

MEMORANDUM

To: City/County Commissioners/Public Health Directors
City/County Environmental Health Directors
District Directors

From: Michael J. Cambridge, Director 
Division of Environmental Health Protection

Date: September 15, 2016

Subject: Implementation Guidance for Subpart 67-4
Lead Testing in School Drinking Water

On September 6, 2016, Governor Andrew M. Cuomo signed legislation (A.10740/S.8158) requiring all school districts and boards of cooperative educational services (BOCES) in New York State to test potable water systems for lead contamination and to take responsive actions. To implement this new law, the Department of Health issued emergency regulations, titled *Lead Testing in School Drinking Water* -10 NYCRR Subpart 67-4 (Subpart 67-4), effective September 6, 2016.

Lead in children's drinking water is a serious public health issue. This memorandum outlines the requirements of Subpart 67-4 and provides guidance for implementing and enforcing the regulation. For your convenience, please find attached a copy of the emergency regulations and a link to the Department of Health's website where the emergency regulations are posted: <http://health.ny.gov/regulations/emergency/>.

Subpart 67-4 applies to all New York State school districts and BOCES (collectively, "schools"), including those already classified as a public water system under 10 NYCRR Subpart 5-1. The regulations do not apply to nonpublic schools.

Pursuant to the accompanying regulations, all potable water outlets that are currently or potentially used for drinking and cooking purposes must be sampled, including but not limited to bubblers, drinking fountains, and faucets. Faucets may be located anywhere on school property where drinking water is currently or potentially obtained, including but not limited to the athletic field.

Schools are responsible for identifying the total number of outlets that require sampling. Samples must be first draw samples, collected in 250 ml containers, and taken from a cold water outlet where the water has been motionless in the pipes for a minimum of 8 hours but not more than 18 hours. Samples must be analyzed by a laboratory that is certified under the Department of Health's Environmental Laboratory Approval Program (ELAP). Attached, please find a Sampling Quick Reference Guide (QRG) for recommendations on sampling.

For school buildings in service as of the effective date of this regulation, by September 30, 2016, all buildings serving children in prekindergarten through grade five must have collected and submitted a sample from all potable water outlets. Any schools serving children in grades six through twelve, not including children in lower grades, must complete collection and submit samples, from all potable water outlets, by October 31, 2016. For school buildings that

are put into service after the effective date of this regulation, initial samples, from all potable water outlets, must be performed prior to occupancy, provided that if the building is put into service between the effective date of this regulation, but before October 31, 2016, the school shall have 30 days to perform first-draw sampling. Please note that these deadlines are for collection and submission only, not for receiving analysis results from an ELAP-approved laboratory. Results are subject to lab wait times, which cannot be determined by the school or the state. It may take several months to obtain results.

First-draw sampling that was conducted at buildings after January 1, 2015 in a manner consistent with these regulations will satisfy the initial sampling requirements. Additionally, schools may be eligible for a waiver for testing school buildings, if the school can demonstrate that it performed testing and remediation prior to the publication date of the regulations that substantially complies with the regulations, and that lead levels in the building's potable water are below the action level. Additional guidance on the waiver process is forthcoming.

If lead levels are detected above 15 parts per billion (ppb) at any potable water outlet, the school must discontinue use of that outlet until a lead remediation plan is implemented to mitigate the lead level, and test results indicate that the lead levels are at or below the action level. The school must ensure that building occupants have an adequate alternate supply of potable water for drinking and cooking until the remediation plan is implemented. Schools must report the exceedance to the local health department (LHD) within one business day. Test results must also be provided in writing to all staff and parents no more than 10 business days after receiving the report. For schools that performed testing prior to September 6, 2016, and that have lead levels at an outlet exceeding 15 ppb, the school must notify all staff and parents in writing of the test results by September 20, 2016.

Schools must post the results of all lead testing and any remediation plans on their website as soon as possible, but no more than six weeks after the school receives the laboratory reports. For schools that performed testing prior to September 6, 2016 that is consistent with the regulation, the school must report the results and any remediation plans on its website by October 18, 2016.

