

UPDATE

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AUTHORS

NEW JERSEY STATE BOARD OF EDUCATION ADOPTS NEW RULES TO ADDRESS CONCERNS REGARDING LEAD IN DRINKING WATER

Concern with lead in drinking water has become a nationwide issue. The New Jersey State Board of Education has now joined the inquiry and taken action on this topic. On July 13, 2016, it promulgated amendments to the regulations governing educational facilities (N.J.A.C. 6A:26 et seq.) requiring immediate testing for lead in the drinking water of all New Jersey public school districts, and other public and private schools including charter schools, renaissance schools, and state-funded early childcare facilities. They cited the health, safety and welfare of children in the state and the potentially serious health problems for children, teachers and school personnel, caused by exposure to lead-contaminated drinking water, as the basis for the amendments and new rules. A drinking water testing program is to be immediately instituted at all school facilities where water is expected to be used for consumption or food preparation. With limited exceptions, all testing for elevated lead levels is required within 365 days of the effective date of the rules. The testing requirements will be governed by the new rules and based on New Jersey Department of Education ("NJDOE") and New Jersey Department of Environmental Protection ("NJDEP") guidance. Under the Safety Requirements for School Facilities in the referenced regulations, each school district will be required to annually submit a statement of assurance of compliance to the NJDOE.

Additional requirements of the new rules include:

- Making the test results of all water samples publicly available at both the school facility and on the school district's website;
- Notifying the parents or guardians of school children and the NJDOE of any elevated lead levels, the measures taken to immediately end the use of each drinking water outlet exhibiting elevated lead levels, and the remedial actions taken to provide alternate sources of drinking water; and



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- Conducting lead testing of all drinking water outlets at least every six years following the initial testing.

The NJDEP, in consultation with the NJDOE, has developed guidance documents, including templates of lead testing plans, notification letters and frequently asked questions sheets. These documents are available on the NJDEP's website.

Upon written demonstration that there is no certified laboratory available to conduct testing within the 365-day timeframe, district boards of education may apply for an extension of the deadline for up to one year. Also, under limited circumstances, the new rules allow for exemptions. An exemption from the initial testing requirements can be obtained by demonstrating compliance with or exceedance of the testing requirements within the past five years or demonstrating that water outlets are not used for consumption or food preparation in any of the school's facilities. If an exemption is granted, unless another exemption is obtained, the rules still require testing within six years of receiving the exemption. Finally, through the NJDOE, the rules allow public and nonpublic schools to seek reimbursement of the costs of conducting water supply testing and analysis, after the effective date of these new rules.

If you have any questions regarding the amendments and new rules regarding lead testing, please contact us.