

**Children's Defense Fund-New York • Citizens' Campaign for the Environment  
Clean and Healthy New York • Earthjustice • Empire State Consumer Project  
Environmental Advocates NY • Food & Water Watch • Great Neck Breast Cancer Coalition  
Green Inside and Out • Healthy Schools Network • Huntington Breast Cancer Action Coalition  
Natural Resources Defense Council • New York City Coalition to End Lead Poisoning  
New York Lawyers for the Public Interest • New York League of Conservation Voters  
NYS American Academy of Pediatrics • NYS PTA • NYS Sustainable Business Council  
Northern Manhattan Improvement Corporation • Sierra Club Atlantic Chapter  
WE ACT for Environmental Justice • Western NY Council on Occupational Safety & Health  
Women's Voices for the Earth**

April 26, 2021

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 Reduce Lead from  
Drinking Water in Schools – S2122/A160

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 S2122/A160. This bill would improve the program by ensuring that children are better protected from the dangers of lead in drinking water in their schools. Once again, New York's leadership is needed.

Public health officials and school administrators recognize that lead in drinking water is a public health threat to students. It is also a health threat to school staff who are or may become pregnant. Schools are facing many challenges this year due to COVID-19. Given that the need for resources for schools in the ongoing pandemic is great, it makes sense to fund lead testing and remediation in school water from water infrastructure funds. Funding from these sources would relieve the financial pressure on the education budget.

## **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 is 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 extended shutdowns and may be closed again 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 for Lead in Public School Drinking Water**

According to New York State Health Department data, over drinking 400,000 outlets were tested and the cost of these initial samples were \$38,290,354. Over the course of testing, 47,887 drinking water outlets, or 12%, reported elevated lead concentrations above 15 ppb, and \$27,814,514 was spent by the state to remediate them. In order to understand the impact that lowering New York State’s action level from 15 ppb to 5 ppb would have, NYLCV Education Fund (NYLCVEF) volunteer researchers collected and analyzed thousands of lab reports from nearly 90% of all New York State school districts containing data from the 2016 initial round of testing. The full results of this study can be found in the [“5 is the New 15”](#) report issued on February 4, 2021.

Reviewing the available data available to NYLCVEF researchers identified an additional 63,428 outlets that tested between 5 ppb and 15 ppb, representing 17.2% of additional outlets currently in use that would be in need of remediation under a more protective standard. Assuming school remediation costs to be reimbursed will be similar to those claimed in 2016, the estimated faucet and fountain replacement cost for the 63,428 outlets between 5 ppb – 15 ppb would be \$30,273,020.

Given the benefits of a more protective standard and the relatively low cost of achieving it, 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 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. Vermont leads the nation’s efforts, mandating a 4 ppb action level. 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. Sampling more frequently identifies elevated lead levels at taps that were not detected during previous sampling efforts.
- Greater transparency. While some school districts voluntarily posted the actual lab reports on-line, the 2016 law did not require schools to do so. In this bill, school districts should be required to post all lab reports on-line. This would enable researchers and advocates have ready access to the data.
- Requiring annual training of those responsible for the testing. The 2016 law did not require that those collecting samples be required to receive training. The state Department of Health has produced 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.

Concerning the financial aspects of this bill, we recommend that you fund this work for New York schools from the 2017 and 2019 Clean Water Infrastructure Act (CWIA). We note that for this fiscal year, the CWIA will have \$2 billion in funding. This includes the unspent \$1 billion from last year and this year’s \$1 billion. Alternatively, these school water infrastructure improvements could be funded through the \$3 billion Restore Mother Nature Environmental Bond Act, on the ballot in November 2022, which includes \$550 million for water quality projects.

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.

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,

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