

# 2022 – 2023 SCORECARD: Lead in Drinking Water Task Force Recommendations

## How is New Jersey Doing?



**1**

**Coordinate state-level campaign for lead-free NJ**

Declare lead to be a public health threat (executive action)

Coordinate state efforts across agencies (executive action)



**2**

**Permanently replace LSL in 10 years**

Require LSL disclosure at home sale and rental (legislation)

Require LSL inventories with annual updates (legislation)

Require water utilities to fully replace LSLs within ten years (legislation)

Offer LSL replacement to all property owners at no cost (legislation)

Ensure property owner participation in the no-cost program (legislation)



**3**

**Create a 10-year funding program for LSL replacement**

Authorize rate recovery across service areas (legislation)

Provide a state subsidy to water utilities with the greatest need (legislation)



**4**

**Enact protective rules and programs to ensure safe drinking water**

Strengthen DEP drinking water regulations (regulation)

Make state home inspection and improvement programs holistic (policy/budget)

Educate at-risk populations through a network of community organizations and local health agencies (policy/budget)

Research health-based thresholds and expanded blood testing (research)



**5**

**Ensure quality water in childcare facilities and schools**

Coordinate and refine testing cycles (regulation and/or legislation)

Publish electronic databases of lead test results (policy)

Improve water safety at facilities run by family childcare providers (policy)

Require drinking water management plans (regulation)

Research financial assistance to childcare facilities (budget and research)

Maximize the health impact of the \$100 million Securing Our Children's Future grant program (DOE policy)

### Legend:

Mostly or completely achieved	<span style="color: green;">■</span>
Partially achieved/in progress	<span style="color: yellow;">■</span>
Limited Progress	<span style="color: orange;">■</span>
Mostly or completely unachieved	<span style="color: red;">■</span>

# 2022 – 2023 SCORECARD: Lead in Drinking Water Task Force Recommendations

## *How is New Jersey Doing?*



### 1.1 Declare lead to be a public health threat (executive action)

Governor Murphy issued a comprehensive lead strategy in Oct. 2019 which embraced many of the task force’s recommendations, including the ten-year goal, a mandatory lead service line inventory and replacement program, lead disclosure, protective measures, a \$500M state bond to subsidize water utilities with fiscal constraints and high incidence of lead and, for schools and child care facilities, a common testing cycle, electronic databases of test results, and drinking water management plans identifying proposed solutions.

### 1.2 Coordinate state efforts across agencies (executive action)

The Governor’s strategy highlighted the need to resolve policy conflicts to maximize efficiency when state and local agencies implement the program. However, further development of this recommendation, including creation of an Office of the Lead Ombudsman, will most likely occur when there is full implementation of the lead paint and drinking water programs, which will highlight the importance of interagency cooperation.

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## *How is New Jersey Doing?*



### 2.1 Require Lead Service Line (LSL) disclosure at home sale and rental (legislation)

- *Paint* - Enacted legislation (S-1147) July 2021 (*Signed by the Governor P.L.2021, c.182*) includes many of the disclosure provisions for rental properties identified in a lead task force subcommittee, including inspection of properties built prior to 1978 that are not certified as “lead safe” at sale/transfer or at tenant turnover, mandatory remediation, supporting fees, and enforcement mechanisms.
- *Water*- Introduced legislation (A3712) to the Assemble 5/2/2022. Requires disclosure of lead drinking water hazards to tenants of residential units; prohibits landlords from obstructing replacement of LSLs; requires inspection of residential rental units for lead drinking water hazards(*Current Status: Sponsors - Assm. Schaer, Pending in Legislature*).
- *LSL-related Disclosure Provisions* - A-5343 (*Current Status: Sponsor - Assm. Schaer, signed into law in July 2021 (Signed by the Governor P.L.2021, c.183)*), authorizes a LSL replacement program and also requires water utilities to address two key aspects of the disclosure issue: 1. notify property owners and tenants if a LSL is present, and, 2. publish its LSL inventory on its website and make it available to government officials.
- S-829 - As enacted in November 2021, this bill adds questions on the presence of LSLs or indoor lead plumbing to the standard real estate disclosure form, which is key for home sales (*Signed by the Governor P.L.2021, c.264*).
- S-830 - This bill, enacted in November 2021 (*Signed by the Governor P.L.2021, c.265*), requires water utilities to provide free lead in water testing upon request during an action level exceedance or following a partial LSL replacement.
- US Environmental Protection Agency’s (EPA’s) Lead and Copper Rule requires water utilities to annually notify property owners about known LSLs and service lines of unknown composition, thereby strengthening legal liability to address the situation(*Current status: promulgated by EPA in January 2021. Under review by the Biden Administration, which may pursue additional regulations to address perceived shortcomings.*)

