

November 15, 2022

BlueGreen Alliance Response: *Environmental Justice Considerations for the Development of the Proposed Lead and Copper Rule Improvements*

EPA-HQ-OW-2022-0801

In the LCRR Review, the U.S. Environmental Protection Agency (EPA) identified the following priority areas for improvement: proactive and equitable lead service line replacement, strengthening compliance tap sampling to better identify communities most at risk of lead in drinking water and to compel lead reduction actions, and reducing the complexity of the regulation through improvement of the action and trigger level construct. On December 16, 2021, EPA announced it would propose a rulemaking (the LCRI) to address these improvements.

The BlueGreen Alliance (BGA) unites labor unions and environmental organizations to solve today's environmental challenges in ways that create and maintain quality jobs and build a stronger, fairer economy. Our partnership is firm in its belief that Americans don't have to choose between a good job and a clean environment—we can and must have both. We are excited to offer our comments on the Lead and Copper Rule Improvement and specifically on proactive and equitable lead service line replacement (LSLR). One of our organizational priorities highlighted in BGA's *Solidarity for Racial Equity* is to "Make Drinking Water Safe and Affordable Starting with Lead Service Lines in Disenfranchised and Marginalized Communities".ⁱ LSLR represents a significant and scalable opportunity to create good, union jobs, improve the health of entire communities, and address environmental injustice by prioritizing those communities that have been disproportionately impacted by toxic legacy chemicals like lead.

Require Full Lead Service Line Replacement

Lead can enter the water supply in a number of different ways. The most common pathway is through the corrosion of plumbing materials that contain lead.ⁱⁱ According to the EPA, the most significant source of lead in drinking water are lead service lines (LSLs)—pipes that extend from a water main underneath the street to a residence.ⁱⁱⁱ In existing lead piping, full replacement of LSLs is the only way to permanently limit lead exposure; partial replacement can exacerbate corrosion and lead to higher levels of lead in drinking water.^{iv} Partial replacement is also inequitable because it leaves behind low-income homeowners who are unable to afford thousands of dollars in replacing their side of the LSL as well as renters with landlords who decide not to cover the costs of LSLR.^v

The proposed revisions to the Lead and Copper Rule do not prioritize the full

replacement of LSLs, nor do they reflect the Biden administration’s *Lead Pipe and Paint Action Plan*, which calls on federal agencies and other stakeholders to do so within ten years.^{vi} Rather, the proposed revisions treat full LSLR as a last resort, instead prioritizing corrosion control that creates a protective coating inside pipes. While the coating can be effective, it cannot protect against unpredictable releases of lead caused by a disturbed pipe or changes in water chemistry. Even with corrosion control, lead pipes are still a danger to millions of Americans. EPA estimated there are between 6.1 and 10 million lead service lines running from water mains to single and multi-family residences and other buildings, such as schools, hospitals, and daycare centers.^{vii} Unfortunately, the information about where these pipes are, and their potential for leaching lead, is largely unknown. In cities around the country—most notably in Flint, Michigan—people are faced with potential exposure to lead. Rather than attempting to mitigate exposure after lead has already contaminated drinking water, full LSLR would prevent lead exposure in the first place.^{viii}

Recommendation: EPA should require full LSLR within ten years and prohibit partial-line replacements except when emergency repairs are needed.

Establish a Health-Based Action Level

According to the Centers for Disease Control and Prevention, there is no safe level of lead.^{ix} While lead poisoning can affect anyone, children are especially vulnerable to the toxic effects of lead in drinking water, and suffer more severe impacts. Infants and children exposed to lead, even at low levels, experience permanent, irreversible damage to their brains and central nervous systems.^x Public health experts recommend setting a maximum contaminant level as close to zero as possible while the FDA has had 5 ppb as the acceptable level of lead in bottled water since 1994.^{xi}

An updated rule should eliminate “trigger” level requirements, and instead should establish a health based action level. Without a health-based action level, many communities will continue to face the threat of lead contamination. EPA data shows that, in 2015, over 5,000 active community water systems serving over 18 million people across the United States had 8,093 violations of the Lead and Copper Rule.^{xii} Of these reported violations, 214 systems serving nearly 600,000 people failed to meet requirements to treat water to reduce the threat to human health of lead contamination.^{xiii} These numbers certainly underestimate the problem, as they do not include Flint, Michigan, or numerous other systems with violations that go undetected or unreported to the EPA.^{xiv} Moreover, race is the strongest relationship to the length of time people have to live with drinking water violations, leaving communities of color disproportionately impacted by violations of the Lead and Copper Rule.^{xv}

Recommendation: EPA should eliminate “trigger” level requirements, and instead should establish a health based action level of no more than 5 parts per billion (ppb).

