

JULY 21, 2004
STATEMENT OF
NATIONAL RURAL WATER ASSOCIATION
ENVIRONMENT AND HAZARDOUS MATERIALS SUBCOMMITTEE
U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, DC
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The Holder report concluded that the EPA gave WASA conflicting advice and signed off on many decisions the utility made.

Washington Post, July 17, 2004

“The fact that the EPA knew -- and in many cases endorsed -- what WASA was doing.”

Jerry Johnson, July 16, 2004 Statement

Summary:

The Safe Drinking Water Act relies on a uniform regulatory compliance program – at the expense of the judgment of locally elected officials – that is too inflexible and arbitrary to handle local individual problems. The D.C. lead crises serves as an example.

First, a recent EPA disinfection rule steered WASA to a new disinfection regiment causing a change in the water chemistry that resulted in corrosion and increased lead concentrations. This example demonstrates the federal government mandating a new uniform disinfection process without adequate consideration of local judgments of its local impacts (and unintended consequences such the creation of new undesirable chemicals, or increase in lead concentrations).

Second, once the EPA’s mandate caused a lead contamination issue, the EPA process stipulates a rigid compliance solution that doesn’t fit the problem it created. Instead of developing an ad-hoc plan to make the public aware of the problem and responsibly address the water treatment, EPA mandates the strict adherence to regulations (including specific public notice language and schedules for removal of lead lines). The EPA solution was crafted in 1991 before the causes of D.C.’s problem were understood, imagined, or contemplated.

Changes in treatment and details of public notification must be evaluated on a case-by-case basis (this is currently against the law). In this case, WASA and EPA probably knew the exact federal prescription for public notice would not properly convey what was really happening and would be used by the environmental community and media to unnecessarily alarm the public. However now that there is a political crisis and investigations underway; regulators are taking cover in the strict adherence to regulation. Just how sacrosanct is the exact application of federal regulations when EPA allowed Columbus, Ohio out of some of the compliance details of the lead rule that was not provided to WASA?

Congress or EPA can expand the regulatory program and require more federal uniform mandates on locals in response to the District experience. This has been the history of national drinking water legislation. However, this will not solve the problem of drinking water protection because the federal government: (1) cannot possibly design a program that foresees the infinite challenges that local communities face in providing safe water, and (2) does not have to deal with the reality of balancing competing public health priorities. The problem with the Safe Drinking Water Act is that improving drinking water in small communities is more of a RESOURCE problem than a REGULATORY problem.

We are providing testimony on related issues including: (1) a recent report by the EPA that concluded alternatives to drinking water chlorination, such as chloramines, may produce "increased concentrations" of some other byproducts, and (2) EPA has not approved bottled water as an approved technology which could make arsenic compliance for many small communities affordable.

The National Rural Water Association has over 25,000 small and rural community members who supply drinking water or wastewater to their communities. These communities are governed by locally elected officials and are non-profit. The Safe Drinking Water Act, in many instances, directs EPA to override the desired local health policy of these communities. We urge you to not let this incident be the predicate for removing more of our local authority to determine local policies.

Mr. Chairman, you have heard that the way to solve the lead problem is by removing local authority and transferring it to the federal government. This is one solution, however, it is not the only policy that Congress should consider. The country's water protection program (Safe Drinking Water Act) relies on a uniform regulatory compliance program – at the expense of the judgment of locally elected officials – that is too complex and arbitrary to handle local individual problems. This program was guaranteed to fail because: (1) it can't possibly manage future local crises that were not contemplated when the regulation was designed and published in the Federal Register, (2) it doesn't consider the unintended consequences of its mandates – it operates in a vacuum, and (3) it can't balance competing local priorities. These three flaws appear to have contributed to the current situation in the District. Now when there is a crisis that needs civic leadership – no one is responsible; and the Federal Register isn't talking.

What Caused The Problem in the District?

Local judgment was overridden by the federal regulatory system, which was too arbitrary and inflexible to deal with the situation. One theory is the EPA Rule to reduce byproducts from disinfection steered the WASA to a new disinfection regiment that caused a change in the water chemistry, resulting in corrosion and increased lead concentrations. The correlation between two rules is not adequately considered when applied in the real world because they are implemented

by EPA in a vacuum. Additionally, the law prohibits the District from balancing the competing objectives of the two rules.

Another theory, a mechanical action disrupted homeowners' plumbing enough to cause a temporary spike in lead samples. If this were the case, the regulations contain a solution (and public notification protocol) based on the long-term problem including corrosion control and replacing some lead service lines, which would not fit if this theory were correct.

