



April 1, 2016

Joel Beauvais, Deputy Assistant Administrator for Water
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue NW
Mail Code: 4101M
Washington, DC 20460

Dear Mr. Beauvais:

Thank you for your February 29, 2016 letter concerning implementation of the Lead and Copper Rule (LCR) under the Safe Drinking Water Act (SDWA).

The North Dakota Department of Health (NDDoH), through its Drinking Water Program (DWP), has primacy for and is responsible for implementation and enforcement of all drinking water regulations under the SDWA in this state. The NDDoH has always regarded ensuring safe drinking water as one its highest priorities. Based upon our review of program data, communication with and training of water supply/distribution operators, and our understanding of the current LCR, the NDDoH continues to implement a compliant LCR program.

Recent events in Flint, Michigan prompted the DWP to take a critical look at how it implements the LCR. In an email dated February 26, 2016, U.S. EPA Region 8 staff asked our DWP to respond to questions about LCR policies and procedures and to provide updates and information about all lead action level exceedances (ALE) issued in the last four years. Recognizing there also would be media requests, the DWP had already begun this information-gathering process. Additionally, the DWP revised its current guidance to match the elements covered in the Peter Grevatt guidance memo of February 29, 2016. Please note that all requested information was sent to EPA Region 8 by March 11, 2016. LCR implementation has always been and will continue to be a high priority for North Dakota. In your letter to all State Commissioners, you asked that states respond to you in writing regarding five near-term action items associated with the LCR. Below is North Dakota's response.

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

North Dakota's protocols and procedures for implementing the LCR are fully consistent with all of the LCR and applicable guidance as we currently understand them. We are striving to comply with all of the requirements, as well as assimilate EPA's newest policy and guidance changes into our practices. Due to the increased scrutiny of the LCR resulting in new regulatory actions and guidance being directed toward the states, compliance with the rule is somewhat of a "moving target." Our response at this time is a snapshot of how North Dakota is currently implementing the rule. Please recognize that changes may well take place in the near future due to the increasing focus on the rule. We will continue to adjust to and follow newer EPA guidance as it is released.



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

North Dakota's expertise in this complex and highly specialized field of corrosion control is limited, which makes managing this phase of compliance challenging. The DWP does review, provide comment, and ultimately approve the corrosion control plans submitted by water systems. It is up to the water systems and their consultant(s), however, to develop the appropriate approach and execute the plan. Many of these treatment systems for corrosion control were installed with the introduction of the LCR many years ago. Consequently, the original designers and reviewers are no longer available to provide advice on certain treatment choices and water quality parameters. Reevaluations could be conducted so that current staff have an improved understanding of the decisions that were made; however, such reevaluations would be difficult to complete in a short period.

We will continue to work with all large systems (as the rule requires) to maintain optimal corrosion control based on current system configuration. Please note that no large systems in North Dakota have ever had any ALE. All medium and small systems operating consistently below the action level do not currently receive additional oversight attention. Although some of these systems may not be truly optimized, they are in compliance.

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).

North Dakota has not historically posted these materials; however, sampling protocols have been routinely shared with water systems during mailings on sampling/monitoring requirements and included with sampling instructions sent directly from the DWP to systems and homeowners. In addition, the LCR and LCR updates have traditionally been addressed as part of our annual operator training sessions.

While guidance on the selection of tier 1 sites can be shared, it is still up to the water system to follow these guidelines and select appropriate sites. As with selection of treatment, water system staff and engineering consultants who made initial decisions on sample site selection may no longer be available. The NDDoH retains the original lead and copper sampling site plans that list addresses, reasons for site selections, and sample tap locations. Many of these sites may still be in use. However, many have also been replaced with other tier 1 sites, if available, because the lead service lines have been replaced or the houses have been removed. Whenever a site change is requested, files are updated and site plans are approved as appropriate.

North Dakota will post its own guidance materials. We may also reference EPA's website for additional resources. Please note, however, that we cannot guarantee or control availability of this information since the materials referenced on EPA's website (e.g., older guidance generated by EPA) may no longer be available.



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

- **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.**

The DWP ensured that all water systems conducted the required materials inventory so that an adequate number of tier 1 sites could be selected, but it did not receive the full inventories from the systems. For this reason, posting inventory information will have to occur primarily at the water system level. If the DWP is asked to collect inventory data in a readily sharable format to post on a state site, this will be a major challenge and not easily accomplished in a short period of time. In addition, the level of detail necessary to identify the specific locations of all lead service lines was not present in the original materials inventory, further complicating the sharing of these data. Extensive and more detailed inventories would be required for many water systems. While such inventories may not have been conducted by many systems, the DWP maintains hard copy files of sampling sites and keeps them updated.

- **LCR compliance sampling results collected by the system, as well as justification for invalidation of LCR samples.**

Our state laboratory can electronically report sample results; however, some private laboratories in North Dakota that are certified for LCR testing do not have that capability. The DWP stores all of the LCR results electronically, but the results are received in many different formats from the laboratories. Water systems could potentially post these results directly to a state website, but it would be difficult for the DWP to post results. Scanning hundreds of pages of data sheets to create PDF files for posting to a website would be a considerable undertaking.

Sample invalidations are usually done in writing so there is a record, but historically the records have only been in hard copy. This situation presents the same challenge as sample results in that a convenient way of converting paper records to an electronic format must be found. The state program has invalidated very few samples and has documented compliance with the LCR. Sample invalidations have been and will continue to be based on appropriate criteria (analysis error, incorrect sample site, incorrect sampling protocol, sample container damage, or sample hold time exceedances). Therefore, we question the value and need to obtain historical sample invalidation data. Providing this information now and into the future may be more easily accomplished and beneficial than reporting historical decisions.

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.

North Dakota is enforcing the notification requirements based on the time limits in the LCR. However, we highly recommend that water systems issue notification before these deadlines, especially for public education where the limit is 60 days. We encourage the water systems to accelerate public education efforts and provide assistance and information in response to any initial action level exceedance.



In summary, the NDDoH has been and remains strongly committed to ensuring safe drinking water for the citizens of North Dakota. We believe that we are properly implementing the current LCR as we understand it, but we welcome suggestions for improvements and enhancements. With respect to future LCR revisions in response to current events, it appears the core question to be answered is what failed--the LCR or implementation of the LCR? If the LCR must be revised, we trust that future revisions will be based on sound science, potential for proper implementation considering state and local resources, and demonstration of public health benefits.

Thank you for the opportunity to provide input on this important matter. Please feel free to contact this office at 701.328.5150 if you have questions.

Sincerely,



L. David Glatt, P.E., Chief
Environmental Health Section
North Dakota Department of Health
LDG
CC: