborative

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Dear Acting Commissioner Ed Potosnak,

The Jersey Water Works Lead in Drinking Advisory Committee submits the following comments on Proposed Amendments and New Rule N.J.A.C. 7:10-5.9 Docket Number: 11-25-12.

Background

The Lead in Drinking Water Advisory Committee at Jersey Water Works (JWW) brings together a diverse group of experts to achieve practical, cost-effective, equitable, and permanent solutions to removing lead from drinking water.

Overview

Jersey Water Works is pleased to see that the New Jersey Department of Environmental Protection (NJDEP) has proposed updates to the New Jersey Lead and Copper Rule and acknowledges the Department's dedication and commitment to protecting the public's health and delivering clean, safe drinking water to New Jersey. The Advisory Committee celebrates stronger protection from lead exposure.

The committee offers comments on :

- Strengthening the guidance for Lead Serviced Line Replacement plans
- Eliminating customer cost shares as a barrier to equitable lead service line (LSL) replacements statewide.
- Improving operational capacity limitations for small, disadvantaged water systems, particularly those serving overburdened communities.
- Clarifying and strengthening standards for Schools and Childcare Centers.
- Ensuring effective Public Notification.

Strengthening the guidance for Lead Serviced Line Replacement plans

Improving the Definition of Access in accordance with the US Environmental Protection Agency's Lead and Copper Rule Improvements (LCRI)

The committee recommends that NJDEP revise the proposed rule to require replacement of privately-owned lead service lines whenever the water system has “access” to the line, as required by the LCRI.

As drafted, the proposed rule appears to require replacement of privately-owned lead service lines only when the property owner gives consent.¹ In contrast, the LCRI requires water systems to replace the entire lead service line, regardless of ownership, if the water system has “access” to do so. The LCRI recognizes that there may be situations in which the system already has legal and/or physical access to replace the privately owned portion of a line without obtaining the property owner's affirmative consent.

NJDEP should revise 7:10-5.9(d)(4) to require full replacement wherever the system has access. It should also incorporate the LCRI's requirement that a water system's lead service line replacement plan must include “Identification of any laws, regulations, and/or water tariff agreements that affect the water system's ability to gain access to conduct full lead and galvanized replacement service line replacement, including the citation to the specific laws, regulations, or water tariff agreement provisions. This includes identification of any laws, regulations, and/or water tariff agreements that require customer consent and/or require or authorize customer cost-sharing.”²

Guidance for post-disturbance flushing

The proposed rule should require that a water system's service line replacement plan specify a procedure for consumers and customers to flush service lines and on-premise plumbing of particulate lead following disturbance or replacement of a lead service line or a service line of unknown -composition, and following full or partial replacement of a lead service line, consistent with applicable requirements for notification and mitigation. This element is explicitly required under the federal LCRI at 40 CFR 141.84(c)(1)(iv) as part of every water system's mandatory service line replacement plan. NJDEP should mandate a [flushing procedure](#) directly in the state rule to ensure clear, consistent public health protections after any disturbance or replacement activity that could mobilize lead particles.

Eliminating customer cost shares as a barrier to equitable LSL replacements statewide.

More robust Guidance for Free and Mandatory Ordinances

¹ See proposed section 7:10-5.9(d)(4) (“The supplier shall replace the portion of the lead service line that it owns if it does not result in a partial lead service line replacement. If the supplier does not own the entire lead service line, the supplier shall make at least four good faith efforts using at least two different methods of communication to offer to replace the property owner's side of the lead service line to conduct full lead service line replacement.”).

² 40 CFR 141.84(c)(1)(viii), [https://www.ecfr.gov/current/title-40/part-141/section-14.1.84#p-141.84\(c\)\(1\)\(viii\)](https://www.ecfr.gov/current/title-40/part-141/section-14.1.84#p-141.84(c)(1)(viii)),

The committee recommends more robust guidance on implementing local municipal ordinances that allow for free or mandatory LSL replacement programs.

