

DELAWARE

SCHOOL DRINKING WATER

ACLU of DELAWARE

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Background on Testing

Beginning in October 2020 through October 2022, the Delaware Division of Public Health ("DPH") and the Delaware Department of Education ("DOE") conducted sampling of water sources in all Delaware public schools to test for the presence of lead. According to the DOE this was a "proactive" measure taken in anticipation of the coming change in the federal Lead and Copper Rule. The testing was facilitated by grant money provided by the U.S. Environmental Protection Agency ("EPA"). These tests were conducted on water systems during a period of stagnant use as schools were shut for an extended



period due to the COVID-19 Pandemic. However, these results revealed significant levels of lead in school water systems, in both consumption and non-consumption sources. These results were not communicated to anyone other than district facilities managers; school boards and parents were not informed and some school boards were alerted by news coverage rather than the DOE or DPH.² Following the initial results, 47 schools of 231 school sites were identified as exceeding the 15 parts per billion ("ppb") or 0.015 milligrams per liter ("mg/L") action level.3 This level was selected in accordance with the EPA guidelines that are designed to prevent corrosion in water lines rather than for public health and safety. Importantly the EPA itself sets the maximum contaminant level for lead in drinking water at 0 ppb, well below the 15 ppb level used for corrosion control. All points that exceeded the initial 15 ppb action level were shut off or labeled as not for consumption, according to the DOE Information Sheet for Families.5

¹ Amanda Fries, Why Delaware schools waited a year to alert public to elevated lead levels, Delaware News Journal, October 10, 2022, 5-6.

² Amanda Fries, Unhappy with communication, Red Clay school board is taking action after lead test results, Delaware News Journal, October 21, 2022, 1-2.

³ Amanda Fries, Elevated levels of lead detected in water sources at 47 Delaware schools, Delaware News Journal, October 4, 2022, 1-4.

⁴ Fries, Why Delaware schools, 3

⁵ DDOE Lead Sampling Information.



Lead is particularly dangerous for children because it causes significant developmental effects on health, cognitive ability, and social skills. Notably it can cause delayed puberty, decreased postnatal growth, and decreased hearing in children. Additionally, it increases rates of antisocial behavior and attention-related behavior problems, alongside lower IQ scores and decreased academic achievement. Decreasing the presence of lead in drinking water and preventing future contamination is essential to ensuring the health of Delaware's students.

After the initial rounds of testing, the DOE and DPH began to analyze the results. However, the EPA determined that the initial testing was flawed in several ways:



- Testing was conducted during a period of low use, thus allowing lead to accumulate in water fixtures and elevate results beyond what they would have been under conditions of normal use.
- The type and conditions of each sample were not documented or standard, an important factor in determining where possible lead contamination exists in a water system.
- Sample sites were not based upon clear criteria to explain how and why each site was selected for testing.
- The results were not communicated to the affected communities, namely students and their families, as well as faculty and staff in the school buildings.

As a result of the initial testing failings, the DPH and DOE began a new round of testing and retesting in December of 2022. For this round, DOE contracted with Batta Environmental Associates, Inc., a Newark-based environmental consultant, with the goal of standardization across testing sites. To conform to the state's own regulations, three types of samples would be conducted to aid facilities managers in identifying the location of lead contamination: primary, sequential, and flush.

 $^{6 \}quad \text{American Society of Pediatrics, } \textit{Prevention of Childhood Lead Toxicity}, \textit{Pediatrics, July 1, 2023, 3}. \\$

⁷ DDOE Lead Sampling Information for Parents.





The reasoning for these samples is as follows:

Primary Sample (P)

Commonly referred to as a first-draw sample, this is the first sample collected after the water has been left stagnant in the system for the required 8-16 hours. This is representative of the conditions present at the beginning of the day or after periods of infrequent use.

Sequential Sample (S)

This is a sample collected after the first draw in fixtures, such as water fountains with coolers, to help determine if coolers, storage units or other components are potential sources of lead.

