

On June 9, 2016, Governor John Kasich signed House Bill (HB) 512, a multifaceted law that the Governor has said “puts Ohio in the front” and makes Ohio “the leader in the country” in dealing with the problem of lead contamination in drinking water. After the crisis in Flint, Michigan sparked a national inquiry and events in Sebring, Ohio raised questions locally, the Ohio General Assembly responded with HB 512, which includes tighter deadlines for Ohio public water systems to respond and notify residents of lead in drinking water. HB 512 was introduced on April 7, 2016, quickly passed by the Ohio Legislature in May, and signed into law by the Governor. The new law becomes effective on September 8, 2016.

The new law establishes sampling, corrosion control, and individual tap action levels, more stringent public notification deadlines, higher administrative enforcement penalties, requirements for identifying and mapping lead infrastructure in public water systems, and financial assistance for communities and schools with lead in drinking water concerns. The enacted version largely mirrors the version that was introduced, which we previously covered [in our frESH blog](#). The key provisions of the changes to Ohio law regarding lead in drinking water are summarized below.

Reducing the Amount of Lead in New Infrastructure and the Definition of “Lead Free”

Previous Ohio law enacted in 1988 required that plumbing materials, including certain pipes, pipe fittings, plumbing fittings or fixtures must generally be “lead free” – defined as containing not more than a weighted average of 8% lead. HB 512 re-defines the term “lead free” by significantly reducing the amount of lead from 8% to a weighted average of 0.25% lead.

New Ohio EPA Rules Required Within 120 Days of Effective Date of Law

HB 512 requires the Director of Ohio EPA (Director) to promulgate rules within 120 days of the effective date of the law (i.e., by January 6, 2017) requiring public water systems (specifically community or nontransient noncommunity water systems) to respond to lead in drinking water with more stringent sampling, corrosion control, individual action levels, expedited public notice requirements and other specific actions:

Sampling, Schedule for Sampling and Corrosion Control

HB 512 requires public water systems to conduct sampling for lead and copper, and also establish a schedule for sampling that considers several factors, including age of the water system, whether the public water system is complying with corrosion control requirements, risk factors including whether the infrastructure likely contains lead service lines and other factors. The new rules would allow the Director to authorize sampling for pH level and other parameters that indicate whether corrosion control requirements are being met. The rules would also authorize the Director to establish corrosion control requirements and require public water systems to submit new or updated corrosion control treatment studies and plan for when certain events could occur.

Individual Tap Action Levels

Under current Ohio law, a public water system exceeds a lead “action level” when more than 10% of tap water samples collected in any monitoring period exceeds 0.015 mg/L. However, HB 512 requires the Director to set a lead threshold for individual taps.

Expedited Public Notice Requirements Where Lead Levels Exceed the Threshold

HB 512 significantly tightens the deadlines by which a public water system must notify consumers of lead sampling results. It requires public water systems to provide information, including lab results that demonstrate excess levels of lead, to the owner and affected consumers within two business days of receipt of the results. The deadline under existing regulations is 30 days after the system learns of the results. HB 512 also requires public water systems to provide public education and other materials within 30 days of receiving the lab results, as compared to existing regulations which allow 60 days.

Other Requirements Where Lead Levels Exceed the Threshold at an Individual Tap

Where lab results show that the lead threshold from an individual tap exceeds applicable threshold levels, HB 512 requires nontransient noncommunity water systems to immediately remove from service all fixtures identified as contributing to elevated lead levels. The legislation requires community water systems to explain the associated health risks, what actions consumers can take to reduce health risks and acts the community system is taking reduce public exposure.

Higher Administrative Penalties for Violations of Public Notice Requirements

The legislation requires Ohio EPA to adopt rules to establish higher administrative penalties for the violations of public notice requirements described above. These penalties range from \$25 per day for each day the system failed to provide notice (for the smallest public water systems), to \$1,000 per day for each day the system failed to provide notice (for the largest public water systems).

Mapping System Infrastructure Containing Lead

Within six months of the effective date of the law, HB 512 requires specified public water systems to identify and map areas of the system that contain lead infrastructure, identify characteristics of affected buildings, and to update this map once every five years. If a public water system exceeds the action level, the new law also requires that system to notify other consumers who are identified in the map as to the availability of tap water testing; these customers must be notified within five days.

Changes to Ohio Water Development Authority Bidding Requirements

Unlike the introduced version of the bill, the law authorizes the Ohio Water Development Authority to contract for expenditures of up to \$50,000 without complying with competitive bidding requirements. Previously, contracts of \$25,000 or more triggered the requirements.

Financial Assistance to Communities and Schools to Address Lead Issues

HB 512 includes provisions designed to strengthen several state grant and loan programs that help communities and schools address infrastructure needs with lead problems. For example, through its drinking water revolving loan program, the legislation requires the Director of Ohio EPA to provide financial assistance to public water systems in order to comply with the mapping requirements described above, conduct corrosion control studies, and provide other assistance to communities that have lead service lines. Ohio EPA is also permitted to extend wastewater loan terms from 30 years after project completion, up from 20, and extend loan financing up to 45 years but no longer than the expected useful life of the facility.

Meanwhile, House Bill 390, which passed the General Assembly on May 25, 2016, appropriates \$12 million in lead plumbing fixture replacement assistance grants, to be used by the Facilities Construction Commission to provide funding to eligible public and chartered nonpublic schools for the reimbursement of costs of replacing drinking fountains, water coolers, plumbing fixtures and other piping found to contain lead levels above applicable action levels. Schools may apply to the Facilities Construction Commission for reimbursement of the cost to have their buildings assessed for lead content in drinking water.

With the assistance of our Public Policy team, we will continue to monitor lead-related developments for drinking water in Ohio and nationally.

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