

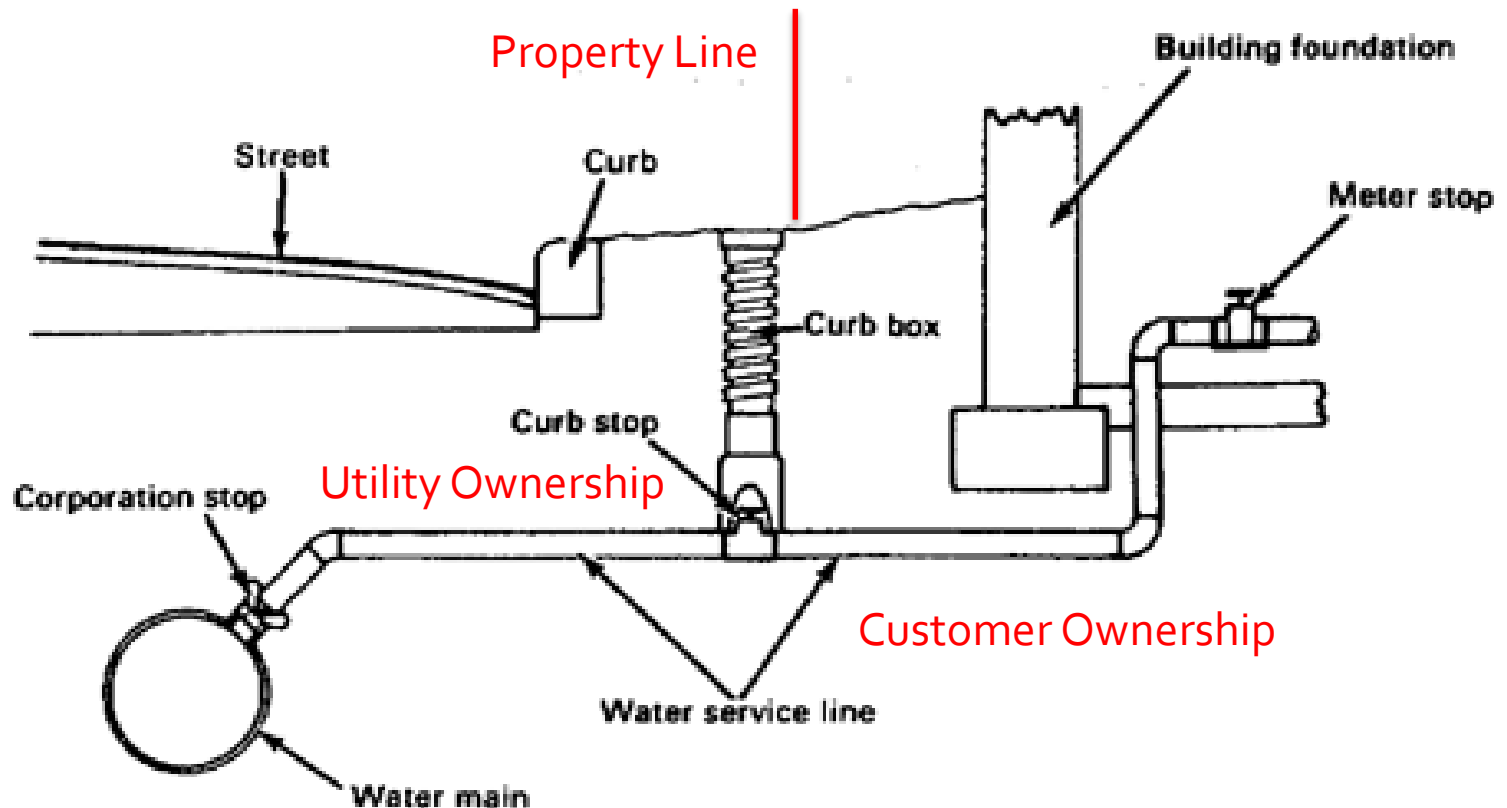
COMMITTEE ON WATER

**Infrastructure, Innovation, and Investment
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