
COMMENT AND RESPONSE DOCUMENT
for the
LEAD & COPPER RULE SHORT-TERM REVISIONS (LCRSTR)

List of Commentators

1. Independent Regulatory Review Commission (IRRC)
333 Market Street, 14th Floor
Harrisburg, PA 17101

LEAD & COPPER RULE SHORT-TERM REVISIONS COMMENTS AND RESPONSES

Section 109.1103. Monitoring requirements. - Need; Fiscal impact; Clarity

1. **Comment:** *Subsection (e) - Reduced monitoring.*

The Preamble to the proposed rulemaking states that certain provisions of § 109.1103(e) are more stringent than the Federal rule on which this proposal is based. The specific provisions are: §§ 109.1103(e)(1)(i)(B) and (C); 109.1103(e)(1)(ii)(B); and 109.1103(e)(3). The Board has explained that these provisions are more protective of the public health than the Federal rule. We ask the Board to explain why the Federal rule is not sufficient to protect the health of the citizens of this Commonwealth.

In addition, a commentator has questioned if these provisions increase the cost for compliance for public water systems. We ask the Board to quantify the costs associated with the provisions that are more stringent than the Federal rule. **(1)**

Response:

The one provision more stringent than the federal provisions involves systems with corrosion control treatment (CCT) that are on a reduced monitoring frequency. Under both rules, if these systems exceed the lead action level without exceeding the copper action level they are required to resume a 6-month monitoring frequency for both parameters. However, under the federal rule, if these systems exceed the copper action level without exceeding the lead action level, they are allowed to remain on a reduced monitoring frequency. Under the state rule, if these systems exceed the copper action level without exceeding the lead action level, they are required to resume a 6-month monitoring frequency for both parameters. Lead and copper in drinking water is usually the result of corrosion of household plumbing. Water suppliers treat for lead and copper using passivation, meaning they change the water chemistry to reduce the solubility of lead or copper. Treatment options for lead are often different than those for copper. When water suppliers tweak treatment to reduce the levels of one parameter, they may actually increase the levels of the other parameter. Additionally, treatment for other regulated contaminants will often cause simultaneous compliance issues with corrosion control treatment. Therefore, a lead or copper action level exceedance is a good indication that the treatment system is not operating effectively and should be re-evaluated to determine whether the current treatment system is the most appropriate.

There will be some additional costs associated with this provision. Resuming routine monitoring from a reduced annual or triennial frequency will require, at a minimum, 2 consecutive rounds of monitoring every 6 months at the initial number of sampling locations. The number of additional samples required varies and is based on the population served. Cost estimates are based on data from the 2007 monitoring period. In 2007, there were 2,948 water systems on a reduced monitoring frequency. Of these, 54 systems (2%) that have installed corrosion control treatment exceeded the copper action level without exceeding the lead action level. Over half of these 54 systems serve less than 500 people. Because so few systems are likely to be affected by this provision and because the costs will vary significantly, a range of increased costs has been estimated and is shown in the table on the next page. The total additional cost is based on an average cost of \$36 for a lead and copper sample analysis.

Additional Monitoring Costs Incurred by a PWS with CCT Where the Action Level for Copper Only Is Exceeded						
Estimate of No. PWSs Affected (2%)	PWS Population					
	≤ 100	101-500	501-3,300	3,301-10,000	10,000-100,000	> 100,000
54	15	21	17	1	0	0
No. of Additional Samples	5	15	30	60	90	150
Increased Costs	\$180	\$540	\$1,080	\$2,160	\$3,240	\$5,400

Based on these estimates, each of the 54 systems would have incurred additional monitoring costs \$180 - \$2,160 for the purpose of ensuring that CCT treatment for either parameter was not compromised.

2. Comment: *Subsection (g) - Sample site location plan.*

Subsection (g)(2)(iv) pertains to site selection for community and nontransient noncommunity facilities that operate continuously. The second sentence of this subsection states the following: "These systems shall collect **as many first-draw samples from appropriate taps as possible** and identify sampling times and locations that **would likely** result in the longest standing time for the remaining sites." (Emphasis added.) This sentence is vague because it does not establish a binding norm that could be evenly applied to all members of the regulated community and enforced by the Department of Environmental Protection in a uniform manner. We recommend that the sentence be amended to provide more definite parameters for testing.). **(1)**

Response:

The language has been edited for clarity, so § 109.1103(g)(2)(iv) will state:

“A community water system meeting the conditions in clause 109.1104(a)(2)(i)(I), or a nontransient noncommunity water system, that operates continuously that has an insufficient number of taps commonly used for drinking to take each first-draw sample from a different tap, may apply to the Department, in writing, to substitute non-first-draw samples. Upon approval by the Department, in writing, these systems shall collect as many first-draw samples from taps that can be used for drinking that meet the sample site criteria specified in this paragraph as possible. The remaining samples must be collected at the times and from the sites identified with the longest standing times. Non-first-draw samples must be 1-liter in volume and collected from an interior tap that is typically used to provide water for human consumption.”

Under § 109.1107(a)(1), a public water system is required to prepare and submit a LCR sample site location plan prior to conducting initial monitoring and update the plan if any changes are made to sampling locations. If a system wishes to substitute non-first draw samples as specified in § 109.1103(g)(2)(iv), the sample site location plan will be the mechanism with which the system applies to the Department in writing. The Department will then respond in writing to the water supplier if the alternate sampling locations are approved.

