

The EPA Should Determine What Interim Actions Can Be Taken to Immediately Notify the Public When Lead in Drinking Water Exceeds the Agency's Action Level

July 20, 2023 | Report No. 23-N-0024





OFFICE OF INSPECTOR GENERAL
U.S. ENVIRONMENTAL PROTECTION AGENCY

July 20, 2023

MEMORANDUM

SUBJECT: The EPA Should Determine What Interim Actions Can Be Taken to Immediately Notify the Public When Lead in Drinking Water Exceeds the Agency’s Action Level
Report No. 23-N-0024

FROM: Sean W. O’Donnell, Inspector General

TO: Radhika Fox, Assistant Administrator
Office of Water

The U.S. Environmental Protection Agency Office of Inspector General initiated an [audit](#) to determine whether the EPA complied with the public notification requirements under section 2106 of the Water Infrastructure Improvements for the Nation, or WIIN, Act. While conducting work on this audit, we decided to issue this management alert to inform the Agency that the OIG has concerns that immediate public notifications are not being made for drinking-water lead-action-level exceedances that may pose a significant risk to public health.¹ On January 15, 2021, the EPA, based on the conclusion that a lead-action-level exceedance has “the potential to have serious adverse effects on human health as a result of short-term exposure,” revised its drinking water regulations to require immediate public notification for the exceedance. However, the compliance date for the updated regulations is October 16, 2024. Therefore, until then, immediate notices are not required, and the public may continue to be exposed to lead-action-level exceedances without timely notification.

This audit supports EPA mission-related efforts:

- Operating efficiently and effectively.
- Ensuring clean and safe water.

This audit addresses a top EPA [management challenge](#):

- Enforcing compliance with environmental laws and regulations.

Action Required

This report contains an unresolved recommendation. EPA Manual 2750 requires that recommendations be resolved promptly. Therefore, we request that the EPA provide us within 60 days its response concerning specific actions in process or alternative corrective actions proposed on the recommendation. Your response will be posted on the OIG’s website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

¹ A lead-action-level exceedance occurs when more than 10 percent of tap water samples collected during the monitoring period show a lead concentration above 15 parts per billion, an action level established by the EPA under 40 C.F.R. § 141.80(c).

Background

According to the EPA, there is no safe level of exposure to lead in drinking water. Lead is a persistent contaminant that accumulates in the human body over time. Even low levels of lead in a child's blood can result in behavior and learning problems, lower IQ, hyperactivity, slowed growth, hearing problems, and anemia.

The Safe Drinking Water Act, or SDWA, authorizes the EPA to establish national drinking water regulations. This includes regulations to control lead and copper levels in drinking water, known as the Lead and Copper Rule, or LCR, which was initially published in June 1991. The LCR established routine monitoring and sampling requirements for public water systems and additional actions systems must take when more than 10 percent of tap water samples show a lead concentration above the action level of 15 parts per billion. The LCR requires public water systems to notify consumers where tap water samples were taken of the results as soon as practicable, but no later than 30 days after the systems learn of the results. When water samples show a lead-action-level exceedance, the LCR requires that the water systems provide public education materials to the communities served within 60 days after the end of the monitoring period in which the exceedance occurred. The consumer notices for individual tap sample results and public education materials must include, among other information, a description of the health effects of lead and steps that the public should take to protect its health.

On December 16, 2016, section 2106 of the WIIN Act amended SDWA section 1414(c) to require public water systems to notify the public as soon as practicable, but not later than 24 hours after a system learns of a lead-action-level exceedance.² The WIIN Act also requires the EPA to provide notice of lead-action-level exceedance “that has the potential to have serious adverse effects on human health as a result of short-term exposure” within 24 hours after it is notified of the exceedance if the public water system or the state primacy agency, which is the state agency with primary drinking water enforcement responsibility, has not provided the required notice.

