



February 12, 2020

Mr. Andrew R. Wheeler
United States Environmental Protection Agency
Docket Center, Office of Water Docket
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attention: Docket No. EPA-HQ-OW-2017-0300

Dear Administrator Wheeler:

Thank you for the opportunity to comment on the U.S. Environmental Protection Agency's (EPA's) proposed Revisions to the Lead and Copper Rule (LCR), published on Wednesday, November 13, 2019 at 84 FR 61684. The Commonwealth of Pennsylvania, Department of Environmental Protection (DEP), offers the following comments.

DEP supports and agrees with the intent of EPA's proposed revisions on several key areas:

- DEP supports EPA's focus on lead service lines (LSLs) in the proposed regulations. Specifically, DEP agrees with the strengthened materials evaluation requirement to develop and maintain an LSL inventory, and the notification and outreach requirements to customers served by an LSL. DEP also agrees with the redefined Tiers, to focus sampling on sites served by LSLs.
- DEP supports EPA's proposal to require action before a water system experiences an action level exceedance (ALE) by implementing a trigger level that is below the action level (AL). DEP also supports the updated 90th percentile calculation. Specifically, DEP agrees with the clarification that only the highest sample results from the highest Tier sites are to be used in the calculation, thereby preventing water systems from "diluting" their calculation by including more sample sites than required.
- DEP agrees with EPA's proposal to eliminate loopholes related to lead service line replacement (LSLR), specifically that only a full LSLR counts towards the replacement goal and the elimination of replacement through testing. DEP also supports requiring systems to replace the system-owned portion of an LSL when notified that the homeowner is replacing the homeowner's portion.
- DEP agrees with requiring notification within 24 hours for individual sample sites where the lead level exceeds the AL. DEP also agrees with requiring systems to provide notification, education and filters to customers following any full or partial LSLR.

Secretary

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- DEP supports the option for replacement of all LSLs for small systems that exceed the lead AL, and the option for removal of all lead-bearing plumbing for nontransient noncommunity systems that exceed the lead AL, in lieu of installation of corrosion control treatment (CCT).
- DEP agrees with the clarification that all phosphate inhibitor CCT must be orthophosphates.

While generally supporting the intent of EPA's proposed revisions, DEP notes that the proposed rule is complex and, once adopted, would have a significant impact on states and public water systems. DEP suggests that EPA consider the development of a supplemental notice once EPA completes a draft of the final rule following the public comment period on the proposed rule.

DEP offers the following comments and recommendations to EPA to clarify and strengthen the rulemaking.

General Comments:

Guidance, training, and other resource needs:

- DEP requests that EPA publish all implementation and data management guidance documents as soon as possible, but no later than six months following publication of the final rule. Timely guidance is necessary for states to effectively draft state regulations, program data management systems, and implement the revised rule.
- Due to the complexity of the proposed rule, DEP requests detailed guidance and training – for states and for water suppliers – on all aspects of the new requirements, including but not limited to: CCT evaluations and re-evaluations, CCT treatment requirements, LSL inventory development, LSLR plan development, public education and outreach activities, Tier 1 public notification, monitoring requirements, monitoring for lead in schools and child care facilities, and small water system compliance flexibility. Among other things, the guidance and training should include the technical aspects of effective CCT evaluations and simultaneous compliance assessments, including the use of pipe scale studies, including templates and case studies where applicable.
- Data management implementation challenges for the proposed rule are numerous for both SDWIS-free and SDWIS states. As the relevant regulatory agency in a SDWIS-free state, DEP requests that EPA provide detailed Data Entry Instructions as soon as possible, but no later than six months following publication of the final rule, so that DEP can update its existing data systems to meet the new requirements. EPA must also update the FedRep system used by states to report to EPA quarterly, so states have time to make modifications needed to provide all the required information. The uncertainty surrounding the “pause” to SDWIS PRIME means that Pennsylvania must continue to maintain its existing state data management systems.

EPA must confirm each cross reference within the proposed rule, as there were discrepancies found throughout the proposed rule, several of which are outlined in comments below. There are numerous references to citations that do not exist, exist only for the current LCR, or have been modified and therefore no longer apply.

§ 141.2 Definitions:

As written, the definition for *Action level* is too broad. EPA should elaborate on what the phrase “in some cases” refers to in the proposed definition: “Action level means the concentrations of lead or copper in water as specified in § 141.80(c) which determines, *in some cases*, the treatment, lead service line replacement, and tap sampling requirements that a water system is required to complete. The action level for lead is 0.015 mg/L and the action level for copper is 1.3 mg/L.” If EPA is unable to clarify “in some cases,” that portion of the definition should be deleted.