Primary Sample (P)

This is the last sample collected and helps determine if plumbing leading to a fixture are potential sources of lead.⁸



The sample sites included all previous sites that had results measuring at or around 15 ppb in addition to retesting all consumption points. However, a new action level of 7.5 ppb was set for the shutoff threshold, half of the original threshold but exceeding the 1 ppb to 0 ppb recommendation⁹ of the American Academy of Pediatrics ("AAP") and the maximum contaminant level set by the EPA. While the downward adjustment of the action level is beneficial, lead in drinking water contributes to approximately 20% of childhood blood lead concentrations. Therefore, any level of lead in drinking water contributes significantly to a child's blood concentration. The second round of testing has largely been concluded and the results have been posted on the state's 2023 Lead in Drinking Water Sampling Dashboard.

^{8 2023} Lead in Drinking Water Sampling Dashboard.

⁹ Cris Barrish, What level is acceptable? Lead found in water at most Delaware schools, WHYY PBS/NPR, November 15, 2022. 4

¹⁰ American Society of Pediatrics, Prevention of Childhood Lead Toxicity, Pediatrics, July 1, 2023, 6.



Results Overview¹¹

Following the second round of testing, 801 samples from 125 water outlets were above the 7.5 ppb action level, causing these locations to be shutoff or labeled as "not for consumption." While the 801 samples over the action level reflect only about 5% of the 17,645 samples taken, they are distributed across all of Delaware's 19 public school districts as well as two public charter schools. Further, the action level is 7.5 times higher than the 0 to 1 ppb recommendation for safe drinking water from the AAP.

Additionally, 2,566 samples tested over 2 ppb, at least double the AAP recommendation and spanning the 19 Delaware public school districts and 9 of its public charter schools. This group of samples come from 982 unique testing locations, of which 125 have already been shutoff for testing above the 7.5 ppb action level, but 857 remain active for use and consumption.

Finally, 12,449 samples, 70% of the total samples taken, returned results that were below the 2 ppb laboratory reporting limit. This means that the testing method could not be used to get an exact measurement of the lead level in the sample. The EPA directed the DOE and DPH to label these samples as "non-detect," meaning these samples could have levels of lead of 0 ppb or up to 2 ppb. While it is heartening to see that these samples are below 2 ppb, they fall into a range that could have health impacts, especially for young students.

¹¹ Results as of July 5th, 2023.

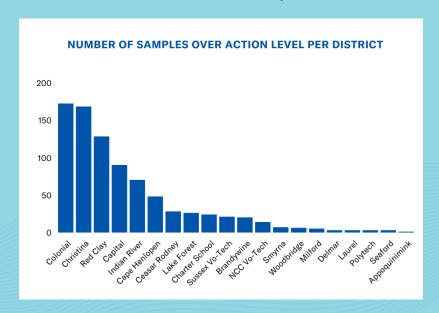




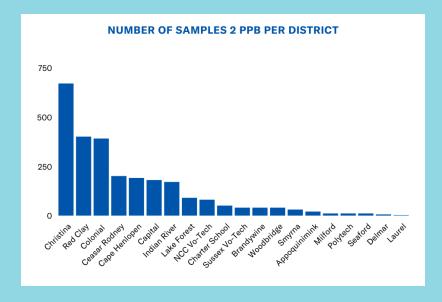
Data Snapshots

Concerning Sampling Results

The school districts with the most samples above 7.5 ppb are Colonial, Christina, and Red Clay School Districts.



The school districts with the most samples above 2 ppb are Christina, Red Clay, and Colonial School Districts.



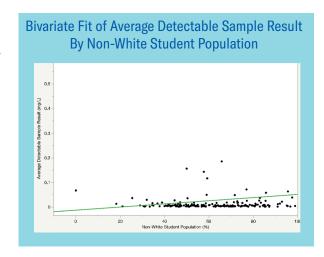


The highest results are 360 times greater than the EPA's maximum contaminant level and 720 times greater than the program action level. Although the DPH has not commented on them directly, they are possibly the result of sampling errors. However, all of them are higher than the levels in Flint, Michigan and if anyone consumed water from these sample locations, it would pose a serious threat to public health. Despite the possible testing inaccuracy, the highest ten results are:

