

PROVIDING SAFE DRINKING WATER IN THE DISTRICT OF COLUMBIA THE NEED FOR MAYORAL ACTION

In his inaugural address, Mayor Fenty promised that the District government “intends to be measured most for how much we do for the least.” One critical way for the District to make good on that promise is ensuring that some of its most vulnerable residents—its children—are protected from the real and continuing danger of excessive levels of lead in their drinking water. Mayor Fenty is aware of the lead issue and has expressed a sincere desire to arrive at a comprehensive solution. The Mayor’s “100 days and beyond” action plan calls for both the designation within 30 days of a cabinet-level official to convene the Interagency Lead Task Force to continue addressing the lead issue across District agencies, and the introduction of legislation within 100 days to improve the District’s ability to enforce against health threats and hazards, including lead.

Follow through on the Mayor’s promises is now critical. The popular public perception following the District’s much-publicized lead-in-water crisis of 2004 is that residents are now receiving safe drinking water—both at home and in schools. Unfortunately, this is not the case.

A growing consensus—including scientists, physicians, and the federal government itself—says that the current standards for acceptable lead levels must be made more stringent to protect the public health. Yet, here in the District, we are not complying consistently even with the current too-lenient federal rules, much less taking the needed steps of strengthening those rules.

Currently, the Mayor has no authority on the local level to enforce and oversee the District of Columbia Water and Sewer Authority’s (“WASA”) obligation to provide safe drinking water, review water quality data, compel action to meet the current standards, and provide the public with assurance that the drinking water complies with current law. Furthermore, the Mayor has not yet taken advantage of new District law enacted in the wake of the 2004 crisis to obtain authority from the United States Environmental Protection Agency (“EPA”) to set and enforce the more stringent rules that are needed.

As a consequence of this unacceptable status quo, District children continue to be exposed—both at home and in schools—to drinking water with exceptionally dangerous levels of lead. As described below, the ability of WASA to provide safe drinking water to the homes of District residents is in significant doubt. In addition, as reported by the *Washington Post* in February 2007, recent test results show that lead levels in drinking water in District of Columbia schools exceeded EPA permissible levels. In one case, test results showed the presence of lead at more than 60 times the federal level.

This paper describes further details of this emerging situation and suggests a course of action to address it.

The Continuing Lead Danger

There is no safe level of lead in our drinking water. Even providing the District’s children with drinking water containing lead at levels in compliance with federal standards is not sufficient. Recent studies have shown that blood lead levels within the federal government standard can reduce

childhood IQ at a rate proportionally higher than levels exceeding the federal standard.¹ (Current federal levels permit up to 10 micrograms of lead per deciliter of blood (µg/dL).) Furthermore, low levels of lead exposure can lead to irritability, lethargy, hearing loss and difficulty in sleeping. Blood lead levels just slightly higher than the federal standard can cause developmental delays in children and limit the ability of children to metabolize Vitamin D (necessary for the absorption of calcium). At higher levels, lead can decrease the velocity of a child's nervous system, damage a child's gastrointestinal tract, shut down a child's kidneys, induce brain-related disorders and cause eventual death.² Because of these significant health risks, the Mayor should make it a high priority to set and enforce more stringent lead levels than those permitted by federal standards.

WASA's Questionable Performance

Unfortunately, WASA's ability to provide drinking water even at current federal levels to District residents remains in doubt. Despite WASA's recent announcement that 2005 lead levels in the District's drinking water were well within EPA standards under the Safe Drinking Water Act (the "SDWA"), WASA did not fully and fairly report drinking water test results to demonstrate compliance with the SDWA. In August 2006, the EPA fined WASA for noncompliance with the requirements of a 2004 consent order entered into with the EPA in the months following public exposure of the District's lead crisis. WASA was charged with misrepresenting data by submitting sampling results of water taken from homes where the lead service lines had already been replaced; this was in direct violation of the consent order, which required testing to be done on homes that had lead service lines and were known to be high-risk. These misrepresentations were compounded by action of the federal Centers for Disease Control ("CDC"), which attributed reports of high lead levels in drinking water by WASA to the presence of lead paint, completely and erroneously disregarding drinking water as the source of the problem. Taken together, these circumstances raise serious doubts whether the lead crisis of 2004 has subsided, particularly since WASA has never faced aggressive oversight by local authorities.