Misuse of *Consumer* vs. *Customer*: There are several instances in the proposed regulation where the use of *consumer* and *customer* are misplaced or do not meet the corresponding proposed definitions. DEP recommends that EPA carefully examine each use of *consumer* and *customer* in the proposed regulation to ensure the correct term is utilized. Examples of possible confusion between the two terms are listed below; please note that this is not an all-inclusive list and a thorough examination of the proposed regulation is still necessary to address all discrepancies.

- 141.84(d)(2): This paragraph specifies that a water system following LSLR must provide notice and risk mitigation to the *customer* served by the LSL. This information should be provided to all *consumers* served by the LSL, not just the paying user (i.e., *customer*).
- 141.85(d)(1) and (3): These paragraphs refer to “persons served by the water system.” Based on the definition for *consumer*, which “means customers and other users of a public water system,” the term *consumer* should be used in place of “persons served by the water system” for clarity and consistency.
- 141.85(d)(4): This paragraph refers to delivery of consumer tap notices. The last sentence states, “The system must provide the notice to consumers, including customers at taps where sampling was conducted”. Based on the definitions for *consumer* (i.e., customers and users) and *customer* (i.e., paying user), and on the fact that this subparagraph is specifically referring to consumer tap notices, the use of *customer* is not appropriate here. It should instead read “The system must provide the notice to consumers, including consumers at taps where sampling was conducted.”
- 141.85(e)(1) and (2): *Consumer* and *customer* are used interchangeably in these two paragraphs. Paragraph 141.85(e)(1) states “All water systems with lead service lines must provide notification to all consumers with a lead service line or a service line of unknown material informing them they have a lead service line or a service line of unknown material” (emphasis added). This leads the reader to believe that every individual served by an LSL, whether or not they are a paying *customer*, should receive notification. However, the following paragraph, 141.85(e)(2), relating to timing of the notification specified in paragraph (e)(1), states that “A water system must provide the initial notification within 30 days of completion of the lead service line inventory required under § 141.84 and repeat the notification on an annual basis until the customer no longer has a lead service line” (emphasis added). This contradicts the statement in paragraph (e)(1) that all *consumers* served by an LSL, not just *customers* that pay for water from an LSL, should be receiving the notification.

- 141.85(e)(3)(i): This paragraph explains the content requirements of the LSL notification, such as explanation of the health effects of lead and steps consumers can take to reduce exposure to lead in drinking water. However, the portion of the notice that is required to provide information about opportunities to replace LSLs and programs that provide innovative financing solutions to assist with replacement of their portion of an LSL should be specific to the *customer*, not *consumers*. It will be confusing for a *consumer* that is provided water through an LSL but does not own the property (e.g., residents of an apartment complex) if the *consumer* is notified that they can replace their LSL and that financial assistance is available. EPA should require two different notices: one for *customers*, which includes all the language specified in this paragraph; and one for *consumers* that do not own or control the LSL, which does not include the language specific to opportunities to replace LSLs and innovative financing for LSLR.
- 141.85(e)(3)(ii): This paragraph refers to customers with a service line of unknown material and states that, “The notice must include a statement that the customer’s service line is of unknown material that may be lead, an explanation of the health effects of lead, steps customers can take to reduce exposure to lead in drinking water and information about opportunities to verify the material of the service line.” This notice should be provided to *consumers* of water from the service line of unknown material, not just *customers*. DEP requests that all references to *customer* in this paragraph be changed to *consumer*.

The *Find-and-Fix* definition is not necessary; paragraph 141.82(j) defines what the find-and-fix assessment is, which makes the definition in § 141.2 redundant and unnecessary. *Find-and-fix* is not used in any other location of Subpart I. If this recommendation is not accepted, ellipses should be inserted following the definition (i.e., between the definition of *Find-and-Fix* and the definition of *First-draw sample*) to ensure that the existing definition of *Finished water* is retained.

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 child care 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 of 8 to 18 hours for samples collected under § 141.92(b).

The use of the word “generally” within the *Galvanized service line* definition is vague and opens the definition up to too much interpretation. Therefore, the word “generally” should be deleted from the definition.

Use of the phrase “usually one to two feet long” within the *Gooseneck, pigtail or connector* definition is vague and allows for too much interpretation. The definition should include a more distinct phrase such as “not to exceed two feet” to more precisely convey that these items should not be of a significant length.

The following definitions are not used in any other sections of the proposed regulation and should therefore not be defined: *Hydrovac*, *Potholing*, and *Trenching*. EPA should move

these three definitions to a section of a forthcoming LCR revisions guidance document which focuses on LSL identification and inventory development.

The term “downstream” should be expanded within the *Lead service line* definition to clarify that it refers to lines downstream from the water main, not downstream on the water main as is meant in other subparts of Part 141, such as Subpart Y - Revised Total Coliform Rule which directs repeat sampling within five service connections downstream.

DEP recommends that EPA define *Medium-size water system* as a water system that serves between 3,301 and 50,000 persons to be consistent with the medium system definition in other drinking water regulations. If EPA chooses to edit the definition as suggested, DEP reminds EPA to make all appropriate edits to population size throughout the regulation.

