

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
GUIDANCE FROM HOTLINE COMPENDIUM

WSG H20

Date Issued: February 1989

SUBJECT: Lead Ban

SOURCE: Betsy Devlin

A person builds a new home after June 19, 1986, the effective date of the lead ban. The homeowner discovers that lead solder was used to install plumbing and confronts the contractors about it. The builders inform the homeowner that the local government permitted them to install lead solder in homes after the deadline, provided they had already purchased it prior to the deadline. The builders claim they were allowed to use up their supply of lead solder first, and then switch to non-lead type thereafter. The homeowner would like the lead solder removed and new plumbing installed.

What legal rights does the homeowner possess? Can a citizen pursue an action against the contractor? The local government?

Response:

The federal lead ban was effective June 19, 1986. Therefore, by installing lead solder after that date, the contractor violated a federal law. The homeowner could bring a citizen suit under Section 1449 of the Safe Drinking Water Act to require the contractor to comply with the lead ban. (It should be noted that the citizen suit provision appears to allow for injunctive relief only; there is no penalty provision). In any such suit, the contractor is likely to raise as a defense, that the local government permitted him or her to install lead solder. The citizen would have to argue that the local law was inconsistent with the federal law and that federal law would prevail in this case; local law cannot "undo" a federal law.

The homeowner may also notify EPA of the problem, EPA could potentially withhold five percent (5%) of the State Public Water System Supervision (PWSS) grant and/or consider issuing an emergency order under Section 1431 (if the requisite findings could be made).