

Getting the Lead Out: Legal Issues in EPA's Lead & Copper Rule: An AWWA Legal Community Virtual Roundtable Dialogue October 16, 2020


American Water Works Association
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AWWA WEBINAR OCTOBER 16, 2020 | 11:00 A.M. – 12:30 P.M. MT

Getting the Lead Out:
Legal Issues in EPA's Lead & Copper Rule
An AWWA Legal Community Virtual Roundtable Dialogue

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Webinar Moderator



Ron Tenpas
Partner
Vinson & Elkins, LLP

Ron Tenpas is a partner in Vinson & Elkins' Washington office, and is recognized as one of the country's preeminent environmental litigators. He is a former Assistant Attorney General (AAG) for the Environment and Natural Resources Division of the U.S. Department of Justice. Ron currently represents clients in civil and criminal investigations related to alleged environmental violations, in addition to representing companies and trade associations in commenting on proposed regulations and in litigation challenging new regulatory provisions. Before he was appointed AAG, Ron served as an Associate Deputy Attorney General, as the U.S. Attorney in the Southern District of Illinois, and as an Assistant U.S. Attorney in the District of Maryland and the Middle District of Florida.

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Panel of Experts



Ron Tenpas
Partner
Vinson & Elkins,
LLP



Corrine Snow
Counsel
Vinson & Elkins,
LLP



Spencer Bruce
President and CEO
Louisville Water
Company



Shawn Bunting
Vice President &
Deputy General
Counsel
American Water

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Agenda

- I. Round Table – all presenters**
- II. Question and Answer – all presenters**

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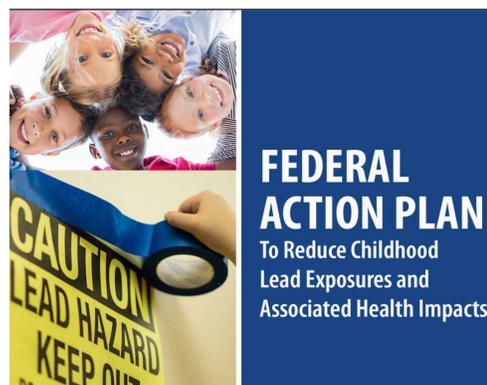
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Lead and Copper Rule Overview

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Rule Timeline

- **1991:** Original Lead and Copper Rule
- **December 2018:** Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts
- **November 13, 2019:** EPA proposed changes to Lead and Copper Rule
- Final Rule: **TBD**
- Effective Date: **TBD** (~30-60 days after Final Rule)



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New Requirements

10 ppb Trigger Level: Corrosion Control and Line Replacements

Corrosion Control

- If already treating must “re-optimize” treatment
- If NOT already treating, must conduct corrosion control study
- “Find and fix” requirements



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Line Replacements

- Water systems to replace the water system-owned portion of a lead service line (LSL) when a customer chooses to replace their customer-owned portion of the line
- All systems with known or possible LSLs must develop a lead service line replacement plan
- Conduct outreach and initiate line replacement
- Above 15 ppb: fully replace a minimum 3% of the number of known or potential LSLs annually
- Above 10 ppb: work with state to set an annual goal for replacing LSLs

New Requirements

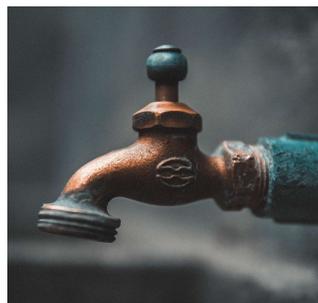
LSL Inventories

Before

- Only required to conduct a materials inventory for the purposes of identifying enough sites for tap sampling
- These inventories were not of the entire system and were not public
- Systems only had to take action if more than 10% of tap samples are greater than the action level (15 ppb)
- No requirements for systems to take follow-up samples at sites with individual tap samples greater than 15 ppb

After

- Public inventory required unless system can demonstrate absence of LSLs within first 3 years of final rule publication
- Must be updated annually



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New Requirements

Sampling and Notification

Sampling

- No flushing before sampling, remove and/or clean faucet aerators, and no use narrow-necked collection bottles
- Changes priorities for collection of samples with a greater focus on LSLs
- Frequency of testing will depend on trigger levels rather than system size



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Notification

- Must notify customers of an action level exceedance (15 ppb) within 24 hours, 30 days for all other results
- Make the LSL inventory publicly available and conduct regular outreach to homeowners with LSLs
- Inform consumers annually that they are served by LSL or service line of unknown material
- Additional public education and outreach

