



June 28, 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 Lead Testing in Schools and Child Care Facilities

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 letter on lead testing in schools and child care facilities is one a series of LCRR letters to EPA. Additional letters on other LCRR issues will be forthcoming over the next few 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 that is tentatively scheduled for July 2021.

ASDWA's recommendations for lead testing in schools and child care facilities in the current LCRR address: consistency in messaging between the LCRR, WIIN testing, and the 3Ts, grandfathering of existing data, re-evaluating the current language on opting out of testing and non-responses, and testing for K-12 schools and not just elementary schools. Additionally,

ASDWA recommends that EPA increase the Agency's outreach to other educational association and non-governmental organizations (NGOs) to appropriately share the workload and the responsibility for lead testing in schools and child care facilities.

Consistency with Existing Protocols

ASDWA recommends the current lead testing in schools and child care facilities portion of the LCRR be adjusted to match existing federal lead testing initiatives to improve consistency and minimize confusion. Currently the testing requirements of the Water Infrastructure Improvements for the Nation Act 2016 (WIIN) and EPA's 3Ts Program, in combination with the LCRR lead testing in schools and child care facilities, creates testing confusion and inconsistency.

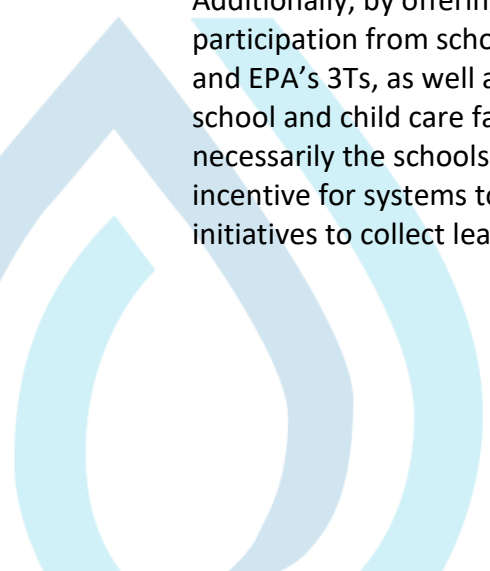
For example, the lack of an action level in EPA's 3Ts is currently an obvious point of confusion for schools on when to act, and the LCRR's "Regulatory Freeze Pending Review" should be seen as an opportunity to develop a consistent message among the 3Ts, WIIN, and LCRR. The testing requirements in WIIN are far more comprehensive than the lead testing in schools and child care facilities outlined in the LCRR, and EPA should consider making these testing protocols identical. Without changing the LCRR to match WIIN, there runs a risk of getting a lead result in compliance with one protocol but being out of compliance with a different protocol.

Grandfathering Existing Data and School and Child Care Facility Participation

In addition to improving consistency among these three protocols (3Ts, WIIN, and LCRR), ASDWA recommends that the LCRR add the opportunity to grandfather in existing lead testing data from schools and child care facilities. If school districts or child care facilities or water systems have a comprehensive plan of monitoring and provide the results publicly, those activities and the data collected should be taken into consideration for use in LCRR compliance.

Some states and/or school districts have been testing some schools for several years and have a significant amount of data. For example, Minnesota schools are required to test all taps used for consumption once every five years, making the LCRR testing redundant. Massachusetts has been conducting [lead testing in schools](#) since 2016, with a significant amount of data collected to date. Several other states started lead testing in schools prior to the LCRR and this data should not be ignored in the LCRR.

Additionally, by offering the opportunity to grandfather existing data, this will encourage participation from schools and child care facilities in both the existing WIIN testing protocols and EPA's 3Ts, as well as the LCRR. States are presently concerned that the convincing for school and child care facility participation in lead testing falls on the water system and not necessarily the schools and child care facilities. The grandfathering of data is a much-needed incentive for systems to garner school and child care facility participation across all federal initiatives to collect lead samples.



EPA should also use this opportunity to clarify their definition of “child care facility” in the rule. The lack of a clear definition is causing confusion on what is included under the term “child care facility.” Defining this term should address associated size thresholds and whether this includes in-home licensed daycares.

