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February 1, 2024

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. N.W.
Washington, DC 20460

Dear Administrator Regan:

We write to express our concerns about the unexpected reduction in lead service line replacement funding to Massachusetts communities. Specifically, we urge EPA to reconsider its new assessment methodology and to promptly restore Massachusetts funding for lead service line replacement.

First, we thank the EPA and the Biden administration for their robust commitment to addressing lead exposure through drinking water. 86 Fed. Reg. 14,063, 14,064 (Apr. 12, 2021). We know the EPA is heavily invested in assisting communities disproportionately affected by lead exposure due to historic inequities in housing quality, economic status, and proximity to lead-emitting industries. *Id.* at 14,064. Non-Hispanic Black people are more than twice as likely to live in moderately or severely substandard housing that presents risks from lead paint. *Id.* The presence of lead service lines and the limited resources available to remediate them further exacerbate the already inequitable exposures in these communities. The historic funding provided by the Biden administration through the Bipartisan Infrastructure Law (“BIL”) seeks to effectively tackle this public health and environmental justice challenge, and we are eager to do that alongside you.

This issue is of critical importance to the residents of Massachusetts. As of 2016, Massachusetts had more lead service lines than all but ten other states.¹ One factor driving this high incidence of lead service lines is the age of Massachusetts’s housing stock. Massachusetts is one of only three states with approximately 30 percent of its housing stock built before 1940,² when the

¹ Cornwell, David A., Brown, Richard A., et al., *National Survey of Lead Service Line Occurrence*, E189 (April 1, 2016), <https://awwa.onlinelibrary.wiley.com/doi/abs/10.5942/jawwa.2016.108.0086>

² U.S. Census Bureau, *2019 American Community Survey 1-Year Estimates*, <https://www.census.gov/programs-surveys/acs/data/summary-file.2022.html>

installation of lead service lines was prevalent.³ Housing stock of this age also correlates to other lead exposures, including an increased likelihood of the presence of lead paint⁴ and high soil lead levels around homes,⁵ magnifying Massachusetts residents' risk of harmful cumulative lead exposures.

While the EPA and the Biden administration have made lead exposure a public health priority, the new methodology for determining how funds are distributed for lead service line replacement significantly disadvantages Massachusetts and does not capture the risk of exposure associated with the states' centuries-old infrastructure. We ask that the EPA and the Biden administration reconsider the formula and restore Massachusetts funding for lead service line replacement in the following ways and for the following reasons:

Based on EPA's analysis of the states' comparative needs, Massachusetts received a Drinking Water State Revolving Fund Lead Service Line Grant ("LSL Grant") of \$65,783,000 for fiscal year 2022.⁶ For 2023 and future years, however, EPA has implemented a needs assessment process based on new data and methodology that has cut Massachusetts' LSL Grant nearly in half, to \$33,700,000.⁷ By contrast, states that have historically shown fewer lead service lines and proportionately newer housing, saw similar increases in funding, such as Florida's increase from approximately \$112 million to \$255 million over the same period.⁸

The new cuts to Massachusetts' EPA LSL Grant are based upon a new "lead service line allotment formula" that EPA implemented this year.⁹ We understand that the new formula relied upon new data, derived from a set of questions to local governments that was added for the first time to the Drinking Water Infrastructure Needs Survey and Assessment ("Survey").¹⁰ This data

³ Massachusetts Department of Environmental Protection & Massachusetts Department of Public Health, *Is there lead in my tap water?* <https://www.mass.gov/guides/is-there-lead-in-my-tap-water>; Congressional Research Service, *Lead Service Lines (LSLs) Replacement: Funding Developments* 3 (Nov. 6, 2023), <https://sgp.fas.org/crs/misc/R47717.pdf>

⁴ Massachusetts Department of Public Health, *2021 Annual Childhood Lead Poisoning Surveillance Report* 5-6 <https://www.mass.gov/doc/2021-annual-childhood-lead-poisoning-surveillance-report-0/download>

⁵ U.S. Environmental Protection Agency, *Executive Summary of EPA 747-R-96-002* (May 1996), <https://www.epa.gov/lead/executive-summary-epa-747-r-96-002>

