



Kenosha Program “Gets the Lead Out”!

Edward St. Peter, Kenosha City Administrator and Water Utility General Manager

Lawrie J. Kobza, Partner, Boardman & Clark LLP

Jared Walker Smith, Attorney, Boardman & Clark LLP

There has been a surge in public awareness of the risks of lead exposure in drinking water. Exposure to lead has been linked to adverse health effects in infants, young children, and pregnant women, and is potentially harmful to adults. Wisconsin drinking water sources have little to no measurable lead. However, if water passes through lead pipes and plumbing, lead may enter the water and cause elevated lead levels at the tap¹. Many communities across the state are investigating the prevalence of lead pipes both in their public distribution system and on private property. Nationally, lead was used in water distribution systems and private plumbing until 1986, although Wisconsin utilities have not installed lead service lines and water mains since the 1960s. Kenosha banned the use of lead plumbing in utility projects in 1937, and the installation of private lead lines was stopped by 1945.

Kenosha, like many other communities with lead pipes, manages lead levels at the tap by using chemical treatment and following good operational practices. The most permanent prevention method, however, is to remove the lead pipes and plumbing which provide the source of the lead. Communities across the state have been removing utility owned lead water mains and service lines, especially during street projects. But financial constraints have limited the removal of the privately owned portion of the lead service line which typically runs from the curb stop to the water meter.

In 2017 Wisconsin Act 137, the Legislature provided municipalities and their water utilities with the authority to establish a financial assistance program to help customers replace their private lead service lines and to fund that financial assistance with utility rates. Prior to Act 137, Wisconsin utilities were prohibited from using revenue from water utility rates to provide funding for private lead service line replacements. While some Wisconsin communities have been able to take advantage of limited state funding or the municipality’s own revenues to help fund replacement of

private lead service lines, many communities, like Kenosha, did not have funds available to provide this type of assistance. By allowing municipal utilities to fund financial assistance for private lead service line replacements with utility rates, Act 137 provides a reliable funding source for long-term lead service line removal.

The authority to establish this financial assistance program is principally found in a new statutory section, Wis. Stat. § 196.372. Utilities may provide financial assistance in the form of a grant, a loan, or a combination thereof. In order to establish this type of financial assistance program, the city, village, or town in which the water utility provides service must first enact an ordinance that permits the water utility to provide financial assistance. It must also enact an ordinance that requires every property owner with a private lead service line within its borders to replace that line. Finally, the Public Service Commission of Wisconsin (PSC) must approve the water utility’s program. The PSC must grant its approval if it finds that a public utility’s proposal is not unjust, unreasonable, or unfairly discriminatory, and if the program satisfies the conditions set out in the legislation. These conditions include a 50 percent of total-cost limit on the amount of any grant, no forgiveness of loans, proportional treatment of customers within the same customer class, and limits on funding sources for the program.

On April 2, 2018, the Common Council of the City of Kenosha adopted a lead service replacement ordinance. The next day, the Kenosha Water Utility filed an application with the PSC seeking approval of its financial assistance program. As the first community to apply for and undergo PSC review, Kenosha met PSC staff and answered questions regarding the specifics of its financial assistance program. This back-and-forth effort paid off. On August 31, 2018, the PSC approved Kenosha’s program.

The Kenosha program covers the following considerations:

1. **Replacement priority.** While ordinances adopted under Wis. Stat. § 196.372 must require each owner of property in the community that is serviced by a private lead service line to replace that line, Kenosha, like other utilities, needs to be able to prioritize when private lead service line replacements occur for logistical and financial reasons. The top priorities for funding replacements in Kenosha are (a) properties with leaking or failed lead service lines, (b) private replacements done in conjunction with road projects, (c) schools and day care facilities, and (d) properties where children under the age of 7 or pregnant women reside. Assistance for other replacements will be provided if and when funds are available.
2. **Inventory of private lead service lines.** Kenosha's program requires private lead service lines to be removed. Kenosha, like most utilities, does not have a complete inventory of where private lead service lines exist within the city. Therefore, Kenosha's ordinance requires that property owners provide access to the Utility to inspect service lines and provides for compliance options should access be denied.
3. **Private replacements done in conjunction with utility replacements.** It is likely that, at least initially, most private lead service line replacements will be done in conjunction with utility-owned replacements done as part of a road project. Wis. Stat. § 196.372(2)(b) requires that the private service line be replaced at the same time as the utility service line. This can be difficult to accomplish since in most cases the utility service line is being replaced by a utility contractor and the private service line is being replaced by a different private plumbing contractor. While more specificity on how this coordination is to occur might be wished for, it was important that Kenosha's program not be overly prescriptive and that the program contain enough flexibility to be workable.
4. **Failure to replace private service lines within deadline.** It is especially important that private lead service lines be replaced if utility-owned lead service lines are replaced. If a property owner fails to do so, a utility may need to take steps to mandate compliance. In addition to other authorized compliance methods, Kenosha's ordinance authorizes disconnection of a noncompliant property owner's water service. Kenosha is required to submit a tariff to the PSC which will authorize disconnection for failure to replace a lead service line.
5. **Financial assistance program – amount of assistance provided.** Wis. Stat. § 196.372(3)(e) requires that (a) if a utility provides "financial assistance" as a specific dollar amount that dollar amount must be the same for each owner, and if the utility provides "financial assistance" as a specific percentage of cost, that percentage of cost must be the same for each owner; and (b) grants are limited to no more than one-half of the total replacement cost. Under Kenosha's program, a private property owner served by a private service line constructed of lead may receive financial assistance equal to 100% of the replacement cost. The financial assistance offered is a grant for 50% of the cost of replacement up to a maximum of \$2,000, with a loan available for the rest. The PSC found that this satisfied the statutory requirement of providing each property owner the same percentage of financial assistance.
6. **Financial assistance program – creation of pre-qualified plumbing contractor list.** Private property owners will be responsible for contracting with a private plumber for the replacement work. Kenosha will maintain a list of plumbing contractors that the Utility has pre-approved for lead service line replacements within the community. This list will provide property owners with information on plumbing contractors willing and able to do private replacement work, and provide a vehicle for Kenosha to inform contractors about the private lead service line replacement program, the need for coordination, and the requirements related to financial assistance.
7. **Financial assistance program – two bid requirement.** Kenosha's ordinance requires that a property owner obtain at least two bids from pre-qualified plumbing contractors for the replacement work. The property owner does not have to select the contractor with the lowest bid, but the available financial assistance will be based on the lowest bid. The owner will be responsible for paying all remaining costs.
8. **Financial assistance program – loan terms.** A property owner may obtain a loan from the utility to fund the property owner's share of the replacement. If a loan is to be provided, loan terms must be determined, a loan agreement must be entered into, and loan installments must be collected. Act 137 provides two different ways loan repayments can be collected. Loan repayments can be collected along with utility bills (and delinquent repayments can be placed on the property tax roll under Wis. Stat. § 66.0809), or they can be collected as special charges under Wis. Stat. § 66.0627(8).

Kenosha's program will provide a 10-year, low interest rate loan at terms established in the loan agreement with the annual collection of loan repayments as special charges. This method reduces administrative work by using the well-established process of property tax collection.

9. Financial assistance – application. Before providing financial assistance, Kenosha requires that property owners apply for financial assistance on a form that will be furnished by the utility. The application will identify the type of financial assistance the property owner is requesting along with certification that the property owner meets basic eligibility requirements established by the ordinance.

10. Financial assistance – payment to plumbing contractor.

Kenosha's ordinance provides that after the replacement work is done, the property owner must provide to the utility the contractor's invoice and documentation of satisfactory completion. Upon receipt of this information, the utility must pay the plumbing contractor directly – up to the amount of the financial assistance provided. The property owner is to pay any invoiced amount that exceeds the amount of financial assistance provided.

One issue that was addressed during the PSC's review of Kenosha's program was whether the financial assistance program should be extended to the replacement of galvanized steel pipes. PSC staff pointed out information on the potential for deposits on the inside of galvanized steel pipes to trap lead. While the PSC's final decision encouraged Kenosha to look at the galvanized steel pipe issue, it did not require Kenosha to extend its program to galvanized steel pipe replacement. The PSC's decision seemingly leaves open the option for each community to make its own decision on whether it wants to, or can, extend the community's financial assistance program to cover replacement of galvanized steel pipes.

The PSC's approval of Kenosha's financial assistance program does not result in a water rate increase. In order to include the private lead service line replacement costs in rates, Kenosha will need to file a full rate case. The PSC's decision requires that Kenosha apply for a full rate case that includes private lead service line replacement costs within two years.

Kenosha expects its financial assistance program to be in full swing for the 2019 construction season, but, living up to its motto "Let's Get the Lead Out!", Kenosha has already provided financial assistance for the removal of several leaking private lead service lines in Kenosha. With the first program approved, the PSC expects to begin to receive additional applications from interested communities. Manitowoc Public Utilities became the second applicant on September 11, 2018.

About the Authors:

Lawrie Kobza is a partner at the Madison law firm of Boardman & Clark and legal counsel to the Municipal Environmental Group - Water Division (MEG - Water). She has worked with municipal water systems for over 30 years. Contact Lawrie at lkobza@boardmanclark.com

Ed St. Peter has worked for the Kenosha Water Utility for 47 years. In addition to being the General Manager of the Utility, on September 5, 2018, he was appointed as the new City Administrator for the City of Kenosha.

Jared Walker Smith is an attorney at Boardman & Clark LLP, where his practice focuses on general municipal, water utility, and real estate law. He is a graduate of St. Olaf College and the UW Law School, and is admitted to practice law in Wisconsin. Contact Jared at jsmith@boardmanclark.com

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1 WIS. DEP'T OF NATURAL RES., PUB-DG-015 2017, LEAD IN DRINKING WATER (2017), available at <https://dnr.wi.gov/files/PDF/pubs/DG/DG0015.pdf>



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