

# LCR Challenges Municipalities Face

2018 Lead and Copper Rule Revisions

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# New Lead and Copper Rules

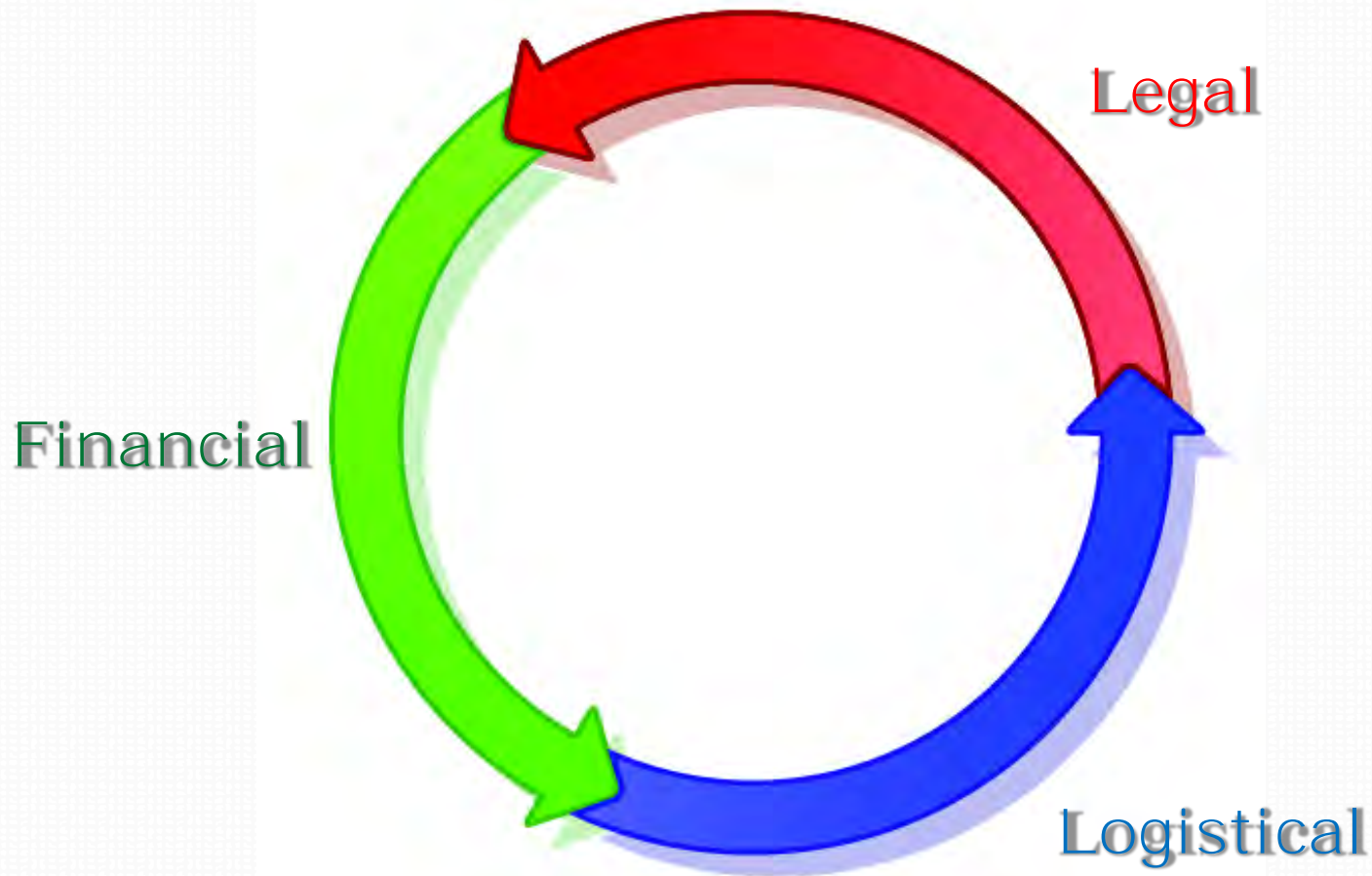
Existing	Revised
Action Level 15 ppb	Action Level 12 ppb
Inventory maintained by system	Field verified inventory of all lines
One first draw sample/site	If LSL: two samples/site
90 <sup>th</sup> %ile based on all samples	90th %ile based on highest per site
LSLR only if exceeded AL after installation of CCT	LSLR req @5%/year or approved AMP
LSLR: limited to publicly owned	LSLR includes public and private
LSLR: not galvanized lines	LSLR includes galvanized if connected to LSL