Sample Type	Result mg/l		School	Location	District
Р	5.4	5,400	N3/Wallace Wallin	Classroom N305 Sink Faucet	Colonial
Р	4.4	4,400	Austin D. Baltz Elementary School	Kitchen Faucet	Red Clay
S	1.7	1,700	Wilson Elementary	First Floor Water Fountain Room K03	Christina
Р	1.4	1,400	Wilson Elementary	Basement Water Fountain Room 30P	Christina
Р	1.3	1,300	Gunning Bedford Middle School	Kitchen Faucet in South Staff Center	Colonial
F	1.3	1,300	William Penn High School	Water Fountain w/ Cooler Cafeteria	Colonial
Р	0.85	850	GW Carver Education Center	Kitchen Faucet	Indian River
Р	0.76	760	Warner Elementary School	Room 112 Sink Faucet	Red Clay
Р	0.53	530	Albert H. Jones Elementary School	First Floor Water Fountain Room B108	Christina
Р	0.44	440	Calvin McCullough Middle School	Counselor's Office Sink Faucet	Colonial



Besides the general danger that lead contaminated water poses for all students, a particular area of concern is the potential for disparate impact. To get a picture of the potential impact, the average detectable sample result ("average D sample"), above the laboratory reporting limit, was plotted against the percentage of the non-white student population for each school. The analysis revealed that there could be a relationship between the percentage of a school's non-white student population and the level of lead contamination, but that



this relationship is small. The graph and summary statistics below show the results of this analysis. It is important to note that this relationship is very slight and based off poor data. More accurate and precise data collection is needed to truly understand this relationship.

Summary Statistics

	Value	Lower 95%	Upper 95%	Signif. Prob
Correlation	0.068133	-0.08369	0.216863	0.3788
Covariance	0.21119			
Count	169			
Variable	Mean	Std Dev		
% NW	62.17124	18.2234		
Average D Sample Resu	ult 0.026746	0.170093		
Linear Fit				
Linear Fit				
Average D Sample Resu	ult = -0.012791 + 0.000	06359*% NW		
	ult = -0.012791 + 0.000	06359*% NW		
Average D Sample Resu	ult = -0.012791 + 0.000	06359*% NW Sum of Squares	Mean Square	F Ratio
Average D Sample Resu			Mean Square 0.022563	F Ratio 0.7788
Average D Sample Resu Analysis of Variance Source	DF	Sum of Squares		
Average D Sample Resu Analysis of Variance Source Model	DF	Sum of Squares 0.0225630	0.022563	0.7788
Average D Sample Results Analysis of Variance Source Model Error	DF 1 167	Sum of Squares 0.0225630 4.8379326	0.022563	0.7788 Prob > F
Average D Sample Resultance Analysis of Variance Source Model Error C. Total	DF 1 167	Sum of Squares 0.0225630 4.8379326	0.022563	0.7788 Prob > F
Average D Sample Resultance Analysis of Variance Source Model Error C. Total Parameter Estimates	DF 1 167 168	Sum of Squares 0.0225630 4.8379326 4.8604955	0.022563 0.028970	0.7788 Prob > F 0.3788





Remediation & Moving Forward

With testing essentially completed the question now becomes what is next, who will act, and how will the problem be solved. A sticking point is likely to be funding. The testing has been funded by the EPA, but they likely will not provide any funding for remediation measures. However, Delaware Secretary of Education Mark Holodick has pledged \$3.8 million to install filters at consumption points throughout Delaware schools. However, there is no plan as to where or how many filters will be installed, and although filtering water will immediately help protect students from lead exposure it does not address the infrastructural problems that create exposure in the first place. It is also unclear how funds will be distributed across districts or within districts. Finally, the DOE and the DPH do not have a timeline and are currently developing a plan of action:



The EPA, DPH and DOE are involved in frequent conversations while the EPA reviews the history, timeline, sampling procedures and results which have occurred to date under the grant. There is no blanket resolution for all schools; some will require plumbing replacement or filter installation which are easy fixes. Others will require significant and costly repairs to water pipes leading from the drinking water mains. DPH awaits EPA guidance on next steps, and EPA has not yet determined a timeline. When the timeline is presented, resampling and follow-up actions will occur. ¹³

The DPH and DOE direction states that the state is waiting for EPA guidance to move forward. While it is important to have coordination at a national and state level for plans relating to public health and safety, the delay caused will result in students continued exposure to lead in their drinking water. The levels that students are exposed to will range from zero to the program action level, that is well above the AAP recommendation.

¹² Holodick and Bucic on Good Morning Philadelphia.

¹³ DPH FAQs.



