

# Administrative Procedures – Final Proposed Rule Filing

## Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

**Rule Governing Testing and Remediation of Lead in the Drinking Water of Schools and Child Care Facilities**

/s/ Michael K. Smith , on 6/8/2020  
(signature) (date)

Printed Name and Title:  
Michael K. Smith  
Secretary  
Agency of Human Services

RECEIVED BY: \_\_\_\_\_

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

**RECEIVED**  
JUN - 9 2020

**BY:** .....

Final Proposed Coversheet

1. TITLE OF RULE FILING:  
**Rule Governing Testing and Remediation of Lead in the Drinking Water of Schools and Child Care Facilities**

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE  
20P-003

3. ADOPTING AGENCY:  
Department of Health

4. PRIMARY CONTACT PERSON:  
*(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).*

Name: David Englander

Agency: Department of Health

Mailing Address: 108 Cherry Street, Burlington, VT 05401

Telephone: 802 863 - 7280 Fax: 802 951 - 1275

E-Mail: ahs.vdhrules@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://www.healthvermont.gov/about-us/laws-regulations/public-comment>

5. SECONDARY CONTACT PERSON:  
*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).*

Name: Brendan Atwood

Agency: Department of Health

Mailing Address: 108 Cherry Street, Burlington, VT 05401

Telephone: 802 863 - 7280 Fax: 802 951 - 1275

E-Mail: ahs.vdhrules@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:  
*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?)* No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

Final Proposed Coversheet

*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).*

18 V.S.A. §1247

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

18 V.S.A. §1247 states "Commissioner...shall adopt rules regarding the implementation of the requirements of [18 V.S.A. chapter 24A]." The rules shall include: requirements or guidance for taking samples of drinking water; the frequency and scope of continued sampling; requirements for implementation of a lead mitigation plan; and any other requirements that the Commissioner deems necessary for the implementation of the requirements of this chapter.

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

The rule includes requirements for taking samples of water used for consumption and food preparation in schools and child care programs. The rule also includes sampling methodology, the frequency and scope of continued sampling, and requirements for implementation of lead mitigation plans.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

It is required by Act 66 (2019) as noted in Section 7.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

Final Proposed Coversheet

This rulemaking is being done at the specific direction of the General Assembly.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Schools, child care programs, parents, guardians, children, students, teachers, school staff, child care program staff, the Department of Health, the Department of Environmental Conservation, the Department for Children and Families, and the Agency of Education.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

While the General Assembly appropriated funding for the cost of laboratory testing and remediation for the first (current) round of testing, it is unclear who will bear the costs of future rounds. The cost to schools and child care programs will vary widely, depending on the number of taps to be tested and the cost of remediation. The laboratory testing and shipping is approximately \$60 per outlet.

19. A HEARING WAS HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 3/4/2020

Time: 01:00 PM

Street Address: 108 Cherry Street, Burlington, VT

Zip Code: 05401

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Final Proposed Coversheet

Date:

Time: AM

Street Address:

Zip Code:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

3/11/2020

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Lead

Drinking water

schools

childcare

Student

Teacher



**To:** Representative Robin Chesnut-Tangerman, Chair of the Legislative Committee on Administrative Rules

**From:** David Englander, Senior Policy and Legal Advisor for Vermont Department of Health

**Re:** Rule Governing Testing and Remediation of Lead in the Drinking Water of Schools and Child Care Facilities

**Date:** June 1, 2020

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*Following the filing of the rule for public comment, the Health Department made the following changes to the proposed rule:*

These are the specific changes made as a result of comments made during the public comment period:

1. The content of Section 6.5 was removed in order to clarify that only “outlets,” and not “fixtures,” are required to be tested.
2. The word “permanent” has been removed from Section 6.5 (formerly Section 6.6) to clarify that “Posting a sign at an outlet that has tested at or above the action level is not an acceptable means of remediation.”
3. The Department has clarified the requirement in Section 6.5.2 (formerly Section 6.6.2) by replacing “fixture” with “sink faucet” to eliminate confusion regarding toilets, water heads, and bath faucets.
4. Section 7 was updated to require notification of staff, parents and guardians of students prior to all sampling.

## Administrative Procedures – Adopting Page

### **Instructions:**

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

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1. TITLE OF RULE FILING:

**Rule Governing Testing and Remediation of Lead in the  
Drinking Water of Schools and Child Care Facilities**

2. ADOPTING AGENCY:

Department of Health

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU  
BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **A NEW RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF  
THE LAST ADOPTION FOR THE EXISTING RULE*):

## INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

**Meeting Date/Location:** January 13, 2020, Pavilion Building, 5<sup>th</sup> floor conference room, 109 State Street, Montpelier, VT 05609

**Members Present:** Chair Brad Ferland, Dirk Anderson, John Kessler, Steve Knudson, Clare O'Shaughnessy and via phone Diane Bothfeld and Matt Langham

**Members Absent:** Ashley Berliner, Jennifer Mojo, and Shayla Livingston

**Minutes By:** Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the December 9, 2019 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Presentation of Proposed Rules on pages 2-5 to follow.
  1. Child Care Licensing Regulations: Center Based Child Care and Preschool Programs, Vermont Agency of Human Services, Department for Children & Families, page 2
  2. General Assistance - Emergency Assistance Rules, Vermont Agency of Human Services, Department for Children & Families, page 3
  3. Solid Waste Management Rules, Agency of Natural Resources, page 4
  4. Rule Governing Testing and Remediation of Lead in the Drinking Water of Schools and Child Care Facilities, Department of Health, page 5
- Next scheduled meeting is February 10, 2020 at 2:00 p.m.
- 3:20 p.m. meeting adjourned.



**Proposed Rule: Rule Governing Testing and Remediation of Lead in the Drinking Water of Schools  
and Child Care Facilities, Department of Health  
Presented by David Englander**

Motion made to accept the rule by John Kessler, seconded by Dirk Anderson, and passed unanimously with the following recommendations:

1. Economic Impact Analysis, page 2, #3: If state revenues are neutral, please state. Correct spelling for "entity" and "dependent" in the first two paragraphs. Pluralize either "cost" or "remain" in the first sentence of the third paragraph.
2. Economic Impact Analysis, page 4, #7: Clarify wording (i.e. "take seek").
3. Economic Impact Analysis, page 4, #8: Reword "No continued sampling is not an alternative." Perhaps consider "Ongoing sampling is required."
4. Public Input, page 2, #5: Correct spelling of "Environmental" and "Research".

# Administrative Procedures – Economic Impact Analysis

## **Instructions:**

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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### 1. TITLE OF RULE FILING:

**Rule Governing Testing and Remediation of Lead in the Drinking Water of Schools and Child Care Facilities**

### 2. ADOPTING AGENCY:

Department of Health

### 3. CATEGORY OF AFFECTED PARTIES:

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:*

Schools, child care programs - The cost to these entities will come in three forms: the laboratory testing, the actual taking of samples, and the remediation.

The cost of laboratory testing is straightforward - samples are sent to the laboratory and are tested. The

## Economic Impact Analysis

approximate cost for each outlet used for consumptive purposes (including the first sample and the flush sample) is \$60 for testing and shipping. The total costs to each entity for testing will vary depending on the number of outlets. As of December 2019, the entity with the smallest number of outlets was one, and the entity with the largest number of outlets was 346, thus costing \$60.00 and \$10,380.00, respectively. In the 2019-2020 the cycle, the State is bearing these costs, but funding for future cycles has not been appropriated.

The cost, and/or resource expenditures, for actually taking the samples and filling out the paperwork will also be highly variable. Some entities have a significant number of staff people who work on maintenance and facilities, and others do not. The amount of time it will take to fill out outlet inventory forms, collect the samples, and pack the samples for shipping will be dependent on these factors, and possibly others. One stakeholder wrote that an effort to generalize about such costs would be futile and misleading. It is fair, however, to state there is some unknown cost borne by the testing entities apart from the testing itself.

The cost of remediation remain unknown. There is an appropriation for the State to cover the cost of remediation (e.g. new faucets and their installation) but no funding has been reserved for future remediation at this time. Given that all schools and child care programs are required to test every outlet by December 31, 2020, and remediate all outlets that test above the action level immediately, the cost of future remediation should be minimal.

Students, children, parents, guardians, teachers, school staff, child care staff - There is no safe level of lead in the body, but lead poisoning is preventable. Lead can harm anyone, but children are most susceptible

## Economic Impact Analysis

to the effects of lead because their bodies are still developing and they absorb lead into their systems more easily than adults do. Even low blood lead levels in a child's body can slow down growth, impair development and learning, and can cause behavior problems. These impairments can come at a cost to schools in the form of needing more resources, more time spent with students with special needs, and at a cost to parents and guardians who bear the cost of educating and raising children with such impairments.

The Department of Health, the Department of Environmental Conservation, the Department for Children and Families, and the Agency of Education - The General Assembly directed the State to conduct the first round of testing. The effort has taken dozens of staff members working on all matters related to testing, including environmental health, logistics, finance, IT, law, and communications. An appropriation has covered many of these costs, but it is unclear what State resources will be necessary for future testing cycles.

