

§ 1242. DEFINITIONS

As used in this chapter:

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(9) "Outlet" means a drinking water fixture, such as a drinking fountain, ice machine, or faucet, the school determines is currently or reasonably expected to be used by or students or staff [BN: by students only] for consumption or cooking purposes, including a drinking fountain, ice machine, or a faucet.

Commented [EN1]: I believe we reached agreement on the language I read to the group so I assume this is an oversight. Schools make the determination as was done in the pilot. I am not comfortable leaving this in rule-making. As to the other changes, I want to be sure that we only reference "drinking fountains, ice machines, kitchen faucets and faucets" as possible sources without suggesting they are included per se. A disconnected non-functioning drinking fountain doesn't need to be tested. The proposal is based upon committee discussion to limit outlet usage by students.

(10) "Alternative water source" means: i) public water systems below action level standards; or (ii) non-public water systems if the water is suitable for consumption pursuant to Agency of Natural Resources standards and that is below consistent with the action level standards; or, is commercially available water.

Commented [EN2]: Some wordsmithing to ensure that the water cannot be at action level standards.

Commented [EN3]: Typo. As we agreed to, commercial water is a stand alone alternative.

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§ 1243. TESTING OF DRINKING WATER

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(e) Waiver.

(1) A school district, supervisory union, independent school, or child care provider that tested all an outlets under this section are waived from the requirements of subsection (b) of this section for that outlet if that the school district, supervisory union, independent school, or child care provider:

Commented [EN4]: I object to "all" and prefer "an outlet" think that the waiver should apply to any outlet that has been tested in accordance with the provision if the testing shows that either the outlet is below action level or it is otherwise remediated. If a school tested 98/100 outlets the school should be eligible for a waiver on those 98 if they are below action level.

(A) has completed testing of all the outlets in each building or facility it owns, controls, or operates in after November 1, 2017;

(B) has conducted testing according to a methodology consistent with the Department methodology established under subsection (d) of this section; and

(C) has implemented or scheduled remediation that ensures that drinking water from the outlets is below the action level or no actions level of lead was found at and an outlet.

Commented [EN5]: Typo

(2) A school district, supervisory union, independent school, or child care provider waived under this subsection shall provide written notice and testing results to the Department of Health prior to XXX

(3) A school district, supervisory union, independent school, or child care provider waived under this subsection shall be eligible for immediate reimbursement from the State for the costs of remediation consistent with this subsection (f) herein.

Commented [EN6]: As per the position of schools. State pays all costs.

(f) Costs.

The state shall bear and assume full responsibility for all direct, indirect and related costs associated or arising from: testing, sampling, remediation and restoring areas disturbed by testing, sampling and remediation to original condition. The state may refuse to pay for remediation not included in the remediation plan submitted to the state unless the remediation was conducted after November 1, 2017 and prior to the effective date of enactment of this provision.

Commented [EN7]: As Jeff indicated, passage of this provision as written is the underpinning for agreement to the whole.

#### § 1244. RESPONSE TO ACTIONABLE LEVEL; NOTICE; REPORTING

If a sample of drinking water under section 1243 of this title is at the action level at an outlet, the school district, supervisory union, independent school, or child care provider that owns, controls, or operates the building or facility in which the outlet is located shall conduct remediation to eliminate or reduce lead levels in the drinking water from the outlet. In conducting remediation, a school district, supervisory union, independent school, or child care

~~provider shall strive to achieve the lowest level of lead possible in drinking water and, at a minimum, shall:~~

(1) prohibit use of an outlet at the action level until a lead remediation plan or other remediation measure published by the Commissioner is implemented or provided in U.S. Environmental Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools is implemented and:

(A) post remediation sampling indicates that lead levels from the outlet are below the action level; or

(2) prohibit use of the outlet at action level until the outlet is permanently removed, or disabled, or otherwise cannot be reasonably accessed by any person [BN: student];

(3) after a lead remediation plan is implemented, retest the outlet until results indicate that the lead levels are at or below the action level;

(3) provide occupants of the building or child care facility an adequate supply of potable alternative water for drinking and cooking until remediation is performed;

(4) notify all staff and all parents or guardians of students directly of the test results, proposed or taken interim action, in writing or by electronic means, within 10 school days after receipt of the laboratory report; and

(5) submit lead remediation plans to the Department as they are completed;

(6) notify all staff and all parents or guardians of students in writing or by electronic means of what remedial actions have been taken; and

(7) submit notice to the Department that remediation plans have been completed.

Sec. 3. 16 V.S.A. § 2973 (b) is amended to read:

**Commented [EN8]:** No agreement to the deleted language. The requirement is to remediate to below action levels—"striving" is subject to interpretation and puts the schools in a bad spot. If the intent is to require a school to remediate to as low as possible, this would require a school to choose. For example, does the school choose the \$ 100,000 fix to replace the entire supply line to get the outlet to 1 ppb versus a \$ 900.00 remediation that puts the outlet at 2 ppb.

The deleted language also requires remediation and the language that follows, consistent with our agreement, allows for other options such as removing the outlet.

**Commented [EN9]:** This need to be consistent with the definition of "outlet" ("student" under my proposal). A school would need to exclude the plumber in order to comply. Our building will be returned to the landlord after the lease and it is commercial property subject to EPA standards. It will not be a school building in perpetuity.

**Commented [EN10]:** This is a stand-alone option or Option 2. You choose between remediating the outlet (Option 1) or Option (2). Adding reasonably brings this in line with the definition of outlet.

**Commented [EN11]:** I believe this is a typo as the outlet is only remediated if it tests below action levels.

**Commented [EN12]:** This language is not necessary. Option 1 is set forth in (A) and it requires remediate and retest to below action level. This does not apply to Option 2 which contemplates removing or disabling the outlet.

**Commented [EN13]:** I believe we agreed that the actual results do not need to be provided but a summary sufficient to inform: # outlets below action level; # at or above action level with the ppb level specified. In addition the school should provide a link to the VDH online database for full test results. This should be included.

**Commented [EN14]:** Want to distinguish between an interim action and completed remediation—they may end being one and the same but could also be different. Action may be disabling the outlet.

**Commented [de15]:** BN

(b)(2)(D) An approved independent school may, in calculating tuition rates pursuant to § 2973, include all direct, indirect and related costs associated or arising from: testing, sampling, remediation and restoring areas disturbed by testing, sampling and remediation to original condition as required under 18 V.S.A. chapter 24A. The Secretary shall not deny approval of an application to increase a tuition rate if such costs serve as the basis, in part, for the proposed tuition rate. This section shall not apply to costs reimbursable under 18 V.S.A. §1243.