



THE UNITED STATES  
CONFERENCE OF MAYORS



February 5, 2024

Ms. Jennifer McLain  
Director  
Office of Ground Water and Drinking Water  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

**RE: Proposed Rule: National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI), Docket ID: No. EPA-HQ-OW-2022-0801**

Dear Ms. McLain,

On behalf of the nation's mayors, cities and counties we appreciate the opportunity to provide comments on the United States Environmental Protection Agency's (EPA) Proposed National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI) to reduce lead in drinking water. The Biden Administration has set an ambitious goal, which the LCRI advances, of removing all lead service lines across the country. We support EPA's efforts to accomplish this goal, and many local governments are already taking action to address lead service lines (LSLs) in their communities, but we have some concerns regarding affordability and implementation of the proposal.

Collectively, our organizations represent the nation's 3,069 counties, 19,000 cities and the mayors of the 1,400 largest cities throughout the United States. Local governments serve as co-regulators in implementing and enforcing many federal laws with states, including Safe Drinking Water Act programs, and our members take these responsibilities seriously. Protecting the health, safety and welfare of residents is a top priority for local leaders.

EPA first promulgated the Lead and Copper Rule in 1991 to reduce exposure to lead in drinking water and implementation of this rule over the last 30 years has resulted in major improvements in public health. Implementing the proposed LCRI will be an unprecedented and major local effort to achieve national public health goals. For these reasons, it is important that EPA establish a regulatory program that is clear, cost-efficient and implementable for all our communities.

Specifically, we recommend the Agency:

- Provide additional and direct funding to local governments to reduce the financial burden imposed by this otherwise unfunded mandate.

- Provide maximum implementation flexibility for local governments in the form of longer and alternative replacement schedules for systems facing affordability barriers, systems with many LSLs or for systems demonstrating sufficient corrosion control treatment.
- Clarify the definition of when a service line is “under the control” of the water system.

### **LCRI Overarching Concerns and Recommendations**

Below, we outline our concerns with the feasibility of the proposed rule and provide recommendations to address these concerns to ensure that the limited financial resources of local governments are used as effectively as possible toward meeting this public health goal.

#### **1. Affordability and Equity**

EPA estimates the annual cost for public water systems (PWSs) to comply with the proposed LCRI is between \$2.9 billion and \$4.8 billion, with costs primarily associated with identifying and removing LSLs, installing water treatment technologies and providing filters to consumers. However, according to the American Water Works Association, the average cost for LSL replacement ranges between \$4,000 and \$7,000 but can be upwards of \$10,000 to replace a single LSL.<sup>1</sup> Given that EPA’s 7th Drinking Water Infrastructure Needs Survey and Assessment estimates that there are approximately 9.2 million LSLs across the country, the total cost for LSL replacement alone is likely to be upwards of \$90 to \$100 billion. Additionally, it is important to note that EPA’s cost analysis is calculated across 35 years, even though the bulk of the costs will be required in the first 10 to 13 years after the rule is finalized, resulting in a likely inaccurate assessment of the impact the proposed rule will have on ratepayer affordability.

Because of this, we are concerned that not only has the Agency underestimated the full cost of compliance, but also the fiscal capacity of local governments and ratepayers to afford these costs. This is a critical miscalculation given that local governments fund over 98 percent of all capital, operations and maintenance investment in drinking water and wastewater infrastructure in the United States, primarily through user fees and bonds. The most recent U.S. Census data shows that local governments spent over \$148 billion on water and wastewater in 2021 alone, and spent over \$2.38 trillion between 1993 and 2019, not adjusted for inflation.