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New Requirements

Schools and Daycares

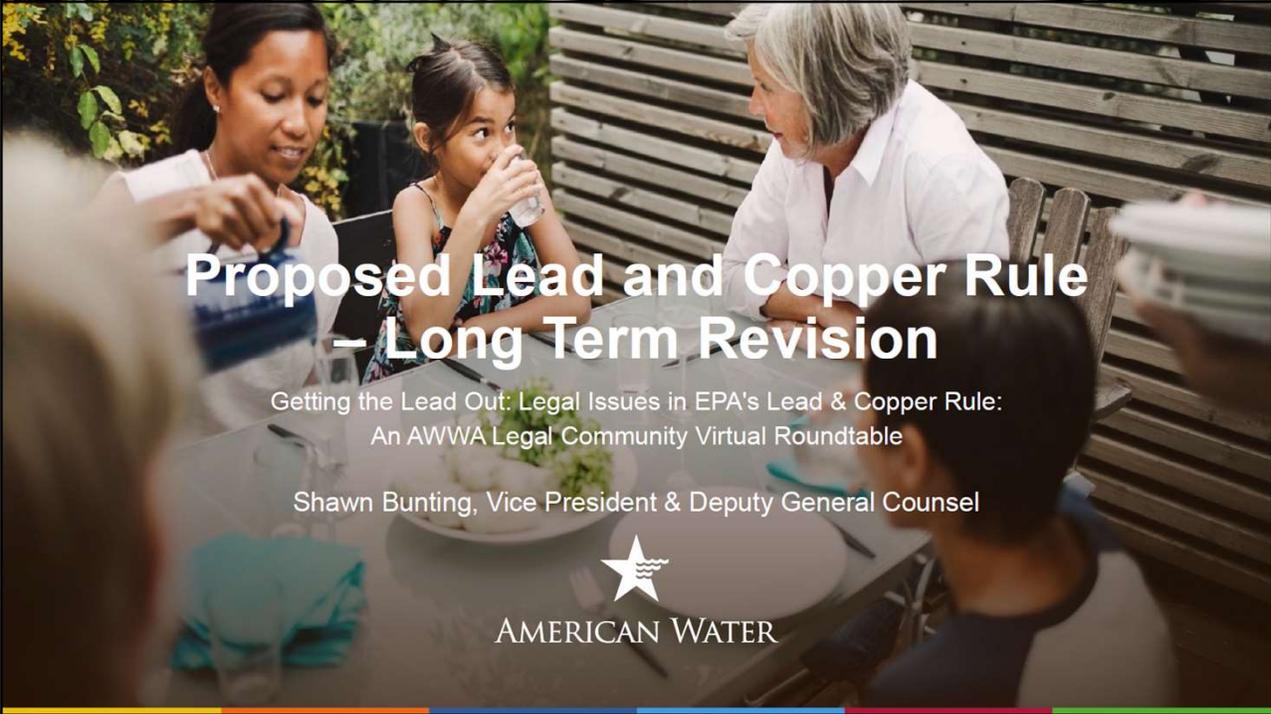
- Community Water Systems must conduct lead in drinking water testing at 20% of K–12 schools and licensed child care in service area every year
 - Excludes facilities built after January 1, 2014
- Sample results must be provided to each sampled school / child care, Primacy Agency and local or State health department



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Proposed Lead and Copper Rule – Long Term Revision

Getting the Lead Out: Legal Issues in EPA's Lead & Copper Rule:
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Shawn Bunting, Vice President & Deputy General Counsel



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American Water's Regulated Presence

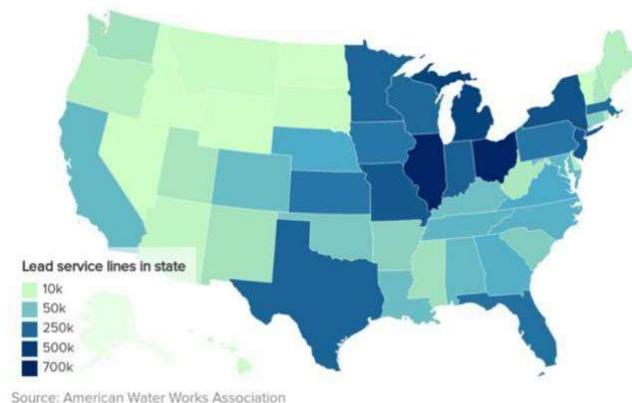
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Lead Exposure in the U.S.

Where's the lead?

