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CABINET SECRETARY

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EPA Docket Center
Office of Ground Water and Drinking Water Docket
Mail Code 2822IT
1200 Pennsylvania Avenue NW, Washington, DC 20460

Submitted electronically to: <https://www.regulations.gov/>

RE: Proposed Lead and Copper Rule Improvements (LCRI): Docket ID No. EPA-HQ-OW-2022-0801

Dear Administrator Regan,

The New Mexico Environment Department (NMED) appreciates the opportunity to submit comments to the U.S. Environmental Protection Agency (EPA) on the *Proposed Lead and Copper Rule Improvements (LCRI)* under the authority of the Safe Drinking Water Act (SDWA). EPA published the proposed rules in the Federal Register on December 6, 2023, Docket ID No. EPA-HQ-OW-2022-0801.

NMED serves as a coregulator with the U.S. EPA for the National Primary Drinking Water Regulations (NPDWRs) and is responsible for overseeing their implementation across 1,064 active public water systems in New Mexico. Protecting New Mexico's drinking water quality for present and future generations is fundamental to NMED's mission.

The proposed LCRI would revise the most recent lead and copper rule, the LCRR, which was promulgated on January 15, 2021. The U.S. EPA is proposing to require water systems to replace lead service lines, remove the lead trigger level, reduce the lead action level to 0.010 mg/L, and strengthen tap sampling procedures, among other changes that would improve public health protection and simplify the rule relative to the 2021 Lead and Copper Rule Revisions (LCRR). The proposed LCRI also proposes improvements for corrosion control treatment, public education and consumer awareness, requirements for small systems, and sampling in schools and childcare facilities.

As mentioned in our February 11, 2020, comment letter on the Proposed Revisions to the Lead and Copper Rule, protecting people from health impacts of lead and copper exposure in drinking water is a priority for NMED. In New Mexico, there are currently 691 public water systems that must comply with the requirements of the LCRR and the proposed LCRI. 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.

New Mexico is a rural state and of the 691 community water systems subject to the LCRR and LCRI, 80% serve populations under 1,000. Many small systems face serious challenges associated with limited technical, managerial, and financial capacity. The proposed LCRI will also generate a significant increase in the workload for NMED staff that will be required to assist our community and non-transient, non-community water systems with these proposed rules.

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As we mentioned in our comments to the LCRR, which we re-emphasize here, it is critical that the U.S. EPA not underestimate the resource implications, both time, money, and overall resources in implementing rules such as the LCRR and LCRI. The U.S. EPA must continue to work closely with the Environmental Council of the States, the Association of State Drinking Water Administrators (ASDWA), individual states and other key stakeholders in developing the tools and guidance that states and communities will rely upon for rule implementation.

Many of the public water systems that are impacted by these regulatory changes, especially those in small and disadvantaged communities, struggle to manage the day-to-day operations of their systems. Many will also struggle to fully understand and implement these complex and often expensive regulatory requirements. This increases the technical, regulatory, and compliance responsibilities of our limited agency staff.

NMED reiterates that the LCRI will require our department to triple or quadruple our current staff resources devoted to LCR implementation. Long term and permanent federal funding for Public Water System Supervision (PWSS) and Drinking Water State Revolving Fund (DWSRF) for these rules is critical. State drinking water primacy staff are increasingly struggling to manage the frequency and broadness of federal regulatory changes while also trying to assist our community and non-community water systems with much needed compliance and capacity challenges. Recent regulatory determinations for the Revised Lead and Copper Rule, Lead and Copper Improvement, PFAS, Consumer Confidence Reports, are just a few of the recent changes that are required to be managed without guaranteed and specific long-term funding for the staffing required to manage these regulations.

NMED appreciates the additional effort that the U.S. EPA is taking to ensure the effective implementation of this complex drinking water regulation. NMED also values the opportunity to comment on this regulatory revision that will ensure a safe and reliable drinking water supply for New Mexico consumers.

Sincerely,



James C. Kenney
Cabinet Secretary

Cc: Courtney Kerster, Senior Advisor, Office of Governor Michelle Lujan Grisham
Sydney Lienemann, Deputy Cabinet Secretary of Administration, NMED
Zachary Ogaz, General Counsel, NMED
John Rhoderick, Director, Water Protection Division, NMED

Attachment 1:

Comments on EPA's Proposed Lead and Copper Rule Improvements (LCRI) December 6, 2023

Introduction

The U.S. Environmental Protection Agency (EPA) is proposing revisions to the National Primary Drinking Water Regulation (NPDWR) for lead and copper under the authority of the Safe Drinking Water Act (SDWA). In this document, EPA is proposing to require water systems to replace lead service lines, remove the lead trigger level, reduce the lead action level to 0.010 mg/L, and strengthen tap sampling procedures, among other changes that would improve public health protection and simplify the rule relative to the 2021 Lead and Copper Rule Revisions (LCRR). This proposed rule provides improvements in the additional following areas: corrosion control treatment, public education and consumer awareness, requirements for small systems, and sampling in schools and childcare facilities. EPA's proposed rule aims to address potential disproportionate impacts of lead in drinking water in communities, including through proposed lead service line replacement and public education, among other areas of the proposed rule.