Local leaders appreciate the historic \$15 billion provided in the bipartisan Infrastructure Investment and Jobs Act (IIJA) to address lead in drinking water. However, this figure is well below the projected replacement cost of \$90 to \$100 billion and the majority of the \$15 billion comes in the form of loans, which local governments must pay back. Further, because the funding is only available through FY2026, it is uncertain if local governments will even be able to use this funding to comply with the proposed LCRI. Moreover, current proposals for upcoming federal appropriation bills drastically reduce the amount of funds available to local governments through the Drinking Water State Revolving Fund as funding for earmarks is being pulled from

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<sup>1</sup> Considerations when Costing Lead Service Line Identification and Replacement, American Water Works Association, November 2022. Available at: <https://www.awwa.org/Portals/0/AWWA/ETS/Resources/Technical%20Reports/2022%2011%2029%2007%20CDM%20SL%20Identification%20and%20LSLR%20Costs.pdf>

the base funding of the State Revolving Fund programs, limiting the amount of funds available for LSL removal efforts.

Unfortunately, the historic capital stimulus provided by Congress in the IIJA falls far short of the cost this proposed LCRI will impose on public water systems and affordability will continue to represent a major barrier to reaching the public health goals of the proposed rule.

**Recommendation:** We urge the Administration and Congress to provide additional and direct federal funding to local governments. We also urge EPA to match compliance schedules with financial assistance where it is needed.

*A. Individual Burden and Environmental Justice Concerns*

Given that local governments will be forced to bear the brunt of costs to comply with the proposed rule, EPA must understand that a rise in water rates in communities across the nation is a near certainty. The steep cost for utilities to comply with the LCRI will be felt most intensely by low-income households and the small business community.

Additionally, in order for local governments and water systems to comply with the proposed mandatory annual replacement rates, many will likely be forced to prioritize customers who are able to afford the estimated thousands of dollars required for LSL replacement. Given the absolute priority that is needed for LSL replacement in low-income and environmental justice communities, this dichotomy could raise serious equity issues.

**Recommendation:** We strongly urge the Agency to consider the financial impact this proposed regulation will have on individual consumers, particularly those in environmental justice and disadvantaged communities. Affordability challenges associated with an accelerated timeline and limited financial resources will force local governments to pass these costs onto community ratepayers. To help alleviate this, we recommend the Agency consider additional funding sources and longer replacement schedules.

*B. Competing Drinking Water Priorities*

We must also note that EPA is in the process of finalizing a host of other new regulations impacting public water systems. Specifically, we are concerned that, in addition to the LCRI requirements, the Agency's rulemakings around new drinking water standards for PFAS and regulating PFAS under CERCLA and RCRA will create additional unfunded mandates that will be unaffordable for many communities. This is on top of ongoing investments PWSs are already making to upgrade aging infrastructure, safeguard systems against attacks, increase climate sustainability and resiliency and meet other requirements under the Safe Drinking Water Act and Clean Water Act.

As mentioned above, local governments already face a water infrastructure needs gap, and these additional unfunded mandates will exacerbate affordability and equity

concerns for the many fixed- and low-income households that already spend a disproportionate amount of their income on water bills.

**Recommendation:** We urge EPA to take a holistic and integrated approach to drinking water regulations and consider the cumulative impacts that the rules and regulations will have on local governments in terms of cost and compliance and implementation timelines.

## **2. Implementation Challenges**

Given the number of challenges associated with the proposed LCRI, including limited financial resources, equity and affordability concerns, and workforce and supply chain shortages, among others, flexibility will be critical to ensuring local communities are able to implement and comply with the proposed rule. The Agency should take such factors as the preponderance of LSLs in a community, local market conditions, issues around gaining authority to access private property, liability concerns and the use of water rate revenue to remove LSLs into consideration when working with local communities on the implementation of the proposed LCRI.

**Recommendation:** We urge EPA to offer additional flexibilities, including extended compliance deadlines, to local governments and PWSs that are managing their own local logistical constraints, limited resources, and competing priorities.

