

**Subcommittee on Environment and Climate Change**  
**Hearing on**  
**“There’s Something in the Water: Reforming Our Nation’s Drinking Water Standards”**  
**July 28, 2020**

**Ms. Diane VanDe Hei**  
**Chief Executive Officer**  
**Association of Metropolitan Water Agencies**

**The Honorable Frank Pallone, Jr. (D-NJ):**

1. Section 1412(b) of the Safe Drinking Water Act requires that the limits on contaminants in drinking water be feasible, which is defined as follows:

“For the purposes of this subsection, the term ‘feasible’ means feasible with the use of the best available technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration).” (1412(b)(4)(D))

Separately, the statute allows the U.S. Environmental Protection Agency (EPA) to set a weaker standard than what is feasible, based on a cost/benefit analysis. (1412(b)(6)).

- a. Do you understand the requirement that a drinking water standard be feasible and the authority to weaken standards based on cost/benefit analysis to be two separate processes? If so, do both steps consider cost?

**RESPONSE:**

**The requirement for EPA to specify a feasible standard for a given contaminant and the option for EPA to promulgate a final standard that balances regulatory costs and benefits are each components of a single regulatory process.**

**Sec. 1412(b)(4)(B) requires EPA to specify an MCL that is as close to the MCLG “as is feasible,” with “feasible” later defined as “feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration).” Importantly, this section directs EPA to take “cost into consideration” when identifying the best available treatment technologies, but does not mandate that cost be a determining factor when EPA specifies whether a given MCL predicated on the use of such technology is feasible.**

**At the same time as EPA proposes an MCL, Sec. 1412(b)(4)(C) requires the**

agency to “publish a determination as to whether the benefits of the maximum contaminant level justify, or do not justify, the costs.” This section therefore recognizes that it is possible for a “feasible” MCL to carry costs that outweigh its benefits.

If EPA determines under Sec. 1412(b)(4)(C) that the benefits of a “feasible” MCL do not justify the costs, then Sec. 1412(b)(6) gives EPA the *option*, following notice and opportunity for public comment, to promulgate an MCL “that maximizes health risk reduction benefits at a cost that is justified by the benefits.” This provision does not prohibit the promulgation of an MCL with costs that outweigh benefits, but simply allows EPA – after collecting and considering public comment – to adjust a proposed standard to better keep costs and benefits in balance. This feature of the statute is particularly important to provide regulatory flexibility when an MCL identified as “feasible” would carry compliance costs that are far out of proportion to the public health benefits.

In sum, through Sec. 1412 Congress has outlined a transparent, deliberative process through which EPA is required to establish MCLs that maximize public health protections while also offering limited flexibility in cases where the cost of the best available treatment technologies may be too much for communities to bear. AMWA continues to support this approach.

- b. During the hearing, you stated that the feasibility analysis is limited to large systems. Can you identify which specific portion of the definition of feasible is limited to large systems?

**RESPONSE:**

The definition of “feasible” itself does not reference the size of systems. But Sec. 1412(b)(6)(B) establishes a two-part analysis for EPA to conduct when considering an MCL that differs from a “feasible” MCL developed under Sec. 1412(b)(4)(B). First EPA must consider costs and benefits of the “feasible” MCL for all water systems. Then EPA must separately consider the costs and benefits of the “feasible” MCL for the subset of systems to which the MCL is likely to apply (specified in the statute as large water systems and other systems unlikely to receive a small system variance). If the costs outweigh the benefits only for the former category, but not the latter, then EPA may not promulgate a cost/benefit-influenced MCL under Sec. 1412(b)(6), and must proceed with the identified “feasible” MCL under Sec. 1412(b)(4)(B).

This means that large water systems could be required to comply with a “feasible” MCL that is not cost effective in aggregate for all water systems nationwide. That same “feasible” standard would effectively not apply to

**small water systems that receive a variance. In other words, virtually all large water systems will be required to comply with a “feasible” MCL that is generally cost effective for the customers of large systems, while it is possible that a more limited number of small systems would have to meet the standard.**

- c. What role do you see for federal financial assistance in lowering the cost of treatment technology to achieve compliance with new drinking water standards?