### 4. IMPACT ON SCHOOLS:

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:*

There will be an impact on schools as described in Section 3.

### 5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

18 V.S.A. § 1247 states "Commissioner...shall adopt rules that include the frequency and scope of continued sampling." No continued sampling is not an alternative. Less frequent sampling is an option that would be less costly. A three year cycle was chosen so that testing would be consistent with child care program license requirements.

### 6. IMPACT ON SMALL BUSINESSES:

## Economic Impact Analysis

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):*

There will be an impact on childcare providers as described in Section 3.

**7. SMALL BUSINESS COMPLIANCE:** *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

Businesses seeking remediation during the 2019-2020 testing cycle will save future costs.

**8. COMPARISON:**

*COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:*

18 V.S.A. § 1247 states "Commissioner...shall adopt rules that include the frequency and scope of continued sampling." Continued sampling is required. Less frequent sampling is an option that would be less costly. A three year cycle was chosen so that testing would be consistent with child care program license requirements.

**9. SUFFICIENCY:** *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

The Department has provided what information is available with relation to costs as described above.

# Administrative Procedures – Environmental Impact Analysis

## **Instructions:**

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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### 1. TITLE OF RULE FILING:

**Rule Governing Testing and Remediation of Lead in the Drinking Water of Schools and Child Care Facilities**

### 2. ADOPTING AGENCY:

Department of Health

### 3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

None.

### 4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

Testing and remediation of lead-bearing components will lead to less lead in wastewater and ultimately waters of the state.

### 5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

None.

### 6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

None.

Environmental Impact Analysis

7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*  
None.

8. OTHER: *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*  
Not applicable.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*  
Section 4 provides what conclusions can be drawn.

## Administrative Procedures – Public Input

### Instructions:

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

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1. TITLE OF RULE FILING:

**Rule Governing Testing and Remediation of Lead in the Drinking Water of Schools and Child Care Facilities**

2. ADOPTING AGENCY:

Department of Health

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

Schedule a public hearing, maintain a public comment period, and post the proposed rule on the Department of Health's website.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

A public hearing was held. Comments were received and responded to in writing. The rule was posted for public comment on the Department's website <http://www.healthvermont.gov/about-us/laws-regulations/public-comment>.

5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

Department of Environmental Conservation

Department for Children and Families

Agency of Education

Vermont Superintendents Association

Vermont School Boards Association



**Public Input**

Vermont Principals' Association

Let's Grow Kids

Conservation Law Foundation

Vermont Public Interest Research Group

Vermont Independent Schools Association

Mosaic Learning Center

Public Comment Responsiveness Summary  
Rule Governing Testing and Remediation of Lead in the Drinking Water of Schools and Child Care Facilities

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A public hearing was held on March 4, 2020 in Burlington, Vermont, regarding the proposed Rule Governing Testing and Remediation of Lead in the Drinking Water of Schools and Child Care Facilities. During both the public comment period as well as the hearing, the Vermont Department of Health (“Department”) received and reviewed written public comments submitted from March 4, 2020 through March 11, 2020.

The following is summary of comments received from the public and the Department’s response to each comment. Comments of a similar or consistent nature have been consolidated and responded to accordingly.

- 1. Comment:** A commenter indicated support of the inclusion of “teeth brushing” in the definition of “outlet” and in other sections of the rule, and noted that the EPA’s 3Ts for Reducing Lead in Drinking Water in Schools identifies teeth brushing as a school-based activity that could “ultimately result in water being consumed.” The commenter further states that they believe this inclusion is consistent with the authority granted to the Commissioner by 18 V.S.A. Chapter 24A.

**Response:** 18 V.S.A. §1247(b)(1) requires that the rules adopted under this section shall include “requirements or guidance for taking samples of drinking water from outlets...that are no less stringent than the requirements in EPA’s 3Ts for Reducing Lead in Drinking Water in Schools.” The inclusion of “teeth brushing” is consistent with the EPA’s 3Ts for Reducing Lead in Drinking Water in Schools, which identifies teeth brushing as an activity that ultimately results in consumption, and is consistent with the authority granted to the Commissioner through 18 V.S.A. §1247. Accordingly, and in consultation with the Vermont Agency of Education and the Vermont Department of Environmental Conservation, the Department has determined that it is appropriate to include teeth brushing in this rule.

- 2. Comment:** A commenter stated an objection “an exemption from testing under any circumstances given the unique characteristics of lead contamination”, including the exemption provided for in Section 4.4. The commenter further stated that should an exemption be permissible under this rule, that the “responsible entity should be required to apply for authorization from the Department to test less frequently where an outlet tests lower than 1ppb for three testing cycles,” and that “parents and other members of the public should be notified of a request for an exemption...and have an opportunity to provide comments on the request.”

**Response:** 18 V.S.A. § 1247(b)(2) states that the Commissioner shall adopt rules that include the “frequency and scope of continued sampling of outlets by school districts, supervisory unions, independent schools, and child care providers...” Accordingly, the Department has the discretion to establish a process for exempting responsible entities from the testing requirements when they meet the necessary conditions. This rule provides a reasonable process for granting exemptions, while allowing for retesting when the circumstances warrant retesting.

- 3. Comment:** A commenter stated that the provisions of Section 4.4.2.2, which establish a testing regime for those eligible for an exemption of “no fewer than five outlets within the entity” when the entity meets the requirements of Section 4.4, may exclude a “disconcertingly high number of outlets that could be contaminated from some unknown cause” for some entities. The commenter proposed that “responsible

entities who receive this waiver be required to test at least 25 percent of their taps, on a rotating basis, each testing cycle.”

**Response:** This exemption for reduced testing has been informed by the EPA Lead and Copper rule standards. Additionally, prior to any entity being eligible for an exemption, the testing and potential remediation of all outlets is required. This rule also includes requirements for retesting when plumbing or water chemistry changes have been made and provides the Department with the ability to require retesting when it has reasonable grounds to believe that there is a potential harm to public health. Accordingly, this rule provides a reasonable process for exemptions, while allowing for retesting when the circumstances warrant retesting.

4. **Comment:** A commenter provided support for the inclusion of 6.2, which states, “In conducting remediation, a responsible entity shall strive to achieve the lowest level of lead possible in drinking water.”

**Response:** The Department acknowledges this comment.

5. **Comment:** A commenter stated that the signage described in Section 6.6 “should not be permitted as either an initial (short-term) or permanent remediation action for any outlet that tests at or above the action level” on the basis that this would conflict with the directive of Act 66 (2019) that the requirements of this rule be no less stringent than EPA’s 3Ts Guide for Reducing Lead in Drinking Water in Schools.

**Response:** The Department has removed “permanent” from this section to clarify that “Posting a sign at an outlet that has tested at or above the action level is not an acceptable means of remediation.”

6. **Comment:** A commenter stated their support for the requirement of Section 6.6.2 that requires the posting of signage which states that a fixture should not be used for consumption, teeth brushing, or cooking purposes at applicable fixtures that are easily accessible to the public.

**Response:** The Department acknowledges this comment.

7. **Comment:** A commenter stated that the pre- and post-testing notices required by Section 7.1 (Initial Testing) must include reference to the advisory level of 1 ppb. The commenter further stated that “the bullets under Section 7.1.1 of the rule should be more explicit about what is required when describing the potential health effects from exposure to lead in drinking water.”

**Response:** The reporting requirements provided in Section 7.1.1 are established in 18 V.S.A. §1243, which does not include notification of the advisory level established by the Department. Additionally, given that the notification is required to describe “the potential health effects from exposure to lead in drinking water,” including the advisory level in this notification will not provide additional clarity to recipients regarding potential health effects and instead may serve as a source of confusion.

8. **Comment:** A commenter stated that “pre-testing notice letters should be sent out for each ongoing testing cycle, not just the initial testing round” because “there will invariably be new staff, parents, and guardians involved with the school or child care facility who did not receive notification from the previous testing cycle.”

**Response:** The Department has updated the proposed rule to require notification of staff, parents and guardians of students prior to all sampling.

9. **Comment:** A commenter stated support for the deadlines for the submission of remediation plans described in Sections 7.3 and 7.4.

**Response:** The Department acknowledges this comment.

10. **Comment:** A commenter stated that the testing schedule described in Section 8 should be “more frequent than just once every three years” and proposed an annual schedule on the basis that subsequent tests could yield significantly different results.

**Response:** The proposed testing schedule is sufficient to protect public health and does so without imposing unreasonable financial and logistical burdens on responsible entities. The Department notes that prior to the implementation of this schedule, facilities will have tested all outlets and remediated those that tested at or above the action level.

11. **Comment:** A commenter stated support for the retesting provision in Section 9.0 on the basis that such a retesting requirement is necessary given the intent of Act 66 (2019).