The health effects of these contaminants are clear. Lead exposure causes damage to the brain and kidneys and can interfere with the production of red blood cells that carry oxygen to all parts of the body. Exposure to lead is known to present serious health risks to the brain and nervous system of children. Young children and infants are particularly vulnerable to the physical, cognitive, and behavioral effects of lead due to their sensitive developmental stages. There is no known safe level of exposure to lead.

Key Concerns

New Mexico is a rural state with 1,064 public water systems. Of the 691 community water systems subject to the LCRR and LCRI, 80% serve populations under 1,000. Many small systems face various challenges associated with limited capacity. Many of these communities are challenged with failing infrastructure and overall inability to effectively manage their day-to-day operations. While the funding provided by the Infrastructure Investment and Jobs Act (IIJA) and other federal grant resources provide a mechanism for communities to pay for projects required by LCRR and LCRI, we anticipate that many of these communities may be forced to choose between funding a critical piece of infrastructure such as a drinking water supply well, storage tank, or other critical system improvements versus funding lead service line identification and replacement projects. This is because many of these small and disadvantaged communities lack the capacity to take on multiple large-scale projects and engage in the significant effort needed to receive funding through these federal grant programs.

While NMED and our third-party assistance providers work tirelessly to assist communities with understanding and complying with regulations such as the LCRR and the LCRI and assisting these communities with navigating the funding requirements, much of our time is taken up by assisting communities with the daily challenges of keeping clean drinking water flowing in their communities. This leaves communities, and NMED, with very limited time and resources to develop strategies to assist with service line inventories and service line replacement programs as required by the LCRR and LCRI.

State Staffing and Resource Implications

Grants to states across EPA's portfolio must include the required long term and permanent additional funding to address associated costs for compliance with this proposed regulation. As an example, LCRI anticipates a 10-year window for lead service line replacements, which means that state primacy agencies like NMED will be required to ensure public water system compliance with lead service line replacements

over that 10-year timeline. While NMED is pursuing additional staffing resources with our IJJA grant set-asides, those grants are set to expire within the next four years, leaving NMED with an additional 6+ years of unfunded staffing resources to implement the LCRI. NMED agrees that the replacement of lead service lines, reduction of the lead action level, the enhanced public education requirements are all worthwhile, many states, including New Mexico rely heavily on federal grant dollars to help implement our state drinking water regulatory programs, specifically, the federal Public Water System Supervision (PWSS). Grant dollars are being stretched more thinly with increasingly complex and demanding workloads resulting from implemented regulations such as the Revised Total Coliform Rule, Disinfection Byproduct rules, Lead and Copper Rule Revisions, proposed Consumer Confidence Rule revisions and now PFAS regulatory determinations. The overall resources required to effectively implement these rules have increased over the years; however, the permanent federal grant dollars have not kept pace with those resource demands.

State primacy agencies like NMED are managing a significant increase in overall workloads due to additional factors such as the tracking and reporting requirements of the IJJA and other complex compliance requirements while facing retirements of technical staff and trained operators, putting states in the unreasonable and unsustainable position of being forced to do more with less. Additionally, recent Congressionally Directed Spending (CDS) has been using DWSRF capitalization grants as a mechanism to fund CDS community projects, further reducing and negatively impacting long standing primacy agency grant funding sources. NMED encourages EPA to review ASDWA's white paper on the [Hidden Consequences of Congressional Directed Spending Impacts on Drinking Water Programs](#). Long-term and permanent federal grant funding is needed to fully implement a robust drinking water program to ensure safe and sustainable drinking water supplies for all New Mexicans.

Small Systems

Approximately 80% of public water systems in New Mexico subject to the LCRR and LCRI, serve populations under 1,000 people and often operate with volunteer boards, administrators, and in some cases, operators. Small system compliance with the proposed LCRI will be challenging. These small community water systems are often disadvantaged and require a significant amount of assistance from our drinking water program to achieve and maintain compliance with increasingly stringent drinking water regulations. NMED works tirelessly to provide as much assistance to these communities as possible through our IJJA set-aside grant funds, however, we anticipate that the need for assistance is going to outpace our resources and our ability to provide the needed hands-on assistance that these communities will require.

On top of the overall challenges of achieving compliance with these proposed regulations, NMED anticipates that many of our small and rural communities may have outdated or nonexistent construction or plumbing records which will make complying with the LCRR and LCRI lead service line identification and replacement requirements significantly more challenging and will require much more hands on assistance from our limited staff or our assistance partners.

Final Considerations

In New Mexico, public water system compliance sampling is paid by Water Conservation Fund (WCF). The WCF is a state specific fee required to be paid by every public water system to support compliance with federal Safe Drinking Water Act (SDWA) sampling and analysis. This fund has a flat yearly revenue and is

insufficient to cover existing water sampling costs, let alone the increased costs of compliance with the proposed lead and copper revisions as well as the other proposed regulatory revisions being considered by EPA. Many small and disadvantaged communities in New Mexico have difficulties paying into this fund. As a result of the LCRR, LCRI, and other federal regulatory determinations, NMED will have no choice but to pursue a fee increase to ensure the long-term ability for this fund to pay for the increase in compliance sampling requirements. While NMED understands that this is a state specific issue, we urge EPA to take these issues into consideration when making these types of regulatory determinations.