



AMERICAN PUBLIC WORKS ASSOCIATION

*Your Comprehensive
Public Works Resource*

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January 9, 2024

Submitted via <https://www.regulations.gov>

U.S. Environmental Protection Agency
EPA Docket Center
Office of Ground Water and Drinking Water Docket,
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Proposed Rule, Environmental Protection Agency, "National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI)," Docket ID No. EPA-HQ-OW-2022-0801

Dear Assistant Administrator Fox:

On behalf of the more than 32,000 members of the American Public Works Association (APWA), we are grateful for this opportunity to submit comments to the United States Environmental Protection Agency (EPA) on proposed revisions to the National Primary Drinking Water Regulation (NPDWR) for lead and copper. Public works shares the administration's commitment to the Safe Drinking Water Act (SDWA) and protecting Americans from harmful contaminants. APWA has engaged with EPA over many years and been supportive of efforts under the administrations of both political parties to deliver needed infrastructure improvements.

Public works appreciates the multitude of tasks EPA has been given and understands this has been a lengthy process from conducting research to translating findings into regulatory policy. APWA includes not only personnel from local, state, and federal agencies, but also private sector personnel with direct oversight, expertise, and involvement in scientific matters for their respective organizations. As such public works professionals often must look at these issues in a holistic manner across all water systems. The responsibilities of our nation's public works professionals include the planning, design, construction, and maintenance of infrastructure while balancing those tasks with protecting the environment and public health. Our members take these duties very seriously and are constantly looking for avenues to submit constructive input as to how we can achieve a balance between sound guidelines that protect the public as well as the environment while limiting regulatory burdens that may negatively impact valuable projects.

There is no doubt that our nation's infrastructure needs updating and maintenance, and in some cases full replacement. Drinking water, wastewater, stormwater, sanitation, cybersecurity, and much more need investment right now. While the federal government does provide funds for projects like these across the country and our members are grateful for additional resources through the Infrastructure Investment and Jobs Act/Bipartisan Infrastructure Law, it is becoming

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increasingly clear the funds provided are insufficient to meet the rising cost burden from new or more stringent regulations.

As the administration has noted the infrastructure law provides \$55 billion to support upgrades to the nation's water infrastructure, with projections speculating a cost of \$30 billion to replace all lead service lines (LSLs). However, only \$15 billion of this is dedicated to LSL replacements while the rest is being stretched by multiple demands particularly the \$11.7 billion of general Drinking Water State Revolving Funds (DWSRF). The DWSRFs can support the replacement of LSLs, but they are also being utilized for addressing other contaminants like per- and polyfluoroalkyl substances (PFAS) in drinking water systems and as pay-fors for congressionally directed spending (earmarks). These two factors are significantly reducing available funds. Since 2022 alone Congress has earmarked \$2.3 billion or 42% in annual federal funding for state SRF projects. Meanwhile, other infrastructure law funds have also been reserved for specific purposes including \$6 billion for emerging contaminants, \$4 billion for PFAS in drinking water, \$6.6 billion for western water infrastructure and resiliency, and \$11.7 billion for the Clean Water State Revolving Funds (CWSRF). These dollars are also not going as far due to inflation and cost projections are likely to continue rising in the next decade especially with permitting delays and added expenses from expanded requirements under Davis-Bacon and Buy America when suitable components are unavailable domestically. All of this threatens to shift much of the cost to communities and ultimately the citizens they serve.

We urge that if the administration wants to prioritize the removal of LSLs that it carefully considers these other variables and any opportunities to provide relief whether through changes to other proposed regulations, exemptions, and more flexibility in conjunction with greater funding. Some changes would be contingent on Congress too and we encourage the administration to work with stakeholders in developing a coherent and convincing message to lawmakers to secure any necessary adjustments. We expect the administration to fulfill their pledge that utilities and their ratepayers will not be required to pay to replace lead pipes on private property provided they replace whole pipes.

