

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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1999 JUN 22 PM 2:35
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Board of Health TITLE NUMBER: 64

CITE AUTHORITY §16-1-9a

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 57

TITLE OF RULE BEING PROPOSED: Plumbing Requirements

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


David K. Heydinger, M.D.
Director

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Plumbing Requirements

Type of Rule: Legislative Interpretive Procedural

Agency Health Address 1800 Washington Street, East
Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates.
 The provisions of the proposed new rule can be administered with existing personnel and equipment.

3. Objectives of these rules:
 Notify public of possible lead contamination of drinking water; prohibit use of lead pipe and leaded solder in public water supply systems; comply with federal requirements which insures that existing federal funding will not be cut.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None. (Up to 5% of existing federal funding under the Safe Drinking Water Act may be lost if proposed rule is not promulgated.)

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

Negligible cost to public water suppliers for public notification process (cost of direct mailing and newspaper notice) and replacement of any existing lead pipe and use of lead-free solder.

C. Economic Impact on Citizens/Public at Large.

Some potential cost savings related to illness or disability due to lead contamination of water.

Date July 1, 1987

Signature of Agency Head or Authorized Representative

David K. Heydinger, M.D.

David K. Heydinger, M.D.
Director
Department of Health

FILED
1987 JUL 15 AM 10:34
STATE OF CALIF.

DATE: June 22, 1988

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Health Department

LEGISLATIVE RULE TITLE: Plumbing Requirements

1. Authorizing statute(s) citation §16-1-9a

2. a. Date filed in State Register with Notice of Hearing:
7/15/87

b. What other notice, including advertising, did you give of the hearing?
Notice was published in a Health Department newsletter distributed to all well drillers, sewage treatment operators, water treatment operators and county health departments.

c. Date of hearing (s): 8-14-87

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)
June 22, 1988

f. Name and phone number of agency person to contact for additional information:
Kay Howard, Director 348-3223
Regulatory Development Section
Health Department

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

WEST VIRGINIA BOARD OF HEALTH

RULE ABSTRACT

Rule Title: Plumbing Requirements

CSR Title & Series: 64 CSR 57 Type: Legislative

Objective/Summary: This proposed new legislative rule establishes standards regarding the use of lead free plumbing in public water supply systems. Public notice regarding potential lead contamination is required. This new rule will bring West Virginia into compliance with P.L. 99-339, the Safe Drinking Water Act Amendments of 1986. Failure to comply with the Federal statute by June 19, 1988 may result in the loss of up to 5% of Federal funds for state program grants for operating public water systems.

For further information contact: Kay Howard, Regulatory Development Section, telephone (304) 348-3223 or Robert Paul, Division of Environmental Engineering, telephone (304) 348-0578, Department of Health, 1800 Washington Street, E., Charleston, WV 25305.

[PROPOSED]

TITLE 64

LEGISLATIVE RULES
DEPARTMENT OF HEALTH

PLUMBING REQUIREMENTS

SERIES 57

198_

For approval by the Legislative
Rule-making Review Committee

[PROPOSED]
LEGISLATIVE RULES
DEPARTMENT OF HEALTH
PLUMBING REQUIREMENTS

64 CSR 57

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OFFICE OF THE
SECRETARY OF STATE

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[PROPOSED]
TITLE 64
LEGISLATIVE RULES
DEPARTMENT OF HEALTH

SERIES 57
PLUMBING REQUIREMENTS

§64-57-1. General

1.1. Scope - This legislative rule establishes standards regarding lead contamination of public water supplies and plumbing connected to public water supply systems.

1.2. Authority - This legislative rule is issued by the State board of health under the authority of Chapter 16, Article 1, Section 9a of the West Virginia Code and is related to Chapter 16, Article 1, Sections 9 and 9a of the West Virginia Code.

1.3. Filing Date -

1.4. Effective Date -

1.5. Supersession and Repeal of Former Regulations - None.

1.6. Final Approval - This rule was approved by the State Board of Health on April 29, 1988.

§64-57-2. Application and Enforcement

2.1. Application - This rule applies to all public water supply systems in West Virginia and to all plumbing, whether public or private, which is connected to a public water supply system.

2.2. Enforcement - This rule shall be enforced by the director.

§64-57-3. Definitions

3.1. Director - The director of the State department of health or his or her lawful designee.

3.2. Lead free - Not more than 0.2% lead when used with respect to solders and fluxes and not more than 8% lead when used with respect to pipes and fittings.

