

Appendix D

Implementation Agreement

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SAMPLE LCRMR IMPLEMENTATION AGREEMENT

- Part I: General Implementation Activities
- Part II: Implementation Responsibilities for LCRMR Provisions that Were Required to Be Implemented by April 11, 2000
- Part III: Provisions Designated to Improve Implementation

This sample could serve as a basis for an implementation agreement. However, implementation agreements may take other forms. Other forms may include formal agreement such as a Memorandum of Agreement (MOA), a bilaterally-signed agreement, or a letter from the Region to the State documenting the terms of the agreement. The type of implementation agreement used is left to the discretion of the EPA Region entering into the agreement.

Part I - General Implementation Activities		
LCRMR Activity	Until the State receives primacy for the LCRMR, the following activities will be the responsibility of:	
	State	EPA
<ul style="list-style-type: none"> • Notify PWSs within 60 days of signing this agreement of the requirements of the LCRMR. 		
<ul style="list-style-type: none"> • Identify other State agencies that should receive copies of the LCRMR. Provide EPA Region with the names, addresses, and phone numbers of contacts to distribute the LCRMR to those agencies within 60 days of signing this agreement. 		
<ul style="list-style-type: none"> • Train State staff and PWSs on the requirements of the LCRMR. 		
<ul style="list-style-type: none"> • Devise a tracking system for PWSs' monitoring and reporting performed pursuant to the LCRMR. 		
<ul style="list-style-type: none"> • Issue notices to PWSs that fail to meet requirements of the LCRMR. 		
<ul style="list-style-type: none"> • Provide copies of the LCRMR in response to public inquiries. 		
<ul style="list-style-type: none"> • Coordinate with water associations to increase awareness of requirements. 		
<ul style="list-style-type: none"> • Assist with public outreach efforts to inform and educate PWSs. 		
<ul style="list-style-type: none"> • Prepare guidance as needed, or forward national guidance to the States. 		
<ul style="list-style-type: none"> • Keep States informed of SDWIS reporting requirements during development and implementation. 		
<ul style="list-style-type: none"> • Provide compliance assistance. 		

Part I - General Implementation Activities		
LCRMR Activity	Until the State receives primacy for the LCRMR, the following activities will be the responsibility of:	
	State	EPA
<ul style="list-style-type: none"> • Notify States of all Federal enforcement actions. 		

Part II – Implementation Responsibilities for LCRM Provisions that Were Required to Be Implemented by April 11, 2000

LCRMR Provision	Until the State receives primacy for the LCRM, implementation for the following provisions will be the responsibility of: (indicate with ✓)	
	State	EPA
§141.81 Demonstration of Optimal Corrosion Control		
<u>(b)(1) systems</u> Ensure systems that have installed corrosion control treatment (CCT) and are not required to conduct water quality parameter (WQP) monitoring continue to properly operate and maintain CCT. Maintain records of system requirements.		
Determine if these systems should conduct additional requirements to ensure CCT is maintained . Maintain records of system requirements.		
<u>(b)(2) systems</u> Ensure systems that have completed treatment steps equal to those described in the 1991 LCR prior to 12/7/92: <ul style="list-style-type: none"> • Routinely monitor for WQPs after OWQPs are set; and • Continue lead and copper tap sampling. Maintain records of system requirements.		
<u>(b)(3) systems</u> Ensure that those systems that meet the criteria of §141.81(b)(3): <ul style="list-style-type: none"> • Collect a round of lead and copper tap samples between October 1, 1997 and September 30, 2000 at the reduced number of sites and continue monitoring every 3 years thereafter; • Not exceed the copper action level after July 12, 2001 ; and • Begin corrosion control treatment steps if during any round of monitoring: <ul style="list-style-type: none"> ▶ the difference between its 90th lead and source water levels is > 5 ppb, (<i>and its serve >50,000 people</i>); or ▶ the system is above the lead action level (<i>any size system</i>); or ▶ the system is above the copper action level on or after July 12, 2001 (<i>any size system</i>). Maintain records of system requirements.		
§§141.84 & 141.90(e) Lead Service Line Replacement and Reporting Requirements		
Ensure that systems subject to lead service line (LSL) replacement requirements: <ul style="list-style-type: none"> – Replace portion of the LSL that they own and maintain records that document what portions of the LSL that they own; and – Make offer to property owner to replace privately-owned portion of LSL. Maintain records of system requirements.		

