



March 8, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Pruitt,

On behalf of the nation's cities, counties and mayors, we appreciate the opportunity to provide input pursuant to Executive Order 13132: Federalism on the U.S. Environmental Protection Agency's (EPA) forthcoming proposed regulatory revisions to the Lead and Copper Rule (LCR). As key partners in the federal-state-local intergovernmental partnership, and as co-regulators of drinking water, our members have a vested interest in this rulemaking. Our members care deeply about providing clean, safe and affordable drinking water for their communities. However, we have some concerns about the potential scope of the proposed LCR revisions. These are listed below, along with some general recommendations.

It should be noted that the United States has some of the safest drinking water in the world. Local elected officials do not want the issue of lead in drinking water to cause nationwide doubt among our citizens regarding the safety of their drinking water. We urge EPA to be comprehensive with its approach in dealing with lead in drinking water and to balance the solutions with all public health and environmental impacts.

In general, our organizations support provisions in the 1996 Amendments to the Safe Drinking Water Act, which require that drinking water standards be based on sound science, public health protection, occurrence of contaminants in drinking water supplies at levels of public health concern, to reduce risk while balancing costs. Moreover, where the contaminant is naturally occurring, monitoring should be required only if EPA can demonstrate that any proposed remedial treatment would ensure greater health protection. For introduced materials, a risk-based standards should be developed.

Additionally, in general, we believe the National Primary Drinking Water Regulation for lead, and any regulatory or legislative initiative addressing lead in drinking water, should balance these public health and environmental priorities. Any federal mandate on local governments should include additional federal financial resources, as well as offer municipal water systems flexibility in implementation and compliance options. Finally, our organizations support programs for public education regarding safe drinking water and innovative solutions that approach this problem beyond the traditional command and control.

Cities, counties and mayors fund the majority of water infrastructure investments at the local level.

Local governments fund 98 percent of all investment in water and sewer capital projects and maintenance primarily through user fees and bonds. The most recent U.S. Census data shows that, in 2015 alone, local governments spent \$118 billion on water and wastewater, and over the past 15 years, have spent roughly \$1.7 trillion. During this same time period, the federal government appropriated approximately \$2 billion each year in total for the State Revolving Loan Fund programs, which provides grants to states who, in turn, provide local governments with loans that must be repaid. Even with this significant investment by local governments, many communities still struggle to upgrade their drinking water systems. The proposed potential revisions, unless done thoughtfully, will compound this problem.

Key Local Government Concerns Regarding Potential Lead and Copper Rule Revisions

As you move forward, we urge you to consider and address the following concerns from local governments on the potential revisions.

Potential revisions will create administrative challenges and unfunded mandates on local governments and residents.

As owners and operators of drinking water facilities, local governments carefully undertake long-range planning years in advance to ensure that costs remain affordable for ratepayers--residential and commercial customers. When additional costs are incurred, either from unexpected repairs or new federal mandates, the costs must be passed onto residents and businesses in the form of higher user rates. With many of our low- and fixed-income residents already paying a disproportionate share of their income toward their water bills, this has created a situation where water is becoming simply unaffordable for large segments of our population. This results in unpaid bills, which creates additional challenges at the municipal level to undertake needed improvements.

The potential revision to require water utilities to replace all lead and copper service lines in the system within a set period of time is likely to create a huge federal unfunded mandate for local governments. Based on a preliminary estimate by EPA, the average cost to replace a lead service line is \$4,700 per line. However, replacement costs could range dramatically from \$1,200 to \$12,300 depending on the length and size of the pipeline. With an estimated six to ten million lead pipes in communities across the country, the total cost to replace these service lines is between \$28 billion to \$47 billion. This is unsustainable for our communities and our residents who pay for these upgrades.

Other potential revisions that may be problematic and expensive include creating an inventory of lead service lines, mandating corrosion control treatment techniques, and developing new standards for lead and copper sampling at the tap. Together, these new requirements will likely require municipal water agencies to further raise user rates, which could compound the financial burden on vulnerable populations in our communities.

Furthermore, we are concerned that the costs and impacts of a more prescriptive requirement will fall disproportionately on smaller communities, compounding the challenges of complying with the new federal mandates. These jurisdictions generally have small staff who work in a variety of capacities within the local government. Expanding requirements could require these smaller communities to hire additional staff, contractors or technical experts, plan for how the pipes would be removed, and coordinate with households throughout their community, to name a few. Larger communities would face similar administrative challenges, and also do not have the financial resources to absorb the additional costs.

Recommendations:

- **Evaluate all costs on local governments and water utilities for potential revisions.** Within the rulemaking process, we encourage EPA to thoroughly analyze, evaluate and consider all costs on local governments associated with the potential revisions to the LCR, which has not adequately been done to date.
- **Provide financial assistance in the form of grants, low-interest and zero-interest loans, and direct assistance to help local governments and residents undertake required upgrades in an affordable manner.** As the rulemaking process moves forward, we strongly recommend that the federal government provide financial resources to local governments to cover any costs associated with new LCR requirements.
- **Provide technical assistance to communities to help them identify best practices and cost-effective measures to replace lines in a holistic fashion.** We also encourage EPA to develop a federal program to assist with the inventory and replacement of lead service lines, including direct assistance to homeowners to replace their pipes.

