

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WSG 76

Date Signed: July 23, 1993

**Revised:** June 1, 1998

**Revised by:** Judith Fraser

MEMORANDUM

SUBJECT: Clarification of Lead Service Line Replacement Requirements in Lead Drinking Water Rule

FROM: James R. Elder, Director (Signed by James R. Elder)  
Office of Ground Water and Drinking Water

TO: Drinking Water Branch Chiefs  
Regions I - X

This memorandum clarifies the lead service line replacement requirements under EPA's Lead and Copper Rule. *See* 40 CFR § 141.84. On June 7, 1991, EPA promulgated regulations, which included a broad definition of "control" as it applies to lead service lines in the distribution system. The definition presumes that water systems control the entire lead service line unless proven otherwise. To prove otherwise, a water system must submit a letter to the State indicating that it does not have any of the following forms of control over the entire line: (1) authority to set standards for construction, repair or maintenance of the line; (2) authority to replace, repair, or maintain the service line; or (3) ownership of the service line. In 1991, the American Waterworks Association (AWWA) challenged EPA's definition of "control", arguing that systems should not be required to replace lead service lines they do not own and that EPA substantially changed the definition of "control" without providing an opportunity for public comment. The Court agreed with AWWA that the Agency had failed to give adequate public notice that it was considering requiring systems to replace portions of service lines the system does not own. The Court remanded and vacated the definition of "control" as it applies to portions of the line beyond a water system's ownership. *AWWA v. EPA*, 40 F.3d 1266 (D.C. Cir. 1994). Because the Court vacated the rule on this procedural ground, it did not address AWWA's substantive argument that EPA was without statutory authority to require replacement of privately owned portions of service lines.

On April 12, 1996, EPA published a Proposed Rule, which included a revised definition of "control" of lead service lines that would obligate water systems to replace the portion of the line that they own, as well as any additional portion which the system has the authority to replace, in order to protect the quality of water delivered to the user. *See Federal Register*, April 12, 1996, p. 1634. EPA solicited comments on the proposed rule and then published a Notice of Data Availability on April 22, 1998. A Final Rule is expected to be published by October 1, 1998.

cc: Bob Blanco  
Brian Maas  
Steve Neugeboren/OGC