pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION

December 13, 2022

Mr. Michael S. Regan
United States Environmental Protection Agency
Docket Center, Office of Water Docket
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attention: Docket No. EPA-HQ-OW-2022-0813

Dear Administrator Regan:

Thank you for the opportunity to provide input on the United States Environmental Protection Agency's (EPA) forthcoming proposed Lead and Copper Rule Improvements (LCRI). The Pennsylvania Department of Environmental Protection (DEP) offers the following comments.

## General Comments

As EPA is drafting the proposed LCRI, DEP supports EPA's prioritizing protection of individuals most vulnerable to the adverse effects of lead exposure (e.g., young children) and communities that have been disproportionately impacted by lead in drinking water. DEP looks forward to reviewing how the lead service line replacement, compliance sampling, and other provisions of the proposed LCRI will reflect these priorities.

DEP requests the compliance date for any provisions located within the Lead and Copper Rule Revisions (LCRR) that will be carried forward or revised within the LCRI be three years following the final publication date of the LCRI. This is necessary to provide States the three years needed to write and implement their rules and provide water systems the appropriate amount of time to address the early implementation aspects of the regulation. The only exception to this request is the development and submission of the lead service line inventory because that is the only provision that EPA has been clear will not change in the LCRI. Water systems are not able to begin early implementation requirements under the LCRR, such as development and submission of a sample plan and lead service line replacement plan, due to the absence of guidance from EPA.

## § 141.2 Definitions

The *First-draw sample* definition is specific to one-liter samples collected in accordance with § 141.86(b)(2), but samples collected at schools and childcare facilities using the 3Ts method are also first draw samples and should be incorporated into the definition. The *First-draw sample* definition should specify that it is a sample collected following a stagnation period of at least 6 hours for samples collected in accordance with § 141.86(b)(2) or 8 to 18 hours for samples collected under § 141.92(b).

The definition for *Method detection limit (MDL)* conflicts with the EPA definition of MDL in 40 CFR Part 136 Appendix B Rev. 2.0. This definition was revised in 2016 to say: "The method detection limit is defined as the minimum measured concentration of a substance that can be reported with 99% confidence that the measured concentration is distinguishable from method blank results." However, the MDL definition in LCRR still says "…99 percent confidence that the analyte concentration is greater than zero…" DEP recommends that EPA edit the LCRR definition to make it consistent with the MDL definition in 40 CFR Part 136.

DEP recommends adding the 0.005 mg/L level for lead and the 0.050 mg/L level for copper – currently defined in § 141.89(a)(1)(ii) – to the *Practical quantitation limit (PQL)* definition to clarify what the PQL is for each analyte, and to be consistent with other definitions where levels are defined such as the action level (AL) and trigger level definitions. DEP also notes that the proposed rule defines the term *Practical quantitation limit (PQL)* whereas existing 40 CFR Part 141 regulations – specifically § 141.89(a)(1)(ii) and § 141.89(b)(3) – use the term *Practical quantitation level*, which is also the term used in § 141.89(b)(3) of the LCRR.

DEP recommends that EPA add a flushing timeframe to the *Pre-stagnation flushing* definition to avoid misinterpretation of the definition. As an example, the 3Ts guidance specifies that samples should be taken after an 8-hour to 18-hour stagnation period, which clearly specifies that the maximum stagnation period is 18 hours. Some similar specification is necessary for LCR tap monitoring; otherwise, it is impossible to know how far in advance it would be allowed for a homeowner or business to flush their lines. EPA should define in guidance the difference between normal use and flushing, and should provide examples relating to typical LCR tap locations (i.e., residences).

DEP recommends that the definition for *School* be edited to specify that "home schools" are not included in the definition.

**§ 141.31 Reporting requirements**

141.31(d)(1): This subparagraph implies that the certification which is due 10 days after completing public notification (PN) is only for Tier 2 and 3 notices because subparagraph (1) does not apply to Tier 1 notices. If this is the expectation, EPA should clarify when certification is due for Tier 1 notices. DEP recommends moving the (1) to just prior to the second sentence, which refers to Tier 2 and 3 notices and leaving the first sentence as an opening to paragraph (d) that applies to all three PN tiers.

141.31(d)(2): The new requirement for public water systems to provide a copy of any Tier 1 notice to EPA and the Primacy Agency within 24 hours has far reaching implications that go beyond the LCR because this requirement, as written, applies to all public water systems for all Tier 1 notices. DEP urges EPA to have in place an efficient method for public water system delivery of Tier 1 notices in an electronic format, but also a method for delivery for small water systems (e.g., transient noncommunity water systems) without internet access that will be required to comply with this provision. This method will also need to have detailed instructions that include to whom the notice should be sent to and through what means (e.g., email vs. online portal).