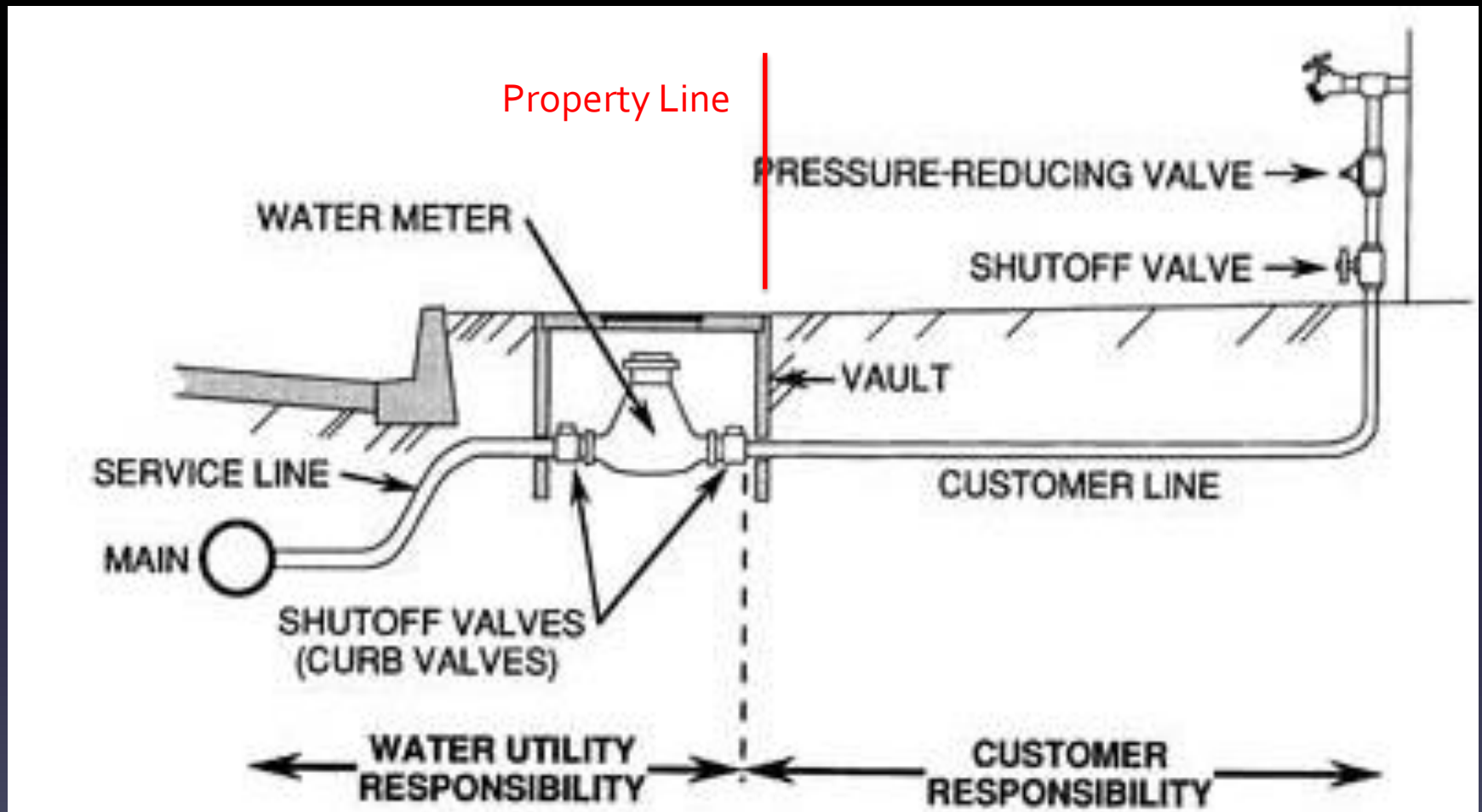
**129th Annual Meeting & Education Conference
National Association of Regulatory Utility Commissioners
November 12-15, 2017**