Ellipses should be inserted following the definition of *Medium-size water system* to ensure that the existing definition of “*Membrane filtration*” is retained.

Misuse of *Monitoring period* vs. *Sampling period*: *Sampling period*, although defined, is not used in any section of the proposed regulation and is only found in § 141.2 (definitions). However, in several instances in the proposed regulation *monitoring period* is used where *sampling period* should have been used, based on the proposed definitions. DEP requests that EPA carefully examine each use of *monitoring period* in the proposed regulation to ensure the correct term is used and that EPA replace *monitoring period* with *sampling period* when appropriate. If EPA does not believe that *monitoring period* was used in error in any instance, then DEP requests that the definition for *sampling period* be deleted since it is not used in the regulation and creates confusion.

DEP recommends adding the 0.005 mg/L level for lead and the 0.050 mg/L level for copper – currently defined in 40 CFR § 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 and trigger level definitions. DEP also notes that the proposed rule defines the term *Practical quantitation limit* whereas existing 40 CFR Part 141 regulations – specifically § 141.89(a)(1)(ii) and § 141.81(b)(3) – use the term *Practical quantitation level*, which is also the term used in § 141.81(b)(3) of the proposed rule.

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, clearly specifying 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.

DEP recommends that EPA define *Small water system* as a water system that serves 3,300 or fewer persons to be consistent with the small system definition in other drinking water

regulations. Along with this change, EPA should make all appropriate edits to population size throughout the regulation.

DEP recommends that EPA add a definition for *Pitcher filter* that specifies exactly what type of filter is acceptable for the purposes of Subpart I. In addition, EPA should include examples of approved pitcher filters and point of use devices in LCR revisions guidance.

As noted above, DEP recommends that the definition of *Trenching* be deleted. If this recommendation is not accepted, ellipses should be inserted following the definition to ensure that the existing definition of *Trihalomethane* is retained.

§ 141.31 Reporting requirements:

141.31(d)(1): As proposed, this paragraph 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 Tier 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 beyond the LCR. 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 and through what means (e.g., email vs. online portal).

§ 141.80 General requirements:

141.80(c)(4)(ii)(A): The proposed regulation allows only Tier 1 and Tier 2 tap sample results be included in the 90th percentile calculation for systems with LSLs. Considering this, DEP recommends that EPA revise the third sentence of this Level 4 paragraph to begin, “Each Tier 1 and Tier 2 sampling result...” and add the phrase “at Tier 1 and Tier 2 locations” to the end of the last sentence of this Level 4 paragraph for clarification.

141.80(f)(1): DEP notes that there are numerous inconsistencies throughout the proposed rule with respect to citations and references to paragraphs within the proposed rule. For example, paragraph (f)(1) of this section states: “Any water system exceeding the lead action level specified at (c) of this section must complete mandatory lead service line replacement.” The word “paragraph” should be inserted before “(c)” to be consistent with format throughout most of the rule where a paragraph citation is preceded by the word “paragraph”. See, for instance, paragraph (a)(1)(i) of § 141.81 where the reference is to “... treatment steps specified in paragraph (d) of this section.” All references to a cited paragraph should be preceded by the word “paragraph” throughout the rule.

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

141.81(a)(1)(ii): This paragraph refers large water systems to paragraph (e) of the section, which is titled *Treatment steps and deadlines for small and medium-size systems without corrosion control treatment*. Section 141.81(a)(1)(ii) specifically discusses large water systems, however the title of paragraph (e) only mentions small and medium-size systems. To correct this discrepancy, DEP recommends that EPA either remove all references of small and medium-size systems from the title and content of paragraph (e) or refer large water systems to another paragraph that would specifically apply to large water systems.

141.81(a)(2)(iii) and 141.81(a)(3)(iii): These paragraphs specify, respectively, that medium-size and small “water systems without corrosion control treatment that exceed the lead trigger level shall complete the treatment recommendation steps specified in paragraph (e) of this section. The water system shall complete the remaining steps in paragraph (e) of this section if it subsequently exceeds either the lead or copper action level.” DEP recommends that EPA specify exactly which of the eight steps specified in paragraph (e) are expected to be completed when the water system initially exceeds the lead trigger level, and which of the eight steps they must complete when the water system exceeds the lead or copper action level.

141.81(b)(3): As noted previously, this paragraph uses the term “*practical quantitation level*” rather than the term “*practical quantitation limit*” which is the term proposed for definition in § 141.2.

141.81(d): To avoid confusion in this paragraph, DEP recommends that each subparagraph be broken out by system size and labeled as such.

