ASSOCIATION OF
METROPOLITAN
WATER AGENCIES

Testimony of

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On Behalf of the
Association of Metropolitan Water Agencies

Before the
U.S. House of Representatives
Energy and Commerce Committee
Environment and Climate Change Subcommittee

Hearing on:
"EPA's Lead and Copper Proposal:
Failing to Protect Public Health"

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Summary of the Testimony of Angela Licata

- Addressing lead in drinking water is a challenge because lead is typically not present in drinking water sources, nor is it removed at the treatment plant. Instead, lead is introduced into drinking water supplies when the water reacts with lead in buried service lines and premise plumbing in homes.

- AMWA has been involved with the Lead and Copper Rule since its inception and values all the work that EPA has done to decrease the public's exposure to lead through drinking water. The association has developed extensive comments on the proposed revisions to the rule, and these comments are the basis of our testimony.

- We appreciate that the proposal would require water systems to complete inventories of their service lines, discourages partial lead service line replacements, and avoids setting mandates for the removal of all lead service lines nationwide.

- We have numerous constructive suggestions to improve the proposed rule, particularly areas relating to the notification of customers following a lead action level exceedance, the procurement and distribution of filters, circumstances where adjustments to a community's corrosion control must be considered, and the interaction between water systems and school and child care centers for the purpose of testing for lead in facility drinking water.

- AMWA supports an achievable, practical, and enforceable Lead and Copper Rule, and hopes its comments will help EPA attain this objective.

Chairman Tonko, Ranking Member Shimkus, and members of the subcommittee: The Association of Metropolitan Water Agencies (AMWA) appreciates the opportunity to offer our thoughts today on EPA's proposed revisions to the Lead and Copper Rule.

I am Angela Licata, Deputy Commissioner of the New York City Department of Environmental Protection (DEP). Each day, DEP delivers more than 1 billion gallons of fresh, clean water to the taps of nine million customers throughout New York State.

I also serve as Vice President of AMWA's Board of Directors. AMWA is an organization representing the nation's largest publicly owned drinking water systems, which collectively serve more than 155 million Americans with quality drinking water. Please note that I address you today as a representative of AMWA. Tomorrow, New York City will submit its own written comments to EPA in response to the agency's proposed Lead and Copper Rule revisions.

Over the past several months, AMWA's members have worked with the association's staff to develop comprehensive comments for EPA in response to the agency's proposed revisions to the Lead and Copper Rule. Those detailed comments, which will be formally submitted to EPA this week, are the basis for AMWA's testimony today.

Addressing lead in drinking water is a particularly challenging because – unlike most other contaminants – lead is typically not present in drinking water sources, nor is it removed at the treatment plant. Instead, lead is introduced into the drinking water of New York City and many other communities when the water reacts with lead in buried service lines and premise plumbing in homes.

To minimize these reactions, New York City and many other communities carefully adjust the pH levels of drinking water to a specific range to lessen the corrosive nature of the water. We also add phosphoric acid – a common food preservative – that forms a protective film on pipes and household plumbing as water passes through. We also perform extensive water quality monitoring throughout the city every day.

Nevertheless, there is no easy solution that can quickly and completely eliminate the problem of lead in drinking water. The issue is further complicated because ownership of individual service lines is typically split between private homeowners and public water systems. But even if every lead service line in the country were removed, lead remaining in premise plumbing and fixtures would continue to pose a threat to public health.

In terms of EPA's proposed revisions to the Lead and Copper Rule, AMWA believes that the agency has put a great degree of thought into the proposal, and we support the effort to address this complicated issue. AMWA has been involved with the Lead and Copper Rule since its inception and values all the work that EPA has done to decrease the public's exposure to lead through drinking water. The formal comments we will file this week will identify a number of strengths in the proposed rule, but will also encourage EPA to make a number of changes to improve its clarity and the ability of water systems to implement and comply with the rule's requirements.