There are an estimated 6.1 million lead services lines—pipes that connect a water main to a building's plumbing—still in use across America



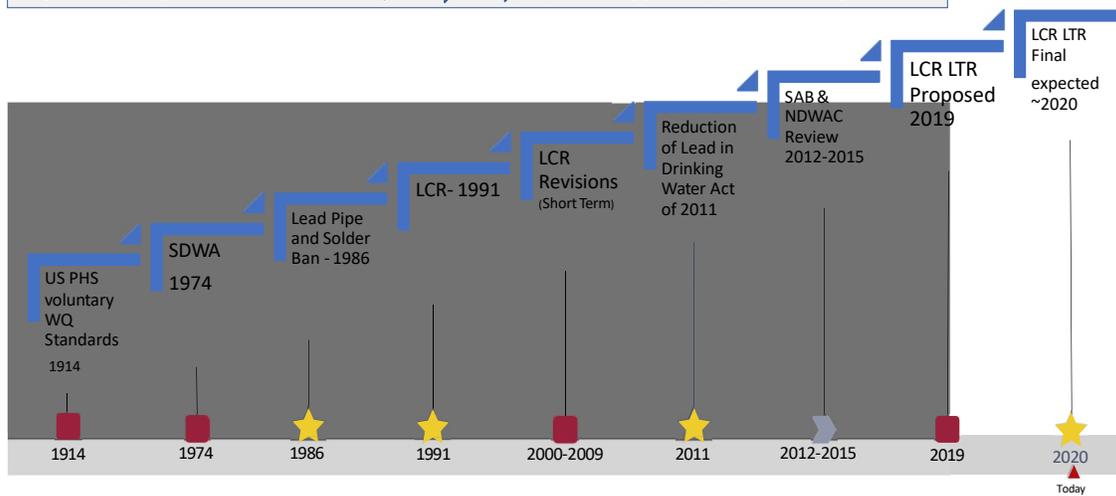
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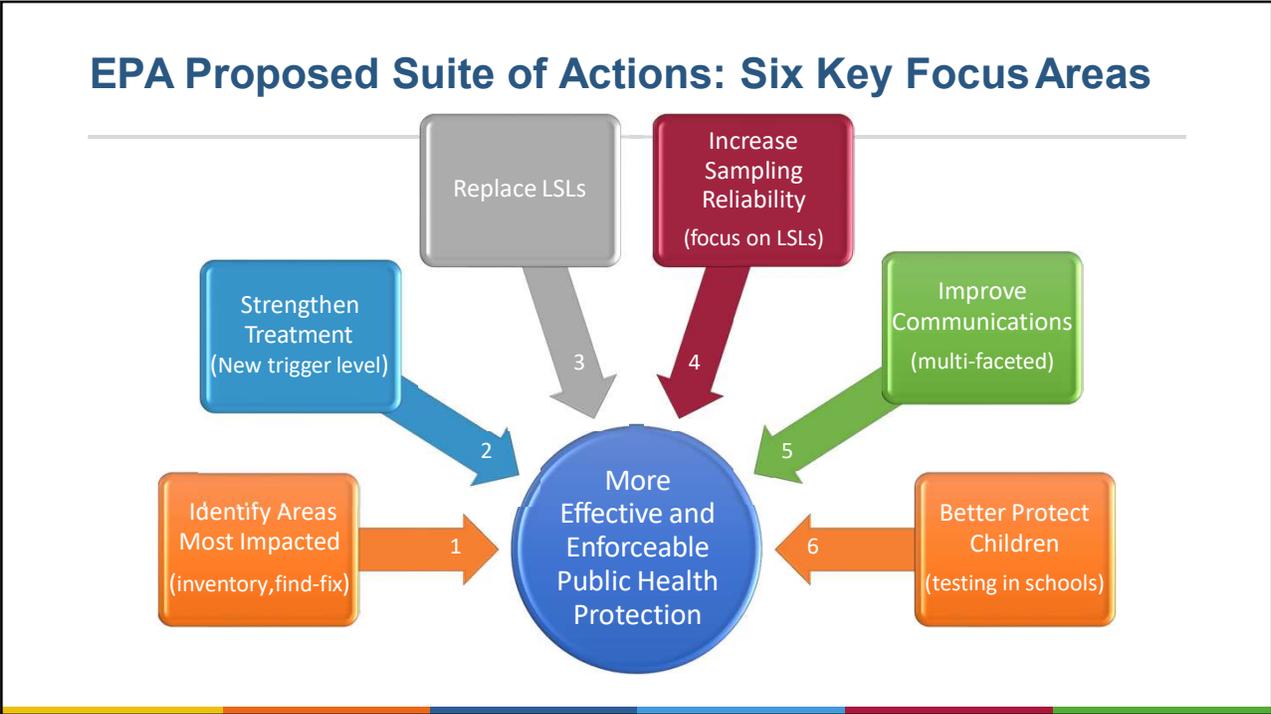
Drinking Water Regulations Become More Stringent