141.81(f)(3)(i): DEP’s interpretation of this paragraph is that it only applies to small community water systems, not small nontransient noncommunity (NTNC) water systems, and that paragraph 141.81(f)(3)(iii) applies to NTNC water systems. Based on this interpretation, DEP recommends that EPA clarify that paragraph 141.81(f)(3)(i) only applies to small community water systems, just as paragraph 141.81(f)(3)(iii) already specifies that it only applies to NTNC systems. If this interpretation is incorrect, and § 141.81(f)(3)(i) refers to all small water systems, then sub-subparagraph (i) contradicts (iii) in the amount of time that a NTNC system has to replace LSLs. DEP recommends that EPA correct the discrepancy.

141.81(f)(3)(ii)(B): This Level 4 paragraph specifies that small water systems shall operate and maintain point of use (POU) devices installed under § 141.93 until the water system receives state approval to select one of the other small system compliance flexibility options. A detailed review of the proposed regulation found no additional mention of the state approving another small system compliance flexibility option after a water system has chosen POU devices as its option. As stated in § 141.93, it appears that POU devices are a permanent option for small system compliance; if this is not the intent of the regulation, DEP recommends that EPA revise § 141.93 to clarify.

141.81(f)(3)(iii): Breaking paragraph (iii) into two paragraphs, (A) and (B), to specify the difference between a NTNC with LSLs and a NTNC without LSLs adds confusion to the

regulation and is not necessary since all lead must be removed from the system within one year. Therefore, DEP recommends that EPA combine the two paragraphs and require that all LSLs and lead-bearing materials be removed within one year under one sub-subparagraph (iii).

§ 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(a)(1): Although the paragraph opens with “Based upon the results of lead and copper tap sampling...”, it neglects to indicate what is expected of a large system that exceeds the copper action level. Instead the paragraph only indicates what is expected if a large system exceeds the lead trigger level. DEP recommends that EPA revise paragraph (a)(1) to include exceeding the copper action level for large water systems, as it has for medium-size water systems in the same paragraph.

141.82(c)(2)(ii) and (iv): The preamble to the proposed rule specifies that coupon tests would no longer be able to be used as the basis for determining OCCT, yet these two paragraphs mention use of coupon tests as a screening method. DEP recommends that EPA provide detailed guidance on coupon tests and how they may be used by water systems to help determine effectiveness of treatment options.

141.82(g)(1) and (2): DEP recommends that EPA delete the last sentence of both paragraphs which states that, “States have discretion to delete results of obvious sampling errors from this calculation.” These sentences leave too much room for interpretation. If EPA does not delete these sentences, DEP requests very detailed guidance for states.

General Comments for paragraph 141.82(j) – *Find-and-fix assessment for tap sample sites that exceed the lead action level.*

DEP recommends that EPA provide minimum criteria in the regulations regarding what a find-and-fix assessment must include. Further detail can be provided in guidance. At a minimum, this guidance should provide: forms for water systems to use when completing a find-and-fix assessment, investigation techniques aside from monitoring that the water system can use to determine if the exceedance requires a CCT modification, corrective actions aside from adjusting CCT that may be acceptable, and expectations for water systems when it is determined that the cause of the exceedance is due to a premise plumbing issue.

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”.

The find-and-fix assessments have data management and tracking implications that will be a challenge to implement, such as a water system collecting water quality parameter samples “at a new water quality parameter site that is on the same size water main in the same pressure zone

and located within a half mile of the location with the action level exceedance.” Data systems are not set up to track new sites that are not specified in the LCR sample plan. Therefore, DEP recommends that EPA revise paragraph 141.86(a)(1) to require water systems to identify these locations ahead of time, along with the pool of targeted sampling sites, so that the data management system can expect sampling at the identified locations in the event of an exceedance.

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 also on 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:

- DEP recommends that EPA set the LSLR goal and not leave the decision to the water systems and states. Requiring a state to approve an LSLR goal rate would promote inconsistent implementation among states and in turn inconsistent public health protection. If EPA does not set an LSLR goal rate, detailed EPA guidance will be needed on how a water system should determine, and how states should approve, an LSLR goal rate.
- DEP does not support the continued allowance of partial LSLRs when a water system “obtains refusal to conduct full lead service line replacement from every customer in its distribution area served by a lead service line on the customer’s portion” as stated in paragraph 141.84(g)(7). The only time that DEP supports this language is 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 LSLR does not fall to the water system as stated in the last sentence of paragraph 141.84(d) 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). DEP recommends EPA provide additional grant funding to water systems to use for full LSLR when a customer

proves they cannot afford to pay for replacement of their portion of the LSL. This would alleviate the financial burden of full LSLR on the water system and partial LSLR on low-income customers, while increasing public health protection.

141.84(a): The opening sentence to this paragraph specifies that, “All water systems must develop and maintain a publicly accessible inventory.” However, paragraph 141.84(a)(7) specifies that only systems with an LSL must make their inventory publicly accessible. EPA should correct this discrepancy by deleting subparagraph (7) or clarifying in the opening sentence to paragraph (a) that only systems with LSLs must make their inventories publicly accessible.

