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TO: The Environmental Protection Agency (EPA), Docket: EPA-HQ-OW-2017-0300

FROM: Florida Rural Water Association (Gary Williams, Gary.Williams@frwa.net)

DATE: February 10, 2020

RE: EPA proposed regulatory revisions to the National Primary Drinking Water Regulation (NPDWR) for lead and copper under the authority of the Safe Drinking Water Act (SDWA)

The Florida Rural Water Association (FRWA) supports the August 2015 recommendations supported by the majority of participants on LCRWG that were subsequently endorsed by the NDWAC (December 15, 2015). We believe our comments today are consistent with the LCRWG recommendations. FRWA shares the EPA's goal of eliminating all lead from the public's drinking water. Local governments (i.e. local public water supplies) exist solely to protect and assist their citizens. The provision of safe drinking water is perhaps the most elemental purpose of local government.

However, the Agency's November 13, 2019, Lead and Copper Rule Revisions (LCRR) are not crafted in a manner that are sufficiently protective of the public health. The proposal is based on a fundamentally flawed-premise that allows for the effects of a private homeowner's plumbing (i.e. a specific faucet) on the water passing through that fixture to trigger very burdensome and possibly unrelated and unnecessary requirements and effects on the entire community (i.e. treatment installation or adjustments, removal of underground water lines, corrosion control studies, unnecessarily alarming public notices, and unwarranted distrust in the public's water safety).

This flawed-premise is compounded by the current rule's construction that prevents state certified operator (water sampling technicians) from conducting the in-home tap sampling, and instead relies on untrained and disinterested homeowners to conduct the very complex and prescriptive testing. This results in widespread erroneous testing that can cascade into a tumultuous chain of events. The regulation as proposed fails to cure the original failure of the LCR (the relevance of an in-home tap sample result to water quality *in the water public system*). It tends to create a false positive condition concerning the entire community water system. The affected community, under the pressure to avoid further violation, must perform certain affirmative measures like; add chemicals to the drinking water supply, mandate the distribution of unnecessarily alarming notices to the public and places the community in violation of the federal regulatory structure when there was very possibly never a safety issue in the community's drinking water, but instead only in private homes.

We urge the Agency to craft a new rule that decouples the current regulatory requirements on water utilities from results of tap sampling. Results from in-home tap sampling should be used for a catalogue of response options that target the

the causes of elevated sampling results at the specific sight including the following: possible replace of lead service lines; an indicator of concerns with the home's premise plumbing: an anomaly - testing error, and causes of elevated sampling results at the specific site including the following: possible replacement of lead service lines in the home, assessment of in-home plumbing fixtures, notification and assistance of additional governmental service agencies, etc.

Before any violable regulation is enforceable, the results of the sampling should be analyzed to determine whether the sampling was conducted appropriately as: an indicator of problematic lead service lines; an indicator of very proximate homeowner's fixtures; or a possible indicator of the water quality in the public water supply. Moreover, the tests should not be conducted by disinterested homeowners, but rather by the locally-appointed, state certified water quality experts or homeowners who express interest in participating in the sampling. This concept was endorsed by the NDWAC because it would "achieve greater customer service and more data to understand and manage lead corrosion." EPA should modify the final LCRR to reflect this policy that was endorsed by the most diverse group of stakeholders conducting the most thorough review of the existing rule under the auspices of the NDWAC. The LCRR's rejection of this position that was:

1. adopted by the LCRWG and NDWAC,
2. predicated on finding of flaws in the status quo,
3. the main concern of the overwhelming majority of community water systems covered by the rule,
4. the majority conclusion of every expert stakeholder panel assembled by the Agency,
5. the most analyzed and publicly reviewed drinking water in the Agency's history, and
6. the common understanding of all experts of existing rule...

should give the Agency great pause.

Excerpts from the August 24, 2015, Lead and Copper Rule Working Group's (LCRWG) Report to the National Drinking Water Advisory Council (NDWAC)

Under the current LCR, a public water system is required to conduct monitoring to assess the effectiveness of its corrosion control treatment and trigger additional actions to reduce exposure when necessary... Implementation of this approach over time has revealed numerous challenges. Recruitment of customers to take in-home samples can be difficult and costly. Customers are not professional samplers and, thus, may implement the sampling protocols inconsistently. Research on sampling protocols also has shown that sampling results may vary, and not necessarily consistently, based on the configuration and length of lines from the water main to the sampling tap and whether the sample is a first draw or a subsequent sample intended to reflect water that had been in an LSL for some time.