# Overview of the Problems



# Challenges are Multi-faceted



# The Legal Conundrum

- Complying with the Rules violates the Constitution
  - **Can't use public money to make improvements on private property**
  - **Can't spread costs that only benefit some to the entire rate base**



# The Legal Conundrum

- Complying with the Constitution violates the Rules
  - **Can't directly charge property owners**
  - **Can't replace public lead service lines without also replacing private lead service lines**



# The **Financial** Conundrum

- The greatest number of lead lines are located in areas of poverty or minimal income
- Prime example is Detroit where the annual **compliance cost of \$52M exceeds the City's entire** asset management budget
- Yet, municipalities have numerous investment needs to protect public health



# The **Logistical** Conundrum

- The State is measuring the wrong thing
  - The lead action level is related to effectiveness of corrosion control
  - Yet it dictates the rate of replacement
- The result = we are off managing the wrong things





# The **Logistical** Conundrum

The Lead and Copper Rules trump  
all other risk factors that drive cost-  
**effective decisions...**

...for NO reason



# The **Logistical** Conundrum

- New sampling will preclude the option for flexibility
- Contractor availability
- Securing owner permission for rental properties
- **And more by the day...**



# The **Logistical** Conundrum

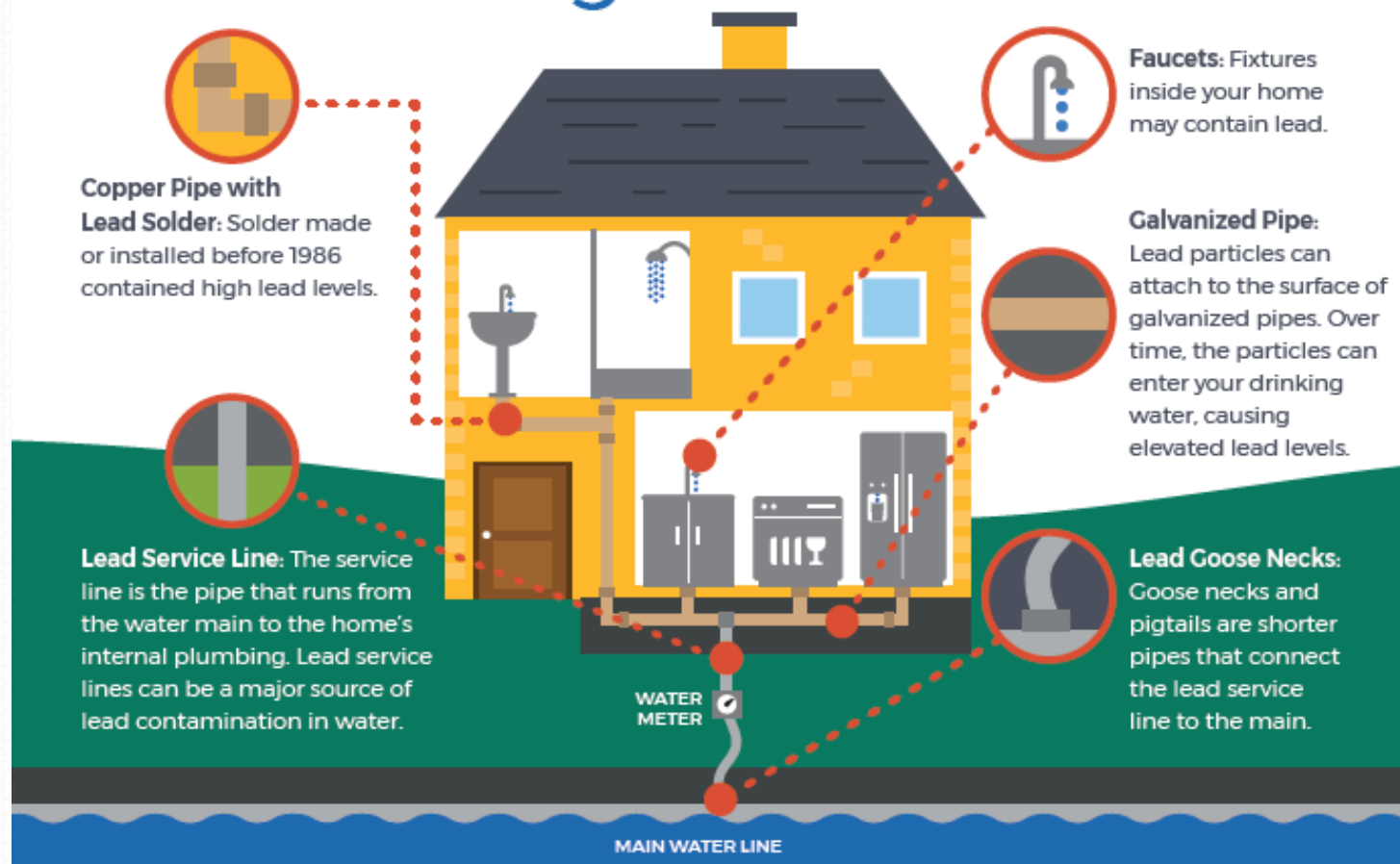
- Yes, it gets worse
- Implementing the wrong fix
  1. Is it the lead line?
  2. Is it the plumbing?
  3. Is it neither?
- We know in many cases the answer is either 2 or 3





