

New York Civil Liberties Union
Education Policy Center
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Michael S. Regan, Administrator
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

**Comment of the New York Civil Liberties Union in Response to Draft
Environmental Protection Agency Strategy to Reduce Lead
Exposure and Disparities in the U.S. Communities. Docket ID No.
EPA-HQ-OLEM-2021-0762**



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Donna Lieberman
Executive Director

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President

Dear Mr. Regan:

The NYCLU submits this comment to the Environmental Protection Agency regarding its Strategy to Reduce Lead Exposure and Disparities in U.S. Communities. We are pleased that the EPA strategy correctly prioritizes the advancement of equity in environmental justice communities, particularly communities of color that are overburdened by lead, and recommend ways to increase the effectiveness of this strategy. We look forward to engaging with the EPA as this strategy progresses.

I. Introduction

The New York Civil Liberties Union (NYCLU), the New York affiliate of the American Civil Liberties Union, is a not-for-profit, nonpartisan organization with nine regional offices across the state and more than 200,000 members and supporters. The NYCLU defends and promotes the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution through an integrated program of litigation, legislative advocacy, public education, and community organizing. As the state's oldest and largest defender of civil rights and liberties, the NYCLU is a leader and community partner in advocating for the rights of all New Yorkers.

The Education Policy Center is the culmination of the NYCLU's decades-long commitment to protecting civil rights and achieving racial justice in education settings. We work to ensure New York public schools and institutions that serve young people empower students, treat them fairly, equitably, and create safe, healthy environments for them to learn and grow.

A person's health, opportunities, and quality of life should not depend on the color of their skin, their bank account, or their zip code. Our expanding



environmental justice work strives to center communities of color, by uplifting impacted voices to ensure their concerns are foremost in the decision-making process.

II. In response to Goal 1; Approach 3: Reduce lead exposures with “whole of EPA” and “whole of government” approach.

Accountability is a recurring, critical component in implementing the EPA strategy but it must include state and local agencies to truly be effective. Specifically, the idea of holding the “whole of government” accountable does not work where key stakeholders such as federally funded state agencies, local governments, and school districts do not participate. In our work, we have seen firsthand the impact that occurs when there is a lack of intergovernmental accountability often resulting in the harm that falls disparately on Black and brown communities.

The removal and replacement of sections of the I-81 highway viaduct in Syracuse, New York, profoundly exemplifies an instance that lacked intergovernmental collaboration by the “whole government” and thus did not adequately consider the community’s needs for lead abatement.

The I-81 highway redevelopment project is a public project so large and complex it takes a critical lens to see the whole picture. To that end, NYCLU issued a comprehensive report highlighting the racist history of the highway and its ongoing harm to the Black community: *Building a Better Future: The Structural Racism Built into I-81, and How to Tear it Down*.¹ The project requires seamless collaboration across the “whole government,” including Federal Highway Administration, the EPA, the New York State Department of Transportation (NYSDOT), Syracuse City School District and other stakeholders, all with a committed focus on racial justice. Additionally, it requires dedicated relationship-building with advocacy organizations and community groups. Unfortunately, this has not been the experience for impacted community members when seeking remediation of lead.

The I-81 viaduct is in a predominately Black neighborhood. The I-81 viaduct redevelopment zone is a “hot spot” for children experiencing lead poisoning. More than twenty-six percent of children tested in this neighborhood have elevated blood lead levels, more than three times the national average.²

¹ New York Civil Liberties Union, [Building A Better Future: The Structural Racism Build Into I-81 and How to Tear It Down](https://www.nyclu.org/en/publications/building-better-future) (2020)

<https://www.nyclu.org/en/publications/building-better-future>.

² Lead Safe CNY, [Lead Exposure in Syracuse](https://www.lead safecny.org/lead-in-cny.html), LeadSafeCNY.org

<https://www.lead safecny.org/lead-in-cny.html>.



