Lead and Copper Rule/Drinking Water: U.S. Environmental Protection Agency Proposes Strengthening Provisions

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The U.S. Environmental Protection Agency ("EPA") announced on November 30th what it denominates as the proposed "Lead and Copper Rule Improvements" ("LCRI").

EPA's rationale for the proposed rule is the health effects associated with exposure to lead in drinking water and advancements in the existing practices utilized by drinking water systems.

EPA initially promulgated in 1991 a rule to control lead in drinking water (i.e., the LCR). EPA utilized its Safe Drinking Water Act ("SDWA") authority to promulgate the LCR. Specifically, it is applicable to all public water systems except those that do not regularly serve at least 25 of the same people at least six months of the year.

The SDWA is the federal law that protects drinking water supplies. The statute requires that EPA identify drinking water contaminants. The federal agency is then required to develop rules that either set maximum permissible levels for the contaminants or establish protocols to treat the water to minimize the levels of contaminants. The states can be delegated the ability to enforce the requirements established by the SDWA. The Arkansas Department of Health implements the program in Arkansas.

The LCR has since been revised at various times. The LCR is applicable to water utilities. The focus has been the reduction of lead and copper in drinking water.

Key provisions in the LCRI include:

- Achieving 100% lead pipe replacement within 10 years (vast majority of public water systems would be required to replace lead service lines within 10 years).
- Locating legacy lead pipes (all water systems would be required to regularly update their inventories, create a publicly available service line replacement plan, and identify the materials of all service lines of unknown material).
- Improve tap sampling (required to collect first liter and fifth liter samples at sites with lead service lines and use the higher of the two values when determining compliance with the rule).
- Lowering the lead action level (lead action level would be lowered from 15 ug/L to 10 ug/L).
- Strengthening protections to reduce exposure (water systems with multiple lead action level exceedances would be required to conduct additional outreach to consumers and makes filters certified to reduce lead available to all consumers).

The American Water Works Association stated in part in a November 30th news release:

. . . It's important to recognize that while some communities can move quickly to replace all lead service lines, others need longer time frames. We are pleased that EPA recognizes that a one-size-fits-all approach will not work and is proposing a formula to help systems with large numbers of lead lines in their service areas comply with the rule. Some communities and their local partners will have to overcome barriers in order to accelerate lead service line replacement and meet EPA's proposed timeline.

The organization also notes that the average cost to fully replace a single lead service line is more than $10,000, and EPA estimates there are 9.2 million lead lines connecting homes to water systems nationwide. It estimates a total cost potentially exceeding $90 billion.

The Environmental Defense Fund ("EDF") in a November 30th press release states in part:

. . . children and adults – especially those in overburdened communities – will reap enormous public health benefits. This proposal charts a path forward to addressing all sources of lead, including air, food, paint, and soil. EDF applauds this proposal and looks forward to supporting EPA to finalize this historical rule by October 2023.

A link to the 622-page prepublication proposed rule can be found here.