



November 15, 2022

Dr. Jennifer L. McLain
Director, Office of Ground Water and Drinking Water
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20004

Re: EPA-HQ-OW-2022-0801 Environmental Justice Considerations for the Development of the Proposed Lead and Copper Rule Improvements (LCRI)

Dear Dr. McLain,

The Association of Metropolitan Water Agencies (AMWA) welcomes the opportunity to provide feedback on environmental justice considerations related to the development of EPA’s anticipated Lead and Copper Rule Improvements (LCRI). AMWA is an organization representing the largest publicly owned drinking water utilities in the United States, and collectively its membership serves more than 160 million people. Our members represent diverse metropolitan areas and have long been working to identify and replace lead service lines in their service areas. The association has been involved with the Lead and Copper Rule since its inception and offered substantive comments during development of the Lead and Copper Rule Revisions (LCRR) that were published on January 15, 2021.¹ We value the work that EPA has done to decrease the risk of lead and copper to public health while prioritizing environmental justice.

Approximately 10 million publicly and privately owned lead pipes and service lines presently deliver drinking water to American households. Last year, the Biden Administration announced its intention to “use every tool at its disposal to eliminate all lead service lines” in the next 10 years, including by “encouraging full lead service line replacement and strongly discouraging

¹ Comments on behalf of the Association of Metropolitan Water Agencies. National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Revisions. February 12, 2020. <https://www.amwa.net/testimonycomments/comments-regarding-epas-proposed-lead-and-copper-rule-revisions-epa-hq-ow-2017>

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partial replacement.”² EPA subsequently concluded an ongoing review of the LCRR and announced its intention to “immediately begin development” of further revisions that would be known as the LCRI. Among the revisions that EPA intends to propose as part of the LCRI are requirements that “would result in the replacement of all LSLs as quickly as is feasible.”³

In light of these objectives, AMWA reiterates its support for advancing public health and environmental justice. Additionally, AMWA asks the EPA to recognize, consider, and address the potential hurdles associated with full lead service line replacements should they be mandated as part of a proposed LCRI rule, and to provide support for community water systems to address these challenges. We summarize these potential complications below.

Service line ownership

To understand the difficulties associated with full lead service line replacement, it is important to understand the ownership of service lines that connect water mains with the premise plumbing in each home served by a water system. Typically, service lines are partially owned by a community water system and partially owned by the customer. The water utility usually owns the portion of the service line from the water main to the curb stop or meter, and the private property owner usually owns the portion of the service line from the property line to the building inlet. The water system is generally unable to access the customer-owned portion of the service line without the customer’s permission, nor is the utility under any obligation to replace, or pay for replacement of, the customer portion of a service line that fails.

This does not mean that community water systems are wholly unable to aid in the replacement of privately owned lead service lines. Many utilities often offer to replace the customer-owned portion of a service line at cost to the customer, in conjunction with the water system’s replacement of the publicly owned portion. Additionally, some utilities and localities have developed plans to fully replace lead service lines without charging customers individually. Some opportunities and challenges of these approaches will be discussed further in this letter.

Impacts on drinking water affordability

EPA estimates that full lead service line replacement has an average cost of \$4,700, ranging from \$1,200 to \$12,300 per line replaced.⁴ Using EPA’s estimate of an average replacement cost per

² FACT SHEET: The Biden-Harris Lead Pipe and Paint Action Plan, December 16, 2021.

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/16/fact-sheet-the-biden-harris-lead-pipe-and-paint-action-plan/>

³ Environmental Protection Agency. Review of the National Primary Drinking Water Regulation: Lead and Copper Rule Revisions (LCRR). 86 FR 71574. December 17, 2021.

<https://www.federalregister.gov/documents/2021/12/17/2021-27457/review-of-the-national-primary-drinking-water-regulation-lead-and-copper-rule-revisions-lcrr>

⁴ Chapter 5: Economic Analysis. Lead and Copper Rule Revisions. Docket Number EPA-HQ-OW-210-0300.

