February 11, 2020

Andrew R. Wheeler
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

RE: U.S. Environmental Protections Agency's *National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Revisions* – Docket ID No. EPA-HQ-OW-2017-0300; 84 Federal Register 61684 (Nov. 13, 2019)

Dear Administrator Wheeler:

The Association of California Water Agencies (ACWA) and California Municipal Utilities Association (CMUA) appreciate the opportunity to provide comment on the Environmental Protection Agency's (EPA's) *National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Revisions*. (84 Fed. Reg. 61684 (Nov. 13, 2019).) ACWA's 450 public water agency members supply over 90 percent of the water delivered in California for residential, agricultural, and municipal uses. CMUA represents 49 water agencies that supply water to over 75% of Californians.

I. Introduction

Lead is a serious and well-recognized public health threat. EPA has a long history of taking action to reduce exposure to lead and copper and protect public health. ACWA and CMUA appreciate and value EPA's efforts to address this issue. Reducing lead in drinking water requires a collaborative effort by federal and state regulators, water systems, consumers, and many others. As is often the case with a national rule, a 'one-size fits all' approach seldom addresses the subtle but significant differences that may exist among the affected parties.

The state of California has done significant work to reduce and minimize exposure to lead. California's programs to test for lead in schools and inventory and replace lead service lines are robust progressive efforts that EPA should consider as a model for the rest of the nation. ACWA and CMUA members are working with state regulators, schools, childcare facilities, and consumers to address lead in drinking water. EPA should recognize the important on-going work in California to reduce lead in drinking water and allow primacy state programs to be grandfathered into the new rule. Primacy states, like California, should receive a waiver from the proposed new rule. These states should be exempted even if the details of their programs do not precisely match the requirements in the proposed rule. Based on California's experience, ACWA and CMUA urge EPA to make changes to the proposed rule to improve the ability of water systems to implement the new rule. A detailed description of our suggested changes is below.

II. Lead in Schools and Childcare Facilities

In 2017, California adopted legislation that required community water systems (CWS) to test for lead at public K-12 schools by July 1, 2019. Participation by private K-12 schools is voluntary and the schools can request sampling from their water provider. (Health and Safety Code § 116277; and 2017 Permit Amendments.) California's school sampling program has been incredibly successful. Out of 7,570 sites sampled, only 289 had test results at or greater than the action level. Starting in 2021, childcare facilities will be required to test for lead as a condition of maintaining their operating permits. (Health and Safety Code § 1597.16 (a).) The California Department of Social Services (CDSS) is currently developing the childcare facility regulations in conjunction with the State Water Resources Control Board (State Water Board).

The proposed rule recognizes that some state and local agencies have already completed or are in the process of completing lead testing in schools and childcare facilities. To avoid duplication, the proposed rule provides the opportunity for a state or primacy agency to waive school sampling requirements if a program is in place that is at least as stringent as the proposed LCR requirements (84 Fed. Reg. at 61707.) However, to be eligible for the waiver the state program must precisely match the proposed new program. Unless the proposed rule is changed, California would be ineligible for the waiver. The new federal rule should not invalidate or duplicate state's on-going programs to address lead in schools and childcare facilities. ACWA and CMUA urge EPA to respect state leadership on this issue and reward rather than penalize states for already taking action.

A. California is Near Completion of an Innovative and Robust K-12 School Testing Program

California should be eligible for a waiver from the proposed K-12 school sampling program and EPA should consider modifying the proposed rule to more closely match California's program. ACWA and CMUA believe California's school lead sampling program is exemplary, public education and communication of results is outstanding; there is no need for a new duplicative testing regime.

Unlike in the proposed rule, California does not explicitly require water agencies to carry out the school testing. (*Id.* at 61707.) While some CWS have conducted the testing themselves, others have partnered with their local school district, or contracted with third parties to conduct the testing. This flexibility ensured testing was completed in a timely manner. ACWA and CMUA recommend the federal rule allow this flexibility; as long as the testing is completed by a certified laboratory, it should not matter who carries it out.

