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U.S. Environmental Protection Agency, EPA Docket Center
Office of Ground Water and Drinking Water Docket
Mail Code 28221T, 1200 Pennsylvania Ave. NW
Washington, DC 20460
Submitted to Docket ID Number: [EPA-HQ-OW-2022-0801](#).

Re: Comments on Proposed Improvements to Lead and Copper Rule:

To Whom It May Concern:

Unleaded Kids enthusiastically supports EPA's proposed improvements to the 2021 Lead and Copper Rule (LCR) published in the December 6, 2023, *Federal Register*. If finalized as proposed, the rule should virtually eliminate the estimated 9.2 million lead service lines (LSLs) from our public water systems with the vast majority replaced by 2037.¹ This would be a major achievement in the effort to reduce children's and adult's exposure to lead in drinking water.

Unleaded Kids is the only national organization focusing on reducing the cumulative impact of all sources of children's exposure to lead. For more information see www.unleadedkids.org.

We applaud EPA for investing the three years since the 2021 LCR revisions to dramatically improve the rule by:

- *Ensuring the estimated socioeconomic benefits of the rule include: 1) reduced deaths from cardiovascular disease (CVD) from adult exposure to lead; 2) fewer cases of Attention-Deficit/Hyperactivity Disorder (ADHD) from early childhood exposure to lead; and 3) fewer cases of babies born with low birth weight from exposure to lead during the pregnancy.* The agency's investment in rigorously evaluating the scientific evidence and developing peer-reviewed quantitative models demonstrates the tremendous benefits of reducing people's exposure to lead, not just from drinking water but from all sources. Specifically, the socioeconomic benefits from the proposed rule vastly outweigh the cost and range from \$17.3 to \$34.8 billion per year – a whopping 8 to 12 times the annual cost of replacement.
- *Requiring replacement of all LSLs as an integral part of a safe drinking water compliance program instead of as a last resort when the lead action level is exceeded.* By uncoupling full LSL replacement from lead action level exceedances, Americans can have real hope that they will not be drinking water through a lead pipe.
- *Refining the public notice and transparency provisions based on feedback from impacted communities.* These improvements enable communities to better track progress, identify problems, and more effectively engage in helping the water system succeed. As a result, water systems are more likely to comply with the rule.
- *Basing water systems responsibility to fully replace LSLs on their control of the service line instead of ownership and then defining control based on access.* This change addresses problems that have plagued LSL replacement since the 1990s by enabling water systems to simply redirect

¹ Based on publishing a final rule in October 2024, compliance would be required in late 2027.

responsibility to customers to address safe drinking water concerns with LSLs on private property.

- *Fixing various implementation challenges so that the water systems would have significant incentives to replace LSLs, lead connectors, and service lines that are galvanized requiring replacement (GRR).* When incentives are properly aligned, water systems and customers have greater reason to replace LSLs in a cost-effective manner.

After providing our specific recommendations to improve the proposal in Part I, we will respond to selected EPA requests for comments in Part II.

Part I: Specific Recommendations to Improve the Proposal

As we reviewed the proposal closely, we identified several areas where it could be improved. The primary areas where those improvements are needed consist of:

1. Amending the definition of “service line” to clearly include both the portions owned by the property owner and the water system;
2. Providing criteria to establish when a water system has “access” to LSLs;
3. Eliminating deferred deadline limiting mandatory full LSL replacements to 10,000 per year;
4. Modifying the deferred deadline for 0.039 replacements so it is based on the number of service lines and not the number of households; and
5. Reducing the lead action level to 5 parts per billion (ppb) but continuing to use the 10 ppb as a trigger for greater corrosion control.

1. Amending the definition of “service line” to clearly include both the portions owned by the property owner and the water system.

The proposal modifies 40 C.F.R. § 141.2 by simplifying the definition of “lead service line,” removing the definition of “full lead service line replacement,” and adding a definition of “service line.” These changes address significant problems with circular and confusing definitions created by the 2021 revisions to the LCR, especially in the final three sentences of the definition of “lead service line.”²

However, the changes go too far when they eliminate a reference to property ownership in the definition of the lead service line. Specifically, a key sentence proposed for deletion says: “A lead service line may be owned by the water system, owned by the property owner, or both.”³

Without this sentence, water systems could define the service line as if it were in multiple parts based on ownership. Yet, the pipe is an integral unit designed to move drinking water from the main to the home or building. The service line’s function does not change based on ownership. EPA clearly – and justifiably – did not intend that outcome based on its reasoning in the preamble to the proposed rule and the changes made to § 141.84(d).

² The proposal would change the definition of lead service line at 40 C.F.R. § 141.2. as follows: “*Lead service line* means a portion of pipe that is made of lead, which connects the water main to the building inlet. ~~A lead service line may be owned by the water system, owned by the property owner, or both. For the purposes of this subpart, a 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. If the only lead piping serving the home is a lead gooseneck, pigtail, or connector, and it is not a galvanized service line that is considered a lead service line the service line is not a lead service line. For purposes of § 141.86(a) only, a galvanized service line is not considered a lead service line.~~”

³ *Id.*

We strongly encourage EPA to restore the sentence by adding it to the end of the definition of “service line” so it reads:

Service line, for the purpose of subpart I of this part only, means a portion of pipe which connects the water main to the building inlet. Where a building is not present, the service line connects the water main to the outlet. A service line may be owned by the water system, owned by the property owner, or both.