**Response:** The Department acknowledges this comment.

12. **Comment:** A commenter objected to the inclusion of “teeth brushing” into the definition of “outlet,” as well as in Sections 6.4.2, 6.5, and 7.4.2 on the basis that it is “in direct conflict with the definition” in Act 66 (2019) and in 18 V.S.A. §1242.

**Response:** The inclusion of “teeth brushing” in this definition in the rule serves to clarify this potential mode of “consumption” and does not conflict with the statutory definition. Additionally, the inclusion of “teeth brushing” is consistent with the EPA’s 3Ts Reducing Lead in Drinking Water in Schools, which acknowledges teeth brushing as a potential mode through which water can be consumed. The inclusion is consistent with the authority granted to the Commissioner through 18 V.S.A. §1247(b)(4), which requires the Commissioner to adopt rules that shall include “any other any other requirements that the Commissioner deems necessary for the implementation of the requirements of this chapter.”

13. **Comment:** A commenter stated that Section 4.5 (Retesting due to building and chemistry changes) is “outside the scope of the testing program contemplated by Act 66 [2019]” and requested this section be deleted.

**Response:** 18 V.S.A. §1241 states, “The purpose of this chapter is to require all school districts, supervisory unions, independent schools, and child care providers in Vermont to test drinking water in their buildings and child care facilities for lead contamination...” and 18 V.S.A. §1247(b)(4) states, “The rules shall include any other requirements that the Commissioner deems necessary for the implementation of the requirements of this chapter.”

Because changes in plumbing and water chemistry can cause lead to leach into drinking water, it is imperative that any such changes are followed by retesting to ensure that the lead level remains below the action level. Changes in water chemistry have created public health risks nationally and represent a real and potentially significant risk to Vermont children. 18 V.S.A. §1247(b)(4) grants the Commissioner the authority to require such retesting.

14. **Comment:** A commenter requested that the word “fixture” be replaced with “outlet” in Section 6.5 on the basis that only outlets are required to be tested and not every fixture is an outlet.

**Response:** The Department has removed Section 6.5 from this rule.

- 15. Comment:** A commenter requested that Section 6.6.2, regarding posting signage for certain fixtures, be removed on the basis that this requirement is outside the scope and intent of Act 66 (2019). The commenter further stated that “a water fixture is not defined in the act and as such could potentially include toilets, water heads, bath faucets.”

**Response:** 18 V.S.A. §1246(b) states “The guidance provided by the Commissioner shall reference the U.S. Environmental Protection Agency’s 3Ts for Reducing Lead in Drinking Water in Schools.” The EPA’s 3Ts guidance specifies that the use of signage as described by Section 6.2.2 is an acceptable means of notification for fixtures not used for consumption or cooking.

The Department has clarified the requirement in Section 6.6.2 by replacing “fixture” with “sink faucet” to eliminate confusion regarding toilets, water heads, and bath faucets.

- 16. Comment:** A commenter objected to the requirements of Section 7.2 (Reporting of Initial Remediation Plans) on the basis that 18 V.S.A. §1244 does not require the reporting of initial remediation actions to the Department and that only final remediation plans are required to be reported to the Department. The commenter further stated that the requirement to submit remediation plans within 5 business days conflict with 18 V.S.A. §1244(4), that requires that remediation plans are submitted to the Department “as they are completed.”

**Response:** 18 V.S.A. §1244 requires the responsible entity to take immediate action to prohibit use of an outlet either temporarily (until remediated and retested) or permanently (through removal or disabling) following an indication that drinking water from an outlet is at or above the action level. In order to ensure compliance with this requirement, the Department must be informed of the initial action. A requirement to notify the Department via the result website within five days is a reasonable method and time frame for notification of compliance. Importantly, such initial remediation plans are required (and therefore must be “completed”) for applicable outlets immediately following the testing results. Accordingly, a reporting window of five business days is consistent with the requirement to report plans “as they are completed”.

- 17. Comment:** A commenter requested that Section 9.0 (Retesting and Evidence of Remediation) be removed from the rule because it “authorizes the department to require testing and remediation in conflict with and outside of the scope of Act 66 [2019].”

**Response:** The purpose of the Act is to “require all school districts, supervisory unions, independent schools, and child care providers in Vermont to test drinking water in their buildings... and develop and implement an appropriate response or lead remediation plan when sampling indicates unsafe lead levels” (18 V.S.A. § 1241).

18 V.S.A. §1247(b)(4) states, “The rules [adopted regarding lead testing in schools] shall include any other requirements that the Commissioner deems necessary for the implementation of the requirements of this chapter.”

Accordingly, if the Commissioner has reasonable grounds to believe that there is a potential harm to public health, a requirement to retest an outlet or outlets or provide reasonable additional evidence of effective remediation is not only authorized by statute, but required by it.



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March 10, 2020

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Submitted via email: [David.Englander@vermont.gov](mailto:David.Englander@vermont.gov)

**Re: Joint Comments on Draft Rule Governing Testing and Remediation of Lead in the Drinking Water of Schools and Child Care Facilities**

Dear Mr. Englander,

Conservation Law Foundation (CLF), Vermont Public Interest Research Group (VPIRG), Vermont Conservation Voters (VCV), and Voices for Vermont's Children respectfully submit the following comments on this Draft Rule Governing Testing and Remediation of Lead in the Drinking Water of Schools and Child Care Facilities (Rule). We thank you for the opportunity to comment on this important Rule.

CLF protects New England's environment for the benefit of all people. CLF is a non-profit, member-supported organization with offices located in Vermont, Massachusetts, Rhode Island, Maine, and New Hampshire. CLF uses the law, science, and the market to create solutions that protect public health, preserve natural resources, build healthy communities, and sustain a vibrant economy. CLF has been a leading advocate for clean water and safe drinking water in Vermont and throughout New England and is engaged in numerous efforts to address the threat of lead in drinking water throughout New England.

VPIRG is the largest nonprofit consumer and environmental advocacy organization in Vermont, with over 50,000 members and supporters. For over 45 years, VPIRG has brought the voice of average Vermont citizens to public policy debates concerning the environment, health care, consumer protection and democracy.

Founded in 1982, VCV works to elect environmentally-friendly candidates to public office, and then holds elected officials accountable for the decisions they make affecting our air, water, communities, land, and wildlife.

Toxics Action Center (Toxics Action) was founded in 1987 in response to the Woburn, Massachusetts contamination crisis. Toxics Action believes that everyone has the right to breathe clean air, drink clean water, and live in a healthy community with a government that operates



responsively and democratically. Toxics Action works to make those rights a reality by working side-by-side community groups fighting pollution threats in their neighborhoods and by training long-term leadership for the environmental and social change movements.

Established in 1983, Voices for Vermont's Children is a statewide membership organization of several hundred individuals and organizations that advocates on behalf of Vermont's children and youth.

Overall, the undersigned groups are generally supportive of this draft Rule. We note below several sections of the Rule that we particularly support. In addition, we also include some suggested changes to the Rule which, if incorporated, will: (1) better align the Rule with the Environmental Protection Agency's (EPA) 3Ts for Reducing Lead in Drinking Water in Schools; (2) ensure clarity in implementation of Act 66; and (3) better safeguard against lead contamination in school and child care drinking water. In addition to the comments below, we are also submitting a redlined version of the draft Rule to show where we suggest incorporating our suggested changes.

## **I. Background**

Lead is a potent neurotoxin that can cause serious health consequences with even minimal human exposure. The medical and public health community universally recognizes that there is no safe level of lead exposure.<sup>1</sup> Even low-level concentrations in children's blood lead level—such as concentrations below five micrograms per deciliter ( $\mu\text{g}/\text{dL}$ )—can result in adverse neurological, immunological, cardiovascular, renal, and/or reproductive and developmental effects.<sup>2</sup>

Adults exposed to lead can also face long-term health risks, including decreased kidney function, increased blood pressure and incidence of hypertension, and other cardiovascular effects.<sup>3</sup> Many employees at schools or child care facilities are women of childbearing age; during a pregnancy, lead exposure for the mother can present severe vulnerability to a developing fetus.<sup>4</sup> No effective treatments ameliorate the permanent developmental effects of lead toxicity.<sup>5</sup>

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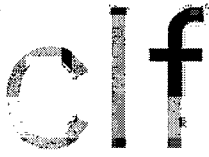
<sup>1</sup> American Academy of Pediatrics' (AAP) *Prevention of Childhood Lead Toxicity Policy Statement*, available at <https://pediatrics.aappublications.org/content/138/1/e20161493>.

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Environmental Protection Agency (EPA). *Basic Information about Lead in Drinking Water*. EPA.gov, updated December 2016, accessible at <https://www.epa.gov/ground-water-and-drinking-water/basic-informationabout-lead-drinking-water>.

<sup>4</sup> World Health Organization (2018 February). Lead poisoning and health. <http://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health>.

