



REGION 6

DALLAS, TX 75270

September 25, 2024

Mr. Bryan McMath
Executive Administrator
Texas Water Development Board
1700 North Congress Avenue
Austin, Texas 78701

Mr. Jon Niermann
Chairman
Texas Commission on Environmental Quality
12100 Park 35 Circle, MC 100
Austin, Texas 78711

Dear Mr. McMath and Mr. Niermann:

The purpose of this letter is to notify you that pursuant to 2 CFR 200.208(d), the EPA is adding a special condition to Assistance Agreement # 4L 02F48102-0, see Enclosure 1, effective the date of the award, that will require the Texas Water Development Board to submit its service line inventory count required under the Lead and Copper Rule Revisions for the systems listed in Enclosure 2, by November 15, 2024, as explained in the term and condition.

1. Reason for the Action

The EPA is taking this action because of concerns that Texas has not reliably reported data to the EPA under the 7th Drinking Water Infrastructure Needs Survey and Assessment. The EPA has identified a risk associated with the Lead Service Line Replacement capitalization grant awarded to Texas. The EPA conducted a risk evaluation under 2 CFR 200.206(c), and based on this evaluation, including recent discussions with the EPA's Office of Inspector General, the EPA has determined that the information Texas submitted to the EPA, which forms the basis for Texas' Fiscal Year 2023 Bipartisan Infrastructure Law Lead Service Line Replacement allotment, is not reliable. The EPA needs more information from the state to evaluate the appropriateness of Texas' allotment before any FY23 DWSRF BIL LSLR funds can be spent.

The EPA worked with states to collect service line material information from water systems across the country as part of the 7th DWINSA for the first time in the assessment's history. The 7th DWINSA

provided the best-available national and state-level projections of service line materials and counts. The EPA depends on states, as grant recipients, to be reliable reporters of information to the EPA. The information submitted by Texas was used in the development of the lead service line-specific allocation formula for distributing the FY 2023 DWSRF BIL LSLR funding. After issuing the FY23 allotments, the EPA offered states and systems a [one-time opportunity](#) to adjust their reported service line information under the 7th DWINSA at the request of states and because the Agency recognized that service line information continues to evolve as water systems develop inventories required under the Lead and Copper Rule Revisions (LCRR). The EPA used the updated LSL counts to develop the FY 2024 DWSRF BIL LSLR allotments.

The EPA strongly encouraged Texas's participation in the one-time update to the 7th DWINSA lead service line questionnaire by reaching out numerous times between November 2023 and February 2024 through calls, emails, and official letters. Texas notified the EPA that it would not be participating in the one-time update because "[w]e feel that we got a good response the first time around and would like to stick with those numbers." Due to continuing concerns, the EPA notified Texas that the Agency would directly reach out to systems to verify if they had updates. This outreach effort was part of the EPA's quality assurance/quality control process.

When the EPA reached out to the City of Houston, who had reported the largest number of lead service lines in the state, the water system informed the Agency that their original submission reflected a data entry error and none of its lines should have been reported as lead service lines. Houston additionally informed the EPA that the system had notified Texas of the error months prior. Even after the EPA discussed the problem of Houston's unreliable data with Texas, Texas did not submit updated information to the EPA to resolve this data entry error. To address the risk presented by the state's decision not to share corrected Houston data with the EPA, and the unreliable data Texas submitted to the Agency, the EPA is requiring this special term and condition included in Enclosure 1 to evaluate the appropriateness of the data Texas submitted under the 7th DWINSA that was used to calculate Texas' FY 2023 DWSRF BIL LSLR allotment.

2. Nature of the Action to Remove the Special Condition

As, explained in the term and condition, the EPA requires that Texas provide the LCRR initial inventory service line count data for the 114 medium and large community water systems for which Texas submitted data under the 7th DWINSA. See Enclosure 2 for a list of these systems. The EPA is awarding Texas its FY23 capitalization grant, but Texas will not be allowed to draw down funds from this grant until Texas receives written notification from the EPA that the specific condition is satisfied.

