

# Lead Testing Update: Everything You Need to Know

# Introductions

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# P.A. 99-922

- In the wake of the Flint drinking water crisis, the General Assembly (with overwhelming bi-partisan support) and Governor Rauner passed P.A. 99-922 on January 17, 2017.
- The new Act amended the Illinois Plumbing License Law and added sections requiring testing for lead in drinking water at various public buildings, including many school buildings. See 225 ILCS 320/35.5.

# LEGISLATIVE FINDING

- General Assembly Finding
  - In passing the Act, the General Assembly made a specific finding that lead has been detected in the drinking water of Illinois schools, and that young children may suffer adverse health effects and developmental delays as a result of exposure to even low levels of lead. 225 ILCS 320/35.5(a).

# LEGISLATIVE PURPOSE

- Legislative Purpose: The General Assembly also stated that the purpose of the legislation is to require:
  - School districts to test for lead in school buildings with the goal of providing school building occupants with an adequate supply of safe, potable water; and
  - School districts to notify parents of enrolled students of the testing results from their school buildings. See 225 ILCS 320/35.5.(a).

# LIMITED TESTING REQUIREMENTS

- The Act requires testing of “sources of potable water” at certain “school buildings”. *See* 225 ILCS 320/35.5(c)(1).

# SCHOOL BUILDINGS

- “School Buildings” applicable to the Act:
  - “Any facility or portion thereof that was constructed on or before January 1, 2000 and may be occupied by more than 10 children or students, pre-kindergarten through grade 5, under the control of (a) a school district or (b) a public, private, charter, or nonpublic day or residential educational institution.” 225 ILCS 320/35.5(b).
  - High schools included for preschool programs & district-run extra curricular activities

# “SOURCES OF POTABLE WATER”

- “Sources of Potable Water” applicable to the Act:
  - “The point at which non-bottled water that may be ingested by children or used for food preparation exits any tap, faucet, drinking fountain, wash basin in a classroom occupied by children or students under grade 1, or similar point of use; provided, however, that all (a) bathroom sinks and (b) wash basins used by janitorial staff are excluded from this definition.” 225 ILCS 320/35.5(b).



# TESTING DEADLINES

- The Act sets forth timelines for testing that are based upon the 1986 amendments to the federal Safe Drinking Water Act which banned the use of lead pipes in public water systems after June of 1986.
- Testing for school buildings built before January 1, 1987 was to be completed by December 31, 2017.
- Testing for school buildings built from January 1, 1987 through January 1, 2000 shall be completed by December 31, 2018.
- No later than June 30, 2019, the Illinois Department of Education shall determine whether testing is necessary for school buildings built after January 1, 2000.

# TESTING PROCEDURE REQUIREMENTS

- Each school district shall test each source of potable water in a school building for lead contamination as required by the Act. 225 ILCS 320/35.5(c).
- Required Samples:
  - Only two samples from each source of potable water are required.
  - School districts must collect at a minimum a 250 milliliter sample of water from each source of potable water that has been standing in the plumbing pipes for at least 8 hours, but not more than 18 hours, without any flushing of the source.
  - A second sample of 250 milliliters must be collected after a thirty second flush from the time of the first collection.
  - If any of the sources of potable water utilize the same drain, the school district is only required to have two samples for one source of water, and one sample for the remaining sources.

# TESTING OF SAMPLES

- Section 320/35.5(c) initially required that the samples be submitted to laboratories accredited by the Illinois Environmental Protection Agency.
- In August of 2017, the Governor signed Public Act 100-103 which amended the laboratory requirements under 225 ILCS 320/35.5.
  - The statute now requires laboratories to be certified to analyze lead in drinking water in accordance with accreditation requirements developed by a national laboratory accreditation body.
  - The laboratories must analyze the samples in accordance with said requirements, including one of the testing methods described in federal EPA regulations.
  - The Illinois Department of Health (“IDPH”) also issued a memorandum (available on the IDPH website) to the Illinois EPA, Division of Labs, requiring that all testing for this law use a minimum reporting limit of 2.0 parts per billion (ppb).
- School districts shall provide the final analytical test results to IDPH within 7 days after receiving the laboratory’s testing results.

# TESTING OF SAMPLES

## Other Considerations

- Completed Chain of Custody Forms
- Facility maps with fixtures identified
- Laboratory Analytical Data in Excel

