WRC
WATER RESOURCES COMMISSIONER

*Jim Nash*

February 12, 2020

Office of Information & Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington DC 20503

Re: National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Revisions
Docket No. EPA-HQ-OW-2017-0300,
ICR Reference No. 201911-2040-002

To Whom It May Concern:

Please find public comments attached in response to the USEPA's Proposed National Primary Drinking Water Regulation: Proposed Lead and Copper Rule Revisions (Docket ID No. EPA-HQ-OW-2017-0300).

Michigan has been at the forefront of new lead and copper rule activities for the past few years and my office offers these comments based on experiences and lessons learned as a local water supply agency serving twenty unique local water supply systems throughout Oakland County, Michigan.

These comments include recommendations for a comprehensive approach to address lead as a public health challenge. Representatives of Oakland County look forward to further discussion on this topic.

Sincerely,

Jim Nash

cc: Rudy Hobbs, Deputy County Executive
Kathleen Forzley, Director of Health and Human Services

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**COMMENTS ON U.S. EPA'S PROPOSED NATIONAL PRIMARY DRINKING WATER REGULATION: PROPOSED LEAD AND COPPER RULE REVISIONS**
**DOCKET ID NO. EPA-HQ-OW-2017-0300**

## Executive Summary

This public comment document is provided in response to the USEPA's Proposed Lead and Copper Rule Revisions (Docket ID No. EPA-HQ-OW-2017-0300). The comments set forth share concerns regarding conflicts between state and federal rules as well as ask questions for needed clarification on implementation by local water supply operators.

Like Michigan's revised lead and copper rules, by the Department of Environment, Great Lakes & Energy (EGLE), the USEPA's Proposed Lead and Copper Rule Revisions (LCRR) will create issues of water affordability due to the State of Michigan needing to increase the annual water fee charged to water systems to meet new federal requirements and lead service line replacement will result in increased water rates to consumers. The Oakland County Water Resources Office is also concerned that the resources to be spent on the revised Rules will not address the primary sources of lead exposure affecting residents' health, such as lead contained in sources besides water.

The first step for all lead rule changes should begin with public education on water quality in the home, along with new, additional, or increased water quality parameter sampling and service line inventories. Then, based on sampling results, we could look at what really needs to be changed through the rulemaking process.

## Comments to Proposed Lead and Copper Rule Revisions

### *Action Level (AL) and Trigger Level (TL)*

- The LCRR leaves the Action Level set at 15 ppb, but this will conflict with Michigan's 12 ppb Action Level which becomes effective January 1, 2025.
- The LCRR proposes a new trigger level of 10 ppb and will result in requiring various responses to comply with Michigan's rules and the federal rules. It will be important for the state and the EPA to collaborate to formalize exactly what is required of water systems reporting to ensure efficient use of resources while maintaining compliance.
- Exceeding the 90$^{th}$ percentile Action Level in the LCRR will be a Tier 1 violation rather than requiring an action. The LCRR proposes that Tier 1 notification needs to be completed within 24 hours. This type of notification has historically been needed for immediate health concerns in a water system, such as a boil water notice or a "do not drink" contamination issue, not for a lead Action Level exceedance. The stringent 24-hour notice requirement can pose a significant compliance challenge for water supplies.

### *Lead and Copper Tap Monitoring*

- Michigan's revised Lead and Copper Rules require two bottle sampling at homes with lead service lines to capture the first and fifth liters of water. This aspect of the Michigan rules was intended to detect lead present at the sampled faucet or interior plumbing and to detect lead present in the water service line connecting the building to the water main.

Michigan counts the highest result from the same site regardless of the number of samples collected. It appears that the EPA will count each sample result independently even though they are from the same site. The differing sampling and monitoring requirements present a conflict between state and federal rules. How should this be reconciled? The question also arises as to whether the LCRR provides a representation of the overall water system?

- Water systems with lead service lines can only use the highest Tier 3 and Tier 4 results in the 90th percentile calculation if there are not enough Tier 1 and 2 sites to meet the minimum sampling requirement. Discounting other Tier 3 and Tier 4 results is not representative of the water system overall. This will adversely affect systems operated by and within Oakland County, Michigan as well as across the state.
- The LCRR proposed trigger level also increases the number of required samples.
- Water sampling performed by a consumer counts towards the 90th percentile calculation if these samples fit the criteria (for example, LSL/Tier 1 or 2; not count if Tier 3 or 4 in a system with LSL if the result is low) at Section 141.86(e) page 61763. Please address consumer-collected samples outside of the compliance period or if the water system doesn't have lead service lines; do these samples count toward the compliance calculation?
- As required in the LCRR at Section 181.86(i), all results used for calculation must be made public (without the building address). Please clarify whether water supplies must or can make low results public as well. Showing the totality of results may serve to reduce public fear and concern about water quality.
- The LCRR proposes a method detection level for lead to be required at 1 ppb however not all laboratories have used 1 ppb as the reporting limit. How can this be addressed?

