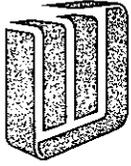


FILED by order
of the Board of Directors of
The Metropolitan Water District
of Southern California
at its meeting held FEB 11 1992 9-11



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Soren E. Duff
Executive Secretary

January 22, 1992

To: Board of Directors (Executive Committee--Information)
(Special Committee on Water Quality and
Environmental Compliance--Information)

From: General Manager

Subject: Primacy Concern Over Federal Lead and Copper Regulation

Report

The California Department of Health Services (DHS) has formally notified the U.S. Environmental Protection Agency (USEPA) that it does not have the financial resources to implement the new drinking water regulation for lead and copper. Under Federal law, failure to implement the rule requires the USEPA to take control of the State drinking water program. This would represent a loss of local control over a critical public health program, and could lead to a USEPA "enforcement" approach towards water utility compliance as opposed to the cooperative approach that currently exists between DHS and water utilities.

Under the mandate of the Federal Safe Drinking Water Act of 1986 (SDWA), the USEPA finalized the lead and copper regulation for drinking water on June 7, 1991. Rather than adopt maximum contaminant levels for lead and copper, the USEPA adopted a treatment technique. The treatment technique consists of corrosion control treatment, public education, source water treatment, and lead service line replacement.

Under the SDWA, a State has the right to exercise primary enforcement responsibility if the State adopts regulations which are at least as stringent as the Federal requirement. In return, the USEPA grants the State a proportionate share of the funds it receives from Congress to enforce the regulations and administer the program. California receives \$2.7 million per year from the USEPA under this program. Implementation of the lead rule by DHS has been estimated to cost up to \$6 million, which is almost half of the \$14.5 million spent by DHS during 1992-93 for implementation and enforcement of the SDWA. It is apparent that implementation of this rule will be more costly to DHS than any other drinking water quality regulation so far.

Due to the high cost to the State to implement this rule, a letter was sent by the Director of DHS to the USEPA's Regional Administrator for California stating that due to the financial limitations in California, DHS will need additional funding or will be forced to turn over responsibility for implementing the lead rule to the USEPA. This letter (attached) sets an extremely important precedent because for the first time

January 22, 1992

a State is sending a message to the Federal Government and Congress that while DHS supports drinking water quality regulations, these regulations must be feasible to implement, given financial resources available to States. Many States are watching to see how the USEPA will respond.

It is believed that the USEPA does not want to take over DHS' program because they too are understaffed and underfunded, but, because they do not want other States to follow California's lead on requests for additional funding, the USEPA will strictly enforce the requirement that a State either does the whole drinking water program or none of the program. In other words, it will not allow DHS to only return primacy for the lead rule to the USEPA and keep the rest of the program intact.

It is not clear yet what the outcome will be but several alternatives are possible:

1. California will decide to return the whole drinking water program to the USEPA if additional funding is not received by the Federal Government.
2. California will seek additional funding to implement the lead rule from alternative sources such as fees on large public water systems.
3. California, along with other States, will seek relief from Congress through the reauthorization of SDWA.

Staff will keep the Board informed on this situation.

Board Committee Assignments

This letter is referred for information to:

The Executive Committee because the letter is in regard to public information for governmental and other entities and officials, and for the citizens of California regarding matters affecting the District's interest, pursuant to Administrative Code Section 2417 (b); and

The Special Committee on Water Quality and Environmental Compliance because of its jurisdiction over issues related to the quality of water furnished by the District to its member agencies, pursuant to Administrative Code Section 2551 (b).

Recommendation

For information only.

JSS:ra
Attachment

for 
Carl Boronkay

DEPARTMENT OF HEALTH SERVICES

714/744 P STREET
P.O. BOX 942732
SACRAMENTO, CA 94234-7320



NOV 19 1991

(916) 657-1425

Mr. Daniel McGovern
Regional Administrator
United States Environmental
Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Dear Mr. McGovern:

As you are aware, the United States Environmental Protection Agency (EPA) adopted the Federal Lead and Copper Rule (Rule) for drinking water in June 1991. This regulation places many requirements on states which decide to implement the Rule. Pursuant to our primacy agreement, we have carefully analyzed the Rule and have completed a comprehensive assessment of the fiscal impact it will have on the California Department of Health Services (CDHS). A copy of this analysis is enclosed.

