

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Environmental **LAW**

NYS schools must test drinking water for lead

On Sept. 6, 2016, Gov. Andrew Cuomo signed legislation mandating that schools across the state test their drinking water for lead contamination. The same day the New York State Department of Health issued emergency regulations implementing the new law and requiring that school districts test their drinking water for lead contamination by Oct. 31, 2016. Schools must then report results to the state and local health departments and to the State Department of Education no more than 10 business days after the school receives test results from an approved laboratory.

Touted as the first legislation in the nation to require schools to test their water for lead, the bill sailed through the Senate unanimously and drew only one dissenting vote in the Assembly. There is nothing we take so much for granted as clean, safe drinking water, and the debacle with lead contamination in Flint, Michigan, and the ongoing problem with PFOA in Hoosick Falls clearly shook the public's faith in the safety of our water and spurred a bipartisan response. When schools across the state began to test voluntarily and reports of significant levels of lead began to appear, a level of concern emerged that transcended the usual partisan politics characteristic of Albany. Republican Sen. Tom O'Mara, chairman of the Senate Environmental Conservation Committee, sponsored the bill that he has described as "a landmark law that makes New York a leader."

Changing standards

Previously, schools in New York with municipal water have not been required to test their water for lead or other contaminants. However, all schools have been subject to lead standards under the federal Safe Drinking Water Act. The



By **RONALD G. HULL**
Daily Record
Columnist

SDWA does not require schools to test their water, but since 1986, it has required the use of "lead-free" pipes and solder. Until 2014, the "lead-free" label actually applied to pipes with up to 8 percent lead, a standard which has now been reduced by 97 percent to 0.25 percent. This new standard is not retroactive. Plumbing in schools built between 1986 and 2014 is still considered lead-free under the SDWA if it contains no more than 8 percent lead.

The new testing law, which is codified as Section 1110 of the Public Health law, applies to any structure that may be occupied by children, but it exempts any structure that is deemed lead-free under the SDWA. Thus, schools built since 1986 are mostly exempt from testing.

Each school district in the state is required, by Oct. 31, to make available on its website a list of buildings deemed to be lead-free under the SDWA.

Schools required to test their water are subject to immediate requirements to perform the testing. Any school serving children in the fifth grade or younger was required to collect water samples by Sept. 30. All other schools are required to collect samples by Oct. 31. All samples must be analyzed by a laboratory approved under the DOH Environmental Laboratory Approval Program.

If the lead concentration in water at an outlet exceeds 15 micrograms per liter (15 ug/L), further use of the fixture is prohibited until a lead remediation plan is implemented and the

water is retested and determined to be safe. The school should also notify all parents, in writing, and not more than 10 business days after the school has received a report of an exceedance.

Disclosing results

For all testing results, each school district must make the results available on its website not more than six weeks after receiving the results.

The law also requires each school district to submit electronic reports to the state. By no later than Nov. 11, each school district must confirm that all required sampling has been done and must follow up by reporting the test results no more than 10 days after receiving laboratory results. Each school must also retain the results for 10 years.

Schools that have already tested their water and, if necessary, remediated the plumbing in a manner that substantially complied with the new requirements may apply to its local health department for a waiver. Schools must report to the state by Nov. 11 if a waiver has been requested.

The Commissioners of Health and Education are required by Dec. 1, 2016, to submit a joint report to the governor and legislature on the initial results of testing, identify the most common sources of lead contamination, and recommend short and long-remediation measures.

Paying for remediation

The legislature also amended education law so that school districts will be eligible for state funds for the cost of testing and remediation. To complement this carrot, there is also a stick. The regulations provide that where a school does not comply,

Continued on next page

Continued from previous page

the DOH or local health department “may take any action authorized by law,” including the assessment of civil penalties.

After the initial testing is completed in 2016, schools are required to retest their water in 2020 and then at least every five years, at a minimum.

The law is designated as Section 1110 of the Public Health Law, and the emergency

regulations are at Subpart 67-4 of Title 10 of the New York Codes, Rules and Regulations. Significantly, the new law and regulations apply only to public schools; no private schools are affected. However, the law reaches all of New York’s 770 school districts and BOCES, and covers more than 5,000 buildings and 2.5 million students.

There are no comparable federal statutes or regulations. However, the USEPA has a voluntary guidance titled “3Ts

for Reducing Lead in Drinking Water in Schools,” which the DOH has adopted as its guidance to schools for implementing the new program.

Ronald G. Hull is a senior attorney in Underberg & Kessler LLP’s environmental and litigation practice groups. He has over 25 years of experience in the areas of environmental and municipal law and litigation.