Ensure New Pipes Do Not Contribute to New Health Hazards

It is important that EPA ensures that new pipes replacing harmful lead pipes do not present a different health hazard. The potential use of polyvinyl chloride (PVC) and chlorinated PVC pipes, for example, pose human health hazards, particularly for children. The chemicals that leach from PVC and CPVC pipes contain developmental toxicants that can lead to low birth weight, birth defects and behavioral and biological problems during childhood.^{xvi} Additionally, PVC and CPVC pipes are commonly joined by solvent cements that can also expose workers to hazardous chemicals such as tetrahydrofuran, a suspected carcinogen.^{xvii}

Recommendation: EPA should discourage or disqualify the use of federal funding to procure PVC or CPVC pipes for lead service line replacement.

Ensure New Pipes are Made in America

Domestic manufacturing is an important requirement of BIL funding and also presents an opportunity for job creation particularly for disadvantaged communities. The Build America Buy America Act (BABA), passed as part of the BIL on November 15, 2021, was enacted to improve our domestic supply chains and establish robust, comprehensive domestic content preferences across all federal aid infrastructure spending.^{xviii} BABA states, the “construction, alteration, maintenance, or repair of infrastructure in the United States,” which includes items 100% of iron, steel, and available manufactured products and construction materials, should be produced in the United States. These provisions apply to EPA programs in the BIL including LSLR.

With proper targeting, BABA could offer sizable economic gains for workers of color and low-income workers who’ve been hardest hit by the decline in manufacturing while uplifting those communities, such as through an increased tax base which can increase local school budgets and improve constituent services.

- Supporting new manufacturing jobs is important for Black workers, who have been particularly hard hit by the decline in manufacturing employment under unfair trade deals. Black manufacturing employment has fallen more than 30% since the late 1990s, contributing to the Black-white wage gap.^{xix}
- Black, Hispanic, Asian American/Pacific Islander (AAPI), and white workers without a college degree all earn substantially more in manufacturing than in non-manufacturing industries.^{xx}

Promote Job Creation in Environmental Justice Communities:

In addition to creating good job opportunities in manufacturing, skills standards for the installment of lead service lines can also help to enhance career pathways for environmental justice communities. LSLR funds can be used to replace pipes and support good job creation, thereby supporting the physical and economic health of environmental justice communities. These efforts can be supported through coordination with the U.S. Department of Labor's (DOL) Good Jobs initiative.

Recommendation: EPA can support environmental justice communities by:

- Requiring or incentivizing local or targeted hire or other hiring and procurement policies that benefit environmental justice communities.
- Requiring or incentivizing pre-apprenticeship opportunities targeting environmental justice communities that are linked to registered apprenticeship programs.
- Requiring or incentivizing registered apprenticeship utilization for each skilled trade necessary to complete LSLR.
- Tracking anonymized disadvantaged worker participation (recruitment, retention and advancement), in coordination with the DOL.
- Encouraging grant applications that include a section describing how the proposed project benefits environmental justice communities. This may include:
 - Projected jobs created and percentage of local or targeted hire;
 - Projected health benefits of the project;
 - Integrating pre-apprenticeships with community-based “wrap around” services to maximize retention of disadvantaged and underrepresented workers in environmental justice communities as they enter careers;
 - Omitting or limiting drug testing or background checks, except for employees with access to customer premises;
 - Identifying existing community networks for recruitment within environmental justice communities; and
 - Evidence of community engagement and education of proposed projects.

Ensure Old Pipes Are Responsibly Recycled

It is important to ensure that addressing environmental injustices in the U.S. does not create environmental injustice elsewhere in the world. Most of the lead scrap from the U.S.—including LSLs—is exported to countries with weaker environmental standards for recycling. In 2021, 50% of lead scrap exports went to India and Mexico for recycling. The other half went to more than 40 other countries including China, Ecuador, Guatemala, Bangladesh, and Indonesia. These countries have much weaker pollution controls for air

emissions, occupational exposures, and few resources for enforcement. The removal of old lead pipes in the U.S. should not contribute to environmental injustices in other countries that have weaker environmental standards.