The definition of a “lead service line” would remain as proposed to read:

Lead service line, for the purpose of subpart I of this part only, means a service line that is made of lead or where a portion of the service line is made of lead.

2. Providing criteria to establish when a water system has “access” to LSLs.

According to the preamble of the proposed rule, the improvements to the LCR are intended to require that water systems conduct full LSL replacement without regard to ownership, as long as they are under the control of the water system. In the proposal, “control” is based on “access” to the service lines, and the proposal provides “requirements and flexibilities to increase access and expedite full service line replacement . . .”⁴

Unfortunately, the proposal does not establish criteria that water systems can follow to determine whether they have access to a service line. Without clear criteria, water systems are likely to narrowly define “access” so that an LSL that is owned by a private property owner, in part or in whole, is not the system’s responsibility. This issue has plagued progress on LSL replacement and undermined efforts to reduce lead in drinking water since 1991.

Instead of providing useful criteria to establish if access is present, EPA takes the unusual - and unnecessary – step of stating at § 141.84(d)(2)(i) that “[t]his rule does not establish the criteria for determining whether a system has access to conduct full service line replacement.” Nonetheless, § 141.84(d)(2) hints at criteria with a confusing parenthetical example - “(e.g., legal access, physical access).”

The resulting ambiguity is likely to make one of the most important provisions of the proposed rule difficult to enforce – an unfortunate outcome that undermines the public health goal of the Safe Drinking Water Act (SDWA) because it all-to-often leaves environmental justice communities that lack the resources, political clout, or access to lawyers most at risk.

In the preamble, EPA explained that it was silent “because of the wide variation of relevant State and local laws and water tariff agreements as well as the potential for these to change over time.”⁵ We recognize that there is a wide variation in laws and that they change over time, but that is hardly justification to avoid establishing criteria that would avoid confusion and endless legal disputes.

⁴ 88 *Federal Register* 84920 stating that “EPA is proposing to treat a service line as under the system’s control wherever a water system has adequate access (e.g., legal access, physical access) to conduct full service line replacement. This means that a water system would be in violation of the rule if the system fails to replace a service line in accordance with the proposed requirements even though it has adequate access to conduct a full service line replacement.”

⁵ *Id.*

From our perspective, SDWA's purpose is to protect public health. This is a public purpose that empowers government agencies at the federal level and in every State to act *even* if it involves private property.

In this case, we suggest that the criteria be added to § 141.84(d)(2) that sets forth a process that water systems should follow to determine if they have sufficient access, and, therefore, control. The process should be based on the provisions of the proposed rule that require water systems to seek access by engaging with the owner of property under which the service line is buried. If the property owner provides access and gives a green light to the water system to replace the service line, the water system has control. If the property owner refuses to provide access, the water system lacks the control needed to trigger the full service line replacement provisions. In addition, the proposed rule recognizes that property owners change by requiring water systems to provide notice of the LSL to new customers with the language inviting the new owner to have the service line replaced.

Therefore, we recommend the following changes⁶ to proposed § 141.84(d) regarding mandatory full service line replacement:

(1) All water systems must replace all lead and galvanized requiring replacement service lines under the control of the water system ~~unless the replacement would leave in place a partial lead service line.~~

(2) Where a water system has access (~~e.g., legal access, physical access~~) to conduct full service line replacement, the service line is under its control, and the water system must replace the service line regardless of ownership of the line or the property it is on. Where a water system does not have access to conduct full service line replacement, the water system is not required by this rule to replace the line, but the water system must document the reasons that the water system does not have access and include any specific laws, regulations, and/or water tariff agreements that affect the water system's ability to gain access to conduct full replacement of lead service line or a ~~and~~ galvanized requiring replacement service line ~~replacement~~ identified pursuant to paragraph (c)(1)(viii) of this section. The water system must provide this documentation to the State pursuant to § 141.90(e)(10).

(i) ~~This rule does not establish the criteria for determining whether a system has access to conduct full service line replacement. The criteria for determining whether a system has access to conduct full service line replacement include: whether the system can safely enter the property; whether the system can safely conduct the replacement; and whether the system has obtained the property owner's consent, if consent is required for access. Presence of a lead service line on private property does not, by itself, determine whether a system has access to conduct full service line replacement for purposes of this rule.~~ Any State or local laws or water tariff agreement requirements to gain access to conduct full service line replacement must be identified in the service line replacement plan as described in paragraph (c) of this section and in the notification provided to persons served by lead, galvanized requiring replacement, and unknown service lines as described in § 141.85(e).

(3) Where a water system has ~~legal~~ access pursuant to § 141.84(d)(2)(i) to conduct full service line replacement only if property owner consent is obtained, the water system must make a "reasonable effort" to obtain property owner consent or written waiver documenting refusal of access for the purpose of full lead service line replacement. If such a water system does not obtain

⁶ Changes are in red font. Underlined text indicates text to be added. Strikethrough text indicates text to be deleted.

consent after making a “reasonable effort” to obtain it from any property owner, then the water system is not required by this rule to replace any portion of the service line at that address.

