

**REGULATORY REVIEW OF
CALIFORNIA'S LEAD-FREE LAW
(AB-1953):**

**AB-1953 DOES NOT APPLY TO HOSE BIBBS
OR FROST-PROOF HYDRANTS**

Another innovative product from Champion-Arrowhead, LLC
5147 Alhambra Ave., Los Angeles, CA 90032
Phone : 323.221.9137 Fax : 323.221.2579
www.championarrowhead.com



On January 1, 2010, the California Assembly Bill (AB-1953) took effect. AB-1953 nearly eliminates the use of lead metal in plumbing products intended to convey or dispense drinking water. As shown in Attachment #1, the actual language used in the Bill is:

“No person shall introduce into commerce any pipe, pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption through drinking or cooking that is not lead-free.”

Champion-Arrowhead has conducted a thorough and extensive regulatory review of the statute to ascertain its purpose as it pertains to hose bibbs and frost-proof hydrants. After completing the review, Champion-Arrowhead has concluded that AB-1953 does NOT apply to hose bibbs and frost-proof hydrants because such products are NOT “fixtures intended to convey or dispense water for human consumption through drinking or cooking.”

Therefore, all Champion-Arrowhead hose bibbs and frost-proof hydrants are made with brass having an amount of lead that complies with all laws and regulations in force within the State of California.

The extensive regulatory review included:

- Examination of the plain language of AB-1953
- Review of legislative history for AB-1953
- Consideration of any previous case law

Examination of the plain language of AB-1953

Under the plain language of AB-1953, it applies to “plumbing fitting or fixture intended to convey or dispense water for human consumption through drinking or cooking.” By design, hose bibbs and frost-proof hydrants have a nozzle that is bent downward with outside threads specifically designed to connect to a garden hose. Furthermore, both products have a heavy-pattern design to withstand the rigors of the outdoor environment. In effect, both hose bibbs and frost-proof hydrants are not “intended to convey or dispense water for human consumption.” Instead they are intended to convey or dispense water for outdoor use. Hence, AB-1953 does not apply to hose bibbs and frost-proof hydrants.

Review of legislative history for AB-1953

In California, the Legislative Daily Journal is a record of the Assembly and Senate meetings the day after a floor session. The Journal contains roll call votes on bills heard in policy committees, bills considered on the floor, and other official action taken. Courts often utilize the Legislative Daily Journal to provide clarity on the intent of a law.

AB-1053 was introduced to the California legislature on February 2, 2006 by Assembly Member Wilma Chan and co-authored by Assembly Members Koretz and Lieber and Senator Kuehl.

On August 23, 2006, Assembly Member Wilma Chan (author of AB-1953) wrote a letter to the Assembly Floor Leader, effectively entering this letter into the Legislative Daily Journal. The letter was made public, and provided to all members of the state Legislature prior to their final vote. The purpose of the letter was to define the intent of AB-1953 as it related to certain products. As shown in Attachment #2, the letter states:

“It is my intention that the requirements of Assembly Bill 1953 are enforceable for pipes, plumbing, fixtures, and other components that can be reasonably construed as intended to convey or dispense water for human consumption through cooking or drinking. These devices include kitchen faucets, bathroom faucets, drinking fountain faucets, and any other end-use devices intended to convey or dispense water for human consumption. The intent of the legislation is that the 0.25% lead content requirement would not apply to devices that can be reasonably described as not intended to convey or dispense water for human consumption. Such devices might include...hose bibbs, fittings tees, and splitters.”

As of January 1, 2010, no further regulatory or legal interpretations have been provided for hose bibbs. Additionally, no interpretative state agency, such as the Department of Public Health or Attorney General, has established a new ruling on hose bibbs.

Therefore it is reasonable to conclude that the California State Legislature did not intend AB-1953 to apply to hose bibbs and frost-proof hydrants.

Consideration of any previous case law

In 1996, amendments to the Safe Drinking Water Act required the U.S. Environmental Protection Agency (EPA) to establish performance standards to regulate the leaching of lead from endpoint devices intended to dispense water for human consumption. The EPA selected Section 9 of ANSI/NSF Standard 61.

Under this standard, an “endpoint device intended to dispense water for human consumption” was defined as “any single device typically installed within the last one liter of the water distribution system of a building.” Products covered under this definition include kitchen, bar, and lavatory faucets; drinking fountains; water coolers; residential refrigerator ice makers; water dispensers; supply stops; and endpoint control valves.

On the other hand, it was determined that bath and shower valves, bidets, drains, garden hose outlets (hose bibbs), and utility and laundry tub faucets do not have to meet the requirements of NSF Standard 61 because these products are not routinely used for drinking water.

