

**Arbor Hill EJ • Children’s Defense Fund – New York • Citizens’ Committee for Children of New York • Clean and Healthy New York • Community Foundation of Herkimer and Oneida Counties • Downstate Regional Lead Resource Center • Earthjustice • Empire State Consumer Project • Environmental Advocates NY • Great Neck Breast Cancer Coalition • Green Inside and Out • Healthy Schools Network • Herkimer County HealthNet • Huntington Breast Cancer Action Coalition • Lead-Free Mohawk Valley • Learning Disabilities Association of New York State • Mohawk Valley Latino Association • Moms for a Non-Toxic New York • Mosaic Health • Natural Resources Defense Council • The Neighborhood Center, Inc. • New York League of Conservation Voters • Northern Manhattan Improvement Corporation • NYS American Academy of Pediatrics • NYS PTA • New York State United Teachers • Sierra Club Atlantic Chapter • Tenants Political Action Committee • WE ACT for Environmental Justice**

December 16, 2020

Honorable Andrew M. Cuomo  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

Re: Protecting Children by Improving New York State’s Program to Remove Lead from Drinking Water in Schools

Dear Governor Cuomo:

We write to thank you for your leadership in supporting and signing into law the “School Potable Water Testing and Standards” legislation in 2016 and to ask that you now support several improvements to the program to ensure that children are better protected from the dangers of lead in drinking water in their schools. Once again, New York’s leadership is needed.

## **Background**

The [Centers for Disease Control](#), [American Academy of Pediatrics](#) and the [World Health Organization](#) all state that there is no safe level of lead exposure. The maximum level for lead in school drinking water recommended by the [American Academy of Pediatrics](#) is one part per billion (1 ppb). While there is no safe level of lead for our children, right now 1 ppb is the level at which lead can be detected most reliably through testing by a certified lab. Unfortunately, New York’s action level is currently 15 ppb.

The impacts of lead exposure in children can be severe. Even at very low levels once considered safe, lead can cause serious, irreversible damage to the developing brains and nervous systems of babies and young children. Lead can decrease a child’s cognitive capacity, cause behavior problems, and limit the ability to concentrate – all of which, in turn, affect the ability to learn and to behave in school and at home. Children with serious lead-related brain impacts are less likely to graduate from high school and are more prone to delinquency, teen pregnancy, violent crime, and incarceration.

The primary source of lead in school drinking water comes from plumbing materials – pipes, fixtures, and fittings. Additionally, more lead can dissolve into the water when water sits unused in school plumbing over weekends, school breaks, and summer.

The problem of lead in school drinking water can be compounded during the COVID-19 crisis. Most schools have experienced an extended shutdown and may be further shutdown as cases increase in New York communities. Some water utilities implement corrosion control to keep lead levels low in drinking water. But, during school shutdowns, water is not coursing through the pipes at a high enough rate to effectively coat the pipes in schools, thereby triggering higher lead levels when schools do reopen. Flushing would help to alleviate this problem, but New York State is not requiring schools to flush their drinking water systems, and it is unclear whether schools are voluntarily flushing their systems.

### **Updating New York State's Current Program for Testing Lead in Public School Drinking Water**

Our recommendations for updating New York State's current program are set forth below.

- Lowering the action level to 5 ppb. New York was the first state in 2016 to adopt a mandatory testing and remediation program for all its public schools. Lowering the level from 15 ppb to 5 ppb – in alignment with the Food and Drug Administration's criteria for what is acceptable in bottled water – appears to be gaining acceptance as a feasible standard to achieve from a regulatory and technical standpoint. In March 2019, Canada established a 5 ppb standard, following a 2018 European Union directive recommending that maximum lead levels in drinking water be dropped from 10 to 5 ppb. In February 2020, the joint committee governing the American National Standards for the National Sanitation Foundation (NSF) and the American National Standards Institute (ANSI) lowered the maximum allowable concentration of lead in treated drinking water to 5 ppb. Domestically, states such as Illinois, Montana, and the District of Columbia have adjusted their action levels accordingly. The State of Vermont leads the nation's efforts, mandating a 4 ppb maximum for lead exposure. At 5 ppb, New York State would be a national leader as the largest state in the country with the lowest action level.
- Removing exemptions for certain schools from testing. The 2016 law provides a waiver and exemption for schools that meet the definition of "lead-free" under federal law. However, there is no such thing as "lead-free" either in fact or law. Current federal law, 42 USC § 300g-6(d), defines "lead free" as not containing more than "0.2 percent lead when used with respect to solder and flux" and up to "a weighted average of 0.25 percent lead when used with respect to the whetted surfaces of pipes, pipe fittings, plumbing fittings and fixtures." Providing exemptions for schools that have lead in their plumbing is not protective of children or staff.
- Testing water more often. Unless there is regular monitoring of each site at which water can be consumed, lead contamination will be missed at some of the locations where children drink water. Lead release is sporadic. A single non-detect sample at a single tap does not guarantee that the water in that tap is always safe to drink. Repeating sampling frequently identifies elevated lead levels at taps that were not detected during previous sampling efforts.
- Environmental Justice - provide data on how the testing requirement is being implemented in the poorest schools. We are also concerned about environmental justice: the poorest schools, enrolling the poorest children, have the fewest staff resources and financial ability to carry out a new mandate and to remediate fully. It is also unlikely these schools could wait a year for State Aid reimbursement to flow. Healthy Schools Network's review of a small sample of NYS school data indicates that schools with more outlets closed have more minority and low-income students who, as we know, are heavily dependent on subsidized school meal programs and free water. The state needs to collect enough data to determine whether these schools are complying, how

