



June 21, 2021

Dr. Jennifer McLain
Office of Groundwater and Drinking Water
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20009

Re: Additional Input from ASDWA on Potential Lead and Copper Rule Revisions (LCRR) on Public Notification and Public Education (PN/PE) and Certifications to the States

Dear Dr. McLain,

The state and territorial primacy agencies are co-regulators with the Environmental Protection Agency (EPA) in the development and implementation of drinking water regulations. As such, ASDWA's members have a unique relationship with EPA when compared to other drinking water stakeholders such as the regulated community, i.e., the water systems. This relationship provides unique opportunities and challenges in the regulatory development process, especially for complex rules such as the Lead and Copper Rule Revisions (LCRR).

ASDWA's members appreciate the time and resources the Agency has expended on the LCRR, as the LCRR will improve public health protection. The final LCRR as promulgated on January 15, 2021, has several areas that warrant additional review and stakeholder engagement. ASDWA's previous comments (dated April 8, 2021) supported the proposed delay of the LCRR effective date to December 16, 2021, as well as the delay of the compliance date to September 16, 2024.

ASDWA supports EPA's ongoing "Regulatory Freeze Pending Review" to allow for additional stakeholder engagement, as well as providing an opportunity for ASDWA to provide additional input on specific topics. This public notification and public education (PN/PE) and certifications letter is one of a series of LCRR letters to EPA. Additional letters on other LCRR issues will be forthcoming over the next couple of weeks that warrant additional consideration by EPA. This series of letters addressing a broad range of LCRR issues that should serve as the foundation for discussions at the co-regulator meeting anticipated to be convened in July 2021.

24-Hour PN Requirement for Action Level Exceedances (ALEs)

The 24-hour PN requirement for ALEs is problematic for both primacy agencies and systems and should be reconsidered in the context of this review. ASDWA is repeating some of its [PN comments on the proposed LCRR](#) due to the importance of this component of the LCRR.

The action level (AL) of 15 µg/L in the current Lead and Copper Rule (LCR) is a measure of corrosion control in a distribution system based on the knowledge at the time. Since the AL and trigger level (TL) are not health-based numbers, ASDWA does not agree with EPA's conclusion that a lead ALE meets the definition of a Tier 1 violation or exceedance "with potential to have serious adverse effects on human health as a result of short-term exposure," as described in section 2106 of the Water Infrastructure Improvements for the Nation Act (WIIN Act). Inclusion of an ALE as a violation category requiring a Tier 1 public notice in the final LCRR would fundamentally change the implementation of Tier 1 public notification (PN). ASDWA recommends that EPA classify lead ALEs as Tier II PN.

Therefore, ASDWA recommends that EPA revise the PN requirements in the final LCRR so that this process is more reasonable. The final LCRR should revise the proposed 24-hour PN requirements to allow for "one business day" for both system-wide and household public notifications to adhere to the intent of the WIIN Act and yet provide a small amount of flexibility to address issues with requirements for actions on weekends, which are "non-business days." The "one business day" requirement would only apply to the LCRR.

The final LCRR should also recognize the differences between household ALEs and system-wide ALEs:

- **Household ALEs:** Water systems should provide their customers with educational materials at the time the tap sample is taken and tell them when the results are expected. When the water system receives the analytical results that result in an ALE, then the system should provide the consumer with the appropriate public notice, including the lead concentration in their sample and the water system's contact information in case the customer has additional questions. This makes the notice shorter, simpler, and more easily prepared in one business day, as previously recommended. The water system will then have a follow-up discussion with the homeowner about the Sample Site Assessment as previously discussed.
- **System-wide ALEs:** The "one business day" public notice to water system customers for a system-wide ALE should be succinct and direct customers to public education materials, with more information on water system actions. Again, this allows for a simpler process during the "one business day". For system-wide ALEs, the final LCRR should allow water systems to use "Reverse 911" type autodial systems, media, and social media, or other method approved by the state to meet the 24-hour or "one business day" notification requirement. Providing for additional delivery methods for PN that include more electronic and rapid response methods will increase the probability that notification will be timely.

The final LCRR should recognize that it is both problematic and logistically very difficult to require Tier 1 PN for system-wide ALEs and 24-hour notice for household ALEs. Tier 1 notices are typically reserved for acute public health issues, such as bacterial contamination or a

treatment failure for removing high-risk contaminants. The inclusion of lead in the proposed LCRR in the immediate acute health risk category is unwarranted, especially given the proposed LCRR is not suggesting a health-based limit and is relying on both the AL and TL for regulatory requirements.

Streamline and Reduce the Number of PN/PE Requirements

ASDWA recommends that the PN/PE requirements in the LCRR be streamlined and reduced. This includes clarifying certain provisions and removing certain sections of the LCRR and to combine some requirements where one task can accomplish two or more goals, while still meeting the needs for providing PN/PE, as described in each of the following LCRR sections:

- 90th percentile (P90) lead Action Level Exceedance (ALE),
- ALE for individual tap samples,
- Public education,
- Consumer Confidence Reports,
- Find & Fix,
- Customers with Lead Service Lines (consumer notice),
- Public outreach when not meeting lead service line replacement (LSLR) goals, and
- Schools and childcare facilities.

