



November 22, 2019

Via Electronic Submission

Secretary, Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

RE: Implementation of Act 120 of 2018, Docket No. M-2019-3013286

Dear Secretary Chiavetta:

Thank you for your efforts to engage interested stakeholders in the process of implementing Act 120 of 2018 (Act 120 or the Act).¹

Natural Resources Defense Council (NRDC) writes in response to an October 24, 2019 Secretarial Letter issued by the Pennsylvania Public Utility Commission (Commission or PUC) inviting comments from interested stakeholders regarding the implementation of Act 120 and in response to several directed questions. These comments are preliminary, and NRDC intends to participate in the Working Group and related discourse. NRDC reserves the right to supplement or modify the suggestions in this letter as the process unfolds.

In addition to the comments in this document, NRDC supports the comments submitted to this docket on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Green and Healthy Homes Initiative (GHHI).

NRDC is a public health and environmental organization. On behalf of our more than 108,000 Pennsylvania-based members and online activists, I submit these comments.

Sincerely,

Valerie Baron
Staff Attorney
Natural Resources Defense Council
1152 15th Street NW
Washington, DC 20010
202-717-8232
vbaron@nrdc.org

¹ 66 Pa. C.S. § 1311(b).

COMMENTS: Implementation of Act 120 of 2018, Docket No. M-2019-3013286

Planning and Reporting: The Commission should take a multifaceted approach to locating lead service lines (LSLs), make information available online, and alert customers² determined to have a LSL.

M-2 What are the most effective methodologies for completing a thorough study to locate and identify LSLs and DWWLs within a utility's service territory?

M-3 What would be a reasonable timeframe, based upon a concerted effort, for a utility to identify all the LSLs within its service territory via historical records, city permits, direct visual inspections and other such means early in an LSL replacement plan's schedule as part of a utility's LTIIP?

M-4 What are the best practices and avenues for reporting and/or communicating the results of a thorough study to locate and identify LSLs and DWWLs within a utility's service territory?

The Commission should direct utilities to complete an inventory within one year.

The Commission should consider using a combination of these strategies as part of an effective inventory of LSLs:

- Review of historical records.
- Hydro-excavations or vacuum excavation to verify the material of the service lines.
- Predictive/machine learning modeling.
- As jurisdictions throughout the country seek to address the problem of lead pipes, new methods are emerging, and the Commission should seek additional input on the best available options before finalizing plans.
- The Commission should require that utilities directly and promptly notify, in writing, customers who have or may have an LSL. The results of an inventory and the data on which the Commission bases the inventory also should be publicly available, preferably online, and should be updated as new information becomes available. We recommend creating, posting, and publicizing a property map containing this information.

Communications: The Commission should prioritize accessible communications that are clear and upfront about the danger of lead in water.

M-6 What information should be provided to customers that are or may be affected by a known or suspected LSL or DWWL (e.g., The utility's replacement schedule, the material type of the company owned service line, etc.)?

M-7 How and when should information be provided to customers that are or may be affected by a known or suspected LSL or DWWL? Discussions may include, but are not limited to, providing information in a website portal and/or printed materials, sending out materials at periodic intervals and/or providing materials when a customer completes an application for service.

² In this document "customer" and "customers" means both the party responsible for the water bill and residents or others residing at the service location.

Accessibility of information about pipe materials, risks, and replacements is critical to a successful program. The Commission should require that information be:

- In plain language accessible at a fifth-grade reading level; and
- Accessible in multiple languages.

The Commission should require utilities to be very clear that there is no safe level of lead exposure for any population, and that lead exposure is particularly harmful to developing fetuses, young children, and pregnant people, and customers who are already exposed to other sources of lead, such as low-income individuals and people of color who are more likely to live in older, poorly maintained housing.

Communications should begin with the dangers of lead and information about lead pipes. It is easy for customers to overlook dangers when they are not featured prominently in communications.

The Commission should require that this information be sent directly to customers, and also be included prominently in places that customers interact with the utility (including but not limited to on bills, in notices, and online).

