

MERCATUS CENTER
GEORGE MASON UNIVERSITY

REGULATORY STUDIES PROGRAM

Public Interest Comment on

Applicability of the Safe Drinking Water Act to Submetered Properties¹

The Regulatory Studies Program (RSP) of the Mercatus Center at George Mason University is dedicated to advancing knowledge of the impact of regulation on society. As part of its mission, RSP conducts careful and independent analyses employing contemporary economic scholarship to assess rulemaking proposals from the perspective of the public interest. This short comment on the Environmental Protection Agency’s revised policy regarding the “Applicability of the Safe Drinking Water Act to Submetered Properties” does not represent the views of any particular affected party or special interest group, but is designed to evaluate the effect of the Agency’s proposal on water conservation and consumer welfare.

I. Introduction

Under Section 1411 of the Safe Drinking Water Act (SDWA) public water systems (those with at least 15 service connections or serving at least 25 people) must meet national primary drinking water regulations if they “have their own water source, treat, or sell water.” Through several memoranda issued by EPA staff and program managers, EPA has established that, if an apartment or office building with more than 15 tenants bills those tenants separately for water, it is deemed to be “selling” water, and becomes subject to the full regulatory requirements of the Safe Drinking Water Act.

Not surprisingly, EPA notes that the majority of multifamily housing units have not installed the equipment necessary to charge tenants based on water use. Instead, most apartment buildings include water usage in the price of rent, with tenants sharing equally in the cost, regardless of usage.

¹ Prepared by Susan E. Dudley, Senior Research Fellow and Director of Regulatory Studies, Mercatus Center at George Mason University. This comment is one in a series of Public Interest Comments from Mercatus Center’s Regulatory Studies Program and does not represent an official position of George Mason University.

Both owners of multifamily housing and Congress² (in 1996) have expressed concern to EPA that its policy discourages water conservation; when apartment dwellers do not face higher costs associated with higher water usage, they have no incentive to conserve water. As a result, EPA Assistant Administrator Tracy Mehan proposes to issue a new policy memorandum.

Under the revised policy, a property owner who had not previously been (or would not be) subject to SDWA national primary drinking water regulations through SDWA section 1411, and who installs submeters to accurately track usage of water by tenants on his or her property, will not then be subject to SDWA regulations solely as a result of taking the action to submeter and bill. The water being provided would already meet drinking water standards because the water would be coming from a regulated public water system.³

II. Discussion

The change in policy reflected in the draft memorandum is definitely a positive step. Efforts by the federal government to mandate water conservation through such programs as the Department of Energy's appliance efficiency standards restrict consumer choices and have adverse consequences (such as the necessity of having to flush low-flow toilets more than once). Allowing individuals, whether they live in single family homes or apartments, to pay for the water they use is much more likely to result in more efficient water usage (i.e., more water conservation), without the unintended side effects.

In its request for comment on the proposed policy change, EPA poses several specific questions, which we respond to briefly here.

1. Should the parent public water system be required to have access to submetered properties for the purposes of monitoring, inspection, repair, etc., to assure compliance with SDWA?

A federal requirement for access to submetered properties is unnecessary. Both apartment building owners and local water authorities have incentives to ensure that residents do not drink unhealthy water, as an acute outbreak of disease caused by contamination reflects badly on both. To the extent that access to private property for monitoring and compliance is important to assure against such health problems, local authorities have adequate authority through local health codes as well as the SDWA.

² H. Rep. 104-632 (104th Cong., 2d Sess.) at 55 and 134 (1996).

³ 68 FR 167, August 28, 2003

2. Are there public health risks raised by this submetering policy that EPA has not taken into consideration?

We concur with EPA that, “the addition of a submeter, or direct billing, should not in any way change the public health protections provided to water consumers on the property, as they are still subject to plumbing codes and provided water from a PWS that is fully regulated by SDWA.”⁴

3. Should EPA maintain the limitation of the draft revised policy to residential properties such as apartment buildings, or is it appropriate to extend the SDWA exemption for submetering to other property types?

The arguments EPA uses to support the SDWA exemption for residential properties apply equally to non-residential buildings. Office buildings that lease space to different businesses should also not be discouraged from tracking and billing separately for water usage. Lessees will be encouraged to conserve water if they face the cost of water usage. Indeed, commercial lessees may have more control over the efficiency of the appliances used in their space than individual apartment residents.

4. Do data exist that indicates submetering may present a disincentive to landlords to convert to water efficient fixtures and appliances, or could this approach affect other methods that promote water conservation?

We know of no data that would suggest submetering would alter landlords’ incentives to purchase water-efficient appliances. In a competitive market place, renters will take into account all the costs of renting a unit, including water costs if water is metered separately. Landlords that install more efficient plumbing fixtures will be able to charge a higher rent, thereby covering the higher up front costs of the fixtures.

III. Conclusions

The draft policy change is a positive step toward allowing market forces to provide incentives for water conservation. EPA should extend the policy to non-residential buildings, as well as apartment units.

⁴ *Ibid.*

APPENDIX I
RSP CHECKLIST

Element	Agency Approach	RSP Comments
1. Has the agency identified a significant market failure?	<p>EPA proposes to remove regulatory constraints on markets for water in residential apartment buildings.</p> <p>Grade: A</p>	<p>EPA’s proposed policy would remedy a regulatory failure that has served to constrain market mechanisms for water conservation.</p>
2. Has the agency identified an appropriate federal role?	<p>The Assistant Administrator for Water proposes to issue a memorandum to regional EPA administrators regarding agency policy.</p> <p>Grade: C+</p>	<p>Since memoranda issued by federal officials in the past created the problem being addressed, a federal policy change is necessary. However, EPA should not issue a federal mandate requiring public water systems to have access to submetered apartment dwellings, as any need for such access can be addressed at the local level.</p>
3. Has the agency examined alternative approaches?	<p>EPA requests comment on whether to extend the policy to non-residential buildings.</p> <p>Grade: B</p>	<p>EPA should seriously consider the alternative of covering all multi-unit buildings in this policy. The arguments EPA uses to support the policy for residential properties apply equally to non-residential buildings.</p>

Element	Agency Approach	RSP Comments
4. Does the agency attempt to maximize net benefits?	EPA did not undertake a formal analysis of the impacts of the memorandum. NA	While EPA did not undertake a formal analysis as required for more significant rulemakings, the Federal Register notice does recognize the perverse incentives created by its earlier policy and is an attempt to correct those distortions and allow economic incentives for water conservation.
5. Does the proposal have a strong scientific or technical basis?	EPA did not undertake a formal analysis of the impacts of the memorandum. NA	
6. Are distributional effects clearly understood?	EPA did not undertake a formal analysis of the impacts of the memorandum. NA	
7. Are individual choices and property impacts understood?	The policy change recognizes that previous policy discourages individual responsibility. Grade: A	The proposed policy change would enhance individual choice and provide incentives for individuals to take responsibility for water conservation.