As noted above, we also recommend:

- Removing from § 141.84(d)(1) the confusing phrase “unless the replacement would leave in place a partial lead service line.” As written, it makes little sense to us since it implies that full replacement would not be required if a partial would remain.
- Adding to the first sentence in § 141.84(d)(2) the phrase “regardless of ownership of the line or the property it is on” to reinforce that ownership of the line is not the controlling factor. This phrase is in the current definition of “full LSL replacement” at § 141.2 that EPA proposes to delete as confusing.⁷
- Revising the text in the third sentence of § 141.84(d)(2) to avoid saying “galvanized requiring replacement service line replacement.” While accurate, the use of the word “replacement” twice so close together is awkward.
- Deleting the word “legal” in § 141.84(d)(3) since it is unnecessary.

3. Eliminating deferred deadline limiting mandatory full LSL replacements to 10,000 per year.

Unleaded Kids wants LSLs to be removed from service as soon as possible. EPA’s proposal giving ten years for the vast majority of water systems to remove LSLs is a significant step towards that goal.

We also understand EPA’s concerns about affordability as well as the disruption to the community. Therefore, we are not opposed to giving a few more years to those water systems such as Chicago Water that have a huge number of LSLs.

However, we oppose deferring the ten-year deadline based on an absolute number of LSLs – whether 8,000 or 10,000 – replaced each year as EPA proposes at § 141.84(d)(5)(i). Unlike many major infrastructure projects such as installing a water treatment plant, replacing LSLs is completely scalable; each additional crew can increase the number of LSLs replaced. The only limit is finding crews to do the work – a situation that will change based on local conditions. The examples EPA provides to justify that limit do not address whether the water system had a reason or the capacity to go faster.

In addition, EPA acknowledges that only a few cities, such as Chicago, Cleveland, or New York have so many LSLs that they could benefit from the deferral. In Chicago Water’s case, they will be allowed to defer completely full service line replacement for more than 40 years – until 2067 – to remove the LSLs. This is unacceptably long.

We also think that writing a rule for a few water systems is inappropriate. Instead of building a deferral based on an absolute number into the rule, those water systems with more than 100,000 LSLs should pursue a variance or consent decree that is tailored to their situation much as Denver Water has done. That process includes public participation and periodic reviews.

For these reasons, we recommend that EPA delete § 141.84(d)(5)(i).

⁷ The current rules says” “*full lead service line replacement* means the replacement of a lead service line (as well as galvanized service lines requiring replacement), as defined in this section, that **results in the entire length of the service line, regardless of service line ownership, . . .**” (emphasis added).

4. Modifying the deferred deadline for 0.039 replacements/year so it is based on the number of service lines and not the number of households.

We see EPA's logic in granting a deferral for water systems with a high percentage of LSLs. It is a more rational approach to considering affordability.

Therefore, we are not opposed to the provision at § 141.84(d)(5)(i) that would defer the ten-year full service line replacement deadline a few years if a water system would be required to replace each year more than 3.9% of the number households it serves. Based on EPA's calculations in Exhibit 4 of the Technical Support Document for the Proposed Lead and Copper Rule Improvements (LCRI),⁸ 5 to 17 large systems, 141 to 420 medium systems, and 570 to 1,737 small systems may exceed this 3.9% threshold based on a ten-year replacement deadline. And almost all those systems would have LSLs replaced in 17 years.

However, we recommend that EPA base the deferral on the number of service lines instead of households and adjust the percentage accordingly. We make this recommendation because:

- Determining the number of households served by a water system with confidence is difficult, even under the best of circumstances. For example, single family homes are often subdivided into multiple households and the number of homes in manufactured housing communities can change year-to-year. Most communities lack a solid inventory of households.
- Unlike households, water systems know with confidence the number of service lines because they use it for billing purposes.
- The number of service lines is an essential part of the inventory. As a result, relying on service lines would simplify compliance assurance and enforcement.

In addition, basing the deferral for LSL replacement on the number of households creates a number of complications that EPA did not appear to consider. For example, multi-family properties with more than 20 households are unlikely to have LSLs because their service lines are typically larger than 2" in diameter – a size that is uncommon for lead pipe. As a result, water systems with significant numbers of large multi-family properties would be differently affected than those large percentages of single-family homes.

We understand that switching from households to service lines may require that EPA increase the 3.9% number. But the change is warranted.

5. Reducing the lead action level to 5 ppb but continuing to use the 10 ppb as a trigger for greater corrosion control.

We fully support EPA's proposal to reduce the lead action level from 15 ppb to 10 ppb. Based on Exhibit 4 of the preamble, 95% of water systems without LSLs can achieve 15 ppb. If they have LSLs, between 73% and 80% can meet 15 ppb. Dropping the level to 10 ppb would mean 91% of water systems without LSLs can achieve it. If they have LSLs, the percentage drops to 59% to 65% depending on the effectiveness of corrosion control technology (CCT).

⁸ <https://www.regulations.gov/document/EPA-HQ-OW-2022-0801-0709>.

Exhibit 4. Percent of Systems By LSL and CCT Status With Lead Levels At or Below Potential Lead Action Levels Adjusted for the Proposed LCRI Sampling Protocol (2012 – 2020)

LSL and CCT Status (Number of Systems)¹	P90² ≤ 0.015 mg/L	P90² ≤ 0.010 mg/L	P90² ≤ 0.005 mg/L
No LSLs/CCT (2,105)	95%	92%	82%
LSLs/CCT (1,224)	73%	59%	37%
No LSLs/No CCT (2,730)	95%	91%	78%
LSLs / No CCT (470)	80%	65%	37%

Notes:

¹ Data from 6,529 community water systems with known CCT and LSL status. See “Analysis of reported 90th percentile values from 2012-2020.xlsx” in EPA-HQ-OW-2022-0801.

²Systems categorized based on their highest P90 value reported (SDWIS 2012–2020).

The challenge is that the lead action level is generally considered by the public to be health-based and is commonly used to indicate that the water has acceptable levels of lead and poses no significant risk. Given what we know about the risks of lead, we think that the message from a lead action level of 10 ppb is a problem.

EPA should consider lowering it to 5 ppb – the practical quantification limit.⁹ This would be consistent with EPA August 2023 proposal¹⁰ to tighten the lead dust hazard standard for lead-based paint to a level that is “greater than zero.”

As we reviewed EPA’s reasoning in the preamble for not adopting a lead action level of 5 ppb, it is largely based on the burden to water systems and States to adequately assess the proper corrosion control treatment. The agency also references limited technical capacity to conduct the assessment. Furthermore, EPA properly points to the need to focus water systems and States on LSL replacement given its significant impact on lead contamination of drinking water.

EPA’s reasoning did not appear to consider the positive implications of a more protective level on the public education requirements. From our experience, a lower action level would strengthen community engagement and avoid implying that 10 ppb were somehow safe or without hazard.

For these reasons, we suggest that, just as it did with LSL replacement, EPA should consider loosening the connection between lead action level exceedances and corrosion control treatment. The corrosion control treatment can still be conditioned on the 90th percentile exceeding 10 ppb.

⁹ EPA sets the practical quantification limit is “the minimum concentration of an analyte (substance) that can be measured with a high degree of confidence that the analyte is present at or above that concentration.” 40 C.F.R. § 141.2. We think EPA should also consider revising the PQL to reflect current methods but understand that the issue is beyond the scope of this immediate rulemaking.

¹⁰ See August 1, 2023 *Federal Register* at page 50444. See also Docket No. EPA–HQ–OPPT–2023–0231 at <https://www.regulations.gov/document/EPA-HQ-OPPT-2023-0231-0001>.

Part II: Responses to Selected EPA Requests for Comment

A. Requests for Comment on General Matters
<p>Whether the proposed revisions to the LCR revision’s treatment technique are effective to prevent known or anticipated adverse health effects to the extent feasible in accordance with the SDWA.</p> <p><i>Unleaded Kids comment: Yes, the proposed revisions should reduce anticipated adverse health effects from exposure to lead in drinking water. However, we provide specific recommendations in Part I above where the proposal should be improved in feasible and practical ways to further reduce those anticipated adverse health effects.</i></p>
<p>Whether the proposed requirements of the rule are enforceable and promote compliance without the need for State or Federal enforcement action. EPA also solicits comment on ways the rule could be modified to better promote compliance.</p> <p><i>Unleaded Kids comment: Yes, the proposed revisions are enforceable and should promote compliance without the need for State or Federal enforcement action by providing greater transparency and public education to impacted communities than the current version of the LCR. However, in Part I we provide five specific recommendations in which the proposal could be improved to make the rule more enforceable and promote compliance.</i></p> <p><i>Specifically, EPA should: 1) provide criteria to establish when a water system has sufficient access to conduct full service line replacements; 2) use the number of service lines instead of households to determine whether the water system is eligible for a deferred deadline under § 141.84(d)(5)(i); and 3) clarify the definition of “service line” to avoid confusion about whether a service line can be defined by ownership rather than its function.</i></p>
B. Requests for Comment on Service Line Replacement
<p>All aspects of the proposed scope of the replacement requirements, including the criteria used to define a full service line replacement (e.g., cutting the pipe at abandoned properties, replacing the entire service line) and which lead sources are subject to replacement under the mandatory program. EPA is seeking comment on whether to prohibit reconnection of any disconnected LSL or GRR service line. EPA is requesting comment on whether the Agency should include lead connectors or galvanized service lines that are or were downstream of a lead connector as part of mandatory replacement.</p> <p><i>Unleaded Kids comment: We enthusiastically support EPA’s proposed improvements to the 2021 Lead and Copper Rule (LCR) published in the December 6, 2023 Federal Register. In particular, we support the provisions:</i></p> <ol style="list-style-type: none"><i>1) Requiring replacement of all LSLs as an integral part of a safe drinking water compliance program instead of as a last resort when the lead action level is exceeded. By uncoupling full LSL replacement from lead action level exceedances, Americans can have real hope that they will not be drinking water through a lead pipe.</i><i>2) Refining the public notice and transparency provisions based on feedback from impacted communities. These improvements enable communities to better track progress, identify problems, and more effectively engage in helping the water system succeed. As a result, water systems are more likely to comply with the rule.</i><i>3) Basing water systems responsibility to fully replace LSLs based on control instead of ownership and defining control based on access. This change addresses problems that have plagued LSL replacement since the 1990s by enabling water systems to simply</i>

redirect responsibility to customers for fixing the issue of service lines on private property.