The Commission should take steps to reach renters and other people who may not be responsible for the water bill. Robocalls, door hangers, and targeted online outreach are all avenues that the Commission and utilities should explore.

The Commission should require that utilities provide information (meeting the standards discussed above) about filtration of water coming through an LSL. For example, utilities should provide information about what certifications on filtration systems indicate that they will remove lead, and information about proper installation, use, and maintenance of filtration systems.

Replacements (M-11, M-12): The Commission must prioritize replacements based on vulnerability and efficiency and provide clear communication to customers.

M-11: What are the best ways to prioritize LSL replacements outside of scheduled main replacement and relocation projects to allow for a proactive and distinct LSL replacement program in an efficient and effective manner?

M-12: Should priority LSL replacement scheduling be provided for customers where water is/will likely be consumed by sensitive populations (e.g., children in schools or day-care centers, pregnant women, etc.), what criteria should make a customer eligible for prioritization and how should utilities obtain this information?

The Commission should prioritize providing efficient LSL replacement that especially targets at-risk, vulnerable populations in this effort. The Commission should direct utilities to offer free, utility-coordinated replacements to all eligible customers living within a neighborhood. The Commission should consider:

- **Efficiency:** The Commission can learn from the experience of other utilities, which have replaced large numbers of LSLs in the same area in neighborhood-based programs, which take advantage of economies of scale. Coordinating replacements means that contractors dig up and restore streets and sidewalks only once. These experiences also suggest that having a core of contractors experienced at neighborhood-level replacement, as opposed to independent contractors in a one-off reimbursement model, creates a cost-saving efficiency, is scalable based on available funding, and improves customer participation rates.

- **Prioritization:** Another benefit of the neighborhood-based programs described above is that they can target replacements in parts of the city where residents are most at risk of lead exposure by measuring children’s blood lead levels, population of women of childbearing age and children under the age of six, race, income, and other health and demographic data, and selecting areas for replacement where the concentration of these factors is highest. Other factors to consider include drinking water lead levels, water main ages, and parcel ages. Prioritization efforts should also be made in consultation with local community leaders and public health experts.

In some circumstances, such as when a utility is replacing small diameter water mains or water meters, it may be appropriate to coordinate LSL replacements with ongoing water main replacements or other infrastructure work. For example, the Commission may do this when it increases efficiency and will not, by default, de-prioritize reaching vulnerable populations. Finally, the Commission should seek additional public input on the options it is considering for prioritization.

There are some practices that we recommend that the Commission avoid permitting or encouraging.

- **Reimbursement:** The Commission should not allow programs that require customers to pay upfront and then seek reimbursements. This disadvantages low income customers who simply cannot afford the expense and creates a disincentive for landlords to replace LSLs. Private-side lead service line replacements cost thousands of dollars and are out of reach for many Pennsylvanians.³
- **Failing to provide LSL replacement free-of-charge:** Requiring customers to pay for or contribute to LSL replacement reduces participation. Lead service line replacement programs in Washington, D.C. and Providence, Rhode Island are illustrative. These programs required customers to contribute to the costs of private-side lead service line replacement. Participation rates in those programs were extremely low— by some estimates just ten percent and two percent, respectively. Low income customers were disproportionately likely to opt out. In addition, although the EPA action for lead is not meant to be health protective, some people take false comfort in it, believing that some lead exposure is safe. Children are at greatest risk from lead exposure, and children whose parents cannot or do not elect to replace LSLs should not suffer.
- **Requiring customers to arrange replacements:** This similarly lowers participation rates. Requiring customers to understand the risk of lead exposure, investigate the materials of their pipe, arrange for funding, and find a contractor are all deterrents from participation. Selecting a contractor to perform a lead service line replacement is not straightforward either. Even a customer who has time to collect and compare contractors’ estimates may not know to probe those contractors on the replacement method they will use. A well-designed program does not rely on this.

Refusals: The Commission should not allow partial LSL replacement except in emergency situations. Where a partial or full LSL remains, the Commission should require water filtration.