<https://www.regulations.gov/document/EPA-HQ-OW-2017-0300-0001>

line of \$4,700 and an assumption of 10 million lead service lines in the United States, fully replacing all lead service lines in the country could cost roughly \$47 billion. This \$47 billion sum far exceeds the \$15 billion worth of lead service line replacement funds included in the Bipartisan Infrastructure Law (BIL) of 2021, thus requiring community water systems to turn to other sources of funding to cover the costs of full lead service line replacement.

Therefore, AMWA is concerned that an EPA requirement for water systems to carry out full lead service line replacements would represent a massive unfunded mandate for communities that do not receive BIL funding. These communities would likely have to turn to increased customer water rates to cover these replacement costs, which could be expected to disproportionately impact low-income customers. Water utilities are limited to grants, loans, and user rates to cover the costs of providing drinking water service, and federal funds to date alone will not cover the full costs.

Since utilities must cover the costs of a litany of other challenges, including aging infrastructure, changing state and federal regulations, climate change, and supply chain disruptions, they must turn to a limited pool of federal grants and loans and increased customer rates to fund major infrastructure projects. Utility customer rate setting authority ranges significantly by locality and states, but when necessary to increase rates, many utilities must increase customer rates for all customers. Increased customer rates disproportionately impact low-income customers, who must spend a larger portion of their income on their water bill than higher income customers.

Community water systems face additional challenges in their authority to increase rates and in their ability to assist low-income customers most affected by increased rates. AMWA represents publicly owned drinking water utilities, which are often governed by boards or other elected officials that may restrict the degree to which utilities can increase rates or whether they may establish lower rates for low-income customers. In other cases, publicly owned utilities may require voter permission to authorize funding for major infrastructure projects. The LCRI must recognize the unique challenges faced by water utilities in acquiring and distributing funds to replace lead service lines and recognize potential increased water rates as an intended consequence of funding lead service line replacement.

Legal constraints on authority to replace lead service lines

Further considerations regarding the LCRI are the legal and logistical complications of replacing lead service lines held by property-owners. As described above, the task of fully replacing lead service lines is often complicated because ownership of each household's service line is split between the community water system (which generally owns the portion from the water main to the property line) and the private homeowner (who typically owns the portion from the property line to the building inlet). Community water systems are generally unable to access or replace a privately owned lead service line without the permission of the property owner.

The challenge of obtaining property owner permission to fully replace a lead service line should not be downplayed, and EPA's announcement to pursue the LCRI acknowledged that

communities like Newark, New Jersey “have shown that full LSLR can be equitably achieved *when there is both a regulatory requirement and a commitment to prioritize funding*” (emphasis added).⁵

It is worth exploring Newark’s regulatory requirement in more detail. In 2019, the city’s code was amended to require private property owners to either replace their privately owned lead service lines at their own expense within 90 days of passage of the ordinance, or sign up for the city’s lead service line replacement program. Individual property owners were also required to allow the city to access their property to carry out a lead service line replacement. A property owner who violated this ordinance could be fined up to \$1,000 or sentenced to jail time or community service of up to 90 days.⁶

The fact that Newark could only achieve so much success in fully replacing lead service lines by compelling residents to cooperate with this effort under threat of fine or imprisonment is telling. It not only shows that full lead service line replacement cannot be achieved by local water systems alone, but also demonstrates that any full lead service line replacement mandate included in the LCRI would be likely to fail unless each city and town nationwide implemented and enforced a similar ordinance to compel the cooperation of property owners. Given stakeholder comments cited by EPA that “low-income people and communities of color are disproportionately served by” lead service lines, the widespread implementation of penalty-based lead service line replacement ordinances could similarly disproportionately threaten these communities with fines or jail time. The goal of fully replacing all lead service lines nationwide must be considered in the context of these factors, so AMWA urges EPA to thoughtfully consider the ramifications of an LCRI that prioritizes full replacement above all else.

Other legal obstacles at the state and federal level can further complicate full lead service line replacement efforts. For example, as of 2017 the laws of three states expressly prohibited water systems from using ratepayer funds on initiatives that benefit specific customers, and laws in at least 19 others made the practice highly questionable.⁷ This would pose significant challenges to any federal mandate that would require community water systems to fully replace, and pay for the replacement of, the publicly and privately owned portions of lead service lines.

