CLEAN WATER ACTION
CLEAN WATER FUND

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Re: National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Improvements, Docket ID No. EPA–HQ–OW–2022–0801

Clean Water Action and Clean Water Fund respectfully submit these comments regarding the Environmental Protection Agency (EPA) National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI).

Comments Related to Line Service Line Replacement

Mandatory Replacement Requirement

Our engagement in revisions of the Safe Drinking Water Act Lead and Copper Rule has emphasized the need to fully replace all lead service lines. We fully support the proposal to require all water systems subject to the Rule's provisions to fully replace lead service lines within ten years. We have focused on lead service lines as a critical aspect of controlling lead in drinking water for a number of reasons:

- We have long known that lead can harm the developing brains of infants and children. Now we know that even low-level exposure contributes to cardiovascular disease, which widens the circle of concern. Replacing lead service lines - the largest source of lead in drinking where they are present – will reduce lead in drinking water and therefore overall lead exposure, every bit of which matters to everyone's health.

- Because exposure to all sources of lead disproportionately burdens people of color and low-income people, any added exposure from lead in drinking water compounds this inequity.
- Momentum toward this goal is greater than it has ever been as indicated by water system activities, state policy developments, Congressional interest, and EPA's own proposal.

EPA's proposal is consistent with commitments made in the White House Lead Pipe and Paint Action Plan and with the findings of the 2021 Lead and Copper Rule Revisions (LCRR) review, which found that "Replacing 100 percent of lead service lines is an urgently needed action to protect all Americans from the most significant source of lead in drinking water systems."[1]

The 2021 LCRR, while not requiring mandatory lead service line replacement, suggested that fully replacing lead service lines would be appropriate and achievable. Inventory and replacement plan requirements put key aspects of a program in place. In *Strategies to Achieve Full Lead Service Line Replacement (LSLR)*, an EPA document published to support the proposed LCRR, EPA noted that "LSLR programs can be structured in ways to overcome potential legal, financial, and practical challenges related to full LSLR."[2] Using lead in water distribution systems - a practice that began over 100 years ago - was a regrettable choice about which there was concern about public health risks at the time.[3] EPA's proposal appropriately recognizes that since full lead service line replacement is the best way to protect public health and is achievable, then it should be incorporated into the Rule's requirements.

Lead Service Line Definition

In clarifying the definition of a "Lead Service Line," EPA appears to have removed an essential sentence: "A lead service line may be owned by the water system, owned by the

[1] *Review of the National Primary Drinking Water Regulation: Lead and Copper Rule Revisions (LCRR)*, 86 Fed. Reg. 71574 (Dec. 17, 2021
[2] *Strategies to Achieve Full Lead Service Line Replacement*, October 2019, EPA 810-R-19-003, page 5
[3] Rabin, Richard, *The Lead Industry and Lead Water Pipes: 'A Modest Campaign*, American Journal of Public Health, Vol. 98, No. 9, September 2008

property owner, or both."[4] This is critical to protecting public health, as well as to Rule requirements including inventory development and full lead service line replacement. If service ownership is left ambiguous in EPA's definition, then the intent of EPA's emphasis on full replacement and on discouraging partial replacements throughout the proposal could be negated. Any ambiguity around what constitutes a lead service line and what is required to be included in the inventory and to be replaced is likely to undermine EPA's overall goal of achieving full replacement of all lead service lines.

Cost-Sharing in Replacement Programs

We have consistently urged EPA to require water systems to cover the full cost of replacement regardless of ownership or whether the line is located under private or public property. The environmental justice review commissioned by EPA as part of the LCRR rulemaking process in 2019 found that presuming customers must pay for things, including covering part of the cost of lead service line replacement, leaves low-income people with inequitable access to the benefits of reducing lead in their water and puts them at disproportionately higher health risk.[5] The environmental justice review for the current proposal found that replacement programs relying on cost-sharing could result in more replacements for high-income households, and notes other proposed provisions intended to counter this potential inequity. These equity provisions, intended to reduce differential impact, include: requiring equity considerations in replacement plans; increasing transparency by requiring replacement plans be public, and calculating the replacement rate on a 3-year rolling average to account for possible delays caused by targeting child care facilities, schools, or areas with higher lead exposure. We support these provisions but remain concerned that they do not fully counter the inequities involved in requiring customers to share the cost of replacement. [6]