³ According to CAUSE-PA and GHHI: “Approximately 640,339 Pennsylvania households have an income below the federal poverty level. For a household of 2, the total annual income for these households is no more than \$16,910 for the entire year. Of course, having income above the federal poverty level does not mean that the household has sufficient resources to shoulder the expense of replacing a lead service line. Indeed, more than 1.2 million households cannot afford their basic necessities, despite having income above the federal poverty level.”

M-19 Considering health implications associated with partial LSL replacements, should Company-owned LSLs be replaced where a customer refuses to allow replacement of the customer-owned LSL and, if so, what additional procedures should a utility follow than those previously discussed?

M-20 When a number of LSLs are identified within a municipal boundary, should the utility seek legislative support regarding LSLs from the municipal entity to support a complete LSL replacement effort?

Partial LSL presents a serious and ongoing health hazard—one that is well recognized in the scientific community—and the Commission should disallow and discourage the practice. In the event that a customer refuses the replacement and the utility has no other recourse, the utility should provide no-cost filters and replacement cartridges (certified to remove lead) to the customer (including free installation and maintenance assistance), and free tap-water test kits. In the event that there is an emergency situation necessitating a partial LSL replacement, the utility should be required to replace the remaining lead pipe within a short, designated time.

Where legislative support would assist in replacing LSLs, the Commission should consider seeking that support.⁴

Rates: The Commission should acknowledge in its communication and policies that reducing lead exposure has widespread benefits.

M-26 What benefits do LSL and DWWL replacements provide to each customer class, including the public and private fire protection, bulk/wholesale and industrial customer classes?

M-27 What benefits do utilities and ratepayers realize from LSL and DWWL replacements apart from a return on and of the utility's investment?

Reducing lead exposure benefits everyone. Studies indicate that there is a high return on investment for LSL removal.⁵ By one estimate from the Minnesota Department of Health, there is a \$10 benefit for every \$1 spent on lead service line removal. Replacing full LSLs can also prevent exceedances of lead standards.⁶ The Commission should treat LSL replacement as a benefit to the general public.⁷

⁴ The Commission should not construe this comment to imply that water systems currently lack the authority to conduct full LSL replacements without further legislative action. Commenters can provide additional analysis on this point if helpful.

⁵ <http://blogs.edf.org/health/2019/03/05/minnesota-estimates-benefits-lead-service-lines-replacement/> ; <https://www.health.state.mn.us/news/pressrel/2019/lead022819.html>

⁶ Margaret J. Krauss, Braddock Already Replaced its Public Water Lines, So What Can It Do About Lead Levels? WESA (Nov. 6, 2018), <https://www.wesa.fm/post/braddock-already-replaced-its-public-water-lines-so-what-can-it-do-about-lead-levels>.

⁷ See, e.g., Linnea Warren May et al., RAND Corp., Informing Pittsburgh's Options to Address Lead in Water 11 (2018), <https://www.rand.org/pubs/perspectives/PE247.html>; Ecology Ctr. & Mich. Network for Children's Envtl. Health, Costs of Lead Exposure and Remediation in Michigan: Update 5 (2016), https://www.michigan.gov/documents/deq/deq-dwmad-cws-Lead.Cost.Report.Designed.Final2016pdf_602173_7.pdf; see also Ecology Ctr. & Mich. Network for Children's Envtl. Health, Costs of Lead Exposure and Remediation in Michigan: Update 7, 9 (2016), https://www.michigan.gov/documents/deq/deq-dwmad-cws-Lead.Cost.Report.Designed.Final2016pdf_602173_7.pdf; Ecology Ctr. & Mich. Network for Children's Envtl. Health, Costs of Lead Exposure and Remediation in Michigan: Update 6 (2016),

https://www.michigan.gov/documents/deq/deq-dwmad-cws-Lead.Cost.Report.Designed.Final2016pdf_602173_7.pdf.

⁷ Health Impact Project, 10 Policies to Prevent and Respond to Childhood Lead Exposure 2, 33-34 (2017) (assuming homes with baseline water lead levels of about 11.4 parts per billion), <https://www.pewtrusts.org/en/research-and-analysis/reports/2017/08/10-policies-to-prevent-and-respond-to-childhood-lead-exposure>.