The LCRWG recommends two types of on-going monitoring: 1) a more robust water quality parameters monitoring program to improve process controls for corrosion control treatment, and 2) voluntary customer initiated tap water sampling coupled with a more robust and targeted public education program to encourage sampling, in part to provide direct information to consumers that they can use to reduce potential exposures to lead from drinking water in their home and to provide ongoing information to the public water systems to identify and correct unanticipated problems...

The LCRWG also recommends that a voluntary customer-initiated sampling program based on the more robust and targeted public education efforts being recommended elsewhere in this report be substituted for the current LCR tap sampling requirements.

The results of the voluntary tap sampling program will be used for three separate purposes:

- informing and empowering individual households to take action to reduce risk,
- reporting to health officials when monitoring results exceed a “household action level” (see section 3.5) and
- ongoing information to the utility to assess effectiveness of corrosion control treatment.

Information for Households

Data from customer-initiated sampling will be valuable in informing and empowering individual households and thus provide greater customer service. All data provided to customers would need to include appropriate information about the variability of lead levels, that a single sample does not represent all water quality, and that levels at a particular tap at a particular time might be higher or lower. The transmittal should also provide appropriate information about the risks of lead exposure, sensitive populations, and actions the consumer can take to minimize risk.

This type of sampling is currently discouraged by the current rule because water systems are often concerned that “complaint” or “customer” samples would be included into the required 90th percentile calculation with potential mandatory response actions if it exceeded the action level. This resulted in systems not offering sampling or having the samples be analyzed through a private lab (and therefore the data would not be available for any utility management or regulatory purpose). Currently, public water systems are mandated to return to the same locations which, while it may have value for other reasons, means that many other households do not get the opportunity to understand their lead exposure.

Voluntary customer initiated sampling can also capture data from multi-family residences, which is not included in the mandatory LCR sampling in most cases. A new approach could achieve greater customer service and more data to understand and manage lead corrosion.

Local governments should have the authority to develop locally-supported and tailored in-home tap sampling schemes that are less onerous than the status quo. Local governments can better craft monitoring plans and schedules based on local preference including sampling during day-time hours, targeting schools for testing, varied aerator removal, targeting homes with children such as daycare centers, resistance of homeowner participation, sampling flushed water samples versus first draw, historically negative sampling results, findings of no potential lead sources (plastic pipe systems), etc.

In addition to the fundamentally flawed-premise of the relevance of in-home sampling conducted by unqualified and disinterested homeowners, the LCRR proposal includes a matrix of new prescriptive federal regulations including corrosion control studies, community-wide alarming public notices, find-and-fix mandates, pitcher filters use, monitoring in schools and childcare facilities, lead service line inventories, etc. According to the American Water Works Association, “These 35 new items of additional paperwork submittals required by the proposed LCRR, in addition to current paperwork requirements under the existing LCR. They represent substantial increases to the paperwork burden placed on water systems and state primacy agencies.” Again, these new requirements are mandated with the penalty of civil enforcement and public opprobrium without an initial clear finding of contamination in the local drinking water supply. These new mandates expand federal regulatory authority over local governments’ practices for the prevention of contamination, public education, and operations & maintenance of the community water supply. The federal government should not usurp local governmental policies for these operations without a clear and obvious finding of contamination or exceedance of a federal public health standard (a so-called maximum contaminant level - MCL).

Current EPA reporting data shows 21,352 federal violations for “monitoring” under EPA’s Revised Total Coliform Rule; 71,076 federal violations for “monitoring and reporting” with all EPA drinking water rules; 46,564 federal violations for “other” which is basically a violation for how the community distributes

federally mandated public notices to its citizens; 4,864 violations for “reporting” under the Revised Total Coliform Rule and 8,522 federal violations for “treatment techniques” which are primarily under the Surface Water Treatment Rule, Ground Water Rule, Disinfection Byproducts Rule, and the Lead and Copper Rule.

EPA United States Environmental Protection Agency

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GPRA Summary Report **GPRA Violation Report** GPRA Inventory Report

SUBMISSIONYEARQUARTER is equal to **2019Q4**

* Submission Year Quarter 2019Q4	MON		MR		Other		RPT		TT	
	Violations	Systems in Violation	Violations	Systems in Violation	Violations	Systems in Violation	Violations	Systems in Violation	Violations	Systems in Violation
Rule Code										
Arsenic			512	402						
Consumer Confidence Rule					8,459	5,580				
Filter Backwash Rule			1	1						
Ground Water Rule			6,824	4,661	355	345			2,766	1,293
Inorganic Chemicals			2,494	398						
Lead and Copper Rule			13,070	8,180	10	10			620	476
Long Term 1 Enhanced Surface Water Treatment Rule			1,021	447	59	33			299	143
Long Term 2 Enhanced Surface Water Treatment Rule			275	124	17	15			259	159
Miscellaneous					7	5				
Nitrates			5,679	4,655						
Public Notice Rule					36,880	11,330				
Radionuclides			1,433	345						
Revised Total Coliform Rule	21,352	12,555			759	750	4,864	3,225	3,419	2,522
Stage 1 Disinfectants and Disinfection Byproducts Rule			3,004	2,017					360	229
Stage 2 Disinfectants and Disinfection Byproducts Rule			4,066	1,993						
Surface Water Treatment Rule			1,707	611					799	367
Synthetic Organic Chemicals			12,731	648						
Total Coliform Rule					18	18				
Volatile Organic Chemicals			18,259	713						
Grand Total	21,352	12,555	71,076	20,168	46,564	16,533	4,864	3,225	8,522	4,937