The Act and the regulations don't fit in either case. If the cause is something else, why are we mandating particular solutions for problems we don't understand? These necessary balancing judgments are beyond the capability of static regulations and beyond the abilities of regulators charged only with the enforcement of the specific regulations. Regulators can only regulate the letter of the law, they can't think beyond compliance – which is critical in determining public health policy. It is essential to realize that meeting regulations is not synonymous with public health protection. In the District example, it is likely that WASA and EPA would have looked at the situation differently. EPA was forced to focus on enforcement, regardless of unintended consequences. On the other hand, if WASA retained authority, it would have had the discretion to be more concerned with the overall public health implications and the ability to be more cautious in changing water treatment regimes. It is only elected policy makers with the authority to look at public policy in a holistic manner that can balance public health risks.

Once the lead levels started to increase, WASA and EPA probably knew that the higher lead levels were not as alarming as the environmental community and media would claim because of the conservative nature of the standards, and that this may be a temporary problem which the federal public notification requirements would not convey. In all of WASA's actions, it appears that after months of the situation, which EPA was reportedly aware of, WASA only violated the public notification elements of the regulations, not any water quality criteria. Just how sacrosanct is the exact application of federal regulations?

EPA allowed Columbus, Ohio out of some of the compliance details of the lead rule that was not provided to WASA. EPA's ruling in Columbus¹ shows that they think some higher lead levels in water are not a health risk. They allowed Columbus a safe harbor if they had higher levels. Why was Columbus (allowed this special exemption) and not D.C.? And more importantly, how much higher than the federal standards can you go before there is a health risk? This common sense question is one that EPA can't answer.²

¹ "In the past, the City of Columbus made certain changes to the method it uses to treat drinking water. Inadvertently, the treatment change caused an increase in the level of lead in the drinking water.... Through this Agreement, the US EPA would suspend the lead service lines sampling and replacement provisions for up to three years beginning if and when the City exceeds the lead limit..." Federal Register: July 27, 2000 (Volume 65, Number 145) [Page 46166-46167]

² In a March report, EPA did not find that arsenic concentrations above their standard necessarily present an "unreasonable risk to health." [USEPA, Exemptions & the Arsenic Rule, March 2002, p. 11, #7] Instead of identifying the levels of arsenic that are "protective of public" [42USC300g-1(b)(15)(B)] or don't present "an unreasonable risk to health" [42USC300g-5(a)(3)] as named in the Safe Drinking Water Act and that the Agency was requested to name by several Congressmen, EPA creatively chose to identify what these levels are not. "EPA is... determining what does not pose an unreasonable risk to health with respect to arsenic, rather than address the

Considering the extreme values in D.C.'s water that exceeded EPA's action level by a factor of over 20; the numerous homes tested over the lead action level; the media uproar over this issue; and the alarm it has fomented in the public, would you ever think the CDC would have said the following just last week: "...although lead in tap water contributed to a small increase in BLLs in DC, no children were identified with BLLs >10µg/dL, even in homes with the highest water lead levels." Does this finding by CDC seem consistent with the level of alarm being portrayed to the public?

Public Notification (Violations vs. Public Health Risks)

The public notification process is another area in the Safe Drinking Water Act that is flawed. The relationship between "violation" and public health risk must be evaluated on a case-by-case basis. Mandatory public notice requirements for all violations can be used to mislead the public. Some violations are worse than others and it is the health impact and degree of malice that needs to be conveyed to the public more than the simple fact that there was a violation. The current federal standard for lead in drinking water is 15 parts per billion (ppb) [based on a percentage of homes tested]. Does that mean that 14.5ppb is safe and 15.5ppb is comparably unsafe? It certainly does not. However, this is how the issue is presented to the public. The news reports of the situation commonly report that water with lead levels above 15ppb is "contaminated" and, inferentially, anything below is not contaminated. Safe, clean, polluted, and contaminated are all characterizations and can be misleading and inflammatory. There is no bright line of concentrations in the parts per billion when lead levels become safe or unsafe. The actual health effects are uncertain and are dependent on the amount of water consumed, age of the person, amount of time exposed and other variables. This is why more public information is better – not just the alarming news. In this instance, the public should have known all along the levels of lead in every test and the balancing that was going on in the water chemistry. This constant public discussion and disclosure would lessen the ability of the media or interest groups to create an appearance of a cover up when there was none.

The public needs to understand that removing all lead from the water supply is technologically impossible and not necessary to protect the public. So the civic policy has dealt with how much lead we can live with and what is the most economical way to get it to acceptable levels. This can be different for separate communities, with unique circumstances, economies, natural environments, demographics, extraordinary local considerations, etc. For example, a community with lead at 16ppb in their water and numerous public housing units with lead paint should not be forced into the same compliance measures as community with 300ppb of lead in the water and no houses with lead paint.

