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James C. Kenney
Cabinet Secretary

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February 11, 2020

Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20004

Re: Comments on Proposed Revisions to the Lead and Copper Rule, EPA-HQ-OW-2017-0300

Dear Administrator Wheeler:

The New Mexico Environment Department (NMED) submits these comments in response to the U.S. Environmental Protection Agency (EPA) request for comments and recommendations as it considers revisions to the Lead and Copper Rule (LCR) under the authority of the Safe Water Drinking Act (SDWA). The EPA published proposed revisions to the LCR in the Federal Register on November 13, 2019, and subsequently extended the comment period to February 12, 2020.

Protecting people from health impacts of lead and copper exposure in drinking water is a priority for NMED. In New Mexico, there are currently 713 public water systems that must comply with the requirements of the LCR. As a public health agency, NMED supports regulatory changes that tackle the daunting challenges of finding and replacing lead service lines and better protect children and other members of the public.

NMED's key concerns regarding the proposed rule are related to drinking water treatment requirements, the timeline for lead service line inventories, lead service line replacement, sampling reliability and laboratory capacity, risk communication, protecting children in schools and childcare facilities, protecting surface water quality, and resource demands for states and public water systems. These concerns are well-covered in comments that we support from three state associations, the Environmental Council of States (ECOS), the Association of State Drinking Water Administrators (ASDWA), and the Association of Clean Water Administrators (ACWA). ASDWA's comments are particularly detailed and provide a thorough assessment of impacts to state drinking water programs associated with the proposed rule.

New Mexico is a rural state with 1,076 public water systems. Of the 570 community water systems, 88% serve populations under 1,000. Many small systems face various challenges associated with limited capacity. As a result, we anticipate water systems in New Mexico will require several years to develop accurate distribution system inventories that identify lead service lines. This process, as well as lead service line replacement, will also generate a significant increase in the workload for NMED. Therefore, NMED supports ASDWA's recommendation for a four-year initial implementation timeframe for inventories and updated compliance sampling plans.

In addition, NMED offers several general comments on the proposed rule. First, NMED strongly encourages the EPA to develop clear definitions, as suggested by ECOS, and employ plain language principles in crafting the final regulatory text. If state drinking water experts have difficulty understanding the rule, implementation will be more resource-intensive and less consistent across the country. Furthermore, we are concerned that the regulated community – public water systems – will also have difficulty understanding many of the regulatory provisions.

Second, NMED urges the EPA to begin planning now for roll-out and implementation of this rule revision. As noted in comments from the state associations, prompt guidance and technical assistance to states is an essential component of realizing our shared goal of protecting public health from lead and copper in drinking water. For example, states will look to the EPA for tools and training related to Safe Drinking Water Information System (SDWIS) reporting and tracking to comply with the final rule revisions.

Third, it is critical that the EPA not underestimate the rule's resource implications, both time and money, as the Agency develops the final rule. ASDWA suggests various ways for the EPA to simplify the final rule, thereby reducing implementation costs, while retaining the critical health protections. NMED adds that the EPA should work closely with ASDWA, individual states and other key stakeholders in developing the economic analysis and information collection request for the final rule, to ensure the final rule is grounded in real fiscal impacts at the state and local level. NMED estimates that the proposed rule provisions would require our department to triple or quadruple the staff resources devoted to LCR implementation.

I appreciate this opportunity to comment on a regulatory change that is so significant for national and local public health programs. I urge EPA to work diligently and in coordination with states to identify additional resources to support states' efforts to effectively implement the revised Lead and Copper Rule.

Sincerely,



James C. Kenney
Cabinet Secretary

Cc:

Kathryn Kunkle, Cabinet Secretary, New Mexico Department of Health
Courtney Kerster, Director of Federal Affairs, Office of Governor Michelle Lujan Grisham
Rebecca Roose, Director, Water Protection Division, NMED
Joe Martinez, Chief, Drinking Water Bureau, NMED