- 4) *Fixing various implementation challenges so that the water systems would have significant incentives to replace LSLs, lead connectors, and galvanized service lines requiring replacement.*

Unleaded Kids supports a prohibition on reconnection of any disconnected LSL or GRR service line. We also support EPA's inclusion of lead connectors or galvanized service lines that are or were downstream of a lead connector as part of mandatory replacement.

Whether a reasonable effort to obtain property owner consent should be more than four times (e.g., five, six, or seven times).

Unleaded Kids comment: Four times using multiple mechanisms as provided in the proposed rule represents a reasonable effort. While more is always better, EPA has established a practical minimum.

Whether the proposed LCR improvements appropriately interprets "control" for the purposes of the mandatory replacement provision (i.e., require systems to conduct full service line replacement in situations where the system has access to conduct the full replacement).

Unleaded Kids comment: Yes, the proposed improvements to the LCR appropriately interprets control based on access. However, EPA needs to provide criteria for water systems to use to determine access. We recommend in Part I, Section 2 specific changes to address those shortcomings.

The proposed minimum replacement rate and replacement deadlines. EPA is seeking comment on whether it is feasible for systems across the nation to complete service line replacement in a shorter timeframe than ten years, such as in six, seven, or eight years.

Unleaded Kids comment: We want to see the timeframe be as short as possible, especially if EPA is to provide deferred deadlines. In many cases, seven years would be practical. Or the timeframe for complying with the rule could be shortened from three years to one since compliance is based on a three-year rolling average, giving the water system an opportunity to ramp up.

We recommend that EPA drop the deferrable deadline at § 141.84(d)(5)(i) based on an absolute maximum. Unlike many major infrastructure projects, such as installing a water treatment plant, replacing each LSL is a unit operation that can be scaled up with no real limit; each additional crew increased the capacity of the water system to replace LSLs. The only limit is finding crews to do the work – a situation that will change based on local conditions. With only a handful of water systems having more than 100,000 LSL, EPA should rely on the other deferral at § 141.84(d)(5)(ii) or use the variance provisions in SDWA as it did for Denver Water or use a consent decree.

EPA is seeking comment on the rate construct approach, including how to calculate compliance with a given service line replacement deadline and average annual rate calculated across a rolling three-year period.

Unleaded Kids comment: We support EPA's proposed approach.

EPA also seeks comment on whether systems should be required to meet a minimum replacement rate in the first three years after the compliance date to give States an opportunity to enforce replacement rate progress sooner than three years after the compliance date.

Unleaded Kids comment: We think EPA should seriously consider requiring compliance with a minimum replacement rate after the first year (in 2025 if the rule is promulgated in 2024) as long as it allows for a three-year rolling average. The rolling average should give a water system that starts off slow in the first year time to make up for the shortfall in the latter two years.

EPA also seeks comment on the complexity of the rate construct.

Unleaded Kids comment: A treatment technology rule like the LCR is inherently complex because it specifies how the distribution system and the relationship to customers is managed. We think EPA has struck a reasonable balance.

EPA is taking comment on whether States, as a condition of primacy, or EPA when it is directly implementing the program, should be required to set initial shortened deadlines by a certain timeframe, such as no later than 60 days after the compliance date.

Unleaded Kids comment: We support initial shortened deadlines.

The overall approach and basis to offer deferred service line replacement to systems with a high proportion of LSLs and GRR service lines in their distribution system relative to their total number of households served. EPA is requesting comment on its proposed threshold of 0.039 average annual number of replacements per household served, which is used to calculate the number of years that systems can defer.

Unleaded Kids comment: We do not oppose the deferral deadline at § 141.84(d)(5)(ii). However, as described in Part I, Section 4, the deferral should be based on the number of service lines instead of households. We understand that EPA may need to increase the number greater than 0.039 with a switch to the number of service lines because there are almost always more households than service lines in a water system.

Whether to require the State, as a condition of primacy, to approve the use of the deferred deadline provision where the water system qualifies for it and/or whether to require the State, as a condition of primacy, to assess whether it would be feasible for a system to meet the ten-year deadline or a shorter deadline even if the system meets the regulatory criteria for the deferred deadline.

Unleaded Kids comment: We would support States assessing whether it would be feasible to meet the 10-year deadline or a shorter deadline even if the system meets the regulatory criteria for the deferred deadline.

The proposed use of a maximum threshold of 10,000 annual service line replacements for systems with atypically high numbers of LSLs and GRR service lines as well as seeking comment on the alternate threshold of 8,000 annual service line replacements. EPA is also seeking feedback on other thresholds and supporting data.

Unleaded Kids comment: We oppose deferring the ten-year deadline based on an absolute number of LSLs – whether 8,000 or 10,000 – replaced each year as EPA proposes at § 141.84(d)(5)(i). Unlike many major infrastructure projects such as installing a water treatment plant, replacing LSLs is completely scalable; each additional crew can increase the number of LSLs replaced. The only limit is finding crews to do the work – a situation will change based on local conditions. The examples EPA provides to justify that limit do not address whether the water system had a reason or the capacity to go faster.