LSLs are typically jointly owned: the water system owns the portion from the water main to the curb stop, and the property owner owns the portion from the curb stop to the home. Many residents must rely on absentee property owners to consent to their properties being made available for work and to coordinate LSL replacements. Without free LSL replacements for water customers, the only remaining LSLs will be in lower-income areas, exacerbating equity concerns.

Minimizing property owner refusal for private side replacement of LSLs

In reality, cost-sharing does not work, and in most cases, it increases the number of property owner refusals. Whether the locality is a disadvantaged city, an urban area with an abundance of absentee landowners, or a more affluent neighborhood, investor and government-owned water utilities encounter many property owners who simply refuse to participate if required to pay a cost share. Consequently, water utilities waste time on outreach, and the replacement process lacks coordination, becoming inefficient and resulting in far fewer pipes being replaced at a significantly higher cost.

Improving operational capacity limitations for small, disadvantaged water systems, particularly those serving overburdened communities.

Improving Water System Capacity to Meet State Deadline

The proposed 90-day deadlines for submitting updated service line inventories, replacement plans, sampling plans, and materials evaluations will pose a challenge to many systems serving disadvantaged communities. Given that limited staff, aging infrastructure, and competing regulatory demands already strain systems, the committee recommends providing grants, targeted technical assistance, and funding pathways to help disadvantaged systems build the necessary capacity.

Increase Laboratory Capacity

The committee recommends that NJDEP address lab-capacity constraints by increasing the number of certified labs available to New Jersey water systems.

The proposed rule increases sampling volume and complexity by requiring fifth-liter sampling, expanding tap sampling sites, and requiring annual sampling at schools and childcare facilities. Many water systems serving disadvantaged communities rely on a small number of labs and lack the resources to absorb higher per-sample costs or longer turnaround times. The committee recommends that NJDEP address lab-capacity constraints by increasing the number of certified labs available to New Jersey water systems.

Clarifying and strengthening standards for Schools and Childcare Centers.

Lead Action Level

The Advisory Committee recommends further reducing the action level for lead in drinking water for schools and childcare facilities to 5 ppb, a level that filters have been certified to achieve. The current action level of 15 ppb and the subsequent proposal of 10 ppb, set by the Department, are not health-based standards but rather technology-based treatment measures that gauge the

effectiveness of corrosion control treatment to minimize lead leaching. Since exposure to small amounts of lead can seriously impact children's health and cognitive development, and current science cannot identify a safe level of exposure, the only true health-based standard would be zero. As a technology-based treatment standard, lead concentrations in drinking water at schools and childcare facilities should be kept as low as reasonably achievable³.

Sampling of Unregistered Child Care Facilities

NJDEP should clarify that the Department, in conjunction with the Department of Children and Families (DCF), is responsible for identifying unregistered child care facilities, especially when determining the primary use of private residences, for which water systems do not maintain records, or provide proper guidance on obtaining these records

Filters

There is no safe level of lead exposure. The Advisory Committee recommends strengthening the filter provisions for schools and childcare facilities. Though lead exposure poses a risk to people of all ages, children are most vulnerable. Even in small doses, infants, toddlers, and preschoolers up to age six are particularly susceptible, as their growing bodies absorb lead much faster than adults do. For children, prolonged exposure can cause irreversible damage to the brain and nervous system, slowing growth and development and prompting behavioral, hearing, and speech problems. And the long-term damage is not just physical. Lead exposure can also trigger severe learning disabilities, as well as emotional and social health impacts. Certified point-of-use filters should be required and maintained for all outlets used for drinking water, food preparation, and/or baby formula mixing in schools and childcare facilities.

Ensuring Effective Public Notification

The 1-Hour Rule

The Advisory Committee recommends revisiting the one-hour window requirement for a more feasible schedule.

The requirement to notify the mayor and municipal clerk within one hour of learning of a lead action level exceedance is too short and risks the dissemination of inaccurate or panicked information; instead, the Department should consider a more feasible window between 1 hour and 24 hours that would allow for verified messaging and coordination with local health agencies. The committee recommends considering a more feasible window.

**Submitted by the Jersey Water Works Lead in Drinking Advisory Committee
(formerly Taskforce)**

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³ <https://dgs.dc.gov/page/water-sampling-results-dc-public-schools>