Local Government Advisory Committee

Hon. Leirion Gaylor Baird, Chair
Lincoln, NE
Ms. Lisa Wong, Vice–Chair
South Hadley, MA
Hon. Ras Baraka Newark, NJ
Hon. Jim Brainard Carmel, IN
Mr. Gary Brown Detroit, MI
Hon. Deborah Cherry Genesee Count, MI
Hon. Melissa Cribbins Coos County, OR
Hon. Jose C. Aponte Dalmau Carolina, PR
Hon. Megan Dunn Snohomish County, WA
Hon. Mark Fox Mandan, Hidatsa and Arikara Nation
Mr. Brian Fulton Jackson County, MS
Hon. Katherine Gilmore Richardson Philadelphia, PA
Hon. Nick Gradisar Pueblo, CO
Hon. Evan Hansen Morgantown, WV
Mr. Chad Harsha Cherokee Nation
Mr. Zane Hedgecock Raleigh, NC
Hon. Deana Holiday Ingraham East Point, GA
Hon. Ella Jones Ferguson, Missouri
Hon. Kelly King Maui County, HI
Hon. Christine Lowery Cibola County, NM
Hon. Rachel May Syracuse, NY
Hon. Melissa McKinlay Palm Beach County, FL
Hon. Julian McTizic Bolivar, TN
Hon. Alex Morse Provincetown, MA
Hon. Douglas Nicholls Yuma, AZ
Hon. Ron Nirenberg San Antonio, TX
Hon. Neil O'Leary Waterbury, CT
Hon. Satya Rhodes-Conway Madison, WI
Hon. Deborah Robertson Rialto, CA
Mr. Michael T. Scuse State of Delaware
Ms. Valinda Shirley Navajo Nation
Hon. Sylvester Turner Houston, TX
Hon. Lucy Vinis Eugene, OR
Mr. Jeff Witte State of New Mexico
Mr. Rodney Bartlett* Peterborough, NH
Mr. Tom Carroll* Silverton, OH
Hon. Vincent DeSantis* Gloversville, NY
Hon. Kwasi Fraser* Purcellville, VA
Mr. Dave Glatt* State of North Dakota
Hon. Daniel Guzman* Oneida Nation, WI
Hon. Ann Mallek* Albemarle County, VA
Hon. Hattie Portis-Jones* Fairburn, GA
Hon. Christina Sablan* Mariana Islands
Hon. Jeremy Stutsman* Goshen, IN

*Indicates member of Small Communities Advisory Subcommittee only

Paige Lieberman
Designated Federal Officer, EPA

December 20, 2022

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Regan:

The Local Government Advisory Committee appreciates the opportunity to provide input on the Lead and Copper Rule Improvements action. Removing lead from drinking water is a priority in local governments across the country, and the work of complying with the new rulemaking will depend on the people working in local governments and water utilities.

We have provided recommendations on the questions provided, as well as a few additional related issues. These include:

- **EPA should consider all reasonable requests for extending timelines related to replacing lead service lines.**
- **EPA should provide more clarity for how lead lines are defined.**
- **EPA should develop a funding allocation that considers the number of lines present and prioritizes municipalities that can quickly put programs into place while they develop full inventories**.
- **EPA should identify a dedicated funding stream for replacing pipes on private property, particularly in disadvantaged communities, that does not come from utility rates or revenue.**
- **EPA should allow significant flexibility in how community engagement funding be used so that communities can manage this task in a way that is effective for their community.**
- **EPA should either provide or encourage communities to use GIS mapping tools when prioritizing equity.**
- **EPA should allow significant flexibility in how funding be used so that communities can manage the task of community engagement in a way that is effective for their community.**

- **In terms of tap sampling and compliance, the EPA should provide states and municipalities with flexibility**.

- **EPA should understand the tradeoff of corrosion control treatment and that any incentive for utilities to add phosphate into water include consideration for the cost of removing it from wastewater treatment plants at the end of the water cycle.**

- **EPA should either make the federal level more restrictive or add a new trigger level, but not both actions.**

- **EPA should consider giving small communities additional time to comply and should incentivize ways to support communities with limited capacity and resources to complete lead service line replacement.**

More details for each of these items is included below. Given the impact this action will have, we ask that EPA continue to work with the LGAC as the rule is finalized over the coming year. We look forward to the continued discussion.

Sincerely,

Leirion Gaylor Baird, LGAC Chair

Secretary Michael T. Scuse, LGAC Chair of America's Waters & Infrastructure Workgroup

Summary of Issue

The Lead and Copper Rule Revision (LCRR) was promulgated on January 15, 2021. Subsequently, the agency reviewed the LCRR to further evaluate if the rule protects families and communities, particularly those that have been disproportionately impacted by lead in drinking water.