The Solution Congress Should Consider

Ask yourself who cares more about the health of the children in the District (and is more responsive to those families), the local mayors or an EPA regional employee in Philadelphia? If the mayors, or the regional governments of WASA, had the authority over managing the health policy underlying the water supply – we would likely not be in the situation we are in now

much more complex issue of what does constitute an unreasonable risk to health." [USEPA, Exemptions & the Arsenic Rule, March 2002, p. 11, #7]

because they are elected for the exact reason of managing issues that have many variables and impacts. Mayors can balance local priorities in a way that regulatory enforcers cannot. Now you are being asked to give more authority to EPA at the expense of the local mayors.

Congress or EPA can expand the regulatory program and require more federal uniform mandates on locals in response to the District experience. This has been the history of national drinking water legislation. However, this will not solve the problem of drinking water protection because the federal government cannot possibly design a program that foresees the infinite challenges that local communities face in providing safe water. The problem with the Safe Drinking Water Act is that improving drinking water in small communities is more of a RESOURCE problem than a REGULATORY problem.

The best way to avoid threats is to have the most educated and responsible local officials overseeing the water supply. We urge you to consider this alternative perspective of local governments and their citizens. The key to finding the best public health policy to tackle the lead issue is for it to be derived and supported by the people that benefit from a safe drinking water and have to pay for the service. If the locals don't like the results, they can elect a new government.

The Role of National Environmental Groups in Local Issues

Why do the environmental groups support a federal control program? The answer is because they can control it better. Most of their policies would not be accepted at the local level (by the people) if there was an open public health debate. Therefore, the groups have made an expertise at getting national legislation enacted that they can exploit through lawsuits as well as intimidating bureaucrats into publishing over-zealous regulations.

Many interest groups petition this committee to authorize more and more, ever-stringent federal unfunded mandates on small communities with the intention of improving public health on the community's behalf. Unfortunately, this does not work and things are not that simple. The key to long-term improvement is local support, local education and available resources. We continually ask for the list of the communities that need to improve their drinking water and are not willing to take the steps to do it. Such a list does not exist. We encourage organizations that advocate for increasing unfunded mandates on communities to take their case directly to the local community. If they can get the community's support, then we would back any new standard or policy. The problem has been that communities do not support most of these policies at the local level because they waste limited resources on non-priority projects.

A Current Example of the Unintended Consequences of the SDWA

It appears that the Stage I rule was the rule that caused WASA to change their treatment to chloramines and resulted in the increase in lead concentrations in the drinking water. The National Rural Water Association is urging EPA to rethink finalizing the Stage 2 Disinfection and Disinfection By-Products (Stage 2) and Long Term 2 Enhanced Surface Water Treatment (LT2) Proposed Rules in light of the recent chloramines study released by the EPA Office of Research and Development. The study concluded that alternatives to drinking water chlorination, such as chloramines, may produce "increased concentrations" of some byproducts.

We are concerned that this rule may result in unintended consequences including exposure to the public of “certain dihalogenated disinfection by-products and iodo-trihalomethanes.” We are particularly concerned by the report’s following finding:

“Important observations included finding the highest levels of iodo-trihalomethanes (THMs) at a plant that used chloramination without pre-chlorination... Another important observation involved finding the highest concentration of dichloroacetaldehyde at a plant that used chloramine and ozone disinfection. Therefore, although the use of alternative disinfectants minimized the formation of the four regulated THMs, certain dihalogenated DBPs and iodo-THMs were formed at significantly higher levels than in waters treated with chlorine. Thus, the formation and control of the four regulated THMs is not necessarily an indicator of the formation and control of other halogenated DBPs, and the use of alternative disinfectants does not necessarily control the formation of all halogenated DBPs, and can even result in increased concentrations of some. Moreover, many of these halogenated DBPs—including certain dihalogenated and brominated species—were not studied in the ICR.”

The proposed rules will likely require a significant number of water supplies to switch from their current disinfection process to chloramines which, according to the EPA’s recent findings, may have unknown public health risks and may be more harmful than chlorine.

Bottled Water As Compliance Technology

Small communities comprise more than 90 percent of the regulated water systems in the country. However, due to a lack of economies of scale, small-town consumers often pay high water rates and compliance costs more per capita than communities with large populations to spread out costs. At the same time, rural areas have a greater percentage of poverty and lower median household income. This results in a very high compliance cost per household in rural systems coupled with an increased inability to pay.

Currently EPA does not allow small communities with exceptional circumstances the option of using home delivered bottled water that meets standards (bottled water) as a compliance technology. The SDWA and EPA permit the use of point-of-use (POU) technology for compliance. Many of our small communities believe delivered bottle water may be a more reliable source of water that meets the standard than a POU technology at the faucet and not aware any substantive reason for allowing POU and at the same time, not allowing bottled water for compliance. The EPA Office of Water and Office of General Counsel has commented that nothing in the SDWA forbids use of bottled water to comply. This option could be a more economical means of compliance with numerous small communities that will face extreme hardship in constructing centralized treatment and potential hazardous waste disposal under the uranium and arsenic rules.