**§ 141.80 General requirements**

DEP recommends that EPA lower the AL for lead to 10 µg/L and remove the trigger level from the regulation. The trigger level adds an unnecessary layer of complication and confusion to the regulation, which will make it difficult for states to implement and for water systems to understand.

**§ 141.81 Applicability of corrosion control treatment steps to small, medium and large water systems**

In general, the corrosion control treatment (CCT) requirements in § 141.81 are overly complicated and at times seem to conflict with each other. DEP requests that EPA conduct a thorough review of this section and eliminate discrepancies.

- One example of this is in § 141.81(a) because there seem to be groups in that subsection that are not specifically covered in the rest of § 141.81, and, at the same time, there are additional categories added throughout § 141.81 that are not in § 141.81(a). This creates gaps in the regulation where it is unclear what some groups need to do or what schedule they fall under. It is unclear what is required for small and medium size systems without CCT that exceed the lead trigger level if they stop treatment steps after two 6-month monitoring periods less than the AL and subsequently exceed the trigger level again. Eliminating the trigger level and lowering the AL to 10 µg/L may help some of the confusion inherent to this section.

- DEP would also like clarification on the "re-optimized" vs. "optimized" terms. In an EPA Q&A webinar, one EPA presenter indicated that systems which already have CCT treatment (whether it was optimized in the past or not) are considered to be re-optimizing OCCT whenever they do anything under subparagraphs (b) & (d); however, the regulation does not always follow that interpretation. For example, § 141.81(b)(2) is for small or medium-size water systems with CCT. Within that paragraph the regulation uses the phrases "deemed to have optimal corrosion control treatment," "deemed to have re-optimized optimal corrosion control treatment," and "deemed to have optimized or re-optimized OCCT." The lack of consistency with use of these phrases makes understanding the regulation very difficult.

**§ 141.82 Description of corrosion control treatment requirements**

General Comment: DEP supports re-evaluating and re-optimizing CCT when sample results show existing CCT is not optimized. However, DEP recommends that EPA clarify in the regulations how this re-evaluation differs from an initial treatment study. DEP also requests that EPA publish detailed guidance relating to this re-evaluation.

141.82(j): The *Find-and-fix* title is problematic as it suggests to the customer that the water system is going to fix any problems that are found during the assessment, even if the cause of the exceedance is due to a premise plumbing issue. DEP recommends revising the title of the assessment and removing any reference to the term "fix."

141.82(j)(2):

- The second sentence of this paragraph, which refers to follow-up samples collected during a find-and-fix assessment, states: "These follow-up samples may use different sample volumes or different sample collection procedures to assess the source of elevated lead levels." This sentence is too vague and will place states in a situation where they are uncertain of the validity of any follow-up samples collected during a find-and-fix assessment. EPA should list specific pre-established sample collection procedures and sample volumes acceptable for the purpose of assessing lead in drinking water. (This comment also applies to the second sentence of § 141.86(h).)

- The last sentence of this paragraph, which refers to follow-up samples collected during a find-and-fix assessment, states: "If the water system is unable to collect a follow-up sample at a site, the water system shall provide documentation to the State, explaining why it was unable to collect a follow-up sample." EPA should provide guidance on what would be an acceptable reason to be unable to collect a follow-up sample, and what the alternative to collecting a follow-up sample would be for water systems that provide an acceptable reason.

**§ 141.84 Lead service line inventory and replacement requirements**

General Comments for § 141.84:

- LCRR establishes a deadline for an initial lead service line inventory to be completed and submitted by October 16, 2024. However, the initial inventory still allows lead status unknown service lines to be present, and there is no deadline for when the unknown lines must be identified. EPA should establish a deadline for a final lead service line inventory to be completed and submitted where unknown lines are no longer acceptable.

- Since it has been widely established that lead service lines (LSL) are a major source of lead, DEP recommends that EPA require water systems to remove all of their LSL regardless of CCT status and AL exceedances. EPA should set a minimum percentage rate of replacement per year, such as 4%, to ensure that 100% of lead service lines are replaced within 25 years. This would greatly simplify the LSL removal calculation and guarantee that all LSL will be removed by an established point in the future (e.g., within 25 years).

- If EPA chooses to keep the LSL as written in LCRR, removing the lead trigger level would simplify lead service line replacement requirements. Specifically, removing the trigger level would eliminate the need to establish an LSL replacement goal, which is an added layer of complication for water systems and states in determining and approving these rates.

