

Submission to City Council re. lead pipe replacement

Cathedral Area Community Association, May 26, 2021

We write City Council as representatives of an inner city neighbourhood that is unfortunately home to 936 lead service connections.¹ However, our concerns extend to all Regina residents in danger of lead contamination, not just Cathedral residents.

We note that in preparing the information before you, at no point did your administrators contact our neighbourhood association and residents for input. Their conclusions were reached without notice to or consultation with community associations in affected areas, despite very serious implications for the health and wellbeing of our residents.

Health dangers

We ask councillors to reflect on the fact that Regina has among the highest lead levels in Canada, and that this constitutes a health emergency. “There is no known safe exposure level to lead,” according to Health Canada.² The following reasons are provided:

In humans, exposure to lead is associated with harmful effects on the brain, heart, and kidneys, and to reproduction. While lead can be harmful to people of all ages, infants and children, and pregnant women and the fetus, are especially susceptible to lead exposure. Infants and children are most at risk because of their developing brains.³

Adults may experience reduced cognition, increased blood pressure and renal dysfunction, state Health Canada’s Guidelines for Canadian Drinking Water. As well, the guidelines note that lead is “classified as probably carcinogenic to humans.”⁴ Impacts on children include an array of developmental delays and behavioural challenges, including attention deficit hyperactivity disorder and elevated aggression.⁵

“Reduced intelligence in children measured as decreases in IQ is the most sensitive and well established health effect of lead exposure,” Health Canada warns.⁶ While adults can recover over time, the World Health Organization notes that children may suffer “profound and permanent adverse health effects.”⁷

¹ City of Regina. Map: Lead Service Connections By Area.

² Health Canada (2020). Guidelines for Canada’s Drinking Water. Table 2: Chemical and Physical Parametres.

³ Health Canada (2020). Lead Information Sheet.

⁴ Health Canada (2020). Guidelines.

⁵ Niggs, Joel T. (2016). Understanding the Link Between Lead Toxicity and ADHD. *Psychiatric Times*, 33:9.

⁶ Health Canada (2020). Guidelines.

⁷ World Health Organization (2019). Lead Poisoning and Health.

The City has known this is an urgent problem for some time now. According to the City's own data, of 168 homes known to have lead lines that were tested between 2016 and 2018, 57 per cent were above the federal limit in the first litre out of the tap in the morning. On the sixth tap draw -- roughly equivalent to a one-minute line flush -- the average concentration of lead was 23.3 parts per billion. This far exceeds the Health Canada guideline of no more than 5 ppb, as well as the 9.5 ppb average detected in tap water at the height of the Flint, Michigan water crisis.⁸

It took a group of investigative journalists to reveal this data publicly in 2019. In December 2019, Regina's City Council rightly recognized Regina's lead problem as a health emergency and unanimously committed to replacing all lead service lines by 2025.⁹ Residents in the inner city were relieved to hear this. Now the City proposes pushing that promise back to 15 years.

Some of the reasons cited for delay, such as difficulty coordinating road work and possibly having to re-pave some streets, are difficult to square against the serious, lasting consequences of lead exposure. It is unreasonable to expect residents to wait 10 or 15 years to be protected from a toxic substance in their drinking water. Fifteen years means babies born today may be exposed to lead contamination for their entire childhoods.

The right to safe drinking water

The United Nations recognizes access to safe drinking water as a fundamental human right, stating, "Rights-holders can claim their rights and duty-bearers must guarantee the rights to water and sanitation equally and without discrimination."¹⁰ The Canadian Constitution guarantees a right to "essential services of reasonable quality."¹¹ Lead contamination in drinking water is not reasonable.

A detailed study of section 36(1)(c) of the Constitution in relation to water quality concludes, "The grammatical and ordinary sense of the words used in both English and French texts supports the conclusion that section 36(1)(c) is not merely aspirational but rather embodies a substantial obligation."¹²

⁸ Wilson, K. and Ackerman, J. (2019). Saskatchewan residents have some of highest levels of lead-tainted water in Canada. *Global News/Leader-Post*. Nov. 4

⁹ Guignard, Jonathan and Bell, Roberta Bell (2019). City council commits to replacing Regina's lead pipes within 5 years. *Global News*, Dec. 3.