The agency has determined that there are advancements in the LCRR, and that rule will go into effect to support near term development of actions to reduce lead in drinking water. Specifically, lead service line inventories that will be developed under the LCRR are necessary to achieve 100% removal of lead service lines. EPA intends to maintain the requirements for information to be submitted in the initial lead service line inventory by the current October 16, 2024, compliance date. Maintaining this compliance deadline ensures water systems will make continued progress to identify lead service lines, which is integral to lead reduction efforts.

The agency also concluded that there are significant opportunities to improve the LCRR, and is developing a new proposed rule, the Lead and Copper Rule Improvements (LCRI). These improvements include: proactive and equitable lead service line replacement (LSLR), strengthening compliance tap sampling to better identify communities most at risk of lead in drinking water and to compel lead reduction actions, and reducing the complexity of the regulation through improvement of the action and trigger level construct.

Charge Questions

While EPA is interested in any additional information or concerns that the LGAC would like to share, it has identified the following questions for specific feedback.

Identifying and Replacing Lead Service Lines

What are the opportunities and challenges to State and Local Governments related to identifying and replacing service lines:

- Achieving 100% Lead Service Line Replacement
    - How quickly can systems achieve 100% LSLR?
    - What factors impact a system's rate of LSLR?
    - What barriers exist for engaging customers about full LSLR?
    - How can systems ensure equity in replacements?
- What are the most effective and equitable ways for water systems to replace lead service lines?

Tap Sampling and Compliance

What are the opportunities and challenges to State and Local Governments related to tap sampling and compliance:

- Should EPA require systems to collect both 1st and 5th liter samples at lead service line sites and use the higher concentration in the 90th percentile calculation for lead?
    - What potential challenges may systems face when complying with an updated tap sampling protocol?

Reducing Rule Complexity

What are the opportunities and challenges to State and Local Governments related to complying with a revised action level (AL) and trigger level (TL) construct:

- What potential revisions to the AL/TL construct could reduce rule complexity?

- Should EPA maintain the TL?
- What is a feasible AL lower than 15 ppb?
- Should additional steps be required to be taken to protect public health in systems with sustained levels of lead above the AL?

Small System Flexibility
What are the opportunities and challenges to State and Local Governments related to small system flexibility:

- If the LCRI requires small systems to replace LSLs regardless of their 90th percentile lead level, should the LSLR remain a small system compliance option for small systems exceeding the lead AL?
    - Should other compliance options be added for small system flexibility? If so, what would such compliance options be?
    - Should EPA reduce the small system flexibility threshold from 10,000 (e.g., to 3,300 or fewer) for all or some of the compliance options?

In addition to the above questions, EPA would appreciate any information or data that the LGAC could provide on their experiences with:

- Inventory and lead service line replacement
- Sampling programs
- Public education
- Corrosion control treatment
- Sampling for lead in schools and childcare facilities
- Other aspects of drinking water lead control programs

<u>Recommendations</u>
The LGAC appreciates the opportunity to provide recommendations on the Lead and Copper Rule, as it is an issue that impacts local governments across the country.

Identifying and Replacing Lead Service Lines
When it comes to identifying and replacing lead service lines, and the speed at which goals can be met, there are a range of factors for local governments to evaluate. Most importantly is cost, which will inevitably rise over time. Basic economic theory dictates that by putting a large amount of money into the market, with communities across the country attempting to procure the same supplies and workforce to get the job done at once, there will be an imbalance. Some utilities have seen this coming and have been stockpiling supplies, but many will be faced with supply shortages or supply cost increases that lead to spending deadlines being missed. This fact is further exacerbated by the current labor market, which will limit the number of lines a municipality can replace in each timeframe. Overall, community average a need for 15 to 20 years to identify and replace service lines. For the reasons noted above, **the LGAC recommends that EPA consider all reasonable requests for extending timelines related to replacing lead service lines.**

Another factor is how lead service lines are defined. While the goal of every local government is to provide safe drinking water to its residents, it is important to weigh the cost and benefit. That means clearly defining where lines can reach a point of safety by only partially replacing them. For example, some lines have only connections that are lead, and not having to replace these would save significant costs and time. At the same time, other communities have the goal of 100 percent lead removal. **The**

LGAC recommends that EPA provide more clarity for how lead lines should be defined. On a related topic, the LGAC recommends that Tier 1 community notification protocol be altered to give communities more flexibility. For example, if a community knows that lead contamination is coming from a homeowner's pipes but that the source water is clean, notifying the community leads to undue concern and an erosion of public trust in the utility.

Funding

For allocating LSL replacement funding, using the drinking water needs study provided by states is not an effective indicator, and requiring complete LSL inventories and cost estimates before obtaining funding will hinder the EPA's goal of removing as many lines as possible in as short a time as possible. Rather**, the LGAC recommends that EPA develop a model that considers the number of lines present and prioritizes municipalities that can quickly put programs into place while they develop full inventories**. Further, the costs in this market as so volatile that any cost estimates created will quickly become irrelevant.

