


MEMORANDUM

February 22, 2019

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Resolution adopting Bill 2-19, Health – Lead in Drinking Water – Schools, as a Board of Health Regulation

PURPOSE: Introduction – no Council votes required

Bill 2-19, Health – Lead in Drinking Water - Schools, sponsored by Lead Sponsor Councilmember Hucker and Co-Sponsors Councilmember Riemer, Council Vice President Katz, Councilmembers Albornoz, Council President Navarro and Councilmembers Jawando, Rice, Friedson, and Glass, was introduced on February 5, 2019. Today the Council is scheduled to introduce a Resolution adopting Bill 2-19 as a Board of Health Regulation.¹

Bill 2-19 would:

- establish a County lead limit for a drinking water outlet in a public school in the County; and
- require remediation of a drinking water outlet in an occupied public school building with a lead concentration greater than the County lead limit.

Background

MD Code, Environment, §§ 6-1501 and 6-1502 require all public and private schools in Maryland to test for lead in each drinking water outlet on or before July 1, 2018. See ©7-12. This State law also requires each school to remediate or close each drinking water outlet found to have an elevated level of lead. Under State law, an elevated level of lead is greater than 20 parts per billion (ppb).

Pursuant to this State law, Montgomery County Public Schools (MCPS) tested its drinking water outlets and completed remediation of 97 percent of the outlets with an elevated level. MCPS estimates that it spent approximately \$540,000 for systemwide testing and \$150,000 for remediation.

¹ Key search terms: #SafeWater4Students
Other search terms: lead, water, water fountains, schools and health.

Bill 2-19 would establish a 5 ppb standard for lead in a drinking water outlet in a public school in the County. The bill would piggy-back on the recent State law and implementing regulations that require each public and nonpublic school in the State to regularly test and remediate drinking water outlets with an elevated level of lead. The State uses the EPA 20 ppb standard. Bill 2-19 would rely on the existing State requirements but establish a lower County lead limit requiring action for public schools in the County.

County Code §2-65, as amended, provides that the County Council is, and may act as, the County Board of Health, and in that capacity may adopt any regulation which a local Board of Health is authorized to adopt under state law. Maryland Code Health-General Article §3-202 authorizes the County Board of Health to adopt rules and regulations regarding any nuisance or cause of disease in the County.

This packet contains:

Proposed Resolution

Bill 2-19

Legislative Request Report

MD Code, Environment, §§ 6-1501 and 6-1502

Circle #

1

3

6

7

Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE MONTGOMERY COUNTY BOARD OF HEALTH**

Lead Sponsor: Councilmember Hucker
Co-Sponsors: Councilmember Riemer, Council Vice President Katz, Councilmember Albornoz,
Council President Navarro and Councilmembers Jawando, Rice, Friedson, and Glass

SUBJECT: Resolution to adopt Bill 2-19, Health - Lead in Drinking Water - Schools

Background

1. County Code §2-65, as amended, provides that the County Council is, and may act as, the County Board of Health, and in that capacity may adopt any regulation which a local Board of Health is authorized to adopt under state law.
2. Maryland Code Health-General Article §3-202 authorizes the County Board of Health to adopt rules and regulations regarding any nuisance or cause of disease in the County.
3. On [Date], the County Council enacted Bill 2-19, Health - Lead in Drinking Water - Schools. Bill 2-19 established a County lead limit for a drinking water outlet in a public school in the County.
5. On [Date], the Council held a public hearing on this regulation. As required by law, each municipality in the County and the public were properly notified of this hearing.
6. The County Council, sitting as the Board of Health, finds after reviewing the evidence in the record that the County lead limit for a drinking water outlet in a public school required by this Regulation is necessary to protect the health of County residents.

Action

The County Council for Montgomery County, Maryland, sitting as the County Board of Health, approves the following resolution:

1. The provisions of Section 24-8D of the Montgomery County Code, entitled "Lead in drinking water.", as added by Bill 2-19, Health – Lead in Drinking Water – Schools, are adopted as a Board of Health regulation. A copy of Bill 2-19 is attached to this resolution.
2. This resolution takes effect on [100 days after adoption].

This is a correct copy of Council action.

Megan Davey Limarzi, Esq.
Clerk of the Council

F:\LAW\BILLS\1902 Health - Lead Levels - Public Water\Board Of Health Regulation For 2-19.Docx

Bill No. 2-19
Concerning: Health – Lead in Drinking Water - Schools
Revised: February 5, 2019 Draft No. 4
Introduced: February 5, 2019
Expires: August 5, 2020
Enacted: [date]
Executive: [date signed]
Effective: [date takes effect]
Sunset Date: None
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Hucker
Co-Sponsors: Councilmember Riemer, Council Vice President Katz, Councilmember Alborno, Council President Navarro and Councilmembers Jawando, Rice, Friedson, and Glass

AN ACT to:

- (1) establish a County lead limit for a drinking water outlet in a public school in the County;
- (2) require remediation of a drinking water outlet in an occupied public school building with a lead concentration greater than the County lead limit; and
- (3) generally amending the law governing the action level for lead in drinking water outlets.