3.3. Public Water Supply - Any water system or supply which regularly supplies or offers to supply, piped water to the public for human consumption, if serving at least an average of twenty-five individuals per day for at least sixty days per year; or which has at least fifteen service connections, and shall include: (a) any collection, treatment, storage, and distribution facilities under the control of the owner or operator of such system and used primarily in connection with such system, and (b) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system shall not include a system which meets all of the following conditions: (1) which consists only of distri-

bution and storage facilities (and does not have any collection and treatment facilities); (2) which obtains all of its water from, but is not owned or operated by a public water system which otherwise meets the definition; (3) which does not sell water to any person; and (4) which is not a carrier conveying passengers in interstate commerce.

§64-57-4. Use of Lead Pipes, Fittings, Solder and Flux Prohibited

4.1. Only lead free solder, flux, pipe and fittings may be utilized in the installation or repair of a public water supply system or plumbing which is connected to a public water supply system. This provision shall not require the replacement of existing plumbing which is connected to a public water system as of the effective date of the emergency filing of this rule, except for such plumbing as is repaired after such date.

4.2. Leaded joints necessary for the repair of cast iron pipes shall be exempt from the prohibition stated in Section 4.1 of this rule.

§64-57-5. Public Notice Requirements

5.1. By June 19, 1988, each public water supply system shall issue notice to consumers that may be affected by lead contamination of drinking water where such contamination results from lead content in the construction materials of the public water distribution system or from corrosivity of the water supply sufficient to cause leaching of lead.

5.2. Notice shall be provided by mail delivery (direct mail or with the individual water bills), hand delivery or by three newspaper notices, one for each of three consecutive months and the first no later than June 19, 1988.

5.3. Contents of the notice shall provide a clear and readily understandable explanation of the potential sources of lead; the potential adverse health effects; the reasonably available methods of decreasing lead content in drinking water; methods to determine if materials containing lead have been used in homes or the water distribution system and how to minimize exposure to water likely to contain high levels of lead; any steps the system is taking to decrease lead content in drinking water; and the necessity, if any, for seeking alternative drinking water supplies. Each notice shall contain the telephone number of the owner or operator of the public water supply system.

5.3.1. Information concerning potential adverse health effects shall include the following language:

"The United States Environmental Protection Agency (EPA) and the West Virginia Department of Health set drinking water standards and have determined that lead is a health concern at certain levels of exposure.

There is currently a standard of 0.050 parts per million (ppm). Based on new health information, this standard may be lowered in the future.

Part of the purpose of this notice is to inform you of the potential adverse health effects of lead. This is being done even though the lead content of your water may not exceed the current standard.

The EPA and the Department of Health are concerned about lead in drinking water. Too much lead in the human body can cause serious damage to the brain, kidneys, nervous system and red blood cells. The greatest risk, even with short-term exposure, is to young children and pregnant women.

Lead levels in your drinking water are likely to be highest:

- if your home or water system has lead pipes; or
- if your home has copper pipes with lead solder, and
 - if the home is less than five years old, or
 - if you have soft or acidic water, or
 - if water sits in the pipes for several hours."

5.3.2. Each notice should advise consumers to use only the cold water faucet for drinking, cooking with, or preparing baby formula, and to run the water until it gets as cold as it is going to get before each use. If there has recently been major water use in the household, such as showering or bathing, flushing toilets, or doing laundry with cold water, this should take 5-30 seconds; if not, flushing could take as much as several minutes. Each notice should also advise consumers to check to see if lead pipes, solder, or flux have been used in plumbing that provides tap water and to ensure that new plumbing and plumbing repairs use lead free materials.

§64-57-6. Penalties - Any individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency, or any entity recognized by law who violates any provision of this rule shall be subject to the penalties found at West Virginia Code, Chapter 16, Article 9a:

"Any individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency, or any entity recognized by law who shall violate any provision of this section, or any of the regulations or orders issued pursuant thereto, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred dollars, and each day's violation shall constitute a separate offense. In

addition thereto, the state board of health or the state director of health, or his authorized representative may seek injunctive relief in the circuit court of the county in which all or part of the public water system is situated for threatened or continuing violations. For a willful violation of this section, or of any of the regulations or orders issued thereunder, an individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency, or entity recognized by law, upon finding thereof by the circuit court of the county in which the violation occurs, shall be subject to a civil penalty of not more than five thousand dollars, and each day's violation shall be grounds for a separate penalty."

§64-57-7. Administrative Due Process - Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

§64-57-8. Severability - The provisions of this rule are declared to be severable. If any provision of this rule shall be held invalid, the remaining provisions shall remain in effect.