141.84(d)(1)(i)-(ii) and 141.84(e)(1)(i)-(ii): DEP recommends requiring the water systems provide the information required in paragraphs (d)(i) and (ii) and (e)(i) and (ii) with the pitcher filter that is provided to every residence under paragraphs (d)(iii) and (e)(iii), and removing the last sentence of paragraphs (d)(i) and (e)(i) that allow the water system to “post the information in a conspicuous location instead of individual notification.” This recommendation would create a regulation that is more protective of public health and ensures that all consumers are properly notified.

141.84(d)(iii) and 141.84(e)(iii):

- DEP recommends that EPA revise paragraphs (d)(iii) and (e)(iii) to provide a timeframe for water system dispersal of pitcher filters, such as, “Prior to completion of the lead service line replacement, the water system shall provide the consumer with a pitcher filter...”
- DEP recommends that EPA clarify whether pitcher filters are only required to be provided to residences or if they are required for LSLRs at non-residential properties such as hospitals and schools. One pitcher filter for non-residential properties that serve large populations is not practical, and enough pitcher filters for all consumers at such properties is not feasible. Therefore, DEP recommends that EPA revise paragraphs (d)(iii) and (e)(iii) to include lead risk mitigation options for non-residential properties.

141.84(d)(3): DEP recommends that EPA delete the first sentence of this paragraph because it is covered under paragraph (d)(4) and is therefore redundant.

141.84(d)(5): DEP recommends that EPA clarify that although the water system is not required to replace its portion of the LSL at that time because the customer replaced theirs more than three months in the past, the LSL must remain a part of the water system’s inventory and a goal for replacement in the future. As proposed, paragraph (d)(5) implies that the water system portion of the LSL never needs to be replaced.

141.84(f)(1): DEP recommends that EPA delete this paragraph for the following reasons:

- This paragraph is redundant since the water system is required to establish a goal rate as part of the LSLR plan under paragraph 141.84(b).
- This paragraph contradicts paragraph 141.84(b) in that paragraph 141.84(f)(1) requires that a goal rate be determined within six months of the initial inventory (misspelled as “invention” in the proposed rule) specified in paragraph 141.84(a), which is due three years after the publication date of the final rule. However, paragraph 141.84(b) requires the LSLR goal rate be established as part of the LSLR plan, which is also due three years after the publication date of the final rule, not six months later.
- This paragraph is confusing in that it only specifies actions to be taken by water systems serving over 10,000 persons, whereas the LSLR goal must be established for all water systems and the remaining subparagraphs under paragraph (f) refer to all water systems.
- Based on DEP’s second general comment for § 141.84 that EPA should set the LSLR goal, the final sentence of paragraph 141.84(f)(1) – which states, “This lead service line replacement goal rate must be approved by the State pursuant to (b) of this section” – no longer applies.

141.84(f)(7): Subparagraph (7) is under the heading of *Water systems whose 90th percentile lead level from tap samples is above the trigger level but at or below the action level*. However, the first sentence of subparagraph (7) specifies that LSLR “begins the first day following the end of the monitoring period in which the lead action level was exceeded” (emphasis added). *Action level* should be changed to *trigger level* in this sentence to be consistent with the intent of the paragraph.

141.84(f)(8): Based on DEP’s second general comment for § 141.84, paragraph (f)(8), which provides EPA with the authority to designate a different LSLR goal rate, would no longer be relevant and should be deleted.

141.84(g)(6): DEP recommends that EPA correct the discrepancy between paragraph 141.84(g)(6), which states that a water system can cease LSLR once they are under the lead AL, and paragraph 141.84(f), which states that a water system needs to conduct LSLR when they are over the trigger level but under the AL. DEP recommends revising paragraph 141.84(g)(6) to state, “A water system may cease lead service line replacement at an annual rate of 3% when its lead 90th percentile level... is at or below the lead action level during each of four consecutive monitoring periods, and resume lead service line replacement at the goal rate established under § 141.84(b) until its 90th percentile level is at or below the lead trigger level...”

141.84(g)(9): DEP requests that EPA provide detailed guidance on how states are expected to determine that a water system should be following a shorter schedule than the schedule required by § 141.84.

§ 141.85 Public education and supplemental monitoring requirements:

141.85: The introductory language of § 141.85 references annual outreach to healthcare providers and caregivers as outlined in paragraph (g), but paragraph (g) does not specify any outreach requirements applicable to healthcare providers and caregivers; this paragraph only specifies outreach activities for failure to meet LSLR goals. EPA should confirm and revise this cross reference.

141.85(c): DEP recommends that EPA clarify this paragraph of the existing rule, which is referenced in the last sentence of the introductory language of § 141.85. Paragraph 141.85(c) states that a water system that exceeds the AL is required to offer to sample the tap water of any customer who requests it. However, paragraph 141.85(c) goes on to say that the water system is not required to pay for collection or analysis, nor is the water system itself required to collect and analyze the sample. Therefore, DEP requests clarification on what the water system is actually required to do if the water system is not taking the sample, analyzing the sample, or paying for the sample.