### *A. Replacement Schedule*

The Agency's LCRI proposal sets a compliance deadline of ten years to replace 100 percent of LSLs (10 percent rolling average over three years), regardless of the system's measured lead level. We support the proposal to build lead service line replacements into a community's capital improvement plan, rather than as a reactionary measure through a Maximum Contaminant Level requirement or lead exceedance. While the proposal includes some flexibility for a longer replacement timeframe for a very limited number of scenarios, ultimately, this compliance schedule is unachievable for a vast majority of communities and water systems.

The two eligibility criteria proposed in the LCRI where a system may receive a deferred replacement timeline are: (1) systems with a high proportion of LSLs relative to the total number of households served (0.039 replacements per household per year); and (2) systems who would have to replace more than 10,000 LSLs per year under the proposed ten-year timeframe. We appreciate the Agency's acknowledgment that many possible factors can influence how many LSLs a city could remove in one year - including market conditions, labor shortages, and even seasonal changes. However, the Agency's conclusion that removing up to 10,000 LSLs a year is "technically feasible" for the vast majority of systems likely downplays the impact that varying limitations have on the ability of communities and water systems to feasibly replace that many pipes in one year.

Additionally, EPA's proposal includes a requirement that States set a shorter deadline for an individual water system to complete LSL replacement where "feasible," which is undefined. Although well-intended, local governments and public water systems are in the best position to appropriately assess local factors and circumstances that strongly impact a system's ability to remove LSLs within a certain timeframe. At a minimum, EPA should require States to consult with local governments before a determination is made regarding shortening the replacement schedule.

**Recommendation:** Eligibility criteria for longer replacement deadlines should be expanded to offer local governments a more realistic and fiscally appropriate timeframe to account for practical limitations. The Agency should also consider a simpler, alternative compliance pathway for systems that have either demonstrated sufficient corrosion control treatment or have few LSLs. This would better allow communities to allocate their resources where they are most required and ensure that systems with higher need are prioritized first. Additionally, we urge the Agency to either remove the requirement that States set more rapid compliance deadlines or clarify under which specific criteria this requirement would be triggered to avoid any sudden shifts in local planning and implementation efforts.

Additionally, EPA should not require local governments to replace non-potable service lines if there are administrative safeguards in place to prevent potable use nor require local governments to replace service lines on abandoned property if there are local provisions in place to ensure replacement before use. This would simplify the replacement requirement and provide additional flexibility for communities.

#### *B. Private Side Replacement*

Replacing LSLs is often complicated because ownership of the service line is often split between the public water system and privately owned property. As such, the local government must obtain consent from the property owner to access and replace LSLs on the private side of the water line. While financial concerns represent one of the most critical barriers to receiving customer consent to access private-side LSLs, it is not the only one. Local governments may struggle to obtain consent for a variety of reasons, including community distrust, the physically disruptive process of removing LSLs, and reluctance to view LSL replacement as a priority. The cooperation of private residents to replace pipes will greatly impact, either negatively or positively, a local governments' ability to complete 100 percent replacement in compliance with the LCRI.

The Safe Drinking Water Act defines public water systems and delineates between portions of the distribution system that are under the control of the PWS and portions that are connected to the distribution system, but are not under the control of the PWS. While the 2021 Lead and Copper Rule Revisions (LCRR) equates "control" with "ownership," the proposed LCRI redefines "control" to equate it to "access."

However, the proposed rule fails to define “access” and what having “legal, physical access” means for local governments and PWSs in terms of conducting LSL replacement on the private side. The definition of “access” is also a function of state and local law, which EPA recognizes. The lack of a clear definition of “access” in the LCRI, as well as differing definitions of “control,” creates implementation and feasibility challenges for communities. For example, does legal access equate to physical access? What happens if the water system has legal access, but the property owner still refuses to consent for LSL replacement? What does having access to private property mean in terms of legal liability and worker safety?

Furthermore, the proposed LCRI outlines various activities PWSs must do to obtain or attempt to obtain necessary access for private-side replacement. For example, under the proposed rule PWSs will be required to identify any State or local laws impacting a system’s ability to conduct LSL replacement with the idea being that the identification of these laws will help the water system overcome the barriers. We understand that this provision is intended to make obtaining access more likely, however without additional clarity on the definitions of “control” and “access,” this provision further adds to the regulatory burden and creates implementation and feasibility challenges for communities.