**RESPONSE:**

**The federal government has an important role to play in helping community water systems affordably finance critical infrastructure projects. Programs like the Drinking Water State Revolving Fund and the Water Infrastructure Finance and Innovation Act advance this objective by offering low-cost loan financing to help communities pay for needed capital investments. However, AMWA also believes it is important for the nation’s 50,000 community water systems to be self-sustaining based on water rate revenues, and should not rely on an ongoing stream of federal grants to support capital or operational investments necessary to achieve compliance with regulatory mandates.**

**Relying primarily on federal financial assistance would put customers at risk of a sudden rate shock if the federal funding spigot were ever shut off. Alternatively, if a steady stream of federal funding were established to cover operational expenses at individual water systems, local governments may come to expect and rely on these federal dollars, potentially incentivizing local officials to redirect their own local resources away from their water system and toward other spending priorities that are not subsidized by the federal government. This is why we believe it is important for the government to continue to take the cost of new regulations into account.**

**The Honorable Doris O. Matsui (D-CA):**

1. Ms. VanDe Hei, you work with water agencies across the country, so you have a unique view of the range of challenges associated with a changing climate.
  - a. Is there anything you would like to add to Ms. Chard’s comments on the threats that climate change poses to safe drinking water?

**RESPONSE:**

**Climate change and its effects pose a range of challenges to drinking water systems, including water scarcity due to drought and diminishing snowpack, flooding that follows more frequent storms and heavy downpours, rising sea levels that lead to saltwater intrusion into groundwater supplies, and**

**wildfires that put transmission infrastructure at risk. Drinking water systems nationwide are hard at work developing plans to make their supplies and infrastructure more resilient to these challenges, but it is a problem that is expected to grow with time.**

**We appreciate that in 2018 Congress created the Drinking Water System Resilience and Sustainability program at EPA. Housed in Sec. 1459A(l) of SDWA, the program offers competitive funding assistance to help communities enhance water supply options and increase the resilience of their drinking water systems to natural hazards such as floods, hurricanes, wildfires, or other hydrologic changes. However, eligibility for the program is currently limited only to drinking water systems that serve disadvantaged communities or communities of fewer than 10,000 people. This effectively excludes from eligibility roughly 4,300 of the nation's community water systems, which serve a collective population of nearly 250 million Americans – including all of the nation's largest metropolitan communities. AMWA is eager to work with Congress to expand eligibility of this program to invite competitive applications from all of the nation's community water systems, while implementing baseline set-asides to guarantee that small and disadvantaged communities continue to have unimpeded access to this assistance.**

**The Honorable John Shimkus (R-IL):**

1. In the area of emerging contaminants, some of these contaminants are appearing in just a few States, but not nationally.
  - a. Some States are issuing their own standards. How are some arguing there are barriers preventing the States from acting?

**RESPONSE:**

**The Safe Drinking Water Act allows any state to set its own drinking water regulation for any drinking water contaminant not regulated by the federal government. The Act also allows any state to set its own more stringent drinking water standard for any contaminant that is subject to a federal standard. Some states may have varying degrees of resources to carry out these tasks effectively, but nothing in federal law prevents them from doing so.**

- b. Do you think there is space to have a conversation to tailor regulations for emerging contaminants in a way that focuses just on those affected States?

**RESPONSE:**

**That is an interesting concept that should be explored further. For example, if a contaminant is predominantly found in the water in one region of the country, but states in that region lack the resources or will to establish their own drinking water standards for it, a regional federal standard could provide protection against the contaminant in the affected area. Meanwhile, water systems in other regions of the country without significant occurrence of the contaminant would not be tasked with screening for a contaminant that is not likely to be present.**

2. A source of much discussion in recent years has been the health advisory authority in section 1412(b)(1)(F) of the Safe Drinking Water Act, which is neither regulatory or enforceable, but can be used to provide health effects information and testing and treatment suggestions.
  - a. What are your thoughts on these health advisories, what is their proper role, and what changes, if any, should be made to them – whether statutory or administrative?

