

EPA Plans to Improve Lead and Copper Drinking Water Rule While Facing Legal Challenge from States

Publications

January 11, 2022

EPA faces continuing pressure to improve the way it protects communities from lead in drinking water. One focus of the current EPA has been the Lead and Copper Drinking Water Rule Revisions (“LCRR”), promulgated under the Trump administration. As it grappled with what to do with the LCRR, the Biden EPA delayed the LCRR’s effective date and compliance deadlines on two occasions, most recently making the LCRR effective on December 16, 2021 and pushing the compliance deadline back nine months, from January 16, 2024 to October 16, 2024. *National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective and Compliance Dates*, 86 FR 31939 (June 16, 2021). Then, in conjunction with the LCRR’s effective date, on December 16, 2021, EPA announced its plans to revise and strengthen the LCRR, while leaving the rule in place for now. *Review of the National Primary Drinking Water Regulation: Lead and Copper Rule Revisions (LCRR)*, 86 FR 71574 (Dec. 17, 2021).

In response to the delays of the LCRR’s effective date and compliance deadlines, the states of Arizona, Louisiana, Ohio, Oklahoma, and Texas filed a challenge in the D.C. Circuit Court of Appeals, in the case of *Arizona et al. v. U.S. EPA et al.*, Case No. 21-1159. On January 6, 2022, the states filed their opening brief, explaining that they wanted the court to vacate the recent EPA actions, which were, in their view, unlawful delays of the compliance deadlines in the LCRR.

The Lead and Copper Rule Revisions (“LCRR”)

Under the authority of the Safe Drinking Water Act, the purpose of the Lead and Copper Rule is to protect public health by minimizing lead and copper levels in drinking water, mainly by reducing water corrosivity because lead and copper enter drinking water primarily from corrosion of lead and copper in plumbing materials. The Trump-era LCRR was the largest change to the Lead and Copper Rule since the rule was promulgated in 1991 and has the most significant impact on Large Community Water Systems (“Systems”), which are water systems serving more than 10,000 customers.

The original Lead and Copper Rule established a Maximum Contaminant Level Goal (“MCLG”) of zero lead in drinking water, and an Action Level of 15 parts per billion (“ppb”). The LCRR maintains the

current MCLG and Action Level, but introduces a lead Trigger Level of 10 ppb. If a System identifies water at the Trigger Level of 10 ppb, it is required to, among other requirements, (1) either conduct a corrosion control study (if it does not currently treat for corrosion) or re-optimize its existing corrosion treatment system, and (2) work with the State to set an annual goal for replacing lead service lines. Under the old Lead and Copper Rule, there was no requirement to replace lead service lines unless the System detected lead at the current Action Level of 15 ppb.

Additional new requirements in the LCRR include:

- Systems are required to prepare and update a publicly-available inventory of lead service lines and “find-and-fix” sources of lead when a sample in a home exceeds the Action Level of 15 ppb.
- Systems above the Action Level of 15 ppb would be required to fully replace a minimum of 3% of the number of known or potential lead service lines annually.
- Systems with lead levels above the Trigger Level of 10 ppb are required to monitor annually or semi-annually, and all samples are required to be taken at homes with lead service lines.
- Systems are required to annually conduct lead in drinking water testing at 20% of K-12 schools and licensed child care facilities built before January 1, 2014 in their service areas.

Biden EPA “Lead and Copper Rule Improvements”

In the Federal Register notice announcing its intent to publish a revision to the LCRR, EPA states that it “heard significant concerns from many drinking water stakeholders about the LCRR” including “whether the rule will adequately protect public health, the confusion it might create about drinking water safety, and the implementation burden that will be placed on systems and states.” 86 FR 71575. EPA notes the serious and significant health impacts from lead exposure—including brain and kidney damage—and that minority and low-income populations appear to be disproportionately exposed to the risks of lead in drinking water.

EPA hosted virtual engagements and collected public comments on the LCRR. According to EPA, most comments focused on lead service line replacement, the action level and trigger level, tap sampling, public education, and sampling for lead in schools and child-care facilities. EPA concluded:

EPA finds that although the LCRR improves public health protection in comparison to the previous version of the rule, there are significant opportunities to further improve upon it to achieve increased protection of communities from lead exposure through drinking water.

In light of this conclusion, EPA intends to immediately begin to develop a proposed National Primary Drinking Water Regulation: Lead and Copper Rule Improvements (“LCRI”) to address these issues. EPA intends to take final action on the LCRI proposal prior to the October 16, 2024 compliance date of the existing LCRR.

Focus areas for the proposed LCRI will be:

- Replacing all lead service lines
- Compliance tap sampling
- Action and trigger levels
- Prioritizing historically underserved communities

State Litigation

Meanwhile, Arizona, Louisiana, Ohio, Oklahoma, and Texas continue their legal challenge to EPA's earlier action of delaying the effective and compliance dates of the LCRR. While the effective date issue is now moot—the LCRR is effective as of December 16, 2021—the petitioner states continue their challenge regarding EPA's delay of the compliance deadline. Specifically, that EPA delayed the deadline for complying with the LCRR nine months, from January 16, 2024 to October 16, 2024. The states argue that the delay is harmful to public health and unlawful under the Administrative Procedure Act. EPA will have until March 7, 2022 to respond and petitioners have until April 22, 2022 to file a reply brief.

While the outcome of this case may have an impact on EPA's (and other agencies') ability to delay deadlines in rules, it will not impact the administrative process underway to promulgate the Lead and Copper Rule Improvements, other than to potentially add urgency to that process. The [Corporate Environmental Lawyer Blog](#) will continue to monitor both the litigation and regulatory developments and report on key developments.

© 2026 Jenner & Block LLP. Attorney Advertising. Jenner & Block LLP is an Illinois Limited Liability Partnership including professional corporations. This publication, presentation, or event is not intended to provide legal advice but to provide information on legal matters and/or firm news of interest to our clients and colleagues. Readers or attendees should seek specific legal advice before taking any action with respect to matters mentioned in this publication or at this event. The attorney responsible for this communication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome. Jenner & Block London LLP, an affiliate of Jenner & Block LLP, is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with SRA number 615729. Information regarding the data we collect and the rights you have over your data can be found in our Privacy Notice. For further inquiries, please contact dataprotection@jenner.com.



