



**Get the Lead Out**  
--- **The City of Milwaukee's Approach** ---  
Assistant City Attorney Thomas D. Miller  
Milwaukee City Attorney's Office

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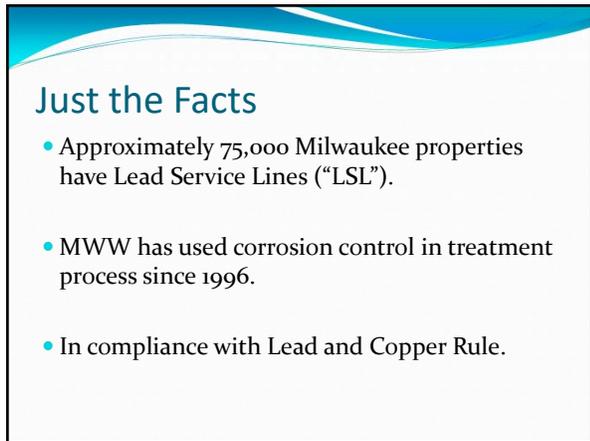
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**Just the Facts**

- Approximately 75,000 Milwaukee properties have Lead Service Lines ("LSL").
- MWW has used corrosion control in treatment process since 1996.
- In compliance with Lead and Copper Rule.

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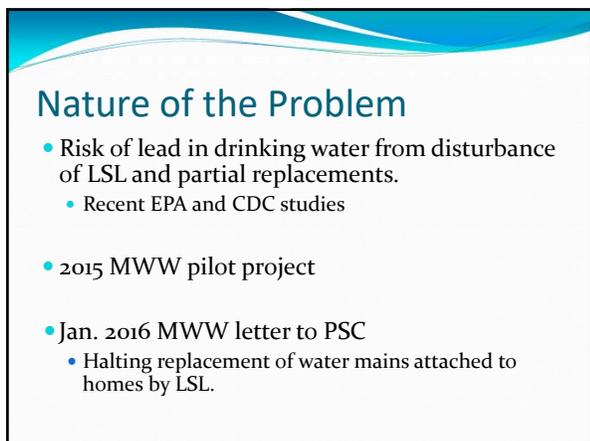
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**Nature of the Problem**

- Risk of lead in drinking water from disturbance of LSL and partial replacements.
  - Recent EPA and CDC studies
- 2015 MWW pilot project
- Jan. 2016 MWW letter to PSC
  - Halting replacement of water mains attached to homes by LSL.

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### LSL Replacement Objectives

- Reduce health/safety risks from LSL disturbance and partial replacements
- Coordinated, full LSL replacement
- Incentivize full LSL replacement by City contractor
- Reduce cost burden on owner

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### Ownership/Responsibility

- Milwaukee Water Works Rules and Regulations Governing Water Service
  - MWW responsible - main to curb stop.
  - Owner responsible - curb stop to outlet of water meter valve.
- *Application of the City of Madison, Dane County, as a Water Public Utility, for Authority to Increase Water Rates*, Madison Rate Case, Docket 3280-WR-106, 205 PUR4th 461, (Wis. PSC October 18, 2000)
- Contrast: Philadelphia, PA; Lansing, MI

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### Can We Require Replacement?

- Authority
  - Police power, Wis. Stat. § 62.11(5)
  - Wis. Stat. § 281.45
- State Plumbing Code?
  - Can't be more stringent than plumbing code. Wis. Admin. Code § SPS 382.03.
  - Existing systems are allowed to exist except if hazard to life, health or property. § SPS 382.22(2)(b).

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### State Plumbing Code?

- Partial replacements and disturbance of LSL are health hazards.
  - EPA, CDC, DNR
  - DNR advises against partial replacement. DNR funds only full LSL replacements.  
<http://dnr.wi.gov/Aid/documents/EIF/leadServiceLineFunding.html#forms> (last accessed Oct. 13, 2017)
- But what about a blanket replacement requirement in absence of DNR order?

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### How to Coordinate?

- City or MWW crews perform customer-side LSL replacements? No.
  - Municipal employees cannot perform water infrastructure construction project “for which a private person is financially responsible.” Wis. Stat. § 66.0901(11).
  - Unlicensed utility employees cannot do replacements unless utility regularly engaged in replacements since 1959. Wis. Stat. §§ 145.06(1)(b) and (4)(f).

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### How to Fund?

- No utility ratepayer funding allowed
- No installment payments on special charge (§66.0627)
- “LSL replacement fee” not a special charge; likely a tax. *State v. Jackman*, 60 Wis. 2d 700 (1973 )

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### How to Fund (cont.)

- General special assessment statute for “municipal work or improvement” (§ 66.0703)?
  - Pro: Ability to spread out the owner’s cost over several tax years.
  - Con: Must strictly follow the statutory procedure, including a hearing.
- Not likely able to use § 66.0703
  - Replacement of owner-side LSL is not work on municipal property

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### Wis. Stat. § 281.45

- Require connection “in the manner prescribed.”
- Permits penalty or “cause connection to be made” if failure to comply within 10 days.
- Assess costs to property as a special assessment
  - Owner option to pay in 5 annual installments.
  - In 1<sup>st</sup> class cities, payment period set by ordinance. Milwaukee City Charter § 11-20-5.