**RESPONSE:**

**Health advisories should be used carefully, when a serious public health threat presents itself before EPA is able to develop a regulation. But health advisories should not be used in place of formal regulations – they can confuse the public and leave water systems in a difficult place in terms of communicating risk and compliance to the public. This is why AMWA supports the development of a formal process and criteria that govern the development of health advisories, with a focus on the risks associated with chemicals in close proximity to water supplies and regional and localized contaminants of concern.**

3. System revenue, billing, and shut offs and reconnections have been a major point of discussion over the last several months.
  - a. Would you please discuss reductions in some drinking water system revenues as consumers are unable to pay for water?

**RESPONSE:**

**In April AMWA worked with the American Water Works Association and the consulting organization Raftelis to develop an estimate of the financial impacts of COVID-19 on drinking water systems nationwide. According to the estimate, drinking water systems could see revenues decrease by nearly \$14 billion over the course of one year. This sum is equal to nearly 17% of**

**utilities' annual revenues and is attributable to costs related to temporary shutoff moratoriums, increased customer delinquencies, reduced commercial revenues, and increased personnel expenses. Additionally, due to deferrals of planned water rate increases, drinking water systems could experience further revenue losses of approximately \$1.6 billion.**

**AMWA is currently in the process of working with Raftelis on a new survey of water systems that will identify actual revenue losses related to the pandemic that water systems have experienced over the past several months.**

4. Prior to the enactment with the 1996 Amendments to the Safe Drinking Water Act, there seemed to be frustration from many corners – EPA, State regulators, and water utilities.
  - a. Please recall for me what it was like back then and what the key issues were that these stakeholders were having?

**RESPONSE:**

**The 1986 Safe Drinking Water Act Amendments – the precursor to the 1996 Amendments – focused on the quantity of new regulations promulgated, not on the necessity or public health benefit of any given regulation. Success was measured by the number of new regulations enacted, thus forcing the agency to attempt to set standards for dozens of contaminants regardless of whether they were likely to be found in the nation's water supplies at levels of concern. This forced communities nationwide to divert resources toward screening for this growing list of substances rather than focusing their investments on specific contaminants that may pose a greater public health risk. And because publicly owned water systems are directly supported by their ratepayers, these additional compliance costs were paid for by members of the public.**

- b. Would you be concerned about an overhaul of the Act that removes many of the key features of the 1996 Amendments?

**RESPONSE:**

**The 1996 SDWA Amendments instated a transparent, science-based approach to regulatory development that considers the public health benefits of a regulation, how feasible an effective standard is to achieve, and compliance costs that will be borne by ratepayers. Without these features we could return to a scenario where various regulations are developed regardless of their compliance costs or resulting public health benefits.**

5. One of the key drivers of the 1996 Amendments was unfunded mandates. Yet, in today's world, the term is probably more 'underfunded Federal mandates' rather than 'unfunded mandates'.

- a. Considering funding levels and needs, what do you see as the practical impact on publicly owned drinking water systems if new regulations aren't required to be of high scientific quality and cost-benefit is either not performed or not meaningful to the regulation?

**RESPONSE:**

**Simply put, water rates paid by the public – including low-income families – would either increase to cover the cost of compliance, or a utility would have to divert resources away from other infrastructure projects. If regulations were not of high scientific quality, then these costs would be incurred potentially without resulting in any meaningful improvements to public health.**

6. During the hearing, Mae Wu, with the Natural Resources Defense Council, testified that costs-benefit requirements are unnecessary under section 1412(b) because the existing requirement to use “feasible” technology already considers costs. Ms. Wu stated that including both elements would result in double counting costs in the regulation.

- a. Do you agree with her argument? Why or why not?