[4] 40 C.F.R. §141.2

[5] Abt Associates, *Environmental Justice Analysis for the Proposed Lead and Copper Rule Revisions*, October 22, 2019, Docket No. EPA-HQ-OW-2017-0300-0008

[6] *Environmental Justice Analysis for the Proposed Lead and Copper Rule Improvements,* EPA, November 2023, pages 88-89, Docket No. EPA-HQ-OW-2022-0801-0689

While requiring customers to contribute has historically been a common practice, this is changing. Water systems are finding ways to conduct and finance replacements without customer contributions. Cost-sharing programs themselves create inefficiency and increased work for strained water system workforces. Perpetuating this antiquated approach will undermine the lead service line replacement and public health protection goals of the proposal.

EPA proposes to "remain neutral"[7] on cost-sharing, which they determine to be a matter of State and local law. Yet, EPA is also "strongly encouraging customer-side replacement to be offered at no direct cost to the customer wherever possible to achieve higher customer participation rates and reduce environmental justice impacts that may result when customers cannot afford to replace their portion of the line."[8] This underplays the potential impact of requiring customers to pay for part of replacement costs. In most cases, customers will be able to refuse to contribute regardless of their ability to "afford" this cost, thus seriously limiting the ability to achieve full replacement of all lead service lines.

EPA should revisit the decision that it is not within their authority to require systems to cover the full cost of replacement. EPA's requirement that States and systems identify barriers to full replacement is a positive step to identifying where State and local laws prohibit the no-cost sharing practices that EPA is strongly encouraging. EPA should work with States and systems on how to overcome these State and local impediments to protecting public health and meeting new SDWA requirements.

Control and Access Issues

EPA proposes to define "control" of lead service lines as legal and physical "access."[9] This leaves unacceptable uncertainty for systems and States, and interferes with full replacement goals. "Access" could be interpreted in very different ways. In the proposal, EPA discusses the potential for customers to refuse any replacement activity on their property regardless of whether a customer contribution is required. This will require documentation and

[7] National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI), 88 Fed. Reg. 84923 (Dec. 6, 2023)
[8] 88 Fed. Reg. 84923 (Dec. 6, 2023)
[9] 88 Fed. Reg. 84921 (Dec. 6, 2023)

procedures for attempting to replace the line when the property changes ownership or other circumstances change as EPA describes. However, "access" could also be interpreted far more broadly to mean that if a system does not own a portion of the line, it lacks control and therefore access. This would have unacceptable consequences for full replacement and public health protection. For example, it could be interpreted to mean that if a system doesn't own a portion of the service line that it therefore does not have access. EPA should define and clarify access more clearly in the regulatory requirements text to avoid this potential misinterpretation.

Deferred Deadlines

The deferred deadline proposal for systems with atypically high numbers of lead service lines formalizes an unacceptably long timeline for replacement. Because this applies only to a few systems, as EPA acknowledges, it should not be codified in the LCRI. EPA is already proposing to allow States to set a deadline of less than ten years for systems where the State determines if it is feasible. States should work with these systems that have atypical numbers of lead service lines to outline a schedule, perhaps in the form of a variance, rather than EPA setting a number in the LCRI. The goal of such an approach would be to avoid setting an upper limit that these systems might well be able to exceed, as EPA acknowledges, and to avoid having replacement incomplete for decades.

