Local Government Advisory Committee

February 20, 2024

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 (LGAC) appreciates the meaningful opportunity to provide input on the proposed Lead and Copper Rule Improvements. This regulatory action is a once in a lifetime opportunity to finally get the lead out of water across the country. As elected and appointed officials for local and state governments, we are dedicated to protecting the safety, health, and well-being of our communities.

Based on the proposed rulemaking, the LGAC has developed the following recommendations, with input from its Small Communities Advisory Subcommittee. We recommend that EPA:

- Allow flexibility for local governments to request timeline extensions based on their communities unique needs, opportunities, and challenges, and provide assistance to help them meet the law's requirements.

- Expand lead service line inventory reporting to include interior lead pipe connectors that may attach service lines to homes or meters.
- Provide communities with technical assistance to develop the policy and legal framework to successfully deploy a lead service line replacement program that includes accessing private property.

- Allow flexibility in lead service line replacement quotas from one year to the next if a replacement plan is in place and work is progressing.

- Work to secure inventory and stabilize the cost of needed supplies whenever possible, with some members of LGAC suggesting consideration of waiving the Buy America requirement if absolutely necessary to help alleviate this challenge.

- Provide dedicated funding and technical assistance to support meaningful public outreach and engagement and allow flexibility in the timeline to complete this.

- Empower local communities, rather than states, to establish the timelines, but allow states to incentivize systems that have capacity to meet a shorter timeline.

- Include specific language in the LCRI to enumerate states with the power to develop their own rules for multiple exceedances.

- Not require water systems to provide filters to residents, and discontinue notice and filter requirements early in certain circumstances, such as when lead service line replacement is completed or when implementation of optimized corrosion control has ocurred.

- In agreement with EPA's proposal, allow states to approve corrosion control treatment (CCT) re-optimization changes for systems based on previously conducted CCT studies. Furthermore, the LGAC agrees with EPA that excessively stagnant samples should be withheld from being sent to laboratories.
- Not change the definition of small systems, given the ripple effect it would have (noted below), and pair funding and one-on-one technical assistance with any new or changed requirements for small systems.

More details about these recommendations are included below. The LGAC believes these steps will be critical in alleviating potential burdens on cities and small communities as they move forward with addressing harmful lead contamination in drinking water. We look forward to continuing discussions on this important topic.

Sincerely,

Mayor Leirion Gaylor Baird
LGAC Chair

LGAC Recommendations – Lead and Copper Rule Improvements

10-Year Replacement Timelines

LGAC previously recommended that EPA consider all reasonable requests for extending timelines related to replacing lead service lines. In this rulemaking, EPA estimates that 96% to 99% of water systems can replace all service lines within 10 years, with only three or four systems needing more time. However, local governments are continuously confronted with unknowns and challenges relative to project delivery, including but not limited to costs, financing, and affordability concerns, staff capacity and workforce shortages, replacement program scope and sequencing, geography and climate considerations, length of construction season, access to private property, timely procurement and supply chain delays, and the need for robust and meaningful community engagement. **The LGAC reiterates its prior recommendation that EPA allow flexibility in the rule for local governments to make reasonable requests for extending the timeline to replace lead lines in their communities based upon their unique needs, opportunities, and challenges.** As part of the request, EPA should be responsive and helpful to these communities by standing up programs to assist communities that are struggling to replace lead lines, including inventory development, navigating funding authorities and applications, developing community engagement plans, and procuring contractors for replacement work, to name a few.

Replacement Program Scope and Access to Private Property

EPA required many municipal water systems to identify all lead service lines in their communities, so they know the scope of the problem they seek to solve. However, private residences and commercial properties may have interior lead pipe connectors that attach the service line to the home or meter that have not been identified. The scope of replacing these interior lines and connectors, as well as the myriad of challenges and potential delays in doing so is still unknown. The rule states that there is no known safe level of lead exposure. **The LGAC recommends expanding the inventory reporting to include connectors.** The LGAC emphasizes that all lead must be removed when encountered, regardless of length of pipe. The definition of connector is sufficient, as long as it is clear anything over 2 feet is considered a service line.

