



April 8, 2016

Joel Beauvais
Deputy Assistant Administrator
United States Environmental Protection Agency
1200 Pennsylvania Ave. NW #4000
Washington, DC 20004

Re: Montana's Response to EPA's Request for Information Related to Montana's Application of the Lead and Copper Rule (LCR).

Dear Deputy Assistant Administrator Beauvais,

Thank you for your commitment to protecting public health and the nation's drinking water. As you know, Montana is a primacy state and implements the requirements of the Safe Drinking Water Act within Montana. Montana is proud of and committed to its working relationship with the staff at the EPA Montana Operations Unit, EPA Region 8, and EPA Headquarters.

As you know, each state is unique in the authority and regulations for implementing the drinking water requirements within that state. Montana is obligated, through federal law and its primacy agreement with EPA, to be no less stringent than federal regulation. Under Montana law, we may not be more stringent than comparable federal rules and guidance. Because guidance documents are non-regulatory in nature, Montana has not adopted guidance documents into regulation. However, Montana uses EPA guidance in the implementation of our program as much as is reasonably possible.

The following is Montana's response to your near-term action requests:

Near Term Action #1: Confirm that the state's protocols and procedures for implementing the LCR are fully consistent with the LCR and applicable guidance.

- Montana is complying with the LCR and we are updating our recommendations to reflect the most recent non-regulatory guidance documents from EPA..

Near Term Action #2: Use relevant EPA guidance on LCR sampling protocols and procedures for optimizing corrosion control.

- Montana has not adopted non-regulatory guidance documents into our rules. We do, however, recommend to our systems that they consider the recommendations of the guidance documents.
- Montana requires systems that propose corrosion control treatment to submit plans and specifications to the department for review. Those plans and specifications must be submitted by a Montana-licensed professional engineer and are reviewed by our staff engineers to ensure they are consistent with our minimum design standards. We do not tell the system or the engineer which treatment to use. Ultimately, it is up to the system and their design engineer to develop the appropriate approach and to implement the plan.
- In Montana, we have three systems – two surface water systems and one groundwater system -- that serve a population greater than 50,000. DEQ has deemed all three to be optimized based on sample results.

Near Term Action #3: Post on your agency's public website all state LCR sampling protocols and guidance for identification of Tier 1 sites (at which LCR sampling is required to be conducted)

- Montana is currently working to update its webpage to include the EPA's newest guidance on sampling protocols and will include guidance for identification of Tier 1 sites.

Near Term Action #4: Work with PWSs – with a priority emphasis on large systems – to increase transparency in implementation of the LCR by posting on their public website and/or on your agency's website the following:

- As stated previously, Montana only has three large systems. However, Montana is committed to working with *all* systems to recommend improvement to transparency and providing public access to records that are available.
 - ***The materials inventory that systems were required to complete under the LCR, including the locations of lead service lines, together with any more updated inventory or map of lead service lines and lead plumbing in the system.***

- This information is no longer available. The LCR record retention requirements, for both the systems and the State, is twelve years. This information has not been retained in state records and may no longer exist with the systems. As stated previously, the department is committed to working with all systems. We will work with any system that has information and wishes to make it available to the public.
- ***LCR compliance sampling results collected by the system, as well as justification for invalidation of LCR samples.***
 - Montana utilizes the Safe Drinking Water Information System (SDWIS) and Drinking Water Watch, a public-facing tool that allows access to some information contained in SDWIS, which displays the 90th percentile sample summary. The vast majority of Montana's historical sample results were reported on paper and only the 90th percentile value used for compliance was transcribed into the SDWIS database. Montana will work to develop and post a public-facing query that will allow anyone to access all lead and copper results that are stored in SDWIS.
 - Historical sample invalidations were done in writing, so there is a record but, almost universally the records are only available on paper. Current practice is to document those decisions in SDWIS in a comment field that is not available through Drinking Water Watch. This situation presents the same challenge as hard copy sample results in that a convenient and efficient way of getting paper records into an electronic format must be found. Providing this information going forward may be more easily accomplished but reporting historical decisions will be difficult.

Near Term Action #5: Enhance efforts to ensure that residents promptly receive lead sampling results from homes, together with clear information on lead risks and how to abate them, and that the general public receives prompt information on high lead levels in drinking water systems.

- Montana enforces the notification requirements based on the time limits in the LCR. It is reasonable to push water systems to beat these deadlines, especially for public education where the limit is 60 days. Montana will encourage water systems to move faster on public education and provide assistance and example materials in response to the initial action level exceedance.

In addition to the near-term action items you identified, I would like to respectfully suggest areas of the current LCR that we believe could be strengthened to improve the rule.

1. A significant number of our systems with action level exceedances have been able to “sample past,” some repeatedly, lead action level exceedances in accordance with the rule. A system under 50,000 people that triggers an action level exceedance is required to begin the optimal corrosion control treatment (OCCT) process. They are not required to continue lead and copper sampling, but if they do and they are able to get two 6-month rounds of samples below the action levels, they may cease their OCCT process but must pick it up from the point where they quit if they have another trigger under the rule. Sampling past an exceedance should not be a routine option for a lead exceedance, but should only be available to systems where it appears that improper sampling/samples are involved.
2. Many of the near-term action items you request are impaired by the submission of hard copy results. A federal rule requiring electronic reporting would not only address the issues discussed above, but would also improve data quality and timeliness. We believe the way to address this issue would be through the lab certification rules.
3. We also believe that EPA should create a sampling protocol and educational materials that should be required, from the certified lab, to go with every sample bottle. The system should then be required to certify, when they submit the samples back to the lab, that the documents were given to the individual sampler and that certification should be included with the results from the lab to the state, in some form.
4. It may be worth considering setting a lead MCL for individual samples, one considerably higher than the trigger level. This may prevent issues where a single home has results at acute levels, but the system is in compliance with its 90th percentile.
5. Systems should be required to sample at all public schools in addition to their routine sampling requirements as schools do not meet the Tier 1 criteria and generally are not part of a system’s sampling plan.

Thank you for your letter and for your commitment to resolve the situation in Flint, Michigan and to assure that it does not happen elsewhere. Montana continues to be fully committed to implementing the requirements of the Safe Drinking Water Act and doing what we can to protect public health. Do not hesitate to contact me if you have any questions.

Sincerely,



Tom Livers