Requiring water testing and replacement of pipes in homes opens local governments up to private property challenges and worker safety issues.

In most communities, water utilities are only legally responsible for pipes at the edge of the utility's main service line. Requiring water utilities to be responsible for full lead pipeline replacement, including those beyond the utility's main service line and on private property, opens up many legal questions for local governments. There may be Constitutional issues as it relates to private property rights and such action may trigger the Takings Clause in the 5th Amendment. Such action could open local governments up to lawsuits regarding destruction of private property, as well as raise potential ownership questions regarding maintenance and upgrades of privately-owned pipes in the future. In addition, many state laws provide clear protection for residents, businesses and private structures, and limit the types of public employees that can access the property. Moreover, a number of states prevent local and state government representatives (or their assigned agents) from entering private property without the express written permission of the owner or a legal warrant to do so. Otherwise, it is considered an invasion of private property rights.

Therefore, if water utilities are not given consent to access, enter, or replace a lead pipeline on private property, the local government could potentially be subject to citizen suits for non-compliance with a federal regulation, raising the question of who is ultimately held responsible for non-compliance. Given current state laws, mandating full lead pipe replacement would not only be a costly burden on local governments, but would also be an extremely onerous and potentially impossible task to implement. We've seen several cities and counties that have undertaken programs to educate their citizens regarding the risks associated with lead-tainted service lines, and some that have offered to replace residential pipes, at-cost or even for free. Many of these communities faced difficulties in securing the necessary approval from homeowners to do so.

Even if local governments and water utilities were granted permission to enter private property, some homes are not safe to enter due to structural issues or potential criminal elements that utility staff would not be trained to spot or cite. Essentially, our workers would be walking in blind, and could be held legally responsible or personally liable for any illegal activities that are seen in or around the property and in private residences and buildings.

Recommendations:

- **Undertake a review and comprehensive assessment of all federal and state laws for private property rights to assess where and when municipal and utility employees can legally set foot on and enter private property and infrastructure.**
- **Evaluate the legal responsibility and personal liabilities of local government and utility employees who witness crimes and/or suspicious activities in private homes or commercial properties.**

General Recommendations for Revisions to the Lead and Copper Rule

As you move forward, we urge you to consider the following general recommendations from local governments to ensure that any potential revisions to the LCR are effective, implementable, offer local flexibility, and avoid a "one-size-fits-all" approach.

Recommendations:

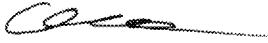
- **Give a reasonable amount of time to undertake an inventory of existing lead pipelines and replacement of those lines.** The longer the allowable time frame for replacement, the more flexibility that local governments will have in terms of planning for and financing pipeline replacements. We recommend a staggered timeline of at least 35 years after a community has undertaken an inventory.
- **Promote effective use of corrosive control.** Our organizations are in favor of corrosion control and recognize that some smaller systems may not always have the technical expertise to determine the proper chemical configuration for their drinking water systems. Creating a baseline, Corrosion Control Treatment, with federal technical assistance, may be a potential answer for these small systems.
- **Conduct targeted educational campaigns.** Studies have shown that bottle-fed babies and young children are the most vulnerable to lead in drinking water. We recommend that EPA undertake targeted campaigns geared toward families with children, daycare centers and schools to educate on the benefits of testing and how to add filters to their water systems. Additionally, EPA should consider providing no-cost filters to families with young children, as well as funding to replace lead pipes and fixtures in schools and daycare facilities.
- **Engage in general public education.** We encourage EPA to undertake a public education campaign geared toward homeowners on the importance of testing their drinking water and provide resources and options for how to address potential problems. This education campaign should properly outline the public health risks associated with lead exposure, potential sources of lead in the home (such as service lines or fixtures) and offer workable and affordable solutions.

Attached to this letter are comments from the National League of Cities and The U.S. Conference of Mayors (dated January 13, 2012) on the agency's previous federalism consultation regarding regulatory revisions to the Lead and Copper Rule, which provide additional comments and concerns.

On behalf of the nation's cities, counties and mayors, thank you for considering the local government perspective on this important issue. As you move forward with the rulemaking process, we urge you to continue to consult with local

governments to ensure that any rule is effective, implementable and cost-efficient. If you have any questions, please contact us: Carolyn Berndt (NLC) at Ex. 6 or Berndt@nlc.org; Julie Ufner (NACo) at Ex. 6 or jufner@naco.org; or Judy Sheahan (USCM) at Ex. 6 or jsheahan@usmayors.org.

Sincerely,



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cc: EPA Office of Air and Radiation and Intergovernmental