Equity

A third factor is how these replacements are paid for, and this goes hand in hand with the EPA's identified goal of achieving equity. Every community will face instances where they know contamination is coming from the pipes on a homeowner's property. That means that replacing the connected service line will not reach the goal of eliminating lead exposure. However, many individuals simply can't afford to replace their pipes, and once tests indicate high levels of lead, there's an obligation to report it to the health department. Funding through the Bipartisan Infrastructure Law is funneled through the State Revolving Funds, so the loan portion of that would need to be supported by taxpayer revenue or utility fees. In many parts of the country, citizens will be opposed to using city funding to pay for the part of the line that is on a homeowner's property. At the same time, residents of disadvantaged communities cannot manage increased utility rates. One solution is to encourage local governments to work within their capital improvement plans so that they are placing water mains and lead service lines at the same time. However, few communities have enough funding allocated to those plans to achieve the replacement rates desired by EPA, so additional funding is needed. **The LGAC recommends that EPA identify a dedicated funding stream for replacing pipes on private property, particularly in disadvantaged communities, that does not come from utility rates or revenue.**

Equity also comes into play when determining how to prioritize the replacement of specific lines. The traditional way for a utility to approach this type of effort is to start on the outskirts of a city and work inward. Using GIS mapping allows a community to identify not only where lead service lines are within a jurisdiction, but also how that overlaps with disadvantaged communities. T**he LGAC recommends that EPA either provide or encourage communities to use such a tool.** Prioritization should be considered for places that won't qualify for low income/disadvantaged status, as well as communities that exceed action levels. Ultimately, the goal should be to replace as many lines as quickly as possible; that filter should be applied first in prioritization, before looking to income level or other demographics.

Customer Engagement

As EPA has identified, engaging customers is a necessary but burdensome part of the task at hand. Part of this is logistical barriers. Gaining access to meters and hookups, as well as permission from property owners and/or residents to perform line replacements, are significant barriers.

The larger barrier is the messaging used and the resources needed to share that message. Local governments have been telling their residents for decades that the water is safe, and now we must

explain that while it remains safe, there is lead in the pipes, and their streets need to be dug up to replace the pipes. The level of sensitivity needed to maintain trust cannot be overstated. If done incorrectly, the message will be that something wrong, and that local governments cannot be trusted. EPA can look to systems like Flint to see this – despite being on the Great Lakes Water Authority system for years, many still don't believe their water is safe. Significant administrative funding will be needed to build a public relation marketing team that can go into communities and have one-on-one conversations with residents. **The LGAC recommends allowing significant flexibility in how funding be used so that communities can manage this task in a way that is effective for their community.** Additionally, EPA can lessen the overall cost by providing comprehensive toolkits that communities – especially smaller ones – can use to train staff doing the public interface work.

Tap Sampling and Compliance

When it comes to tap sampling and compliance, **the LGAC recommends providing states and municipalities with flexibility**. The reason for this is that the sampling needed varies based on where it is taking place. For example, if a pipe is near the meter, 1st liter sampling is appropriate; for lead service lines 5th liter sampling is appropriate; for a connection to the water main the 10th liter sampling is appropriate.

Since the burden of sampling is on homeowners, any changes to the current procedure may be challenging to implement, especially with seniors, and when water must be turned off for several hours prior to testing. This fact underscores the recommendation for flexibility.

A related element is the requirement for corrosion control treatment when lead is present in water. This is a challenging area for water utilities, as they must balance the cost of taking action with the safety of inaction. **The LGAC recommends that EPA understand this trade off and that any incentive for utilities to add phosphate into water include consideration for the cost of removing it from wastewater treatment plants at the end of the water cycle.**

Reducing Rule Complexity

In general, the LGAC recommends reducing the complexity of rules whenever possible. While the members generally agree on recommendations, there are a few points of differing opinions, including whether the Lead and Copper Rule should be more restrictive at the federal level. On the one side, members understand that states have the option to add restrictions appropriate for their jurisdictions, and in many instances that approach has been successful, especially in more urban environments. On the other side, many small and rural communities lack the expertise and capacity to develop additional standards, and so they can only rely on the federal levels for protection.

In terms of revising the action level and trigger level construct, there are mixed opinions among members. There is concern that if you add "trigger level" to the lexicon, there will be unnecessary confusion and concern, fueled by sound bites from the media. Managing this communication will pull resources away from the goal of efficiently replacing as many lines as possible. **The LGAC recommends that either the EPA make the federal level more restrictive or add a new trigger level, but not both actions.**

Providing small system flexibility

All the issues identified above are magnified in smaller communities, with the additional benefit of accessing state and federal resources to take action.

The LGAC does not think that population should dictate the safety of water; lead lines should be replaced everywhere. However, places with small populations and limited capacity in local government should be given flexibility in how long it takes them to replace service lines. Providing technical assistance should also be considered for small systems, including offering incentives for smaller communities to combine resources, or for states to offer cooperative buying arrangements that lessen the administrative burden for each community.