Communities need support with successfully gaining access to private property and assuming liability for this work. First, in areas with rental property there is the burden of gaining approval from both the property owner and the resident. This requires significant staff outreach and trust building (more below). Second, is the challenge of funding the repair, especially if a landscaped yard must be torn up and repaired. Property owners need to be assured that their homes will be restored to as good if not better than they started. Depending on the home, restorations can cost as much as the service line replacement. There are also public relations concerns about leaving a lawn or sidewalk exposed during winter months because it cannot be restored until warmer weather arrives.

Communities may also need technical assistance to develop the policy and legal framework to successfully deploy a lead service line replacement program that includes replacing connectors on private property. From model ordinances to standard legal provisions, to typical access agreements, many communities will need a suite of governing documents and best practices that are “tried and true” and have worked in other places. For example, Detroit Water and Sewerage Department is trying to pass local legislation to give the City control of the private side of the line for one year, so that they can get access to the line, replace it, and offer a one-year warranty before returning it to the property owner. Detroit is also working with the state to enact a law allowing control of private side for purposes of replacing lead lines. However, this is arguably one extreme response, and there are concerns these types of laws constitute an unconstitutional taking of property. Many other communities are taking the approach of creating ordinances that give property owners the opportunity to be part of a free lead service line replacement program. If property owners don’t accept, they would be required to replace the line at their own cost by a certain date or lose water service. Regardless of the approach, these types of action will require significant time to develop and implement.

Geography and Climate

Geography and climate are additional factors in determining timeline. In a place like Madison or Lincoln, you must dig significantly deeper than a place like Dallas to reach the frost line. There are also different windows of opportunity to dig and repair sidewalk and landscaping depending on climate. The city of Madison underwent a full lead service lane replacement project in 2000, which serves as a relevant case study. The city estimated as many as 11,000 lines existed and were required through a consent decree to replace both the public side and the private side of the lines within ten years. City officials were optimistic that they would meet the deadline, and even accomplished most of the work within six years, once the needed processes and contracts were in place. However, they chose to stretch the last ten percent of the work over the remaining four years because there were future public works projects planned in that location, and waiting until those projects began meant saving significant money and decreasing disruption to residents' daily lives. While the project was overall a success, it's worth noting that part of the success is because it was a major municipal priority, with all hands-on deck. In a city of 300,000 people, with 70,000 service connections, an average of three to five replacements were completed each day, and that was at maximum capacity. **The LGAC recommends that EPA allow – or encourage states to allow – flexibility in quotas from one year to the next if there is a plan in place and work is progressing.**

Supply Chain and Labor

Completing this work on a national scale will test the market. With any type of major capital improvement project, the supply chain and labor are drivers of timeline and cost. If the whole country is simultaneously buying pipe, soliciting a workforce, and seeking lab results, there will be shortages that delay timelines and introduce price volatility. While the Bipartisan Infrastructure Law (BIL) provides a significant amount of funding, it will not be enough. Water rates will increase to cover the cost of lead line replacement. Having the flexibility to manage the costs over time will be helpful to stabilizing rates and affordability, especially for overburdened communities. Recent inflation has made most U.S. household reevaluate their expenditures. Combine that with other proposed regulations like PFAS drinking water limits, and utility rates could quickly become untenable for many households and businesses. **The LGAC recommends that the U.S. government work to secure inventory and stabilize the cost of needed supplies whenever possible. Some members of LGAC suggested that waiving the Buy America requirement could be considered, only if absolutely necessary, to help alleviate this challenge.**

Contractors will also be in limited supply compared to demand. In Ann Arbor, the water utility has never received more than two bids in response to an RFP, and at times there have been no responses. In Detroit, long term contracts were used to incentivize contractors to relocate staff and equipment to the area for guaranteed funding and stable work. The influx of federal infrastructure funding has allowed skilled contractors to pick their projects, and working in residential neighborhoods is particularly challenging. With an estimated six to nine months needed for each bid cycle, multiple years of dependable funding is helpful to attract contractors looking to invest in a community.