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## *How is New Jersey Doing?*



### 2.2 Require (LSL) inventories with annual updates (legislation)

- A-5343, signed into law in July 2021 (*signed by the Governor P.L.2021, c.183*) requires that all water utilities collect service line inventory data that is comprehensive, consistent and current, and authorizes the use of predictive modeling. An initial count is required in 60 days, a preliminary inventory is due within 60 days, and an updated version is required by one year.
- EPA's proposed amendments to the Lead and Copper Rule set a deadline for development of the inventory (or, alternatively, demonstration of an absence of LSLs) at three years from the date the final rule is published and requires annual updates and creation of a LSL replacement plan. The inventory must include both utility and customer-owned service lines, and while the results must be made public, water utilities can unilaterally decide whether to publish specific addresses of properties with LSLs. (*Current Status: promulgated by EPA in January 2021. Under review by the Biden Administration, which may pursue additional regulations to address perceived shortcomings.*)
- New Jersey Department of Environmental Protection (NJDEP) expects to publish a state version of the federal Lead and Copper Rule in 2023 authorizing measures that are more restrictive than EPA's proposal, and while that document will address the need for LSL inventories, the specific requirements (e.g., transparency, etc) are not presently clear. (*Current Status: the Biden Administration review may delay the release of NJDEP's rule by several months.*)

### 2.3 Require water utilities to fully replace LSLs within ten years (legislation)

- As enacted in July 2021 (*signed by the Governor P.L.2021, c.183*), A-5343 establishes the LSL replacement goal at 10 years (with potential five-year extensions), requiring water utilities to annually replace 10% of LSLs identified.

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## *How is New Jersey Doing?*



### 2.4 LSL replacement to all property owners at no cost (legislation) Offer

- As enacted in July 2021, A-5343 does not prohibit water utilities from charging customers a cost share for the replacement of the portion of the LSL that resides under private property. New Jersey Future (NJF) plans to pursue such restrictions as a condition of receiving state assistance for LSL replacement work.
- S754 - Appropriates \$1.3B in federal American Rescue Plan funds for use in the New Jersey Environmental Infrastructure Financing Program for LSL replacement (*Current Status: Sponsors - Sen. Greenstein and Sen. Lagana, Pending in Legislature,*)
- A799 - Allows gross income tax deduction for amounts paid for removal of lead, asbestos, sodium, chloride, and other contaminants from taxpayer's property (*Current Status: Sponsors - Assw. Timberlake, Assw. Quijano, and Assm. Schaer, Pending in Legislature* )

### 2.5 Ensure property owner participation in the no-cost program (legislation)

- The state enacted a law (*P.L. 2019, c.291*) in January 2020, authorizing localities to adopt an ordinance that allows water systems (or their contractors) to enter a property for the purpose of replacing a LSL. The substantive provisions are modeled after a similar measure that was previously adopted in Newark. NJF has suggested that water utilities be provided with blanket authority for such property access, either through a separate bill or an amendment to A-5343, as that approach would be much more efficient in moving the LSL replacement program forward.

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## *How is New Jersey Doing?*



### 3.1 Authorize rate recovery across service areas (legislation)

- As enacted in July 2021, S-5343 authorizes 100% rate recovery for both investor-owned utilities (IOUs) and government-owned utilities, but limits the IOUs to recovering their actual cost, with no “return on equity” additive beyond that. It does not, however, prohibit a customer cost share (*P.L.2021, c.183*).
- A-5407 - signed into law in July 2021 (*P.L.2021, c.184*), removes restrictions on special assessments and bond issuances for replacement of residential LSLs, freeing water utilities to bond for that work.

