

Additional Input on B22-0507
The Lead Pipe Replacement and Disclosure Amendment Act of 2017

From the Campaign for Lead Free Water and Natural Resources Defense Council
Feb. 9, 2018

Introduction

The Campaign for Lead Free Water and Natural Resources Defense Council welcome the opportunity to offer this feedback based on significant changes to the committee print for bill B22-0507, The Lead Pipe Replacement and Disclosure Amendment Act of 2017, and on our research into the basis of the proposed program envisioned in the bill.

We request a meeting to discuss this feedback and our recommendations, before the Council takes any further action on the bill.

To summarize our feedback below:

1. We strongly support the language clarifying and making explicit that DC Water has authority to replace lead service lines (LSLs) running through private property;ⁱ
2. We strongly support the language requiring DC Water to replace LSLs fully when replacing mains or public-side LSLs, however we urge the Council to provide in the bill that this work will be done with public funds;ⁱⁱ
3. We support the decision to drop the concept of “lead-free” homes, and strongly discourage the Council from including such a concept in future laws.
4. We appreciate the improvements to the disclosure requirements, but think that disclosure needs to be more universal, and have offered specific ideas for that below.
5. We appreciate the requirement for DC Water to provide public education, but given the harmful and still ongoing history of incorrect, incomplete, or misleading public information about lead in water in the District, the law needs to set out very specific and prescriptive requirements, and we have offered our specific ideas for that below.
6. **We strongly urge the Council to set aside the portion of the bill that establishes a voucher program for LSLR, and to instead develop a long-term District-wide lead service line replacement (LSLR) program. That bill should mandate a proactive and systematic long-term LSLR program that is publicly funded, is administered by DC Water without requiring homeowners to apply for vouchers, and follows**

an aggressive schedule established in the bill's text, to be completed as soon as possible but no later than 20 years, as discussed further below.

As CLFW members stated in testimony on the bill (submitted for the Nov. 17, 2017 hearing), we support the Council's overarching goal and efforts toward enabling District residents to be rid of the dangerous lead services lines (LSLs) that serve their homes, posing a constant risk of lead-tainted water at the tap. However, even with the significant changes that have been incorporated into the voucher program envisioned in B22-0507, DC Water would continue implementing a largely-passive and piecemeal approach to LSLR, that leaves thousands of LSLs in the ground where they pose a risk to customers' health for many decades into the future. Some additional updates to this legislation could address this problem, creating a common-sense, health-protective replacement program in line with what other cities are doing to clean up their drinking water.

Already, full system-wide removal of all LSLs is the premier policy recommendation of the National Drinking Water Advisory Council,ⁱⁱⁱ the American Water Works Association, and the LSLR Collaborative, "25 national public health, water utility, environmental, labor, consumer, housing, and state and local governmental organizations."^{iv} The Council's proposal for a voucher program of limited scope falls far short of this health-protective recommendation. We are also concerned about the lack of detailed and accurate information about the way DC Water is calculating the charges it apportions to residents for full LSLR under its current practices, and this lack of information further prevents us from supporting the voucher program. (In order to help develop the system-wide long-term LSLR program we are urging the Council to adopt, we request the Council's help in obtaining more detailed information than has been made available regarding the current rate and costs of LSLR.)

Below we present a more detailed discussion of the foundation for our requests, and we look forward to discussing how we can work with the Council to achieve them.

1. We strongly support the new provisions requiring full LSLR

We commend the Council for including new language that would require DC Water to perform full LSLR concurrent with the replacement of water mains or LSLs in the public space, and would make DC Water's authority to do so explicit. As members of the CLFW stated in public testimony on the bill, partial LSLR is not an effective means of lowering or eliminating lead at the tap, and in fact it poses significant and well-documented health risks. As you know, to continue the practice of partial LSLR would be unconscionable, especially given the scientific evidence showing that in 2004-2006

DC Water caused a second wave of childhood lead poisonings due to the accelerated partial LSLR program it implemented following the District's 2001-2004 lead-in-water crisis. Brown, M. J. 2011. Association Between Children's Blood Lead Levels, Lead Service Lines, And Water Disinfection, Washington, DC, 1998–2006. Environmental Research 111:67-74). It also leaves renters, including many low-income District residents particularly vulnerable. Under this scheme, landlords have no incentive to pay for replacement of pipes running through their property. Ending this practice in the District would be a major win for public health and environmental justice in the District, and we strongly support this move.

We are also pleased to see that the "lead-free" home concept has been removed from the bill. The concept is misleading and dangerous for several reasons, including the widespread presence of lead in interior plumbing and fixtures, even under the current federal restrictions on lead content. We strongly discourage the Council from ever adopting that or similar language in any future bill, and to the extent it exists in other places in the DC Code, we encourage the Council to amend those codes to eliminate it.

