

March 4, 2021

# DRINKING WATER ALERT

## ENVIRONMENTAL LAW

*A Shipman & Goodwin® Alert*

**SHIPMAN**

## Drinking Water Alert: EPA Bolsters Lead and Copper Rule with New Lower Trigger Level, Other Changes

The U.S. Environmental Protection Agency (EPA) recently promulgated the first significant revisions to the Lead and Copper Rule (LCR) pursuant to the Safe Drinking Water Act (SDWA) in thirty years. The revised LCR, effective March 16, 2021 [<https://www.epa.gov/ground-water-and-drinking-water/final-revisions-lead-and-copper-rule>], includes dozens of new or modified requirements to improve the quality of drinking water and protect public health, especially of children, who are more susceptible to lead poisoning than adults. See 40 CFR Part 141, Subpart I.

### What is the LCR and Who Should Know About It?

Any entity that owns or operates a “Public Water System” (PWS), particularly a larger “community water system” (CWS, a subset of a PWS) that may service schools (public or private) or licensed childcare facilities, must understand and comply with the new LCR requirements. Additionally, schools and childcare facilities that operate their own water systems (i.e., have a drinking water well) qualify as “non-transient non-community water systems” (NTNCWSs, another subset of PWSs) and are subject to the LCR, albeit with separate compliance requirements.

Several key highlights are summarized below.

- The LCR’s lead “Action Level” remains at 15 parts per billion (ppb). If a system’s lead level is greater than 15 ppb, control measures such as corrosion control and line replacements may be required.
- There is a new lead “Trigger Level” set at 10 ppb. If a system’s lead level is between 10 and 15 ppb, the system operator must begin planning for how to control lead contamination in the event a result above the Action Level is later identified.
- Sampling methodologies are now focused on identifying problematic lead service lines (LSLs) with the required implementation of what EPA is calling the “Fifth Liter Rule.” Instead of collecting the “first draw” or “first liter” as soon as the tap opens, samplers at sites with LSLs must now draw four liters before collecting the water sample so that the lead results are more likely to indicate the

### Our Environmental Law Practice Group:

Andrew N. Davis, Ph.D.  
(860) 251-5839  
adavis@goodwin.com

Tyler E. Archer  
(860) 251-5234  
tarcher@goodwin.com

Alfredo G. Fernández  
(860) 251-5353  
afernandez@goodwin.com

Kristie A. Beahm  
(860) 251-5334  
kbeahm@goodwin.com

Aaron D. Levy  
(860) 251-5893  
alevy@goodwin.com

Lilia N. Hrekul  
(860) 251-5417  
lhrekul@goodwin.com

Matthew Ranelli  
(203) 836-2805  
mranelli@goodwin.com

condition of the LSL and not the internal plumbing and fixtures. The “first liter” is still collected for copper sampling and can nevertheless be sampled for lead to provide additional data on internal plumbing and fixture conditions.

- Sampling frequency standards now require more frequent testing for certain systems. For systems where results exceed the Action Level, sampling must now occur semi-annually. For systems where results are between the Trigger Level and the Action Level, sampling must occur annually. For systems where results are under the Trigger Level, sampling may occur every one or three years depending on the facts.
- All water systems must develop an LSL inventory and develop a replacement plan for any LSLs by March 2024.
- Under the new “Find and Fix” protocol, any individual tap where results exceed the Action Level must be further investigated and, as warranted, corrected (even if the system’s overall lead level does not exceed the Action Level).
- CWSs must sample 20% of the schools and childcare facilities they serve each year for the next five years. Secondary schools must be sampled upon request by the school during this time.



It is also important to note what the revised LCR does not do:

- it does not create a national maximum contaminant level (MCL) under the SDWA;
- it does not change the existing Action Level; and
- it does not require that all LSLs or compromised indoor plumbing/fixtures be replaced by a date certain.

Also, the revised LCR does not require schools and childcare facilities that are serviced by CWSs (e.g., by municipal water systems) to independently sample their own water. However, given that aged internal pipes and fixtures are sometimes a source of lead, the EPA strongly encourages all schools and childcare facilities to participate in its voluntary Training, Testing and Taking Action (3Ts) program. The 3Ts program provides a toolbox for schools and childcare facilities to increase their awareness of, and ability to mitigate exposure to, lead in drinking water.

## What You Should Do

If you operate a CWS that services a school and/or childcare facility — or you operate a school or childcare facility with its own drinking water source — we recommend a review of the last several years/events of drinking water data to determine legacy lead levels relative to the Action Level and new Trigger Level in order to prudently

plan ahead with knowledge of your system's baseline. Keep in mind that with the new sampling methodologies (e.g., the Fifth Liter Rule), past performance may not be indicative of future results. We also recommend an LCR compliance assessment be conducted to determine if the current testing frequency is appropriate and relevant personnel understand the new rules and sampling methodologies.

If you operate a building that has been fully or partially dormant, due to COVID-19 conditions for example, we recommend you prepare a plan to preemptively "flush the lines" before re-occupancy to eliminate potentially stagnant water that may contain elevated levels of lead and/or copper that may have leached from the pipes and/or fixtures.

Shipman environmental attorneys have significant experience advising owners/operators of PWSs of varying sizes, including several public school districts, and can assist you with LCR assessments and compliance strategies, as well as identifying and working with qualified environmental consultants.

## **Questions or Assistance**

Please reach out to any Shipman environmental lawyer listed on page 1 of this alert or to your primary Shipman contact if you would like to discuss this important update.

These materials have been prepared by Shipman & Goodwin LLP for informational purposes only. They are not intended as advertising and should not be considered legal advice. This information is not intended to create, and receipt of it does not create, a lawyer-client relationship. Viewers should not act upon this information without seeking professional counsel. © 2021 Shipman & Goodwin LLP. One Constitution Plaza, Hartford, CT 06103.