In 2006, the letter authored by Wilma Chan and discussed above, uses very similar language as used in NSF Standard 61 when it states, “it is my intention that the requirements of Assembly Bill

1953 are enforceable for...components that can be reasonably construed as intended to convey or dispense water for human consumption through cooking or drinking. These devices include...end-use devices intended to convey or dispense water for human consumption.”

Therefore, it is reasonable to conclude that Wilma Chan (author of AB-1953) and the California State Legislature intended AB-1953 to fall within the same spirit as NSF Standard 61 and not apply to “garden hose outlets” such as hose bibbs and frost-proof hydrants.

Conclusion

After this exhaustive search and regulatory review of AB-1953, Champion-Arrowhead has concluded that AB-1953 was not intended for hose bibbs or frost-proof hydrants.

Therefore, all Champion-Arrowhead hose bibbs and frost-proof hydrants are made with brass having an amount of lead that complies with all laws and regulations in force within the State of California.

ATTACHMENT #1:
CALIFORNIA ASSEMBLY BILL 1953
(AB-1953)

HISTORY:

FILED WITH SECRETARY OF STATE AS LAW SEPTEMBER 30, 2006
APPROVED BY GOVERNOR SEPTEMBER 30, 2006
PASSED THE ASSEMBLY AUGUST 30, 2006
PASSED THE SENATE AUGUST 29, 2006
AMENDED IN SENATE AUGUST 28, 2006
AMENDED IN SENATE JUNE 14, 2006
AMENDED IN ASSEMBLY MAY 25, 2006
AMENDED IN ASSEMBLY MAY 1, 2006
AMENDED IN ASSEMBLY MARCH 15, 2006
INTRODUCED FEBRUARY 2, 2006

INTRODUCED BY: Assembly Member Wilma Chan (Coauthors: Assembly Members Koretz and Lieber & Senator Kuehl)

An act to amend, repeal, and add Section 116875 of the Health and Safety Code, relating to lead plumbing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1953, Chan Lead plumbing.

Existing law prohibits the use of any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of any public water system or any plumbing in a facility providing water for human consumption, except as specified.

Existing law prohibits the introduction into commerce of any pipe, pipe or plumbing fitting, or fixture that is not lead free, except for a pipe that is used in manufacturing or industrial processing.

This bill would, commencing on January 1, 2010, revise this prohibition to apply to any pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption, but would exclude from this prohibition specified devices.

Existing law defines lead free as not more than 8% lead when used with respect to pipes and fittings and not more than 4% by dry weight with respect to plumbing fittings and fixtures.

This bill would, commencing on January 1, 2010, revise the term "lead free," for purposes of manufacturing, industrial processing, and conveying or dispensing water for human consumption, to refer not to the lead content of pipes and pipe fittings, plumbing fittings, and fixtures but to a weighted average lead content of the wetted surface area of the pipes, fittings, and fixtures of not more than 0.25%, to be determined pursuant to a prescribed formula.

Existing law requires the State Department of Health Services to adopt building standards to implement the above prohibitions. Appropriate state and local building and health officials are required to enforce these standards.

By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 116875 of the Health and Safety Code is amended to read:

116875. (a) No person shall use any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of any public water system or any plumbing in a facility providing water for human consumption, except when necessary for the repair of leaded joints of cast iron pipes.

(b) No person shall introduce into commerce any pipe, pipe or plumbing fitting, or fixture, that is not lead free, except for a pipe that is used in manufacturing or industrial processing.

(c) No person engaged in the business of selling plumbing supplies, except manufacturers, shall sell solder or flux that is not lead free.

(d) No person shall introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

(e) For the purposes of this section, "lead free" means not more than 0.2 percent lead when used with respect to solder and flux and not more than 8 percent when used with respect to pipes and pipe fittings. With respect to plumbing fittings and fixtures, "lead free" means not more than 4 percent by dry weight after August 6, 2002, unless the department has adopted a standard, based on health effects, for the leaching of lead.

(f) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 2. Section 116875 is added to the Health and Safety Code, to read:

116875. (a) No person shall use any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of any public water system or any plumbing in a facility providing water for human consumption, except when necessary for the repair of leaded joints of cast iron pipes.

(b) (1) No person shall introduce into commerce any pipe, pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption through drinking or cooking that is not lead free, as defined in subdivision (e). This includes kitchen faucets, bathroom faucets, and any other end-use devices intended to convey or dispense water for human consumption through drinking or cooking, but excludes service saddles, backflow preventers for nonpotable services such as irrigation and industrial, and water distribution main gate valves that are two inches in diameter and above.