The Rule is the most resource intensive rule ever adopted by EPA for drinking water. As our analysis clearly indicates, the fiscal impact on the CDHS would be \$1.8 million the first year and would increase to \$5.8 million per year (representing 84 person years) by the fourth year of implementation. This would create major funding problems for the State of California. For example, during 1992-93, the State of California will already be spending \$14.5 million for implementation and enforcement of the Federal Safe Drinking Water Act (SDWA). However, the current EPA grant to the State for implementation of the SDWA is only \$2.7 million per year. In other words, California is already subsidizing the implementation of the SDWA by approximately \$11.8 million per year.

The California State Legislature, during the past year, passed legislation imposing costs of \$12.5 million per year on California water utilities to pay for the increasing regulatory costs of implementing the SDWA. These fees are imposing significant hardships on many water utilities, particularly the smaller ones. Through the imposition of these fees and continued use of other state funding sources, California has been able to absorb most of the costs of implementing and enforcing new EPA drinking water requirements. For example, we have been able to absorb the costs of the new Surface Water Treatment Rule, the Coliform Rule, public notification requirements, the new MCLs for volatile organics, the Phase II MCLs, and the new standards for inorganics and pesticides. California, however, cannot absorb the implementation costs for the Lead and Copper Rule in light of the significant fiscal impact it would have on the State. Other EPA-mandated drinking water requirements of higher priority make it unfeasible to redirect resources in order to carry out the mandates of the Rule.

Mr. Daniel McGovern

Page 2

The CDHS has evaluated the possibility of obtaining additional funding to implement the Rule. We have determined that no additional State General Funds can be made available at this time. Furthermore, these costs cannot be added to existing water utility fees, given the already high fees charged to water utilities. State policy does not permit the CDHS to adopt any regulation having a fiscal impact to the State unless a source of funding can be identified. Due to these circumstances, the CDHS has no choice but to inform EPA that California cannot initiate the process for development and adoption of the Rule until such time that EPA provides sufficient funding to enable us to proceed.

It should be clearly understood that this action is based strictly on the lack of resources. California has consistently taken the position that lead is a serious threat to public health and has taken numerous actions to deal with it. For example, California banned the use of lead and lead solder in water deliver systems several years before EPA. In addition, Governor Pete Wilson recently signed the Childhood Lead Poisoning Prevention Act which will require the CDHS to adopt a standard of care by which all children shall be evaluated by health care providers for risk of lead poisoning. The Act will not be fully implemented until July 1993. For cases of childhood lead poisoning, a comprehensive evaluation of the potential routes of environmental exposure, including drinking water, will be conducted. If drinking water is determined to contribute to the lead burden, the CDHS has the authority to require that the water supplier mitigate the problem.

Clearly, California has no desire to give up its primacy delegation from EPA. We believe that we have one of the better drinking water regulatory programs in the nation. EPA must realize, however, that few states, including California, can continue to implement and enforce all of the mandates adopted by EPA without some significant increases in financial assistance. We also believe that this is only the beginning of such fiscal problems as EPA continues to adopt new rules for radon, disinfection by-products, and groundwater disinfection. If additional resources are not forthcoming, EPA should initiate serious discussions with the states with respect to priorities for implementation and enforcement of the SDWA.

We would be pleased to meet with your staff to discuss the interim situation regarding the Rule. Hopefully, we will be able to agree on a few priority actions that can be undertaken by the CDHS, or jointly with EPA, short of adoption and full implementation of the Rule. These actions would, of necessity, be dependent upon the amount of resources that could be jointly directed toward those activities.

Mr. Daniel McGovern
Page 3

We look forward to your response and to meeting with your staff to jointly determine the best course of action on this very important issue.

Sincerely,

Original Signed By:
Molly Joel Coye, M.D., M.P.H.
Molly Joel Coye, M.D., M.P.H.
Director

Enclosure