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### Wis. Stat. § 66.0911

- Construction “from the lot line to the building to be serviced...”
- The charge authorized by § 66.0911 is a special assessment although not named as such. *Dewey v. Demos*, 48 Wis. 2d 161, 168 (1970).
- Independent statutory authority for special assessment.
  - No need to follow the special assessment procedures of § 66.0703. See League Op. #631 (May 7, 1987).

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### LSL Replacement Ordinance

- MCO 225-22 regulates manner of connecting to the sewer or water main.
  - Implements Wis. Stat. § 281.45.
- Amended MCO 225-22:
  - “All property shall be connected to the public water main in a manner consistent with the provisions of s. 225-22.5 [the LSL Replacement Ordinance]...”

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### Replacement Requirement

- LSL shall be replaced when:
  - Leak/failure discovered on either private or utility side.
  - Utility-owned portion is replaced on “either a planned or emergency basis.”
- Prohibits repair or reconnection

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### Notice and Owner Election

- Written Notice
  - Leak/Failure – Upon determination that replacement is required
  - Planned replacement – 45 days before construction
- Owner Election
  - Within 10 business days
  - Replace by contracting directly with licensed plumber or
  - Elect to have City contractor replace LSL

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### City Cost-Share

- Eligibility
  - Property is a 1-4 unit residential property.
  - Hold-harmless and temporary right-of-entry agreement.
- Cost-Share
  - Owner's share shall be lesser of one-third of average current cost to replace private-side LSL or \$1,600.
  - City will pay balance of private-side LSL replacement cost.

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### Special Assessment

- All who elect to have work performed by City contractor.
- 10-year payment term. City Charter § 11-20-5.
- Covers owner's share of customer-side cost.
  - Not assessed for utility-side LSL replacement.
  - Not assessed for water main replacement.

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### Enforcement

- Citation - \$100 per day.
- Discontinuation of Service
  - Imminent threat to health, safety, or public welfare
  - Notice and reasonable opportunity to comply
  - Consistent with PSC and MWW rules and regulations

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### Enforcement (cont.)

- “Have the required work performed.” § 281.45
  - Appropriate court-issued warrant
    - Not just special inspection warrant under Wis. Stat. § 66.019.
    - Special warrant to abate lead hazard.
  - Costs assessed and collected as special assessment.
  - Practical problems

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### Implementation

- As of October 1, 2017 –
  - 418 LSL replacements completed.
  - 309 of those are leaks/failures.
  - 24 replacements due to water main or sewer project.
  - 76 LSLs replacements at child care facilities.
  - 9 owner-initiated
    - Not covered by LSL Replacement Ordinance.
    - MWW replaced its side of LSL (no partial replacements).
  - 20 properties referred to DNS.

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### Implementation (continued)

- More LSL leaks than anticipated (projecting 450 vs. 300 in budget).
  - Source: 2018 Budget Overview, MWW, Oct. 16, 2017.
- MWW projects 650 replaced by end of 2017.
  - Source: 2018 Proposed Plan and Executive Budget Summary.
- Budgeting for 800 LSL replacements in 2018.
  - 100 of those for planned main replacements.

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## Multi-Department Effort

- Department of Neighborhood Services
  - Tracking down owners/absentee landlords
  - Post-construction inspection
  - Enforcement
- Milwaukee Health Department
  - Making the health/safety case to owners
  - Water filter distribution program
    - On target to distribute 3,000 in 2017 (2018 City Budget Docs).
    - Distributed 1,755 filters in 2016.

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## Public Awareness Campaign

- “Lead-Safe Milwaukee”
  - <http://city.milwaukee.gov/LeadSafeMKE>



The graphic features the 'Lead-Safe Milwaukee' logo at the top left. To its right, the text reads 'SAFE PAINT SAFE WATER SAFE KIDS' and 'It's Easy To Protect Your Family!'. Below this, three numbered steps are illustrated with cartoon characters: 1. 'Safely Clean Up Paint Dust' (a person cleaning a wall), 2. 'Run Your Water' (a water tap), and 3. 'Get Kids Tested' (a person holding a child). At the bottom, it says 'CITY OF MILWAUKEE HEALTH DEPT. & MILWAUKEE WATER WORKS' and provides the website 'LeadSafeMKE.com' and 'EspanolLeadSafeMKE.com'.

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## Lead-Safe Milwaukee

- Lead paint
  - Safely clean up lead paint chips and dust
  - Still #1 source of lead poisoning
- Lead in Water
  - MHD recommends use of water filter if LSL and:
    - Child under 6 years old or
    - Pregnant or breastfeeding women
  - Flush cold water for at least three minutes
- “3 before 3” – get kids tested for elevated blood lead levels 3 times before age 3

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**Ongoing Challenges**

- Interior plumbing as source of lead in water.
- Sustainable funding sources.
- Timely participation on planned replacements.

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**Thank You**

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