Public Drinking Water Systems

In 1973, the Safe Drinking Water Act (42 U.S.C. §300f et seq) was signed into law which allows the EPA to set standards on the quality of public drinking water. Importantly, it allows state agencies to become the primary enforcer of the act if they establish regulations that meet federal threshold. In the State of Delaware, Regulation 4462 of Title 16 of the Delaware Administrative Code regulates the quality of drinking water, sets the standards for contaminants, defines the process by which water is tested, and explains how the drinking water provider must notify the public of testing and results. Additionally, it gives the DPH the power to enforce water treatment requirements when a water system is in violation of the administrative code.

Importantly, water systems, like those found in schools, are required to "provide the consumer notice... no later than 30 days after the system learns of the tap monitoring results." It is unclear who was responsible for reporting the first few rounds of testing, as they were initiated at the state level by the DPH and the DOE. However, government transparency is an essential aspect of the democratic system in Delaware. Any future testing should be reported to the public and water system consumers at least as an effort of good faith by the DOE and DPH, regardless of their legal obligation. In addition to existing obligations, the DOE and DPH have an opportunity to make impactful decisions for student health.



14 42 U.S.C. §300g

15 16 Del. Admin. C. §4462-10.6.4.2



The Standard of Good Repair

In October 2022, Governor John Carney signed SS1 for SB270 amending Section 1 Chapter 23, Title 14 of the Delaware Code. This amendment requires the DOE and DPH to co-develop a Standard of Good Repair for aspects of school district facilities to be annually evaluated using a Facilities Evaluation Instrument developed by the DOE and DPH. The results of the annual evaluation shall be presented at a public school board meeting. Additionally, "by May 1st of each year, the superintendent will submit a report of facility inspection findings and a board approved repair and maintenance plan to the Department of Education, the chairs of the Bond Committee, the chairs of the House and Senate Education Committees, the Director of the Office of Management and Budget, and the Controller General." Most relevant is the law's requirement that a water quality standard to be developed as part of the Standard of Good Repair. 17

This amendment has the potential to benefit school communities in the effort to remedy the drinking water quality of Delaware schools. The establishment of a standard for water quality in schools could allow school communities to hold their boards and administrations accountable for repairs and maintaining safe school facilities. However, there is no requirement to include lead content in the water quality standard. DPH and DOE have until January 1st, 2024, to create the Standard of Good Repair. DOE should include a standard for lead in drinking water and setting it at the highest the 1 ppb recommendation of AAP. Enacting this lower standard will ensure that lead in public school drinking water will no longer be a contributor to childhood lead poisoning.



¹⁷ Id. (c) (10).



Schools of Concern

The following schools, listed by district, have at least one sample location that exceeded 7.5 ppb:

APPOQUINIMINK

Lorewood Grove Elementary School

BRANDYWINE

Brandywine High School

Claymont Elementary School

Concord High School

Hanby Elementary/Bush Early Education Center

Lancashire Elementary School

Mt. Pleasant Elementary School

Mt. Pleasant High School

Springer Middle School

CAESAR RODNEY

DAFB Middle/Welch Elementary

Fred Fifer Middle School

Star Hill Elementary School

W. Reily Brown Elementary School

W.B. Simpson Elementary School

CAPE HENLOPEN

Beacon Middle School

Cape Henlopen High School

HO Brittingham Elementary School

Lewes Middle School

Love Creek Elementary School

Mariner Middle School

Milton Elementary School

Rehoboth Elementary School

CAPITAL

Booker T. Washington Elementary School

Central Middle School

East Dover Elementary School

Fairview Elementary School

Hartly Elementary

Kent County Community School

Kent County ILC

North Dover Elementary

South Dover Elementary

Towne Pointe Elementary

William Henry Middle School

CHARTER SCHOOLS

Charter School of Wilmington

Odyssey Charter School -Annex

CHRISTINA

Albert H. Jones Elementary School

Bancroft

Bayard - Pulaski Elementary Campus

Brookside Elementary School

Christina Early Education Center

Christina High School

Douglass School

Glasgow High School

John R. Downes Elementary School

Keene Elementary School

Maclary Elementary School

School

Marshall Elementary School

May B. Leasure Elementary School

McVey Elementary School

Oberle Elementary School

Robert S. Gallaher Elementary School

Sarah Pyle Academy

Shue-Medill Middle School

Smith Elementary School

West Park Place

Elementary School

Wilson Elementary



COLONIAL

Calvin McCullough Middle School

Carrie Downie Elementary School

Castle Hills Elementary

Colwyck Center

George Read Middle School

Gunning Bedford Middle School

Harry O. Eisenberg Elementary School

John G. Leach School

Kathleen Wilbur Elementary School

N3/Wallace Wallin

New Castle Elementary School

Pleasantville Elementary School

William Penn High School

Wilmington Manor Elementary School

DELMAR

Delmar Middle and High School

INDIAN RIVER

East Millsboro
Elementary School

Ennis School (New)