141.85(e)(5)(i): DEP recommends that EPA define “disturbance to a lead service line”. This could be accomplished through examples in guidance or in a new definition in § 141.2. In addition, DEP requests clarification on why an LSL disturbance under paragraph 141.85(e)(5)(ii) requires a pitcher filter but an LSL disturbance under paragraph 141.85(e)(5)(i) does not. Additionally, the underlined words should be inserted in the following phrase in paragraph 141.85(e)(5)(i), “... must provide the consumer with information about the potential for elevated lead levels in drinking water as a result of the disturbance...”

141.85(f): DEP recommends that EPA add a paragraph to explain the content requirements for the *notification of exceedance of the lead trigger level* similar to what was provided for the *notification of lead service line* under paragraph (e)(3).

141.85(g): DEP requests detailed guidance on outreach activities required under paragraph (g). At a minimum, this guidance should include details on timing and what is expected for each outreach activity listed as an option.

141.85(g)(1): DEP requests clarification on outreach activities for failure to meet the LSLR goal and when these outreach activities must be conducted, specifically if a water system completes one round of monitoring in the following year and the 90th percentile results demonstrate the system is back below the lead trigger level. For example, suppose a water system failed to meet its annual LSLR goal in 2020 and chose to conduct a town hall meeting for its outreach activity during the 4th of July celebration in 2021. If that water system collects a set of samples from January through June 2021 in which the 90th percentile concentration is back below the lead trigger level prior to July 4, 2021, is the system still required to conduct the town hall meeting?

141.85(g): DEP recommends that EPA require outreach activities when a water system does not meet the 3% LSLR required in response to an ALE. It does not make sense that a water system which exceeds the lead trigger level and does not meet the LSLR goal must conduct outreach but a water system that exceeds the lead AL and does not meet the LSLR requirement does not.

141.85(h): DEP requests that EPA clarify what “All water systems” refers to in this paragraph. Does this phrase refer to all water systems that were required to follow the notification requirements under this section?

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

141.86: DEP requests that EPA provide clarification specifying what “Tier” service lines of unknown material fall under.

141.86(a): 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(a)(10): This paragraph references subparagraph (a)(2)(iii) in the following manner, “... and collect the remaining samples in accordance with tiering requirements under (a)(2)(iii) of this section.” Subparagraph (a)(2)(iii) refers to water quality information, not tiering requirements. Therefore, DEP recommends that EPA check this reference and revise as necessary.

141.86(d):

- EPA should specify what the “compliance date” is that is referred to in paragraph 141.86(d)(1)(i).
- EPA should specify what the “effective date” is that is referred to under paragraph 141.86(d)(1)(ii) and its Level 4 paragraphs.
- EPA should clarify which water systems are expected to conduct initial monitoring. Based on a review of the proposed language, DEP cannot determine if all systems are expected to return to initial monitoring following the “compliance date” or not.
- There are several erroneous citations in this section. For example, paragraph 141.86(d)(4)(iii)(A) contains references to “paragraph (d)(ii)(D)”; citations of this paragraph are missing a number between “(d)” and “(ii)”. Based on the language in paragraph 141.86(d)(4)(iii)(A), and the fact that there is no paragraph 141.86(d)(4)(ii)(D) in the proposed rulemaking, it seems that the paragraph intended to be cited is paragraph 141.86(d)(4)(i)(D). This is only one of several erroneous citations in § 141.86(d); DEP requests that EPA correct these erroneous citations.

DEP recommends the following implementation schedule for monitoring as this schedule is more protective of public health:

- Water systems complete the LSL inventory and LSLR plan within three years of the date of publication of the final rule, as currently written in the proposed regulation.

- Water systems be given an additional six months to revise and submit a lead and copper sample site plan (requested in DEP’s comment on § 141.86(a) above) to the primacy agency; this should be specified in paragraph 141.86(a).
- Initial monitoring would begin the following year in January for all systems with Tier 1 sites. Water systems without Tier 1 sites may remain on the monitoring frequency they were already on.

141.86(f): Existing paragraph 141.86(f) was not included in the proposed rule. The lead-in sentence to existing paragraph 141.86(f) contains a reference to a section of an existing regulation which is proposed to be changed. The existing lead-in sentence to this section includes a reference to § 141.80(c)(3). The language from § 141.80(c)(3) is proposed to be moved to § 141.80(c)(4). Accordingly, the reference to § 141.80(c)(3) in existing paragraph 141.86(f) should be changed to § 140.80(c)(4).

141.86(h): 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 overly 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.

§ 141.87 Monitoring requirements for water quality parameters:

General Comment: 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 RTRC 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 trigger level, and, therefore, fewer re-evaluations of CCT.

