Lead and Copper Rule/Safe Drinking Water Act: U.S. Chamber of Commerce Files Amicus Curiae Before the United States Court of Appeals for the District of Columbia

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The United States Chamber of Commerce ("Chamber") filed on September 19th a Brief for *Amicus Curiae* in support of the various organizations challenging the Safe Drinking Water Act Lead and Copper Rule Improvements ("LCRI").

A Petition had been filed by the American Water Works Association and others challenging the rule promulgated under the federal Safe Drinking Water Act by the United States Environmental Protection Agency ("EPA") on October 30, 2024, entitled "*National Primary Drinking Water Regulations for Lead and Copper: Improvements*". See 89 Fed. Reg. 86418.

The LCRI requires that drinking water systems identify and replace lead pipes within 10 years. Further, it will require:

- Additional testing of drinking water (i.e., improved tap sampling).
- Lower threshold for mandating actions to address lead exposure in drinking water.
- Enhanced communication (i.e., creating a publicly available service line replacement plan).

The LCRI also mandates that drinking water providers with multiple exceedances of lead action levels must undertake the following:

- Adjust treatment.
- Conduct additional community outreach.
- Make filters that are certified to reduce lead available to all consumers.

The Chamber states that its separate brief:

…is necessary to provide the broad perspective of the business community that amicus represents, which covers every sector of the nation's economy, and is not limited to businesses that are directly subject to the rule at issue in this litigation.

The Chamber challenges the LCRI arguing in part:

- Previous EPA regulations only mandated removal of lines that water systems owned.

- For the first time, the agency is requiring public water systems to replace the homeowner's pipes if those systems can access them (and public water systems only own a portion of the line servicing a private property).
- LCRI rewrites the statutory phrase "under control of" to mean any service lines that "a water system has access" (e.g., legal access, physical access) to, which would include portions of service lines on individuals' and businesses' private property ("under control of" does not equate to "access" and ignores the practical realities that are central to providing drinking water across the United States).
- Public water systems' responsibilities to oppose the LCRI would vary from jurisdiction to jurisdiction, as the systems would have to navigate diverse state and local laws to determine under what conditions they can "access" private property.
- EPA's assertion that the LCRI is feasible and cost-effective, which rests on the premise that compliance is technically possible for some large public water systems, is arbitrary and capricious (EPA did not address the challenges that all regulated parties – and not just a number of large players – would face).

A copy of the *Amicus Curiae* can be downloaded here.