Maximizing the participation of schools and child care facilities in testing for lead in drinking water is critical to protecting public health. ASDWA and its members want to reemphasize the importance of school and child care facility participation in lead testing. ASDWA recommends that EPA re-evaluate the option of allowing schools and child care facilities to opt out of lead testing. Allowing the option of opting out undermines the entire purpose of the LCRR – protecting the public, especially children, who are particularly susceptible, from elevated lead levels. In addition to addressing the opting out issue, EPA needs to provide clarity on non-responses. How many times must a system reach out to a daycare and child care facility before it is considered a non-response? What is the time necessary between reaching out, and how long must non-responses and opt-outs be documented? Resolving the issue of a water system receiving several non-responses from schools and child care facilities is critical, as it is an easier alternative than formally replying to the water system with an affirmative or refusal to testing. In addition to maximizing participation of schools and child care facilities, ASDWA recommends that EPA improve accountability in the rule. Under the current proposal, schools might not share testing results with parents, which is an issue EPA needs to remedy. There should also be some accountability with the schools to ensure remediation is happening. These clarifications and suggestions are necessary before finalizing the LCRR.

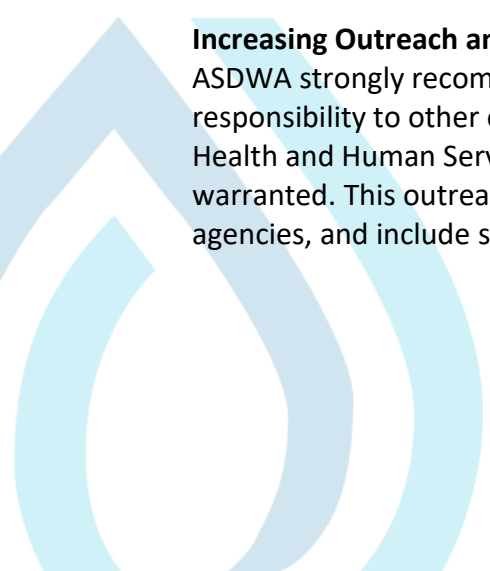
Expanding Lead Testing Requirements to K-12 Schools

Considering the full protection of vulnerable populations to elevated levels of lead in schools, ASDWA and its members recommend that testing for lead in schools be conducted in K-12 schools. The inclusion of secondary schools in this recommendation accounts for the potentially susceptible populations, such as pregnant students and teachers, as well as comprehensively protecting the country’s students. This recommendation echoes many concerns that have been shared by the public and other organizations during EPA’s public stakeholder listening sessions.

For the LCRR lead testing requirements to ultimately be successful, existing data must be considered for compliance, testing should be conducted in K-12 schools, and the option for opting out or not responding must be re-evaluated.

Increasing Outreach and Engagement

ASDWA strongly recommends that EPA use the LCRR as an opportunity to engage and share responsibility to other organizations like the Department of Education (DoE) and Department of Health and Human Services (HHS). An extensive outreach and engagement program is warranted. This outreach and engagement needs to extend beyond these two government agencies, and include school-centric and child care-centric associations.



Some, but not all, relevant school-centric associations are listed below:

- National School Board Association - <https://www.nsba.org/> Most or all states also have a state school board association.
- American Association of Superintendents - <http://www.aasa.org/home/> This association also has state organizations that are very active.
- Association of School Business Officials - <https://asbointl.org/> This association also has active state organizations with annual conferences.

EPA should also conduct outreach to parent-teacher associations (PTAs).

The child care centric-associations also warrant additional outreach. Child care associations include, but are not limited to, the National Association of Family Child Care (NAFCC), the National Children's Facilities Network, the Center for Law and Social Policy (CLASP), and National Association for the Education of Young Children and Education Counsel.

Many state programs have partnered with their state-level education agencies, which has been vital to running state lead testing in schools and child care facilities. ASDWA recommends that EPA increase its interactions with DoE, HHS and comparable state-level agencies, as these agencies likely have more jurisdiction over schools and child care facilities than local water systems.

If you have any questions about these comments, please feel free to contact me or Kevin Letterly (kletterly@asdwa.org).

Sincerely Yours,



J. Alan Roberson, P.E.
Executive Director

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