they are complying (remediation or merely shutting off the tap), whether they can afford permanent remediation, and whether they are providing free water to their students.

- Greater transparency. While some school districts voluntarily posted the actual lab reports to be disclosed, the 2016 law did not require schools to do so. School districts should be required to (a) post all lab reports on-line and (b) report in detail on the remediation it has conducted and post that information on-line.
- Requiring annual training of those responsible for the testing. The 2016 law did not require that those collecting samples to certify that they received training. The state Department of Health already produce training videos on how to properly collect samples. Requiring an attestation from the school districts that the personnel tasked with collecting the samples have reviewed this information would be an important step to ensure accurate results.

Thank you again for addressing this important issue. New York State was a leader in 2016, and we look to the state to reassume that leadership position. We look forward to continued improvements to the program through your executive budget and during this coming session to better protect our children.

Joan Leary Matthews of the Natural Resources Defense Council can serve as an initial point of contact for our organizations regarding this request. She can be reached at (212) 727-4571 or [jmatthews@nrdc.org](mailto:jmatthews@nrdc.org).

Respectfully yours,

Aaron Mair  
Founder  
Arbor Hill EJ, Albany, New York

Morri Markowitz, MD  
Director  
Downstate Regional Lead Resource Center

Ben Anderson  
Director of Poverty and Health Policy  
Children's Defense Fund – New York

Courtney Bowie  
Managing Attorney, Northeast Office  
Earthjustice

Alice Bufkin, MPAff  
Director of Policy and Advocacy for Child and Adolescent Health  
Citizens' Committee for Children of New York

Judy Braiman  
President  
Empire State Consumer Project

Kathleen A. Curtis  
Executive Director  
Clean and Healthy New York

Rob Hayes  
Director of Clean Water  
Environmental Advocates NY

Alicia Fernandez Dicks  
President & CEO  
Community Foundation of Herkimer and Oneida Counties

Beth Fiteni  
Director  
Green Inside and Out

Gilda D. Gillim  
Parent Advocate

Laura Weinberg  
President  
Great Neck Breast Cancer Coalition

Claire Barnett  
Executive Director  
Healthy Schools Network

Elyse Enea  
Executive Director  
Herkimer County HealthNet

Karen Joy Miller  
Founder & President  
Huntington Breast Cancer Action Coalition

David Jones, PharmD  
Clinical Pharmacist  
Mark E. Warfel, D.O., FAAP  
Lead-Free Mohawk Valley Coalition Chair  
Lead-Free Mohawk Valley

Kathryn Cappella  
Secretary-Treasurer  
Learning Disabilities Association of New York  
State

Carmen S Martinez  
Executive Director  
Mohawk Valley Latino Association

Alexandra Zissu  
Ulster County Chapter Head  
Moms for a Non-Toxic New York

Caitlin Adams  
Director of Practice Operations, MV Region  
Mosaic Health

Joan Leary Matthews  
Senior Attorney & Director, Urban Water  
Natural Resources Defense Council

Patrice Vannortwick  
Division Director  
The Neighborhood Center, Inc.

Joshua Klainberg  
Senior Vice President  
New York League of Conservation Voters

Matthew Chachere  
Staff Attorney & Member of the NYS Advisory  
Council on Lead Poisoning Prevention  
Northern Manhattan Improvement Corporation

Elie Ward  
Director of Policy  
NYS American Academy of Pediatrics

Dana Platin  
President  
NYS PTA

Andrew Pallotta  
President  
New York State United Teachers

Caitlin Ferrante  
Conservation Program Manager  
Sierra Club Atlantic Chapter

Michael McKee  
Treasurer  
Tenants Political Action Committee

Peggy M Shepard  
Executive Director  
Sonal Jessel  
Director of Policy  
WE ACT for Environmental Justice