¹⁰ UN General Assembly (2010). *The Human Right to Water and Sanitation*; UN Water, *Human Rights to Water and Sanitation Fact Sheet*.

¹¹ The Constitution Act, 1982. Section 36(1)(c).

¹² Busby, Karen (2015). *Providing Essential Services of Reasonable Quality to all Canadians': Understanding Section 36(1)(c) of the Constitution Act, 1982.* *Review of Constitutional Studies*, 20:2.

In this light, safe water is not just another demand to be ‘balanced’ with competing interests, such as sports stadiums, police budgets or low property taxes. It is a fundamental human right and constitutional guarantee, and the City of Regina is a duty-bearer.

Expanding the budgetary conversation

Yet when it came time to discuss this year’s City budget, once again critical infrastructure took a back seat to ensuring another razor-thin mill rate increase -- proudly described in the press as the lowest since 2009 -- the bulk of which went to policing.

The only nod to our very serious lead problem was an amendment to expand the annual grant for filter rebates, which is not an effective solution, and has seen marginal uptake by affected residents. In fact, the Leader Post stated last week that only 20% of eligible residents have taken advantage of the water filter program. It is clear that this approach of mitigation is not resonating.

Consequently, lead line replacement funding rests solely with non-progressive utility rate increases, rather than progressive taxation through the mill rate. The result is a post-budget proposal that looks towards citizen’s monthly water bills alone to deal with a major problem, leaving inner city residents exposed to lead contamination for years to come.

Although administrators may argue that the only box to tick for water infrastructure is the utility fund, this urgent situation requires a broader conception of how to address critical infrastructure failings that pose immediate danger to residents.

Filter program issues

The well known danger presented by lead contamination isn’t easily mitigated by tips on how to flush your taps or install filters. The City’s campaign on that front is anemic at best, evidenced by low uptake from citizens. The first message the City gives on its website is a reassurance that lead is a natural substance and Regina water is safe -- not a very strong message to encourage citizens to take precautions.

There is no door-to-door campaign to test water and install filters. Instead, a letter is sent annually that invites people on lead service lines to proactively contact the city for assistance. Cathedral residents have told us the process to obtain testing and a filter

unit is frustrating and ineffective. For low income residents and renters, the hoops are especially difficult to navigate. Furthermore, there is no testing program in place to ensure that the filters provided by the City eliminate lead completely through follow up testing.

The City website itself is a discouragement. For one thing, it states “all building owners” are eligible for free water tests, omitting renters. It has a Covid-19 alert that states, “We are not conducting in-home water testing for lead service connections at this time,” even though city employees don’t enter homes to take the tests.

Free testing involves convincing the city you are eligible through provision of supporting documentation, awaiting a paper requisition, travelling to Roy Romanow Provincial Laboratory (RRPL) at the University of Regina with said requisition to obtain a specimen container, conducting the test yourself and returning the sample back to the RRPL within a designated time frame. A resident who took up the offer of a free test describes an onerous process that required considerable understanding of the system and either access to a car or time away from jobs and children during daytime hours to undertake a lengthy bus ride.

Another Cathedral Area resident who did the test and obtained the free faucet filter system from the City said the unit was flimsy and broke shortly after installation. She then decided to purchase the jug water filter system. After much searching and despite the 5-page printout she received from the City after inquiry, she was only able to find the jug type filter system the City would reimburse in one location, out in Regina’s east end, which is difficult for inner city residents without cars. For the jug she received a one-time \$100 rebate for it from the City. This did not cover her costs for filters that are recommended to be replaced every 2-3 months at a cost of \$20 each.

This testimony raises several issues. Many of the areas in Regina that have high lead levels are also where the highest rates of people on fixed incomes reside. Rebates are only provided to a filter approved by the National Sanitation Foundation/American Nations Standards Institute, which are difficult to find. Even if senior and low income residents are able to track down these filters, they may not own or know how to operate a computer to fill out the application, or have the funds and transportation to obtain replacement filters every few months. The form asks if you are a homeowner, which gives the impression renters need not apply.