**RESPONSE:**

**I disagree with this argument. Under Sec. 1412(b)(4)(B) EPA is required to develop an MCL that is as close to the MCLG “as is feasible,” with “feasible” later defined as “feasible with the use of the best technology . . . available (taking cost into consideration).” Importantly, nothing in the statute bars EPA from “taking cost into consideration” but still developing a “feasible” standard whose costs are far out of proportion with the resulting public health benefits.**

**Sec. 1412(b)(6) gives EPA an opportunity to promulgate final standard that keeps costs and benefits in balance. If EPA determines that the compliance costs associated with an MCL set as close to the MCLG as feasible “would not justify the costs of complying with the level,” then this section allows EPA to promulgate an MCL “that maximizes health risk reduction benefits at a cost that is justified by the benefits.” Before promulgating an MCL under this section, EPA must provide notice and the opportunity for public comment.**

**In other words, Sec. 1412(b)(4)(B) requires EPA to merely *consider* compliance costs when developing an MCL. Sec. 1412(b)(6) allows EPA to finalize an MCL where the public health benefits *justify* the cost. AMWA believes this provision is particularly important to address instances where an MCL identified as “feasible” would carry compliance costs that are far out of proportion to the public health benefits.**

7. In the Safe Drinking Water Act, the hallmark of the 1412 process is objective contaminant evaluation, science-based regulatory decisions, and practical application that maximizes public health protection resources.

- a. Do you support continued use of this model?

**RESPONSE:**

**Yes.**

- b. Are you concerned that losing these hallmarks risks just rubber-stamp predetermined outcomes? Why?

**RESPONSE:**

**If EPA was under a mandate to simply promulgate regulations, rather than evaluate whether proposed regulations actually deliver public health benefits, the agency would have to give little thought to the necessity of the regulation. The agency's duty would simply be to advance an ongoing string of new rules for various substances that may or may not appear in water supplies in significant quantities, or which may not pose public health risks when present in concentrations found in water supplies. This would carry significant cost and affordability consequences for public utilities and their customers, without necessarily delivering corresponding public health benefits.**

8. Please discuss the progress that has been made in detection levels.

- a. Does detection of a contaminant necessarily equal a public health risk?

**RESPONSE:**

**No. Detection technology has come a long way. Current detection capabilities are far beyond parts-per-million or parts-per-billion. Today parts-per-trillion detection is possible – equivalent to one drop of water in twenty Olympic sized swimming pools. At this level of detection, many substances might be found in water supplies at very low levels. This does not mean that each poses a public health threat or needs to be regulated.**

- b. Is merely relying on detection levels for setting drinking water standards an optimal way to regulate drinking water contaminants?

**RESPONSE:**

**No, the mere detection of a substance in water supplies in very low levels does not necessarily indicate a public health risk.**



- c. Could you please discuss the impacts to your members of being forced to treat to detection level limits, including feasibility of even doing that?

**RESPONSE:**

**Treating to detection level limits for numerous contaminants would be extremely expensive for water utilities and their customers. so many substances may be present at extremely low, parts-per-trillion levels. Water is soluble so many substances may be present at very low, parts-per-trillion levels. Bringing each of them to a zero-detection level may be possible with some treatment technologies but would come with a significant price tag that ultimately would be paid for by the public.**

9. It doesn't matter if you are a Fortune 500 company, municipal utility, or a school with a well, all mandates have costs.
  - a. Could you please discuss the difference between public utilities and for-profit corporations in digesting the costs associated with new mandates?

**RESPONSE:**

**Publicly-owned water systems collect no profits – all of our revenues come from our ratepayers and go back into the water system. Any new operational or capital costs also come from the pockets of our ratepayers or must be offset by spending reductions elsewhere. And because utilities must generally charge uniform rates to all customers, low-income households bear a disproportionate burden when rates increase.**

**Privately-owned water systems are also supported by rates, though their rate structure is designed to maintain a profit margin. Rates charged by privately-owned utilities are generally regulated by state utility boards. If a private utility can demonstrate that a new regulation will increase operational costs, the utility board may allow for a rate increase to offset this cost.**

- b. Your members tend to have the most customers with the greatest ability to absorb costs, does that make it any easier for you to generate resources if that effort does not deliver a return in public health risk reduction?

**RESPONSE:**

**No, because our rate bases are made up of a diverse variety of households of various income levels. When some customers might be able to absorb a rate increase necessary to pay for a new regulatory mandate, those on the lowest-income end of the spectrum will only see their affordability challenges**

**exacerbated. This is why we must be sure that any mandate actually delivers a return on the investment in the form of improved public health protections.**