

The United States Conference of Mayors **Environmental Advocacy Issues for 2023**

EPA Unfunded Mandates for Local Governments



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LEAD AND COPPER RULE - LEAD PIPE REPLACEMENT



BACKGROUND

- The Safe Drinking Water Act (SDWA) directs EPA to set standards for lead in drinking water and to reconsider the standard every 5 years under the Lead And Copper Rule (LCR). Last one was issued in January of 2021.
- EPA is advancing a new rule (August 2023) that will change existing standards and requirements that will affect every community with a regulated public water supply.

PUBLIC HEALTH

- Lead can be harmful to human health at low exposure levels, especially for children under the age of 6. Can cause Lower IQ, decreased ability to pay attention, and underperformance in school.
- CDC states blood lead levels should not exceed 5 ug/dL. (micrograms of lead per deciliter)
- American adults have an average blood lead level of 10 ug/dL.



2021 LEAD AND COPPER RULE PROVISIONS

- By October 2024 - All water systems have to do a lead pipe inventory, mapping out where pipes that contain lead are located. All pipes of unknown substance are assumed to contain lead.
- Requires communities to remove 3% of all lead pipes every year, including on private property.
- “Action Level” Remains at 15 ppb



LEAD AND COPPER RULE 2023 EXPECTED REVISIONS

- All water systems may have greater testing, monitoring and reporting responsibilities including testing of school and child care facilities.
- LCR will most likely set a lower level of lead concentration in drinking water that will trigger actions including service curtailment, distribution of bottled water, removal of lead pipes, and communication with the public.
- Potentially Shorter Time Frame to Remove all Lead Pipes from 33 years to 10 years or less.



THE COST CHALLENGE - THE LCR AND LEAD PIPE REMOVAL

- The Infrastructure Investment and Jobs Act (IIJA) includes \$15 billion in grant/loan aid to the states. (51% in loans/49% in grants.)
- The states incorporate the federal grants into their State Drinking Water Revolving Fund Loan Program (DWSRF).
- Local government operating regulated municipal water systems can apply to their DWSRF for a loan or grant to finance their lead pipe removal program.



COSTS & CHALLENGES - THE LCR AND LEAD PIPE REMOVAL

1. Cost estimates by the water sector indicate that the actual cost to remove lead service lines will be between \$47-\$99 billion.
2. Cities cannot charge customers for service line replacements, and:
 - Must remove any lead pipe water mains
 - Must enter private property to complete the mandate
 - The cost to replace lead service lines is an unfunded mandate on the utility's (municipal) budget.
 - The 2021 timeframe to complete the replacements has been set at 33 years to ease the financial burden but is now being considered to be completed much sooner - 10 years or less.



STATUS OF LEAD & COPPER RULEMAKING

A new proposal, revising LCR, is expected to be released in August 2023 with a final rule being issued in October 2024.

NEXT STEPS AND CALL TO ACTION

1. USCM, NLC, and NACO will submit comments and we need members to do the same.

1. Need to alert Congressional delegations of the financial challenge involved with lead pipe removal and seek:
 - A more reasonable transition time to comply.
 - Appropriate more federal grants to ease municipal budget burdens imposed by the mandates.

PFAS REGULATION



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BACKGROUND

- PFAS is a designation used to represent a family of 9,000-12,000 substances that are potentially hazardous chemicals, and are a potential public health threat.
- PFAS can be found in firefighting foam, teflon, food packaging, and clothes and are known as “forever chemicals” because they do not break down naturally.

PUBLIC HEALTH

- Current scientific research suggests that exposure to high levels of certain PFAS may lead to adverse health outcomes. However, research is still ongoing to determine the types and what levels of PFAS exposure will lead to health effects.



EPA'S REGULATORY STRATEGY FOR PFAS

1. PFAS DRINKING WATER STANDARDS

- EPA is advancing a rulemaking to set a drinking water standards to limit the concentrations of certain forms of PFAS in regulated public water systems. Proposed Rule might be released next week.

1. PFOS/PFOA- Comprehensive Environmental Response Compensation and Liability Act (CERCLA, also known as Superfund)

- EPA will be designating PFOS and PFOA (2 types of PFAS) as a hazardous substance under CERCLA (Superfund). August 2023



PFAS TREATMENT TECHNOLOGY

- Advanced treatment technology is available to remove PFAS substances from drinking water:
 - Granular Activated Carbon (GAC)
 - Reverse Osmosis (RO)
 - Ion Exchange (IO)
- Each treatment technology is expensive to buy and install, and to operate and maintain.
- These treatment technologies are energy intensive.



IMPACT ON MUNICIPAL DRINKING WATER UTILITIES

The American Water Works Association (AWWA) has preliminary estimates:

- All regulated public water systems (49,424) will be required to comply with testing, monitoring, and reporting requirements.
- 10-15% of water systems (1,139 - 5,339) will be required to comply with new Safe Drinking Water requirements, depending on the types of PFAS and level of compliance (4ppt or 10ppt).



