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Great Lakes & St. Lawrence Cities Initiative

Field Hearing on Barriers to the Implementation of the Infrastructure, Investment and Jobs Act
Written Testimony of Milwaukee Mayor Cavalier Johnson
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Milwaukee water equity need: Equitable Investment in Safe Drinking Water Infrastructure.

Like many communities across the country, Milwaukee is working to replace lead service lines (LSLs) and invest in other aging infrastructure to ensure reliable access to clean, affordable drinking water. Milwaukee began systematically replacing more than 73,000 lead service lines in 2017. Safe Drinking Water Loan Program (SDWLP) financing has been essential to replacing more than 5,000 LSLs in the past six years. Several obstacles, primarily the limited funding available, have prevented Milwaukee from replacing more than 1,000 LSLs per year, leading to an unacceptable 70-year timeline to replace all remaining LSLs.

Milwaukee is determined to replace all residential lead service lines as quickly and equitably as possible. Infrastructure, Investment and Jobs Act funding will allow Milwaukee to continue to replace LSLs, but Milwaukee must receive its fair share of available funding if the city is to accelerate the pace of LSL replacement work. In order to scale up the scope and pace of LSL replacement and in anticipation of additional federal funding, Milwaukee Water Works (MWW) is redesigning its LSL replacement program with a focus on equity.

Milwaukee ordinance does not currently have an equity component. City ordinance currently requires replacements at childcare facilities, if a leak or failure occurs, and during certain planned public improvement projects. Milwaukee Water Works is refining the LSL replacement program with a focus on promoting equity in the prioritization of LSL replacement. In addition to existing requirements to replace certain LSLs, Milwaukee Water Works plans to identify and rank census blocks for priority by balancing three factors: the density of LSLs, intensity of elevated Blood Lead Levels among resident children, and an aggregate score of socioeconomic indicators of disadvantage among residents.

Barriers to Equitable Implementation of the Bipartisan Infrastructure Law

1. Lack of alignment between the Priority Ranking and Evaluation Form, requested support, and awards

Milwaukee's experience indicates that there is no clear correlation between the DNR's Priority Evaluation and Ranking Form (PERF) score and how much funding a community can expect to receive. Milwaukee ranked fifth highest of 75 communities for LSL replacement in 2022, according to the DNR's "22 CY Private Lead Service Line Replacement Program Funding List," but the DNR only awarded Milwaukee \$4.5 million of the \$8.5 million requested.

Recommendation: Align Priority Evaluation and Ranking Score with requested amount and award.

2. A lack of equity in the awards for Safe Drinking Water Loan Program financing for LSL replacement when considering a municipality's proportional share of the state's LSLs.

SDWLP funding for LSL replacement is not proportional to the number of LSLs in a given community. It is not equal, and certainly not equitable. If communities received equal funding, each community would receive a share of available funds that is proportional to the number of LSLs in that community.

Milwaukee has approximately 32% - 40% of Wisconsin's lead service lines. Current estimates range from 170,000 to 219,000 LSLs in Wisconsin. Milwaukee has 66,000 active residential LSLs, and about 69,000 LSLs in total. Despite having 32% - 40% of LSLs in Wisconsin, Milwaukee received 10% of funding available for LSL replacement in 2022. The DNR made \$43 million available for LSL replacement via the SDWLP, all as principal forgiveness, in 2022. The DNR awarded \$4.5 million to Milwaukee in 2022.

At a minimum, the DNR should award SDWLP funding for lead service line replacement in part based on the number of lead service lines that a community has relative to the number of lead service lines in the state. Truly equitable distribution of federal resources would mean that no single community completes replacement of their full LSL inventory before any other community.

Recommendation: Align SDWLP awards for LSL replacement with the proportion of LSLs in a community, relative to the state total.

3) The timeline for applying for and notification of SDWLP financing does not align with municipal budgeting.

The state process does not occur on a timetable that aligns with local government planning and budgeting, making it difficult to plan and scale up LSL replacement work. While the EPA announces state allocations in January for the following (not current) State Fiscal Year, the Wisconsin DNR does not require an Intent to Apply submission from municipalities until October 31 and applications by the following June (18 months after the EPA announces federal awards). The DNR states it will announce awards to municipalities in late summer for the current

year - well into the construction season and nearly one year *after* most municipalities have completed their budget. In other words, most municipalities will not know how much SDWLP funding they have received for the current year until the summer construction season is well under way.

If the DNR were to move up their process and allow municipalities to submit their requests early in the year prior to year when funds would be utilized, and the DNR announced their awards *before* municipal budget season, it would be easier for municipalities to craft their local budget and scale up their LSL programs. Utilities could plan their LSL replacement work well in advance of the construction season and begin the preliminary administrative work. The ability to bid out contracts with confidence, in advance of the construction season, is essential to scaling up an LSL replacement program.

Recommendation: Move up the annual SDWLP process to facilitate local budgeting and infrastructure construction planning.

4.) Prohibition against municipalities of greater than 10,000 residents from receiving loans at 33% below market rate.

While the EPA appropriately directed states to modify definitions of disadvantaged communities with regard to principal forgiveness funding, stating that the EPA would consider disadvantaged community criteria that relied solely on population “problematic”, the EPA provided no such guidance with regard to the criteria for accessing below market rate loans. SDWLP financing is essential to several critical investments in Milwaukee’s drinking water infrastructure other than lead service line replacement

Wisconsin DNR policy creates a barrier to accessing the best rate of 33% of the market rate by requiring that communities have fewer than 10,000 residents. As Milwaukee Water Works stated in their public comment on the Draft 2023 SDWLP Intended Use Plan, “...with regard to the loans subsidized at 55% and 33% of the state’s market rate, MWW was disappointed to learn that the DNR continues to use population as the primary determining factor...This is unfair to any disadvantaged community with a population of greater than 10,000.”

MWW is the largest water utility in the state, serving nearly 870,000 residents, numerous hospitals, major industry, and thousands of small businesses. After many years of major capital investments, MWW’s debt to equity ratio is approaching the recommended threshold identified by the Public Service Commission. State policy as proposed will not incentivize Milwaukee to accelerate a number of important Capital Improvement Projects.

Recommendation: Allow communities with more than 10,000 residents to access SDWLP financing at 33% of the market rate.

5. A lack of incentives to encourage landlords to voluntarily replace their LSLs, and lack of authority for renters to participate in required LSL replacement on behalf of a landlord.

Like many municipalities across Wisconsin, the housing stock is a mix of owner-occupied and rental properties. There are more than 130,000 renters in Milwaukee, and many of those renters

reside in properties with lead service lines. There is currently no state financial incentive available to Milwaukee to encourage landlords to voluntarily replace their lead service line.

For those rental properties that fall under Milwaukee's current lead service line program, absentee landlord status poses a barrier to implementation. Milwaukee ordinance requires property owners to sign and return a document granting the city and contractors temporary right of entry in order to access the property. Landlords then must give 24-hour notice to renters before entering the property. Milwaukee also requires property owners to sign and return a document consenting to use a city-designated contractor to perform the work. Many landlords do not promptly return this documentation, leading to additional staff time and various extraordinary efforts in order to secure the necessary documentation, which delays the work, causes inefficiency, and ultimately increases costs that are borne by the city.

Recommendation: the DNR should advocate that the State Legislature adopt measures that 1) provide financial incentives that encourage landlords to voluntarily replace their lead service lines, and 2) allow renters to act on behalf of a landlord for the purposes of granting a right of entry and the use of a city designated contractor.