In California, schools constructed after 2010 are exempt from sampling requirements rather than the 2014 construction date EPA is proposing. (*Id.* at 61689.) California adopted the 2010 construction date threshold because schools constructed after that date do not include leaded pipes or fixtures. Since lead pipes and fixtures were not used in schools constructed after 2010, there is no need to collect samples from these schools. (Health and Safety Code § 116277 (e).) ACWA and CMUA recommend that EPA utilize California's cutoff date of January 1, 2010 or allow each state to set its own cutoff date based on the use of lead pipes and fixtures in their state.

The proposed rule requires all K-12 schools be sampled for lead every five years by a CWS. (84 Fed. Reg. at 61689.) ACWA and CMUA believe a 10-year sampling cycle is more appropriate given the complexity and resources required to conduct tests at these facilities. Additionally, for sites that show

lead levels to be below the action level, ACWA and CMUA recommend no longer requiring CWS to conduct testing.

The proposed rule specifies requirements for sample collection from schools and daycares, including an eight hour minimum stagnation time and the use of 250 ml bottles. (*Id*. at 61769.) California's State School Sampling Guidance mandates a stagnation period of six hours and specifies one liter wide-mouth bottles be used for sample collection. These differences in sampling protocols should not disqualify states from receiving a waiver. ACWA and CMUA encourage EPA to allow flexibility in sampling collection. If the proposed prescriptive regulatory language remains, EPA may be compelled to invalidate all of the good work done to assess lead in California schools, and potentially other states with proactive programs.

Given the difficult nature of coordinating testing in school facilities, California allows for schools to remain untested if a CWS has made a good faith attempt to contact that school for testing. ACWA and CMUA urge EPA to be similarly flexible in the national rule. If CWS can demonstrate they have made a good faith effort to reach out to schools, they should not be punished for the schools failure to respond. In California, private schools have proven especially difficult to sample. (2017 Permit Amendments.) It is for this reason that ACWA and CMUA recommend mandatory testing be restricted to public K-12 schools and private school testing be voluntary. More coordination would be needed with the U.S. Department of Education and state education agencies if mandatory testing at private schools is included in the final rule.

ACWA and CMUA support educating the public regarding lead in drinking water. It is imperative that any information conveyed to the public is informative and easy to understand. California's Division of Drinking Water's (DDW) webpage entitled "Lead Sampling of Drinking Water in California Schools" should serve as a model that EPA can build on. The webpage, which is updated on anon-going basis, contains documents on frequently asked questions, information for the public, information for community water systems, sampling results, funding opportunities, and additional resources such as those provided by trade associations, academic publications and the federal government.

The DDW developed a unique tool to convey results to the public in the form of a story map. This innovative map displays school sample results that DDW has received (and will continue to receive) on a map. You can enter your zip code, school name, or click on any location on the map to view the results of lead testing in California's schools. The story map provides information that is helpful to the reader including: how to use the map, testing results and what they mean, and most importantly what remediation action the school has undertaken. The information contained on the story map was developed by DDW with feedback from water systems, which reviewed the information for readability. To create the map, DDW made a concerted effort to streamline data collection to the basic information that could be conveyed in an understandable way. If EPA decides to produce a similar story map, ACWA and CMUA recommend working with water systems and other stakeholders to ensure the data displayed is factual and easily understood.

B. Childcare Facilities

As noted previously, California recently enacted legislation requiring childcare facilities to test for lead as a condition of maintaining their operating permits. (Health and Safety Code § 1597.16 (a).) In conjunction with the State Water Board, CDSS is currently developing the regulations establishing how

these facilities conduct testing. Given the frequency in which childcare facilities open and close in California, the State Water Board and CDSS have been working closely to identify locations of childcare facilities and develop guidance for testing protocols at these sites. Selected by CDSS, yet-to-be-determined third-party providers will test Childcare centers every five years. This arrangement recognizes the complicated nature between water suppliers, owners of the property and the operators of a business entity regulated by another state agency. In-home childcare providers were deliberately excluded from this legislation because sampling these entities is even more complex than sampling licensed childcare facilities. ACWA and CMUA recommend that EPA model the federal childcare testing program after California's. The proposed rule would impose too substantial of a burden on CWS and should be removed or significantly revised. Childcare facilities should be responsible for sampling their water for lead rather than CWS.