In addition, by October 31, 2016, schools must post on their website a list of all buildings that have been determined to be lead-free. More information on lead-free determinations is provided in the attached Question and Answer (Q&A) document.

By November 11, 2016, schools must report completion of all required sampling, information regarding any testing conducted prior to the effective date of the regulation, and a list of all buildings that are determined to be lead-free, to the Department of Health, LHD, and State Education Department. Schools will submit these reports through a statewide electronic reporting system, utilizing the Department of Health's Health Commerce System. Details on how to report using the statewide electronic reporting system will be forthcoming.

The school must retain all records of test results, lead remediation plans, determinations that a building is lead-free, and waiver requests, for ten years following the creation of such documentation. Copies of such documentation must be immediately provided to the Department of Health, LHD, or State Education Department, upon request.

Roles and Responsibilities

At this time, the DOH is requesting your assistance with responding to questions from schools within your jurisdiction concerning the regulation and, in particular, proper sampling protocols. In addition to providing guidance to schools and answering questions, LHDs will play a role in receiving sampling results showing that the action level has been exceeded, reviewing waivers, following up with schools to help them achieve compliance, and enforcement if necessary. The Department is in the process of developing an Environmental Health Manual (EHM) Item which will further outline and define roles and expectations. This EHM is expected to be released shortly.

2016 eHIPS Time and Activity and State Aid Reporting

The following initial guidance is provided to support time and activity reporting in the Environmental Health Information and Permitting System (eHIPS) and LHD reporting under Article 6 for state aid reimbursement related to early implementation of these emergency regulations.

For schools already included to eHIPS*:

- Use Operation Category/Code: “Environmental Lead”/2200
- Select the service category “Environmental Lead Investigation – Service Request”
Note: Information reported to eHIPS as outlined above will be reported to Line 24 of the eHIPS State Aid Statistical Report (“CS&FP – Environmental Lead”) and to the “Lead Poisoning Prevention” line on Form D/Environmental Health of the 2016 Quarterly Expenditure Report.

**Many schools are already included to eHIPS for various permitted and regulated activities.*

Bulk Time and Activity Reporting in eHIPS:

- DOH is currently evaluating options to clarify program reporting categories within eHIPS and will provide additional guidance in the near future.

Training

The DOH, in conjunction with the EPA, will be hosting a webinar on September 21, 2016 to assist the LHDs with implementation of this new regulation. In addition, on September 23, 2016, there will be another webinar targeted to schools. Details for webinar registration are forth-coming.

Next Steps

The Department of Health and SED are preparing to send out a joint memo to the schools, similar in content to this memo, regarding the implementation of the regulation. This joint memo is expected to come out shortly.

Additional Information

As a follow-up to the conference call on August 25, 2016, attached, please find the list of laboratories certified by the Environmental Laboratory Approval Program (ELAP) to perform

lead analyses. A list of approved laboratories can be found on the ELAP website at: <http://www.wadsworth.org/labcert/elap/comm.html>. In addition, the Environmental Protection Agency (EPA) guidance titled "3Ts for Reducing Lead in Drinking Water in Schools," is available at: https://www.epa.gov/sites/production/files/2015-09/documents/toolkit_leadschools_guide_3ts_leadschools.pdf:

Also attached, please find a Question and Answer document (Q&A) that outlines some typical questions regarding lead in schools and Subpart 67-4. In addition, information can be found on the [Department's website](#). Please note that the Department will be continually updating this website as information becomes available.

If you have any questions, please do not hesitate to contact your field coordinator regarding this program.

Attachments (4)

cc: Nathan Graber, M.D.
R. Sokol/T Boepple Swider
B. Miner/T. Shay/T. Carroll
C. Jones Rafferty
D. Ripstein
S. Dorward
Regional Environmental Health Directors
Regional BCEHFP Field Coordinators
Regional BWSP Field Coordinators
CEH-DEHP
LHD2