



February 12, 2020

Mr. David Ross
Assistant Administrator
Office of Water
U.S. Environmental Protection Agency 1200 Pennsylvania Ave. NW
Mail code: 4101M
Washington, DC 20460-0001

RE: Comments regarding National Primary Drinking Water Regulations: Lead and Copper Rule Revisions, Docket No. EPA-HQ-OW-2017-0300

Dear Assistant Administrator Ross:

Thank you for the opportunity to comment on the U.S. Environmental Protection Agency's (EPA's) proposed Lead and Copper Rule revisions. Public Employees for Environmental Responsibility (PEER) is concerned that the proposed rule does not address all the issues that led to the Flint water crisis, and therefore endangers Americans' health. The provisions regarding lead service line (LSL) replacements are inadequate, and are actually weaker than the current rule; the enforceable maximum contaminant level (MCL) for lead is too high; and that the definition of LSL is problematic. Our specific comments are set forth below.

Background. Many drinking water systems throughout the nation still use old lead service lines to provide treated water to consumers. In addition, privately owned pipes entering houses, apartments, and commercial and municipally-owned properties (including schools) may contain lead solder or lead pipes. Chemicals used to treat water can cause lead to leach from these lines. In 1991, EPA adopted a rule under the Safe Drinking Water Act (SDWA), requiring drinking water systems to utilize corrosion control measures when the lead level in the water is above 15 ppb. If that occurs, the water system must collect water samples at the tap, and if more than 10% of those samples exceed the lead action level of 15 ppb, then water systems are required to take action to reduce lead levels. This statutory scheme therefore allows a certain number of taps to have lead levels higher than 15 ppb.

There is no safe level of lead; relatively small amounts of lead can cause significant damage, especially in children.¹ The preamble to the rule concedes, "Even at low levels of lead in blood, there is an increased risk of health effects in children (*e.g.*, <5 micrograms per deciliter) and

¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6347104/>

adults (e.g., <10 micrograms per deciliter).”² If finalized, the proposed new rule would be the first significant change to the lead and copper rule (LCR) since 1991. EPA has been kicking the lead and copper can down the road for decades, and the proposed rule does little to address the problems faced by residents of Flint, Michigan or Newark, New Jersey. While PEER is aware that replacing antiquated pipes and water distribution systems is complicated, it is necessary in order to ensure that human health is protected.

LSL replacement scheme has been weakened. The current lead and copper rule requires that systems exceeding the lead action level replace 7% of the LSLs per year. The proposed rule *reduces* the percentage of LSLs requiring replacement to 3%. Specifically, §141.84 (g)(1) states:

Lead service line replacement for water systems that exceed the lead action level in tap samples. Water systems that exceed the lead action level in tap samples taken pursuant to § 141.86 must replace full lead service lines at a minimum annual rate... (1) Water systems must annually replace three percent of the initial number of lead service lines in the inventory, including service lines of unknown material at time of the action level exceedance.

Therefore, EPA is allowing water utilities to take 33 years to replace LSLs with lead. This proposal is a weakening of existing standards, and is contrary to the backsliding provision of the Safe Drinking Water Act. EPA should require that all LSLs be proactively replaced across the country.³

Enforceable maximum contaminant level (MCL) for lead is too high. The proposed rule did not lower the MCL for lead. Instead, EPA is keeping the 15 parts per billion (ppb) MCL, and is proposing an additional “trigger level” of 10 ppb. This trigger level is not an enforceable standard, but merely the level at which water systems must identify actions that would reduce lead levels in drinking water. EPA admits that the old standard of 15 ppb was not based on health concerns. In the Preamble to the rule, EPA states, “The EPA established the lead action level in the 1991 based on feasibility and not based on impact on public health. The proposed trigger level is also not a health based standard.”⁴ Therefore, neither the MCL nor the proposed trigger level are based on health concerns, and as such, are not protective of human health. EPA should have an enforceable MCL for lead of 5 ppb at the tap.⁵

The definition of LSL is problematic. EPA’s definition of an LSL at 40 CFR §141.2 is problematic because it exempts “goosenecks, pigtails, or other connectors” made of lead (these are short sections of piping, usually one to two feet long, which flex and are used for connections between rigid service piping). These connectors can be a major source of lead in drinking water because they can release lead into water as they flex with temperature changes. EPA admits that

² Rule, IIA.

³ PEER understands that this would result in a significant financial burden to municipalities, but the EPA must advocate for some type of grant program to assist in providing necessary financial support.

⁴ Preamble, Rule IIIA

⁵ Canada’s maximum acceptable concentration (MAC) for total lead in drinking water is 5 ppb. See <https://www.canada.ca/en/health-canada/services/publications/healthy-living/guidelines-canadian-drinking-water-quality-guideline-technical-document-lead.html>

lead goosenecks, pigtails, and connectors can be a significant source of lead in drinking water. Section 141.84(c) of the proposed rule requires the water system to “replace any lead gooseneck, pigtail or connector it owns when encountered during emergency repairs or planned water system infrastructure work” regardless of the system’s 90th percentile lead level. However, despite this, EPA does not define what a “service line” is, and this results in a situation where non-lead service lines that have lead goosenecks, pigtails, or other fittings are considered to not be lead. In other words, if the line is unknown material, or a material other than lead, the entire service line would not be an LSL even though it contains lead goosenecks, pigtails, or other connectors. EPA should define “service line” and include goosenecks, pigtails, or other connectors as part of that service line.

Conclusion. EPA claims that the proposed rule improves the current rule.⁶ It does not. EPA’s rule must contain an enforceable and protective health-based MCL; must contain a plan to remove *all* LSLs; and must include a comprehensive definition of “service line.” Failure to do so will result in Americans continuing to be harmed by lead in their water.

Thank you for the opportunity to comment.

Sincerely,

Timothy Whitehouse
Executive Director

⁶ <https://www.epa.gov/ground-water-and-drinking-water/proposed-revisions-lead-and-copper-rule>