### 3.2 Provide a state subsidy to water utilities with the greatest need (legislation)

- At a press conference when the lead in drinking water report was released in October 2019, Governor Murphy called for a \$500M state bond issue for lead in paint and water. Subsequently, legislative leaders called for state borrowing to support water infrastructure, including lead-related work, however, the fiscal impact of Covid-19 on the State Budget precluded the bonding proposal. Two existing funding sources were made available, however:
- The FY2021 and FY2022 Appropriations Acts each included \$60M for water infrastructure projects, as administered through the NJ Infrastructure Bank (NJIB). Beyond the \$10M set aside to satisfy the state match to federal funds, the NJIB plans to leverage part of the balance to generate a much higher amount of low-interest loans for drinking water projects, including LSL replacement.
- The federal Water Infrastructure Funding Transfer Act, sponsored by Sen. Booker authorized a one-time transfer of existing funds from the Clean Water State Revolving Fund to the Drinking Water State Revolving Fund (DWSRF), specifically for lead-related work. NJDEP used this authority to shift \$110M to the DWSRF in fiscal year 2020 for lead service line replacements.
- The federal Bipartisan Infrastructure Law (BIL) in November 2021 allocated \$15B for lead in drinking water nationally, with NJ getting approximately \$48M per year. In April 2023, EPA updated its allocation of these funds. This was welcome news to New Jersey, as the state’s allocation will more than double from 1.7% to 3.8%, increasing annual funding for LSL replacement by \$35M (73%), from \$48M to \$83M. This could potentially yield as much as \$138M in additional funds for LSL replacement (LSLR) over the remaining four years of the BIL program. In total, New Jersey seems in line to receive \$380M through fiscal year 2026.
- The federal American Rescue Plan, which in early 2021 provided aid to states and localities with few restrictions, furnished \$6.5B to NJ, including language authorizing the use of funds for water and sewer infrastructure. Some cities, including Camden, have successfully received an allocation of this funding for LSL replacement
- The Clean Water, Healthy Families, Good Jobs campaign, chaired by NJF, continues to advocate for \$700M in ARP funding for water infrastructure needs in NJ, including LSL replacement.
- In 2023, NJDEP Launched The Technical Assistance Program (NJTAP) will help disadvantaged or overburdened communities to identify lead service lines, develop asset management and capital improvement plans, and identify sources of state and federal funding to assist with important water quality improvement projects. NJTAP will provide support via a consulting firm that will work directly with water systems to address lead in drinking water.

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## *How is New Jersey Doing?*



### 4.1 Strengthen NJDEP drinking water regulations (regulation)

- In 2019, NJDEP began a stakeholdering process for a state version of the Lead and Copper Rule (LCR). Several task force members participated in an all-day session on June 10, 2020, and written comments were submitted in July 2020. A rule proposal is expected in 2023.
- EPA's proposed Lead and Copper Rule Revision (LCRR), promulgated in January 2021, and upon which the state provisions would be added, addressed several task force recommendations in several areas, including water sampling, corrosion control treatment, water quality parameters, LSL inventories, banning partial LSL replacements, and public outreach and notification. Water utilities will need to fully implement all provisions by 2024.

### 4.2 Make state home inspection and improvement programs holistic (policy/budget)

- The FY2021 Appropriations Act provided \$5M for a Single Family Home Lead Hazard program and \$5M for a Lead Safe Home Lead Hazard Remediation Fund. The FY2022 Appropriations Act includes a \$10M line item appropriations for lead in paint. Going forward, these programs (and perhaps others like them) may help form the basis of a more holistic approach to lead remediation in housing.
- The FY2023 Appropriations Act includes a \$170M line item appropriations for lead in paint from the American Rescue Plan.

### 4.3 Educate at-risk populations through a network of community organizations and local health agencies (policy/budget)

- A program proposal for a statewide communications program, which seeks support from nonprofit funders, was submitted by New Jersey Future to NJDEP and was presented to the department's Council on Environmental Justice in early 2021. The primary thrust is to expand the use of community organizations, the trusted voices in many cities, to more effectively convey the messaging about lead.

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*How is New Jersey Doing?*



## 4.4 Research health-based thresholds and expanded blood testing (research)

- The task force report recommended that NJDEP's Drinking Water Quality Institute consider the health implications of lowering the existing lead action level, and a task force member was added to the Institute in 2020. That proposal, as presented to the NJDEP Commissioner in a letter in the early fall of 2021, was rejected by NJDEP. The NJDEP believes that its planned Lead and Copper Rule Revisions (LCRR), which will be much more aggressive in requiring water systems to address worrisome trends in water parameters, will provide adequate protection. In November 2021, based on deliberations by a task force subgroup, a second letter was drafted to the Commissioner recommending that the action limit be reduced from 15ppb to 5ppb for child care facilities and schools.
- The task force is awaiting the release of NJDEP's Lead and Copper Rule (LCR). The task force plans to raise the issue of the delayed rule with Lead Free New Jersey (LFNJ).