Part II – Implementation Responsibilities for LCRMR Provisions that Were Required to Be Implemented by April 11, 2000

LCRMR Provision	Until the State receives primacy for the LCRMR, implementation for the following provisions will be the responsibility of: (indicate with ✓)	
	State	EPA
<p>Ensure that systems that conduct partial LSL replacement:</p> <ul style="list-style-type: none"> • Notify residents at least 45 days before partial replacement that lead levels may increase temporarily following the replacement and provide guidance on measures they can take to minimize exposure to lead. (<i>Primacy Agency can allow shorter notification if replacement is done in conjunction with emergency repairs.</i>) • Collect at their expense a post-replacement sample that is representative of the lead content of water in the service line within 72 hours of completing the partial LSL replacement. • Notify residents of analytical results by mail or posting within 3 business days of receiving the results. • Submit to EPA or the State (<i>specify</i>) the results of LSL samples following partial LSL replacement. <p>Determine need to submit additional information to verify system completed the above requirements and maintain records of system requirements.</p>		
§§141.86 & 141.90(a) Lead and Copper Tap Monitoring and Reporting Requirements		
<p>Ensure that systems with an insufficient number of Tier 1, 2, or 3 sites, use representative sites to complete their sampling pools.</p> <p>Maintain records of system requirements.</p>		
<p>Ensure that systems on reduced monitoring collect from sites that are representative of those used during standard monitoring and where appropriate, specify where these samples should be collected.</p> <p>Maintain records of system requirements.</p>		
<p>Ensure that systems on reduced monitoring notify the State or EPA (<i>specify</i>) in writing no later than 60 days after a change in treatment or the addition of a new source.</p> <p>If necessary, specify additional steps that are needed to ensure optimal corrosion control treatment is maintained and maintain records of system requirements.</p>		
§141.88 Source Water Lead and Copper Monitoring Requirements		
<p>If compositing is allowed in the State regulations, ensure that systems resample if the composite sample is ≥ 0.001 mg/L for lead and/or ≥ 0.160 mg/L for copper.</p> <p>Maintain records of system requirements.</p>		

Part II – Implementation Responsibilities for LCRMR Provisions that Were Required to Be Implemented by April 11, 2000

LCRMR Provision	Until the State receives primacy for the LCRMR, implementation for the following provisions will be the responsibility of: (indicate with ✓)	
	State	EPA
§141.90(f) Revisions to Public Education Reporting Requirements		
Ensure systems report compliance with their public education requirements within 10 days after the period in which these tasks were required. Maintain records of system requirements.		
§142.15(c)(4) State Reporting Requirements		
Report in accordance with new requirements: <ul style="list-style-type: none"> • All 90th percentile lead levels for large and medium systems; • Done milestone; and • Deem milestone. 		
<i>This Agreement will take effect upon the date of the last signature.</i>		
_____	_____	
Agency PWSS Program Manager:	EPA Program Manager, EPA Region _____	
_____	_____	
Name of State Agency	Date	

Date		

Part III – Provisions Designed to Improve Implementation

(States with more stringent regulations may be unable to implement these provisions until they update their regulations. States may choose not to implement these provisions or to implement them with an alternative effective date to the federal April 11, 2000 effective date.)

§§141.81 and 141.82(g) Demonstration of Optimal Corrosion Control

Allowance for a system to be deemed to have optimized corrosion control under §141.81(b)(3) if its source water lead levels are below the Method Detection Limit and its 90th percentile lead level are ≤ 0.005 mg/L for two consecutive 6-month monitoring periods.

Revised procedure for assessing compliance with OWQPs.