Goal for Lead is 0 ppb

Regulation progresses from no limit → 50 → 15 → proposed trigger 10 ppb (0.010 mg/L)



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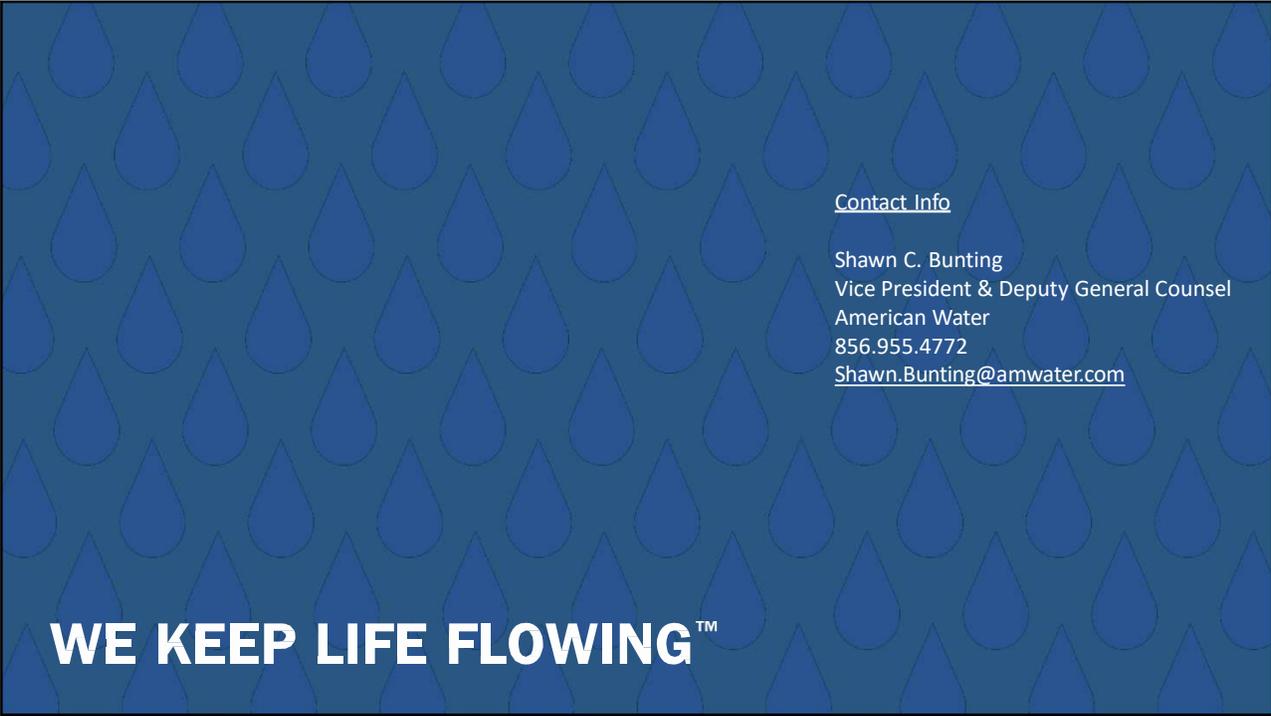
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Mitigation Strategy

American Water's Program to **Reduce Potential Lead Exposure** in Drinking Water

- Treat
- Monitor
- Find
- Replace
- Flush
- Educate

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Contact Info

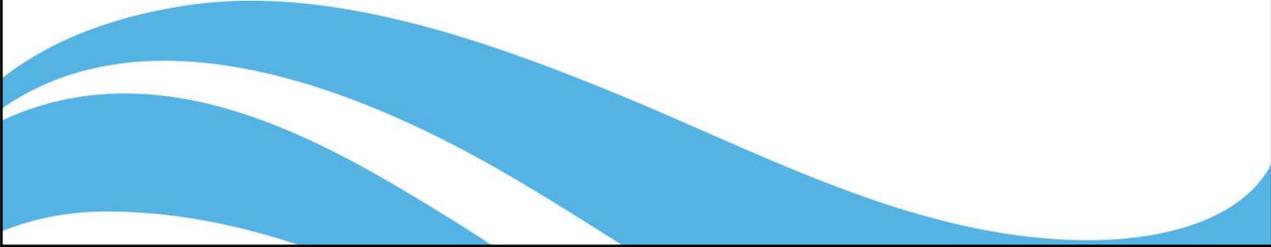
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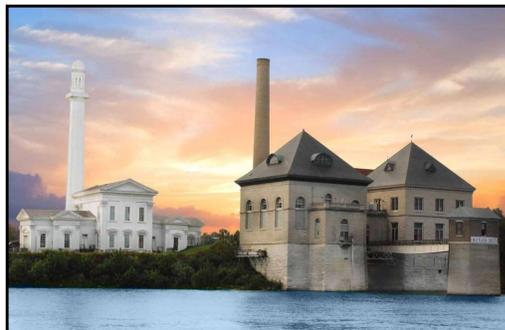