(2) Pipes, pipe or plumbing fittings, or fixtures that are used in manufacturing, industrial processing, for irrigation purposes, and any other uses where the water is not intended for human consumption through drinking or cooking are not subject to the requirements of paragraph (1).

(3) For all purposes other than manufacturing, industrial processing, or to convey or dispense water for human consumption, "lead free" is defined in subdivision (f).

(c) No person engaged in the business of selling plumbing supplies, except manufacturers, shall sell solder or flux that is not lead free.

(d) No person shall introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

(e) For the purposes of this section, "lead free" means not more than 0.2 percent lead when used with respect to solder and flux and not more than a weighted average of 0.25 percent when used with respect to the wetted surfaces of pipes and pipe fittings, plumbing fittings, and fixtures. The weighted average lead content of a pipe and pipe fitting, plumbing fitting, and fixture shall be calculated by using the following formula: The percentage of lead content within each component that comes into contact with water shall be multiplied by the percent of the total wetted surface of the entire pipe and pipe fitting, plumbing fitting, or fixture represented in each component containing lead. These percentages shall be added and the sum shall constitute the weighted average lead content of the pipe and pipe fitting, plumbing fitting, or fixture.

(f) For the purposes of paragraph (3) of subdivision (b), "lead free," consistent with the requirements of federal law, means not more than 0.2 percent lead when used with respect to solder and flux and not more than 8 percent when used with respect to pipes and pipe fittings. With respect to plumbing fittings and fixtures, "lead free" means not more than 4 percent by dry weight after August 6, 2002, unless the department has adopted a standard, based on health effects, for the leaching of lead.

(g) This section shall become operative on January 1, 2010.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

ATTACHMENT #2:
LETTER BY ASSEMBLY MEMBER
WILMA CHAN (Author of AB-1953)



Wilma Chan ASSEMBLYWOMAN SIXTEENTH DISTRICT

CHAIRWOMAN, ASSEMBLY COMMITTEE ON HEALTH

California Legislature

August 23, 2006

Honorable Fabian Nuñez
State Capitol, Rm 219
Sacramento, CA 95814

Dear Speaker Nuñez:

It has come to my attention that a question has arisen regarding the language of Assembly Bill 1953. It is my intention that the requirements of Assembly Bill 1953 are enforceable for pipes, plumbing, fixtures and other components that can reasonably be construed as intended to convey or dispense water for human consumption through drinking or cooking. These devices include kitchen faucets, bathroom faucets, drinking fountain faucets and any other end-use devices intended to convey or dispense water for human consumption. The intent of the legislation is that the 0.25% lead content requirement would not apply to devices that can reasonably be described as not intended to convey or dispense water for human consumption. Such devices might include: fire hydrants; fittings and valves for wastewater distribution systems, decorative fountains, marine applications, air and vacuum appliances, bathtubs, showers, Roman tubs, sanitary sewer drains, irrigation sprinklers, toilets, urinals, bidets, laboratory uses, service sinks, whirlpools, spas therapy pools, and clothes washers; hose bibs, fittings, tees and splitters; flush valves; solenoid valves; pre-rinse assemblies that do not include an auxiliary spout or other outlet; bath tub faucets; shower heads and shower head adapters.

As California transitions to a lead-free plumbing market by 2010, it will be important that current, comprehensive information about the lead-free materials options is available to plumbing manufacturers. This information may facilitate the efficient implementation of AB 1953, including industry group assessments of the available materials with which the industry can work to meet the no-lead requirements of the bill.

My hope and desire is that plumbing manufacturers and California's water agencies work together, along with California's state and local public health agencies, to learn about the new public health standard of 0.25% maximum lead content established by my AB 1953 as quickly as possible. Such collaboration will help achieve timely and orderly implementation of its critical public health benefits to all California water consumers. It is imperative that the plumbing industry and state and local governments collaborate on the implementation of this new law to ensure an effective program for protecting Californians, in a manner that respects the needs of this important industry to continue to thrive in our state.

Sincerely,

WILMA CHAN
Assemblymember
16th District

CAPITOL OFFICE, STATE CAPITOL, P. O. BOX 942849, SACRAMENTO, CA 94249-0016 • (916) 319-2016 • FAX (916) 319-2116
DISTRICT OFFICE, 1515 CLAY STREET, SUITE #2204, OAKLAND, CA 94612 • (510) 286-1670 • FAX (510) 286-1888
E-MAIL: assemblymember.chan@asm.ca.gov