Community Engagement

A critical part of this work is community engagement and risk communication. Most systems lack the bandwidth to do the type of public outreach and engagement that is required. The effort will necessitate intentional and meaningful communication that will resonate with residents and businesses. An approach may include townhalls, open houses, or a resource hub to share information about the program, the project schedule, the impacts to the community, and the cooperation needed by each resident or business. A variety of communication channels must be established through websites, social and traditional media, bill inserts, neighborhood and community publications, and door-to-door campaigns, all of which will require appropriate translation services, delivered in a culturally competent manner. **EPA needs to provide dedicated funding and technical assistance to support this level of communication and allow communities to have a flexible timeline for meaningful public outreach.**

For example, in Detroit, replacement is occurring on a block-by-block basis. As one block comes to the top of the queue, the utility is hydro excavating to determine whether lead pipes are serving homes. Without proactive communication before, during, and after this lead determination, access to the home, digging up yards, and eliminating problem pipes would be impossible. Detroit states it costs $43 per house for staffing, printing literature, hosting meetings and door-to-door outreach for its lead line replacement community outreach program. To attain its goal of 10,000 line replacements per year, Detroit must set aside almost half a million dollars for outreach. Detroit credits its robust outreach program for the 100 percent cooperation in accessing the private service line.

While specific projects are communicated, communities will need time and support with the overall message that municipal drinking water is still safe to consume. Robust and meaningful communication is the foundation in which to build and maintain public trust. Without it, credibility will be lost. This can extend beyond municipal boundaries as well. For example, the City of Newark owns the reservoir supplying its residents and many surrounding communities. When they replaced their lines in 2020, the safety of the water was questioned, even though the reservoir was not contaminated with lead. Several communities ended contracts with the City and have not returned, resulting in significant lost revenue.

Deadlines and State Oversight

EPA has asked whether states should be required – as a condition of primacy – to set initial shortened deadlines where systems seemingly have the capacity. **The overall recommendation is to allow communities to establish their own timelines. With that said, LGAC members believed states could establish incentives for systems that do have capacity to meet a shorter timeline.**

Every local official is managing competing priorities and limited capacity. **The LGAC recommends that EPA not give states any role that allows them to prioritize those resources.** Looking at the cities of Newark and Yuma illustrate this need for community flexibility. When Newark replaced their lead service lines in 2020, during the height of the COVID-19 pandemic, ambition was a big motivator. The public supported the City's streamlined work and their focus on protecting environmental justice communities, and that in turn motivated city departments to work harder. However, that was a collective decision made by the community. In Yuma, Arizona, water is a daily topic of discussion. The health of the water is extremely important to the community, but so is the availability of water. Right now, the community has prioritized the former via a system expansion. At the end of the day, there is a limit to capacity and financing, and Yuma would be unable to secure a bond for an additional water project if required under the LCRI.

Lancaster, Pennsylvania, offers another perspective. The community and its leaders are committed to eliminating lead, but their research shows that only one percent of service lines are lead. The number one way that children are exposed to lead in Lancaster is through paint. In the last year, their health bureau received 91 cases of children with elevated blood lead levels (EBLL), 80 percent of which came from rental properties. The city is funding an aggressive campaign to eliminate the harmful contaminant and have been doing corrosion control for decades to mitigate any threat in drinking water. With more than 75 percent of the population considered an Environmental Justice community, affording another aggressive campaign under the LCRI will be a major challenge, and will not yield significant improvement in public health.

Generally, systems can remove lines at a faster pace when they are clustered in a neighborhood, but the work slows down when lines are scattered across the city. Thus, systems do not want the EPA/States to have the option of mandating shorter schedules if they see a system removing lines at a rapid pace. The ten-year timeline should apply regardless of the pace in the first few years.