If your life is complicated by poverty, addictions, ill health, illiteracy or other challenges, you are likely to continue using the City water as it is. Those least well off are the ones

most affected negatively by the approach of depending on these filtration systems for clean water.

Further, the City does not have records of which houses have lead-containing connections to the mainline, though these connections present no less danger. Again, it is up to citizens to be proactive. There is some advice on the City website about how to determine if there is a lead line. It doesn't mention that copper lines may contain lead solder, giving the impression that if you see a copper line, you are automatically okay. A Cathedral resident who followed the instructions called the city for a test kit but was initially rejected on the grounds that the main line on her block had already been replaced. It took follow-up calls and persistence to receive the kit, which revealed her family's tap water contained double Health Canada's safe limit.

There are many stories like this in affected neighbourhoods. Only the most motivated residents access testing and the filter program, and only the wealthiest can afford the more effective under-sink reverse osmosis option, which costs up to \$1,000 or more. Currently there is no equality of protection for Regina residents. This is not acceptable for the next 15 years.

Legal risks

In Canada, people are getting tired of waiting for politicians to act on water safety. First Nations have been leading by example: a group of Manitoba First Nations have launched a \$2.1 billion class action suit against the federal government for failure to provide safe drinking water in their communities.¹³ BC and Alberta First Nations have also launched lawsuits.¹⁴ The City of Thunder Bay is facing a \$350 million class action lawsuit after attempting to solve its lead problems with an additive that caused pinholes in water pipes.¹⁵ Jurisdictions and specific problems may vary, but they share the concept that appropriate levels of government are legally accountable for a safe and secure drinking water supply.

US cities have seen several class action suits related to water quality. In 2016, Flint citizens launched a lawsuit "for Failure to Control Lead in Drinking Water in Flint, Michigan, and Failure to Assist Michigan Schools with Lead Testing and

¹³ Annabel, Kirsten (2020). 'Chance to seek justice' after First Nations' water advisories lawsuit certified as class action: lawyer. CBC News, July 17.

¹⁴ Abouchar, Julie (2014) First Nations Launch Drinking Water Lawsuit Against Federal Government. Willms & Shier Environmental Lawyers LLP; Keating, Bob (2019). Okanagan First Nation sues federal government for clean drinking water but minister says it's 'entirely safe.' CBC News, Aug. 15.

¹⁵ CBC News (2020). \$350M class action lawsuit launched against City of Thunder Bay over pipe leaks. Nov 24.

Remediation,” leading to a federally-enforceable settlement requiring the city and state to find and replace all lead lines by 2020.¹⁶ Residents of Sycamore, Illinois have likewise filed suit against their city for “chronic health issues consistent with symptoms of lead toxicity and believed to be related to exposure to the city’s water.”¹⁷ Just this January, the City of Newark, NJ settled a class action lawsuit over “failure to address the lead crisis on a timely basis,” agreeing to remove all 2,000 remaining lead pipes at no cost to homeowners, and to supply residents with free test kits and filters until the job is complete, scheduled by the end of spring 2021.¹⁸

These suits are instructive to Canadians because, in addition to providing a model of citizen action, they reveal that the only sure way to meet the obligation of safe water is to remove all pipes that contain lead, plain and simple. This echoes Health Canada’s advice that, while filters are an option, “The best approach to minimize exposure to lead from drinking water is to remove the full lead service line.”¹⁹

Taking action

The City of Saskatoon has been far more proactive on this front. They did not waste time after receiving similar testing data in 2016-2017, instead vowing to remove all lead pipes by 2026, which they are on track to achieve, averaging 483 replacements per year.²⁰ Saskatoon covers 60 percent of the homeowner’s connection line replacement, with various options to assist property owners with the remaining 40 per cent.²¹

Regina's Lead Service Connection Management Program Report recommends homeowners to pay all the cost, with payment plans of “up to 10 years for qualifying residents.” We spoke with several Cathedral homeowners, who have recently replaced their lead water connections and learned that the costs incurred ranged from \$3500-\$7200. Fully covering these costs, even for those who do qualify for the City’s proposed repayment plan raises monthly payments by over \$50/month, which is simply unattainable for many of our residents compared to programs that spread costs more evenly. Furthermore, there are no specific requirements for landlords to proactively install filtration and replace connectors, leaving renters at particular risk.