GW Carver Education
Center

Indian River High School

Ingram Pond Outdoor Educational Facility

JM Clayton Elementary School

Long Neck Elementary School

Lord Baltimore Elementary School

Millsboro Middle School

North Georgetown Elementary School

Phillip Showell Elementary School

Selbyville Middle School

Sussex Central High School

LAKE FOREST

Central Elementary School

Lake Forest East Elementary School

Lake Forest North Elementary School

Lake Forest South Elementary School

W.T. Chipman Middle School

LAUREL

North Laurel Early Learning Academy

MILFORD

Morris Early Childhood Center

NCC VO-TECH

Delcastle Technical High School

Howard High School of Technology

Marshallton

St. Georges Technical High School

POLYTECH

Polytech

RED CLAY

Anna P. Mote Elementary School

Austin D. Baltz Elementary School

Brandywine Springs School

Cab Calloway School of the Arts

Early Years Program

Forest Oak Elementary School

H. B. duPont Middle School

Heritage Elementary School

John Dickinson High School

Linden Hill Elementary School

Meadowood School

North Star Elementary School

Richardson Park Elementary School

Richey Elementary School

Shortlidge Elementary School



Skyline Middle School

Stanton Middle School

Thomas McKean High School

Warner Elementary School

SEAFORD

Frederick Douglass Elementary School Seaford High School

SMYRNA

John Bassett Moore Intermediate School

Smyrna High School

Smyrna Middle School

Sunnyside Elementary School

SUSSEX VO-TECH

Sussex Tech

WOODBRIDGE

Early Education Center

Phillis Wheatley Elementary School

Woodbridge Middle School

The following schools, listed by district, have at least one sample location that exceeded 2 ppb:

APPOQUINIMINK

Appoquinimink High School

Appoquinimink Preschool Center

Brick Mill Elementary School

Cedar Lane Elementary School

Everett Meredith Middle School

Lorewood Grove Elementary School

Middletown High School

Olive B. Loss Elementary School

BRANDYWINE

Brandywine High School

Claymont Elementary School

Concord High School

Hanby Elementary/Bush Early Education Center

Lancashire Elementary School

Lombardy Elementary School

Maple Lane Elementary School

Mt. Pleasant Elementary School

Mt. Pleasant High School

Springer Middle School

CAESAR RODNEY

Allen Frear/JS Charlton

Caesar Rodney High School

DAFB Middle/Welch Elementary

Fred Fifer Middle School

Magnolia Middle School

McIlvaine Early Education Center

Nellie Stokes Elementary School

Postlethwaite Middle School

Star Hill Elementary School

W. Reily Brown Elementary School

W.B. Simpson Elementary School

CAPE HENLOPEN

Beacon Middle School

Cape Henlopen High School

HO Brittingham Elementary School

Lewes Middle School

Love Creek Elementary School

Mariner Middle School

Milton Elementary School

Rehoboth Elementary School

Sussex Consortium

CAPITAL

Booker T. Washington Elementary School



Central Middle School

East Dover Elementary School

Fairview Elementary School

Hartly Elementary

Kent County Community School

Kent County ILC

North Dover Elementary

South Dover Elementary

Towne Pointe Elementary

William Henry Middle School

CHARTER SCHOOLS

Charter School of New Castle

Charter School of Wilmington

East Side Charter

Las Americas Aspira - East Campus

Newark Charter - Jr. High School

Odyssey Charter School -Annex

Odyssey Charter School -High School

Odyssey Charter School -Lower School

Providence Creek Academy

Sussex Academy - Elementary School

CHRISTINA

Albert H. Jones Elementary School

Bancroft

Bayard - Pulaski Elementary Campus

Brader Elementary School

Brennen School

Brookside Elementary School

Christina Early Education Center

Christina High School

Delaware School for the Deaf

Douglass School

Gauger-Cobbs Middle School

Glasgow High School

John R. Downes Elementary School

Keene Elementary School

Kirk Middle School

Maclary Elementary School

Marshall Elementary School

May B. Leasure Elementary School

McVey Elementary School

Networks School for Employability Skills

Newark High School

Oberle Elementary School

Robert S. Gallaher Elementary School

Sarah Pyle Academy

Sarah Pyle Academy -Newark

Sarah Pyle Academy -Wilmington

Shue-Medill Middle School

Smith Elementary School

Stubbs Early Education Center

West Park Place Elementary School

Wilson Elementa

COLONIAL

Calvin McCullough Middle School

Carrie Downie Elementary School

Castle Hills Elementary

Colwyck Center

George Read Middle School

Gunning Bedford Middle School

Harry O. Eisenberg Elementary School

John G. Leach School

Kathleen Wilbur Elementary School

N3/Wallace Wallin

New Castle Elementary School

Pleasantville Elementary School

Southern Elementary School



William Penn High School

Wilmington Manor Elementary School

DELMAR

Delmar Middle and High School

INDIAN RIVER

East Millsboro Elementary School

Ennis School (New)

Ennis School (Old)

Georgetown Elementary School

GW Carver Education Center

Indian River High School

Ingram Pond Outdoor Educational Facility

JM Clayton Elementary School

Long Neck Elementary School

Lord Baltimore Elementary School

Millsboro Middle School

North Georgetown Elementary School

Phillip Showell Elementary School

Selbyville Middle School

Southern Delaware School of the Arts

Sussex Central High School

LAKE FOREST

Central Elementary School

Delaware Early Childhood Center

Lake Forest East Elementary School

Lake Forest High School

Lake Forest North Elementary School

Lake Forest South Elementary School

W.T. Chipman Middle School

LAUREL

North Laurel Early Learning Academy

MILFORD

Lulu M. Ross Elementary School

Milford Central Academy

Mispillion Elementary School

Morris Early Childhood Center

NCC VO-TECH

Delcastle Technical High School

Hodgson Technical High School

Howard High School of Technology

Marshallton

St. Georges Technical High School Milford Central Academy

Mispillion Elementary School

Morris Early Childhood Center

POLYTECH

Polytech

RED CLAY

Al duPont High School

Anna P. Mote Elementary School

Austin D. Baltz Elementary School

Brandywine Springs School

Cab Calloway School of the Arts

Conrad Schools of Science

Early Years Program

Forest Oak Elementary School

H. B. duPont Middle School

Heritage Elementary School

John Dickinson High School
Linden Hill Elementary School

Marbrook Elementary School

Meadowood School

North Star Elementary School

Richardson Park Elementary School

Richey Elementary School

Shortlidge Elementary School

Skyline Middle School



Stanton Middle School

Thomas McKean High School

Warner Elementary School

William Lewis Elementary School

SEAFORD

Blades Elementary School

Frederick Douglass Elementary School

Seaford High School

Seaford Middle School

West Seaford Elementary School

SMYRNA

Clayton Elementary School

John Bassett Moore Intermediate School

North Smyrna Elementary School

Smyrna High School

Smyrna Middle School

Sunnyside Elementary School

SUSSEX VO-TECH

Sussex Tech

WOODBRIDGE

Early Education Center

Phillis Wheatley Elementary School

Woodbridge Middle School



Reference Materials

Background Sources and Further Reading

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First Round Results (DPH/DDOE): https://data.delaware.gov/Health/Lead-in-Drinking-Water-Sampling-Results/r3rf-e7mm

2023 Lead in Drinking Water Sampling Dashboard: https://data.delaware.gov/stories/s/2023-Lead-in-Drinking-Water-Sampling-Results-Dashb/pc3b-a6j3

Delaware Department of Education and Delaware Division of Public Health Publications

DPH FAQs: https://publichealthalerts.delaware.gov/safe-school-drinking-water/frequently-asked-questions/

DDOE Letter to Families: https://publichealthalerts.delaware.gov/wp-content/blogs.dir/203/files/sites/203/2022/11/Letter-to-families-Nov-2022-1.pdf

DDOE Lead Sampling Information for Parents: httpss://publichealthalerts. delaware.gov/wp-content/blogs.dir/203/files/sites/203/2023/01/Lead-Sampling-Info-Sheet-Parents-1.9.23.pdf