Strengths of the proposed revisions

Among the strengths of the rule is the new requirement for water systems to complete an inventory that specifies the composition, if known, of public and privately

owned service lines connected to the distribution system. While many water systems will face challenges in accurately determining the makeup of some service lines – particularly those on private property – on balance it is important and worthwhile for water systems to document what materials are in the service lines that deliver water to their customers. Once an inventory is completed, we agree that all water systems serving more than 100,000 people should make their inventories available to the public online. Our comments will include several suggestions to improve the inventory requirements, but overall we welcome their addition to the Lead and Copper Rule.

AMWA appreciates that EPA's proposal avoids setting unattainable mandates such as a deadline for the replacement of all lead service lines nationwide. Compliance with such a mandate would take decades, cost billions of dollars, and would prevent water systems from allocating their limited budgets to other projects and initiatives that may deliver greater public health benefits. However, the rule also empowers individual homeowners to compel their water system to replace the publicly owned portion of a lead service line when the homeowner simultaneously replaces their privately owned lead line. AMWA will offer EPA a number of suggestions to make this process as seamless as possible – such as fostering a cooperative process between the homeowner and the water system in place of arbitrary deadlines that may be impractical in many cases – but we generally agree that giving homeowners a pathway to have their water system replace a lead service line connected to their property is one of the most important new features in the proposed rule.

AMWA also agrees with steps the proposal takes to discourage partial lead service line replacements, as they carry few public health benefits and allow lead pipes to

remain in the ground. But a total ban on partial replacements, as some would advocate, is ill-advised and not feasible. For example, emergency water main replacement work may offer an opportunity for a water system to simultaneously replace the publicly owned portion of a household's lead service line. Likewise, a planned water main replacement project may result in a new alignment or spacing of the main, necessitating replacement of at least part of a lead service line. Ideally the privately owned portion of the lead line would be replaced at the same time, but a water system's ability to do so is often contingent upon that customer's willingness to allow work on his or her property (and, in many cases, for the customer to pay the costs associated with replacing the privately owned portion). EPA's proposed revisions recognize that there will be situations where customer consent cannot be quickly obtained, and in those limited cases would permit a water system to at least remove the publicly owned portion of a lead service line when the emergency main repair projects or other scheduled infrastructure work provide an opportunity to do so.

AMWA further appreciates that the proposed rule would not require water systems to cover costs associated with the replacement of privately owned service lines, though they would retain the option to do so. While some water systems are able to subsidize private-side replacement, the ability of many others to do so is legally questionable or banned outright. A mandate in the Lead and Copper Rule for a water system to pay the cost of replacing a privately owned portion of a lead service line would therefore leave many water systems in the position of either violating the rule, or violating state or local laws barring the use of ratepayer dollars for infrastructure projects that benefit individual residents. The proposed rule wisely avoids this scenario.

We understand that low-income homeowners may face particular challenges related to paying for the replacement of their privately-owned lead service line. Fortunately, Section 2105 of the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016 (P.L. 114-322) authorized grant funding that may be used by water systems for "providing assistance to low-income homeowners to replace lead service lines." Through fiscal year 2020 Congress has appropriated nearly $45 million for these grants, and AMWA hopes that EPA will soon begin seeking applications so these funds can be put to work for low-income homeowners who wish to proactively remove lead lines from their property.

Areas in need of improvement

AMWA has also identified a number of parts of the proposed rule that are not achievable, practical, or enforceable. For example, one section would require any water system that exceeds the lead action level at the 90th percentile to notify all customers within 24 hours of learning of the exceedance. While we agree that the public should be promptly notified of water quality conditions that may pose severe and acute human health risks, the rule should avoid unnecessarily alarming members of the public (such as those whose homes are not served by lead service lines) who are not expected to be significantly impacted by an exceedance.

We do understand that EPA's proposal for public notification following a lead action level exceedance must abide by the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016 (P.L. 114-322). That law amended the Safe Drinking Water Act to require a notice to "be distributed as soon as practicable, but not later than 24

hours, after the public water system learns of the … exceedance," provided that the exceedance "has the potential to have serious adverse effects on human health as a result of short-term exposure."