Multiple Exceedances

In response to EPA's questions about filters and repeated exceedances, **the LGAC is hesitant to support filters**. They note that once communities have provided them, they will become a permanent responsibility, resulting in additional cost to the community, and putting the onus on residents to properly use and replace something on a set schedule. The better approach to growing public trust in water safety is to eliminate lead lines. Having filters available upon request is sufficient, but mandating delivery of filters to every home after an exceedance is administratively burdensome and costly, and they may not be used effectively anyway.

In response to the question of whether states should be allowed to develop their own rule for multiple exceedances, states already have the right to enact laws that enhance federal regulations. Nonetheless, **LGAC recommends the LCRI specifically say that states may develop their own rule for multiple exceedances.**

In response to EPA's question about discontinuing notice and filter requirements early in certain circumstances (e.g. if the system implements optimized or re-optimized corrosion control, completes the LSLR, or has two subsequent periods below the actionable level), the LGAC unequivocally says yes. Especially if a line is replaced, every requirement regarding lead should end.

Corrosion Control Treatment and Samples

Regarding corrosion control treatments, LGAC members highlight the idea of "one water," and that anything added for drinking water safety must be taken out in the wastewater treatment part of the cycle. However, **the LGAC agrees with EPA about corrosion control being a reasonable and cost-effective treatment protocol**. It will be an important tool long into the future, especially given the prevalence of lead in internal fixtures and faucets. The ultimate goal of water utilities is to protect public health and maintain their trust; if a lead action level is going to be hit, utilities need to be able to take action with additional corrosion control treatment. **LGAC supports EPA's proposal that states may approve a CCT re-optimization treatment change for a system based on a previously conducted CCT study**. The previous study authorized a range of orthophosphate that may be added to the water supply; thus, in the event of an exceedance, there may be room within the range of the water utility's current authorized treatment protocol to increase the orthophosphate level.

The LGAC agrees with EPA that excessively stagnant samples should be withheld from being sent to the laboratory. Detroit considers any sample as excessively stagnant if the water has been stagnant for over one week. Water utilities should strive to sample at addresses with regular consumption, which is representative of households having potential exposure to lead daily.

Small Communities

The LGAC's Small Communities Advisory Subcommittee (SCAS), which includes elected and appointed officials, mostly from communities of 10,000 residents or less, provided specific input on the rulemaking.

Regarding the proposed lowering of the definition of small systems from 10,000 to 3,300 residents, they raised concerns. First, communities of this size have limited revenue, with little differentiation in resources between the two proposed thresholds. **If flexibilities were no longer waived for communities between 3,300 and 10,000 residents, there would need to be a corresponding funding mechanism to support compliance. There would also need to be little to no match requirement for planning and implementation, from municipalities no longer considered "small" under the new regulation.**

Beyond funding, technical assistance is an important factor for small communities. SCAS members highlighted that the expertise and worker retention of small water system operators has declined over the last ten years. The technical assistance offered is often via a website recording or dependent on completing a complex application. **If**

the goal is to support compliance, implementation must involve a person coming into a facility, or at the least, connecting via one-on-one videoconferencing.

A bigger concern with changing the threshold in the definition is the series of known and unknown impacts it would have on state regulations and guidelines. States often use EPA's definition of small systems to determine different funding resources and requirements. Changing this for one specific rule could set a dangerous precedent, with the potential for a cascading, harmful fiscal impact. Furthermore, the change could impact regionalization efforts, where rural communities are working to combine operations to share resources and lower cost. The SCAS believes that EPA should incentivize this trend wherever possible. However, in some states there are population thresholds for this action, which are based on federal water regulations. SCAS members from western Massachusetts noted that it's already difficult to connect communities with under 5,000 people to regionalization efforts, and this proposed change would further exacerbate the challenges associated with these efforts.

In response to the question of who authors relevant guidance under the LCRI, **the SCAS appreciates EPA's evidence-based approach and overall supports EPA taking on this responsibility**. However, if this responsibility is delegated to states, they recommend that EPA provide templates and deadlines for completion. Members also request that, wherever possible, communities be allowed to access funding and technical assistance directly from EPA – rather than an intermediary government or organization – as this makes a notable difference in efficiency and efficacy for small communities.