**“Getting To Unleaded: Challenges and
Solutions in Facilitating the Removal of
Lead Service Lines”**

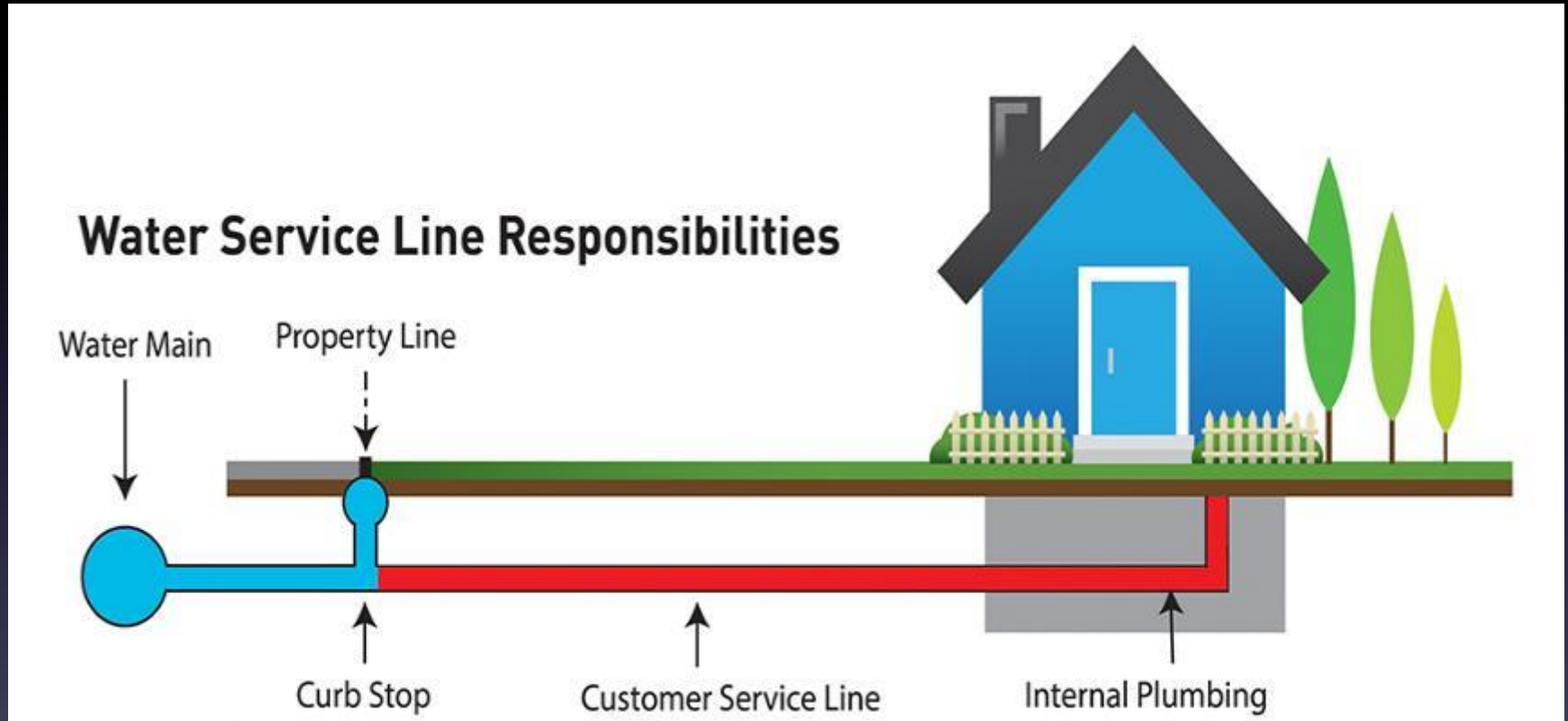
Typical Inside Meter Installation



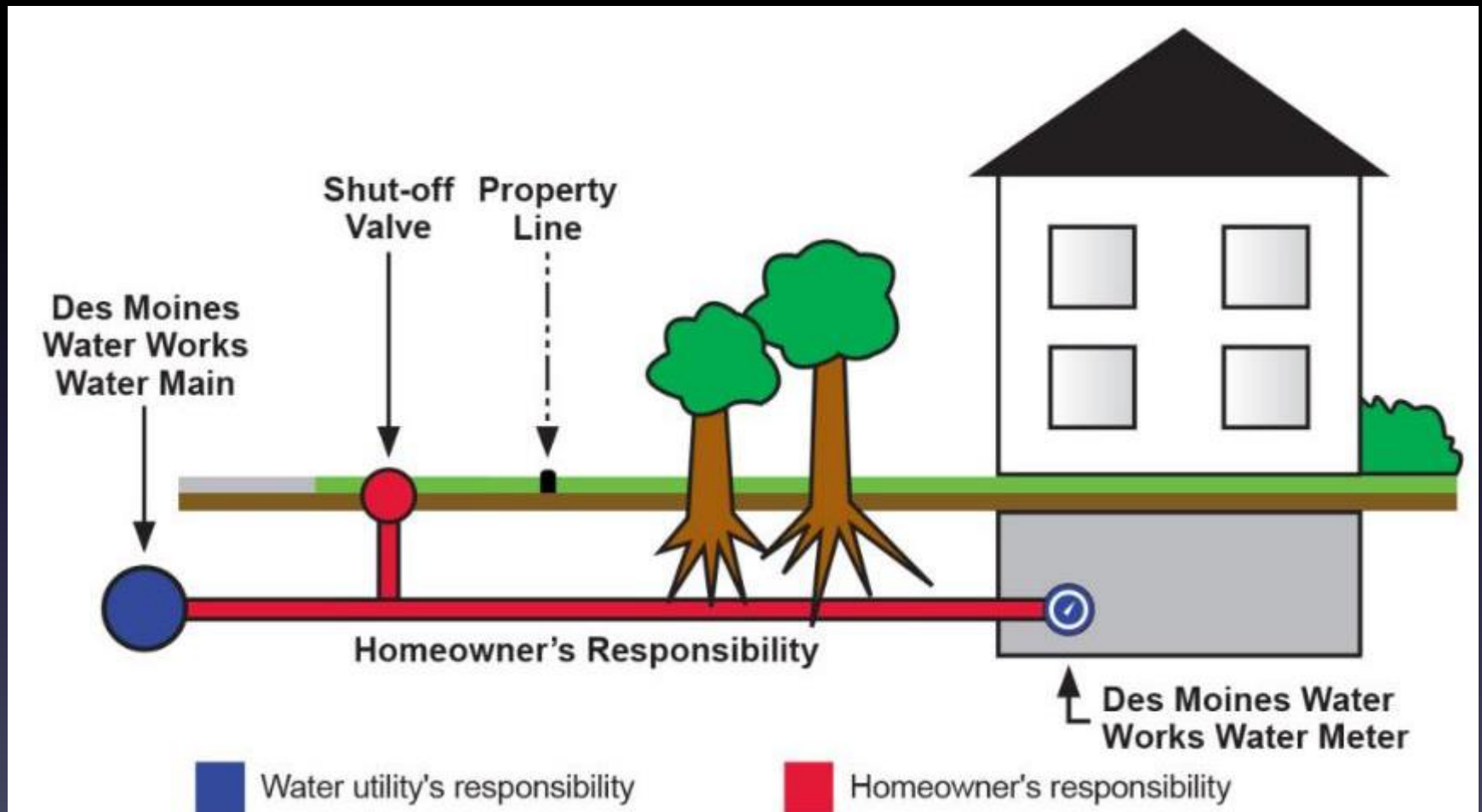