Partial Lead Service Line Replacements

We agree with proposals to prohibit partial replacements in most cases because of the potential to increase lead levels. However, EPA should do more than discourage partial replacements by signaling that the intention is to "virtually eliminate" the practice. A partial lead service line, whether it is under private or public property, is still a lead service line that contributes to elevated lead in drinking water. Presence of lead service lines is thus an ongoing public health risks and an impediment to the 100% replacement goal. Leaving part of a lead service line in place to ensure continued water service in the case of an emergency is reasonable, as long as mitigation activities are conducted and the system works to complete

the replacement. EPA should further restrict the exclusion for conducting partial replacements during planned infrastructure work that is not for the purpose of replacement. Precisely because such maintenance is usually planned well ahead of time, systems should be able to make arrangements with customers in the event that lead service lines are encountered. As water systems complete lead service line inventories and update them, they will be increasingly more prepared to identify when routine maintenance plans are likely to encounter lead service lines and at which homes or buildings. Where customer cooperation is impossible, the risk mitigation activities that would be required for emergency repairs can be conducted and other requirements for this situation would continue to apply.

A failure to reign in partial replacements to the greatest extent possible could result in the perpetuation of a practice that has left many partial lead service lines in place, particularly but not only on the "customer-owned" side or under private property. This complicates preparation of accurate inventories and replacement activities. A prohibition on partial replacements except in emergencies and special circumstances, with a goal of virtually eliminating this practice, is consistent with the public health protection goals of the LCRI.

Connectors

We support EPA's proposal to define connectors as being no longer than two feet and to require any lead connectors encountered to be replaced. We continue to recommend that lead connectors be included in the mandatory replacement requirement not only if they are encountered in the course of maintenance, repair, or replacement but also if they are identified through the records reviews required in the Inventory provisions of the Rule. As EPA notes, lead connectors are included in the inventory and customers served by pipe with a lead connector must be notified because lead connectors can contribute to lead in drinking water.

Service Line Inventory and Service Line Replacement Plan

We agree with EPA's proposal to conduct record reviews in order to include lead connectors in the required inventories, and to identify the locations of previously replaced lead connectors, and to track where lead connectors are replaced in the future.

We support the proposal to require systems to identify State or local laws or water tariff agreements that govern access to conduct full service line replacement and for States to notify systems in writing of similar State or local laws or constitutional requirements. These State or local laws could impact systems' ability to effectively carry out replacement requirements and need to be considered in development of replacement plans. This requirement can also help resolve confusion and lack of clarity around what, if any, impact such State and local provisions actually have on access and financing issues. EPA is requesting comment on whether plans should be updated in the case of any changes in State or local laws or other provisions that impact replacement plans, and we agree that updated plans should be required if these changes impact elements of the replacement plan.

EPA requests comment on the threshold for requiring systems to host inventories, inventory summary data, replacement summary data, and service line replacement plans online. Specifically, EPA requests comment on whether such a requirement should pertain to systems serving more than 10,000 persons rather than the 50,000-person threshold in the proposal. We think it is reasonable to require online hosting for systems serving greater than 10,000 persons since systems will have prepared these materials and submitted them to the State and should thus have the ability to host them online.

Action Level and Trigger Level

We support EPA's proposal to eliminate the LCRR Trigger Level and to lower the Action Level to 10 µg/L. The intention of the Trigger Level, which was to promote early action to reduce lead levels when sampling results demonstrated elevation was a good one. However, having two tiers of activities based on sampling results set up a complicated process for water systems and States to manage and for the public to understand. While the Action Level is not a health-based level and is intended to assess corrosivity and the effectiveness of any treatment, nonetheless increased understanding of health effects of lead at very low levels supports setting the Action Level lower than it was first set in the LCR.

EPA should re-examine the decision not to lower the Action Level to 5 µg/L as many public health and other stakeholders advocate. It is difficult for those outside the drinking water

sector and the regulatory community to understand the justification for setting the Action Level based on whether it is generally demonstrative of how well corrosion control treatment is working. While EPA's estimates do indicate that an Action Level of 5 µg/L would lead to more exceedances, and thus more burden on implementing State agencies, it is increasingly difficult to explain being more stringent in avoiding lead exposure in drinking water wherever possible. These perceptions still matter despite the fact that the Action Level itself is not set as nor does it function as a health-based level. Ongoing perceptions that regulations meant to control lead exposure in drinking water are not sufficient does not increase customers' confidence in their drinking water – an issue all stakeholders can agree is important. We are not arguing that the Action Level should be set based on public perception, but that given the communications inherent in a level that is not a health-based level and the ongoing debate around a lower Action Level that EPA should revisit the possibility that a lower Action Level would better support the overall LCRI goals. The health risk communication challenges inherent in the nature of the Action Level support the full lead service line replacement goals of the proposal, given that over time overall lead levels will go down.