In accordance with SDWA section 1414(c)(2)(A), the EPA promulgated regulations to implement the WIIN Act public notification requirements, along with revisions to the LCR. To make such updates, the EPA must follow an administrative process for developing and issuing regulations. As explained on the EPA's [website](#), the Agency generally proposes the regulation, considers public comments on the proposed rule, makes revisions if appropriate, and then publishes a final rule. The EPA proposed the regulation revisions on November 12, 2019, and published the final rule on January 15, 2021, with an effective date of March 16, 2021. The final rule established lead action exceedance as a Tier 1 public notification, which is the EPA's most urgent notification under the drinking water regulations. This requires water systems to provide notice to persons served no later than 24 hours after they learn of a lead-action-level exceedance. On January 20, 2021, the President issued Executive Order 13990, directing federal agencies to review certain regulations, including revisions to the LCR, to ensure regulatory decisions are guided by the best science and prioritize environmental justice and the creation of union jobs. As a result, the EPA postponed the effective date of the new regulation to allow for further public comments and EPA review in accordance with the directives in the executive order. The EPA republished the final rule on June 16, 2021,

² WIIN Act section 2106 is codified at 42 U.S.C. 300g-3(c).

and established a revised effective date of December 16, 2021, and compliance date of October 16, 2024, for the updated regulations.

Responsible Offices

The Office of Ground Water and Drinking Water, within EPA's Office of Water, oversees implementation of SDWA. Within the Office of Ground Water and Drinking Water, the Standards and Risk Management Division is responsible for developing drinking water regulations, and the Drinking Water Capacity and Compliance Assistance Division is responsible for implementing drinking water regulations, which includes developing and providing guidance to EPA regions, state agencies, and public water systems.

The EPA has granted primacy to all states except Wyoming for their drinking water programs. State primacy agencies implement SDWA and enforce drinking water standards at public water systems within their jurisdiction. EPA regional offices oversee state primacy agencies to verify that drinking water programs comply with SDWA.

Scope and Methodology

We conducted this project from December 2022 through June 2023. While our overall audit, which is still ongoing, is conducted in accordance with generally accepted government auditing standards, the work related to this report does not constitute an audit done in accordance with these standards. However, we did follow the OIG's quality control procedures for ensuring that the information in this report is accurate and supported.

We interviewed Office of Ground Water and Drinking Water staff and management and held discussions with EPA Regions 5 and 9 to obtain an understanding of the rulemaking process and the Agency's implementation progress. We also obtained clarifications from Region 9 regarding the LCR notification requirements.

OIG Concerns

On January 15, 2021, the EPA published revisions to its drinking water regulations that established lead-action-level exceedance as a Tier 1 public notification. This means the exceedance has the potential to have serious adverse effects on human health as a result of short-term exposure. According to the Office of Water, there is no federal regulation or enforcement authority requiring water systems to implement the Tier 1 public notification for lead-action-level exceedance until the October 16, 2024 compliance date. While this is true, we recommend that the EPA consider what immediate, interim steps it can take to timely notify the public of exposure to lead-action-level exceedances. Interim steps may include issuing a guidance document strongly encouraging state agencies and water systems to notify the public of lead-action-level exceedances and upload sample results to the EPA's Safe Drinking Water Information System database as soon as practicable.

The EPA's mission is to protect human health and the environment. Rulemaking processes and procedures should help protect public health and should not result in the prolonged exposure to health risk situations such as lead-action-level exceedances. As reported in the EPA's Safe Drinking Water Information System database, from January 15, 2021, to December 31, 2022, 1,152 public water systems serving approximately 3.8 million people recorded lead-action-level exceedances, but these systems were not required to provide Tier 1 notification to those served. If the EPA can take immediate, interim steps before

October 16, 2024, people who may be exposed to lead exceedances in drinking water can be promptly notified of its impacts and what they can do to protect themselves.

Recommendation

We recommend that the assistant administrator for Water:

1. Determine what immediate actions the Agency can take to promptly notify the public of lead-action-level exceedances to reduce risks to human health pending the compliance date of October 2024 for the EPA's updated drinking water regulations.

cc: Michael S. Regan, Administrator
Janet McCabe, Deputy Administrator
Dan Utech, Chief of Staff, Office of the Administrator
Wesley J. Carpenter, Deputy Chief of Staff for Management, Office of the Administrator
Faisal Amin, Agency Follow-Up Official (the CFO)
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Regional Audit Follow-Up Coordinators, Regions 1–10

Report cover image: Child drinking water from a drinking water fountain. (EPA photo)



Whistleblower Protection

U.S. Environmental Protection Agency

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