



Institute for
Policy Integrity

NEW YORK UNIVERSITY SCHOOL OF LAW

March 23, 2020

Dr. Thomas Armitage
Designated Federal Officer, EPA Science Advisory Board (1400R)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460
armitage.thomas@epa.gov

Re: Notification of Two Public Teleconferences of the Chartered Science Advisory Board, FRL-10006-35-OA—Comments on Review of the Lead and Copper Rule Revisions

The Institute for Policy Integrity (“Policy Integrity”) at New York University School of Law¹ submits the following comments to the Environmental Protection Agency (“EPA”) Chartered Science Advisory Board (“SAB”). These comments concern the SAB’s review of the scientific and technical basis for the proposed rule entitled National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Revisions (“Proposed Rule”).

Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Policy Integrity evaluated the Proposed Rule and submitted public comments to EPA on February 12, 2020, detailing our findings (see the attached comments to EPA, which are hereby incorporated). This letter summarizes the substance of our previous comments to EPA and encourages the SAB to consider these points during its review.

The proposed revisions are estimated to deliver tens of millions to hundreds of millions of dollars in monetized, annualized *net benefits* when calculated using a 3% discount rate, but tens of millions to hundreds of millions of dollars in monetized, annualized *net costs* when calculated using a 7% discount rate.² On the basis of these cost-benefit comparisons, and after considering the proposed revision’s many and potentially significant non-monetized benefits, EPA concludes that the revisions’ benefits justify their costs.³ EPA does not fully clarify, however, whether this final determination could be based independently either on consideration of just the additional non-monetized benefits or just the calculations at a 3% discount rate, or if instead the agency is relying to some extent on both a preference for the 3% discount rate-based calculations and also the potentially significant non-monetized benefits.⁴

¹ This document does not purport to present New York University School of Law’s views, if any.

² 84 Fed. Reg. 61,684, 61,730 (Nov. 13, 2019).

³ *Id.* at 61,734.

⁴ *Id.* (explaining, after first noting that the proposed rule’s net benefits are negative at a 7% discount rate, that “In addition to the monetized benefits of the proposed rule, a number of potentially significant non-quantified and non-monetized sources of benefit exist that *further strengthen the determination* of benefits justifying costs” (emphasis added)—perhaps thereby

The SAB first should encourage EPA to quantify and monetize additional categories important benefits, especially cardiovascular mortality effects and benefits within homes with no LSL (lead service lines). For example, even if there is some uncertainty about the precise magnitude of the effect, the risk of cardiovascular mortality from lead exposure is not zero, and even a small quantified benefit of avoided mortalities could have a significant impact on the cost-benefit analysis. The SAB has already concluded that “[t]here is well-documented and substantial population morbidity associated with even low-level Pb exposure in humans, especially for hypertension and related cardiovascular disease risk in adults.”⁵ The SAB should encourage EPA to estimate a reasonable, non-zero quantitative range of cardiovascular impacts and any other currently non-monetized benefits that can reasonably be monetized.

The SAB should also encourage EPA to consider whether there are strong reasons to favor the calculations of costs and benefits based on a 3% or lower discount rate, or at least to disfavor calculations based on a 7% discount rate. A 3% or lower discount rate is likely more appropriate given both the special nature of the benefits (in particular the IQ-related income effects that will occur over the next 100 years to future generations of yet-to-be-born individuals) and also perhaps based on the special nature of the costs (which largely fall on publicly-owned water systems and households, both of which may have a different social rate of time preference and opportunity cost of capital than private entities, and which also have access to public financing to support compliance expenditure).

Finally, the SAB should encourage EPA to consider the costs and benefits of more protective regulatory alternatives. Though EPA proposes a new “trigger level” that is lower than the “action level” set back in 1991 based on a feasibility determination, EPA does not explore whether alternative action levels or trigger levels would better maximize net welfare or protect public health. In 2011, the SAB noted that the public health literature had already evolved substantially since 1991: “Recent data published after 1991 demonstrate that young children are vulnerable to Pb at exposure levels lower than were previously recognized.”⁶ Given the more recent data, the significance of benefits that EPA has not yet monetized, and the strong reasons to focus on cost-benefit calculations at a 3% or lower discount rate, it is very possible that a more protective alternative would better maximize net welfare, or would better advance environmental justice goals while remaining cost-benefit justified. The SAB should encourage EPA to consider additional alternatives, based on the most recent health literature.

Respectfully,



Jason A. Schwartz, Legal Director

Institute for Policy Integrity

jason.schwartz@nyu.edu

Attachment: Comments of the Institute for Policy Integrity at New York University School of Law to EPA on National Primary Drinking Water Regulations: Lead and Copper Rule Revisions, EPA-HQ-OW-2017-0300 (Nov. 13, 2019)

implying that even before consideration of non-monetized benefits, a determination of benefits justifying costs can be made based on monetized costs and benefits alone, despite the net negative calculations at the 7% discount rate).

⁵ SAB, Drinking Water Committee, Review of the Effectiveness of Partial Lead Service Line Replacements at 9 (2011), [https://yosemite.epa.gov/sab/sabproduct.nsf/964CCDB94F4E6216852579190072606F/\\$File/EPA-SAB-11-015-unsigned.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/964CCDB94F4E6216852579190072606F/$File/EPA-SAB-11-015-unsigned.pdf).

⁶ *Id.* at 12.