

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
GUIDANCE FROM HOTLINE COMPENDIUM

WSG H19

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SUBJECT: Lead Ban

SOURCE: Betsy Devlin

Section 1417 of the Safe Drinking Water Act (SDWA) prohibits the use of lead pipes, solder, and flux any time after the enactment of the SDWA amendments of 1986. However, this section also requires States to enforce the lead ban no later than 24 months after enactment (June 19, 1988).

What recourse does a homeowner have if lead solder was installed in his home after the enactment date, but prior to the enforcement?

Response:

- (A) The use of lead pipes, solder, and flux was banned by the SDWA effective June 1986. Therefore, any plumber, general contractor, etc. who used lead solder, pipe or flux after that date is in violation of federal law. However, EPA's general enforcement authorities (Section 1414) are, by the terms of the statute, limited to violations of National Primary Drinking Water Regulations (NPDWRs) promulgated under Section 1412 of the SDWA. Since the lead ban is a requirement of Section 1417, not an NPDWR requirement, EPA cannot bring an administrative or judicial action under Section 1414 when there is a violation of the lead ban.
- (B) EPA always has the option of proceeding under its emergency powers in Section 1431. This provision allows EPA to, among other things, issue orders as necessary to protect health of persons and commence civil actions for appropriate relief. The provision includes a restraining order or permanent or temporary injunction, when it finds that a contaminant which is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the health of persons. Section 1431 clearly states that this provision applies "notwithstanding any other provision of this title." Therefore, even though the Section 1414 authorities cannot be used to enforce the lead ban, Section 1431 is available provided EPA can make the required findings.

- (C) The homeowner should consult State law to determine if there is a State or local ban on lead in effect, when the ban became effective, if there is a State agency that is responsible for enforcing it, and what the penalties are for violating the State ban. Two situations arise:
- 1) If the state does not have a lead ban or if the lead was installed after June 19, 1986, but before the State's law was effective, the homeowner may not have a specific statutory or regulatory remedy under State law. In such cases, the homeowner may wish to consider a citizen suit under Section 1449 of the SDWA alleging that the contractor violated Section 1417 of the SDWA. A suit based on tort law concepts against the plumber (or contractor) in State court may also be appropriate. The homeowner may wish to notify EPA and have the Agency investigate to determine if the situation is appropriate for a 1431 order (as discussed above).
 - 2) If the State has a lead ban and it was in place when the lead was installed, the homeowner can use the remedies and procedures under the State law in addition to the remedies discussed in (a) above.