⁶ U.S. Environmental Protection Agency, *Memorandum on "Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law,"* 30 (Mar. 8, 2022), https://www.epa.gov/system/files/documents/2022-03/combined_srf-implementation-memo_final_03.2022.pdf

⁷ U.S. Environmental Protection Agency, *Memorandum on "FY 2023 Allotments for the Drinking Water State Revolving Fund based on the Seventh Drinking Water Infrastructure Needs Survey and Assessment,"* 6 (Apr. 3, 2023), https://www.epa.gov/system/files/documents/2023-04/Final_FY23%20DWSRF%20Allotment%20Memo%20and%20Attachments_April%202023.pdf

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

served as a tool for the EPA to develop “estimated counts of service lines” by extrapolating from national and state data to produce ratios applied to states.¹¹ We have serious concerns about the quality of the data upon which EPA relied and the methodological approach EPA took to fill gaps in that data—at great cost to our residents and to the joint efforts by the Biden administration and the Commonwealth of Massachusetts.

Specifically, the data produced from new, optional Survey questions and applied using general ratios that do not appear to take account of relevant state-specific factors. EPA added these questions to the Survey for the first time in this seventh iteration of the Survey,¹² in an optional part of the Survey.¹³ EPA did not make clear in the Survey that a state’s lead service line funding would be dependent upon these optional questions,¹⁴ nor did it conduct sufficient outreach or training to state or local governments to notify them of this material change. Indeed, a quarter of public water systems nationally did not even respond to the new questions.¹⁵ And of the water systems that did respond, many indicated that their service lines were of “unknown material.”¹⁶

In order to address this missing, necessary data, EPA used national data and applied assumptions to produce a final number for each state. It is not clear, however, that EPA’s new estimation methodology adequately considered critical factors that could drastically shift state allotments, such as the age of housing stock and associated exposures in older areas of the country, like New England.¹⁷ Moreover, there have been reports that the underlying data upon which EPA’s methodology is based may contain significant reporting and data entry errors.¹⁸

¹¹ *See id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Tal Kopan, *After Sharp Drop in Federal Funding to Replace Lead Water Lines, State Races to Find Out Why*, Boston Globe, Sept. 12, 2023.

¹⁵ U.S. Environmental Protection Agency, *7th Drinking Water Infrastructure Needs Survey and Assessment FAQ*, (Apr. 2023), https://www.epa.gov/system/files/documents/2023-04/Final_FAQ_DWINSAs_4.4.23.v1.pdf

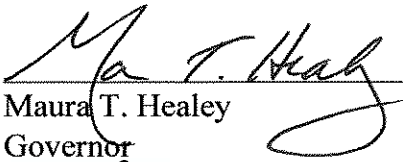
¹⁶ *Id.*

¹⁷ U.S. Environmental Protection Agency, *Drinking Water Infrastructure Needs Survey and Assessment, 7th Report to Congress 42-45* (Sept. 2023)

¹⁸ See, e.g., Congressional Research Service, *Lead Service Lines (LSLs) Replacement: Funding Developments 6* (Nov. 6, 2023), <https://sgp.fas.org/crs/misc/R47717.pdf>; Roya Alkafaji, *Lead Pipe Survey Flaws Reveal that States may not be Getting Their Fair Share*, Environmental Defense Fund, Deep Dives, Jun. 29, 2023, <https://blogs.edf.org/deepdives/2023/06/29/lead-pipe-survey-flaws/>

For these reasons, EPA initiatives such as funding for lead service line replacement are essential and necessary to mitigating lead exposure and its harmful impacts and we urge you to please reconsider the new formula and restore Massachusetts funding for lead service line replacement so we can continue to tackle this challenge together.

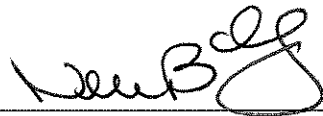
Sincerely yours,



Maura T. Healey
Governor



Andrea Joy Campbell
Attorney General



Deborah B. Goldberg
Treasurer and Receiver General