Proposed Rules
Public Comments Received
Discussion and Response

Title: Plumbing Requirements, West Virginia Department of Health
Legislative Rules, 64 CSR 57.

A public hearing regarding this rule was held on August 14, 1987, and was attended by William L. Flesher, West Virginia Water Utility Council. Comments were received by mail from Phillip R. Jones, Jr., Guthrie District Sanitarians, WV Department of Health, and Steve Frail, Sanitarian, Monroe Health Center; Ruth Eye, Board of Health. Copies are attached.

Changes made to the rule following the public hearing are indicated as follows: Strike-throughs indicate text to be deleted; underlining indicates text to be added.

(1) Comment (Mr. Frail): The Monroe County Health Department endorses and applauds the proposed regulation governing sound plumbing practices. Specifically in the area of prohibiting the use of lead pipes, fittings, solder and flux, we feel that in particular that this aspect is very relevant to safe environmental health practices for the citizens of our State.

(2) Comments (Mr. Jones): The heading of Section 4 of the proposed plumbing requirements is improperly worded. The proposed heading presently indicates that lead free pipes, etc., are prohibited.

Response: The word "free" was inadvertently inserted into the section title.

Proposed: §4. Use of Lead Free Pipes, Fittings, Solder and Flux Prohibited

(3) The Board has added language to §4.1 to clarify that replacment of existing plumbing connected to public water systems (e.g., in private residences) is not required by this rule until such time as such plumbing is repaired.

Proposed: 4.1. Only lead free solder, flux, pipe and fittings may be utilized in the installation or repair of plumbing which is connected to a public water supply system. This provision shall not require the replacement of existing plumbing which is connected to a public water system as of the effective date of the emergency filing of this rule, except for such plumbing as is repaired after such date.

(4) Comment (Mr. Flesher): Section 5.1 should be revised to require that the Director of the West Virginia Health Department set maximum contaminant levels for lead contamination of drinking water, and maximum index levels according to any repeatable test procedure for corrosivity. Public notice procedures should be required only after the established index

levels or maximum contaminant levels have been exceeded.

Response: The proposed public notice requirements relating to possible lead contamination are intended to comply with an amendment to Federal law which is not related to the amount of lead in water immediately after treatment. (Lead levels are already routinely monitored and regulated at the treatment plant through the Public Water Supply Operators rule, 64 CSR 4.) These new requirements address the problem of contamination of adequately treated water in the distribution system or in household plumbing. Those few distribution systems in the State which utilize any lead pipes, fittings, solder and flux will be converted to lead-free as a result of this rule; there may be a period until conversion is completed during which notice is required. Monitoring water quality at the point it leaves the distribution system or at the tap after passing through plumbing in the home or other user location would not be cost-effective or even practical.

However, requirements of the Federal Environmental Protection Agency (EPA) regarding public notice have been changed since the State public hearing and comment period was conducted (40 CFR 141.34). Section 5.1 has been changed to comply with the new EPA requirements.

Proposed: §5.1. By June 19, 1988, each public water supply system shall issue notice to consumers that may be affected by lead contamination of drinking water where such contamination results from lead content in the construction materials of the public water distribution system or from corrosivity of the water supply sufficient to cause leaching of lead. ~~The--owner--or--operator--of--each--public--water--supply--system--shall--issue--subsequent--notices--annually--for--five--years--from--the--initial--notice--or--the--effective--date--of--this--rule.~~

(5) Sections 5.2, 5.3 and 5.3.1 have also been changed in order to comply with new EPA reporting requirements and a non-substantive change has been made in §5.3 for purposes of clarification by substituting the words "decrease" and "decreasing" in place of the words "mitigate" and "mitigating."

Proposed: 5.2. Notice shall be provided by mail delivery (direct mail or with the individual water bills), ~~supplemented by newspaper notice.~~ hand delivery or by three newspaper notices, one for each of three consecutive months and the first no later than June 19, 1988.

5.3. Contents of the notice shall provide a clear and readily understandable explanation of the potential sources of lead; the potential adverse health effects; the reasonably available methods of decreasing lead content in drinking water; methods to determine if materials containing lead have been used in homes or the water distribution system and how to minimize exposure to water likely to contain high levels of lead; any

steps the system is taking to decrease lead content in drinking water; and the necessity, if any, for seeking alternative drinking water supplies. Each notice shall contain the telephone number of the owner or operator of the public water supply system.