Typical Outside Meter Installation



Typical Investor-Owned System



Common Municipal System



Water Line Materials



Lead Service Pipes

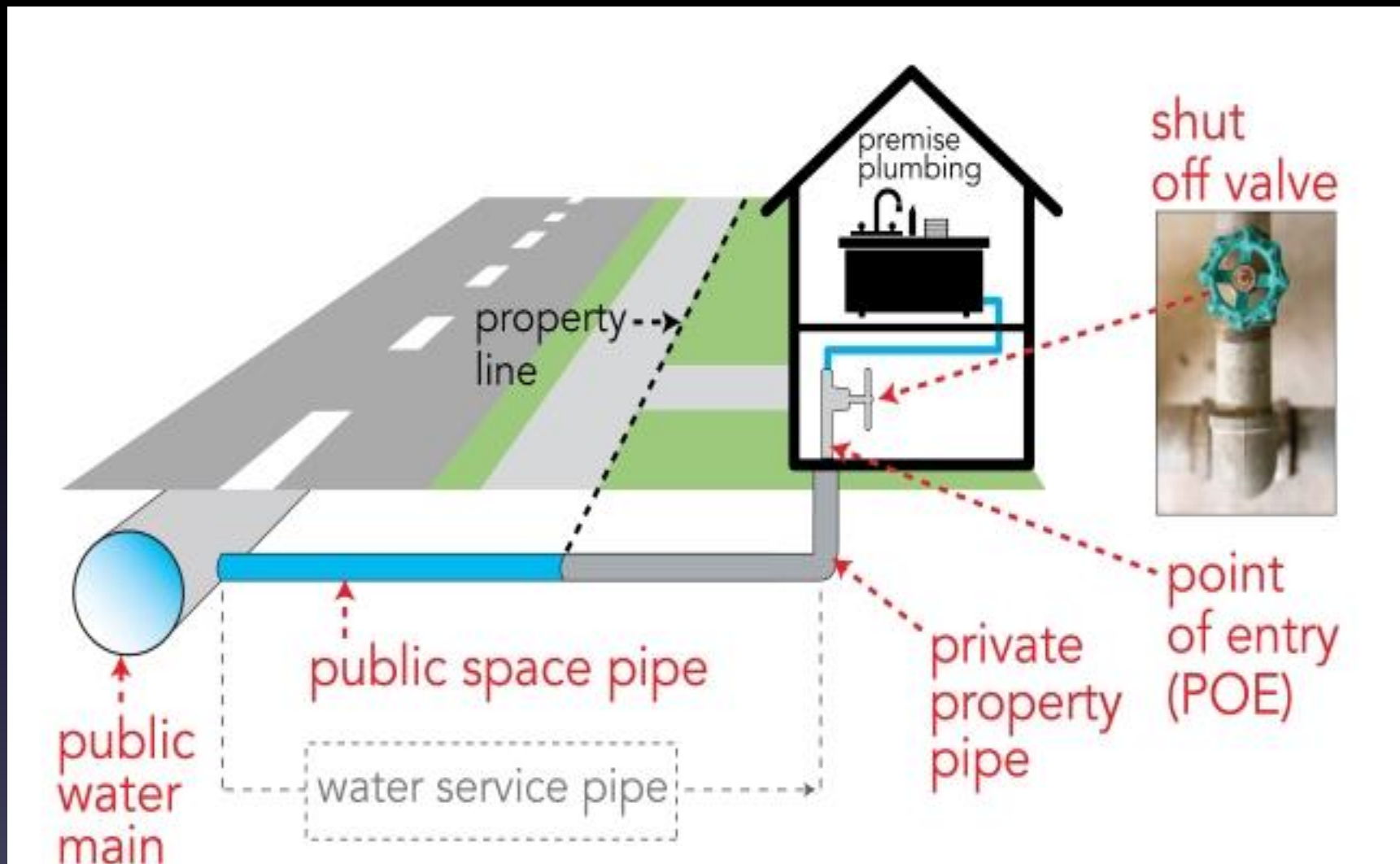


Lead & Copper Rule Summary

- Action Levels:
 - Lead: 15 µg/L
 - Copper: 1.3 mg/L (1,300 µg/L)
 - Must be exceeded in more than 10% of the sampled services
 - Treatment Technique – NOT A HEALTH-BASED LIMIT
- MCLG for Lead: Zero mg/L

