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February 5, 2024

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Comments submitted via Federal eRulemaking Portal:

<https://www.regulations.gov>

Re: NACWA's Comments on EPA's National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI) (Docket ID: EPA-HQ-OW-2022-0801)

Dear Administrator Regan:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA) proposed rulemaking to update and improve its National Primary Drinking Water Regulations for Lead and Copper published in the Federal Register.¹

NACWA represents the interests of 350 public clean water utilities across the country that everyday provide the essential services of managing billions of gallons of wastewater to ensure the continued protection of public health and the environment. Our members strongly support appropriate public health protections from lead exposure in drinking water supplies, and the proposed LCRI makes significant progress to eradicate lead in this regard.

NACWA supports the comments submitted by our sister organizations, the American Water Works Association (AWWA) and the Association of Metropolitan Water Agencies (AMWA), whose members will be directly impacted by this proposed rulemaking. NACWA is submitting these comments to specifically provide input on how public clean water agencies may be impacted by the proposal.

The proposed LCRI calls for replacement of *all* lead and service lines (LSL) within a decade and a very low lead action level of 10 parts per billion – which will require significant investment for public water utilities, well

¹ 88 Fed. Reg. 84878 (December 6, 2023).

exceeding the historic federal investments provided in the Bipartisan Infrastructure Law (BIL). NACWA has consistently urged a renewed federal commitment to greater infrastructure funding in rebuilding the nation's aging infrastructure.

While the BIL's \$15 billion allocation towards LSL replacement is helpful, it is a drop in the bucket compared to the total costs that will be borne by public water systems and ultimately passed along to individual ratepayers themselves to entirely replace *all* lead service lines, especially those that go beyond the utility main. This is not an argument against addressing lead but is a call to action to fully recognize the financial burden that will be placed on individual customers to meet these federal objectives, and a plea for greater federal investment as well as flexibility, where appropriate and backed by science, to help mitigate water rate increases. These are affordability challenges that customers will face on top of those already caused due to increased rates for needed clean water investments.

How the LCRI Will Impact the Provision of Clean Water Services

While this proposed rulemaking is poised to directly impact public water systems, there will be indirect impacts to downstream wastewater utilities and water quality. As NACWA noted during the previous Lead and Copper Rule Revisions, public water systems have always had flexibilities under the Safe Drinking Water Act in implementing corrosion control technologies (CCT) (*e.g.*, alkalinity and pH adjustments, calcium hardness adjustments, and phosphate/silicate-based corrosion inhibitors) that reflected local water chemistry and site-specific needs within a given service area and watershed.

In contrast, public water systems under this new proposal face a "one-sized-fits-all" orthophosphate dosing requirement that will add more phosphorus to the system and therefore require downstream public wastewater utilities to remove it before discharging to surface waters. Even if a public water system achieves complete LSL replacement, the current LCRI proposal leaves public water systems with no corrosion control option other than to continue orthophosphate dosing - essentially requiring phosphorus additions into the system in perpetuity.

NACWA continues to recommend EPA not adopt a "one-size fits all" approach to mitigating lead by mandating orthophosphate as the preferred optimal CCT approach but rather continue to support the inherent flexibilities granted under the SDWA for drinking water utilities to make responsible, scientific decisions for their own facility's CCT techniques. Or in the alternative, if a public water system achieves complete LSL replacement, there should be an "off-ramp" to continued orthophosphate dosing to a more flexible alternative. These recommendations would allow for locally appropriate protections and minimize excess phosphorus loading to water systems.

Many surface waters throughout the United States face eutrophication from a variety of point and non-point sources. Federal and states regulatory agencies charged with carrying out the mission and goals of the Clean Water Act have responded to the enhanced nutrification of surface water by setting often-stringent numeric nutrient limits under the National Pollution Discharge Elimination System (NPDES) for publicly owned clean water agencies.

These discharge limits require clean water agencies to significantly invest in treatment controls to reduce the amount of phosphorus and nitrogen discharged into surface waters. And, over the 50 years of the Clean Water Act (CWA), at a tremendous cost, clean water agencies have successfully mitigated millions of pounds of nutrients from entering surface waters and have greatly improved water quality for communities and the aquatic life alike that depend on clean and safe water.

While many clean water agencies have installed nutrient removal technology to meet current water quality standards for phosphorus, the LCRI proposal will undoubtedly increase the quantity of phosphorus that downstream wastewater utilities will need to remove before discharging into surface waters. This will require more utilities to install nutrient controls and others to scale up their treatment technology. As the climate changes and water quality becomes more eutrophic in nature, it is inevitable that clean water utilities will face even more stringent nutrient limits to protect surface water quality.