IMPACT ON MUNICIPAL DRINKING WATER UTILITIES - SDWA

The American Water Works Association has preliminary estimates:

- The stringent standard of 4 ppt for water systems related to PFOA and PFOS are estimated to cost \$35 billion, and annual costs of \$3.2 billion.
- The standard of 4 ppt for water systems related to long chain PFAS substances at \$38 billion, and annualized costs of \$3.5 billion
- The standard of 10 ppt for water systems related to long chain PFAS are estimated to cost \$23.5 billion, and annualized costs \$2 billion.
- Annual Costs to Individual Households would range from \$8 - \$17,000



CERCLA IMPACTS ON MUNICIPAL WATER AND WASTEWATER SYSTEMS

- Questions remain for proper disposal of sewage sludge, drinking water residuals, if PFOS and PFOA are detected.
- Sewage sludge is typically used as a fuel in an anaerobic digester (energy creation), land applied as a soil nutrient, or disposed in a subtitle D landfill.
- If deemed a hazardous waste, there would be a reluctance to land apply or place in a non hazardous waste landfill for fear of being held liable for future cleanup under Superfund.
- The only safe disposal method is hazardous waste incinerator or subtitle C landfill (hazardous waste). Estimated cost at \$3.5 billion annual which does not include transport costs.



STATUS OF UPCOMING PFAS RULEMAKINGS

1. PFOS and PFOA National Primary Drinking Water Proposed Rule is expected to be released March 3, 2023. (30-90 days to comment)
2. PFOS and PFOA Designation for CERCLA is set to be finalized in August 2023.

NEXT STEPS

1. Submit Comments to Drinking Water Proposed Rule
2. Discussion: Other Actions?

Financial Capability Assessment (FCA) Policy



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BACKGROUND - FCA GUIDANCE

- When municipal discharges cause violations of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) sets a schedule for the municipality to address them as soon as possible.
- The Financial Capability Assessment Guidance (FCA Guidance) is used by municipalities when devising plans to come into compliance with the CWA. During that process, municipalities and EPA negotiate schedules with specific timeframes for implementation.
- The Mayors Water Council has been working with EPA since 2009 to reform the costly and inflexible method and process in the 1997 Guidance policy by which EPA determines how much your community should spend to comply with the Clean Water Act (CWA).



BACKGROUND - CONTINUED

- In 2021 a new FCA Guidance was issued that was a vast improvement over the 1997 version. The new guidance was later retracted and the February 2023 version was just issued.
- Many improvements that were included in the 2021 version were NOT included in the 2023 version.



2023 Financial Capability Assessment Pros/Cons

Pros:

- Increased Transparency
- Consideration of the Lowest Quintile of Poverty as an Affordability Factor
- Allowance of Local Metrics

Cons:

- Time for Compliance Is Limited to 20 years or 25 years in exceptional cases. (Some cities were getting as many as 29 years to comply).
- Uses National Benchmarks to Compare Community Level Metrics to Determine Local Affordability
- New Financial Alternative Analysis (FAA) is overly burdensome and could serve as a deterrent to communities seeking relief.
- FCA also expects local governments to exhaust all means of financing (SRF AND WIFIA) and assisting low income residents before being granted any relief or flexibility.



IMPACT ON MUNICIPAL DRINKING WATER UTILITIES

St. Louis - Department of Justice filed a settlement, or consent decree, requiring MSD to spend a minimum \$4.7 billion over the next 23 years to address the issue of overflows and other sewer system improvements.

Lima, OH - \$150 million over 29 years as a result of Integrated Planning



IMPACT ON MUNICIPAL DRINKING WATER UTILITIES

“Intended as a long-overdue update to the original 1997 version of the guidance, the new FCA will fall well short of meeting the expectations of those calling for an update, including Congress, the members of our respective organizations and other key stakeholders. While seemingly a minor guidance document impacting a small portion of EPA’s environmental portfolio, the calculations in the guidance have directed tens of billions of dollars of federally-mandated spending on Clean Water Act requirements by hundreds of communities across the country since 1997. This is a document that the Agency must get right or we will repeat the mistakes of the past and continue to put low-income and disadvantaged communities across the country in the untenable position of being unable to afford their water and sewer bills.”

Letter from USCM, NLC, WEF, AWWA, and NACWA to EPA and OMB Nov 10, 2022



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STATUS OF FCA RULEMAKING

Final FCA Guidance was issued on February 1, 2023.

CALL TO ACTION/DISCUSSION

1. Ask EPA to withdraw rule and work on a more suitable approach
2. Seeking Congressional Action



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Contact Information

For those interested in taking a more active role on these issues, please contact **Judy Sheahan** at jsheahan@usmayors.org or **Rich Anderson** at randerson@usmayors.org

If you would like to receive a copy of the slides or would like an electronic copy of the background materials, please contact Kassidy Klein at kklein@usmayors.org

Thank you!