However, no expedited statutory notice distribution timeframe applies in the case of a lead action level exceedance that does not have the potential to have serious adverse effects on human health as a result of short-term exposure. In that case, the Safe Drinking Water Act directs EPA to issue a regulation to prescribe the "manner, frequency, form, and content" of such notice after taking "into account the seriousness of any potential adverse health effects that may be involved" (See SDWA Sec. 300g-3(c)(2)(A)).

EPA contends in the preamble to the proposed rule that it "cannot define the subset of [action level] exceedances that could result in serious adverse health effects due to short-term exposure." While we acknowledge this could pose a challenging task, Congress has only directed the agency to require 24-hour notification under this specific circumstance. We have strong concerns that requiring an expedited notice following any 90th percentile action level exceedance could unnecessarily alarm the public, and our comments will offer alternative options for EPA to explore that abide by the requirements of the WIIN Act.

AMWA notes that the proposal includes a new "Find-and-Fix" procedure that water systems would follow to attempt to identify and address the underlying cause of elevated levels of lead detected in individual homes during the course of required monitoring activities. However, as proposed, even a single tap sample result that exceeds the action level could cause a water system to have to consider or implement systemwide corrosion control changes. This could prompt adjustments that have unintended

consequences elsewhere in the distribution system and that expose the public to elevated lead levels and corresponding public health issues. Our comments will tell EPA that corrosion control adjustments should only be made in response to data demonstrating that current corrosion control is deficient throughout the distribution system, and not in response to a small number of samples where other, household-specific factors may have influenced the results.

The proposed rule lays out a number of scenarios under which a water system would be required to provide pitcher filters to customers, such as following lead service line replacement work or other projects that could disturb lead pipes. AMWA believes that this is reasonable, but we have significant concerns with a proposed requirement for water systems to provide pitcher filters and three months of replacement cartridges to customers served by a lead service line following the replacement of the water meter. Water meter replacement typically consists only of shutting off water for a short time and replacing the meter without any cutting of the pipe itself, meaning that the potential to disturb lead is minimal. Requiring water systems to provide filters for these normal operational and maintenance activities would amount to a significant cost burden on water systems and their customers, and would raise doubts about the ability of large water systems – some of which replace thousands of water meters every year – to obtain sufficient quantities of filters in a timely manner.

Finally, AMWA disagrees with language in the proposal that would require water systems to meet a target of testing the water of 20 percent of schools and 20 percent of licensed child care facilities in their service area each year. The proposal offers no guidance as to how a water system should identify and contact appropriate schools and

child care centers or how a lack of response by the school or child care center should be treated. As written, the proposal effectively charges water systems with the task of convincing schools and child care centers to agree to testing, while also holding water systems accountable for a school or child care facility's compliance. Because the Safe Drinking Water Act includes no authority for EPA to require schools and child care facilities to test their water for lead - unless that school or child care facility is itself a non-transient non-community water system – we believe it is patently unfair for the proposed rule to create a school and child care facility testing regime that is only enforceable against community water systems.

AMWA will therefore ask EPA to eliminate all annual school and child care facility testing benchmarks from the final rule, and only require water systems to assist in the testing of a school or child care facility's water when requested to do so by that facility. We believe those who wish for EPA to go further in requiring water quality testing in schools and child care facilities should encourage Congress to give the agency that authority directly.

Conclusion

AMWA thanks the committee for the opportunity to discuss EPA's long-awaited revisions to the Lead and Copper Rule. AMWA's members are public health leaders in their communities and make protection of their customers the highest priority. At the same time, we believe that any regulatory mandate related to lead in drinking water must be achievable, practical, and enforceable. The comments we have discussed today, and

will formally submit to EPA this week in response to the proposed rule, aim for this objective.

Thank you again for the opportunity to testify, and I would be happy to answer any questions you may have.