§141.85 Revisions to Public Education Content and Delivery Requirements

Allowance for a CWS to:

- Modify public education language regarding building permit availability and consumer access to these records, if those documents are not available. *(Requires prior State approval.)*
- Delete references to LSLs in its public education materials if it has no LSLs. *(Requires prior State approval.)*
- Mail public education materials separately from its water bill.

Allowance for a CWS that serves 3,300 or fewer people to:

- Omit the requirement to provide public service announcements to radio and TV stations.
- Omit newspaper notification. *(If the CWS serves 501-3,300 people, it must have prior State approval.)*
- Limit distribution of pamphlets to facilities serving primarily pregnant women and children, unless the State requires a broader distribution. *(If the CWS serves 501-3,300 people, it must have prior State approval.)*

Allowance for a special-case CWS to use the NTNCWS alternative mandatory public education language and follow the NTNCWS public education delivery requirements. *(System must submit request in writing.)*

Allowance for a NTNCWS to:

- Use internal e-mail systems to distribute public education materials electronically instead of using printed materials, as long as this achieves at least the same coverage.
- Use alternative mandatory public education language that is more suited to its type of system.
- Delete references to LSLs in its public education materials if it has no LSLs. *(Requires prior State approval.)*

§§141.86 & 141.90(a) Lead and Copper Tap Monitoring and Reporting Requirements

Allowance for system on reduced lead and copper monitoring to collect samples during months other than June-September.

Allowance for NTNCWSs or special-case CWS, *such as a prison or hospital*, that do not have enough taps that can supply first-draw lead and copper samples, to collect samples from taps with the longest standing times.

If yes, indicate if you plan to require a system to receive prior approval of its sampling plan or review the plan when the system submits its monitoring results.

Monitoring waiver for lead and/or copper tap monitoring for small systems if system meets material and monitoring criteria.

Allowance for systems to collect lead and copper tap water samples once every 3 years without conducting interim rounds of annual monitoring if their 90th percentile lead and copper levels are ≤ 0.005 mg/l and ≤ 0.65 mg/l, respectively for 2 consecutive, 6-month periods.

Part III – Provisions Designed to Improve Implementation

(States with more stringent regulations may be unable to implement these provisions until they update their regulations. States may choose not to implement these provisions or to implement them with an alternative effective date to the federal April 11, 2000 effective date.)

Sample invalidation if system meets at least one of the 4 sample invalidation criteria.

Allowance for laboratories to decrease the time lead or copper samples stand in their original container after acidification from 28 hours to 16 hours.

Calculation of 90th percentile lead and copper levels in place of the system for:

- ▶ all systems; or
- ▶ a subset of the systems *(if yes, specify which group of systems)*.

Allowance for systems to no longer submit certifications that samples were collected using proper sampling procedures or that homeowner samples were collected after having received proper sampling instructions.

Allowance for systems to no longer provide justifications if their sampling pool contains Tier 2 or 3 sites or an insufficient number of sites served by LSLs.

Allowance for systems to no longer submit a written request for permission to monitor for lead and copper on a reduced schedule after it meets its OWQPs.

§141.87 Water Quality Parameter Monitoring and Reporting Requirements

Allowance for a ground water system to limit biweekly WQP entry point monitoring to representative locations if it can demonstrate these sites are representative of water quality conditions in its system.

Allowance for a system to proceed to triennial WQP tap monitoring without conducting the interim rounds of more frequent monitoring if it is also eligible for accelerated reduced lead and copper tap water monitoring and it meets its OWQPs.

§141.88 Source Water Lead and Copper Monitoring and Reporting Requirements

Allowance for a system to conduct source water monitoring on a reduced schedule if it exceeds an action level, but has source water lead levels ≤ 0.005 mg/L and source water copper levels ≤ 0.065 mg/L and Primacy Agency has determined that source water treatment is unnecessary.

§141.89 Revisions to the Analytical Methods for Lead and Copper

Allowance for laboratories to no longer achieve the copper MDL in order to accept composite samples.