Treatment & Control

- Corrosion Control
- Partial Elimination
- Full Elimination



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NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

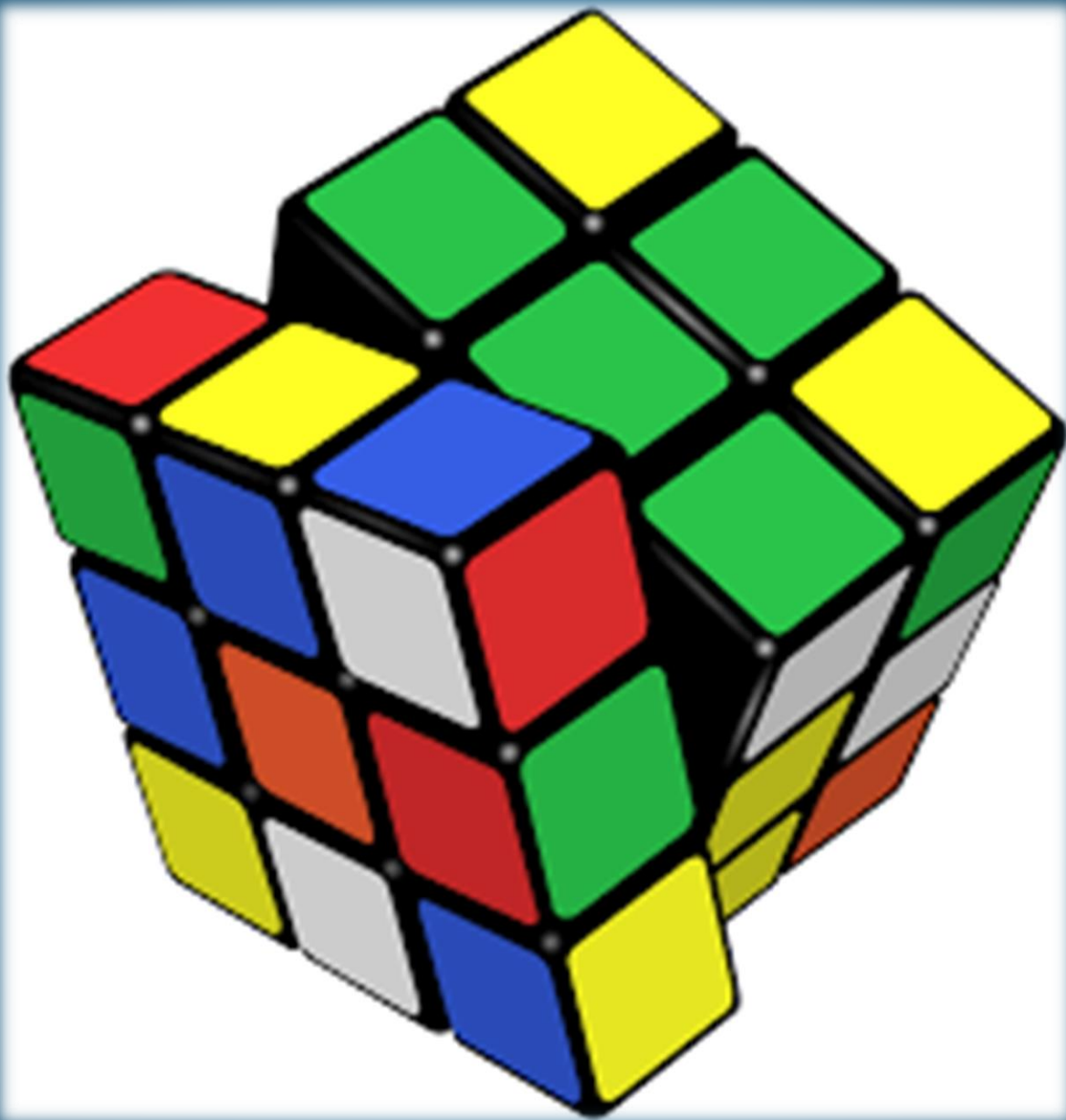
129th Annual Meeting

November 13, 2017

“Getting To Unleaded: Challenges and Solutions in Facilitating The Removal of Lead Service Lines”