CONCERNED ABOUT LEAD IN YOUR DRINKING WATER?

## Sources of **LEAD** in Drinking Water



We are between that rock  
and that hard place

Municipalities face at least one of three brick  
walls:

Legal

Financial

Logistical



We are between that rock  
and that hard place

Perversely, non-compliance is inevitable.

As Paul Newman said...

*What we've got here is a failure to communicate.*



# “We” is you

- By definition, local municipalities are water suppliers.
  - Unless all drinking water within the municipality is provided to residents by private wells.
- Because local municipalities are water suppliers, they are subject to the LCRs.



# The Details





# We are required to...

- If the lead action level is exceeded...replace at least 7% per year
- **Offer to replace the owner's portion of the line at water supply expense**
  - One wonders, who wouldn't take that offer?



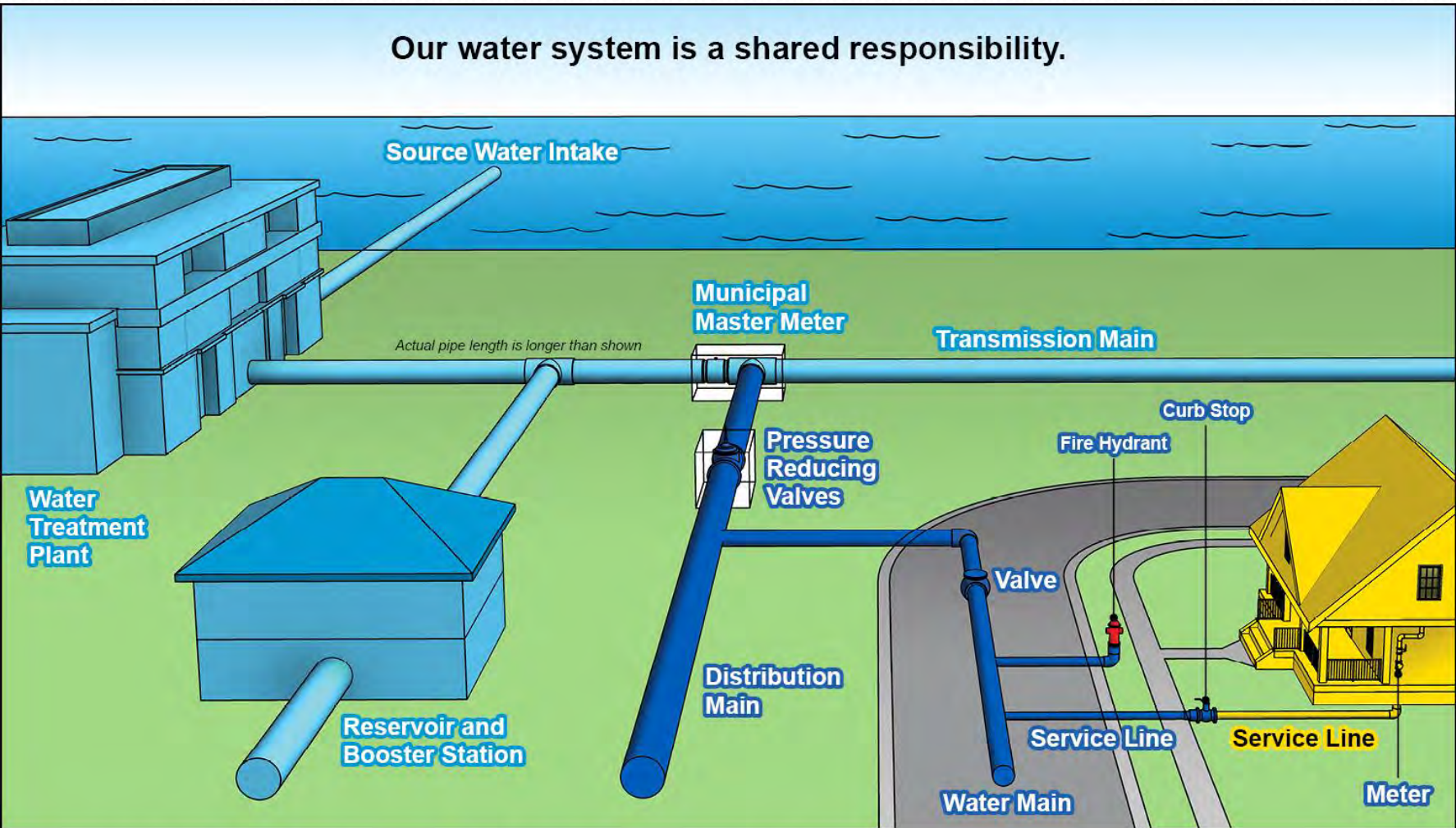
# We are required to...