<sup>5</sup> *Id.*



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While deteriorating lead-based paint is often the most prevalent source of exposure, lead also can be found in drinking water. According to EPA, drinking water can be “a significant contributor to overall exposure to lead, particularly for infants whose diet consists of liquids made with water, such as baby food, juice, or formula.”<sup>6</sup> EPA estimates that up to 20 percent of human exposure to lead may come from drinking water.<sup>7</sup> Further, experts suggest that this estimate may not accurately reflect the full picture of lead exposure from drinking water given the lack of comprehensive testing.<sup>8</sup>

In addition to these health impacts, we appreciate that VDH spotlights the socioeconomic impacts of lead poisoning in its Economic Impact Analysis. Indeed, research indicates the costs of childhood lead poisoning to schools, child care facilities, parents, and society writ large far outweigh the costs of remediation.<sup>9</sup>

Because there is no safe level of lead in the body, EPA set the maximum contaminant level goal for lead in drinking water at 0 ppb. Similarly, the American Academy of Pediatrics recommends that “state and local governments should take steps to ensure that water fountains in schools do not exceed water lead concentrations of 1 ppb.”<sup>10</sup> And in conformance with these health-based standards, VDH has set a Health Advisory level of 1 ppb for lead in drinking water. While Act 66 only requires remediation when outlets test at or above 4ppb, the law does require responsible entities to strive to achieve the lowest level of lead possible in drinking water.<sup>11</sup>

## II. Recommendations

Our comments are organized by Rule section below:

### 3.0 Definitions

#### 3.9 “Outlet”

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<sup>6</sup> 3 Ts for Reducing Lead in Drinking Water at Schools and Child Care Facilities at 13, EPA (July 2018), [https://www.epa.gov/sites/production/files/2018-09/documents/final\\_revised\\_3ts\\_manual\\_508.pdf](https://www.epa.gov/sites/production/files/2018-09/documents/final_revised_3ts_manual_508.pdf) (“3 T’s Manual”).

<sup>7</sup> EPA, *Basic Information about Lead in Drinking Water*, *supra* note 3.

<sup>8</sup> See, e.g., Rebecca Renner, *Exposure on Tap: Drinking water as an overlooked source of lead*, ENVIRONMENTAL HEALTH PERSPECTIVES (Feb. 2010), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2831942/>; Rebecca Renner, *Out of Plumb: When water treatment causes lead contamination*, ENVIRONMENTAL HEALTH PERSPECTIVES (Dec. 2009), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2799485/pdf/ehp-117-a542.pdf>.

<sup>9</sup> See e.g., Gould, Elise. *Childhood Lead Poisoning: Conservative Estimates of the Social and Economic Benefits of Lead Hazard Control*. ENVIRONMENTAL HEALTH PERSPECTIVES. (2009); Mitchell, David. *Preventing Toxic Lead Exposure Through Drinking Water Using Point-of-Use Filtration*, ENVIRONMENTAL LAW INSTITUTE (2018), available at: <https://www.eli.org/sites/default/files/elr/featuredarticles/48.11074.pdf>.

<sup>10</sup> AAP Policy Statement at 11.

<sup>11</sup> 18 V.S.A. § 1244.





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We support the inclusion of “teeth brushing” as a use that must be considered when determining if a faucet falls under the definition of an “outlet” for two reasons. First, Act 66 granted the Commissioner of Health (Commissioner) broad authority to adopt rules to achieve the purposes of Chapter 24A.<sup>12</sup> Those rules may include “any . . . requirements that the Commissioner deems necessary for the implementation of the requirements in [Chapter 24A].”<sup>13</sup> Therefore, if the Commissioner determines that testing outlets where teeth brushing occurs is necessary to implement the requirements of Chapter 24A, the authority to do so clearly rests in statute.

Second, the Legislature indicated the rules shall include “requirements or guidance for taking samples of drinking water from outlets . . . that are no less stringent than the requirements in EPA’s 3Ts for Reducing Lead in Drinking Water in Schools . . .” EPA’s 3Ts Guide references teeth brushing as a school-based activity that could “ultimately result in water being consumed.”<sup>14</sup> Since the purpose of Chapter 24A is to test drinking water for lead contamination, and some water can be consumed (i.e., a child may drink some) during teeth brushing (especially small children still learning to do this activity), it is important that this activity be included in the list of uses to fully achieve the purposes of Chapter 24A.

For the above reasons, we support “teeth brushing” being included in the definition of “outlet,” and being included in other portions of the Rule.

#### **4.0 Testing Requirements**

##### **4.4 Outlets exempted from testing**

We do not support an exemption from testing outlets under any circumstances given the unique characteristics of lead contamination. At a minimum, responsible entities should have to apply for authorization from VDH to test less frequently where an outlet tests lower than 1 ppb for three testing cycles. Parents and other members of the public should be notified of a request for an exemption from the Section 8 testing requirements and have an opportunity to provide comments on the request. We support the draft Rule referencing 1 part per billion (ppb) as the standard for requesting approval from VDH to test less frequently; 1 ppb is the widely accepted, technically achievable level of lead in drinking water that poses the lowest risk to human health.<sup>15</sup>

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<sup>12</sup> 18 VSA § 1247(a).

<sup>13</sup> *Id.*

<sup>14</sup> 3 Ts at 49 (“As an example, indicate that a sink is a hand-washing only sink to prevent students and staff from misunderstanding and utilizing sinks for brushing teeth, washing food or other activities that ultimately result in water being consumed.”).

<sup>15</sup> *See, e.g.*, AAP Policy Statement.



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We do not support the testing exemption regime proposed in Section 4.4.2.2 for several reasons. First, as indicated above, given the distinct characteristics of lead contamination, there should never be an exemption to testing. Second, if such a downscaled testing regime is established, an exemption should only be authorized after the Commissioner has determined that this change in testing does not pose a significant threat to public health. Currently, responsible entities would automatically receive this exemption, no matter if there are circumstances that could pose a threat to public health from a relaxed testing protocol. Given the unique challenges posed by lead contamination (lead is colorless, odorless, and water samples only represent conditions at that moment in time), we believe this exemption should only be granted after a request to VDH, an opportunity for parents and other members of the public to provide comment on the request, and an ultimate determination by the Commissioner that such an exemption would not pose a threat to public health. Please see our suggested redlines in the Rule to incorporate this change.

Third, we are concerned that the low number of outlets required to be tested in this downscaled testing regime leaves a vast number of taps vulnerable to lead contamination from unforeseeable causes outside of the responsible entities' control. The only way to ensure lead is not present at unsafe levels in drinking water from an outlet is to test it relatively frequently. As of December 2019, the entity with the smallest number of outlets was one, and the entity with the largest number of outlets was 346.<sup>16</sup> If a school with a number of outlets on the higher end of this range is only required to test five taps every three years, this leaves a disconcertingly high number of outlets that could be contaminated from some unknown cause. The result is that children could be exposed to lead for years on end without detection.

Given the myriad ways lead contamination can occur—from changes in water chemistry, to disturbance in service lines, to nearby construction, to name a few—it is important that a larger number of outlets are sampled on a long-term basis. We believe it would be more appropriate for responsible entities who receive this waiver to be required to test at least 25 percent of their taps, on a rotating basis, each testing cycle. Please see our suggested redlines to incorporate this recommendation into the Rule.

Although the Rule requires retesting if there are plumbing changes that could reasonably be foreseen to result in an increase in lead levels coming from that outlet or if there is a change to water chemistry (Section 4.5.1 and 4.5.2), this presumes that the school or child care provider responsible for the lead testing program is always aware of these changes. Since neither Act 66 nor the Rule provide a mechanism for the local municipality or the public water system operator to provide schools or child care providers with notice of these changes, it is unrealistic to assume that responsible parties will always know of these changes. As such, those retesting scenarios do not alleviate our concerns about the five outlets requirement.

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<sup>16</sup> VDH Economic Impact Analysis at 2, <https://www.healthvermont.gov/sites/default/files/documents/pdf/Water%20Testing%20for%20Lead%20Rule%20Forms%20SoS%20signed.pdf>.



Lastly, we understand VDH and ANR are trying to achieve equivalency with the new draft EPA Lead and Copper Rule standards (which require testing five outlets), but this does not mean the minimum number of outlets required to be tested couldn't be *higher than* five. To best ensure the health and safety of Vermonters, responsible entities should be required to either continue testing according to Section 8, or apply to the Commissioner for a waiver, which if granted, would still require testing of at least 25 percent of their outlets on an annual basis (but always at least five). The Rule should also provide guidance indicating that responsible entities should test a *revolving* 25 percent of outlets every year, so that eventually, all outlets at the school or child care facility are tested on a reoccurring cycle.

## 6.0 Remediation

We support VDH's decision to include language from Act 66 reminding entities that in conducting remediation, they "shall strive to achieve the lowest level of lead possible in drinking water" (Section 6.2). It is important that this clear Legislative intent is reflected in the Rule implementing the law.

### 6.6 Signage

Regarding the provisions of the Rule governing signage (Section 6.6), signage should not be permitted as either an initial (short-term) or permanent remediation action for any outlet that tests at or above the action level. The Legislature clearly intended for the requirements in this Rule to be no less stringent than EPA's 3Ts Guide for Reducing Lead in Drinking Water in Schools (see references to consistency with 3Ts throughout Act 66 with regard to testing methodology (§1243(d); §1247(b)(1)), and lead remediation (§1244(1)(A)(i); §1246(b)).