III. Lead Service Lines

California has an extensive lead service line (LSL) inventory and replacement program. California's approach is workable for CWS, transparent to customers, and protects public health. ACWA and CMUA urge EPA to revise the proposed rule to more closely mirror California's lead service line programs.

A. Inventory

California's LSL inventory began in 2016 and the first round was completed in 2018. (Health and Safety Code § 116885(a).) All CWS provided DDW with information on the service lines in their district. The results of the inventory are publically available on an interactive map administered by DDW. Customers can use the map to find the number of lead service lines, unknown service lines, and total number of service lines in their water agency's district. Results from the inventory of over 11 million service lines indicate that there are only 136 lead service lines and 900,000 service lines are of unknown material in the entire state of California. The website will next be updated in 2020 after CWS provide DDW with more detailed information. From 2017 to 2019, CWS, as part of their Electronic Annual Reports were required to submit lead service line and unknown service line information to the DDW. By July 1, 2020 systems with known lead service lines and unknown service lines must submit a replacement schedule for known lead and unknown lines to DDW. The State Water Board's DDW Deputy Director must then approve the schedule. Upon approval, DDW will publically post timelines on DDW's website.

The initial lead service line inventory in California was completed in three years. This was only possible because it does not include information on the customer side of the line from the water meter to the home. Most CWS in California have no record of material used in customers plumbing, nor the ability to identify and access this information. Collecting this type of property specific information would be extremely difficult for CWS. If this requirement stays in the final rule, CWS would be entirely dependent on individual property owners cooperating with request to inspect the line. If permission is obtained, CWS would likely need to pothole every property to visually inspect the line. Potholing individual properties is costly, takes time, and is labor intensive. It could not be completed in three years.

Helping homeowner's determine if they have lead pipes is a laudable goal and a focus of public water agency outreach. However, it is the job of plumbers or other plumbing experts familiar with

residential systems not CWS to conduct this analysis. ACWA and CMUA urge EPA not to include privately owned service lines in lead service line inventories. The proposed rule is not the correct vehicle to address this issue as it would place an undue financial burden on CWS. If this provisions remains in the rule, EPA must recognize and account for the fact that CWS will be significantly limited in their ability to identify the composition of privately owned service lines; collecting this data will require significant funds and take more than three years to develop. Unknown privately owned service lines should be excluded from calculations used to develop system's lead service line replacement goals. Property owner's failure to grant access to CWS or respond to requests for information should not result in additional burdens on CWS.

B. Replacement

In California, CWS that have identified lead service lines, or service lines containing unknown material have until July 1, 2020 to develop a schedule to replace the service lines that contain lead or unknown material. DDW is recommending a 10-year replacement schedule and will be flexible based on number of LSLs needing replacement, number of unknowns, number of fittings, and ability of system to replace them (e.g. budget restrictions, size/scope of problem). CWS must submit their replacement schedule to DDW, at which point. the Deputy Director and District Engineers will have 30 days to review the plans, recommend changes, and revise timetables if needed. DDW would like CWS to develop replacement plans with consistent replacement schedules to avoid systems waiting until year 9 or10 to replace LSL. Each CWS replacement timeline spreadsheet will be posted publicly and must include the address of each lead service line, reason for inclusion (e.g. line, fitting, etc.) and date (month and year) for replacement. In addition, CWS must submit a report to DDW justifying the timeline needed to complete the replacement. These reports will include: the number of user service lines to be replaced per year with priority given to schools and licensed child care centers replacements; the annual cost estimate for user line replacement with percentage of total annual operating budget this amount represents; if a rate adjustment is necessary to fund user service line replacement, details must be provided on the rate increase and effective date; and if applicable, provide relevant information regarding application(s) for funding from the State Board or another entity to replace user service lines**.** ACWA and CMUA encourage EPA to follow California's approach and timeline for lead service line replacements.

ACWA and CMUA members strongly support voluntary programs and outreach to help and encourage customers to replace their lead pipes and fixtures. We appreciate EPA's recognition that CWS should not be expected to cover the costs of replacing the customer's portion of a lead service line and applaud the availability of new grant programs to help water agencies provide assistance to low-income homeowners for this purpose. However, ACWA and CMUA urge EPA to remove requirements for replacing privately owned lines from the proposed rule. Expanding mandatory replacement programs to include the customer side would be extremely cumbersome and problematic for a CWS. Gaining access to people's homes would be difficult, and the potential increase in a CWS liability would be substantial. For example, once a water agency replaces plumbing are they liable for all future repairs? CWS should not be responsible for privately owned plumbing. If this proposal stays in the final rule, EPA must account for the fact that not all customers will be receptive to CWS outreach or able to afford to replace their plumbing. Property owner's unwillingness to comply should not result in additional burdens on CWS.

