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MARYLAND, MASSACHUSETTS, MICHIGAN,  
NEW JERSEY, OREGON, AND WISCONSIN**

November 15, 2022

Michael S. Regan, Administrator  
U.S. Environmental Protection Agency  
EPA Docket Center, Office of Water Docket  
Mail Code 28221T  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

**Via Electronic Submission**

EPA-HQ-OW-2022-0801

RE: *Notice of Public Meeting: Environmental Justice Considerations for the Development of the Proposed Lead and Copper Rule Improvements (LCRI)*, 87 Fed. Reg. 61,269 (Oct. 11, 2022)

The Attorneys General of New York, Illinois, Maryland, Massachusetts, Michigan, New Jersey, Oregon, and Wisconsin submit these comments in connection with the U.S. Environmental Protection Agency’s (“EPA”) notice of public meeting regarding environmental justice considerations for the development of improvements to the *National Primary Drinking Water Regulations: Lead and Copper Rule Revisions*, published at 86 Fed. Reg. 4,198 (Jan. 15, 2021) (the “Revised Lead and Copper Rule”).<sup>1</sup> Given the paramount importance to public health, we urge EPA to expeditiously remedy the deficiencies in the Revised Lead and Copper Rule and implement an updated rule that uses the best available science, 42 U.S.C.

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<sup>1</sup> The Attorneys General incorporate by reference their previous submissions regarding the Revised Lead and Copper Rule: Comments of the Attorneys General of California, Oregon, Minnesota, Connecticut, Pennsylvania, Wisconsin, Illinois, Maryland, New York, and New Jersey (Feb. 12, 2020), <https://www.regulations.gov/comment/EPA-HQ-OW-2017-0300-1468>; Comments of the Attorneys General of New York, California, Maryland, Massachusetts, Minnesota, New Jersey, Oregon, Pennsylvania, and the District of Columbia (Apr. 14, 2021), <https://www.regulations.gov/document/EPA-HQ-OW-2017-0300-1877>; Written Testimony of Sarah K. Kam, Assistant Attorney General, Office of New York State Attorney General (May 5, 2021), <https://www.regulations.gov/comment/EPA-HQ-OW-2021-0255-0012>; Initial Opening Brief of State Petitioners, *Newburgh Clean Water Project, et al. v. EPA*, Case No. 21-1019 (D.C. Cir.).

§ 300g-1(b)(3), protects the health of all Americans, and rectifies environmental injustice related to lead-contaminated drinking water.<sup>2</sup>

As EPA has recognized, communities of color and low-wealth communities are disproportionately exposed to the risks of lead that is present in drinking water delivered by community water systems. *Review of the National Primary Drinking Water Regulations: Lead and Copper Rule Revisions (LCRR)*, 86 Fed. Reg. 71,574, 71,575 (Dec. 17, 2021). Lead service lines are typically the primary source of lead in community-delivered drinking water. *Id.* Communities of color and low-wealth communities tend to live in older housing that are more likely to have lead service lines. *Id.* Moreover, because of various disparities, including in the quality of housing, community economic status, and access to medical care, lead from other sources also disproportionately affects these communities. *Id.* For example, children of color and children in low-wealth communities are more likely to live near lead-emitting industries and to live in urban areas with contaminated soil, contributing to their overall exposure. *Id.* Additionally, non-Hispanic Black people are more than twice as likely as non-Hispanic white people to live in moderately or severely substandard housing, which present risks from deteriorating lead-based paint. *Id.* Both the individual and cumulative impact of these lead exposures increase the risk of these populations suffering elevated blood-lead levels and the associated health risks, of which lead-contaminated drinking water is a significant contributor.

Removal of lead service lines is essential to protecting public health from the dangers of lead in drinking water and would further environmental justice. *Id.* at 71,578. Conversely, leaving millions of lead service lines in place would put generations of Americans at risk of significant lead exposure from their drinking water. *Id.* at 71,577. Approximately 10 million American households drink water from lead pipes and service lines.<sup>3</sup> Additionally, children in 400,000 schools and child care facilities are at risk of exposure to lead in their water.<sup>4</sup> EPA has stated that replacing 100% of lead service lines “is an urgently needed action to protect all Americans from the most significant source of lead in drinking water systems.” *Id.* at 71,574. Under the Revised Lead and Copper Rule, however, EPA estimated that the Rule would result in replacement of only about 5% of lead service lines nationally over a 35-year period. *Id.* at 71,577. To achieve 100% lead service line replacement within the next decade, as called for by the Biden administration, EPA must make accompanying revisions to the Revised Lead and Copper Rule to

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<sup>2</sup> See Charles Lee, *Confronting Disproportionate Impacts and Systematic Racism in Environmental Policy*, ELR 10207 (Mar. 2021), [https://www.elr.org/sites/default/files/docs/elr\\_pdf/51.10207.pdf](https://www.elr.org/sites/default/files/docs/elr_pdf/51.10207.pdf).