The EPA's 3Ts Guide includes posting "Not for Drinking/Cooking" signs as an immediate remediation measure only for fixtures that are "routinely used for purposes *other than* human ingestion (e.g., hand-washing) . . ."<sup>17</sup> That is, such signs are only recommended for taps that would fall outside of this Rule's definition of "outlet" (those taps "currently or reasonably expected to be used for consumption, teeth brushing, or cooking purposes"). Therefore, for this Rule to be consistent with EPA's 3Ts, it must prohibit such "Not for Drinking/Cooking" signage as either a short-term or permanent remediation measure at any *outlet*. Section 6.2 should be changed as suggested in the attached redlined version to better align with EPA's 3T's guidance.

We support the commonsense requirement in Section 6.6.2 of posting such signs on non-outlet fixtures (i.e., those not reasonable expected to be used for consumption, teeth brushing, or

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<sup>17</sup> EPA 3T's Guide for Reducing Lead in Drinking Water in Schools, Module 6: Remediation and Establishing Routine Practices Remediation Options, available at [https://www.epa.gov/sites/production/files/2018-09/documents/module\\_6\\_remediation\\_options\\_508.pdf](https://www.epa.gov/sites/production/files/2018-09/documents/module_6_remediation_options_508.pdf) (emphasis added).

cooking purposes) that are easily accessible to the public. The Commissioner's authority to require such signage derives from 18 V.S.A. §1247(4), as well as the statutory requirement that remediation plans be consistent with EPA's 3T's Manual (§1244(1)(A)(i)).

## 7.0 Reporting and Communication

### 7.1 Initial Testing

To be consistent with Act 66, pre-testing and post-testing notice letters must include reference to the VDH Health Advisory of 1 ppb. According to Act 66, schools and child care providers must notify all staff and all parents or guardians of students at least five days prior to lead sampling. 18 V.S.A. § 1243(b)(2). The notice must include, among other items, "the potential health effects from exposure to lead in drinking water." 18 V.S.A. § 1243(b)(2)(B) and (E).

The bullets under Section 7.1.1 of the Rule should be more explicit about what is required when describing the potential health effects from exposure to lead in drinking water. The purpose of an administrative rule is not just to reiterate the broad language contained in statute; rather, a rule is intended to provide more detail and description. To that end, this Rule should add a bullet point to the list under 7.1.1 to clarify that any pre-test notice should include reference to VDH's established health advisory for lead in drinking water. This is a vital piece of information underpinning and providing context for the potential health effects from exposure to lead in drinking water. If a parent or guardian only receives a letter indicating that water samples at their child's school tested below the state action level of 4 ppb, they could incorrectly conclude that the water is therefore completely safe for consumption. To provide an accurate basis upon which parents, guardians, or staff can comprehend the sampling results, each notice letter must include reference to the state health advisory level of 1 ppb.

Additionally, pre-testing notice letters should be sent out for *each* ongoing testing cycle, not just the initial testing round. It is unclear why there are separate notification requirements in section 7.5 for ongoing testing. Notification should occur before every cycle of testing, since there will invariably be new staff, parents, and guardians involved with the school or child care facility who did not receive notification from the previous testing cycle.

### 7.3 and 7.4 Reporting of Remediation Plans and Completion of Remediation Plans

We support the inclusion of deadlines by which remediation plans must be submitted (six months), and permanent remediation actions must be completed (18 months) (Section 7.3 and 7.4). VDH has broad authority per Act 66 to establish rules and requirements necessary to implement this chapter (18 V.S.A. § 1247(a) and (b)(4)), and there is no restriction on the Agency's ability to set deadlines by rule. These timelines are reasonable and should not be extended.



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We are aware that at least one stakeholder has requested VDH add language that grants the Commissioner authority to extend the 18-month period for “good cause shown.”<sup>18</sup> We strongly discourage VDH from incorporating this extension language. Any flexibility of this deadline should come from the Commissioner’s own discretion of whether or not to enforce for late submissions, not from a “good cause” extension opportunity that could slow responsible entities’ implementation of lead remediation measures. Eighteen months is adequate time to undertake these actions, and the Rule should not include a “good cause” exception.

### **8.0 Schedule**

Testing should be more frequent than just once every three years. A single test for lead only provides reliable information about the lead content of water at that outlet *for the specific sample*. Subsequent tests could yield significantly different results, even when water quality does not change. Accordingly, testing should be more frequent. The District of Columbia requires annual testing for lead at outlets in all school and child care facilities,<sup>19</sup> and Vermont should require the same.

### **9.0 Retesting and Evidence of Remediation**

We support this last section of the Rule as a necessary component of the Rule. The intent of Act 66 is to remediate unsafe levels of lead in drinking water at schools and child care facilities. If VDH has reasonable grounds to believe that an outlet is in need of retesting or is otherwise not safe to be used for consumption, teeth brushing, or cooking purposes, then it is well within the Commissioner’s authority under Act 66 to require retesting or provision of additional evidence of effective remediation.

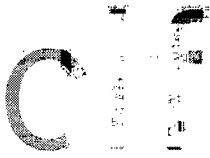
### **Conclusion**

Thank you for the opportunity to provide these comments. We appreciate VDH’s attention to the significant public health and environmental problems posed by lead in drinking water. We urge VDH to revise the proposed Rule consistent with our recommendations to ensure Vermont communities have access to safe drinking water free of lead.

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<sup>18</sup> Public comments submitted by Mosaic Learning Center, received by CLF on December 13, 2019 pursuant to a Public Records Request (1 V.S.A. § 315 *et seq*).

<sup>19</sup> § 38–825.01a. Prevention of lead in drinking water in schools. Available at <https://code.dccouncil.us/dc/council/code/sections/38-825.01a.html>.



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Respectfully submitted,

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To: Vermont Department of Health  
From: Jeffrey Francis, Executive Director, Vermont Superintendents Association  
Bruce MacIntire, President, Vermont School Custodians and Maintenance Association  
Mill Moore, Executive Director, Vermont Independent Schools Association  
Date: March 11, 2020  
Re: Proposed Rule Governing Testing and Remediation of Lead in the Drinking Water of  
Schools and Child Care Facilities

The Vermont Superintendents Association, Vermont School Custodians and Maintenance Association, Vermont Independent Schools Association (Associations) respectfully requests that the certain proposed rules cited herein should not be approved because these rules conflict with provisions and intent of Act 66 (S. 40) and in some instances exceeds the department's authority under the act. The Associations object to the following proposed rules:

1. Proposed Rule 3.9: The proposed rules adds "teeth brushing" to the definition of "outlet" in direct conflict with the definition set forth in Act 66 and in 18 V.S.A. §1242  
(Definitions):

*(10) "Outlet" means a drinking water fixture currently or reasonably expected to be used for consumption or cooking purposes, including a drinking fountain, an ice machine, or a faucet as determined by a school district, supervisory union, independent school, or child care provider.*

2. Proposed Rule Section 4.5  
This entire section is outside of the scope of the testing program contemplated by Act 66 and should be deleted.
3. Proposed Rule Section 6.4.2  
Strike the word "teeth brushing". See comment to paragraph 1 above.
4. Proposed Rule 6.5  
Strike the word "fixture" and replace with "outlet". Only outlets are subject to testing and, pursuant to 18 V.S.A. §1242 (10) not every water fixture is an outlet.  
  
Strike the words "teeth brushing."

5. Proposed Rule 6.6.2  
Strike this entire rule because this is outside of the scope and intent of Act 66. During committee discussions regarding acceptable remedial measures, legislators and the Associations understood signage cannot be used as a permanent remedial measure for an outlet testing at or above 4 parts per billion.

However, the committee did not discuss, take testimony or intend for the lead testing and remediation program to include requiring signage at untested fixtures as contemplated by Rule 6.6.2. In addition, a water fixture is not defined in the act and as such could potentially include toilets, water heads, bath faucets. No cost impact statement has been

determined for this requirement. It seems unreasonable to require signage at these water fixtures.

6. Proposed Rule 7.2

This rule conflicts with 18 V.S.A. § 1244 which sets forth what the school or child care provider must do if an outlet tests at action level.

§ 1244 *does not require* that the school or child care provider provide the department with a separate report as to initial remediation actions because the committee only intended for the school or child care provider to file final remediation plans.

Even if subsection (4) was intended to apply to initial remedial measures, it sets a deadline for filing that conflicts with proposed rule 7.2. Subsection (4) only requires the school or child care provider to “*submit lead remediation plans to the Department as they are completed*”.

Had the legislature intended to set a time/deadline it would have provided a compliance date as it did in other subsections of the statute (e.g. subsection (3): “notify . . . within 10 school days after receipt of the laboratory report”).

