



November 7, 2013

Dr. Peter Grevatt, Director
Office of Ground Water and Drinking Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N. W.
Mail Code: 4601M
Washington, DC 20460

Re: Applicability of Reduction of Lead in Drinking Water Act to Fire Hydrants

Dear Dr. Grevatt:

The American Water Works Association, Association of Metropolitan Water Agencies, National Association of Water Companies and National Rural Water Association are committed to the goal of the Reduction of Lead in Drinking Water Act to protect the public from lead exposure. We appreciate EPA's ongoing efforts to resolve our concerns regarding implementation of P.L. 111-380.

In particular, we welcome your consideration of our concerns about EPA's recent interpretation extending applicability of the statute to fire hydrants in the final *Frequently Asked Questions* on the Act, response to Question 5, Oct. 22, 2013. The Agency's interpretation could strand hundreds of millions of dollars of public and private assets without providing any additional public health protection. For the reasons described in more detail below, we respectfully urge EPA to take immediate steps to clarify that hydrants are exempt from P.L. 111-380.

- Considering the plain text of the statute, which says nothing about hydrants, and the legislative history (see attached), which makes clear that Congress intended to mirror the laws in three bellwether states (none of which extends to hydrants), EPA's interpretation appears to be in error and should be withdrawn. At a minimum, any decision that P.L. 111-380 applies to hydrants should take place through a formal rulemaking. Such a decision would represent a significant expansion of the scope of the law and warrants a supporting record along with the other safeguards afforded by the Administrative Procedure Act.

- As you contemplate the clarification we are requesting, please recognize that until Oct. 22, 2013 no statement or action in the Congressional Record or by the Agency provided any indication that hydrants would be considered a potable water supply. Moreover, the third-party certification standard endorsed by EPA in the FAQs of May and October does not reflect the use-scenario underlying EPA's response to FAQ, Question 5. Consequently, we are now facing two new and significant expectations just two months before the prospective Jan. 4, 2014 compliance date. This situation effectively deprives hydrant manufacturers and water systems of the three-year transition period envisioned by Congress, when they enacted P.L. 111-380. A transition period that:
 1. Allows manufacturers to ensure the more brittle lead-free alloys will not impact the primary function of fire hydrants—fire protection;
 2. Enables manufacturers and distributors to re-tool and manage inventories in a way that does not create market disruptions or endanger manufacturing jobs; and
 3. Facilitates the introduction of new products into the marketplace without disruptions impacting water systems, home builders, and for other products, individual homeowners.

- Having gathered input from manufacturers, distributors and water utilities, it is clear to us that it will be impossible for the drinking water community to meet the Jan. 4, 2014, compliance date with respect to hydrants under EPA's current interpretation. The market disruptions and economic costs Congress was seeking to avoid are likely to occur.

- We appreciate the numerous challenges facing the Agency in crafting policy based on P.L. 111-380. However, please consider that health concerns associated with lead are not a matter of acute exposure, and that seldom if ever is any one hydrant of the millions that are installed across the country used to provide water for consumption. Moreover, in the rare instance that a hydrant is used as an emergency source of potable water, a hydrant serves this purpose for only a limited period of time.

In summary, we urge you to: (1) remove FAQ, Question 5 and the associated response; and (2) reconsider the Agency's premise for its current response to FAQ, Question 5, by preparing a FAQ response describing hydrants as exempt from compliance with P.L. 111-380 or, alternatively, reserve this topic for a future rulemaking such as the LT-LCR.

If it would be helpful to the Agency, we would welcome the opportunity to engage in a broadly-inclusive stakeholder process that would be implemented without delay to achieve our shared goal of protecting human health while averting the unintended consequences that we currently face.

We greatly appreciate your attention to this matter. Please feel free to contact any of the signatories to this letter to discuss this issue further.

Sincerely,



Thomas W. Curtis
Deputy Executive Director
American Water Works Association



Diane VanDe Hei
Executive Director
Association of Metropolitan Water Agencies



Michael Deane
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Mike Keegan
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Summary of Law and Legislative History

The law (both the SWDA and the Reduction of Lead in Drinking Water Act) is silent with respect to hydrants (and we note that the list of “pipes, pipe fittings, plumbing fittings or fixtures” in the law is not generally considered to capture products like hydrants). The legislative history makes clear that Congress intended to mirror an earlier lead free law enacted by California, and later followed by both Vermont and Maryland (156 Cong. Rec. H. 8617). The sponsor of the California law, Assembly Woman Wilma Chan, clarified in a letter to Speaker Fabian Nunez dated August 23, 2006, that the law was intended to apply only to devices that provide water for human consumption (and not devices that could reasonably be described as not providing water for human consumption). She specifically identified fire hydrants as being outside the scope of the law. Likewise, in Vermont, the state attorney general issued guidance confirming that as the agency charged with enforcing the state law, it would not consider hydrants to be subject to the statutory lead limit. And last but not least, in Maryland, the statute is identical to California's, and the supporting regulations use the same language as Congress. These regulations clarify that hydrants are simply not covered (i.e., neither included nor exempted). With California, Vermont and Maryland as explicit models for the federal law, and without anything in the legislative history to suggest a different reading or intent by Congress, we submit that EPA has good grounds to conclude that the federal Reduction of Lead in Drinking Water Act simply does not extend to fire hydrants.