DC Appleseed's Initial Report

The initial public disclosure in 2004 of excessive lead levels in the District's drinking water supply exposed a critical District public health problem that had largely gone unnoticed by District residents. On December 8, 2004, at the request of Councilmember Carol Schwartz and in response to lead levels in the District's drinking water far exceeding levels set by the SDWA, DC Appleseed published a report on the District's drinking water crisis. The report called for numerous reforms, including: (1) the creation of a new District environmental agency to oversee environmental issues, including the providing of safe drinking water, (2) more stringent regulation of the District's drinking water, (3) greater and more effective communication with consumers about the quality of each resident's drinking water and steps to mitigate the presence of lead, and (4) better governance by WASA. (The full DC Appleseed report is available at www.dcappleseed.org.)

We had a two-pronged reason for calling for a new District environmental agency: first, to ensure full and fair implementation of the *current* lead in drinking water regulations by bringing

¹ *Environ Health Perspect* 113:894–899 (2005).

² Werner Troesken, *The Great Lead Water Pipe Disaster* 31 (The MIT Press 2006).

responsibility for that implementation under “one roof” and provide every District resident with reliable information about the quality of the drinking water at his/her tap; and, second, to give the District a platform from which it could *go further* than federal regulations to better protect the public health of its citizenry. Indeed, a critical element to all the reforms proposed by DC Appleaseed lay in the District obtaining authority from the EPA to *regulate its own drinking water*. Such authority, which forty-nine states already have, is known as “primacy,” and it is available under the SDWA to governments wishing to regulate their drinking water systems locally—with local enforcement and accountability—rather than through the federal government. As explained in DC Appleaseed’s report, taking primacy would also authorize the District to adopt more stringent lead regulations than those permitted under the federal rule.

District Performance since Creation of the New Department of the Environment

Since DC Appleaseed issued its 2004 report, legislation was signed into law in 2005 creating the District of Columbia Department of the Environment (“DDOE”) and giving the DDOE the authority to obtain primacy pursuant to the SDWA. To date, no steps have been taken by DDOE to seek the needed primacy. Instead, as illustrated by the recent missteps of WASA and District schools concerning lead in water, DDOE and the District have not given enforcement of safe drinking water regulations the attention they deserve. At a minimum, the District needs to ensure that WASA and the schools comply with current rules. The only way to do that is by applying for primacy and committing adequate financial and human capital resources into the DDOE to demonstrate that the District is prepared to operate a robust program dedicated to reducing lead exposure to children. Obtaining primacy will also give the District the additional tools—beyond what is authorized under current rules—necessary to adopt more stringent lead rules, keep consumers informed about the quality of their drinking water, obtain information from WASA on its compliance with current laws, and compel changes when violations occur.

The Need for District Action

Local control of drinking water regulation and meaningful enforcement are critical goals that would provide District residents with the public watchdog currently lacking. Under the existing system, EPA’s Region III office in Philadelphia is charged with monitoring WASA’s compliance with the SDWA. There is no EPA office in the District to coordinate oversight with and compliance of WASA, nor is there a dedicated department in the Philadelphia office charged with overseeing the District’s environmental programs. This enforcement structure is no substitute for strong, local oversight authority.

Additionally, the EPA has repeatedly been lax regarding its District drinking water oversight. For example, it came to light during the 2004 crisis that the EPA had known about the District’s excessive lead levels and WASA’s failure to adequately address the issue and inform the public for many years. Also, it had taken EPA years to give formal approval to previously recommended corrosion control technology for the District’s water distribution system. Although the 2004 consent order was a welcome development, it came 13 years after the passage of the regulations that WASA was bound to follow. And the recent news regarding elevated lead levels in the water fountains of District schools, much of which was belatedly made known to many District officials, demonstrates a breakdown in EPA oversight. Indeed, EPA’s and WASA’s checkered and questionable history is a reminder that only local control, accountable to the Mayor and ultimately

the citizens of the District, can assure that the presence of lead in the District's drinking water and the associated health risk is minimized.

The District is at a critical juncture regarding the lead in drinking water issue. Given the new information on the damaging effects of even small amounts of lead in drinking water to a child's cognitive development and ability to learn, coupled with the growing evidence that lead levels in the District's water remain dangerously high, further implementation of the recommendations outlined in the 2004 DC Appleseed report is warranted and can help the District create strong local oversight and foster public confidence on an important public health matter.

Under the DDOE enabling legislation, prior to applying to the EPA for primacy, the Mayor must conduct a cost/benefit analysis to ensure that the costs of achieving primacy would be commensurate with the benefits. We urge Mayor Fenty to seize the opportunity at hand, complete a cost/benefit analysis (we believe the benefits of primacy will far outweigh the costs), take control of the District's drinking water program and set the example for the nation on how to truly protect the public health. We offer our support in this undertaking, including a paper being drafted for DC Appleseed by accounting firm Navigant Consulting that outlines the essential elements of a cost/benefit analysis concerning primacy.