

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WSG 30

Date Signed: April 23, 1987

Honorable Jack Fields
House of Representatives
Washington, D.C. 20515

Dear Mr. Fields:

I am responding to your letter of March 26, 1987, in which you requested answers to several questions posed by Mr. John Collins about the lead ban provisions in the Safe Drinking Water Act (SDWA) Amendments of 1986 (P.L. 99-339). My response will answer each question as posed by Mr. Collins.

- 1) "Is the law now in effect? I have been told that the law will be in effect in June 1988."

The law is in effect now. After June 19, 1986, (the effective date of the SDWA amendments) any solder, flux, and pipe used in the installation or repair of any public water supply system, or in any plumbing in a residential or non-residential facility providing water for human consumption which is connected to a public water supply system must be "lead free." "Lead free" means that solder and flux may not contain more than 0.2 percent lead and pipe may not contain more than 8.0 percent lead. The States must enforce this requirement within two years (June 19, 1988).

- 2) "Who will enforce the law, and what are the penalties for noncompliance?"

As explained above, all States must have a mechanism in place to enforce this prohibition by June 19, 1988. It is up to each State to decide how best to implement this requirement. Penalties for noncompliance will be a function of each State's laws and regulations. In addition, beginning June 19, 1988, the Department of Housing and Urban Development and the Veterans Administration may not provide mortgage insurance or other assistance for new residential property unless the plumbing is "lead free." Also beginning June 19, 1988, solder which has lead content in excess of 0.2 percent must prominently display a warning label that the use of that solder in making joints or fittings in any private or public potable water supply is prohibited.

- 3) "How will the solder-joints be tested? Whose responsibility is this?"

Several test kits are available to enable inspectors to test for the lead content of solder joints in the field. It is the responsibility of the State (or local governments) to ensure that the lead ban provisions are enforced. EPA will evaluate each State's enforcement program to ensure a lead ban mechanism is in place and adequately enforced.

- 4) "What civil liabilities will be incurred if it is proven that lead bearing solder has been used, and as a result lead poisoning to a human? The above in regards to (a) the plumbing contractor; (b) the building contractor; (c) the plumbing supply house which sold the lead bearing solder?"

EPA can only address the responsibilities imposed by the SDWA. Questions concerning specific product liability are determined by State law. The SDWA simply bans the use of products that are not "lead free" as defined by the Act. The SDWA is neutral on the issue of liability. It neither imposes liability nor relieves individuals of liability for any injury caused by lead bearing products. Of course, in determining whether to impose such liability a court may consider whether the defendant was in compliance with the lead prohibition requirements of the Safe Drinking Water Act as well as State law implementing the lead ban.

- 5) "What penalties will be incurred if the State and/or local governments do not comply with this law?"

If a State fails to enforce the prohibition EPA may withhold up to five percent of the State's Public Water System Supervision program grant. Any penalties on local governments will be determined by each State government.

I trust this information will clarify the lead ban provisions of the Safe Drinking Water Act. I appreciate your questions and welcome any further clarifications you may have.

Sincerely,
(signed for by Rebecca Hanmer)
Lawrence J. Jenson
Assistant Administrator