

US EPA ARCHIVE DOCUMENT

## Comment

The Safe Drinking Water Act's variance provision is of great interest the over 20,000 small rural water systems that are member of the National Rural Water Association. I am writing to inquire to the process of granting variances in the hope of better understanding the administrative and legal processes surrounding variances for small systems.

According to U.S. EPA Region 5 Order, "DRAFT VARIANCE UNDER SECTION 1415(A)(3), THE CITY OF COLUMBUS" [page 6] the City of Columbus is granted a variance by EPA if:

(A) As a precautionary measure the City will consult with the EPA and U.S. EPA Region 5 prior to making any treatment change.

(B) As a precautionary measure, at the time the City identifies a treatment change, the City will increase the frequency of tap monitoring for lead and copper and those optimal water quality parameters designated by the EPA. If specified by the EPA, additional monitoring may be required for other water parameters, beginning at the time the City identifies a treatment change.

(C) If the lead levels begin to rise the City will consult with U.S. EPA and EPA, and take immediate steps to reverse that trend, and if necessary install the additional treatment technology to stop the elevation.

Apparently this exceptional process is less expensive for water systems than EPA's prescribed regulatory requirement to begin sampling lead service lines and replace those lines where sampling indicates a level more than the action level. (40 C.F.R. Section 141.84). This would likely be a preferred compliance option for many water systems under the Lead and Copper Rule. However this exception has only been provided to Columbus. Could you please explain why this process should only be available in the City of Columbus and not in the other approximately 60,000 community water systems required to comply with the Lead and Copper Rule. Why is Columbus' water system unique in the fact that this process would "provide better public health protection, and keep lead levels at consumer's taps at least as low as the National Primary Drinking Water Regulations," (page 7), but not in other (or every) community water systems? If this process results in "better public health protection," why is this option not available under EPA's best available treatment listings?

## USEPA Response

The commenter had no objection to the issuance of a variance, but rather was inquiring as to why a variance was only being granted to the City of Columbus, Ohio, and why the alternative treatment technique was not incorporated into the National Primary Drinking Water Regulations if it provides better public health protection. The variance is being granted to the City as the legal implementation mechanism for a pilot project under the Regulatory Reinvention Initiative. We view the project as an innovative approach to addressing the specific circumstances raised by Columbus' XLC proposal, and we decided to issue the variance after several years of discussions with the City, and after the City obtained input from all relevant stakeholders. Because of the care that has gone into developing the project and variance, we believe it will be a very useful testing ground for determining whether the approach taken here could be expanded to include other similarly situated systems.

The commenter also requested information on how other systems could apply for similar variances. Section 1415(a)(3) of the Safe Drinking Water Act (SDWA) gives the United States Environmental Protection Agency (USEPA) the authority to grant a variance from a treatment technique:

“upon a showing by any person that an alternative treatment technique . . . is at least as efficient in lowering the level of the contaminant with respect to which such requirement was prescribed.”

In 1999, the City of Columbus, Ohio, submitted a Project XLC (which stands for eXcellence and Leadership for Communities) proposal. In exchange for regulatory flexibility regarding testing and replacement of lead service lines while it balanced water treatments, the City Water Department proposed to contribute \$4.5 million (\$300,000 per year for 15 years) to establish a stable funding source for the City Health Department's lead poisoning prevention program.

Project XL for Communities is a national pilot program whereby EPA grants regulatory flexibility on a site-specific basis to project sponsors that successfully negotiate an XL FPA. In exchange for any flexibility requested and granted through an XLC project applicants must demonstrate that the XL project overall will achieve environmental performance or public health protection beyond that which would be achieved without the XL project.

The USEPA has determined that the alternative treatment technique outlined in the variance will be at least as efficient in lowering the level of lead as lead service line testing and replacement. This variance will be made available to the City of Columbus as part of an XLC project and will only become effective should the City of Columbus exceed the lead action level as a result of changes made to the City's water treatment, and at such time as the City meets all of the conditions outlined in the variance. An XLC project must be ongoing in order for the City to use the flexibility provided by the variance. The variance is being used as the legal implementing mechanism for the XLC project, which contains commitments made as part of the XLC project negotiations and contained in the Final Project Agreement (FPA) negotiated between the City, Ohio EPA, Ohio Department of Health and the USEPA.

As I stated above, the experience we gain through this project will be valuable for the Agency as it determines to respond to any applications for variances from systems under similar circumstances in the future.

Mr. Mike Keegan  
National Rural Water Association  
Washington Office  
1200 New Hampshire Ave, NW Suite 430  
Washington, D.C. 20036  
(p) 202/955-4555  
(f) 202/955-1147  
keegan@ruralwater.org  
<http://www.ruralwater.org>