By adding

Montgomery County Code
Chapter 24. Health and Sanitation
Section 24-8D

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 24-8D is added as follows:**

2 **24-8D. Lead in drinking water.**

3 **(a) Findings.**

4 **(1) The United States Environmental Protection Agency has**
 5 **determined that:**

6 **(A) lead is a toxic metal that is harmful to human health;**

7 **(B) children are at a greater risk from lead exposure than adults;**
 8 **and**

9 **(C) there is no safe level of lead for children.**

10 **(2) MD Code, Environment, §§ 6-1501 and 6-1502 require public and**
 11 **nonpublic schools to:**

12 **(A) regularly test for lead in drinking water outlets located in**
 13 **each occupied school building;**

14 **(B) within 24 hours, prevent all physical access to water from a**
 15 **drinking water outlet with an elevated level of lead until the**
 16 **problem is mitigated; and**

17 **(C) report the results of all lead testing to the Maryland**
 18 **Department of the Environment.**

19 **(3) A lead level in a drinking water outlet greater than 5 parts per**
 20 **billion is a danger to children in public schools.**

21 **(b) Definitions. In this Section, the following words have the following**
 22 **meanings:**

23 **Action level means a level of lead in water, which if exceeded, requires a**
 24 **school to take remedial action, notification, and follow-up-sampling.**

25 **Director means the Director of the Department of Environmental**
 26 **Protection or the Director's designee.**

27 Drinking water outlet means a potable water fixture that is used for
 28 drinking or food preparation. A drinking water outlet includes:

- 29 (1) a water fountain, faucet, or tap that is used or potentially used for
 30 drinking or food preparation;
- 31 (2) an ice-making machine;
- 32 (3) a hot drink machine; and
- 33 (4) any sink that is known to be used for human consumption.

34 County lead limit means a lead concentration in drinking water of 5 parts
 35 per billion in a 250 milliliter first-draw.

36 Public school means a school operated by the Montgomery County Board
 37 of Education or a public charter school established by the Montgomery
 38 County Board of Education.

39 State regulations means the Code of Maryland Regulations, Title 26,
 40 Department of the Environment, Subtitle 16, Lead, Chapter 07, Lead in
 41 Drinking Water – Public and Nonpublic Schools, as amended.

42 (c) Action level. A public school must:

- 43 (1) complete all testing and reporting required by the State regulations;
- 44 (2) submit a copy of all test results and reports required by the State
 45 regulations to the Director; and
- 46 (3) take the remedial action, notification, and follow-up sampling
 47 required for an elevated level of lead under the State regulations
 48 for any drinking water outlet with a lead concentration that is
 49 greater than the County lead limit.

50 *Approved:*

51

Nancy Navarro, President, County Council

Date

LEGISLATIVE REQUEST REPORT

Bill 2-19

Health – Lead in Drinking Water - Schools

- DESCRIPTION:** Bill 2-19 would establish a County lead limit for a drinking water outlet in a public school in the County and require remediation of a drinking water outlet in an occupied public school building with a lead concentration greater than the County lead limit.
- PROBLEM:** The State requires public schools to test and remediate drinking water outlets for lead elevation greater than the EPA limit of 20 ppb. However, there is no safe level of lead for children.
- GOALS AND OBJECTIVES:** Decrease the potential lead poisoning from an elevated lead level from a drinking water outlet in a public school.
- COORDINATION:** MCPS, Health Department, County Attorney
- FISCAL IMPACT:** To be provided
- ECONOMIC IMPACT:** To be provided
- EVALUATION:** To be provided
- EXPERIENCE ELSEWHERE:** The District of Columbia uses a 5 ppb standard for lead levels in public school drinking water outlets.
- SOURCE OF INFORMATION:** Robert H. Drummer, Senior Legislative Attorney
- APPLICATION WITHIN MUNICIPALITIES:** To be researched.
- PENALTIES:** N/A

West's Annotated Code of Maryland
Environment
Title 6. Toxic, Carcinogenic, and Flammable Substances (Refs & Annos)
Subtitle 15. Lead in Drinking Water (Refs & Annos)

MD Code, Environment, § 6-1501

§ 6-1501. Definitions

Effective: June 1, 2017

Currentness

In general

(a) In this subtitle the following words have the meanings indicated.

Drinking water outlet

(b)(1) "Drinking water outlet" means a potable water fixture that is used for drinking or food preparation.

(2) "Drinking water outlet" includes:

(i) A water fountain, faucet, or tap that is used or potentially used for drinking or food preparation; and

(ii) Ice-making and hot drink machines.

Elevated level of lead

(c) "Elevated level of lead" means a lead concentration in drinking water that exceeds the standard recommended by the U.S. Environmental Protection Agency in technical guidance.

Public water system

(d) "Public water system" has the meaning stated in § 9-401 of this article.

Technical guidance

(e)(1) "Technical guidance" means the most recent technical guidance issued by the U.S. Environmental Protection Agency for reducing lead in drinking water in schools.

(2) "Technical guidance" includes:

(i) 3Ts for Reducing Lead in Drinking Water in Schools (2006); and

(ii) Any subsequent technical guidance issued by the U.S. Environmental Protection Agency for reducing lead in drinking water in schools.

Credits

Added by Acts 2017, c. 386, § 1, eff. June 1, 2017.

MD Code, Environment, § 6-1501, MD ENVIR § 6-1501

Current through legislation effective July 1, 2018, from the 2018 Regular Session of the General Assembly

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

West's Annotated Code of Maryland

Environment

Title 6. Toxic, Carcinogenic, and Flammable Substances (Refs & Annos)

Subtitle 15. Lead in Drinking Water (Refs & Annos)

MD Code, Environment, § 6-1502

§ 6-1502. Testing for presence of lead in drinking water outlets in school buildings

Effective: June 1, 2017

Currentness

Scope of section

(a) This section does not apply to a public or nonpublic school that is classified as a public water system.

Adoption of regulations

(b)(1) Subject to paragraph (2) of this subsection, the Department, in consultation with the State Department of Education, the Department of General Services, and Maryland Occupational Safety and Health, shall adopt regulations to require periodic testing for the presence of lead in each drinking water outlet located in an occupied public or nonpublic school building.

(2) Before adopting the regulations required under this section, the Department shall gather information about the testing processes, protocols, and efforts being undertaken by each county school system and private school to establish a safe and lead-free environment, including whether the school system or school has a plan for testing and, if appropriate, remedial measures.

Requirements

(c) Regulations adopted under this section shall:

(1) Require initial testing to be conducted on or before July 1, 2018;

(2) Phase in the implementation of the required testing beginning with:

§ 6-1502. Testing for presence of lead in drinking water..., MD ENVIR § 6-1502

- (i) School buildings constructed before 1988; and
 - (ii) School buildings serving students in a prekindergarten program or any grade from kindergarten through grade 5;
- (3) Establish a sampling method for the required testing that is consistent with technical guidance;
- (4) Establish the frequency for the required testing;
- (5) Address best practices and cost-effective testing;
- (6) Require test samples from drinking water outlets to be analyzed by an entity approved by the Department; and
- (7) If an analysis of a test sample indicates an elevated level of lead in a drinking water outlet, require that:
- (i) The results of the analysis be reported to the Department, the State Department of Education, the Maryland Department of Health, and the appropriate local health department;
 - (ii) Access to the drinking water outlet be closed;
 - (iii) An adequate supply of safe drinking water be provided to school occupants;
 - (iv) The school take appropriate remedial measures, including:
 - 1. Permanently shutting or closing off access to the drinking water outlet;
 - 2. Manual or automatic flushing of the drinking water outlet;
 - 3. Installing and maintaining a filter at the drinking water outlet; or

§ 6-1502. Testing for presence of lead in drinking water..., MD ENVIR § 6-1502

4. Repairing or replacing the drinking water outlet, plumbing, or service line contributing to the elevated level of lead;
- (v) The school conduct follow-up testing; and
- (vi) Notice of the elevated level of lead be:
 1. Provided to the parent or legal guardian of each student attending the school; and
 2. Posted on the Web site of the school.

Waiver from testing

(d) The Department, in consultation with the State Department of Education, may grant a waiver from the testing required under this section if:

- (1)(i) The drinking water outlets in the school building have been tested for the presence of lead in a manner that substantially complies with regulations issued under this section; and
- (ii) The test results indicate no elevated levels of lead in any of the drinking water outlets in the school building;
- (2)(i) Students in the school building do not have access to any drinking water outlet; and
- (ii) Bottled water is the only source of water for drinking or food preparation in the school building;
- (3) A plan is in place for testing the drinking water outlets and addressing any elevated level of lead in a drinking water outlet in the school building in a manner that substantially complies with the regulations required under this section; or
- (4) The local school system has:
 - (i) Completed comprehensive lead testing of the drinking water from plumbing fixtures; and

(ii) A comprehensive monitoring program to ensure safe drinking water in its schools.

Report

(e) On or before December 1, 2018, and on or before December 1 each year thereafter, the Department and the State Department of Education jointly shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly on the findings of the testing required under this section, including:

(1) The name and address of each school found to have elevated levels of lead in its drinking water; and

(2) The type, location in the building, and use of each drinking water outlet with an elevated level of lead.

Credits

Added by Acts 2017, c. 386, § 1, eff. June 1, 2017. Amended by Acts 2017, c. 62, § 6.

MD Code, Environment, § 6-1502, MD ENVIR § 6-1502

Current through legislation effective July 1, 2018, from the 2018 Regular Session of the General Assembly

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.