UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WSG 167
Date Signed: May 6, 2003

MEMORANDUM

SUBJECT: Sampling for Non-transient Non-community Public Water Systems under the Lead and Copper Rule

FROM: William R. Diamond, Director
Drinking Water Protection Division

TO: Charlene Denys, Chief
Safe Drinking Water Branch
Region V

I am writing to follow up on your request for clarification of monitoring requirements under the Lead and Copper Rule. Specifically, you asked about the minimum number of samples required for non-transient non-community water systems and the meaning of "site" and "faucet" in regulatory language.

The Lead and Copper Rule, at section 141.86(c), specifies that water systems shall collect at least one sample during each monitoring period from the number of sites as five, for the smallest water systems.

The table in section 141.86(c) does not make allowances for water systems with fewer than five buildings or taps to use an alternative monitoring scheme. Systems that do not have the number of buildings or taps required by the table must still meet the minimums in the table. The Lead and Copper Rule Minor Revisions preamble specifically addresses this issue. Some commenters responded to the proposed rule by suggesting that systems with fewer buildings or taps than required by the table at section 141.86(c) be allowed to collect only one sample from each tap available for sampling. In response, we explained that a system collecting fewer than the required number of samples would not have adequate information to characterize a lead or copper problem. Please see 65 FR 1970 (January 12, 2000). In our response we also noted that because there "can be variability in lead and copper levels at different taps within the same building and even at the same tap at different points in time," systems that do not have the requisite number of sites "must sample at multiple taps used to provide drinking water for human consumption within available buildings. Systems with too few taps must collect multiple samples from available taps used to provide drinking water on different days during the monitoring period.....".

The documents listed below provide more information.

- Lead and Copper Rule (56 FR 26460, June 7, 1991)
- Lead and Copper Rule Minor Revisions (65 FR 1950, January 12, 2000),
- March 30, 2000 memorandum from the Regulatory Implementation Branch Chief to the Regional Drinking Water Branch Program Representatives and Regional Drinking Water PWSS Enforcement Coordinators)
- State Implementation Guidance for the Lead and Copper Minor Revisions, EPA 816-R-01-021, Oct 2001
- Lead and Copper Monitoring and Reporting Guidance for Public Water Systems, EPA 816-R-02-009, Feb 2002)

Courts routinely rely on Agency preamble, or other documentation, to understand the intent of regulatory language. For example, in the case HRI Inc. v EPA, 198 F.3d 1224 (1oth Cir. 2000) the court defers to EPA's interpretation of SDWA "treatment as a state"regulations. Courts overturn Federal Agency interpretations only if those interpretations are clearly in error. For example, see Auer v. Robbins, 519 U.S. 452, 460 (1997). The discussions above regarding sampling for non-transient non-community water systems under the Lead and Copper Rule reflect our consistent position on this issue since promulgation of the rule in 1991.

If you have any questions or comments or would like to discuss this issue further, please call me or have your staff contact Jeanne Campbell, at (202) 564-3826.