COLORADO
Department of Public
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

April 6, 2016

Mr. Joel Beauvais
Deputy Assistant Administrator
United States Environmental Protection Agency
Washington, DC 20460

Dear Mr. Beauvais:

Colorado shares your urgency in protecting public health and ensuring drinking water safety. We understand that because of the recent events in Flint, Michigan lead has become an issue of national importance. Colorado has a robust program under the state-specific lead and copper regulatory requirements, which is as stringent as the National Primary Drinking Water Regulations and where we work to be consistent with the complex and frequently changing national guidance and EPA's associated clarification memoranda.

As the agency with primary enforcement authority for the administration and enforcement of the Safe Drinking Water Act in Colorado, the Colorado Department of Public Health and Environment must account for and address other drinking water-related risks, such as preventing waterborne disease outbreaks like the salmonella outbreak that struck Alamosa, Colorado in 2008 that caused 1,300 illnesses, one death and cost millions of dollars to address. Colorado is still assisting local communities in San Juan and La Plata Counties that were impacted by the Gold King Mine spill. Additionally, Colorado has tackled state-specific issues not addressed by the National Primary Drinking Water Regulations. In 2015 Colorado promulgated regulations that address inspecting drinking water storage tanks, controlling cross connections, and improving disinfection to prevent waterborne disease. Colorado is also working to address perfluorinated compound (PFC) issues that have recently been identified in three community public water systems in El Paso County, Colorado that serve approximately 60,000 people. Colorado will continue to engage with EPA Region 8, local health departments and impacted water systems to find solutions not only for lead, but all these complex issues.

We have a strong partnership with EPA Region 8 and are working with Region 8 staff regarding Lead and Copper Rule (LCR) implementation. With regard to your request for near-term action to address risks from lead in drinking water, please find the following responses:

1. State Implementation. Colorado carefully implements the LCR and we are doing a solid job considering the incredible complexity of this rule and the considerable limitations of the available tool, EPA's Safe Drinking Water Information System (SDWIS). We look forward to working further with EPA Region 8 regarding implementation specifics and, if appropriate, taking additional steps within our regulatory authority. We utilize EPA implementation guidance in alignment with regulatory requirements. Guidance supports the regulated community with compliance, and while it does not establish independent requirements it may establish the agency's expectation with respect to how to comply with regulatory requirements and inform compliance.
2. Sampling and Optimizing Corrosion Control. Colorado's LCR sampling guidance is consistent with the safe drinking water act and previously-issued EPA guidance. We updated our LCR sampling guidance in accordance with EPA's February 29, 2016 clarification memorandum and removed references to pre-flushing prior to commencement of the six-hour stagnation period. My drinking water staff tells me how complicated water chemistry can be, and that there is not a one-size-fits-all approach to optimizing corrosion control, so we have scientists and engineers involved in these case-by-case evaluations. We use EPA guidance regarding optimizing corrosion control to help establish compliance.
3. Posting guidance on website. Colorado's LCR sampling protocol is posted on our web site. Colorado also provides LCR Sample site identification forms on our website that water systems are required to complete. The forms cover all the necessary Tier 1 site identification criteria. We also provide a link to EPA's online LCR guidance, templates and announcements.

4. LCR Transparency. In April we will begin communicating with water systems via numerous avenues to encourage them to provide more information to the public regarding their materials inventory and additional related information. Since late 2015, the general public can access on-line records that show summary LCR compliance sampling results. The summary includes all lead results and the 90th percentile calculated value. Consistent with the open records law in Colorado we will not post personally identifying information such as residential addresses. Colorado adheres to EPA requirements and guidance to address invalidation requests. Because specific invalidation requests often include a person's address, those requests and the department's responses will not be posted. However, such records are available to anyone requesting them after staff redact personally identifying information. We are also working to update the department's consumer-focused lead information website to include assistive information regarding lead in drinking water. We encourage EPA to develop web resources or templates to help water systems post their lead rule information.
5. Public information. Colorado administers and enforces the LCR as written. Our communications with drinking water systems described above will also encourage water systems to provide additional information to the public regarding the sample results from homes. We will also continue to encourage water systems that exceed the lead action level to conduct the required public education efforts as quickly as possible, as long as all the associated requirements are met.

The lead and copper rule is the most complicated part of the drinking water regulations to implement, and yet the database tool provided by EPA to implement this rule has grave deficiencies related to sampling schedules, compliance calculations, and tracking required activities. This is of great concern, especially when it appears that EPA plans to update the federal lead and copper rule in 2017 without a commitment to concurrently update the tool or to provide states the resources to implement new regulatory requirements. We are concerned that the federal lead and copper rule will be revised in a manner that will be even more complicated and challenging to implement, which will exacerbate the current issues with the database tool and lack of adequate funding. In line with cooperative federalism that EPA and the states have embraced, EPA must collaborate with states to develop new regulatory requirements including innovative ways to protect our nation's drinking water while ensuring that adequate funding and implementation tools are provided well in advance of the effective date. Your letter states that there will be a general process going forward to identify strategies and actions to improve drinking water safety, however, it is not clear that EPA intends to specifically address funding and database problems associated with LCR implementation. We request that EPA make a firm commitment within the next thirty days that it will work closely with states in the development of any new LCR regulatory requirements as well as critical improvements to the database tool and that it will not compel states to implement a more complicated rule unless adequate resources are provided to the states.

Thank you for your leadership in these challenging times. Safe drinking water is essential for the health of all our communities and we in Colorado take our responsibility to ensure our citizens have safe drinking water very seriously. To continue to provide clean and safe drinking water, we must work together to develop innovative and cost-effective ways of providing this critical resource to our citizens. The public must be assured that we can and are protecting their health. We look forward to continuing and strengthening our partnership with EPA and in ensuring safe drinking water for the residents and visitors in Colorado.

Sincerely,

Larry Wolk, MD, MSPH
Executive Director and Chief Medical Officer
Colorado Department of Public Health & Environment