# ANY SAMPLE RESULTS EXCEED 5

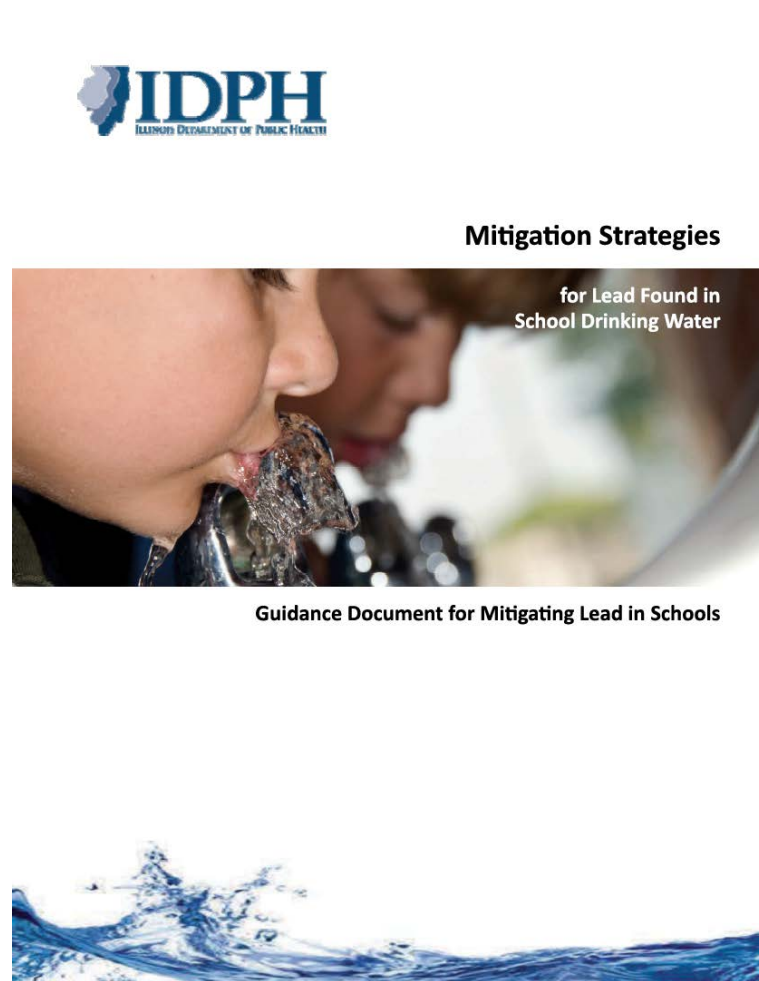
- 225 ILCS 320/35.5(c)(3) –
  - “If any of the samples taken in the school exceed 5 parts per billion, the school district or chief school administrator, or the designee of the school district or chief school administrator, shall promptly provide an individual notification of the sampling results, via written or electronic communication, to the parents or legal guardians of all enrolled students and include the following information: the corresponding sampling location within the school building and the United States Environmental Protection Agency's website for information about lead in drinking water....”
- Summary:
  - Applies if any of the samples exceed the 5.0 ppb threshold. Even if second draw from potable water source has test results below 5.0 ppb, there is no exception to the notification requirement. However, school districts can affirmatively report that the second draw had lower results.
  - Must promptly provide individual notification of the sampling results, via written or electronic notification, to the parents and legal guardians of all students enrolled at that facility;
  - Notification must include the sampling locations and the United States Environmental Protect Agency’s website for information about lead in drinking water.

# ALL SAMPLE RESULTS BELOW 5 PPB

- 225 ILCS 320/35.5(c)(3) –
  - “If any of the samples taken at the school are at or below 5 parts per billion, notification may be made as provided in this paragraph or by posting on the school's website.”
- Statute’s use of “may” does not require notification to parents and guardians if test results are at or below 5 ppb.
- Although Section 320/35.5 does not explicitly mandate notification if the results are under 5.0 ppb, the IDPH’s “Sampling Protocol for Drinking Water in Schools” states that a school district must at a minimum provide notification through its website, even when results are under 5.0 ppb.
  - IDPH does not have any rule making authority under this legislation.
  - Nonetheless, school districts should consider voluntarily disclosing the test results depending on the scope of the positive results and possibility for freedom of information requests for the test results.

# ALL SAMPLE RESULTS ABOVE 2.00ppb

- Implementation of a Water Management Plan



# MITIGATION CONSIDERATIONS

- No Mitigation or Penalties - The statute does not require school districts to mitigate any positive lead results, or impose any penalties if a school district fails to comply with the statute.
  - Rather, the statute states that lead sampling results will not be used for purposes of determining compliance with the IDPH’s rules that implement the national primary drinking water regulations for lead and water. 225 ILCS 320/35.5(c)(7).
- IDPH’s Recommendations– The statute requires IDPH to post on its website guidance on mitigation actions and ongoing water practices in schools.
  - IDPH’s “School Mitigation Strategies for Lead in Drinking Water”, available on its website, acknowledges that the law does not require mitigation, but states that IDPH is requiring the mitigation strategies and requirements contained in the document until subsequent testing indicates no presence of lead.
  - IDPH’s recommendations for reducing lead levels include monitoring and sequential sampling of problem fixtures, installation of mechanical flushing valves, manually flushing fixtures, and removal and replacement of fixtures with persistent lead levels.
  - IDPH authority to “requir[e] the mitigation strategies and requirements ...”?



# MITIGATION CONSIDERATIONS

- Although the statute does not give IDPH the regulatory power to enforce or require the mitigation strategies, school districts should use the IDPH's guidelines to protect their students and staff from lead exposure, and also prevent any potential regulatory actions by IDPH or civil lawsuits.
- IDPH has also discussed publishing a list of school districts that have not complied with this Act.

# TESTING FOR DAYCARES AND PRE-KINDERGARTEN FACILITIES

- The statute only applies to school buildings, meaning any facility or portion thereof, constructed before January 1, 2000 that are occupied by 10 or more children or students, pre-kindergarten through fifth grade, under the control of a school district or a public, private, charter, or nonpublic day or residential educational institution.
- If a high school or a community college has a pre-kindergarten program, that “portion” of the school building occupied by the pre-kindergarten students must be tested. Any other sources of potable water that the pre-kindergarten students might ingest or access must also be tested. The presence of these programs does not create a duty to test all sources of potable water that are not otherwise subject to this statute.
- If the program is a licensed day care center, the testing requirements are governed by the Child Care Act, 225 ILCS 10/5.9, which gives IDPH the authority to adopt rules and procedures for testing, notification, and mitigation.

# *Questions and Answers*

*We thank you for your time!*

# Presenters:

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