Remarkably, the NYSDOT neglected to test the viaduct for lead paint.³ This failure occurred even after the NYCLU, community groups, and community members raised their concerns about lead exposure. The NYSDOT blatantly ignored the community’s concerns and issued a statement that “painted structures” constructed before 1988 “are considered hazardous.”⁴ The statement failed to provide the community with any information on the levels of lead. The NYSDOT failed to test for lead embedded in the viaduct or in nearby soil and dust from decades of leaded-gasoline use. It also did not consider the compounding effects of lead paint in homes and buildings throughout this predominately Black community. The absence of data on lead levels prevents the public from making a “reasoned decision” about how to protect themselves and has prevented the federal and state governments from engaging in reasonable efforts to protect this neighborhood from ongoing and future exposure to lead.

The prevalence and magnitude of lead poisoning exists at the intersection of race and class, vastly overburdening the low-income Black communities adjacent to the I-81 viaduct. Yet, Yet, none of the agencies involved--the Federal Highway Administration, the EPA, and the NYSDOT—deemed it necessary to test the I-81 or its surrounding soil for lead.

This is an explicit demonstration of failure on the part of the “whole government” to create a comprehensive plan to safeguard a Black neighborhood and protect them from potential toxic lead exposure.

The NYCLU recommends expanding the definition of the “whole government” to include state and local government agencies, including school districts and local transit providers. In addition, the Strategy should make explicit a requirement to consult meaningfully with impacted people and groups. Finally, the EPA Strategy must require lead testing for infrastructure projects and other state and local proposed projects in communities of color.

II. In response to Objective B: Reduce Exposure to Lead from Drinking water; Approach 1: Reduce lead exposures locally with a focus on communities with environmental justice concerns.

The EPA proposed strategy acknowledges that elevated blood lead levels in children contribute to unfavorable outcomes such as lower IQ, increased inattention and hyperactivity, hearing, and speech impediments, learning difficulties, and behavioral challenges. Among other outcomes, these

³ N.Y. Department of Transportation, I-81 Draft Environmental Impact Statement (DEIS), Draft Section 4(f), Evaluation 6-510. (2019)

⁴ N.Y. Department of Transportation, I-81 Viaduct Project: Draft Environmental Impact Statement and Draft Section 4(f) Evaluation §6-508 (2021)

issues can contribute to increased grade retention and dropout rates, and entanglement with the criminal legal system. We are pleased that the EPA strategy outlines methods to address and lessen the disproportionate exposure of children of color to lead in drinking water. To be effective, these methods must be met with adequate funding to ensure that they can be implemented.

According to local reports, "in [2017](#), 25 upstate [New York] counties had higher percentages of children testing positive for lead poisoning [than in Flint, Michigan](#) at the height of its crisis."⁵ As of 2020, "New York has more children with lead poisoning than any other state."⁶ Unsurprisingly, a disproportionate number of these children are Black and brown.



To combat this, New York adopted requirements for all school districts to test drinking water for lead contamination and take remedial action if lead exceeds the actionable threshold.⁷ Despite this requirement, a 2021 audit by the NYC Comptroller found that only about 10% of water fixtures in New York City schools had been tested.⁸ Of those tested, more than 5,700 had lead levels that violated New York and federal regulations.⁹ New York State has more than 5,000 schools, serving more than two million young people. Testing and eliminating lead in school drinking water will be a monumental task but must be prioritized.

Unfortunately, only 537 of the 5,700-water fixtures were fixed and ready for follow-up testing within a month of being flagged. Thousands of these water fountains, faucets, and water bottle refilling stations in New York City schools remained out of commission for years while they awaited additional safety testing or repairs to remove lead.¹⁰

In addition to being low-income, environmental justice communities are often food deserts, with limited access to bottled water. Clearly, we cannot deny

⁵ Morley Musick, [Why Some Upstate Cities Have High Rates of Lead Poisoning](#), City and State, Dec. 11 2020, <https://www.cityandstateny.com/policy/2020/12/why-some-upstate-cities-have-high-rates-of-lead-poisoning/175361/>

⁶ NY Pub. Health L. §1110,1370-a (2022); N.Y Comp Codes R. & Regs. tit. 10, §G- 67 (2022).