Louisville Water Company
Proposed Lead Copper Rule



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Louisville Water Company

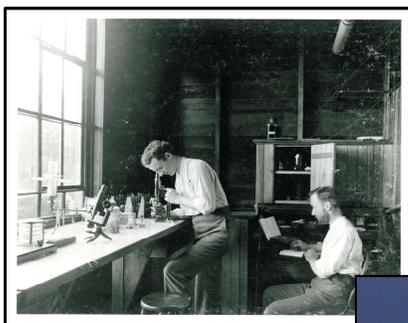


Drinking water to nearly one million people in Louisville, Kentucky region. Kentucky's first public water provider October 16, 1860

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Louisville Water Company



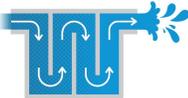
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Producing & Delivering Drinking Water



2 water treatment plants



33 storage tanks



Producing & Delivering Drinking Water



66 booster pumping stations



4,226 miles of water main



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Louisville Water Company





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Ask the Experts



Ron Tenpas
Partner
Vinson & Elkins,
LLP



Corrine Snow
Counsel
Vinson & Elkins,
LLP



Spencer Bruce
President and CEO
Louisville Water
Company



Shawn Bunting
Vice President &
Deputy General
Counsel
American Water

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Presenter Biography Information

- Ron Tenpas is a partner in Vinson & Elkins' Washington office, and is recognized as one of the country's preeminent environmental litigators. He is a former Assistant Attorney General (AAG) for the Environment and Natural Resources Division of the U.S. Department of Justice. Ron currently represents clients in civil and criminal investigations related to alleged environmental violations, in addition to representing companies and trade associations in commenting on proposed regulations and in litigation challenging new regulatory provisions. Before he was appointed AAG, Ron served as an Associate Deputy Attorney General, as the U.S. Attorney in the Southern District of Illinois, and as an Assistant U.S. Attorney in the District of Maryland and the Middle District of Florida.
- Corinne Snow principally practices in environmental law in Vinson & Elkins' New York office, with an emphasis on litigation, regulatory compliance, internal investigations, and defense against government investigations and enforcement actions. Previously, she served as Senior Counsel in the Office of the Associate Attorney General, which oversees all civil litigation on behalf of the United States, and as Counselor in the Office of the Attorney General. Most recently, Corinne served as Counsel and Chief of Staff in the Environment and Natural Resources Division of the U.S. Department of Justice, where she assisted in managing a 600-person division that included 400 lawyers. In this role she helped manage the Division's civil and criminal litigation arising under more than 150 environmental and natural resources laws.
- Spencer Bruce has served as President and CEO of Louisville Water since 2016 and has over 23 years of engineering and management experience. He joined Louisville Water in 2006, responsible for managing the company's distribution operations and water treatment facilities. He then served as the company's Vice President and Chief Engineer from December 2013 until January 2016. Prior to Louisville Water, Bruce worked for 13 years with Rohm Haas in North Carolina, Texas, and Illinois holding multiple management positions in maintenance, production, engineering, customer service and supply chain. Bruce also currently serves as president of the Louisville Water Foundation.
- Since February 2015, Shawn Bunting has served as vice president and deputy general counsel of American Water. In his role, Mr. Bunting leads a legal and compliance team of more than 50 professionals that provide strategic and day-to-day legal services essential to the company's operations throughout the United States. Mr. Bunting's practice focuses on a wide-range of matters including environmental and class action litigation, complex transactions and crisis response. Mr. Bunting joined American Water in 2008 as vice president and general counsel of American Water's market-based business and led the American Water concession team from 2009 to 2012. Mr. Bunting also has served as the general counsel for American Water's Mid-Atlantic and Eastern Divisions, including the two largest state subsidiaries within the American Water system, Pennsylvania and New Jersey American Water.

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