***Corrosion Control Treatment (CCT) and Water Quality Parameters (WQPs)***

- It appears from the LCRR that any large water system with a 90th percentile sampling results greater than 5 ppb may be required to evaluate for and install corrosion control treatment. This would add another lead level to contend with (5, 10, 12, 15 ppb). Is 5 ppb now the new, unspoken trigger. See Section 141.82(b)(3). How does this affect consecutive systems?
- The LCRR proposed having a 3 mg residual of orthophosphate in the distribution system which is problematic and extremely difficult to obtain. This should not be a hard and fast number. The required residual should be based on the specifics of each water system and part of their individual corrosion control treatment plan. We have concerns regarding the effects of higher phosphate concentration in wastewater and consumers' in-home water treatment equipment.
- Find and Fix: the water quality parameter sites required for "find and fix" will typically be in residential areas. Requiring the addition of these sites onto the water quality parameter plan to be sampled moving forward is not realistic because we would need access to consumers' homes. This places an undue burden on the water system for just one home.
    - Alternative solution: If an individual sample exceeds the action level, follow up sampling should take place after investigating why the sample was high in the first place. Was there an old faucet mount filter that was bypassed for the sample? Have the aerators never been cleaned out? Is it an antique faucet? Then,

investigative samples should be collected if the consumer is willing to cooperate. If this is the only building that exceeds the action level in the entire sampling pool, no further water quality parameter testing or corrosion control treatment studies should need to take place.

***LSL Inventory and LSLR Plan***

- Disturbances (i.e. meter changeout, water shut off/turn on) will require the provision of a water filter pitcher and additional filters at Section 141.86(e)(5)(ii).
- Filters: the water system should not be required to provide filters to consumers. If the filters are not properly maintained, they could cause more harm than good. Flushing instructions and education has been noted by EGLE staff as significantly reducing the lead level in drinking water, especially after a full lead service line replacement. Where is the science showing that flushing and education is insufficient without also providing filters?
- Please clarify what an "unknown service line" is. If the home is built after the year lead was not used as service line material in that water system, but we have not seen the service line material and do not have tap records, does this count as "unknown" where we must mail notification and include the consumer's home in the service line replacement calculations?
- Please clarify if there is a requirement to sample after a full lead service line replacement or just a partial. What's the science behind sampling 3-6 months after replacement? Michigan requires sampling within 72 hours after a partial replacement. However, Michigan does not require sampling after a full lead service line replacement.
- The LCRR notes that a lead gooseneck must be replaced when found, but it is not considered a lead service line unless followed by lead or galvanized. Michigan would determine this to be a partial lead service line replacement and partial lead service line replacements are prohibited in Michigan. Please reconcile this conflict between state and proposed federal rules.
- Please clarify the proposed annual outreach to lead and unknown service line consumers by January 15 of each calendar year, at Section 141.85(h)(2). Does this mean mailing and serving all notices between January 1 and January 15 each year? If so, this would result in more than 8,500 letters just for this office alone. Why does the LCRR allow for only two weeks to mail? We also have a concern about part-time residents and whether they would ever see the letter.
- The LCRR proposes that the inventory must be made public but that the address does not need to be included. Please clarify exactly what content should be included in the public inventory.
- The LCRR proposes that failure to meet the lead service line replacement goal, at Section 141.85(g), requires a water supply to choose one or multiple notices from the following options: conduct a social media campaign, contact plumbers and contractors, send certified mail to consumers with a lead service line, conduct a town hall meeting or community event, visit targeted consumers. In this instance the lead service line replacement goal is based on exceeding the trigger level, unlike in Michigan. Please consider the amount of resources needed to comply with the notice requirements set forth as well as the public scare that might arise due to these actions. The intended result may not be justified depending on why the lead service line goal was not achieved.

- For example, what if the water supply was only short in replacing a few service lines from the goal? What if the remaining customers refuse to work with the water supply to replace their service lines? We suggest that the USEPA first meet with the state authority to review the reason for not meeting the goal before taking required public notice action.

***Public Education and Outreach***

- The LCRR proposes 24 hours to notify consumers if the 90$^{th}$ percentile of their individual results exceeds the action level, and this is a very short amount of time for such notification. We suggest that the notice period be extended to at least 72 hours. Michigan allows 30 days for individual result notification (although the state recommends notice as soon as possible and in fact that is what we strive to accomplish).
- The LCRR's proposed outreach to particular groups (healthcare, etc.) is difficult at best to achieve because water supplies do not possess a list of the required groups and contact information. Please explain more specifically how this can be accomplished.

***Lead in Drinking Water at Schools and Child Care Facilities***

- The LCRR proposes that lead in drinking water at schools and child care facilities should fall within the purview of local water supplies. This should not be the water system's responsibility. This should be required directly of schools and day care facilities by the USEPA or Michigan's state authority, EGLE. These sample results will not be used for compliance or in determining corrosion control decisions, so they are not relevant to the water system as a whole. Water systems can educate these facilities on water quality, but water supplies would again still need addresses of such facilities from the state.

***Primacy Agency Reporting***

- The reporting requirements in the LCRR are much more expansive than any other part of the Safe Drinking Water Act. This will overwhelm state and local water departments across the country.