- For everyone else with lead service lines (or galvanized connected to lead), replace LSLs at average of 5% per year NTE 20 years
- Unless, an alternate schedule in an asset management plan is approved by the DEQ.



# Who owns what?

Our water system is a shared responsibility.



# Logistical Challenges

- Accurate sampling
- Consent for access
- Prohibition of partial line replacements
- Available human resources
- Disposal of lead pipes



# Sampling has huge ramifications

- New sampling **protocol** (“**sequential sampling**”)
- Are homeowners willing to assist?
- Are they capable?





# Another rock and a hard place

- Public agrees LSLR is important, but will they let you in their home? No legal right to trespass.
- What about rental properties?
- Compliance depends on decisions by homeowners over which municipalities have no control



# Time for a new metaphor...

“\_\_\_\_\_ if we do, \_\_\_\_\_ if we don’t”

- We cannot replace the public portion without replacing the private
- The problem
  - There can be multi-pronged connections serving several properties
  - If one of the properties denies access, the municipality cannot reconnect services to all lines because it would be a violation!



# By the way, who is going to do this?

- Are there enough people out there to do this work at the rate needed?
- Added government staff for compliance with sampling, public education, inventory





# Now what do we do with it?

- Where do the lead pipes go?
- Is this creating another health risk?
- What is the cost of disposal? Who pays for that?



# Pretending there is such a thing as a free lunch

- How does a water supply pay for LSLR?
  - MDEQ confirmed intent to spread costs across the rate base
  - **Have urged communities to be “creative”**
- Fact: Other public health projects and services will be sacrificed in order to comply with the LCR



# The Impracticality of using the General Fund

- Priorities are police, fire and rescue



# And by the way, there's that thing called the law

- Expending public funds for the benefit of private property is unconstitutional
- Unless, specifically authorized by the legislature
- *Bolt v City of Lansing*, 459 Mich 152 (1998)



# The condition for an appropriation is not in place

- Express support of two-thirds of House and Senate. Const 1963, art 4, § 30





# Lansing, we have a problem

- Municipalities are prohibited from assessing an unlawful tax upon citizens without voter approval.
- Michigan Supreme Court held that a municipal fee is an unlawful tax if it is not regulatory, proportional and voluntary.
- Spreading the cost of LSLR across a community is NOT proportional to the cost of service each citizen receives.



You might not know it, but  
when it comes to infrastructure  
 $1+2+3=1,000$

1. The new lead rule
2. Liability for basement flooding lawsuits
3. Settlements for stormwater charges



# What's next?

- Request for a Declaratory Ruling to MDEQ
  - By GLWA, DWSD and WRC
  - Filed August 13, 2018
- MDEQ Guidance Documents
- Public Perception





# Questions?

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