Recommendation: Because U.S. standards are more stringent, it is important that EPA require all LSLs to be recycled at a U.S. facility.^{xxi}

There are multiple and varied ways to support environmental justice communities through the process of LSLR. The Lead and Copper Rule should include all opportunities to make LSLR more proactive and equitable for environmental justice communities. This includes full LSLR within 10 years; eliminating trigger levels and utilizing health-based action levels; disqualifying PVC and CPVC pipes as replacements; requiring U.S. recycling of old pipes; fulfilling domestic content requirements; and spurring job creation and job quality.

Endnotes

ⁱ BlueGreen Alliance, *Solidarity for Racial Equity*, 2022. Available online: <https://www.bluegreenalliance.org/resources/solidarity-for-racial-equity/#:~:text=Our%20new%20%E2%80%9CSolidarity%20For%20Racial,to%20a%20more%20just%20society.>

ⁱⁱ U.S. EPA, *3Ts for Reducing Lead in Drinking Water in Schools*, 2018. Available online: <https://www.epa.gov/ground-water-and-drinking-water/3ts-reducing-lead-drinking-water>

ⁱⁱⁱ Ibid

^{iv} Natural Resources Defense Council, *What's In Your Water? Flint and Beyond*, 2016. Available online: <https://www.nrdc.org/resources/whats-your-water-flint-and-beyond>

^v Environmental Defense Fund, *Lead Pipes and Environmental Justice*, 2020. Available online: https://www.edf.org/sites/default/files/u4296/LeadPipe_EnvironJustice_AU%20and%20EDF%20Report.pdf

^{vi} The White House, "Fact Sheet: The Biden-Harris Lead Pipe and Paint Action Plan," 2021. Available online: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/16/fact-sheet-the-biden-harris-lead-pipe-and-paint-action-plan/>

^{vii} U.S. EPA, *Strategies to Achieve Full Lead Service Line Replacement*, 2019. Available online: https://www.epa.gov/sites/default/files/2019-10/documents/strategies_to_achieve_full_lead_service_line_replacement_10_09_19.pdf

^{viii} Advisory Committee on Childhood Lead Poisoning Prevention of the Centers for Disease Control and Prevention, *Low Level Lead Exposure Harms Children: a Renewed Call for Primary Prevention*, 2012. Available online: https://www.cdc.gov/nceh/lead/acclpp/final_document_030712.pdf

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- ^{ix} Centers for Disease Control and Prevention, Lead Fact Sheet, 2009. Available online: https://www.cdc.gov/biomonitoring/lead_factsheet.html
- ^x US EPA, Basic Information about Lead in Drinking Water, 2016. Available online: <https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water>
- ^{xi} Food & Safety Magazine, “Bottled Water Regulation and FDA,” 2002. Available online: <https://www.food-safety.com/articles/4373-bottled-water-regulation-and-the-fda>
- ^{xii} Natural Resources Defense Council, *Threats on Tap: Widespread Violations Highlight Need for Investment in Water Infrastructure and Protections*, 2017. Available online: <https://www.nrdc.org/resources/threats-tap-widespread-violations-water-infrastructure>
- ^{xiii} Ibid
- ^{xiv} Ibid
- ^{xv} Natural Resources Defense Council, *Watered Down Justice*, 2019. Available online: <https://www.nrdc.org/resources/watered-down-justice>
- ^{xvi} Healthy Building Network, Water Pipes Hazard Spectrum, 2022. Available online: <https://healthybuilding.net/products/12-water-pipes>
- ^{xvii} Ibid
- ^{xviii} Federal Register, “Request for Information Relating to the Implementation of the Build America Buy America Act”, 2022. Available online: <https://www.federalregister.gov/documents/2022/06/01/2022-11729/request-for-information-relating-to-the-implementation-of-the-build-america-buy-america-act>
- ^{xix} Economic Policy Institute, *Botched policy responses to globalization have decimated manufacturing employment with often overlooked costs for Black, Brown, and other workers of color*, 2022. Available online: <https://www.epi.org/publication/botched-policy-responses-to-globalization/?emci=57b761d1-87cc-ec11-997e-281878b83d8a&emdi=4ddd7a8c-8fcc-ec11-997e-281878b83d8a&ceid=3515713>
- ^{xx} Ibid
- ^{xxi} Basel Action Network, “Lead Pipes Removed in the U.S. May Result in Poisoning Abroad”, 2022. Available online: <https://www.ban.org/news/2022/4/20/lead-pipes-removed-in-the-us-may-result-in-poisoning-abroad>