2. We Need A District-Wide, Publicly-Funded Full LSLR Program

In addition to the requirement for full LSLR when water mains or LSLs in the public space are replaced, we would like to work with the Council and DC Water to develop a comprehensive and proactive District-wide LSLR program to permanently and completely remove all of the LSLs in the District, from the water main to the non-lead pipe serving the interior of the building. At a minimum, the Council should require DC Water to complete a minimum number of such full LSL replacements per year, on an aggressive schedule specified in the bill, to be completed as soon as possible but no later than 20 years, until the entire District is free of LSLs.

In contrast to this vision for full District-wide LSLR, the program that would be created by B22-0507 is inadequate, both from a public health and a social justice standpoint. We are concerned that the voucher program for full LSLR will leave many homes with an intact or partial LSL in place, simply because a percentage – and likely a significant percentage – of homeowners who a) do not qualify for a voucher or b) whose voucher does not cover the entire cost of private-side replacement, will not be able to afford such a replacement. We are also concerned that a percentage – and likely a significant percentage – of homeowners who *are* able to afford private-side LSL replacement, will choose against paying for such replacement due to entrenched DC resident misunderstandings about lead in water, which have been created (and continue to be reinforced) by DC Water's (and DC WASA's before it) erroneous and/or misleading public messaging.

We are concerned about the lack of explicit plans for the District's adoption of a comprehensive LSLR replacement program in the near future. We are also gravely concerned that adopting a partial subsidy program now could harm the chances that a comprehensive program could be adopted later, and that it could be done without creating further unfair discrepancies in relation to customers who have already paid to replace the LSLs running through private property. More to the point, we see no reason for waiting until later to come up with a permanent solution to the District's LSL problem.

For a comprehensive long-term solution to the District's LSL problem, a well-planned, District-wide full LSLR program should be incorporated into the capital improvement plan and budget so it can become an integral part of the District's and DC Water's long-term vision and strategy. Such a program can be designed to take advantage of the cost-efficiency benefits that come with a large-scale proactively-planned program. This needs to include the replacement of *all* partial LSLs where the District previously replaced the portion in the public space but left the portion of the line running through private property in place. For such partially-replaced lines, DC Water currently will not perform full replacements but instead tells residents they must complete the replacement on their own with a private contractor.^v Given what we know today about the health risks and documented large-scale health harm *in the District* from such lines, the environmental justice implications of this are deeply troubling, and they must be addressed head-on.

3. District Residents Need Robust Public Information And Support

Before a full LSLR program is established and then regularly until it is no longer needed (i.e. the foreseeable future), the Council should require robust public engagement and delivery of complete, accurate, and honest information to ensure that people understand their risks and their options for ensuring their water is safe in relation to lead. This is critical because a lack of funds is not the only reason why District residents have declined to replace their LSLs. People who don't think there's a compelling reason to replace their lines are not going to take time out of their busy schedules to make arrangements on their own and to incur a significant expense that they do not view as necessary.

DC Water does not provide regular, accurate information or support to its customers to enable all households with LSLs (or partially replaced LSLs) to understand why they should pay for full replacement. District residents have been given many mixed messages over the years, including the message that DC Water's compliance with the federal Lead and Copper Rule means that the water at the tap is safe and free from lead,

and the message that a one-time test of their water with a low lead reading provides assurance that their water is safe in relation to lead.

We ask that the Council require DC Water to deliver systematically a bold and simple message that counters this past misinformation, and to inform residents about their risk of exposure to lead in water. The message should:

- Be sent every 6 months until such time as all (intact and partial) LSLs in the District are eliminated;
- Be sent via a colorful, large-print flyer in DC Water bills;
- Be sent via email to ANC commissioners, neighborhood listservs; letters to the DC chapter of the American Academy of Pediatrics (AAP), nurses' associations, and women's health associations; a public service announcement (PSA) on TV and radio, and direct notification to all customer cell phones.
- Use plain language accessible at the 8th-grade reading level, and include instructions for obtaining copies in different languages including Spanish and other languages widely spoken in the District;
- State that consumption of even small amounts of lead in water can result in permanent health harm, including permanent brain damage to developing fetuses' and children's brains;
- State that residents can be exposed to lead in water even if DC Water is in full compliance with federal rules;
- State that residents can be exposed to lead in water even if one-time or sporadic testing shows low or no lead;
- State that residents can be exposed to lead in water even if they have no LSL, because there are other lead-bearing plumbing materials that can leach lead and because lead is still being added into new plumbing;
- State that there is no scientific evidence that flushing (running water) at the beginning of the day or immediately prior to use ensures against lead exposure;
- State that only full LSLR can permanently and reliably prevent lead from leaching from a full or partial LSL;
- State that residents should take measures to protect themselves from lead, for example by obtaining a filter that is certified to remove lead and then installing, using, and replacing that filter exactly according to the manufacturer's directions.