If the private line requirements stay in the rule, ACWA and CMUA urge EPA to revise the requirements**.** The proposed rule states that, "When a water system is notified by the customer that he or she intends to replace the customer portion of the lead service line the water system has 45 days from the day of their notification to conduct the replacement of the system-owned portion." (84 Fed. Reg. at 61756.) At a minimum CWS replacement requirements should require proof of customer action, not just intention to act. Conceivably, a customer could notify a water system of a vague intent to replace the private portion of the service line at an undetermined date in the future. Or a customer could submit this notification to the water system and subsequently not follow through with the private-side replacement. In either case, the clock for the public side replacement would begin ticking on the day that the customer provided the initial notification, thus requiring the water system to complete replacement of the public-side portion within 45 days.

While 45 days is a laudable goal for public-side replacement, this tight timeline is infeasible and arbitrary. ACWA and CMUA agree water systems should make a good faith effort to coordinate simultaneous replacement of both the public and privately-owned portions of a service line following a notification of intent by the customer. However, the final rule should promote a collaborative process that recognizes the many variables that come into play to affect the feasibility of replacement projects. For example, CWS allocate resources based on operations, maintenance, emergencies and capital projects that have already been approved. It may not be possible for CWS to coordinate construction work within 45 days. Instead, water systems should be permitted to work with customers to develop a mutually agreeable timeline.

C. Definition

ACWA and CMUA are **c**oncerned with the galvanized pipe language in the definition of a LSL. The proposed rule states "galvanized service line is considered a lead service line if it ever was or is currently downstream of any lead service line or service line of unknown material." (*Id.* at 61744.) The inclusion of "ever was" is problematic as a CWS may not have specific records for service lines that go back to the initial installation, and may be unable to definitively prove or disprove what material may have been upstream of the galvanized line throughout the life of the service line. ACWA and CMUA recommend that EPA remove the "ever was" standard from the definition. Instead, we recommend that a galvanized service line be considered a lead service line only if its currently, or is known in the past to have been, downstream of a lead service line or service line of currently unknown material. ACWA and CMUA also recommend that if the only lead upstream of a galvanized service line is either a lead gooseneck, pigtail, or connector, then the galvanized line should not be considered a lead service line.

IV. Corrosion Control Treatment

The proposed rule removes calcium hardness from the list of options to evaluate for corrosion control treatment (CCT) studies. Instead of allowing water systems to evaluate silicate-based o*r* phosphate based corrosion inhibitors, all CCT studies must include orthophosphate treatment at doses of both 1.0 mg/L and 3.0 mg/L. (*Id.* at 61693.) As a result of this prescriptive change, more water systems will identify orthophosphate as the optimized corrosion control treatment and will be required by state primacy agencies to utilize it. As noted in the proposed rule, "(using) orthophosphate for corrosion control can increase the phosphorus loading to wastewater treatment facilities. Increased phosphorus loading may be a concern for wastewater systems with phosphorus discharge limits or for systems that discharge into water bodies where phosphorus is the limiting nutrient." (*Id.* at 61693.)

However, this acknowledged concern fails to identify the increased phosphorus entering receiving waters from water systems using orthophosphate due to outdoor irrigation, pipe leaks, and fire-fighting and routine operation and maintenance activities. This source of phosphorus entering the environment is often greater than the amount water systems contribute to wastewater treatment facilities, particularly in arid areas of California and the Southwestern United States. There is no economically or technically feasible method to prevent this type of phosphorus loading to receiving waters. Water systems need the flexibility to determine which CCT options are feasible in their area and include only those options in their CCT studies. In many areas of California, forcing water systems to switch to orthophosphates could result in violations of Clean Water Act National Pollutant Discharge Elimination Permits. ACWA and CMUA urge EPA to provide more flexibility for evaluations of CCT options; a one size fits all approach does not account for site-specific variations. Orthophosphate may not be the best option in regions where water bodies are impaired under section 303(d) of the Clean Water Act. Water systems should not be put in the position where meeting requirements of the Safe Drinking Water Act would result in violations to the Clean Water Act.