5.3.1. Information concerning potential adverse health-effects shall include the following language:

~~Lead has no known useful function in the body. It is a well-known toxin causing damage to the nervous system, the blood-forming processes, the gastrointestinal system and the kidneys. Recent studies have shown that lead can also cause cognitive damage (e.g., damage to perception, memory, and judgment), stunt children's growth and raise blood pressure in adult males, even at low levels of exposure. These health effects can range from relatively subtle biochemical changes at low lead body burden levels to severe retardation at high levels or even death at higher levels. Young children and fetuses are most at risk of damage from exposure to lead.~~

"The United States Environmental Protection Agency (EPA) and the West Virginia Department of Health set drinking water standards and have determined that lead is a health concern at certain levels of exposure. There is currently a standard of 0.050 parts per million (ppm). Based on new health information, this standard may be lowered in the future.

Part of the purpose of this notice is to inform you of the potential adverse health effects of lead. This is being done even though the lead content of your water may not exceed the current standard.

The EPA and the Department of Health are concerned about lead in drinking water. Too much lead in the human body can cause serious damage to the brain, kidneys, nervous system and red blood cells. The greatest risk, even with short-term exposure, is to young children and pregnant women.

Lead levels in your drinking water are likely to be highest:

- if your home or water system has lead pipes; or
- if your home has copper pipes with lead solder, and
- if the home is less than five years old, or
- if you have soft or acidic water, or
- if water sits in the pipes for several hours."

PUBLIC HEARING

Plumbing Requirements

8/14/87

NAME ADDRESS GROUP REPRESENTED DO YOU WISH TO COMMENT (YES/NO)

William S. Fisher P.O. Box 19 Mineola, DECA 11450
P. FISHER
W. FISHER
YES

Comments Received By Mail
Regarding Proposed
Plumbing Requirements

Steve Trail
Monroe Health Center

Phillip R. Jones, Jr.
Guthrie District Office
Health Department

CITY ENGINEER

WATER MANAGER

WILLIAM L. FLESHER

MAYOR William P.A. Nicely



CITY OF PARKERSBURG
ONE GOVERNMENT SQUARE
P. O. BOX 1627
PARKERSBURG, W.VA. 26102
304-424-8568

August 14, 1987

TO: David K. Heydinger, M.D., Director
W.Va. Department of Health

I am William L. Flesher, Professional Engineer and Manager of the Parkersburg, West Virginia Water system which is a member of the West Virginia Water Utility Council.

The membership of the West Virginia Water Utility Council provide water service to a substantial majority of the users of public water service in West Virginia. Mr. Ted Jones, Jr., President of the Council, has asked that I represent the Council here today.

I wish to take part in this public hearing for proposed legislative rulemaking by the Department of Health by commenting on the proposed 64 CSR 57. My proposal is that Paragraph 5.1 Section 5 be revised to require that the Director of the West Virginia Health Department set maximum contaminant levels for lead contamination of drinking water, and maximum index levels according to any repeatable test procedure for corrosivity.

It is further proposed that public notice procedures be required only after the established index levels or maximum contaminant levels have been exceeded.


William L. Flesher



MONROE HEALTH CENTER

P.O. Box 590
Union, WV 24983-0590

August 7, 1987

Department of Health
Regulatory Development Sec.
Room 7, P & G Building
2019 Washington Street, East
Charleston, West Virginia 25305

Dear Sir:

Pursuant to notice of public hearing on proposed rule on plumbing requirements, title number 64, Chapter 16, Article 1, Section 9a, the Monroe County Health Department endorses and applauds the proposed regulation governing sound plumbing practices. Specifically in the area of prohibiting the use of lead pipes, fittings, solder and flux, we feel that in particular that this aspect is very relevant to safe environmental health practices for the citizens of our State.

Sincerely,

Steve Trail
Sanitarian

ST/ct

RECEIVED

AUG 10 1987

**REGULATORY DEVELOPMENT
SECTION**

Memorandum

TO: Regulatory Development Section
West Virginia Department of Health

FROM: ^{P.R.J.} Phillip R. Jones Jr., District Sanitarian
Guthrie District Office

RE: Proposed Plumbing Requirements - Series 57

DATE: August 4, 1987

The heading of section 4 of the proposed plumbing requirements is im-
properly worded. The proposed heading presently indicates that lead free
pipes, etc., are prohibited. The heading should state that lead containing
pipes, etc., are prohibited.

PRJ/dc

RECEIVED

AUG 5 1987

**REGULATORY DEVELOPMENT
SECTION**