Compliance Alternatives for a Lead Action Level Exceedance for Small Community Water Systems and Non-Transient Non-Community Water Systems

EPA requests comment on limiting small system flexibility to use point-of-us devices and plumbing replacement as compliance alternatives to systems serving 3,300 persons and fewer. We agree with EPA's proposal that these compliance alternatives in the case of Action Level exceedances are most appropriate for and should be limited to systems serving 3,300 persons or fewer.

Corrosion Control Treatment (CCT)

As we noted in comments on the LCRR in 2020, EPA should ensure that the LCRI does not minimize and in fact emphasizes the need to consider the water quality impacts of increasing the use orthophosphate for corrosion control**.** Orthophosphate treatment is a critical item in our toolbox for preventing corrosion and controlling lead in drinking water, but its use

can have the unintended consequence of increasing phosphorus loadings to downstream surface waters and wastewater treatment facilities. Nutrient pollution like phosphorus can trigger excessive plant and algal growth in streams, lakes, reservoirs, and estuaries. Certain algae are toxic and can make people sick if they swim or come in contact with contaminated water. In extreme cases algal growth can result in "dead zones" devoid of any aquatic life. When harmful algal blooms (HABs) occur in streams, lakes, or reservoirs that are drinking water sources, it can create treatment challenges for drinking water systems. There are also economic impacts to nutrient pollution, both in the form of treatment costs for wastewater utilities that may have to meet certain Clean Water Act pollution limits for nutrients and in the form of lost recreation and tourism dollars when a lake, river, or beach is closed because of a toxic algal bloom.

EPA's economic analysis of the proposed LCRI concluded phosphorous entering surface waters from orthophosphate would be small compared to total phosphorus loads from all other anthropocentric sources. Yet even a relatively small increase in total phosphorus in water bodies already impaired for phosphorus is problematic considering there is wide agreement among scientists that the frequency and distribution of algal outbreaks have increased in recent years.[10]

Reducing all sources of nutrient pollution nationwide is a long-standing EPA priority. Public health protection and water quality can benefit by acknowledging the need for a holistic approach. Requiring full lead service line replacement, as EPA is proposing, is one element of a holistic approach in that over time it will reduce treatment needs and has the additional benefit of addressing particulate lead which is not always reduced by orthophosphate treatment. EPA should also support research into innovative approaches to phosphorous management and continue to support advanced understanding of corrosion control practices. We do not suggest taking lightly the need to reduce exposure to lead at the tap, regardless of its source. We do ask EPA not to dismiss the need to address the unintended consequences of contributing more

[10]National Office for Harmful Algal Blooms at Woods Hole Oceanographic Institution, "Recent Trends: National Changes," July 11, 2016, https://www.whoi.edu/redtide/regions/us-recent-trends

nutrient pollution to water bodies, which itself can create public health risk in drinking water[11] and impact water bodies that are already impaired or experiencing HABs.

Please note that we have also joined other comments, including with Environment America others about schools and childcare settings and with Earthjustice and others about key provisions in the proposal. We thank EPA for enabling robust public participation during the LCRR Review and LCRI process and for consideration of these comments.

Questions can be addressed to Lynn Thorp, National Campaigns Director, Clean Water Action/Clean Water Fund, lthorp@cleanwater.org,
202-754-3460.

[11] U.S. Environmental Protection Agency Assistant Administrator for Water Joel Beauvais memo to State environmental and health agency Commissioners, February 9, 2016; https://www.epa.gov/sites/production/files/2016-03/documents/samplelettercommissionersfeb2016.pdf