3. Time Allowed for Completing of the Action

The additional information described in the term and condition is to be submitted by no later than November 15, 2024, i.e., within 30 days of the LCRR inventory compliance deadline, which is October 16, 2024. Please use the spreadsheet in Enclosure 2, which contains the list of select water systems, to submit the information requested. If you do not provide the EPA with timely LCRR initial inventory service line count data for the selected water systems, the EPA may take appropriate action under 2 CFR 200.339, such as considering de-obligation of funds from the capitalization grant.

4. Method for Reconsideration

Texas can request that the EPA reconsider this action by providing a written explanation as to why the lead service line questionnaire data Texas submitted to the EPA as part of the 7th DWINSA provides a reliable representation of the number of LSLs in the state, including an explanation of Texas' quality assurance process. The explanation must be provided within 5 business days from the date of this notice letter, unless the EPA provides an extension in response to a written request from Texas. A request for reconsideration, and any requests for an extension, must be sent to Tongee Flemming, Acting Deputy Division Director, Mission Support Division Region 6, at Flemming.Tongee@epa.gov.

I appreciate your assistance with this action. Please also coordinate with Chloe Adelman (Adelman.Chloe@epa.gov, 214 665 6796) of the DWSRF program as necessary.

Sincerely,

Tongee Flemming
Acting Deputy Division Director
Mission Support Division Region 6

Enclosures

1. Special Term and Condition
2. Inventory Data Table

cc: Jessica Pena, TWDB, Deputy Executive Administrator
Marvin Cole, TWDB, Director, Program Administration and Reporting
Cari-Michel La Caille, TCEQ, Director, Office of Water
Jennifer McLain, EPA, Director, Office of Ground Water and Drinking Water
Yu-Ting Guilaran, EPA, Deputy Director, Office of Ground Water and Drinking Water
Anita Thompkins, EPA, Director, Drinking Water Infrastructure Development Division
Matt Klasen, EPA, Acting Deputy Director, Drinking Water Infrastructure Development Division
Kiri Anderer, EPA, Supervisor, Water Infrastructure Technical Support Branch

ENCLOSURE 1

Special Condition Pursuant to 2 CFR 200.208

Due to the EPA's and the EPA Office of Inspector General's concerns that Texas has not been a reliable reporter for the LSL questionnaire data originally provided by the recipient to the EPA as part of the 7th Drinking Water Infrastructure Needs Survey and Assessment, which forms the basis for Texas' Fiscal Year 2023 Bipartisan Infrastructure Law Lead Service Line Replacement allotments, the recipient agrees to provide the EPA with the Lead and Copper Rule Revisions initial inventory service line count data for select medium and large community water systems by November 15, 2024. The EPA provided the list of select water systems to the recipient as Enclosure 2 to the letter sent to the recipient on September 25, 2024. This list is the same as the list of systems, surveyed systems as part of the 7th Drinking Water Infrastructure Needs Survey and Assessment.

The recipient shall ensure that the information provided to the EPA under this term and condition meets the EPA's documentation requirements for the initial inventory required under the LCRR. The EPA will use the information that the recipient provides pursuant to this term and condition to evaluate the appropriateness of the recipient's data that it submitted to the EPA as part of the 7th DWINSA.

The reasons for this condition, the requirements for its removal, and the method for reconsideration are detailed in the EPA's notice letter sent to the recipient on September 25, 2024. If the recipient does not provide the EPA with timely LCRR initial inventory service line count data for the selected water systems in accordance with this term and condition, the EPA may take appropriate action under 2 CFR 200.339, such as considering de-obligation of funds from this capitalization grant.

Please submit the requested data in the file provided as Enclosure 2 to the EPA's September 25, 2024, notice to Chloe Adelman at adelmann.chloe@epa.gov.