Section 109.1104. Public education and notification. - Implementation procedures; Need; Clarity.

3. Comment: *Subsection (a)(2)(i)(B)*

This subsection pertains to the delivery of education materials. It is being amended to read as follows:

“The water supplier shall deliver education materials meeting the content requirements of paragraph (1) to local public health agencies, such as the county or State Health Department, even if they are not located within the water system's service area, along with an informational notice that encourages distribution to all the potentially affected consumers. The water supplier shall contact the local public health agencies directly by phone or in person. The local public health agencies may provide a specific list of additional community based organizations serving target populations which may include organizations outside the service area of the water system. If a list is provided, the water supplier shall deliver education materials that meet the content requirements of paragraph (1) to all the organizations on the list.”

We have three concerns. First, the term "local public health agencies" is unclear. We recognize that the Preamble to the rulemaking lists the agencies that must be contacted and that additional guidance will be provided by the Department. However, as noted above, regulations establish binding norms and also have the full force and effect of law. We recommend that the term either be defined or that the final-form regulation include a reference to a specific guidance document that lists the agencies that must be contacted. This term also appears in Subsection (a)(2)(i)(D).

Second, what is the need for contacting local public health agencies, even if they are not located with the water system's service area? This requirement also appears in Subsection (a)(2)(i)(D).

Third, we find the third and fourth sentence of this subsection to be problematic. Under these sentences, the Board is delegating its rulemaking authority to local public health agencies and members of the regulated community will be required to comply with the additional requirements. This approach does not establish a binding norm that could be applied evenly to the regulated community. If the Board believes that other community based organizations should be contacted, those organizations should be listed in the guidance document. (1)

Response:

This language is consistent with, and no more stringent than, the federal language found in 40 CFR 141.85(b)(2)(ii). The following excerpts from the federal preamble explain EPA's rationale:

From page 57792: “In recognition of the importance of distributing information to the at-risk populations (e.g., pregnant women, infants, and young children) on the hazards of lead and how one can protect themselves from exposure to lead, EPA has added additional organizations (e.g., licensed childcare facilities, obstetricians-gynecologists and midwives, and preschools) to the list of organizations a water system must contact when a lead action level exceedance occurs to ensure that the information reaches all potential bill paying and non-bill paying customers. This is based on NDWAC's recommendation. ...EPA recognizes that the local health agencies play an important role in ensuring that consumers who are most vulnerable receive critical information on how one can reduce their exposure to lead. ...EPA believes the additional activities required in the rule following a lead action level exceedance ...will appropriately bring the seriousness of lead exposure to the attention of consumers.”

From page 57793: “EPA believes that the local health agencies play an important role in making sure consumers who are most vulnerable receive the information they need to reduce their

exposure to lead in drinking water. However, EPA cannot mandate that health departments generate and provide contact information for the new organizations and is not assuming that local health agencies will have the contact information readily available in all cases. ...EPA believes that if the local public health agency can identify organizations that potentially serve target populations, then a water system should deliver public education materials to this organization even if it is not within the water system's service area. EPA believes there could also be instances where an individual does not reside within the system's service area but is served by the water system in another capacity (e.g., a child lives in another county but spends a large part of their day at a child care facility that is served by a water system with a lead action level exceedance)."

To clarify the term "local public health agencies," the language has been amended to read as follows:

"The water supplier shall deliver education materials meeting the content requirements of paragraph (1) to the local **board or department of public health that has jurisdiction over the water system's service area**, along with an informational notice that encourages distribution to all the potentially affected consumers. The water supplier shall contact the local board or department of public health directly by phone or in person. The local board or department of public health may provide a specific list of additional community based organizations serving target populations which may include organizations outside the service area of the water system. If a list is provided, the water supplier shall deliver education materials that meet the content requirements of paragraph (1) to all the organizations on the list." (Emphasis added)

The Department is not delegating its authority to another agency. As stated above, local health departments play an important role in ensuring consumers who are not regular consumers receive information on reducing their exposure to lead in drinking water. All water systems required to conduct a public education program because of a lead action level exceedance are required to contact the local health department via the telephone or in-person to request assistance in identifying the consumers who are most at-risk from exposure to lead in the drinking water and in distributing the public education materials. DEP is not mandating that the local public health agency provide a list of additional organizations or ensure that the water supplier provide education materials to these organizations. However, if a list of organizations is provided by the local health department, DEP will ensure that the public water system deliver the education materials as required. Under § 109.1104(a)(1)(iii) water systems are required to submit copies of public education materials prior to delivery; under § 109.1107(a)(4), public water systems conducting a public education program are required to submit a written certification that they have complied with the public education requirements.

4. Comment: *Subsection (a)(2)(i)(D)*

This subsection requires water suppliers to make a good faith effort to reach certain organizations. It states that the good faith effort "may" include requesting information from a local public health agency. The use of the word "may" is problematic because it is nonregulatory language which indicates that this provision is optional. It is inappropriate to include optional provisions in a regulation. If the Board believes this provision is necessary, it should change the word "may" to "shall." If it is not necessary, the provision should be deleted from the regulation. **(1)**

Response:

The term "may" has been changed to "must."