- DEP does not support the continued allowance of partial LSL replacements when a water system "obtains refusals to conduct full lead service line replacement or non-responses from every remaining customer in its distribution system served by either a full or partial lead service line..." as stated in paragraph 141.84(g)(7). DEP would support this language if the water system provides documentation that the customer refusal is **not** due to financial hardship. Section 141.84 makes it clear that the financial burden for full LSL replacement

does not fall to the water system as stated in the last sentence of paragraph 141.84(e) which states: "The water system is not required to bear the cost of replacement of the portion of the lead service line not owned by the water system." The same is true regarding replacement of lead goosenecks, pigtails, or connectors as specified in paragraph 141.84(c). Because additional funding is now available to water systems, such as money provided under the Bipartisan Infrastructure Law, DEP believes that full LSL replacement should always occur when a customer proves they cannot afford to pay for replacement of their portion of the LSL.

**§ 141.86 Monitoring requirements for lead and copper in tap water**

141.86(a): The LCRR currently requires that water systems identify a pool of targeted sampling sites but does not specify that a sampling plan needs to be developed and submitted. DEP recommends that EPA require submission of a lead and copper sample site plan that indicates which sites from the inventory, required under paragraph 141.84(a), will be sampled. This will assist with data management and implementation at the state level because the water system can assign a unique identifier to each sample location. The inventory should be used to determine the appropriate sampling sites, but the inventory is a separate document that will potentially be updated more frequently than the sample site plan.

141.86(d): EPA should clarify which water systems are expected to conduct initial monitoring. Based on the LCRR language, it appears that the expectation is for all systems to return to initial monitoring following the compliance date. EPA should also clearly specify when monitoring begins because states need sufficient time to write regulations and provide training to water systems on rule implementation requirements prior to initiation of sampling under the new regulation.

**§ 141.87 Monitoring requirements for water quality parameters**

DEP recommends that EPA require all water systems that have installed CCT to monitor for water quality parameters (WQPs) no less frequently than once every two weeks in the distribution system and at the entry point, with no option for a reduced monitoring frequency and number of locations. Water systems could collect these samples at Revised Total Coliform Rule sample sites. Water systems that are required to monitor for WQPs more frequently will be able to better monitor water quality and adjust treatment operations to ensure more consistent water quality. More consistent water quality will result in better optimized treatment, fewer exceedances of the lead AL and, therefore, fewer re-evaluations of CCT.

**§ 141.88 Monitoring requirements for lead and copper in source water**

A sample collected at the entry point to the distribution system and after any application of treatment is an entry point (EP) sample and should be called such. Calling an EP sample, a "source water sample" is confusing. DEP recommends that EPA revise all references to "source water sample" to "entry point sample" and use the language found in § 141.87(a)(1)(ii) which states: "Samples collected at the entry point(s) to the distribution system must be from locations representative of each source after treatment. If a system draws water from more than one source

and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used)."

**§ 141.90 Reporting requirements**

141.90(a)(1)(v): DEP disagrees with EPA that it is necessary for the water system to report that they sampled at a different location than previous monitoring periods; as such, DEP requests that EPA delete this paragraph 141.90(a)(1)(v). The inventory and sampling plan should include additional locations to ensure that a water system has the appropriate number of each Tier sites in case a customer is unwilling or unable to collect a sample.

**§ 141.93 Small Water System Compliance Flexibility**

141.93(a)(3): DEP does not agree that the *Point-of-Use* (POU) device option is protective of public health for the three reasons listed in the bullets below. For these reasons, DEP recommends that EPA remove the POU device option as a small water system compliance flexibility option.

- The POU device is only installed on one tap within the household or building. This is not a feasible option as most households and facilities have more than one tap where drinking water can be obtained.

- The POU device option cannot be implemented at a water system that has any restaurants, hospitals, or other facilities that a POU device cannot meet drinking water demand. It would be too difficult for the water system to meet the requirement of maintaining the POU device to ensure continued effective filtration as specified in 141.93(a)(3)(iii).

- Tracking of POU device monitoring and maintenance by water systems and states would be difficult to implement. One example of the challenges is that POU device maintenance should be based on water use at each tap to ensure that lead breakthrough does not occur. As such, proper monitoring and maintenance would require installation of a water meter at the tap where the POU device is installed.

- In reference to 141.93(a)(3)(iv), water collection and analysis of one-third of POU devices each year, and all POU devices in 3 years, will be an additional burden and cost that may not be feasible for a small community water system.

**Appendix A to Subpart O of Part 141 - Regulated Contaminants**

DEP recommends that EPA add "lead service line" under the column titled "Major sources in drinking water" in this table.

DEP appreciates the opportunity to provide comments on EPA's forthcoming proposed Lead and Copper Rule Improvements. Thank you for your consideration. If you have any questions or comments, please contact Lisa Daniels, Acting Deputy Secretary for Office of Water Programs, by e-mail at ldaniels@pa.gov or by telephone at 717.783.2950.

Sincerely,

Ramez Ziadeh, P.E.
Acting Secretary