In addition to the above, for every unit that DC Water's records indicate is known to be served by a partial or intact LSL, or is served by a service line of unknown material, the Council should require DC Water to issue a notice with each monthly bill sent to that customer. Such notice should state: While DC Water's records are incomplete, DC

Water has evidence that this unit is served by a partial or full LSL, or that it may be served by an LSL. Because of that evidence, customers should take precautions to protect all of the residents in the unit from exposure to lead, including the use of a lead-certified water filter.

4. The Council Should Require Lead-In-Water Disclosure For All Sales and Rentals

We appreciate that the Council has adopted improvements to the disclosure component of the bill, including the requirement for homeowners to inform residents of their rights under the law, and the requirement to disclose the presumption of LSLs for any unit built before 1986. We urge the Council to adopt further improvements.

Because there are numerous pitfalls that could occur under a requirement for individual residential sellers and lessors to disclose the presence of a LSL, we propose that the Council require *all* residential sale and lease transactions to include a detailed disclosure about LSLs.

As currently drafted, B22-0507 requires the homeowner to disclose “information reasonably known to the owner” about the presence of lead pipes. We are concerned about two aspects of this language, and propose that it be eliminated while retaining the requirement for a District-developed lead-in-water disclosure form. One concern is that an owner could use the flexibility of the term “reasonably known” to justify non-disclosure, despite having some information or reason to believe that the residence is served by a partial or full LSL. A better alternative would be to require disclosure of information about the presence of lead that is “suspected, reasonably known, or known by the owner.”

Further, even if the owner has no intention to mislead or hide information, they may simply have no information, or incorrect information, which would lead them not to make a disclosure when in fact the residence is served by a LSL. For example, they may have performed a “scratch test” and wrongly assumed that a “no lead” result ensures that no section of their service line is made of lead. They may believe that a one-time water sample detecting no lead was proof that there is no LSL present. Or they may have been given false or incorrect information by the prior owner or DC Water.

We therefore ask that the Council require DOEE to develop a lead-in-water disclosure form similar to the existing one for lead paint, to accompany **every single residential sale or lease contract**.^{vi} The form would have a similar “Section A” on basic information about the residence, and “Section C” for the tenant or buyer to add a signature acknowledging receipt. Section B should include the following:

- A statement that LSLs are presumed to be present in residences built before 1986;
- A statement that federal laws have reduced the allowable amount of lead, but still allow lead to be contained in new plumbing and fixtures and used in plumbing repairs, and that such plumbing materials are still capable of releasing lead in amounts that can cause permanent health harm;
- The following questions and statements, accompanied by a clearly-worded glossary of terms:
 - Do you know or have reason to believe that this property is served by a full or partial lead service line? (Answers are Yes, No, Don't Know.)
 - Do you know or have reason to believe that this property has been subject to a full or partial lead service line replacement? (Answers are Yes-Full, Yes-Partial, and Don't Know. The form should include a blank space for the owner to disclose the date on which the work was done, if known.)
 - Are there any reports or documents about any lead service line serving this property at any time, including any partial or full replacement of the same? This includes reports or documents provided to you by a previous or current owner, property manager, District government agency, or contractor. (Answers are No, and Yes – and I understand I must provide a copy of those documents to the tenant/buyer.)

The foregoing changes can be made to the current bill relatively easily. Along with the requirement for DC Water to complete full LSLR whenever it replaces public lead water service lines or water mains, and the provision explicitly clarifying DC Water's authority to do so, the Council is in the position to adopt a robust bill that takes a bold and meaningful step toward protecting District residents from lead in water, and we would welcome the opportunity to support the Council's efforts in getting it passed.

In closing, we look forward to discussing any questions you might have about these requests, and to working closely with you to develop a full District-wide publicly-funded LSLR program. As noted above, we request a meeting to discuss these requests at your earliest convenience.

ENDNOTES

ⁱ See Sec. 2 (adding a new subsection 2(b-1) to DC Code §8-201 *et seq.*)

ⁱⁱ See Sec. 3 (adding a new Sec. 6019a to DC Code §34-2151 *et seq.*)

iii https://www.epa.gov/sites/production/files/2017-01/documents/ndwacrecommtoadmin121515_0.pdf (“...the driving proactive principle to improve public health protection is removing full lead service lines from contact with drinking water to the greatest degree possible and minimizing the risks of exposure to the remaining sources of lead in the meantime.”)

iv <https://www.lslr-collaborative.org/replacement.html> (established to “help communities advance full lead service line (LSL) replacement.”)

v <https://www.dewater.com/voluntary-replacements>.

vi Currently available at:
<https://doee.dc.gov/sites/default/files/dc/sites/ddoe/publication/attachments/DC%20Lead%20Dis%20closure%20Form%20final%20fillable.pdf>.