All of these violations are for paper process violations and more specifically errors in completing the procedures or processes with the complex federal drinking water rules. None of these violations is for a finding of contamination. Small and rural communities with limited resources and technical/administrative staff often have the greatest difficulty in managing the complexity of the federal regulations.

EPA Rule/Mandate (Number of Federal Register Pages)

Arsenic Rule (91 pages)

Chemical Rules (27 pages)

Lead and Copper Rule (64 pages)

Radionuclides Rule (47 pages)

Uranium Rule (77 pages)

Filter Backwash Recycling Rule (20 pages)

Ground Water Rule (88 pages)

Enhanced Surface Water Treatment Rule (44 pages)

Long Term 1 Surface Water Treatment Rule (33 pages)

Long Term 2 Surface Water Treatment Rule (134 pages)

Stage 1 Disinfection Byproducts Rule (87 pages)

Stage 2 Disinfection Byproducts Rule (134 pages)

Surface Water Treatment Rule (57 pages)

Total Coliform Rule (26 pages)

Public Notification Rules (23 pages)

Federal Operator Certification (7 pages)
Security Vulnerability Assessment (27 pages)

The LCRR will likely include more federal procedural and process requirements than all the existing rules combined.

The federal regulatory authority in drinking water safety should be limited to monitoring for compliance with federal standards and the operations of local governmental water utilities and discussion on how to comply should remain a local government prerogative. All of the new provisions in LCRR to address public education, preventions, inventories, testing in schools, find and fix, etc. that are not necessary to remediate contamination should remain under the jurisdiction of the people who have to pay for the operations of the public water supply and have direct control over the governance of that supply. Local governmental drinking water supply best practices that are not funded by the federal government should not become new unfunded federal prescriptive mandates when the local people oppose the federal preemption. EPA guidance on operations, maintenance, governance, public education, and other best practices for administering water utilities is appropriate. However, the federal government should not promulgate uniform regulations for the governance of local communities as each local community is unique in its operations and character.

Every one of the approximately 68,000 U.S. public drinking water supplies that are regulated under the LCR has a unique set of vulnerabilities and challenges. The great majority of communities required to comply with all the new federal requirements, programs, reporting, paperwork, etc. will be small and rural communities with limited administrative and technical resources. Our concern is that the vast new federal experiments on local governments under the LCRR will result in the unintended consequence of forcing communities to pay for compliance actions that are unnecessary because the problem is at homeowner's taps, not in the water system. This dynamic is especially acute and problematic for economically disadvantaged populations. If you apply a uniform regulatory standard for operational and governance of 68,000 unique local communities, you will not only fail to address the greatest risks in many communities, but you will force many other communities to implement regulations that may not be necessary..

We believe the current LCR can be modified to result in enhanced public health protection and drinking water safety.

In the current LCR, federal agencies say the obvious, that no amount of lead in your water is good and impose a highly convoluted standard (action level) of 15 parts per billion on a certain percentage of the homes tested. 15 parts per billion is not a measure of drinking water safety. That was not the intent of the action level. However, that is what is implied. Any new rule should not retain a system that is resulting in so much public confusion and misapprehension.

To ensure the greatest possible public health protection, any new rule should be a shared responsibility, meaning local governments and local populations should agree that the resulting policies are necessary, tailored to local conditions, and result in a commensurate public health benefit. This intergovernmental collaborative should be incorporated into the details of the rule in monitoring schemes, lead service line replacement plans, efficacy of corrosion control treatment, public education, remedies to high household tap samples, and the provision of pitcher filters to certain customers. In all these key rule elements, provisions should be included to ensure any uniform federal remedy does not usurp any solution that is preferable to the local citizens and more protective of public health.

Again, the success of any drinking water safety program is dependent on local support. Crafting an LCRR that is based on this principal will result in greater potential to reduce lead in drinking water by allowing

for more community involvement and responsibility in sampling and remediation, better use of local limited resources, and remediation plans that are more targeted to local conditions.

