



**Proposed Amendments and New Rule N.J.A.C.
7:10-5.9 Docket Number: 11-25-12
April 3, 2026**

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Dear Acting Commissioner Ed Potosnak

New Jersey Future (NJF) is pleased to submit comments on the Proposed Amendments and New Rule N.J.A.C. 7:10-5.9 Docket Number: 11-25-12.

New Jersey Future strongly supports the State's goal of greatly reducing lead exposure, and the proposed rules will help New Jersey move toward that goal in many ways. However, several technical and practical concerns must be addressed to ensure successful implementation by water suppliers.

We are pleased to provide comments on the following:

- Lead Service Line (LSL) Identification and Replacement Protocols
- Equity and the Elimination of Cost-Sharing
- Protecting Children in Schools and Childcare Facilities
- Operational Capacity and Laboratory Infrastructure
- Public Notification

Lead Service Line (LSL) Identification and Replacement Protocols

New Jersey Future urges the New Jersey Department of Environmental Protection (NJDEP) to provide supportive guidance for "good-faith effort" and "last resort" protocols, adopt the federal "access" standard, and require documentation, authorities, and guidelines for mandatory post-disturbance flushing.

- **Supportive guidance for "good faith effort" and "last resort" protocols.** Drinking water systems are responsible for the full replacement of the LSL, including the privately owned portion. While New Jersey Future agrees with the "good faith effort" requirement (four attempts via two methods), NJDEP should clarify "last resort" protocols for partial replacements during emergencies to avoid compliance violations when owners refuse access.

- **Adopting the Federal "Access" Standard:** The proposed rule should be revised to require replacement of privately owned lead service lines whenever a water system has "access" to the line, in alignment with the federal Lead and Copper Rule Improvements (LCRI). The current draft relies on affirmative property owner consent, overlooking situations where water systems already have legal or physical access under existing regulations or water tariff agreements.
- **Documentation of Legal Authorities:** Water systems should be required to explicitly identify the laws, regulations, and tariff agreements that affect their ability to gain access to service lines. This includes citing specific provisions that either authorize customer cost-sharing or mandate consent, ensuring a transparent legal framework for replacements.
- **Mandatory Post-Disturbance Flushing:** Service line replacement plans must mandate specific procedures for consumers to flush the premise plumbing of particulate lead following any disturbance or replacement of a service line. This is a critical public health protection because disturbance activities can mobilize lead particles into the drinking water.

Equity and the Elimination of Cost-Sharing

New Jersey Future urges NJDEP to provide supportive guidance for water systems, establish guidance, eliminate direct cost-sharing, and provide operational efficiency and local ordinance guidance to improve customer participation and eliminate cost-share barriers.

- **Eliminating Direct Cost-Shares:** Customers should not be charged a direct cost-share for service line replacements. Requiring payment disproportionately leaves lead infrastructure in lower-income areas and communities of color, exacerbating existing racial and economic inequities.
- **Operational Efficiency:** Eliminating cost-shares reduces the administrative burden on water utilities, which would otherwise waste significant time and resources on outreach and data management for property owner refusals. A free replacement model leads to a more coordinated, efficient, and less costly process overall.
- **Local Ordinance Guidance:** Robust state guidance is needed to help municipalities implement free or mandatory LSL replacement ordinances, which are essential to addressing the challenge posed by absentee landlords who may otherwise refuse to consent to the work.

Protecting Children in Schools and Childcare Facilities

New Jersey Future urges NJDEP to provide stronger protections for children in schools and childcare facilities, including clarifying sampling requirements, lowering the lead action level, instituting "Filter First" mandatory protections, and providing clear guidance for identifying unregistered facilities.

- **Reconciling "Shall Sample" vs. "Shall Offer"**

The phrase "**shall sample**" establishes the legal requirement for the water supplier to maintain a school/child care testing program as part of their regulatory duties. However, the rule further states supplier "**shall offer**" to sample each facility at least once every three years.

- If a facility is unresponsive, the supplier "shall make at least one additional offer" during that same cycle.
 - "Shall sample" defines a programmatic state-mandated service, while "shall offer" defines a communication that attempts to do so.
- **Lowering the Lead Action Level:** The lead action level for schools and childcare facilities should be reduced to below 5 ppb. This level is achievable with certified filters and aligns with standards already adopted in neighboring states, such as New York and Pennsylvania (5 ppb), Vermont (4 ppb), and Illinois (2 ppb).
 - **"Filter First" Mandatory Protections:** Rather than relying on a three-year sampling cycle, which is considered unacceptably long for developing children, the state should mandate a "Filter First" approach. This requires maintaining certified point-of-use filters on all outlets used for drinking, food preparation, and baby formula to protect against lead from complex internal plumbing that service line replacement cannot address.
 - **Identifying Unregistered Facilities:** The responsibility for identifying unregistered childcare facilities, particularly those in private residences, should fall to state agencies like the Department of Children and Families (DCF), as water systems lack the records to track these primary-use changes.

Operational Capacity and Laboratory Infrastructure

New Jersey Future urges NJDEP to provide grants and technical assistance to support water systems serving overburdened communities and to include provisions for increasing the number of certified labs.

- **Support for Overburdened Systems:** The proposed 90-day deadlines for inventories and replacement plans are viewed as a significant strain on disadvantaged systems with limited staff and aging infrastructure. The state should provide grants, technical assistance, and funding pathways to help these systems meet the new requirements.

- **Addressing Laboratory Bottlenecks:** New Jersey must increase its number of certified labs to manage the increased volume and complexity of required testing, such as fifth-liter sampling and expanded tap sampling sites. This prevents high costs and long turnaround times from disproportionately affecting small, resource-constrained systems.

Public Notification

NJDEP should also recognize that a one-hour window risks the dissemination of inaccurate or panicked information and consider a more feasible window.

- **Expanding the Notification Window:** The current requirement to notify municipal officials within one hour of a lead action level exceedance is considered unfeasible and potentially counterproductive. A window of 1 to 24 hours is recommended to prioritize accuracy and verified messaging, which prevents the spread of panicked or unverified data that could erode community trust.
- **Protections for Rental Units:** In alignment with the 2025 Lead Disclosure Bill, the state should implement protection programs, such as providing point-of-use filters, for tenants in residential rental units

New Jersey Future encourages NJDEP to adopt the above considerations to create a strong incentive for LSL replacement, while ensuring the technical constraints are realistic across all system sizes.

Thank you for your time and consideration.

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