⁷ New York City Comptroller's Office, [Comptroller Stringer Audit: Water Lead Testing and Remediation in New York City Schools Reveals Inefficiencies and Delays](#) (Jul. 01, 2021) <https://comptroller.nyc.gov/newsroom/comptroller-stringer-audit-water-lead-testing-and-remediation-in-new-york-city-schools-reveals-inefficiencies-and-delays/>

⁸[Id.](#)

⁹ [Id.](#)

¹⁰ Greg B. Smith, [NYCHA'S Lead Paint Crisis Explodes as Known Number of Apartments Where Kids Risk Exposure Triples](#), The City, Oct. 22, 2020 <https://www.thecity.nyc/housing/2020/10/22/21528781/nycha-lead-paint-more-apartments-identified>.

children access to safe water in school for years as the EPA undertakes to remedy years of environmental racism. **The NYCLU recommend that additional Federal funds be made available to municipalities and school districts to undertake proper remediation. Distribution must be based on need. In school districts like New York City or upstate urban cities where the need is greatest administrators should not be forced to choose between remediating lead or paying educator salaries. We recommend Using a whole government approach, the EPA should ensure access to alternative water sources or purification where needed.**



III. In response to Goal 2; Approach 1: Reduce lead exposures locally with a focus on communities with disparities and promote environmental justice

Thousands of children remain at risk for lead poisoning through paint and water in their homes and communities. The remediation of lead is an immense undertaking and EPA must consider equity and real-life consequences at every step. The EPA must ensure that mitigation does not do additional harms.

Mitigation efforts often come at the expense of the impacted, marginalized people. This can include forced relocation, with its attendant financial burdens, isolation from family and friends, transportation challenges, and loss of childcare, to name a few. The EPA must pursue a strategy that supports families who may be required to relocate during repairs, replacement, and renovation, to avoid compounding the harms they have already experienced.

Although private and government actors are often responsible for creating the unhealthy environment in which low-income communities of color are exposed, those actors are rarely held accountable. A recent report by the New York State Attorney General found major landlords were out of compliance with New York City's Childhood Lead Poisoning Prevention Act. Federal monitors for the New York City Housing Authority (NYCHA) found that there are approximately 9,000 apartments that house children under six years old that likely contain lead paint.¹¹ And at least 800 children living in NYCHA properties have been confirmed to have lead poisoning.¹²

Unfortunately, the responsibility of removing the child from that environment falls financially on the caretakers, who, especially in the case of public housing residents, often lacks the resources to do so. The grave result of not relocating the child heightens the child's risk of being removed from their home and family by children's services. The EPA strategy to prioritize

¹¹ Id.

¹² Id.

and address lead poisoning must not be punitive to parents, caregivers, and families.

Instead, there must be direct accountability for private and local government actors. The EPA must use its authority to ensure compliance with remediation of lead by state and private actors. In addition, the EPA should partner with not for profit and local organizations to ensure families have the resources and funding to offset the financial burdens experienced during the remediation of lead. **We recommend critically considering the compounded factors of living and learning in communities affected by lead and creating grants to directly support families at these intersections.**

IV. Conclusion

In conclusion, we support the EPA strategy to advance equity and support underserved communities and recommend several steps to increase the effectiveness of this strategy. As the EPA correctly identifies, communities of color face greater risk of lead exposure due to redlining, historic racial segregation in housing and the lack of affordable housing. Not only ending but remedying these generational harms will take sustained intergovernmental collaboration and a singular focus on achieving racial justice. We look forward to supporting these efforts.

Thanks,

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