We also appreciate EPA's promise of additional water technical assistance (WaterTA), including the recently launched Get the Lead Out Initiative that partners with 200 underserved communities nationwide to help identify LSLs, develop replacement plans, and apply for funding. As methods are further refined, we request the agency will share updates on successful practices and tools through virtual and in-person trainings along with potentially more partnerships. In the interest of making these upgrades as expeditiously as possible, we hope EPA will identify opportunities to streamline processes by removing any potential redundancies, simplifying procedures, and making sure other agencies are aware for projects that are more complex and use a combination of funds. We believe these efforts will prove most critical for other disadvantaged communities with limited resources who may need greater guidance in combination with more accessibility to federal funds. It is important to recognize that the challenges for some will be far greater than others and we are hopeful that EPA will remain thoughtful through this process particularly as we learn more from the

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development of a national inventory of LSLs. Bearing this in mind, we are pleased EPA has stressed feasibility in this proposal asserting that:

EPA finds that a minimum average annual replacement rate of 10 percent, calculated across a rolling three-year period and corresponding to a 10-year replacement deadline, is feasible as defined in SDWA section 1412(b)(4)(D) because it is technically possible for systems of all sizes and affordable relative to large water systems. EPA estimates that a 10-year replacement deadline is feasible for 96 to 99 percent of CWSs nationwide (USEPA, 2023g).

For many systems this deadline is difficult to attain. We understand the agency is proposing two eligibility criteria for systems to defer their LSL replacement deadline past 10 years in accordance with a schedule that is feasible and prevents known or anticipated adverse health effects of lead to the extent possible. We appreciate the first criteria takes into consideration systems with a high proportion of LSLs and galvanized requiring replacement (GRR) service lines in their distribution system relative to their total number of households served. Moreover, that EPA acknowledges financial sustainability and affordability must be maintained for these systems through the replacement process and through the use of methods such as corrosion control treatment and point-of-use devices to protect households. For the second eligibility criterion we believe the alternate annual service line replacement threshold of 8,000 service lines per year to be more realistic given the resources larger systems may need to marshal and coordinate. As the agency has pointed out, this level would ideally allow for more flexibility in locating sufficient labor and materials within certain regions and distributing work in a more efficient manner that helps to better account for weather, economic conditions, and the composition of buildings requiring replacements.

Furthermore, as the agency stated in the Federal Register, additional time and engagement may be necessary for some property owners to receive consent to remove LSLs from their properties. For those who refuse treatment for their service lines, we advise they be deemed not under the control of the water system and forego replacement of the lines until permission has been granted. As for the proposed level of “reasonable effort”, we advise the number of attempts to engage the property owner and methods of communication are best decided by localities who know what is most effective when conducting outreach with their citizens.

Again, while the objectives of the proposed rule are well meaning, we want to ensure that resources are not misallocated from other efforts that are critical to certain communities such as improvements to resiliency and addressing other forms of contamination, which otherwise could result in a lower quality of life for residents, as well as lower environmental protections and higher public health risks. We want to ensure respect for local authorities regarding infrastructure and encourage close coordination across federal, state, and local governments to enhance the project process and avoid overwhelming public works professionals in carrying out their responsibilities especially for limited staff in small and disadvantaged communities.

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APWA members pride themselves on being committed to public service by profession, and on being a resource for federal initiatives is just another way we work to protect our communities. We look forward to continuing to work with the EPA to share information with our membership as well as provide input on behalf of public works practitioners across the country. If APWA may be of further assistance, please contact Ryan McManus, APWA Government Affairs Manager, at rmcmanus@apwa.org or 202-218-6727.

Thank you for your time and consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Gary Losier". The signature is fluid and cursive, with the first name "W." and last name "Losier" clearly visible.

W. Gary Losier, PEng
APWA President

A handwritten signature in black ink, appearing to read "Scott D. Grayson". The signature is fluid and cursive, with the first name "Scott" and last name "Grayson" clearly visible.

Scott D. Grayson, CAE
Chief Executive Officer

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