Safe drinking water cannot be set aside. We expect our politicians to uphold basic

¹⁶ Concerned Pastors, ACLU and NRDC (2015). Notice of Intent to Sue; National Resource Defence Council (2020). The Flint Water Crisis.

¹⁷ Businesswire (2020). Hagens Berman: Sycamore, Illinois, Residents Sue City for Toxic Tap Water That Sickens Residents. Nov. 2.

¹⁸ Lupica, Amy (2021). City of Newark Reaches Settlement In Lead Pipe Lawsuit. Our Daily Planet, Jan. 28.

¹⁹ Health Canada (2020). Guidelines.

²⁰ City of Saskatoon (2020). Lead Service Line Replacement Update. Feb. 8

²¹ Water Canada (2017). Lead Pipe Replacement Program Begins in Saskatoon. May 29.

human rights and defend vulnerable citizens no matter what. If it means listening to complaints about road disruptions, or complications coordinating with other utilities, that is a small price to pay to ensure our health and especially children's health.

Although the challenge of removing all lead pipes within five years is great, it is not impossible. When City Council made a promise, it tasked its administration to come up with the roadmap to realize that promise. A 15-year plan that is financed only by individual water bills and homeowner's pockets for connection line replacements is not the roadmap we need. We ask this Council to:

1. Reaffirm the unanimous promise to remove all lead service lines within five years. Reject the 15-year recommendation and recognize this is just the beginning of a public conversation on lead line replacement, not the end.
2. Move outside the box of the utility fund and deal with this emergency additionally through general revenue funds in city budgets for the next five years, recognizing that the scope of the problem requires support from the mill rate, the provincial transfer and other general income sources and/or loans.
3. As part of the preceding recommendation, ensure funding covers a contribution to the cost of home line replacement, as in Saskatoon's example, and full cost assistance for qualified low-income homeowners.
4. Coordinate with the Saskatchewan Health Authority a voluntary blood-testing program for children in affected areas.
5. Order proactive door-to-door installation of free under-sink reverse osmosis filter units for all identified affected residences as soon as pandemic restrictions allow, as a temporary measure until their lines are replaced.
6. Amend communications so that the consequences of drinking lead-laced water are stated first and foremost, quoting verbatim the health impacts identified in Canada's drinking water guidelines. Include renters in messaging. Do not minimize the situation. Make it clear to residents that it's a serious problem that will require their full attention and cooperation with mitigation efforts.
7. Remove whether or not a road was newly paved as an acceptable reason to delay lead line replacement for years to come, recognizing that the City has previously stated that all new road construction should involve replacement of old lead lines. If a road was paved without this being done, residents shouldn't have to bear the ongoing risks of lead exposure as a consequence.
8. Require landlords to participate in mandatory water testing, and lead-levels are present, install under-sink reverse osmosis filtration until lead water connections are replaced and testing indicates no further contamination, similar to requirements for installing fire alarms.

9. Involve community associations in the development and delivery of a five-year plan, recognizing that support for effective community organizing and awareness goes a long way toward mitigating complaints about costs and road disruptions.

Guidelines for Canadian Drinking Water Quality - Health Canada 2020-09-04

Type ^[1]	Parameter (published, reaffirmed)	MAC (mg/L)	Other value (mg/L)	Common sources of parameter in water	Health considerations	Comments
I	Lead (2019)	0.005 ALARA	None	Leaching from plumbing (lead service lines, lead solder and brass fittings)	Health basis of MAC: Reduced intelligence in children measured as decreases in IQ is the most sensitive and well established health effect of lead exposure. There is no known safe exposure level to lead. Other: Possible effects include behavioural effects in children. Reduced cognition, increased blood pressure, and renal dysfunction in adults are also possible; classified as probably carcinogenic to humans	MAC is for total lead. Lead levels should be kept as low as reasonably achievable. Sampling should be done at the tap to reflect average exposure. The most significant contribution of lead in drinking water is generally from the lead service line that supplies drinking water to the home. The best approach to minimize exposure to lead from drinking water is to remove the full lead service line. Drinking water treatment devices are also an effective option.