Appendix E

Sample Memorandum of Understanding

Under 40 CFR 142.12, States must adopt the requirements of the Lead and Copper Rule Minor Revisions within 2 years of the final rules' publication or by January 12, 2002.

A Memorandum of Understanding (MOU) will be necessary **only** when States have not submitted a complete and final primacy revision application package by January 12, 2002. For further detail, please refer to Section III-B.

A sample MOU is presented on the following pages.

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Memorandum of Understanding

Name of State Agency
U.S. Environmental Protection Agency Region ____
Memorandum of Understanding
for Implementation of the
Lead and Copper Rule Minor Revisions (LCRMR)

On January 12, 2000, the U.S. Environmental Protection Agency (EPA) published the final Lead and Copper Rule Minor Revisions (LCRMR). These rules amend the National Primary Drinking Water Regulations, 40 CFR Part 141 and the regulations for implementation of the National Primary Drinking Water Regulations, 40 CFR Part 142.

The April 28, 1998 revisions to the Primacy Rule extend the time allowed for States to adopt new Federal regulations from 18 months to 2 years. Therefore, the State must adopt regulations pertaining to the LCRMR and submit a complete and final primacy revision application by January 12, 2002 unless it requests an extension of up to 2 years to adopt the new or revised regulations.

This document records the terms of a Primacy Memorandum of Understanding between the (Name of State Agency) (the State) and the EPA, Region ____ for the Lead and Copper Rule Minor Revisions (LCRMR), and shall remain effective from the date (for State's eligible for interim primacy) this MOU is signed until either January 12, 2004 or the date the State's primacy application is submitted under 40 C.F.R. §142.12. To retain primacy the State must submit a final and approvable Primacy Revision Application incorporating the above-referenced provisions of the Federal Register to EPA, Region ____ by January 12, 2002, or no later than January 12, 2004, if the State has been granted an extension.

Until the State Primacy Revision Application has been submitted, for States eligible for interim primacy, or approved, the State and EPA, Region ____ will share responsibility for implementing the primary program elements as indicated below.

This MOU outlines the responsibilities of (Name of State Agency) and EPA, Region ____ as partners in this effort, working toward two very specific public health-related goals. The first goal is to achieve a high level of compliance with the regulation. The second goal is to facilitate successful implementation of the regulation during the transition period before the State has interim primacy for the rule. In order to accomplish these goals, education and training will need to be provided to water suppliers on their responsibilities under the LCRMR.

EPA Region ____ will be responsible for notifying States of all Federal enforcement actions. EPA Region ____ will also keep States informed of SDWIS reporting requirements during development and implementation. The (Name of State Agency) will identify other State agencies that should receive copies of the LCRMR. Within 60 days of signing this MOU, provide EPA Region with the names, addresses, and phone numbers of contacts identified within those agencies.

Appendix F

Statement of Principles—Guidance on Audit Law Issues

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 14 1997

MEMORANDUM

SUBJECT: Statement of Principles
Effect of State Audit Immunity/Privilege Laws
On Enforcement Authority for Federal Programs

TO: Regional Administrators

FROM: Steven A. Herman *SAH*
Assistant Administrator, OECA

Robert Perciasepe *Bob Perciasepe*
Assistant Administrator, OAR

Mary Nichols *Mary Nichols*
Assistant Administrator, OAR

Timothy Fields *Timothy Fields*
Acting Assistant Administrator, OSWER

Under federal law, states must have adequate authority to enforce the requirements of any federal programs they are authorized to administer. Some state audit immunity/privilege laws place restrictions on the ability of states to obtain penalties and injunctive relief for violations of federal program requirements, or to obtain information that may be needed to determine compliance status. This statement of principles reflects EPA's orientation to approving new state programs or program modifications in the face of state audit laws that restrict state enforcement and information gathering authority. While such state laws may raise questions about other federal program requirements, this statement is limited to the question of when enforcement and information gathering authority may be considered adequate for the purpose of approving or delegating programs in states with audit privilege or immunity laws.

