

Do You Operate a Public Water Supply? Why You Need to Know for Sure.

Drinking water quality and water contamination are now high-profile topics of concern, with the discovery of unexpected contaminants in “public” water supplies across the country. Providers of “public water” are obligated to test, monitor, and correct contamination in drinking water. Yet it is increasingly clear that many providers of “public” water supplies are not fully aware of these testing obligations, or why they may qualify as public water supplies in the first place. Because the regulatory framework concerning drinking water initially appears more geared toward traditional public water suppliers, like municipalities, smaller or non-traditional water suppliers may be confused about how they fit into that framework.

The testing obligations are not limited to municipalities alone. For instance, schools, manufacturing facilities, office buildings, hospitals, gas stations, and campgrounds may also qualify as “public water systems.” These non-traditional entities typically fall under the public water supply definition when they operate a well system, rather than receiving municipal water. Who uses the water and how often it is used affects whether the entity will qualify as a public water system, and if so, which type. The type of the public water system involved will affect which regulatory obligations apply.

The requirements relating to lead in drinking water come from the federal Safe Drinking Water Act of 1974 (SDWA) and the Lead and Copper Rule (LCR) promulgated by the Environmental Protection Agency (EPA), which New York State has incorporated into its own regulations. EPA delegates primary enforcement responsibility (“primacy”) for public water systems to States and Indian Tribes if they meet certain requirements, including developing a program and regulations at least as stringent as the federal ones. EPA approved New York’s program, and the New York State Department of Health (NYSDOH), through its Commissioner or his designated representative (e.g. a county health district commissioner), is charged with overseeing the delivery of safe drinking water. In cooperation with county health departments, NYSDOH regulates the operation, design and quality of public water supplies. Thirty-six counties in the State and the New York City Health Department have direct oversight of the public drinking water systems within their jurisdiction, while the rest of the counties are regulated by staff in the NYSDOH district offices.

NYSDOH regulations define a “public water system” as a system for providing water to the public for human consumption where the system has at least 15 service connections or regularly serves an average of at least 25 individuals per day at least 60 days out of the year. A public water system is then further categorized as either a “community water system” (CWS) or a “non-community water system” (NCWS). A CWS is what we commonly think of as public water suppliers, meaning those that serve at least 15 service connections used year-round by residents or regularly servicing at least 25 year-round residents. A NCWS is a public water system that does not meet those requirements for a CWS.

A NCWS goes beyond the traditional municipal service provider to encompass other entities. A NCWS is further classified as either a “transient” or “non-transient” water system. A transient non-community water system (TNCWS) is one that does not regularly serve at least 25 of the same persons over 6 months per year. An entity like a gas station or campground that provides its own water to people who do not remain there for long periods of time might qualify as a TNCWS. In contrast, a non-transient non-community water system (NTNCWS) is one that regularly serves at least 25 of the same persons over 6 months per year; a school district or hospital is more likely to qualify under this category.

It is important for public water suppliers to identify which type of system they have and to understand their obligation to test and monitor their water for lead and copper contamination. EPA has developed technical guidance to assist public water suppliers in completing proper testing and their other obligations, including specific guidance for schools. [See 3Ts for Reducing Lead in Drinking Water in Schools, rev'd Oct. 2006.](#)

EPA established, and New York likewise has adopted, an action level for lead in public drinking water of 0.015 milligrams per liter. The action level for copper is 1.3 milligrams per liter. If testing shows that more than 10% of the samples exceed this action level, then the water supplier must take additional actions that may include further sampling, source water testing, corrosion control treatment steps, replacing portions of lead service lines, reporting action level exceedances to the applicable regulatory authority, and informing and educating the public about lead in drinking water and how they can reduce their exposure. Depending on the type of water supply involved and the action level exceedance, different timeframes may apply for completing those next actions. In particular, reporting and notification obligations may have short windows for completing the necessary action, so suppliers should be aware of their obligations in advance so that they can timely comply with the regulatory requirements.

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