Association of State
Drinking Water Administrators

May 27, 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 Small Systems Issues

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 small systems letter is the second of a series of LCRR letters to EPA and addresses four significant small systems issues, noting that ASDWA is following EPA's definition of a small system being a system that serves 10,000 or fewer customers. Additional letters on other LCRR issues will be forthcoming over the next few weeks that warrant additional consideration by EPA. These letters should serve as the foundation for discussions at the co-regulator meeting that is scheduled for July 2021.

Move Small System Flexibilities to Corrosion Control Treatment (CCT) Section as Exceptions - ASDWA recommends that the entire small water system compliance flexibility portion of the

LCRR in §141.93 be removed and replaced with the following two exceptions to the CCT installation requirements:

1. CCT Exception for Non-Transient, Non-Community Water Systems (NTNCWSs) and small community systems that have control over all plumbing to allow for replacement of all lead bearing plumbing fixtures in lieu of CCT installation.
2. CCT Exception for very small systems (serving 100 connections or less) to allow for installation and maintenance of POU devices in lieu of CCT installation.

This change would help minimize the state burden for tracking by combining the small systems flexibilities as part of the CCT requirements.

Only Allow POU Devices for Water Systems With 100 Connections or Less - ASDWA recommends that the small system flexibility option in the final LCRR for point-of-use (POU) devices only be allowed for very small water systems with 100 connections or less. Based on states' experiences, POUs are not a viable compliance option for system serving more than 100 connections, as this option requires system personnel to purchase, install, and maintain POUs for more than 100 connections 100% of the time. Potential opportunities for failure with a POU program include: getting 100% of the system to initially participate and maintain participation; accessing customer homes for maintenance, replacement and compliance monitoring; customer education for understanding the importance of the POU device and how to use it; modification and removal of POU devices by customers outside of the control of the system; transfer of occupancy to new owners or tenants without the transfer of knowledge and education about the POU device; and tracking maintenance and replacement of filters.

While ASDWA is making this recommendation for a small universe of systems serving 100 connections or less to potentially use POU for compliance, it is important to note that some states would not allow POU as a compliance option for any system due to the above reasons. This flexibility for these states to not allow POU for compliance must be maintained in the LCRR.

After working with water systems to address lead and other contaminants such as arsenic and uranium with POU devices, some states have found that it is very difficult for water systems to install and maintain POU devices and ensure compliance when having the devices installed for more than 100 connections. Kansas has had some limited success with water systems using POU devices that serve 100 connections or less. Vermont has had some limited success but also has experienced problems with water systems attempting to use POU devices for lead removal at systems serving less than 100 connections, such as with customers in ski area condos where the water system cannot control each device and some devices are removed for various reasons.

ASDWA also recommends that EPA provide clear criteria in the LCRR for small systems to ensure that they have adequate training and can complete the necessary requirements for proper POU program implementation, even with the lower limit of 100 connections. The criteria should include that each water system must have an escrow account for future

maintenance and replacement of filters and conduct sampling (on top of other sampling requirements) for a minimum of one-third of the total number of POU devices each year (noting that quarterly monitoring may be needed to appropriately match up with traditional LCRR compliance monitoring); must get certification from each owner/resident of acceptance and buy-in, and that the water system provide education materials to the customer that the water system owns the POU device, that it cannot be modified or removed, and if there is a problem that the water system should be contacted immediately. Additionally, depending on the language in the LCRR, some states would likely incorporate additional levels of compliance oversight, and a consent order may be needed for the use of POU devices for compliance.

These criteria would be consistent with existing state requirements in Kansas, Vermont, Nebraska, and Montana to ensure that the water system has allocated resources for the POU devices and for sampling; that the devices remain in place and are working properly to remove lead; and that the water system has access to go into customer homes and non-residential buildings to maintain them on a regular and continual basis. Kansas also approves the POU device prior to installation, that POU device be installed permanently into the plumbing (e.g., reverse osmosis or Granular Activated Carbon [GAC]) and would not approve POU installation at the end of a faucet. The Kansas Department of Health and Environment (KDHE) Point of Use & Point of Entry Treatment Device Policy details the KDHE's requirements.

Sampling Waivers - ASDWA recommends that EPA provides clear language within the LCRR, and/or provide substantive guidance, for what information must be included in the water system's documentation for states to issue a sampling waiver. States and small water systems need to know what proof a small system will be required to provide in order for the sampling waivers to be issued from the beginning of the LCRR compliance period, and then throughout the time period for completing lead service line replacements. States and small water systems must understand the waiver process and what type of technical assistance the systems may need, based on their limited knowledge and the complexity of the required information.

Remove Only Lead Service Line Replacement as a Compliance Option - ASDWA recommends that small systems serving 10,000 or fewer customers that have lead service lines (LSLs) as defined by the LCRR be required to submit an LSL replacement plan with their LSL inventory to ensure the complete consideration of potential compliance alternatives. The regulatory requirements for LSL inventories and replacement plans should be consistent across all system sizes, as the need to protect public health is not dependent on system size.

ASDWA also recommends removing LSL replacement as a single compliance alternative. The LCRR small system flexibility option for full LSL replacement (all LSLs within 15 years) should be removed as a single option (in lieu of other options) from the list of compliance alternatives, and instead be required in conjunction with another compliance alternative. Allowing replacement over 15 years in lieu of CCT installation or another option for systems serving 10,000 or fewer customers with LSLs creates a situation where customers will continue to have

lead in their drinking water while the LSLs are being replaced over 15 years. In addition, homes with leaded brass or lead solder in their plumbing could continue to have elevated levels of lead in their water well beyond the 15-year period of LSL replacement.

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,

J. Alan Roberson, P.E.
Executive Director

Cc: Eric Burneson – EPA OGWDW
Anita Thompkins – EPA OGWDW