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Lead and Copper Rule/Drinking Water: 14 State Attorneys General (Including Arkansas) Request U.S. Environmental Protection Agency Withdrawal of Proposed Rule

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Fifteen Attorneys General submitted a February 5th memorandum to the United States Environmental Protection Agency (“EPA”) commenting on the proposed rule:

National Primary Drinking Water Regulations for Lead and Copper: Improvements (“proposed rule”)

The rule was proposed on December 6, 2023. See 88 Fed. Reg. 84878.

The Attorneys General authoring the February 5th memorandum include:

- Arkansas
- Florida
- Georgia
- Iowa
- Idaho
- Kansas
- Louisiana
- Mississippi
- Montana
- Nebraska
- South Carolina
- South Dakota
- Texas
- Utah
- Wyoming

EPA’s rationale for the proposed rule are 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. EPA utilizes Safe Drinking Water Act authority to promulgate the control of lead in drinking water. Specifically, the federal statute 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.

By way of introduction, the Attorneys General February 5th states that the proposed rule:

. . . creates a heavy-handed mandate on states that is nigh impossible to comply with and is also a financial burden on already squeezed middle class families. It is unworkable, underfunded, and unnecessary and should be withdrawn.

Concerns expressed in the February 5th letter include:

- EPA approved in 2021 a rule that would require pipe replacement only if the amount of lead reached a certain threshold and the rule had a reasonable time for such replacement
- Rule has not yet taken effect
- The outcome of the 2021 rule should be considered as opposed to proposing even more stringent standards

The proposed rule is also argued to be unlawful for the following reasons:

- Implicates the Major Questions Doctrine (Stating that every homeowner will be required to replace every lead pipeline in the country within the next 10 years, raising utility prices for American families and by some estimates \$60 billion in costs)
- Violates the Commerce Clause (Congress' Commerce Clause power does not extend to purely local, non-economic activities and improperly seeks to regulate pipes that connect each individual house with a main even though they are privately owned by the homeowner) (Federal government funding will not cover costs to complete the required work)
- Arbitrary and Capricious

A copy of the letter can be downloaded [here](#).