The Associations note parenthetically that this rule sets forth a filing deadline using “business days”. “Business days” applies to child care providers and “school days” is what should be used for schools.

7. Proposed Rule 7.4.2

Strike “teeth brushing”.

8. Proposed Rule 9.0

Strike this entire section because this rule authorizes the department to require testing and remediation in conflict with and outside of the scope of Act 66.

### **Background**

Following passage by the Senate, S. 40 (Act 66) was assigned to House Education on February 19, 2019. The House Education committee began testimony and discussion on the bill beginning March 12, 2019. The bill was then committed to House Human Services on April 3, 2019 to consider the bill as it affected child care facilities.

For more than 3 weeks the House Education considered the scope of a school and child care provider lead testing program. Specifically, the committee focused on the action level, testing intervals, fixtures to be tested, the remediation required and the cost. At one point during committee deliberations, representatives of agencies, schools, child advocacy groups, child care providers and environmentalists (hereinafter stakeholders) gathered to attempt consensus and this was achieved in several areas: action level, definition of outlet, scope of testing and remediation. The stakeholder discussions occurred over a two day period.



It's important to stress that remediation costs were central to committee deliberations and stakeholder agreements. Fiscal projections were directly tied to the action level, anticipated number of outlets subject to testing and anticipated remedial measures and associated costs. The outcome of the house process was a narrowly tailored testing and remediation program limiting testing of only "outlets" and pursuant to a standard testing schedule, an action level of 5 or more parts per billion and remediation as set forth in the bill.

The House and Senate Conference Committee on the bill was contentious as the committee sought agreement on the main differences: action level and the amount of state funding of remediation (cost). However, consensus was readily achieved regarding the definition of "outlet", the scope of testing (limited to outlets pursuant to a standardized schedule) and required remediation.

### **Definition of Outlet**

The committee and stakeholder deliberations--which included the ANR and DOH--focused at length on the definition of "outlet". Three important takeaways from this agreement. First, the definition does not include "teeth brushing" and its addition changes the definition. The critical determinant is whether the school or child care provider determines the water fixture is currently or reasonably expected to be used for consumption. Our general understanding of the hygiene protocol for "teeth brushing" does not include consumption but the opposite: expulsion through spitting. To the extent a school or child care provider determines or reasonably expects that students are consistently "consuming" water at a water fixture as a result of teeth brushing than the school or child care provider would be required to test the outlet.

Second, the definition of outlet does not apply to all water fixtures. Testing is only required for an "outlet" and not for a water fixture. In fact, the definition of "outlet" is intended to limit testing to only a "drinking water fixture", which includes a "drinking fountain, an ice machine, or a faucet" that the school or child care facility determines is "currently or reasonably expected to be used for consumption or cooking purposes".

If a school or child care facility determines a drinking water fixture is not "currently or reasonably expected to be used for consumption or cooking purposes. . ." it is not required to test that fixture and that fixture is not an "outlet" under 18 V.S.A. § 1242 (10).

The Associations object to the inclusion of "teeth brushing" in proposed rules 3.9,4.5, 6.5 and 6.6.2. The Associations object to the inappropriate use of the term "fixture" in proposed rule 6.5.

### **Scope of Testing and Remediation**

#### **Testing outside of the testing schedule and not pursuant to remediation**

Testing was intended to only occur:

- 1) to outlets pursuant to a standardized testing schedule created by DOH; and,

2) immediately following remediation measures to ensure that the remediation was successful.

Proposed rule 8.0 sets forth the type of testing schedule that was envisioned by the legislature. However, the committee never contemplated and the legislature never examined the costs associated with testing program set forth in proposed rule 4.5. The rule creates a new testing protocol that was not discussed, testified to or agreed to by the legislature or the stakeholders—including specifically ANR and DOH. Most significantly, the legislature never prepared a fiscal note to cover the costs associated with this new testing program.

The Associations request that proposed rule 4.5 be stricken.

*Executive branch discretion to expand testing and remediation*

Rule 9.0 grants authority to DOH expressly rejected by the House Education Committee. During stakeholder discussions in the presence of committee members, DOH and the environmental lobbyists suggested adding language that permitted DOH to require testing when the DOH determined it was required to prevent a health risk. This language was rejected by the committee because the intent of Act 66 is to narrow and limit testing as set forth by the legislature.

In other words, the legislature intended to create a narrowly tailored testing and remediation program and set aside funding to meet the anticipated costs of the specific testing and remediation program set forth in the act. Proposed Rule 9 authorizes the department to require testing and remediation based upon its own determination of potential harm to the public health not contemplated or approved of by the legislature.

If this rule is adopted it has the force and effect of law. As such, the department could require testing and remediation outside of what the committee contemplated

In short, this rule grants the department such broad authority it potentially eviscerates the purpose and intent of portions of the act.

Chapter 6 – Environmental Health Rules  
Subchapter 9

**Rule Governing Testing and Remediation of Lead in the Drinking Water of Schools and  
Child Care Facilities**

**1.0 Authority**

This rule is adopted pursuant to 18 V.S.A. § 1247.

**2.0 Purpose**

The purpose of this rule is to set forth the requirements for the testing and remediation of lead in the drinking water of schools and child care facilities in Vermont.

**3.0 Definitions**

- 3.1 “Action level” means four parts per billion (ppb) of lead.
- 3.2 “Building” means any structure, facility, addition, or wing that may be occupied or used by children or students. This only includes buildings that are owned, controlled, or operated by the responsible entity.
- 3.3 “Child care provider” has the same meaning as in 33 V.S.A. § 3511.
- 3.4 “Child care facility” or “facility” has the same meaning as in 33 V.S.A. § 3511.
- 3.5 “Commissioner” means the Commissioner of Health.
- 3.6 “Department” means the Department of Health.
- 3.7 “Drinking water” has the same meaning as in 10 V.S.A. § 1671.
- 3.8 “Independent school” has the same meaning as in 16 V.S.A. § 11.
- 3.9 “Outlet” means a drinking water fixture currently or reasonably expected to be used for consumption, teeth brushing, or cooking purposes, including a drinking fountain, an ice machine, or a faucet as determined by a school district, supervisory union, independent school, or child care provider.
- 3.10 “Non-recurring care” means a program that provides child care designed to meet the short term, temporary child care needs of parents arising from, but not limited to tourism, recreation, or shopping.
- 3.11 “Responsible entity” means a school district, supervisory union, independent school, or child care provider in the State.

- 3.12 “Remediation Plan” encompasses the complete list of planned remediation actions submitted electronically on the state results website for all of the responsible entity’s tested outlets that are at or above the action level.
- 3.13 “School district” has the same meaning as in 16 V.S.A. § 11.
- 3.14 “Supervisory union” has the same meaning as in 16 V.S.A. § 11.

**4.0 Testing Requirements**

- 4.1 If the concentration of lead in drinking water indicates that water from an outlet is at or above the action level, the responsible entity shall ensure remediation at that outlet is conducted as described in this rule.
- 4.2 Initial Lead Testing in 2019-2021

On or before December 31, 2021, each responsible entity shall collect and have analyzed for lead according to the methods in Section 5.0 water samples from outlets in the buildings it owns, controls, or operates that are currently used or reasonably expected to be used for consumption, teeth brushing or cooking purposes. This includes outlets expected to be used on a temporary basis such as during temporary relocations.

- 4.3 New Outlets

- 4.3.1 All new outlets should be flushed prior to use for not less than five minutes, twice a day, for three weeks.
- 4.3.2 Any outlets newly used or newly installed for consumption, teeth brushing, or cooking purposes shall be tested and demonstrate first-draw and flush lead concentrations below the action level prior to use. This includes outlets expected to be used on a temporary basis.
- 4.3.3 All new outlets shall be lead-free and compliant with the federal Safe Drinking Water Act as amended, 9 V.S.A. Ch. 63, Subchapter 1C, and determinations by the Commissioner of Health pursuant to 9 V.S.A. § 2470e (2)(A).

- 4.4 Outlets exempted from testing

- 4.4.1. If both first draw and flush samples of an outlet test lower than 1 ppb for three testing cycles consistent with this rule, that outlet is not required to be tested again, subject to Sections 4.4.2, 4.4.3, and 4.5.

4.4.2 If every outlet in buildings owned or controlled by a responsible entity tests lower than 1 ppb for three testing cycles, the entity may choose to either:

4.4.2.1. Continue to test all outlets pursuant to the testing schedule in Section 8; or

4.4.2.2 Adopt a testing regime that includes no fewer than five outlets within the entity, not including any outlet that utilizes a filter. If a responsible entity has fewer than five taps, all taps must continue to be tested.

4.4.3 Outlets that utilize a water filter shall be tested regardless of results below detection of 1 ppb.

4.5 Retesting due to building and chemistry changes

4.5.1 Outlets shall be retested if there have been plumbing changes unrelated to remediation efforts, and that could reasonably be foreseen to result in an increase in lead levels coming from that outlet prior to use.

4.5.2 Outlets shall be retested when there is a change to water chemistry that could reasonably be foreseen to result in increased lead levels coming from that outlet prior to use.