141.87(b): The heading for this paragraph, “*Initial sampling for water systems without corrosion control treatment*”, is not consistent with language in paragraph 141.87(b)(2), which indicates that small and medium-size systems with CCT need to monitor.

Table 1 to Paragraph (a)(2)(i) and Table 1 to Paragraph (e)(1): DEP requests that EPA add the missing greater than (>) symbol in front of 100,000; otherwise, it appears that any water system serving more than 100,000 persons does not have to conduct WQP monitoring.

141.87(c)(1): DEP found the following reference discrepancies within paragraph 141.87(c)(1) and requests that EPA check and, as necessary, revise these references:

- 141.87(c)(1)(ii) refers to “paragraph (c)(3) of this section”, however, there is no paragraph (c)(3); DEP believes this should be (c)(1)(iii) instead.

- 141.87(c)(1)(iii) refers to “paragraph (c)(2) of this section”, which no longer applies in the proposed rule. Paragraph 141.87(c)(2) in the existing LCR describes entry point monitoring requirements. However, paragraph 141.87(c)(2) in the proposed rule no longer discusses entry point monitoring, instead it discusses a state’s discretion to require WQP monitoring.
- 141.87(c)(1) refers to “(c)(1)(i) of this section” when it should reference (c)(1)(ii) as well; otherwise, it is unclear that water systems are required to conduct entry point monitoring in addition to distribution monitoring for WQPs.

141.87(e): As explained in DEP’s general comment for § 141.87, DEP disagrees with the option for a water system with CCT to reduce water WQP monitoring. Therefore, DEP suggests EPA delete § 141.87(e).

141.87(e)(1): This paragraph refers only to large systems, but both large and medium-size systems can achieve reduced monitoring. Accordingly, if EPA decides to retain § 141.87(e), the proposed reduced monitoring requirements of this subparagraph should be revised to apply to medium-sized systems as well as large systems.

§ 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 sample and should be called such. Calling an entry point sample, a “source water sample” is confusing. Therefore, DEP recommends that EPA revise all references to “source water sample” to “entry point sample” and use the language found in paragraph 141.87(a)(1)(ii) which states, “Samples collected at the entry point(s) to the distribution system shall 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 the system sampled at a different location than previous monitoring periods; as such, DEP requests that EPA delete 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 sites in each Tier in case a customer is unwilling or unable to collect a sample.

141.90(e)(1):

- This paragraph indicates that EPA is requiring a water system which exceeds the lead AL to resubmit their inventory and LSLR plan. Under § 141.84, however, both plans should have been submitted within three years of the final publication date for the rule, and plans are to be updated annually; therefore, it is not necessary for the plans to be resubmitted within 12 months after a lead ALE.

- DEP requests clarification on the “sampling referred to in § 141.84(f)”. Paragraph 141.84(f) refers to LSLR for water systems that exceed the trigger level but not the AL, and does not have any reference to sampling requirements. DEP requests that EPA check and, as necessary, revise this reference.

141.90(e)(2)(i): This paragraph references paragraph 141.84(f)(10); however, there is no paragraph 141.84(f)(10), as paragraph 141.84(f) ends with paragraph 141.84(f)(8). DEP requests that EPA check and, as necessary, revise this reference.

141.90(e)(3)(v): DEP requests that EPA clarify or delete the last sentence of this sub-paragraph, which states that, “Mailed notices post-marked within three business days of receiving the results shall be considered “on time.”” The beginning of paragraph 141.90(e)(3)(v) refers to the timeframes specified in paragraph 141.85(d)(2), which are consumer tap notice timeframes of 30 days for no ALE and 24 hours if the lead result exceeded the AL; how can a mailed notice post-marked within three business days meet the 24-hour notification requirement for results over the AL?

141.90(f)(4) and (5):

- Both paragraphs require a demonstration “Annually on July 1” that the water system has delivered annual LSL notification and conducted outreach activities. DEP recommends that EPA change “annually on July 1” to “annually by July 1”; this edit allows for better implementation and still meets the intent of the proposed regulation.
- DEP requests that EPA provide guidance on how a water system is to demonstrate that the system has completed the annual LSL notification delivery and outreach activities.
- DEP recommends that EPA revise these paragraphs to specify that the water system is demonstrating to the state completion of the annual LSL notification delivery and outreach activities; otherwise, it is unclear to whom the demonstration should be sent.

141.90(h): DEP recommends that EPA retain the requirement to report the individual lead and copper results to the state within 10 days after the monitoring period, even when the state is calculating a water system’s 90th percentile concentration. Implementation of paragraph 141.90(h) as proposed would be extremely challenging for states in terms of data management and staff resources. DEP has found no explanation from EPA for this additional burden. DEP has found that water systems and labs often fail to calculate the 90th percentile concentration correctly; therefore, DEP staff have been calculating this value for systems for several years. DEP plans to continue to calculate the 90th percentile values, which, as proposed under paragraph 141.90(h)(1), will require that the water system’s monitoring period to be shortened to ensure that all results be reported to the state on “a date before the end of the applicable monitoring period.” In addition, requiring the state to provide the 90th percentile calculation to the water system in writing is an unnecessary burden on the state; the water system already has the ability to calculate this value directly or can obtain the result by accessing the state’s data management system after compliance has been run.

