

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WSG 40

Date Signed: December 7, 1988

Revised: June 1, 1998

Revised by: Judith Fraser

MEMORANDUM

SUBJECT: The Safe Drinking Water Act (SDWA) Lead Ban

FROM: Margaret B. Silver (signed by M.B. Silver)
Attorney
Water Division (LE-132W)

TO: Jeanne Briskin
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Lead Task Force
Office of Drinking Water (WH-550D)

Use Prohibitions

Under the lead ban in section 1417(a)(1) of SDWA, pipe, solder, and flux "which is used after the enactment of the Safe Drinking Water Act Amendments of 1986, in the installation or repair of (A) any public water system, or (B) any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system shall be lead free" (emphasis added). Section 1417(b) of SDWA states that "the requirements of subsection (a)(1) [i.e., the lead ban] shall be enforced in all States effective 24 months after the enactment of this section" (emphasis added).

The SDWA amendments were enacted on June 19, 1986. Because the statute says that the lead ban is to be enforced two years after its effective date, the question arises whether the lead ban was in effect from June 19, 1986 to June 19, 1988. The plain language of the statute, as well as its legislative history, make it clear that the lead ban took effect June 19, 1986.

Section 1417(a)(1) very simply and directly states that pipe, solder, and flux used for the purposes listed in that section after June 19, 1986 must be lead free. The fact that Congress gave the States two years to incorporate the lead ban into State and/or local law and to implement an enforcement program does not change the clearly stated effective date of the federal requirement.

The legislative history confirms that Congress intended that the lead ban go into effect on June 19, 1986. The Conference Report on the 1986 SDWA amendments states that "[t]he lead use prohibition is effective immediately." Conf. Rep. No. 99-575, 2d Sess., p. 38 (1986). The report goes on to explain that "[b]ecause enforcement will require States to modify their State or local plumbing codes or apply other means, a period of 24 months is provided before States are

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required to enforce the prohibition." Ibid. In addition, in discussing the proposed amendments on the Senate floor, Senator Durenburger stated that:

It is our intention that State and local governments make the modifications in codes and regulations necessary to effectuate the ban as soon as possible. And we make the ban in Federal law effective immediately for that purpose.

132 Cong. Rec. S6289 (daily ed. May 21, 1986).

Section 1417(b) requires States to enforce the use prohibitions by June 19, 1988 through State or local plumbing codes, or such other means of enforcement as the State may determine appropriate. Furthermore, the United States Environmental Protection Agency has the authority to enforce §1417(a)(1) in the event a State fails to do so. See §§1414(b)(g) and (i). In addition, States that fail to enforce §1417(a)(1) are subject to a withholding penalty of 5% of federal program funds. Finally, EPA may also rely upon §1431's emergency powers to issue orders as necessary to protect the health of persons and commence civil actions for appropriate relief, including a restraining order or permanent or temporary injunction, when it finds that a contaminant which is present or is likely to enter a public water system may present an imminent and substantial endangerment to the health of persons.

Unlawful Acts—Sales

The 1996 Amendments to the Safe Drinking Water Act added Section 1417(a)(3), "Unlawful Acts." This section makes it unlawful for persons to introduce into commerce any pipe or plumbing fitting or fixture that is not lead free, except for pipe that is used in manufacturing processes. §1417(a)(3)(A). The amendments also make it unlawful for any person to 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. §1417(a)(3)(c). Finally, persons engaged in the business of selling plumbing supplies may not sell solder or flux that is not lead free. §1417(a)(3)(B). These sales bans are enforceable beginning August 6, 1998, two years after the August 6, 1996 effective date. Section 1417(b) does not require States to enforce the sales ban. However, the sales ban is federally enforceable pursuant to sections 1414(b), (g), and (i), which allow the EPA to bring civil actions and issue administrative orders.

cc: Regional Drinking Water Branch Chiefs
ORC Water Branch Chiefs