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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

June 21, 2006

The Honorable Stephen Johnson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

We are writing to urge the EPA to address important concerns raised in the U.S. Government Accountability Office (GAO) report on lead safety and our nation's public drinking water systems (GAO Report No.06-148). The GAO report highlights several critical shortcomings in the effectiveness of the EPA lead rule which raise serious questions about the EPA's conclusion that the conditions that led to the elevated lead levels in Washington, D.C. were not indicative of the conditions nationwide. The weaknesses identified by the GAO report are systemic, not unique to Washington, D.C. GAO identified most of these weaknesses by evaluating the very same data collected and evaluated by EPA. We question the Agency's conclusion that the conditions leading to the elevated lead levels in Washington, D.C. are not more widespread, based on the GAO findings. We ask the Agency to respond to several questions regarding the Agency's conclusions and your intent to address the GAO findings. We urge you to re-evaluate your conclusions, and we urge the Agency to incorporate GAO's recommendations into its guidance and rulemaking process in order to remedy these deficiencies. At the end of this letter, we have listed a series of questions that we request the EPA respond to by July 12, 2006.

As you know, lead poisoning continues to pose an unacceptable threat to the welfare of infants, children, and pregnant women in the United States, particularly in minority and low-income communities. Lead is rarely found in the source water used for public water supplies, but more commonly enters tap water as a result of corrosion of water lines, pipes, and household plumbing. Lead in drinking water can be a significant source of lead exposure, and can account for as much as 60 percent of the exposure for infants and children who consume formula and concentrated juices. Children suffer the greatest negative health impacts, since lead adversely impacts physical and mental development, but lead poisoning can also lead to kidney damage, reproductive disorders, anemia and reduced intelligence. The GAO report stated, "…ensuring that the lead rule adequately protects public health and is fully implemented and enforced should be a high priority for EPA and the states because the potential consequences of lead exposure, particularly for infants and young children, can be significant."

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Specifically, the GAO report made recommendations to rectify three identified areas of weakness. First, GAO stated that the EPA has not pushed states to provide needed information on lead, and as a result the EPA is lacking sufficient data to gauge the overall effectiveness and enforcement of EPA's lead rule since implementation. Over 30 percent of the nation's community water systems have not reported lead testing results and over 70 percent of the nation's community water systems lack any performance milestone reporting. The GAO report summarized by stating, "EPA has been slow to take action on these data problems and, as a result, lacks the information it needs to evaluate how effectively the lead rule is being implemented and enforced nationwide."

These report findings raise a series of questions, such as on what data did the EPA base its determination that the conditions leading to the elevated lead levels in the District of Columbia were not indicative of the conditions nationwide? We urge the EPA to collect and analyze the missing data.

The GAO report identifies significant weaknesses in the regulatory framework for the lead rule. Specific GAO recommendations included:

- Sampling sites of highest risk for lead be used for sampling.
- Reduced monitoring should be used only in appropriate cases and that systems resume standard monitoring following a treatment change. GAO evaluated EPA's compliance data and determined that 49 large and medium water systems were in violation of the action level and appeared to be on reduced monitoring schedules. A reduced monitoring schedule reduces the chance that high lead levels will be detected and that the public will be warned of a potential health risk.
- Homeowners who participate in tap sampling should be notified of test results to protect their health.
- Controls over when and how treatment changes are implemented should be adopted to avoid increases in lead levels.
- Plumbing standards should be updated, reflecting availability of low-lead fixtures and GAO's finding that some products currently classified as "lead-free" leach high levels of lead into drinking water.

These conclusions are not specific to Washington, D.C., and they are, in many cases, based on GAO's analysis of the very same data collected by EPA as part of your program review. Given these recommendations and the weaknesses identified by GAO in the national lead and copper rule, please explain how the EPA justifies its conclusion that the Washington, D.C. lead in drinking water situation was unique and not indicative of a national problem.

Specific areas of improvement that we urge the EPA to adopt include: ensuring that site selection for lead testing meets highest risk criteria; eliminating the reduced monitoring elements of the lead and copper rule; ensuring that homeowners who participate in periodic lead monitoring receive notification of test results; ensuring that changes in water system treatment processes do not impair the effectiveness of corrosion control; and reevaluation of the standards regulating "lead-free" plumbing fixtures and devices to ensure that they are protective enough to prevent lead leaching into the tap water.

Perhaps most disconcerting to us is the GAO finding that few schools and child care facilities nationwide have tested their water for lead and no focal point exists at either the national or state level to collect and analyze test results. Few states have comprehensive programs to detect and remediate lead in drinking water at schools and childcare facilities. Only 5 states required general lead testing for schools, and of those only four require child care facilities to test for lead when obtaining or renewing their licenses. Almost half the states reported having no lead efforts of any kind. State and local officials need more information on the pervasiveness of lead contamination to know how best to address the issue. We urge the EPA to work with the Department of Education and the Centers for Disease Control and Prevention to develop better guidance on lead for state and local education officials to follow. We are also aware that EPA is considering updating its 1994 guidance on lead in drinking water in schools and non-residential buildings, along with its 1999 guidance on simultaneous compliance and we urge EPA to incorporate GAO's recommendations in this area.

In addition, GAO found that EPA issued a guidance memorandum to reiterate and clarify specific regulatory requirements under the lead and copper rule before its evaluation of the lead rule was complete. Please explain why EPA issued that memorandum before completing its review, and why the Agency believed it was necessary to clarify those points at that time.

In summary, we believe that EPA must make preventing unnecessary public lead exposure a high priority, especially because our nation's children suffer the greatest risk and impacts. Lead poisoning is entirely preventable and EPA must work to remove the source of the problem from our public water systems by implementing these recommendations. We look forward to your prompt responses to the attached questions, and we urge you to re-evaluate your conclusions regarding the weaknesses in the lead and copper regulatory program.