Jay L. Kooper
Vice President, General Counsel
& Secretary
Middlesex Water Company





Lead Service Lines – Cuts Across Core Legal Subjects

Torts – Negligence and the Duty of Care

Property – Ownership and Control, Trespass

Constitutional – The Regulatory Compact/Ratemaking

*Palsgraf v.
Long Island
Railroad*



Torts – Negligence and the Duty of Care

Hopkins v. Lazo Realtors (Supreme Court of NJ)
Real Estate – Open House. Potential Buyer slips on basement steps while touring house.

Court – More expansive approach to common law application of Duty of Care. Homeowner and Seller's Broker owed Duty of Care to inspect premises

Test – Fact-specific analysis of: (1) Relationship of parties; (2) Nature of Attendant Risk; (3) Opportunity and Ability To Exercise Care; (4) The Public Interest

Torts – Negligence and the Duty of Care

Application To Water Utility & Customer-Side LSL

- Current Customers
 - No question water utility has duty of care
 - Proactive warning and educating customer of options
- Future Customers if Current Customer Refuses
 - If water utility educates current customer and refusal to replace then current customer can reasonably foresee risk and utility has fulfilled duty to warn.
 - But Utility still exposed to risk of litigation

Property – Ownership and Control, Trespass

RIDDLE:

When is a water utility legally responsible for the portion of a water service line that it does not own, did not install, has not mapped, cannot find and cannot access?

ACCORDING TO THE DEPUTY ATTORNEY GENERAL OF NEW JERSEY:

If the water utility is “deemed to control” that portion of a water service line (In Re Readoption of N.J.A.C. 14:2). This argument was remanded by Superior Court of New Jersey, Appellate Division.



Constitutional – Regulatory Compact/Ratemaking

The Regulatory Compact: Provide investor-owned utilities with the fair opportunity to earn a just and reasonable return on their prudently invested capital (U.S. Const. amend. V & XIV)
(FPC v. Hope Natural Gas, 320 U.S. 591 (1944))

York Water (PA PUC – Decided March 2017)

- LSL Replacement Costs treated as utility's regulatory asset regardless of LSL ownership.
- Costs must be tracked
- Costs amortized without recovery of carrying costs

Constitutional – Regulatory Compact/Ratemaking

PA American Water (PA PUC – Filed May 2017)

- LSL Replacement Costs capitalized and included in Rate Base as “eligible property.”
- Recovery of LSL Replacement Costs through Base Rates and DSIC.

NJ American Water (NJ BPU – Filed Sept. 2017)

- Part of NJ American Rate Case Petition
- Seeks recovery for customer-side LSL replacements made through end of test year in base rates
- Seeks recovery for customer-side LSL replacements made post-test year through DSIC

Constitutional – Regulatory Compact/Ratemaking

Indiana Public Law 91 (Enacted April 2017)

- Allows Indiana URC to approve a utility's request to fold the cost of LSL replacement into rates on condition of submission of plan that addresses 10 specific elements plus findings of reasonableness and in public interest.

Wisconsin Senate Bill 48 (Introduced Feb. 2017)

- Would allow Wisconsin PSC to approve a utility's request to recover the cost of LSL replacement financial assistance programs in rates.

Constitutional – Regulatory Compact/Ratemaking

Common Thread of Various State/Utility Approaches

- Treats a customer-side LSL as a regulatory asset for purposes of allowing the water utility to replace a customer-side LSL.
- Retains the vesting ownership and responsibility for customer-side LSL with the customer.

Unanswered Question Going Forward

- Do these approaches solve the puzzle?



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