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I. Audit Immunity Laws

Federal law and regulation requires states to have authority to obtain injunctive relief, and civil and criminal penalties for any violation of program requirements. In determining whether to authorize or approve a program or program modification in a state with an audit immunity law, EPA must consider whether the state's enforcement authority meets federal program requirements. To maintain such authority while at the same time providing incentives for self-policing in appropriate circumstances, states should rely on policies rather than enact statutory immunities for any violations. However, in determining whether these requirements are met in states with laws pertaining to voluntary auditing, EPA will be particularly concerned, among other factors, with whether the state has the ability to:

- 1) Obtain immediate and complete injunctive relief;
- 2) Recover civil penalties for:
 - i) significant economic benefit;
 - ii) repeat violations and violations of judicial or administrative orders;
 - iii) serious harm;
 - iv) activities that may present imminent & substantial endangerment.
- 3) Obtain criminal fines/sanctions for wilful and knowing violations of federal law, and in addition for violations that result from gross negligence under the Clean Water Act.

The presumption is that each of these authorities must be present at a minimum before the state's enforcement authority may be considered adequate. However, other factors in the statute may eliminate or so narrow the scope of penalty immunity to the point where EPA's concerns are met. For example:

- 1) The immunity provided by the statute may be limited to minor violations and contain other restrictions that sharply limit its applicability to federal programs.
- 2) The statute may include explicit provisions that make it inapplicable to federal programs.

II. Audit Privilege Laws

Adequate civil and criminal enforcement authority means that the state must have the ability to obtain information needed to identify noncompliance and criminal conduct. In

determining whether to authorize or approve a program or program modification in a state with an audit privilege law, EPA expects the state to:

- 1) retain information gathering authority it is required to have under the specific requirements of regulations governing authorized or delegated programs;
- 2) avoid making the privilege applicable to criminal investigations, grand jury proceedings, and prosecutions, or exempt evidence of criminal conduct from the scope of privilege;
- 3) preserve the right of the public to obtain information about noncompliance, report violations and bring enforcement actions for violations of federal environmental law. For example, sanctions for whistleblowers or state laws that prevent citizens from obtaining information about noncompliance to which they are entitled under federal law appear to be inconsistent with this requirement.

III. Applicability of Principles

It is important for EPA to clearly communicate its position to states and to interpret the requirements for enforcement authority consistently. Accordingly, these principles will be applied in reviewing whether enforcement authority is adequate under the following programs:

- 1) National Pollutant Discharge Elimination System (NPDES), Pretreatment and Wetlands programs under the Clean Water Act;
- 2) Public Water Supply Systems and Underground Injection Control programs under the Safe Drinking Water Act;
- 3) Hazardous Waste (Subtitle C) and Underground Storage Tank (Subtitle D) programs under the Resource Conservation Recovery Act;
- 4) Title V, New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, and New Source Review Programs under the Clean Air Act.

These principles are subject to three important qualifications:

- 1) While these principles will be consistently applied in reviewing state enforcement authority under federal programs, state laws vary in their detail. It will be important to scrutinize the provisions of such statutes closely in determining whether enforcement authority is provided.
- 2) Many provisions of state law may be ambiguous, and it will generally be important to obtain an opinion from the state Attorney General regarding the meaning of the state law

and the effect of the state's law on its enforcement authority as it is outlined in these principles. Depending on its conclusions, EPA may determine that the Attorney General's opinion is sufficient to establish that the state has the required enforcement authority.

3) These principles are broadly applicable to the requirements for penalty and information gathering authority for each of the programs cited above. To the extent that different or more specific requirements for enforcement authority may be found in federal law or regulations, EPA will take these into account in conducting its review of state programs. In addition, this memorandum does not address other issues that could be raised by state audit laws, such as the scope of public participation or the availability to the public of information within the state's possession.

IV. Next Steps

Regional offices should, in consultation with OECA and national program offices, develop a state-by-state plan to work with states to remedy any problems identified pursuant to application of these principles. As a first step, regions should contact state attorneys general for an opinion regarding the effect of any audit privilege or immunity law on enforcement authority as discussed in these principles.

Appendix G

Rule Presentation

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