

## Kuether, Molly

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**From:** Vanderboom, Toni  
**Sent:** Tuesday, November 01, 2016 8:32 AM  
**To:** Kuether, Molly  
**Subject:** FW: EPA & LCR update

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**From:** Kuether, Molly  
**Sent:** Tuesday, November 01, 2016 8:01 AM  
**To:** Vanderboom, Toni  
**Subject:** FW: EPA & LCR update

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**From:** Bohl, James  
**Sent:** Tuesday, November 1, 2016 8:00:45 AM (UTC-06:00) Central Time (US & Canada)  
**To:** Kuether, Molly; Norfolk, Tea  
**Subject:** FW: EPA & LCR update

For our WQTF members.

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**From:** Robert Miranda [<mailto:rmiranda@wi.rr.com>]  
**Sent:** Monday, October 31, 2016 11:46 PM  
**To:** Bohl, James  
**Subject:** EPA & LCR update

### Daily News

EPA Floats Options For Revisions To Lead & Copper Drinking Water Rule  
October 27, 2016

EPA in a new white paper is floating options for its pending lead and copper rule (LCR) overhaul due in 2017 that include more-specific measures than recent recommendations from an agency advisory panel, including how to resolve legal issues with replacing lead service lines (LSLs) and to impose new water sampling requirements.

The white paper, released Oct. 26, says its update the to LCR -- issued in 1991 and last revised in 2007 -- will “include both technology-driven and health-based elements that focus on proactive, preventative actions to avoid high lead levels and health risks.”

The “potential elements under consideration are interconnected components that together will address the challenges with the current rule and improve public health protection in the revised rule,” while continuing to closely adhere to Safe Drinking Water Act (SDWA) requirements, according to the white paper.

The agency's options follow recommendations that its National Drinking Water Advisory Council (NDWAC) submitted to EPA in late 2015. Although the revised rule is due next year, some lawmakers have said the Flint, MI, lead in drinking water crisis shows a need to accelerate the rule.

The white paper maintains the broad areas of focus NDWAC discussed in its recommendations: Consideration of LSL replacements, improving the optimization of corrosion control treatment (CCT) requirements, consideration of a new household action level based on human health, strengthening sampling requirements, and including public education, communication and transparency requirements.

But EPA provides new specifics and addresses some areas NDWAC's recommendations generally avoided such as grappling with legal issues inherent in helping municipalities fully replace LSLs; more specifically addressing tap sampling techniques advocates have called “loopholes” that have led to elevated lead levels in many cities across the country; and mandating sampling for schools that are not public water systems.

NDWAC and the EPA white paper encourage utilities to conduct full lead service line replacements (LSLRs), rather than partial replacements by implementing “proactive” programs toward the goal of full LSL replacement.

NDWAC proposed several targeted outreach programs, interim goals and specific deadlines toward implementation and programs to engaged customers in the effort. EPA's paper maintains these goals but analyzes the “substantial economic, legal, technical and environmental justice challenges” from costly full LSLRs.

## Legal Questions

EPA also weighs the legal question of how a utility should be required to define when it “controls” a portion of a lead line. Currently, EPA requires utilities to replace only the portion of the LSL that it owns. However, advocates have pushed for a change in the definition of “ownership” to require public water systems replace the entire LSL where they have the authority to “replace, repair or maintain” the line.

The “controls” definition is due to a longstanding ambiguity following a 1994 U.S. District Court for the District of Columbia ruling, American Water Works Association (AWWA) v. EPA, which said EPA did not provide an opportunity for the public to comment on the definition of control prior to the current standard promulgated in 1991. But the court did not address whether the broader definition was within the agency's legal authority under SDWA.

In the white paper, EPA acknowledges that it may look at “important legal questions about [its] authority under state or local law to require and/or pay for such replacement.”

EPA also says that although the goal of full LSL replacements present “economic, legal, technical and environmental justice challenges,” it would look to cities and towns that have had some success in the endeavor, developing “innovative approaches” to full LSL replacements: Lansing, MI; Madison, WI, and Boston, MA.

## 'Sampling Loopholes'

EPA's paper outlines more-specific plans to clarify what many advocates say are “sampling loopholes,” codifying guidance it provided in a [Feb. 29](#) memo issued as part of its communications post-Flint. That approach discourages procedures such as flushing the tap prior to a mandatory stagnation period, ensuring faucet aerators are not removed to ensure a better result in the sample, and encouraging the use of wide mouth bottles for collecting tap samples.

The agency also will look to require “mandatory sampling for schools that are not public water systems” in the revised LCR -- something the agency's children's health advisory panel had requested. EPA did not, in its white paper, address the LCR's “tiering” system for determining where compliance monitoring takes place, though EPA water officials outlined concerns about the system in an Oct. 13 memo to regional water division directors.

The agency pledges to “evaluate and determine what specific role or roles a health-based value may play in the revised LCR” -- though NDWAC had recommended that the agency establish a “household action level based on the amount of lead in drinking water that would raise an average, healthy infant's blood lead level to greater than five micrograms per deciliter based on consumption of infant formula made with water.”

Under NDWAC's recommendations, water systems would be required to notify the consumer and local public health agency if this level were exceeded.

### Optimizing CCT

EPA's white paper recommendations on CCT largely echo NDWAC's input, though the agency details specific options it is considering in the final proposed rule.

Those measures include requiring large systems to evaluate and re-optimize CCT when EPA published updated CCT guidance -- which NDWAC had proposed; requiring all systems in the United States to implement that CCT “regardless of system size, tap sampling results, or the presence of LSLs”; and requiring water systems already applying CCT to evaluate and re-optimize if they are exceeding the lead action level.

In an Oct. 26 memo accompanying the release of the white paper, EPA Office of Water Deputy Assistant Administrator Joel Beauvais noted that the plans outlined in the paper may not be comprehensive, and did not provide a specific month in 2017 when the final rule proposal would be released.

“EPA will continue to engage actively with stakeholders and we expect that this paper will help to inform that engagement as we work to develop a proposed rule for public comment. We also recognize that there may be other considerations that will need to be addressed as we continue our discussion and receive feedback through the rulemaking process,” he wrote. -- Amanda Palleschi ([apalleschi@iwpnews.com](mailto:apalleschi@iwpnews.com))

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