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*How is New Jersey Doing?*



## 5.1 Coordinate and refine testing cycles (regulation and/or legislation)

- The Governor’s comprehensive lead plan acknowledges that schools and child care facilities should be tested on the same three year cycle, reducing New Jersey Department of Education’s (NJDOE’s) span from six years. Schools will share the results with NJDOE, which will place them in a central database. To authorize the accelerated testing cycle, NJDOE adopted changes to existing Safe Drinking Water regulations in July 2020. The new lead testing cycle is likely to begin with the 2023

## 5.2 Publish electronic databases of lead test results (policy)

- Governor Murphy’s comprehensive lead plan concurred that central databases should be implemented or improved by NJDOE and NJ Department of Children and Families (DCF) with the goal being to reflect all test results and remediation measures and to provide statewide reports. NJDOE’s website now links to certified reports of individual school districts summarizing 2017 test results by school facility (though no statewide data was published). On March 11, 2020, DCF received a federal WIIN grant of \$1.5M to comprehensively test all state-licensed and registered child care facilities, which it plans to complete no later than July 2023, prioritizing centers in low-income areas. Results will be communicated with the affected communities and parents and training will be provided on lead risks.
- As of 2021, DCF is working through the WIIN Grant and anticipates the comprehensive testing will continue into 2024.
- S280 -Requires NJDOE and DCF to establish online reporting systems for schools and child care centers to report lead testing results. *(Current Status: Sponsor - Sen. Greenstein, Pending in Legislature)*

## 5.3 Improve water safety at facilities run by family childcare providers (policy)

- The task force’s publication of the report on lead in drinking water at child care facilities in November 2021, identifies 10 recommendations affecting testing, remediation, communication, training, protective measures, and financial assistance. Advocacy will be required to implement the recommendations.
- Introduced legislation Oct. 2022
- (A-4770) Requires landlords of certain properties providing childcare services who refuse lead service line replacements to install and maintain water filters (Current Status: Sponsor - Assm Schaer, Pending in Legislature)

# 2022 – 2023 SCORECARD: Lead in Drinking Water Task Force Recommendations

## *How is New Jersey Doing?*



### 5.4 Require drinking water management plans (regulation)

- The Governor’s comprehensive lead plan acknowledged the importance of these plans, which identify how lead problems will be remediated in schools and child care facilities. The plans are also incorporated in the task force’s report on lead in drinking water at child care facilities, which was published in November 2021. Advocacy will be required to implement the recommendations through regulatory changes.

### 5.5 Research financial assistance to child care facilities (budget and research)

- Due in part to the receipt of \$6.5B in federal funds from the American Rescue Plan (ARP), the FY22 State Budget has a large projected surplus that is unprecedented. As the State wrestles with how to allocate those funds, New Jersey Future has strongly proposed that lead-related investments be considered. In June 2021, the Legislature enacted a bill appropriating \$100M in ARP funds to child care facilities, which will be administered by DCF, New Jersey Department of Human Services (NJ DHS) and Economic Development Authority (EDA).
- The task force’s [report](#) on lead in drinking water at child care facilities, which was published in November 2021, recommended that a small part of that \$100M be set aside to address lead exposure in child care facilities. The report also identified other financial options and advocacy will be required to implement those recommendations. Finally, the FY 22 State Budget included a new appropriation of \$1M for lead remediation in preschool facilities in public school districts, for which NJDOE has initiated the application process.
- 2023 published blog - [“Could there be an Irony in Lead In Drinking?”](#) to share information in pursuit of environmental justice criteria for New Jersey Department of Education’s second round of a Child Care Facilities Improvement Program.

### 5.6 Maximize the health impact of the \$100M Securing Our Children’s Future grant program (NJDOE policy)

- In April 2020, NJDOE adopted regulations governing spending of the \$100M in state bonds authorized through the Securing Our Children’s Future bond issue, including many of the task force’s recommendations, such as a prohibition on expensive internal plumbing renovations, use of new technology (e.g., automated flushing systems), a methodical approach to selecting solutions (i.e., starting with the least costly) to maximize efficiency in the use of available funds, and prioritization of the funding distribution among different localities based on their incidence of lead and degree of fiscal distress to address environmental justice concerns. However, the value of applications received was only \$5.6M. Therefore, a second round of school district submissions will be pursued after the 2021-2022 school year, during which all schools will be newly tested for lead in water. NJDOE may alter its relative weighting of prioritization factors for the second round to emphasize disadvantaged communities.
- As enacted in July 2021, A-5887 (P.L.2021, c.146) appropriated \$6.6M for water improvement projects in public schools (including \$1M for NJDOE’s administrative costs), the first installment from the \$100M in state bonds that are available for the “Securing Our Children’s Future” program.