In addition, EPA acknowledges that only a few cities, such as Chicago, Cleveland, or New York have so many LSLs that they could benefit from the deferral. In Chicago Water’s case, it will have more than 40 years – until 2067 – to remove the LSLs. This is unacceptably long.

We also think that writing a rule for a few water systems is inappropriate. Instead of building a deferral based on an absolute number into the rule, those water systems with more than 100,000 LSLs should pursue a variance or consent decree that is tailored to their situation much as Denver Water has done. That process includes public participation and periodic reviews.

For these reasons, we recommend that EPA delete § 141.84(d)(5)(i).

The requirement for systems to install a dielectric coupling when conducting a partial replacement of an LSL or GRR to separate the remaining LSL or GRR service line and the replaced service line unless the replaced service line is made of plastic and other recommended risk mitigation activities.

Unleaded Kids comment: We support the requirement to install a dielectric coupling as proposed.

The proposed requirement to ban partial lead and GRR service line replacement unless it is conducted in accordance with emergency or planned infrastructure work (excluding planned infrastructure work solely for the purposes of replacing lead and GRR service lines as part of a service line replacement program).

Unleaded Kids comment: We want to avoid partial LSL replacements whenever possible. We are not opposed to EPA’s balancing in the proposed rule by banning partials except for emergencies or planned infrastructure work as long as there is a ten-year deadline to replace LSLs (with very limited deferrals as explained above).

EPA is seeking comment on whether partial service line replacement should be prohibited during “planned infrastructure work” or with certain types of planned infrastructure work.

Unleaded Kids comment: We would recommend that EPA consider banning partial LSL replacement as part of planned infrastructure work. However, we understand EPA’s rationale for the limited exemption and are not opposed to it as long as there is a ten-year deadline to replace LSLs (with very limited deferrals as explained above).

C. Requests for Comment on Service Line Inventory and Service Line Replacement Plan

EPA is proposing a threshold of systems serving greater than 50,000 persons to host the inventory and plan online, which is the required threshold under the LCRR. EPA is seeking comment on the size threshold at which systems must host their publicly accessible inventory, inventory summary data, replacement summary data, and service line replacement plan online, and whether it should be lowered relative to the LCRR requirements.

Unleaded Kids comment: We recommend lowering the threshold to 10,000 persons served because the online mapping tools are readily available to water systems. We strongly support the use of street addresses unless not an available as EPA has proposed.

EPA is proposing a requirement for systems to validate the accuracy of non-lead service lines in their inventory that were categorized using methods other than records review or visual inspection of at least two points along the line. EPA is requesting comment on the number of validations required, the proposed 95% confidence level approach used to develop the number of validations required, the criteria for which methods used to categorize non-lead service lines should be included in the validation pool (including whether non-lead lines categorized based on records should be subject to validation), and the seven-year timeline for systems on a ten-year replacement deadline to complete the validation requirements.

Unleaded Kids comment: We strongly support the proposed validation requirements including the 95% confidence level approach; greater confidence is not essential for the inventory to be useful. We also encourage EPA to be clear in communications to the public, States, and water system that absolute certainty is not possible and can be counterproductive as it draws resources away from full LSL replacement. We also strongly support the requirement that the validation be completed three years before the replacement deadline but not longer than seven years.

Comment on establishing a deadline for systems to identify all unknown service lines prior to their service line replacement deadlines.

Unleaded Kids comment: We strongly support the proposed validation requirements including the 95% confidence level approach. We also strongly support the requirement that the validation be completed three years before the replacement deadline but not longer than seven years.

Comment on a requirement for systems to update their service line replacement plans if there are any changes, such as changes to laws and policies applicable to full service line replacement.

Unleaded Kids comment: We strongly support the proposed requirements to update the plan if there are any changes to the circumstances on which the plan is based including laws and policies applicable to full service line replacement.

D. Requests for Comment on Lead Action and Trigger Levels

EPA is seeking comment on the proposed lead action level of 0.010 mg/L, as well as comment and supporting data on alternative action levels, such as 0.005 mg/L, with regards to generally effective corrosion control treatment and identifying systems most at risk of elevated levels of lead in drinking water.

Unleaded Kids comment: As explained in Part I, Section 5, we recommend that EPA drop the lead action level to 5 ppb. We can support keeping the corrosion control treatment requirements linked to 10 ppb even though it may increase the complexity of the rule.

EPA is also seeking comment on the use of the action level to determine when additional public education is required, and the use of the same action level for public education as for the CCT provisions.

Unleaded Kids comment: As explained in Part I, Section 5, we recommend that EPA drop the lead action level to 5 ppb. We can support keeping the corrosion control treatment requirements linked to 10 ppb even though it may increase the complexity of the rule.

EPA is seeking public comment, data, and information on the anticipated benefits and tradeoffs, including for public health and administrative burden on systems and States, if more small and medium systems are required to conduct a detailed optimized CCT demonstration and take other actions if they exceed the proposed action level of 0.010 mg/L or other lower values, while water systems are simultaneously mandated to conduct full service line replacement.

Unleaded Kids comment: We think EPA is properly focusing the effort on full service line replacement and appropriately balanced the burden on States, water systems, and the available technical expertise.