4.6 All analysis shall be conducted by a certified drinking lab pursuant to 18 V.S.A. § 501b

## 5.0 Sampling Methodology

5.1 Pre-sampling Conditions

5.1.1 Samples shall be collected after the water sits in the pipes for a minimum of 8 hours. Due to samples needing to be collected when the facility is in regular use, samples shall not be collected the day after vacations, weekends or holidays.

5.1.1.2 Samples must be collected during periods of normal use and occupation.

5.1.1.3 If an outlet or facility does not see regular use or occupancy prior to sampling, the facility shall flush water from the respective outlets for five minutes, twice a day for a three-week period prior to sampling.

5.1.2 Aerators shall be left in place during sampling.

- 5.1.3 Shut-off valves shall not be opened or closed prior to sample collection. The outlets may be used in the course of normal operation but no pre-stagnation flushing or plumbing work shall occur in the week prior to sampling.
- 5.1.4 Outlet inventory shall be conducted in a format provided by the Department.
- 5.1.5 Any additional guidance provided by the Department shall be followed.

## 5.2 Sampling

- 5.2.1 Following guidance provided by the Department, persons designated by the responsible entity shall collect the following samples from each outlet identified on the outlet inventory using a 250 mL bottle provided by a certified drinking water lab:
  - 5.2.1.1 First Draw  
Samples shall be collected from each outlet after the water sits in the pipes for a minimum of 8 hours; samples shall be collected when the facility is in regular use, not the day after vacations, weekends or holidays.
  - 5.2.1.2 Flush Samples  
Following 30 seconds of flushing after first draw samples are collected.

## 6.0 Remediation

- 6.1 If the concentration for lead in drinking water from an outlet is at or above the action level, the responsible entity shall ensure remediation of that outlet is conducted as required in this rule.
- 6.2 In conducting remediation, a responsible entity shall strive to achieve the lowest level of lead possible in drinking water.
- 6.3 At a minimum, the responsible entity shall remediate the outlet consistent with the guidance provided by the Department and the Vermont Department of Environmental Conservation.
- 6.4 When testing results are at or above the action level the responsible entity shall:
  - 6.4.1 Prohibit use of an outlet that is at or above the action level until implementation of a lead remediation plan and sampling indicates that lead levels from the outlet are below the action level within one school day; or

6.4.2 Permanently remove, disable, or otherwise ensure it cannot be accessed by any person for the purposes of consumption, teeth brushing, or cooking purposes.

6.5 Signage

6.5.1 Posting a sign at an outlet that has tested at or above the action level is not an acceptable means of remediation.

6.5.2 Responsible entities that have determined that a sink faucet is not reasonably expected to be used for consumption, teeth brushing, or cooking purposes, but are easily accessible by the public, shall have signs stating that such sink faucet should not be used for consumption teeth brushing, or cooking purposes. Signs must include visuals for the non-reader.

**7.0 Reporting and Communication**

7.1 Initial Testing – Prior to December 31, 2021

7.1.1 At least five school days, or business days for child care providers, prior to sampling and testing, responsible entities shall notify all staff, parents or guardians of students directly in writing or by electronic means of the following:

- the scheduled sampling;
- the requirements for testing;
- why testing is required;
- the potential health effects from exposure to lead in drinking water;
- information provided by the Department, regarding sources of lead exposure other than drinking water;
- information regarding how the responsible entity shall provide notice of the sample results; and
- how the responsible entity shall remediate sample results that are at or above the action level.

7.1.2 Notify all staff and all parents or guardians of students directly of the test results and the proposed or taken remedial action in writing or by electronic means within 10 school days, or business days for child care providers, after receipt of the laboratory report;

7.1.2.1 Center Based Child Care and Preschool Programs that provide non-recurring care services shall post the results of all testing and remediation measures where it will be clearly visible to all parents and guardians of students and children.

7.1.2.2 Center Based Child Care and Preschool Programs that provide non-recurring services shall note in children's enrollment forms that the child is enrolled in non-recurring care services.

7.1.2.3 Center Based Child Care and Preschool Programs that provide recurring care services shall adhere to 7.1.2 for those parents and guardians of students and children.

7.2 Reporting of Initial Remediation Actions

Initial remediation actions shall be reported by the responsible entity to the Department via the result website within five business days.

7.3 Reporting of Remediation Plans

Remediation Plans shall be submitted by the responsible entity to the Department via the result website within six months of receipt of laboratory results.

7.4 Reporting Completion of Permanent Remediation

7.4.1 All permanent remediation actions shall be completed and reported as soon as practicable but not more than 18 months from the date of receipt of results indicating a lead concentration at or above 4 ppb.

7.4.2 Following remediation, every outlet that has been remediated must be sampled and the responsible party be in possession of testing results documenting the lead level is below the action level prior to the outlet being placed back into use for consumption, brushing teeth, or cooking purposes.

7.5 Ongoing Testing after December 31, 2021

7.5.1 Responsible entities shall:

7.5.1.1 At least five school days, or business days for child care providers, prior to sampling and testing, responsible entities shall notify all staff, parents or guardians of students directly in writing or by electronic means of the information specified in Section 7.1.1

7.5.1.2 Notify all staff and all parents or guardians of students directly of the test results and the proposed or taken remedial action in writing or by electronic means within 10 school days, or business days for child care providers, after receipt of the laboratory report;



7.5.1.3 Notify all staff and all parents or guardians of students, and students in writing or by electronic means of what remedial actions have been taken. This notification requirement can be met by referring parents or guardians of students, and students to the results website.

7.5.1.4 Child care providers that offer care to children not regularly scheduled to attend shall post the results of all testing and remediation measures in a way that is easily viewed by parents, guardians, staff and the public and on any public website if one is maintained. A child care provider shall note in the child's file whether they regularly attend or not as determined by the provider.

7.5.2 Certified Drinking Water Laboratories shall submit all laboratory results in a format determined by the Department:

7.5.2.1 Within 30 days after analysis has been completed; and

7.5.2.2 Within two days of notifying the responsible entity.

## 8.0 Schedule

Testing entities shall sample in accordance with the following schedule:

### 8.1 Child Care Facilities:

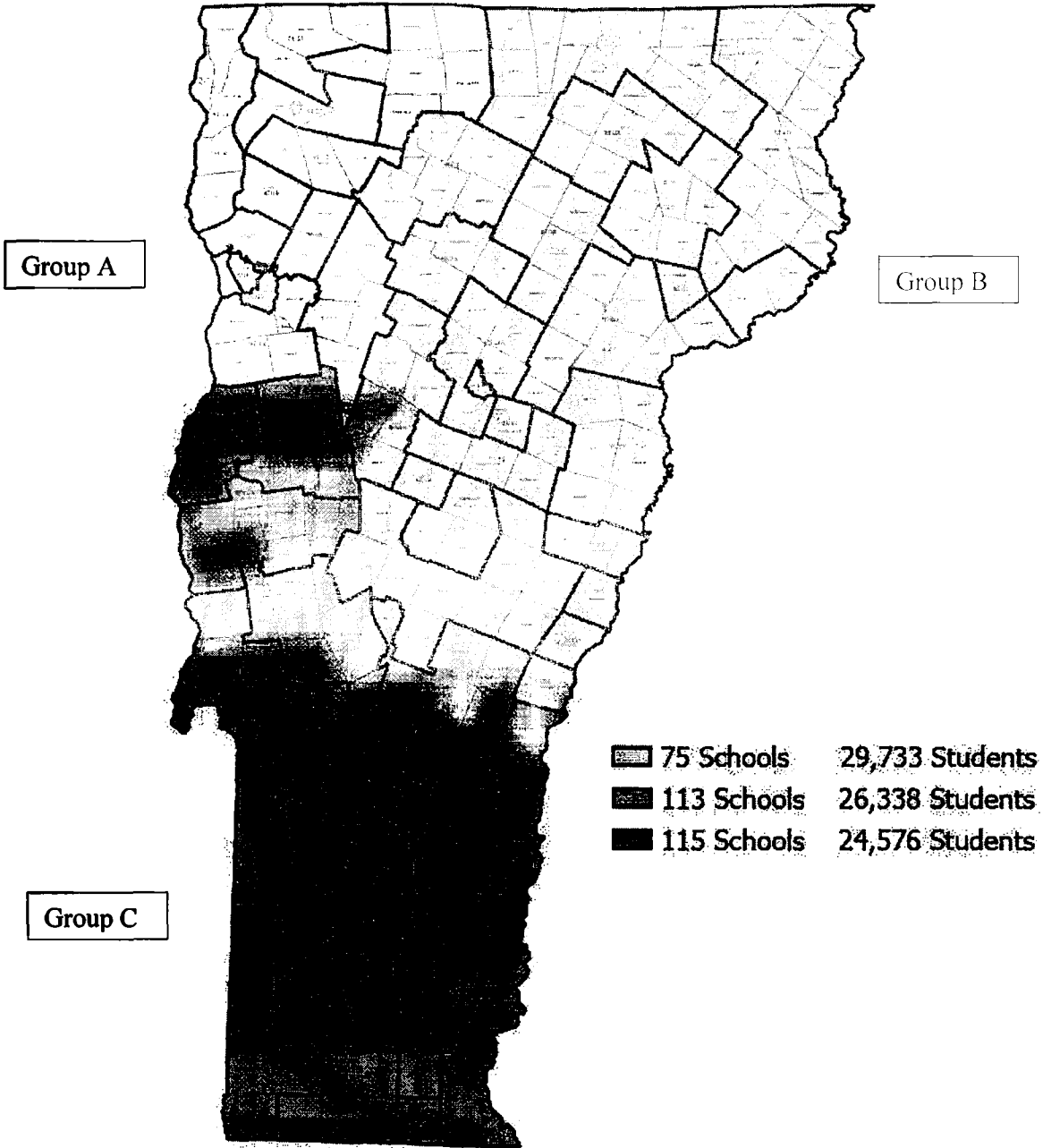
- Once every three (3) years, the child care provider shall complete water testing. Child care facilities located within or operated by schools shall comply with the schools testing schedule.

