

REGULATORY UPDATE: SUMMER 2006

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SAFE DRINKING WATER ACT

PROPOSED CHANGES TO THE LEAD AND COPPER RULE (LCR)

On July 18, 2006 the Environmental Protection Agency (EPA) published proposed changes to the Lead and Copper Rule (Federal Register, Volume 71, page 40828). While public comments are due to EPA by September 18, 2006, none of the proposed changes and clarifications affects the basic requirements of the LCR.

The following presents a brief overview of the proposed changes:

1. The number and location of samples required for the smallest size systems (e.g., systems with less than five sample taps used for drinking water consumption) would be changed such that the system would be required to collect samples from all taps (once) and repeat sampling at other taps in order to collect a total of five samples.
2. If a utility is conducting tap monitoring on a three-year schedule, language is proposed to clarify that samples must be collected in a consecutive four-month period June through September (and cannot be collected over multiple years).
3. Language is proposed that will define "monitoring period" and that a utility would be determined to be exceeding (or not exceeding) an Action Level on the date when the monitoring period is over.
4. Utilities would not be allowed to remain on reduced monitoring based solely on meeting optimal values for water quality parameters. The proposed language would require that reduced monitoring only be allowed where it has been demonstrated that corrosion control treatment is effective and reliable.
5. Utilities would be required to obtain prior approval from the primacy agency to add a new source or change a treatment process before implementing the change (currently the LCR requires a utility to notify the state within 60 days after making such changes).
6. Utilities would have to report tap-water testing results to owners of sampled homes within 30 days (the

information reported is to include language addressing lead health effects, the meaning of the lead action level and maximum contaminant level goal, and steps homeowners can take to minimize their lead exposure risk).

7. If a utility exceeds the Action Level for lead, proposed language would require the utility to contact the primacy agency by phone or in person.
8. Language is proposed that utilities make a "good faith effort" to send public education materials (triggered when the lead Action Level is exceeded) to organizations that most likely serve vulnerable populations (e.g., licensed childcare centers, preschools, OBGYNs, etc.).
9. For lead service lines, the first year of lead service line replacement (if required) is the day after the monitoring period ends.
10. For lead service lines, if a line service was previously tested and shown not to be contributing lead and that utility subsequently exceeds the lead Action Level, then the line service line is put back into the pool of service lines that need to be replaced (the utility would be able to again "test out" the lead service line).
11. Proposed language to the health effects language to indicate that lead exposure can be a concern to adults with kidney problems and high blood pressure.
12. Language is added to the public education language that would provide utilities with flexibility to explain sources of lead and steps that consumers can take. Public water systems that detect lead above the method detection limit of 1 ug/L would need to include a statement in the Consumer Confidence Report.

EPA requests public comment on the feasibility of allowing states to specify plumbing replacement as a corrosion control technique for small and medium-sized systems. EPA is also requesting public comment on allowing point-of-use and point-of-entry treatment for corrosion control for small and medium-sized systems.

TOTAL COLIFORM/DISTRIBUTION SYSTEM RULE

Under the Safe Drinking Water Act, EPA is required to review existing drinking water regulations every six years. During the review completed in 2003, EPA identified the Total Coliform Rule (TCR) as a regulation for possible revisions. In addition to potential changes to the TCR, EPA is moving towards developing a distribution system regulation that could be developed along with the TCR revisions.

EPA has hired a contractor that is currently contacting water utility associations and other interested Stakeholders to gather their input on whether or not to establish a FACA (Federal Advisory Committee Act) committee to negotiate elements of a revised Total Coliform Rule and Distribution System Rule.

In 2002, EPA published a series of "white papers" discussing distribution system issues of public health concern. EPA staff is currently working on developing a series of TCR white papers. On June 22-23, 2006, EPA held an experts workshop to discuss the TCR white papers. The immediate schedule for next steps is not known, but EPA intends to publish a proposed rule by summer of 2007 and a final rule during 2008. Considering the time involved in the FACA process, and the time it takes to publish proposed and final regulations, that is an ambitious schedule.

GROUNDWATER RULE

EPA published a proposed Ground Water Rule on May 10, 2000. Under court-order, EPA is scheduled to publish the final rule by August 2006 (an extension is available until October 2006 to publish the final rule).

CONTAMINANT CANDIDATE LIST (CCL)

The development of the CCL is a requirement under the SDWA and is the starting point for EPA's evaluation of contaminants for potential regulation in drinking water. The initial CCL was published in 1998. The initial CCL contained 60 chemicals and microbiological entities. EPA reviewed 9 chemicals and microbiological entities from the initial CCL and determined that there was not sufficient reason to develop drinking water regulations.

EPA published a final Contaminant Candidate List 2 (CCL2) in February 2005. The CCL2 is essentially the 51 remaining contaminants from the initial CCL. EPA was scheduled to identify at least 5 constituents from the CCL2 for possible regulation by December 2005 and then to make final determinations on whether or not to pursue a regulation by October 2006. EPA has not yet formally identified 5 constituents from the CCL2 for possible regulation.

UNREGULATED CONTAMINANT MONITORING RULE (UCMR)

In August 2005 EPA proposed the UCMR2. The purpose of UCMR requirements is to obtain occurrence information for

constituents that may be regulated under the SDWA. The UCMR2 proposal included 26 contaminants. The latest information is that a final UCMR2 will be published by November 2006. As proposed, UCMR2 monitoring would occur between 2007 and 2011.

M/DBP COMPLIANCE TOOLS

EPA posted compliance tools to help water utilities meet implementation requirements for the Stage 2 DBP Rule and the LT2ESWTR. The posted compliance tools include the Data Collection and Tracking System (DCTS) and the Initial Distribution System Evaluation (IDSE) tool.

The DCTS will be used (1) to collect microbial data from the LT2ESWTR and (2) by EPA and State Primacy Agencies to track implementation of the LT2 and the Stage 2 DBP Rule.

The IDSE Tool includes (1) an IDSE wizard to assist water utilities in determining which IDSE option would work best for their given situation.

The tools can be found at the following web address:

<http://www.epa.gov/OGWDW/disinfection/tools/index.html>

CLEAN WATER ACT

WATER TRANSFERS RULE

On June 7, 2006, EPA published a water transfers rule. The intent of the proposal is to codify that Congress did not intend in the Clean Water Act for water transfers to be subject to the NPDES permit program. Water transfers are defined as an activity that conveys waters of the US (surface waters) to another water of the US without subjecting the water to any intervening industrial, municipal or commercial use. Transfers include routing water through tunnels, channels, or natural stream courses for public water supplies, irrigation, power generation, flood control, and environmental restoration.

Several recent court cases have dealt with whether a permit for water transfers is required under the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) program. In 2004, the question went before the U.S. Supreme Court in *South Florida Water Management District v. Miccosukee Tribe of Indians*. The court did not rule directly on the issue, generating uncertainty about the need for a permit. EPA concluded in 2005 that Congress intended water resource-management agencies and other state authorities to oversee water transfers, not the NPDES permitting program. This proposed rulemaking codifies that conclusion. Public comments were due by July 24, 2006, however, the public comment period has been extended until August 7, 2006.

The proposed rule and additional information on water transfers are available at http://www.epa.gov/npdes/agriculture#water_transfer.