Other obstacles to full lead service line replacement can be found in the federal tax code. If a water system attempts to finance the replacement of both the public and private portions of a lead service line with tax-exempt bonds, which are a common and cost-effective infrastructure financing mechanism, it must first navigate the IRS’ “private business use test” to certify that a

⁵ Environmental Protection Agency, December 17, 2021.

⁶ City of Newark, NJ, Title XVI Health, Sanitation, and Air Pollution, Chapter 16:23 Mandatory Replacement of Lead Service Line, <https://ecode360.com/36709585>

⁷ University of North Carolina Environmental Finance Center. Navigating Legal Pathways to Rate-Funded Customer Assistance Programs: A Guide for Water and Wastewater Utilities. <https://www.amwa.net/publication/navigating-legal-pathways-rate-funded-customer-assistance-programs-2017>

disproportionate portion of the bond issuance would not benefit a private, home-based business.⁸ This process adds months of work and expense to the process, as utilities must document whether there is a home-based business at each property with a private lead service line to be replaced. Any draft LCRI rule must be created with the knowledge that the US tax code currently imposes difficulties on utilities using tax-exempt bonds to pay for private-side lead service line replacement.

The LCRI must further consider the difficulty community water systems may face in acquiring permission to replace lead service lines on rental properties, where some of a utility's most vulnerable customers may live. In nearly all cases, water utilities require the permission of the property owner to conduct a lead service line replacement on the customer property side. Without adequate support to connect with landlords, which can range from individuals managing a few properties to large organizations with multiple, multi-unit properties, many utilities may not be able fully replace lead service lines where rental residents would benefit.

Community distrust in tap water

Finally, AMWA asks that the forthcoming LCRI recognize the racial disparities in trust in tap water utilities and consider how that may inform the support needed for water utilities to replace lead service lines in private homes. A recent Value of Water Campaign poll, for example, found that respondents of color (i.e., people of all races and ethnicities other than non-Hispanic Whites) were less likely to say their pipes were safe (69%) compared to white respondents (87%).⁹ These statistics bring to light the fact that already existing community concerns about water infrastructure safety may hinder water utilities' ability to access and replace service lines on private property. It is possible that communities with lower trust in their water infrastructure may also not fully trust a utility's ability to properly replace a lead service line and in turn opt out of the replacement; therefore, it is important that the EPA consider and prepare for these potential concerns.

An additional complicating factor of lead service line replacement is that residents may refuse a utility access to replace a service line for several reasons, including home water disruption, concerns about costs, or loss of landscaping. Alternatively, utilities may have to juggle how to cover costs of disruptions to properties caused by replacement, introducing the possibility that only homeowners who can afford to make aesthetic improvements after service line replacement agree to replacement. Regardless of homeowner decisions, to ensure order and community trust, utilities will have to invest administrative time and effort to oversee respecting private homeowners' decisions, further driving costs of lead service line replacement.

⁸ Kildee Introduces Bill to Help Communities Replace Lead Pipes. March 8, 2022.

<https://dankildee.house.gov/media/press-releases/kildee-introduces-bill-help-communities-replace-lead-pipes>

⁹ Value of Water Campaign. American Support for Investments in Water Infrastructure.

<http://thevalueofwater.org/sites/default/files/Value%20of%20Water%20Poll%202022%E2%80%94Key%20Poll%20Findings.pdf>

Conclusion

AMWA supports the EPA in its mission to advance environmental justice and public health. We similarly support individual utility efforts to remove their lead service lines as quickly as possible, and agree that the complete removal of lead service lines is a worthy goal. However, achieving this critical milestone will be a complex process. The agency must recognize the various affordability, legal, and community trust challenges as it considers environmental justice in the development of the LCRI. We appreciate the opportunity to comment and ask that the agency fully consider and address the challenges associated with lead service line replacement. If you have any questions about this letter, please contact Brian Redder, AMWA's Manager of Regulatory and Scientific Affairs at redder@amwa.net or Jessica Evans, AMWA's Government Affairs Associate at evans@amwa.net.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas Dobbins".

Thomas Dobbins
Chief Executive Officer

cc: Radhika Fox, Assistant Administrator, EPA Office of Water
Eric Burneson, EPA Office of Ground Water and Drinking Water