**Recommendations:** EPA should provide additional clarity around the definitions of “control” and “access” to provide more guidance to communities and PWSs around conducting LSL replacement on private property. Without this clarity, local governments should not be held responsible for failing to replace LSLs they do not have control over where it is not feasible to do so.

Further, we recommend that EPA maintain its provision in the LCRI to not require local governments to cover the costs associated with the replacement of privately-owned service lines, but still retain the option to do so. While some local governments have been able to subsidize private-side replacement, there may be legal issues or state prohibitions on using ratepayer or capital funds for private-side replacements.

### *C. Lead Service Line Inventory*

Under EPA’s LCRR water systems are required to provide an initial inventory of their LSLs by October 16, 2024. Under the proposed LCRI, all water systems will have to regularly update their inventory and create a publicly available service line replacement plan. For unknown service lines, EPA is proposing to require that water systems categorize the material of all unknown service lines by the system’s applicable deadline for completing mandatory full service line replacement (ten years for most systems).

**Recommendation:** While local governments are making progress on completing their inventories, changes to the LCRI can help ease the regulatory burden of this requirement. For example, we urge EPA to allow communities to complete the inventory

without having to include fire services and other non-potable service lines, as well as abandoned properties.

### **3. Risk Communication**

We recommend taking a moderate approach to risk communication so as not to cause undue public alarm and concern. While public information and transparency is important, informing customers of the existence of lead pipes can potentially raise undue public alarm if no lead is leaching due to proper corrosion control. Therefore, risk communication should be targeted to customers where there is a specific concern. LSL notification can be complex for local governments, and a requirement to notify customers when there is uncertainty will only make this process more challenging. Specifically, a 24-hour notification timeframe when there is an action level exceedance is unrealistic. Moreover, a 24-hour notification is usually reserved for acute public health emergencies such as significant outbreaks of infectious diseases or bioterrorist attacks where there is the potential for human health to be immediately impacted. Effective risk communication may require longer than 24 hours to execute, as there may be various administrative issues to resolve, and several business days could elapse in some instances.

**Recommendation:** We urge the Agency to encourage best efforts for rapid delivery and notification but allow for flexibility in its requirements.

### **4. Small System Flexibility**

EPA's LCRI proposes to change the eligibility threshold for small system flexibility from water systems serving 10,000 people down to 3,300 people. Small systems are particularly constrained in their financial and staff capacity, which impacts their ability to comply with federal regulations.

**Recommendation:** We recommend the Agency maintain its previous eligibility threshold of 10,000 persons in an effort to provide maximum flexibility for local governments and in particular, smaller communities. Additionally, EPA should ensure that small system flexibilities will be available in every state, since many of the flexibilities could depend on the state granting them.

**Due to the concerns listed above, we believe additional financial resources, expanded compliance schedules and maximum implementation flexibility would offer the most realistic approach for local governments to make significant progress toward reducing lead in drinking water and removing 100 percent lead pipes. We urge EPA to take a reasonable and rational approach to compliance that recognizes local obstacles and to be realistic when setting goals or standards under the LCRI.**

On behalf of the nation's mayors, cities and counties, thank you for considering the local government perspective on this important issue. As the Agency finalizes the LCRI, we look forward to working with you to ensure a clear, cost-effective and implementable rule. If you have any questions, please contact us: Judy Sheahan (USCM) at 202-861-6775 or [jsheahan@usmayors.org](mailto:jsheahan@usmayors.org); Carolyn Berndt (NLC) at 202-626-3101 or [Berndt@nlc.org](mailto:Berndt@nlc.org); or Sarah Gimont (NACo) at 202-942-4254 or [sgimont@naco.org](mailto:sgimont@naco.org).

Sincerely,



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