



February 2, 2022

The Honorable Kumar P. Barve, Chair
Environment and Transportation Committee
House Office Building, Room 251
Annapolis, Maryland 21401

Re: House Bill 248 – Environment – Legionnaires’ Disease Prevention Act

Dear Chair Barve and Committee Members:

The Maryland Department of the Environment (MDE or the Department) has reviewed HB 248, *Environment – Legionnaires’ Disease Prevention Act* and would like to provide some information about this legislation.

This legislation requires MDE to “adopt regulations requiring an owner or operator of a public building to establish and implement a water management program to prevent the growth and spread of Legionella pneumophila in a building water system to reduce the risk for Legionnaires’ disease.” The bill also requires regulations be consistent with the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standard 188 (Legionellosis: Risk Management for Building Water Systems); validation testing of water; reporting and recordkeeping by an owner/operator of a public building; and sampling and analysis for Legionella pneumophila at a frequency determined by the Department or under other circumstances.

According to the Centers for Disease Control and Prevention (CDC)¹, the Legionella pneumophila bacterium occurs in freshwater environments such as lakes or streams, and can become a public health concern when growth and spread occur in building water systems. Legionella is transmitted by way of airborne droplets from potable sources like shower heads, as well as non-potable sources like cooling towers and decorative fountains. The CDC indicates health departments reported nearly 10,000 cases nationwide of pneumonia-like pulmonary disease due to Legionella in 2018, and that one in 10 people who contract the disease may die.

The federal Safe Drinking Water Act (SDWA) addresses the presence of Legionella as related to vulnerable source waters. While §141.52 includes a Maximum Contaminant Level Goal (MCLG) of zero for Legionella, §141.70 describes Treatment Technique requirements (filtration and disinfection) for surface water and groundwater under direct influence of surface water only. The SDWA currently does not address the presence of Legionella in distribution water quality.

In Maryland, suspected Legionella outbreaks are investigated by the Maryland Department of Health (MDH). When an outbreak is confirmed, MDH sets remediation requirements for the property, such as developing a Water Management Plan and addressing distribution water quality; in some instances, permanent secondary disinfect treatment is installed. Under the SDWA, use of a treatment system for secondary disinfection

¹ [cdc.gov/legionella/fastfacts.htm](https://www.cdc.gov/legionella/fastfacts.htm)

requires the property be regulated as a “consecutive public water system.” This designation triggers MDE oversight that includes treatment design review, sampling for certain water quality parameters under the SDWA, and routine inspections. The Department currently regulates 29 consecutive public water systems that installed secondary disinfection treatment systems to prevent or resolve Legionella growth.

In the current bill language, “public building” is not defined, which could be interpreted as government-owned properties only, or all “nonresidential buildings,” which would include but would not be limited to hotels, office buildings, hospitals and other health care facilities, assisted living facilities, schools and universities, commercial buildings, industrial buildings, etc., and multifamily residential buildings as described in ASHRAE 12-2000. In addition, the CDC’s Worksheet to Identify Buildings at Increased Risk for Legionella Growth and Spread indicates certain building types (healthcare facilities, senior housing, multiple housing units with centralized hot water system, or building of more than 10 stories) and those using certain devices (cooling towers, spas, decorative fountains or central humidifier) should develop a Water Management Plan. As the definition impacts the scope of oversight, the Department recommends clarification of the term “public building.”

The bill specifies “validation testing of water to minimize the growth and transmission of” the bacteria in building water systems. The Department requests clarification of the term “validation testing” to ensure regulations are drafted to meet the intent of the legislation. As the U.S. Environmental Protection Agency (EPA) and the Department currently do not have an approved laboratory method for the analysis of Legionella, a laboratory testing method will need to be developed and approved. There is also limited capacity at in-state laboratories to perform (non-Department approved) Legionella testing, and testing is typically only performed on an emergency basis. If the “validation testing” language pertains to baseline or routine sampling for Legionella, the Department will need to work with state and private laboratories to develop capacity to perform a large quantity of testing under an approved methodology.

The bill also appears to use “water management program” and “sampling and management plan” interchangeably without defining either term. While the Department assumes (1) a “water management program” to be a series of steps to develop goals and policies to minimize Legionella growth in a building distribution system, along with means to assess risk, evaluate improvements, implement changes and measure progress, and (2) a “sampling plan” to be a representation of locations within a building’s plumbing system from which to collect water samples for Legionella analysis, the Department requests these terms be defined to ensure regulations are drafted to meet the legislation.

Currently, the Department has regulatory authority over public water systems as defined by the SDWA (those serving at least 25 persons). Furthermore, the Department typically does not regulate “premise plumbing,” that is, private plumbing in buildings where there is no water treatment system installed. In certain cases, the Department does have regulatory authority over buildings that are not SDWA water systems. In particular, the Department oversees the State’s Lead in School Drinking Water Program that requires public and private schools to test for lead and remediate plumbing systems where state lead Action Levels are exceeded. This bill would substantially expand the Department’s authority to regulate water systems consisting of premise plumbing only, without treatment devices and below the SDWA threshold.

Finally, this bill adds no provisions for enforcement. Maryland’s “Prohibited Acts” under Environmental Article 9-412 mostly apply to suppliers of water, and not property owners. It appears that the Department will have limited mechanisms for enforcing this bill.

Implementation of this bill will potentially result in Water Management Plans being developed for hundreds of thousands of publicly- and privately-owned buildings. If these buildings also need to conduct testing for Legionella, Maryland laboratories will need expanding capacity to meet demand. MDE will need to develop regulations and likely guidance to support building managers in complying with the requirements. Furthermore, a successful program would require proactive customer support to answer questions from building managers who are unfamiliar with water system sampling. This bill may also result in additional regulatory oversight for buildings that decide to install treatment devices as part of a Water Management Plans. The Department currently has adequate and sufficient staff and resources to conduct its mission effectively and efficiently. Any additional legislatively-mandated program or regulation, such as this, will likely hamper our efficiency, force us to divert resources away from current core competencies and likely disrupt customer service and/or diminish services. In addition, this bill should consider establishing enforcement authority to MDE for oversight of property owners, which does not currently exist.

Thank you for your consideration. We will continue to monitor HB 248 during the committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or tyler.abbott@maryland.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", written over a horizontal line.

Tyler Abbott

cc: Lee Currey, MDE, Director, Water and Science Administration