The GAO report identifies significant, systemic problems, including a lack of reliable data at the EPA on which to base decisions. We look forward to working with you to ensure that EPA's regulations adequately protect public health and are fully implemented and enforced.

Sincerely,

Jim Jeffords

Hillary Rodham Clinton

Barack Obama

Joe Lieberman

Frank Lautenberg

Barbara Boxer

Attachment Containing Questions

Questions Concerning Missing Data Needed to Gauge Effectiveness of EPA's Enforcement of the Lead Rule

1. How does EPA support its conclusion that the lead problems in Washington D.C. are not widespread when the Agency is missing 30% of the lead testing data and 70% of the milestone reporting data? Please provide a summary of the data that EPA used to support its conclusion.
2. What does EPA identify as the number one barrier to the Agency conducting effective oversight of this program using real-time, accurate, comprehensive data on testing and performance milestones?
3. Please describe the degree to which funding is an issue. For example, since 2001, the EPA budget has declined significantly. Please explain how these funding cuts have affected the EPA's oversight capacity as it pertains to the lead and copper rule and the data needs described above.
4. How many people at EPA headquarters and within each region are assigned directly to lead and copper rule oversight? How have those numbers changed between 2001 and the date of your receipt of this letter, and how many of those people spend dedicated time collecting, reviewing, and analyzing lead testing and milestone data from the states? Do technology barriers affect EPA's ability to effectively collect and analyze implementation data for the lead and copper rule? If so, please explain them and identify what actions EPA and/or Congress could take to resolve them.
4. Will the Agency require testing data to be made publicly available via the internet to increase the likelihood that the public will receive timely, meaningful information regarding lead content in their community's drinking water and the need for any preventative actions?

Questions Concerning Potential EPA Rulemaking

We understand that the Agency is considering a rulemaking on many of the GAO's recommendations for strengthening the lead rule, and we ask that you respond to the following questions:

1. How will the EPA ensure that the site selection process for lead testing is statistically-relevant and fully representative of all types of residential dwellings (i.e., single family homes, apartments, condominiums)and commercial establishments (i.e., restaurants)?
2. How will the EPA re-evaluate and modify, if necessary, the risk criteria currently used in the lead and copper rule to identify which sites will be tested? For example, GAO found that, "…enough time has elapsed so that lead solder in plumbing installed from 1983 to 1986 [one of the site selection criteria in the lead and copper rule] is no longer fresh…" Will the EPA incorporate this finding into its proposed rulemaking?

3. The GAO report found that the lead and copper rule's requirement that systems do a "materials evaluation" to identify an adequate pool of high risk sampling sites did not, in many cases, include a system-wide assessment. The GAO also found that many systems also do not have a complete inventory of their service lines. Will EPA require a full inventory of service lines to identify lead service lines, and if not, what means with EPA use to ensure that sites with lead service lines are included in a sampling plan under the lead and copper rule?
4. Will the EPA require that public water systems notify homeowners who participate in periodic lead monitoring of the results and of any preventative action they should take or medical care they should seek? Given the potential public health risk if homeowners do not know of high lead levels, has EPA taken any steps since the Washington, D.C. lead in drinking water incident to ensure that appropriate notice and prevention information is provided?
5. GAO found that "49 large and medium water systems were exceeding the 15-parts-per-billion action level and appeared to be on reduced monitoring schedules…In addition, our analysis indicates that 104 large and medium systems with lead levels of 13 –15 parts per billion also appear to be on reduced monitoring schedules." What action is EPA taking to ensure that those systems exceeding the action level are not approved for reduced monitoring schedules? In addition, the GAO report cites some state officials who believe that those systems hovering right below the action level ought to be subject to more scrutiny than provided by reduced monitoring. Has EPA considered this GAO finding in the Agency's analysis of the lead and copper rule, and will you propose changes to the existing rules that preclude such systems from qualifying for reduced monitoring schedules?
6. GAO found that the decision to resume standard monitoring following a major treatment change "…can be critical…," citing the circumstances that lead to the exceedances in the Washington, D.C. case. What type of new guidance has EPA provided, or will EPA provide to public water systems to ensure that appropriate lead monitoring is conducted after a major treatment change? Will EPA eliminate the periodic monitoring provision in the current rule and ensure that monitoring frequency and scope are enhanced for at least the one-year period following a major treatment change?
7. The Safe Drinking Water Act, section 1417(e), requires the Administrator to provide accurate and timely technical information and assistance to qualified third-party certifiers in the development of voluntary standards and testing protocols for the leaching of lead from new plumbing fittings and fixtures that are intended by the manufacturer to dispense water for human ingestion. The National Sanitation Foundation (NSF) has created one such a standard. However, GAO found that some products that are not covered by this voluntary standard on lead leaching contribute high levels of lead to drinking water during testing. For example, GAO reports on an NSF analysis which showed that the amount of lead leaching from products containing 8% lead or less leached between 0.4 and 39 parts per billion for water meters and between 4.1 and 530 parts per billion for valves. In addition, the GAO study cited an August 2005 study, which identified several aspects of NSF's testing protocol that should be re-evaluated. That study,

published in the American Water Works Association Journal, concluded that the NSF protocol "lacks the rigor necessary to prevent installation of devices that post an obvious public health hazard." Has the EPA provided that study, the Agency's analysis of the results, the GAO report findings, or any other information to NSF since its standard was first issued? If so, please describe that information and when it was provided.

8. Has EPA reviewed the adequacy of the NSF standard to protect public health or requested that NSF update its standard based on this information?