<sup>3</sup> The White House, *FACT SHEET: The Biden-Harris Lead Pipe and Paint Action Plan*, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/16/fact-sheet-the-biden-harris-lead-pipe-and-paint-action-plan/>.

<sup>4</sup> *Id.*

expedite replacement and ensure equitable access.<sup>5</sup> *Id.* at 71,578 (stating that “EPA intends to propose for comment requirements that, along with other, non-regulatory actions, would result in the replacement of all [lead service lines] as quickly as is feasible”). Furthermore, as EPA recognizes, state and federal funding incentives may not be presently sufficient to achieve replacement of all lead service lines, and additional actions are necessary to reduce risks to families living in homes with lead service lines. *Id.*

In addition, EPA must fully identify and address the disproportionately high and adverse human health effects that the Revised Lead and Copper Rule has on communities of color and low-wealth communities.<sup>6</sup> The Revised Lead and Copper Rule only provides for replacement of lead service lines in communities where the private homeowners have the resources to cover the out-of-pocket cost of replacing the private portion of the lead service line, which disproportionately impacts these communities. As EPA recognized, the cost of replacing the customer-portion of a lead service line may leave the most vulnerable Americans disproportionately exposed to lead. *Id.* Indeed, EPA’s environmental justice analysis found that the Revised Lead and Copper Rule’s reliance on “household-level changes that depend on ability-to-pay will leave low-income households with disproportionately higher health risk.”<sup>7</sup> Moreover, a higher incidence of rental housing in these communities creates an additional barrier to lead service line replacement where the property owner does not consent to full replacement. *Id.* at 71,575.

EPA should improve the Revised Lead and Copper Rule by addressing these injustices. First, EPA should prioritize lead service line replacement in neighborhoods at higher risk of lead poisoning.<sup>8</sup> The Lead and Copper Rule

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<sup>5</sup> *Id.*; see also Letter from U.S. Senators to EPA (Oct. 25, 2022), <https://www.durbin.senate.gov/imo/media/doc/EPA%20Lead%20and%20Copper%20Rule%20Improvements%20Comment%20Letter%20SIGNED.pdf> (“We support your commitment, reiterated in the Lead Pipe and Paint Action Plan in December, to fully replace all of the nation’s lead pipes within 10 years. That is an ambitious but critically important goal. To accomplish this objective, EPA must strengthen and enforce the Lead and Copper Rule (LCR) to require water systems to replace these often century-old and deteriorating lead pipes over the coming decade.”).

<sup>6</sup> See Exec. Order 12,898, 64 Fed. Reg. 7629 (Feb. 16, 1994); see also Exec. Order No. 13,990, 86 Fed. Reg. 7,037, 7,037 (Jan. 20, 2021), Exec. Order 14,008 § 219, 86 Fed. Reg. 7619, 7629 (Feb. 1, 2021); EPA, Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (2016), [https://www.epa.gov/sites/default/files/2016-06/documents/ejtg\\_5\\_6\\_16\\_v5.1.pdf](https://www.epa.gov/sites/default/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf).

<sup>7</sup> See EPA, Environmental Justice Analysis for the Proposed Lead and Copper Rule Revisions, Exhibit ES-1 (Oct. 2019), <https://www.regulations.gov/document/EPA-HQ-OW-2017-0300-0008>.

<sup>8</sup> See Comments of Isaac Slavitt (Oct. 19, 2022), <https://www.regulations.gov/comment/EPA-HQ-OW-2022-0801-0005> (discussing a new prioritization methodology, which optimizes the use of funds towards the lead drinking water line replacement projects most likely to maximize reduction of childhood exposure, that was applied in City of Malden, Massachusetts); see also InsideEPA, *Massachusetts Project Tests EJ Metric For Prioritizing LSL Replacements* (Oct. 31, 2022), <https://insideepa.com/daily-news/massachusetts-project-tests-ej-metric-prioritizing-lsl-replacements>;

Working Group to the National Drinking Water Advisory Council, for example, advised that “making environmental justice a priority can be achieved through . . . setting priorities for which neighborhoods are targeted first for [lead service line replacement] to ensure equal treatment of low income neighborhoods.”<sup>9</sup> In addition, the Government Accountability Office determined that EPA could develop guidance about methods for identifying high-risk locations, and thus help operators of public water systems test water samples from locations at greater risk of having lead service lines and identify areas with vulnerable populations.<sup>10</sup> Without such prioritization, lead sampling and service lines replacements are more likely to occur in wealthier areas and those with higher proportions of white residents even though Black and brown children are more likely to have elevated levels of lead in their blood and live in older homes with lead service lines.<sup>11</sup>

