



PUBLIC WORKS – UTILITY OPERATIONS

DATE: January 23, 2020
FROM: Michelle Klose, Director of Utility Operations
ITEM: Utility comments on EPA draft Lead and Copper Rule

REQUEST

Approval for Utility to submit comments on the draft Lead and Copper Rule to EPA and our congressional delegation, working with the North Dakota League of Cities and communities across the state.

Please place this item on the January 28, 2020 City Commission meeting agenda.

BACKGROUND INFORMATION

Bismarck Public Works took the lead to coordinate comments on the draft Lead and Copper Rule with League of Cities, North Dakota Department of Environmental Quality, and multiple cities across the state. We first pulled together the public works and engineering contacts across the state to share and discuss the proposed rule and the impact to the utilities. We worked with our congressional delegation to extend the 30-day comment period to 60 days, and also organized an in person meeting with the communities across the state and North Dakota Department of Environmental Quality to go through the details of the proposed rule and how we could jointly provide feedback on the impacts to each of our cities and provide constructive recommendations. We are in the process of developing a joint letter outlining major concerns with the proposed Lead and Copper Rule. The major points in the comments we will provide include the information below, which are broadly supported with our fellow North Dakota cities.

There are significant concerns with the direction of the EPA proposed Lead and Copper Rule. On a high level they are:

1. The draft rule increases responsibility, liability, and costs for the utility, and all the rate payers within the utility, for infrastructure not owned by the utility but instead adds the pipes and fittings that are between the main and the water tap inside a person's home. This places the utility in a level of high risk for compliance failure and at the same time provides no support for the property owners' cooperation in testing or replacement of

the service line, and no control over the fittings or plumbing within the home or school that may increase lead levels. In light of that requirement, the utility would need to either get access through city ordinance inside of people's homes, even against their will, or else we will need to treat the water to highest level of lead and copper found in a home in Bismarck. The draft rule places regulatory compliance requirements on the utility, including replacement of extensive underground infrastructure, based on test results of samples that the utility does not take nor have any level of quality control or quality assurance.

2. The draft rule provides no responsibility on the property owner for their portion of a lead service line, no responsibility on the property owner to cooperate with the utility, no responsibility of the owner to identify the material of the service line entering their home, no responsibility to disclose existence of the lead service line or testing levels especially to customers if they run a business or day care facility from their property that has a lead service line, no responsibility to disclose if they have waived the tracking of their lead service line at time of the property sale. In addition, the draft rule places requirements to forever test for lead in schools and daycare facilities, even in facilities that do not have lead service lines or detectable levels of lead. All of this would require state or local leaders to face extreme increased costs for compliance or the alternative of requiring private property owners to give us mandated access.
3. The draft rule places a large administrative burden on the utility for the inventory of all lead service lines, the tracking of individual use filters and replacement cartridges, and places the highest emphasis in the water treatment and water quality on protection of lead service lines. The utility currently balances funding needs for all regulatory compliance, growth, and infrastructure reliability for all utility customers. The draft rule creates a higher cost to provide service to properties with lead service lines, and requires all treatment to favor lead service lines which may adversely affect other types of service lines. This focus on corrosion control solely for lead service lines could create consequences for other types of water service lines. The draft rule is setting the stage for an imbalance with the residential rate structure as the cost of service for properties with lead service lines will be much higher than the other customers. To protect the services being provided to all water customers, and for the utility remain in compliance with the lead and copper rule, the utility may be forced to shut off water service to if we can no longer provide safe reliable water service to a property that has very high levels resulting from interior plumbing and fittings that are solely the property owner's responsibility.

The utility would recommend the following changes in the draft rule:

*Recognize the required balance between the utility and the property owner so the burden of compliance is based upon who owns the infrastructure at the point of collection of the sample. There are benefits of having a trigger point below the compliance level to push review of the corrosion control methods.

*The noncompliance time period that triggers replacement of all lead service lines needs to be lengthened by a year to allow results in changes to corrosion control to actually be seen in the distribution system.

*The rule must recognize the property owner has responsibility for their portion of the lead service line and the plumbing and fittings within the structure that can adversely affect the water quality.

*Require the property owner to disclose the lead service line to the utility, and property owner be responsible for their own filters especially if using the property as a business such as a daycare

or rental property. This allows a balance of cooperation between the utility and the property owner to reduce lead levels.

*If the goal of EPA is to have all lead service lines removed in the next 33 years as implied by the rule, they should be direct and set a future date of compliance for removal of lead service lines by the owner of the lead service line.

While the comments the utilities are drafting are in much more depth, I would generally like approval to present these items and others that directly impact the utility. Due to time constraints, a final draft of those comments will be due prior to any further Commission meeting. I will be present at the City Commission meeting to respond to questions the Board may have regarding this matter.

RECOMMENDED CITY COMMISSION ACTION

Approval for Utility to submit comments on the draft Lead and Copper Rule to EPA and our congressional delegation, working with the North Dakota League of Cities and communities across the state.

STAFF CONTACT INFORMATION

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