FRWA strongly supports and endorses the American Water Works Association's comments on the LCRR. If the Agency chooses to retain the LCRR and the current rule's reliance on in-home sampling for action level compliance, we urge for the adoption all AWWA's recommendations in the final LCRR proposal. We are listing the following AWWA LCRR recommendations to emphasize their importance to small and rural communities.

- “Providing community-wide Tier 1 public notice based on a 90th percentile concentration greater than 15 µg/L is inconsistent with Congress's instruction to provide such notice to the public after a lead level exceedance 'that has the potential to have serious adverse effects on human health as a result of short-term exposure.' As EPA has noted the 90th percentile concentration of 15 µg/L is not a health-based standard. As discussed in the 'legal considerations' section, EPA cannot set a notification level when it has not provided the evidence required to justify that notification level.”
- “EPA should remove the proposed monitoring requirements for lead in schools and childcare facilities. These institutions and businesses have a responsibility to provide a healthy environment for the children in their care. Most states already have regulatory regimes to assure educational and childcare facilities provide a safe environment for the children.”
- “The rule provisions will create unnecessary customer concern and distrust if the required methodology artificially inflates the number of 'unknown material' service lines and those lines must be treated as though they are made of lead.”
- “The purpose of lead and copper tap sampling is as a check on existing corrosion control practice or the need for installing corrosion control. Sampling under the rule is neither to represent exposure nor understand what potential contribution to lead levels are arising from the lead service line when one is present.”
- “The rule should not set a 45-day timeframe for coordinating a lead service line replacement with the customer... Specifying a 45-day timeframe is not appropriate, and setting any timeframe leads to unwanted effects. Including a prescriptive timeframe in the rule does not promote timely engagement of customers.”
- “The proposed rule burdens water systems and states with a significant amount of unnecessary paperwork. AWWA strongly encourages EPA and the Office of Management and Budget to focus on describing sound programmatic expectations and reducing associated paperwork to the maintenance of logs and documentation that is available for review upon request.”
- “The trigger level of 10 µg/L is an administrative threshold for evaluating corrosion control treatment which the Agency has not demonstrated to be feasible in combination with the other elements of the proposed treatment technique, but it certainly cannot be successful unless EPA significantly improves its risk communication around lead in drinking water and EPA's regulatory objectives... The proposed trigger level is not the best way to evaluate a water system's progress with corrosion control treatment. It relies on a 90th percentile statistic which is a very limited signpost for how well a system is doing. It oversimplifies the approach to identifying systems that need attention. By relying on a single performance metric the approach does not take advantage of existing data and tools to evaluate performance. Furthermore, as described below in the legal considerations section, the trigger level is not a health based or feasibility based standard. There is good reason for concern as the proposal sets yet another decision criteria for the public to misconstrue as a level of health concern. This challenge could potentially be resolved through effective, consistent risk communication by EPA, EPA regions, and states. Such risk communication should begin with the preamble of the final rule.”

The great majority of communities regulated by the EPA under LCRR will be small (under 1000 in population)? Small and rural communities will have more difficulty complying with the new rule due to

limited economies of scale and lack of technical expertise. The new rule should include additional on-site technical assistance resources to assist small communities with the complexity of the new rule. Most small community non-compliance with the Safe Drinking Water Act and Clean Water Act can be quickly remedied by on-site technical assistance and education. It is important for EPA to recognize that small local water supplies are operated and governed by people whose families drink the water every day and people who are locally elected by their community. Some of the smallest communities rely on volunteers to operate their local drinking water supplies. Enhancing drinking water and wastewater quality in small communities is more of a resource than a regulatory problem. The most successful approach for technical assistance is the “circuit rider” concept which provides an expert, with experience in water utility operations and compliance, who can travel directly to small and rural communities, as needed, to assist with rule compliance and generally eliminate the need for civil-enforcement. Additionally, it is essential that the assistance provider only represents the community’s interest in order to identify the most economical solution and provide the best advice for local decision-makers. What small and rural communities want and need is to know how to comply in a simple and affordable manner – and similarly, how to operate and maintain their water utilities. With additional resources, it would be very possible to provide such on-site assistance and assessment to every small community out of compliance with new LCR rule, correct the situation, or develop a workable plan to return to compliance in the near future

Thank you for the opportunity to comment and participate. We are very appreciative of the Agency’s many public outreach opportunities. We believe that our recommendations will result in a better federal lead rule and greater public health protection. Flint should serve as a wake-up call for the public as the guarantor of the safety of their public drinking water supply through their local governments which are ultimately responsible for public safety. The premise that many water systems are like Flint is not true and the Flint crises should not be the pretext to penalize all other water systems. We believe our recommendations will begin to correct the status quo by granting additional authority and responsibility to the people.