When required first-draw tap samples from compliance monitoring are above the action level, CWS should engage that household to help determine what source of lead is contributing to high values and what remediation options are available to the household. California has very few LSLs, instead in some regions the lead in drinking water comes from corrosion of brass fittings. (Kimbrough, DE; JAWWA, Vol 99 No. 8 pg. 70-76, 2007.) Evaluation of corrosion control practices should not be based on individual high lead values but should be part of a trend analysis to inform response to action level exceedances. Zinc-orthophosphate does not reduce brass corrosion in general or the release of lead in particular. The requirement in EPA's proposed rule to examine orthophosphate as a corrosion control treatment would not address this source of lead contamination.

Additional language in the description of corrosion control treatment requirements also needs clarification. (84. Fed. Reg. at 61749.) The proposed language does not address large water systems without corrosion control treatment that are deemed to have optimized corrosion control. ACWA and CMUA request that large systems without corrosion control treatment be considered optimized and not required to install treatment. (*Id.* at 61747.) Further clarification is also needed about whether partial corrosion control treatment (ie- corrosion control of some but not all sources of treated water) is viewed as no corrosion control, or should be treated in some other manner not currently specified. ACWA and CMUA also request that new groundwater wells drawing from the same aquifer as existing approved groundwater wells, with comparable pH and alkalinity as existing wells, be exempt from corrosion control re-optimization requirements. (*Id*. at 61747.)

V. Trigger Level

The proposed rule would establish a new lead trigger level of 10 parts-per-billion (ppb) in addition to the 15 ppb action level in the current LCR. (*Id.* at 61686.) Exceeding this new trigger level would results in costumer notification requirements, corrosion control treatment changes, and additional actions. This would effectively make the trigger level the new de facto standard, at which point, a water system would have to take further action. ACWA and CMUA request that EPA more clearly explain the reasoning for this new trigger level and why this level needs to be different from the action level.

VI. Public Notification

ACWA and CMUA agree with the proposed rule's intent to encourage rapid communication between CWS and customers about exceedances of lead action levels. However, the requirement to notify customers within 24 hours of the exceedance of a lead action level based on a single tap sample (*Id.* at 61701) is unworkable. It often takes longer to verify a sample result, and CWS do not want to be in the position to report to customer's information that is possibly incorrect. California's DDW recommends informing residents within two working days. ACWA and CMUA recommend that EPA allow at least two working days to report results to customers. This will enable water systems to verify results before reaching out to customers. For non-detections, ACWA and CMUA recommend sampling results provided to residents 30 days after monitoring results are verified by a CWS.

The proposed rule would require Tier 1 notification when a water systems exceed the action level. (*Id.* at 61710.) These levels are not health based standards, and exceedances could occur as a result of identified LSLs or changes in sampling locations. Issuing a Tier 1 notification is not appropriate in these situations and could cause a lack of public confidence in the safety of their drinking water based on an isolated sampling event. ACWA and CMUA agree that customers should be promptly notified of high levels; therefore, we recommend that EPA allow CWS to provide targeted notice to those customers impacted by verified lead exceedance through methods approved by state agencies. CWS should have two business days after receiving all laboratory verified results, rather than the proposed 24 hours, to provide this notice.

VII. Conclusion

ACWA and CMUA appreciate the opportunity to comment on the proposed new rule. We urge EPA to provide more flexibility in the final rule. Primacy states, like California, with ongoing programs to inventory and remove lead service lines and sample lead in schools and childcare facilities should be exempt from new requirements. These existing state programs should be grandfathered into the final even if the details of their programs do not precisely match the requirements in the proposed rule. If you have any questions regarding this letter, please contact Abby Schneider, ACWA's Senior Federal Relations Representative at 202-434-4760; or Jonathan Young, CMUA's Regulatory Advocate at 916-326-5806.

Sincerely,

Abby Schneider
Senior Federal Representative
Association of California Water Agencies

Jonathan Young
Regulatory Advocate
California Municipal Utilities Association