### 8.2 Schools (See Figure 1):

- Group A – By June 30, 2024, every three years thereafter
- Group B – By December 31, 2024, every three years thereafter
- Group C – By June 30, 2025, every three years thereafter

## 9.0 Retesting and Evidence of Remediation

If the Department has reasonable grounds to believe that there is a potential harm to public health, the Department may require responsible entities to retest outlets or provide additional evidence of effective remediation.



**FIGURE 1**

VERMONT **GENERAL ASSEMBLY**

# The Vermont Statutes Online

## Title 18 : Health

### Chapter 024A : Lead In Drinking Water Of Schools And Child Care Facilities

(Cite as: 18 V.S.A. § 1247)

#### § 1247. Rulemaking

(a) The Commissioner shall adopt rules under this chapter to achieve the purposes of this chapter.

(b) On or before November 1, 2020, the Commissioner, with continuing consultation with the Secretary of Natural Resources, the Commissioner for Children and Families, and the Secretary of Education, shall adopt rules regarding the implementation of the requirements of this chapter. The rules shall include:

(1) requirements or guidance for taking samples of drinking water from outlets in a building or facility owned, controlled, or operated by a school district, supervisory union, independent school, or child care provider that are no less stringent than the requirements of the U.S. Environmental Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools and that include a first draw sample and second flush sample;

(2) the frequency and scope of continued sampling of outlets by school districts, supervisory unions, independent schools, and child care providers, provided that the Department may stagger when continued sampling shall occur by school or provider, school type or provider type, or initial sampling results;

(3) requirements for implementation of a lead mitigation plan or other necessary response to a report that drinking water from an outlet is at or above the action level; and

(4) any other requirements that the Commissioner deems necessary for the implementation of the requirements of this chapter. (Added 2019, No. 66, § 1, eff. June 17, 2019.)



# Proposed Rules Postings

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#### Deadline For Public Comment

Deadline: Mar 11, 2020

Please submit comments to the agency or primary contact person listed below, before the deadline.

#### Rule Details

Rule Number: 20P003

Title: Rule Governing Testing and Remediation of Lead in the Drinking Water of Schools and Child Care Facilities.

Type: Standard

Status: Proposed

Agency: Department of Health, Agency of Human Services

Legal Authority: 18 V.S.A. § 1247, and 3 V.S.A. § 801(b)(11)

Summary: The rule includes requirements for taking samples of water used for consumption and food preparation in schools and child care programs. The rule also includes sampling methodology, the frequency and scope of continued sampling, and requirements for implementation of lead mitigation plans.

Persons Affected: Schools, child care programs, parents, guardians, children, students, teachers, school staff, child care program staff, the Department of health, the Department of Environmental Conservation, the Department for Children and Families, and the Agency of Education.

Economic Impact: While the General Assembly appropriated funding for the cost of laboratory testing and remediation for the first (current) round of testing, it is unclear who will bear the costs of future rounds. The cost to schools and child care programs

Keywords:

Lead  
Drinking  
Schools  
Child Care  
Student  
Teacher

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	Vermont Lawyer ( <a href="mailto:hunter.press.vermont@gmail.com">hunter.press.vermont@gmail.com</a> )	Attn: Will Hunter

**FROM:** Louise Corliss, APA Clerk **Date of Fax:** January 28, 2020

**RE:** The "Proposed State Rules " ad copy to run on **February 6, 2020**

PAGES INCLUDING THIS COVER MEMO: **3**

**\*NOTE\*** 8-pt font in body. 12-pt font max. for headings - single space body. Please include dashed lines where they appear in ad copy. Otherwise minimize the use of white space. Exceptions require written approval.

If you have questions, or if the printing schedule of your paper is disrupted by holiday etc. please contact Louise Corliss at 802-828-2863, or E-Mail [louise.corliss@vermont.gov](mailto:louise.corliss@vermont.gov), Thanks.

## PROPOSED STATE RULES

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By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at <https://secure.vermont.gov/SOS/rules/>. The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

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Child Care Licensing Regulations: Center Based Child Care and Preschool Programs.  
Vermont Proposed Rule: 20P002

AGENCY: Agency of Human Services, Department for Children and Families

CONCISE SUMMARY: The proposed rules reduce duplication and adapts the rules for Public School Prekindergarten Programs (PSPP) and/or any Center Based Child Care and Preschool Programs (CBCCPP) located in a public school building. In addition, the department is making necessary changes to the breastfeeding regulations, background clearance regulations, provisional licensure regulations, and updating the name of the Community College of Vermont's professional development system. As a result of these amendments, the section 1.3 of CBCCPP regulations was amended to align with these changes.

FOR FURTHER INFORMATION, CONTACT: Melissa Riegel-Garrett, Policy Director, Vermont Agency of Human Services, Department for Children & Families, Child Development Division NOB1, 280 State Drive, Waterbury, VT 05671 Tel: 802-989-9685 Email: [melissa.riegel-garrett@vermont.gov](mailto:melissa.riegel-garrett@vermont.gov) URL: <https://dcf.vermont.gov/cdd/laws-regs>.

FOR COPIES: Christel Michaud, Vermont Agency of Human Services, Department for Children & Families, Child Development Division NOB1, 280 State Drive, Waterbury, VT Tel: 802-224-6940 Fax: 802-241-0848 Email: [christel.michaud@vermont.gov](mailto:christel.michaud@vermont.gov).

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Rule Governing Testing and Remediation of Lead in the Drinking Water of Schools and Child Care Facilities.  
Vermont Proposed Rule: 20P003

AGENCY: Agency of Human Services, Department of Health

CONCISE SUMMARY: The rule includes requirements for taking samples of water used for consumption and food preparation in schools and child care programs. The rule also includes sampling methodology, the frequency and scope of continued sampling, and requirements for implementation of lead mitigation plans.

FOR FURTHER INFORMATION, CONTACT: David Englander, Department of Health 108 Cherry Street, Burlington, VT 05401 Tel: 802-863-7820 Fax: 802-951-1275 Email: [ahs.vdhrules@vermont.gov](mailto:ahs.vdhrules@vermont.gov) URL: <http://www.healthvermont.gov/about-us/laws-regulations/public-comment>.

FOR COPIES: Shayla Livingston, Department of Health 108 Cherry Street, Burlington, VT 05401 Tel: 802-863-7820 Fax: 802-951-1275 Email: [ahs.vdhrules@vermont.gov](mailto:ahs.vdhrules@vermont.gov).

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General Assistance / Emergency Assistance Rules.

Vermont Proposed Rule: 20P004

AGENCY: Agency of Human Services, Department for Children and Families

CONCISE SUMMARY: The General Assistance and Emergency Assistance programs (GA/EA) provide temporary housing to Vermonters experiencing homelessness either through the criteria under the category of catastrophic situations or by meeting the criteria under vulnerable populations. The GA/EA programs provide eligible recipients with motel vouchers when there is no shelter space available. The proposed rule removes all references to temporary housing from the GA/EA rules and temporary housing will no longer be administered by the GA/EA programs. Included in this proposal are technical corrections and deletions of obsolete references such as Town Service Officers.

FOR FURTHER INFORMATION, CONTACT: Deanna Jones Agency of Human Services, Department for Children and Families 280 State Drive, HC 1 South, G107-1, Waterbury VT 05671-1201 Tel: 802-398-5333 Fax: 802-241-0460 Email [deanna.jones@vermont.gov](mailto:deanna.jones@vermont.gov) URL: <http://dcf.vermont.gov/esd/rules>.

FOR COPIES: Amanda Beliveau, Agency of Human Services, Department for Children and Families, Economic Services division 280 State Drive, HC 1 South, H121-1 Waterbury, VT 05671-1020 Tel: 802-241-0641 Fax: 802-241-0460 Email: [amanda.beliveau@vermont.gov](mailto:amanda.beliveau@vermont.gov).

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