§ 141.92 Monitoring for lead in schools and child care facilities:

The Wolf Administration fully supports a requirement for monitoring for lead in schools and child care facilities due to the elevated health concerns associated with lead exposure in children. However, DEP recommends that this section of the proposed regulation be promulgated by the United States Department of Education for monitoring in schools and the United States Department of Health and Human Services for monitoring at child care facilities. Neither public water systems nor DEP has authority to require schools and child care facilities to participate in a mandatory monitoring program for lead in drinking water. Setting a mandatory standard could result in a violation for the public water system with no authority to achieve compliance. DEP strongly believes that monitoring for lead in schools and child care facilities should be one component of a comprehensive environmental program which focuses on all aspects of health concerns – including lead in paint, radon, asbestos, mold, etc. – in schools and child care facilities and that such a program would be better served and implemented under the two aforementioned agencies.

If EPA chooses to maintain the requirement for monitoring for lead in schools and child care facilities within the rule, DEP has the following comments on § 141.92:

141.92(f): DEP requests that EPA clarify how water systems are supposed to provide analytical results from school and child care facility sampling and poses the following three questions: (1) Are results expected to be reported to the state in the same format as LCR tap monitoring for 90th percentile calculations? (2) Will EPA require that these results be reported to EPA along with 90th percentile results, or does the state maintain the results? (3) How will EPA ensure that school/child care facility monitoring results are not co-mingled with LCR compliance samples in data management and analysis systems?

§ 141.93 Small Water System Compliance Flexibility:

General Comment: DEP supports the *Replacement of Lead-Bearing Plumbing* option for small NTNC systems and recommends that this option be made available to small community water systems (CWSs) with no LSLs and premise plumbing owned and controlled by the small CWS. Examples of this type of CWS include, among others: apartment buildings, personal care homes, academies, and schools.

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 where a POU device cannot meet drinking water demand.

- 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.

141.93(b)(1) and (d)(1): DEP recommends that EPA reduce the amount of time that a NTNC water system has to replace its LSLs from 15 years to one year. The one-year LSLR timeframe would be consistent with the *Replacement of Lead-Bearing Plumbing* option which involves replacing LSLs and all lead-bearing plumbing within the water system. There is no justification for allowing the same 15 years that a CWS has to replace LSLs in a NTNC system, which might have only one or two LSLs to replace, whereas a CWS might have hundreds of LSLs to replace.

141.93(c) and (d): DEP recommends that EPA delete the last full sentence of the introductory language of these paragraphs which states, “If the water system subsequently exceeds the lead action level it must implement the approved option.” Under these paragraphs, the water system is already exceeding the lead AL, as stated in the first sentence of each of these paragraphs. Once the small water system compliance flexibility option is chosen, there is no indication that the water system can stop implementing the chosen option until it is complete. For this reason, the last full sentence of the introductory language of these paragraphs is unnecessary.

Appendix A to Subpart O of Part 141 – Regulated Contaminants:

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

Appendix A to Subpart Q of Part 141 – NPDWR Violations and Other Situations Requiring Public Notice:

DEP supports the requirement for a consumer notice to be provided within 24 hours for individual samples that exceed the lead AL as specified in paragraph 141.85(d). However, the requirement for an exceedance of the 90th percentile lead AL to be provided as a Tier 1 PN within 24 hours will be problematic for water systems. In addition, the 90th percentile result will not be known until after the end of the monitoring period. Therefore, a 24-hour notice will be required systemwide for an issue that may have occurred several months ago.

§ 142.16 Special primacy requirements:

142.16(d)(5): As indicated in DEP’s first general comment under § 141.84, EPA should set the LSLR goal and not leave the decision to the water systems and states.

142.16(o)(2)(i)(B): DEP recommends more detail on what EPA expects as part of a CCT review conducted as part of a sanitary survey. Sanitary surveys currently evaluate treatment and monitoring, which include CCT and WQP monitoring. DEP disagrees that an evaluation of the effectiveness of CCT should be included with a sanitary survey. A review of the effectiveness of CCT is more specialized than a sanitary survey and, therefore, will need dedicated staff to conduct.

Thank you for your consideration of DEP's comments on this important proposed rulemaking. Should you have any questions or need additional information on this matter, please contact Lisa Daniels, Director of DEP's Bureau of Safe Drinking Water, at 717-787-9633 or ldaniels@pa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick McDonnell". The signature is fluid and cursive, with a large initial "P" and "M".

Patrick McDonnell
Secretary