Second, EPA should encourage full lead service line replacements and discourage partial replacements.<sup>12</sup> Under the Revised Lead and Copper Rule, partial lead service line replacements will not count in calculating the number of lead lines that have been replaced, though partial lead service line replacements may still be conducted. 86 Fed. Reg. at 4217. As we have previously detailed, partial lead service line replacement is not an effective solution, and may even exacerbate disparities in lead pollution, because it removes only the water system-owned portion of the lead service line, leaving in place the portion of the lead service lines that is on homeowners’ and renters’ properties where owners cannot or will not pay for replacement of the privately-owned portion.<sup>13</sup> Partial lead service line replacements also significantly increases short-term lead exposure and associated

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Massachusetts Municipal Association, *Malden Uses Data to Prioritize Removal of Lead-Lined Service Pipes* (Dec. 2021), <https://www.mma.org/malden-uses-data-to-prioritize-removal-of-lead-lined-service-pipes/>.

<sup>9</sup> Lead and Copper Working Group Report, 18 (2015), <https://www.regulations.gov/document/EPA-HQ-OW-2017-0300-0062>. The National Drinking Water Advisory Council unanimously endorsed the working group’s report in full. National Drinking Water Advisory Council Letter to EPA, 2 (Dec. 15, 2015), <https://www.regulations.gov/document/EPA-HQ-OW-2017-0300-0126>.

<sup>10</sup> U.S. Government Accountability Office, *EPA Could Use Available Data to Better Identify Neighborhoods at Risk of Lead Exposure* (Dec. 2020), <https://www.gao.gov/products/gao-21-78>.

<sup>11</sup> See Erin McCormick and Kevin G. Andrade, *Revealed: US Cities Refusing to Replace Toxic Lead Water Pipes Unless Residents Pay*, The Guardian (July 20, 2022), <https://www.theguardian.com/us-news/2022/jul/20/us-cities-force-residents-pay-thousands-replace-lead-pipes-risk-drinking-toxic-water>; Comments of Isaac Slavitt (Oct. 19, 2022), <https://www.regulations.gov/comment/EPA-HQ-OW-2022-0801-0005>.

<sup>12</sup> Hannah Northerly, *Environmental Justice Woes Spring from Lead Pipe Replacement*, E&E News (Jan. 13, 2022), <https://www.eenews.net/articles/environmental-justice-woes-spring-from-lead-pipe-replacement/>.

<sup>13</sup> See Comments of the Attorneys General of California, Oregon, Minnesota, Connecticut, Pennsylvania, Wisconsin, Illinois, Maryland, New York, and New Jersey, 11 (Feb. 12, 2020), <https://www.regulations.gov/comment/EPA-HQ-OW-2017-0300-1468>.

health risks.<sup>14</sup> Reportedly, over 11,000 water utilities engage in the practice of partially replacing lead pipes, which poses serious health risks, particularly in environmental justice communities.<sup>15</sup>

Third, EPA should conduct targeted and effective outreach to all environmental justice communities to improve access to lead service line replacements. This outreach should counteract barriers environmental justice communities face in obtaining lead service line replacement. For example, in Providence, Rhode Island, even though the city offered free replacements of lead service lines to certain neighborhoods, some residents were not able to sign up because they could not attend the grant program.<sup>16</sup> Similarly, effective outreach must reach communities not necessarily served by existing information networks, such as new Americans or communities where English is a second language.

Finally, we support EPA collaborating with state and tribal primary agencies and state Clean Water and Drinking Water State Revolving Funds to assist local communities and ensure lead service line replacement funding is effectively and equitably deployed.<sup>17</sup> We recognize that local water jurisdictions will face funding challenges in achieving 100% lead line replacement, and trust that EPA will do what it can to help them meet those challenges.

Thank you for the opportunity to submit these comments.

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<sup>14</sup> *Id.*

<sup>15</sup> Erin McCormick and Kevin G. Andrade, *Revealed: US Cities Refusing to Replace Toxic Lead Water Pipes Unless Residents Pay*, The Guardian (July 20, 2022), <https://www.theguardian.com/us-news/2022/jul/20/us-cities-force-residents-pay-thousands-replace-lead-pipes-risk-drinking-toxic-water>.

<sup>16</sup> *Id.*

<sup>17</sup> See EPA, *Bipartisan Infrastructure Law: State Revolving Funds Implementation Memorandum* (Mar. 2022), <https://www.epa.gov/system/files/documents/2022-03/bil-srf-memo-fact-sheet-final.pdf>.

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