In the wake of the 2014 Flint, Mich., water crisis, environmental regulators and federal, state, and local decision-makers throughout the country have increased focus on elevated lead levels in drinking water. Historically, lead was a prevalent component in municipal water supply infrastructure, chiefly distribution pipes, valves and joints. Lead makes its way into drinking water once that water is put into the conveyance system, by leaching from larger distribution pipes or from within a building’s internal pipes, faucets, fountains or fixtures. The 1986 amendments to the Safe Drinking Water Act (SDWA) banned installation of lead plumbing components in drinking water supply systems and in newly constructed and/or renovated buildings, but did not require retroactive removal of older components that contact drinking water. Through legislative efforts over the past year and a half, California has established new permitting requirements and a grant program to address the issue of elevated lead levels in schools’ drinking water. School districts and schools should consider their eligibility for grant funding as they investigate whether their buildings may have lead issues that need to be addressed.

TAKEAWAYS

1️⃣ Water purveyors serving K-12 schools must now collect & analyze school’s samples from water fountains and faucets, if requested by school or district.

2️⃣ In November 2017, the State Water Board began accepting grant applications to fund projects that improve drinking water quality in public schools.

3️⃣ Grants—which may be used toward a number of eligible projects and/or interim supplies—will be awarded until the $9.5 million fund runs out or June 30, 2019, whichever occurs first.

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In the wake of the 2014 Flint, Mich., water crisis, environmental regulators and federal, state, and local decision-makers throughout the country have increased focus on elevated lead levels in drinking water.
Permit Amendments and AB746: Water System Obligations to Test

On January 17, 2017, the State Water Resources Control Board’s Division of Drinking Water (DDW) issued amendments to water supply permits for approximately 1,200 water systems throughout California. The amendments require water purveyors serving K-12 schools to collect and analyze up to five samples from a school’s water fountains and faucets, if requested by a school or district. Should results of those samples exceed action levels of 15 parts per billion (ppb), the permit amendments require water systems to notify school official within two business days. Water systems must also meet with school staff to interpret and discuss sample results, and provide information regarding potential corrective actions. Water systems must also conduct repeat sampling at locations that exceed 15 ppb and obtain those results within 10 business days.

Written requests can be submitted by public, charter and private schools alike, as long as the school is served by a public water system. The water systems are obligated to comply with all requests until November 1, 2019. According to a DDW report, as of October 19, 2017, 1,755 schools provided a copy of their request letter to the division, and 1,169 schools have submitted sampling results.

Following in the steps of the permit amendments, on October 12, 2017, the California legislature passed Assembly Bill 746 (AB 746), which requires community water systems to test lead levels at K-12 public schools and other school district buildings constructed before 2010 by July 2019. Whereas the permit amendments applied to requesting private and public schools alike, AB 746 imposes an affirmative duty on water providers to test public school sites. While subtle differences exist between the two programs, the State Water Board has recognized that AB 746 “exempts from testing school sites for which testing for lead has already been requested pursuant to the community water system’s permit amendment. If a school site is not exempt …, and a request has not been made by the local education agency …, [AB 746] would control the requirements placed on the public water system.” Similarly, schools that were previously sampled prior to 2009 would be exempt under the new program.

These recent changes have not been welcomed by all. In November 2017, the California Municipal Utilities Association (CMUA) filed a petition with the Office of Administrative Law (OAL) challenging the permit amendments as an underground regulation. In response to the petition, DDW submitted a certification to the OAL that it would not “issue, use, enforce, or attempt to enforce” a template on which the permit amendments were based, but stated that the permit amendments themselves were still in full effect. CMUA continues to challenge the State Water Board’s actions.

Drinking Water for Schools Grant Program

In addition to a new regulatory regime requiring water purveyors to test certain schools upon request, the State Water Board has established the Drinking Water for Schools Grant Program, which allocates up to $9.5 million in funding to improve access to and the quality of public school drinking water. Senate Bill 828 of 2016 required the State Water Board to establish a grant program for funding improved water quality, as well
as guidelines for the submittal and acceptance of grant applications. In March of 2017, the State Water Board adopted the program’s Guidelines, which outline the criteria for eligible entities, eligible projects, and the Program’s statutorily mandated priority to disadvantaged communities (DACs).

Grants awarded may span from $25,000 to $100,000 per school, and are capped at $1 million for eligible entities applying for multiple schools. Eligible projects include, but are not limited to, new water bottle filling stations or drinking water fountains; point-of-use (at a single tap) or point-of-entry (at the building) treatment devices, including up to three years of replacement filters, operation and maintenance costs; replacement or repairs to drinking water fixtures and plumbing appurtenances; and providing interim supplies during repairs/installations, such as bottled or hauled water. The program will not, however, fund drilling new wells, rehabilitating existing wells, connecting to adjacent water systems, or pilot and outreach programs. During its first phase, through June 2018, only schools and districts serving small DACs are eligible for project grant funding. A small DAC is defined as a municipality, school district, or school service area of 20,000 or less people and an annual median household income less than 80 percent of the state median household income ($63,783 in 2016). The Guidelines allow a DAC to be demarcated by municipality or “a school district or individual school boundary,” thus allowing certain schools or districts to be eligible even if located within a larger municipality that exceeds the median income threshold or population. Large DACs (i.e., those exceeding the 20,000 population limitation) become eligible after June 2018.

On November 30, 2017, the State Water Board began accepting grant applications for the program through the Financial Assistance Application Submittal Tool. Grants will be awarded until the $9.5 million fund runs out, or until June 30, 2019—whichever occurs first. County education offices are encouraged to apply for multiple small school districts within their jurisdiction, and should consider doing so immediately to obtain the most favorable position in the queue of requesting entities. While the $9.5 million dollars is designed to assist many communities, available funding may go quick as awareness over these issues continues to grow.

System Replacements
Further, after the passing of Senate Bill 427 (2017), community water systems must compile an inventory of known partial or total lead user service lines in use in its distribution system by July 1, 2018. The inventory must include all active user service lines and those that are reasonably expected to become active in the future. The bill requires community water systems to also identify areas that may use lead user service lines, and identify areas within the distribution system that the operator cannot identify the material used for the service line. Community water systems are required to establish schedules to replace all known lead-based service lines and service lines of unknown material by July 1, 2020.

Pillsbury’s Experience
Pillsbury has significant experience assisting both water suppliers and school districts with environmental compliance, and specifically with addressing elevated lead detected in drinking water and SDWA compliance.
We assist our clients in establishing sampling programs, regulatory reporting, public outreach, risk management, and project completion where remedial work is required.

These and any accompanying materials are not legal advice, are not a complete summary of the subject matter, and are subject to the terms of use found at: https://www.pillsburylaw.com/en/terms-of-use.html. We recommend that you obtain separate legal advice.