EPA Should Promote Regulatory Flexibility and Coordinate with States

EPA estimates that anthropogenic sources deposit nearly 750 million pounds of phosphorus per year into surface waters, and at the high end the LCRI would contribute roughly 0.5% or 3.9 million pounds of the total phosphorus surface waters. EPA also asserts that the LCRI impact will be “small, relative to the total phosphorus load deposited annually from all other sources.”

While EPA attempts to put the additional phosphorus loadings in perspective, it brushes over the simple fact that “more phosphorus in, is more phosphorus out.” In a one-water framework that is the result of the interconnectivity of our public water systems and wastewater treatment plants, often under dual ownership, there is one individual rate payer – the public. The national estimates also gloss over localized impacts under which certain communities will be significantly affected, based on local water quality conditions. And to look holistically at the impacts of the LCRI, EPA should also consider the increased energy demands and associated environmental impact and increased carbon footprint of adding, and then removing, phosphorus from our water systems. This approach may be the best solution in certain cases, but less so in others.

NACWA continues to urge EPA to encourage state regulatory authorities to provide clean water utilities with regulatory flexibility—such as considering the development of a variance or conducting a use attainability analysis (UAA)—to account for increased phosphorus concentrations associated with the LCRI, especially where these tools are will enable clean water utilities to meet CWA permitting requirements. Downstream wastewater utilities, particularly those with stringent nutrient permit limits, will also need adequate time to assess their influent and make meaningful treatment adjustments for increased phosphorus concentrations coming into their systems.

Further, EPA should help guide coordination between public water suppliers and downstream wastewater treatment plants when an upstream utility re-optimizes its CCT and begins adding orthophosphate as a treatment technique. As public water systems add orthophosphate concentrations to their treatment regimes, there is no requirement for upstream utilities to coordinate or relay their CCT techniques downstream. Knowing if, when, and how much phosphorus will be

added to the system and how it will impact wastewater influent will assist wastewater utilities in their efforts to prepare.

Economic Analysis Misrepresents True Costs of Added Phosphorus Removal

Given these downstream impacts of increased phosphorus loading, EPA's economic analysis of the cost of phosphorus removal per pound is likely underestimated.

As EPA notes in its proposed LCRI rulemaking, the number of POTWs with nutrient limits in NPDES permits is increasing over time. EPA acknowledges that 41% of the clean water utilities in the U.S. will likely face nutrient limits over the next 35 years. NACWA believes EPA's growth rate estimation is conservative and there will likely be more utilities with nutrient limits.

EPA derived unit costs associated with removal of \$5.44 per pound of phosphorus incrementally added (88 Fed. Reg. 84990). NACWA believes it is impractical to standardize a single unit cost for removal of phosphorus because there are many variables and assumptions to consider. For example, some locations with more stringent permit limits have costs upwards of \$13 per pound of phosphorus removed.

EPA also estimates that the annual cost impacts of the LCRI to clean water utilities, at the high end, would be \$12 million, a \$5.9 million incremental increase over the baseline. NACWA believes that EPA's Economic Analysis misrepresents the true costs on public clean water utilities in that it spreads the cost impacts over a 35-year period rather than when orthophosphate dosing begins within three years of the LCRI becoming final. In sum, the costs to clean water utilities will be greater in the near term, and much higher than the average would suggest for some utilities.

In addition, the Economic Analysis assumes wastewater treatment plants have sufficient capacity *already built in* to manage increased loading and does not consider the added infrastructure capital costs that may be needed to expand capacity. In order to truly assess the cost of incremental phosphorus loading at upstream utilities, a life-cycle cost analysis would need to be conducted.

Conclusion

NACWA recognizes the critical need to address potential lead and copper contamination in drinking water and appreciates EPA's efforts through the LCRI to provide needed clarity on public health protections from these constituents.

However, many of NACWA's members provide drinking water as well as clean water services and recognize that it is possible to provide public health protections through drinking water treatment without sacrificing downstream environmental and water quality.

NACWA continues to recommend EPA not adopt a "one-size fits all" approach to mitigating lead by mandating orthophosphate as the preferred optimal CCT approach but rather continue to support the inherent flexibilities granted under the SDWA for drinking water utilities to make responsible, scientific decisions for their own facility's CCT techniques. Or in the alternative, if a public water system

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achieves complete LSL replacement, there should be an “off-ramp” to continued orthophosphate dosing to a more flexible alternative. In doing so, drinking water utilities can continue safeguarding public health while simultaneously ensuring protection of downstream water quality concerns.

If you have any questions, please contact me by phone at 202/533-1839 or by email at eremmel@nacwa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily Remmel". The signature is fluid and cursive, with a large loop at the end of the last name.

Emily Remmel
Senior Director, Regulatory Affairs