E. Request for Comment on Corrosion Control

The proposed option for a water system to delay optimized CCT until after the system has replaced all of its LSLs and GRR service lines, while the system achieves at least 20 percent removal per year and must have no LSLs, GRR service lines, or lead status unknown service lines remaining at the end of the five-year period.

Unleaded Kids comment: We support the proposed approach. It strikes a reasonable balance and is feasible.

F. Requests for Comment on Compliance Alternatives for a Lead Action Level Exceedance for Small Community Water Systems and Non-Transient, Non-Community Water Systems

EPA is proposing that small system flexibilities be limited to community water systems (CWSs) serving 3,300 persons and fewer and all non-transient, non-community water systems for the remaining compliance alternatives of point-of-use devices and plumbing replacement. EPA is seeking comment on whether the Agency should allow systems serving up to 10,000 persons (or another threshold) to be eligible to use the small system compliance flexibility provision.

Unleaded Kids comment: We support EPA's proposal to use 3,300 as the threshold.

G. Requests for Comment on Public Education

The proposed determination that the public education treatment technique is feasible and prevents known or anticipated adverse health effects to the extent feasible.

Unleaded Kids comment: We recommend that EPA drop the lead action level to 5 ppb because it will better educate the public, be consistent with EPA's proposed approach on lead-dust from lead-based paint standards, and encourage greater participation in full service line replacement. See explanation in Part I, Section 5.

Whether the types and timing of outreach activities proposed for systems failing to meet the mandatory service line replacement rate are appropriate and whether other activities should be considered.

Unleaded Kids comment: We support EPA's proposal. The agency has struck a reasonable balance.

Whether EPA should require systems to annually notify consumers if they are served by a lead connector, in addition to notifications for sites with lead, GRR, or lead status unknown service lines.

Unleaded Kids comment: We support EPA's proposal. The agency has struck a reasonable balance.

Whether EPA should require additional public education requirements to further encourage swift service line replacement faster than the ten-year replacement deadline. For example, should water systems that have LSLs, GRR service lines, or unknown service lines five years after the compliance date for the LCRI be required to increase the frequency of the notification of service line materials from annual to once every six months?

Unleaded Kids comment: We support effective notifications. It is not clear that doing them every six months as opposed to annually would have much of an impact. It is more important to lower the lead action level for public education purposes to 5 ppb.

H. Requests for Comment on Additional Requirements for Systems with Multiple Lead Action Level Exceedances

Whether water systems should be required to take additional actions when the system exceeds the lead action level multiple times and if so, what actions are appropriate and feasible, and when these additional actions should be required under the LCRI.

Unleaded Kids comment: A water system with multiple lead action level exceedances should be expected to take additional actions. As was successfully done by Denver Water, one of those actions should include providing residents that have LSLs with NSF-53 certified filters until their LSL is replaced and the water has cleared sampling levels. We acknowledge that lowering the lead action level to 5 ppb may warrant additional tiers for multiple exceedances.

Whether EPA should use three action level exceedances in a five-year period for identifying systems with multiple action level exceedances where additional action is warranted, and whether additional actions should be required sooner or later than the five-year period, or whether EPA should use a modified metric (number of consecutive action level exceedances in a set time period) or a different metric entirely (i.e., based on one or more factors other than the number of action level exceedances in a set time period).

Unleaded Kids comment: We support EPA's proposal. We acknowledge that lowering the lead action level to 5 ppb may warrant additional tiers for multiple exceedances.

Whether EPA should require water systems to make filters certified to reduce lead and replacement cartridges, along with instructions for use, available to all consumers within 60 days of a system having multiple action level exceedances and whether there are any supporting or contrary data on whether the proposed filter requirement would be protective of public health.

Unleaded Kids comment: Yes, we think filters certified to reduce lead and replacement cartridges should be provided. Not only do they better protect residents, but they also provide an incentive to residents to participate in full service line replacement as soon as possible because it means they no longer need to filter their water.

The proposed requirements for systems to develop a filter plan and submit to the State after the system has multiple action level exceedances for the first time, and whether EPA should require systems to take additional actions to facilitate filter distribution.

Unleaded Kids comment: Yes, but we recognize that over time, the plan may become standardized. For now, Denver Water is a model that demonstrates the importance of supporting the filter distribution with effective public education on their use.

Alternative requirements for systems with multiple action level exceedances to provide filters to their consumers, such as requiring water systems to provide filters and replacement cartridges to consumers served by an LSL, GRR service line, or unknown service line or to all consumers, or to require systems to consult with the State upon meeting the criteria for multiple action level exceedances, after which the State determines the appropriate action to reduce lead exposure.

Unleaded Kids comment: We support EPA's proposal.

An additional provision providing discretion to States to allow systems with multiple action level exceedances to discontinue the proposed required actions sooner if the system takes actions (e.g., installs optimized or re-optimized CCT, completes mandatory service line replacement) and is at or below the lead action level for two consecutive monitoring periods.

Unleaded Kids comment: We can accept giving States the discretion.

Whether, in addition to the proposed requirements, EPA should provide States discretion to determine appropriate action following a multiple action level exceedance that is tailored to meet specific system needs.

Unleaded Kids comment: We can accept giving States the discretion.