For each of these topics, the importance of requiring public water systems (PWSs) to provide appropriate information about lead to their customers is critical, especially if the customer is served by a lead service line (LSL), however the current requirements create unneeded redundancy. For example, if a home with a lead service line is part of the sampling pool and has high levels of lead at their home during a round in which the system exceeds the lead action level at a system not meeting their LSLR percentages, that individual homeowner will receive no less than 7 communications pertaining to lead. These communications include: lead consumer notice, contact from system for find-and-fix, public notice within 24 hours of when the P90 is calculated, public education within 60 days of when the P90 is calculated (and monthly on the water bill), in the CCRs, targeted outreach for homes with lead service lines, and additional outreach for homes with lead service lines when PWS not meeting goal-based LSLR. With the combination of all these PN/PE requirements, the message to customers may be diluted by the volume of information to process or become a nuisance to the homeowner. The number of requirements will challenge many water systems to understand and continually track what communications are required in what timeframe, and for states to track to ensure PN/PE compliance. States will be inundated with questions from the water systems, and potentially customers, about these complex regulatory requirements.

The LCRR PN/PE regulatory requirements are exacerbating a complex regulation. Page 4199 of the *Federal Register* states that, “EPA is also focused on conducting critical research and improving public awareness by consolidating and streamlining Federal messaging.” In the revisions to the PN rule in 2000, the goal was to make the notifications that were received more “meaningful.” To assist in improving notifications, ASDWA recommends the following to clarify,

streamline and remove certain sections of the LCRR and to combine some of the PN/PE requirements:

- Provide an option for states to not require language about lead in every CCR: If a community water system validates that they have no lead service lines and they have not detected lead in any of their samples, such as when this frequently happens in mobile home parks, then states should have the option to not require them to include language about lead in their CCR. The states would then also have the flexibility to provide an option or require PWSs (without LSLs and without lead in their samples) to provide language about the risks of lead from home plumbing in their CCR, if they choose to.
- Create and simplify one single public education communication requirement that can be used for ALEs and customers with lead service lines (LSLs) for the scenarios: It would be helpful for PWSs to be able to use the same language to meet all the public education (PE) materials requirements in one annual communication in conjunction with the CCR. This change would separate the PE material requirements from the more time sensitive notification requirements such as for ALEs; during water related work that could disturb LSLs; and for customers with LSLs at the time of new service initiation, where a reference to the (annual) PE materials could also be provided with the notifications.
- Simplify the LCRR requirements for providing PE materials by combining them where possible, and still meet the multiple requirements instead of having separate requirements for different scenarios. For this to be simplified, the LCRR should clearly explain the information that must be provided in PE materials for households to understand and address health risks from lead, galvanized, or brass fixtures by including specific examples of actions households should take to address these risks. In the current LCRR, PE materials are required to be provided for the five following scenarios which should be separated from the more time sensitive notification requirements, and combined where possible to minimize multiple communications:
 1. At the end of the monitoring period for a trigger level exceedance that occurred and repeated annually until the system is no longer in exceedance;
 2. During water related work that could disturb LSLs;
 3. Within 30 days of completion of the LSL Inventory plus annually and at time of new service initiation;
 4. In the first year after the CWS does not meet its replacement goal and every year until the CWS is no longer required to perform a goal based LSLR program; and
 5. After the PWS completes its LSL replacement program.
- Removing §141.85 (b)(2)(A) that requires PE about lead be provided to local and state health agencies. Local and state health agencies should be more knowledgeable about the health effects of lead than the PWS. In addition, it would be very difficult for the state or local health agency to track the information for each location within the PWS service area, track what the PWS is doing to address it, or act on the information that is provided. The local health agency may also have many PWSs within its jurisdiction and would potentially be receiving the same information from all of them. This requirement

could instead be combined with the PE recommendation above to provide the same information (in one single communication) to state and local health agencies that is provided to PWS customers.

- Clarify §141.80 (c)(3)(v) and §141.202 (b) to explain when the lead action level is calculated, i.e., that the lead action level cannot be calculated until all sampling results for the monitoring period have been submitted. This applies to both §141.80 (c)(3)(v) General requirements for Control of Lead and Copper and §141.202 (b) Tier 1 Public Notice to explain when the lead action level is calculated.
- Revise §141.85 (d) to clarify what information is provided when a Tier 1 PN is issued. This revision should include an explanation of what a member of the public is supposed to do with the information. For example, if a customer's neighbor has a galvanized line and the household receiving it doesn't have an ALE, but the Tier 1 PN 24-hour notice goes to the whole service area, EPA should clarify whether the customer is supposed to follow a "do not drink" order or flush their lines. This should also provide explicit examples of pipes and fixtures (e.g., lead, galvanized, or brass fixtures) that may contribute to lead levels. While the LCRR includes some information about this, it should provide more specific information, such as for a Tier 1 boil order (similar to other rules).

Streamline and Reduce the Number of Certifications to the State

ASDWA recommends that the number of requirements for certifications to the state be streamlined and reduced in the LCRR. There are currently 22 required certifications in the LCRR which will be problematic for states and PWSs to track and to ensure compliance. To streamline these requirements in a manner that ensures states can adequately implement the rule and are also able to report the necessary information to EPA, ASDWA recommends that each of these 22 certifications be combined into one report for an annual (or bi-annual) certification, similar to the CCR requirements. This could potentially include a checklist, with information about how the PWS met the requirements of the LCRR and to certify that they were completed. A bi-annual requirement would also coincide with and address the need for having to certify that the PWS completed sampling if sampling is conducted twice per year.

ASDWA appreciates the opportunity to provide this additional input in the LCRR review process. If you have any questions about these comments, please feel free to contact email me at aroberson@asdwa.org or call me at (703) 915-4385.

Sincerely Yours,



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Executive Director

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