I. Requests for Comment on Lead Sampling in Schools and Child Care Facilities

Whether CWSs should be required to collect more samples and/or to sample more frequently in schools and child care facilities.

Unleaded Kids comment: We think that every fixture used for cooking or drinking water should be sampled. We have not seen sufficient evidence that EPA, States, water systems, or schools are able to predict with confidence which fixtures are representative. If that information becomes available, EPA can adjust the requirements in the rule.

The proposed provision to allow States to issue waivers to community water systems from the requirement for lead sampling in schools and child care facilities during the five-year period after the LCRI compliance date if the facility was sampled for lead after January 1, 2021 but prior to the LCRI compliance date and the sampling otherwise meets the waiver requirements of § 141.92(h).

Unleaded Kids comment: We support the provision allowing States to issue waivers in the circumstances described above.

Whether or not to allow States to waive the requirements of § 141.92 for CWSs in schools and child care facilities that use and maintain filters certified to reduce lead, and if so, whether the waiver should only be allowed where schools and child care facilities are required by State or local law to install point-of-use devices and maintain them.

Unleaded Kids comment: If the filters are demonstrated to be used and maintained, we can support allowing states to waive the requirements.

The minimum requirements for States to provide a waiver (e.g., should the waiver be limited to locations where the filter use is required by State or local law; should the waiver be limited to locations where State or local law requires periodic sampling or testing to ensure proper filter use).

Unleaded Kids comment: The rule should require periodic sampling or testing to ensure proper filter use.

Whether EPA should require CWSs to make school and child care facility sampling results publicly available, and if so, how frequently and in what manner.

Unleaded Kids comment: We support transparency. EPA should require utilities to make the test results publicly available if the school system or the state does not.

J. Request for Comment on Reporting and Recordkeeping

EPA is requesting comment on the expansion of the inventory reporting to include lead connectors and non-lead service lines.

Unleaded Kids comment: We support the expansion of the inventory reporting to include lead connectors and non-lead service lines.

K. Requests for Comment on Compliance Dates

Whether it is practicable for water systems to implement notification and risk mitigation provisions after full and partial service line replacement (§ 141.84(h)), notification of a service line disturbance (§ 141.85(g)), and associated reporting requirements (§141.90(e)(6) and (f)(6)) upon the effective date of the LCRI.

Unleaded Kids comment: Because the requirements are similar enough to the ones in the 2021 revisions to the LSL, we recommend that EPA require compliance upon the effective date of the LCRI.

Whether earlier alternative compliance dates for LCRI are practicable such that water systems transition directly from LCR to LCRI in less than three years (i.e., one or two years) based on the assumption that water systems would comply with the LCR until the LCRI compliance date.

Unleaded Kids comment: We support earlier alternative compliance dates for the LCRI.

L. Questions from within Preamble

A system's existing authority to access the service line and complete the full service line replacement might provide the system with the legal authority to conduct the service line replacement over the objection of the property owner or resident. However, as some stakeholders noted, requiring service line replacement at properties where customers object to their replacement could create potential safety concerns for utility staff. EPA is seeking comment on whether the proposed LCRI should either allow systems to treat those service lines as not under the control of the system and forego replacement of the lines or require systems to conduct full service line replacement in situations where the system has legal access to conduct the full replacement but property owners or residents deny physical access.

Unleaded Kids comment: In Part I Section 2, we provide criteria by which a water system would establish it has sufficient control to conduct full service line replacement. The criteria for should include:

- *Whether the system can safely enter the property;*
- *Whether the system can safely conduct the replacement; and*
- *Whether the system has obtained the property owner's consent, if consent is required for access.*

The process should be based on the provisions in the proposed rule that require water systems to seek access by engaging with the owner of the property under which the service line is buried. If the property owner provides access and gives a green light to the water system to replace the service line, the water system has control. If the property owner refuses to provide access, the water system lacks the control needed to trigger the full service line replacement provisions.

In addition, the proposed rule recognizes that property owners change by requiring water systems to provide notice of the LSL to new customers with mandatory text inviting the new owner to have the service line replaced.

A deadline for inventory completion that precedes the deadline for mandatory service line replacement could reduce the possibility of non-compliance with the replacement deadline, but it would not have the advantages of a consolidated deadline as described above. EPA seeks comment on its rationale for the consolidated deadline approach as compared to an earlier deadline for identifying unknown service lines.

Unleaded Kids comment: We support EPA's proposed approach. The benefits of a consolidated deadline are not sufficient to warrant a different approach.

While water systems are required to notify consumers of disturbances resulting from water main replacement under these proposed requirements, EPA is also requesting comment on whether to require distribution of filters for this type of disturbance.

Unleaded Kids comment: We think filters certified to reduce lead and replacement cartridges should be provided for disturbances. The releases of lead from these disturbances are too unpredictable to hope that flushing will suffice. If evidence emerges allowing predictions, then EPA can modify the rule.

At Unleaded Kids, we appreciate the opportunity to comment on EPA's proposed improvements to the LCR. For more information, please contact Tom Neltner at tneltner@unleadedkids.org or 317-442-3973.

Sincerely,



Tom Neltner
National Director
Unleaded Kids
tneltner@unleadedkids.org
317-442-3973