**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

October 16, 1992

To: Board of Directors (Executive Committee--Information)
From: General Manager
Subject: Update on Disinfectant/Disinfection By-Products Regulation, Arsenic Regulation, Radon Regulation, and Safe Drinking Water Act Reauthorization

Report

Recent activity has occurred with respect to both the disinfectant/disinfection by-products (D/DBP) regulatory negotiation, and the arsenic regulation. Additionally, the Dominici Bill (S. 2900), which was a bill to institute a moratorium on regulations under the Safe Drinking Water Act (SDWA), was defeated, but substitute language was offered that is relevant to the SDWA reauthorization and to the radon regulation. The purpose of this Board Letter is to update the Board on these matters.

Status of D/DBP Regulatory Negotiation

As described in a Board Letter at the August 1992 Board meeting, the U.S. Environmental Protection Agency (USEPA) has proposed to develop the D/DBP regulation using a collaborative problem-solving process called "regulatory negotiation" or "reg-neg". Reg-neg is an alternative method of developing regulations under which a draft rule is developed by consensus among parties affected by the regulation (regulated community, environmental groups, public interest groups, state agencies, and others). A summary providing more detail about reg-neg is attached (Attachment 1).

On September 29 to 30, 1992, a public meeting was held in Washington, D.C., to take comment on the USEPA proposal, and on the proposed Negotiating Committee members. A list of proposed Negotiating Committee members is shown on Attachment 2. Edward G. Means, Director of Water Quality, is representing the National Water Resources Association. It is essentially certain that the USEPA will decide to proceed with the reg-neg.

Negotiations are scheduled to conclude by February 28, 1993, though there are provisions to allow an extension if significant progress is being made. Your Board will be kept informed as this process proceeds.

Revised Arsenic Regulation

The USEPA has indicated (orally only) that they intend to revise the current arsenic maximum contaminant level (MCL) of 50 ug/L. Levels being discussed are in the range of 0.5 ug/L to 20 ug/L.

Metropolitan's surface water could require treatment if the standard is set at 5.0 ug/L or less. Capital and annual operation and maintenance costs could be as high as \$14 billion and \$1.1 billion, respectively. Groundwater pumpback programs could be impacted, even if the standard is set at the high end of the range being considered (many wells in the Central Valley have arsenic above 20 ug/L). Based on an evaluation done by Resources Division using their groundwater database, member agency groundwater production could be impacted (34 out of 115 Southern California wells surveyed had detectable levels of arsenic, ranging from 1 to 10 ug/L). Finally, L.A. Department of Water and Power's Owens Valley supply could be impacted.

Occurrence data from Metropolitan and member agency sources have already been sent to the USEPA. The USEPA intended to propose a new arsenic regulation by November 1992, but that date has been pushed back because of personnel changes. Metropolitan has kept the Member Agency Water Quality Managers group advised of this issue, and will continue to give them and your Board information as it becomes available. At Metropolitan's urging, the Water Utility Council of the American Water Works Association has assigned one of their technical advisory workgroups to investigate the validity of the USEPA's occurrence and cost data.

Dominici Bill (SDWA Reauthorization, and Radon)

At the September 1992 Board meeting, your Board took a position of "support if amended" on the Dominici Bill (S.2900). This bill proposed to institute a moratorium on new regulations under the SDWA, pending reauthorization. The bill was narrowly defeated (53 to 43), but Senators Chafee (R, RI) and Lautenberg (D, N.J.) offered a substitute, which passed, and is now on the President's desk. The moratorium was omitted from the substitute.

The substitute amendment requires the USEPA to report to Congress on problems associated with the SDWA. The report must consider health effects of drinking water contaminants and the benefits of removing them, the financial and technical capability of drinking water system to meet regulations and alternative financing mechanisms. The report is expected to be used as a basis for reauthorization and is due to Congress within 9 months of enactment.

The substitute bill also requires that the USEPA conduct a risk assessment for radon, considering relative risk from various pathways of exposure, costs of mitigating exposure, and the costs experienced by individual homeowners and small communities to mitigate radon. The evaluation must include issues posed by disposal of treatment wastes. The Administrator must report to Congress by July 31, 1993. Additionally, the Administrator is authorized to seek an extension of the court-imposed deadline for the radon regulation to October 1, 1993.

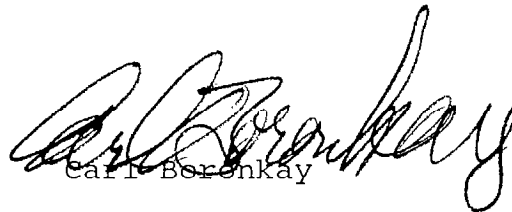
Board Committee Assignments

This letter is referred for information to:

The Executive Committee because of its authority to study, advise, and make recommendations with regard to legislation affecting the District, pursuant to Administrative Code Section 2417 (a).

Recommendation

For information only.


Carl Borenkay

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BOARD/AN1

Attachments

ATTACHMENT 1

OVERVIEW OF REGULATORY NEGOTIATION

In June 1992, the United States Environmental Protection Agency (USEPA) announced that it is considering developing the disinfectants/disinfection by-products rule by a negotiation process called "regulatory negotiation" or "reg-neg". The purpose of this article is to provide an overview of this process, and to provide the reader with references for additional information.

What is Regulatory Negotiation?

Reg-neg is an alternative method of developing regulations. It is a collaborative decision-making process in which a draft rule is developed by consensus among parties affected by the regulation (regulated community, environmental groups, public interest groups, state agencies, product manufacturers, etc.). The parties are assisted by a dispute resolution professional who has no decision-making authority, but who assists parties in developing alternatives and facilitates communication between parties. The USEPA commits to agreeing to the consensus draft rule, as long as it is consistent with statutory requirements. The draft rule is then subjected to the requirements of the Administrative Procedures Act (publication in the Federal Register, receipt and response to public comment prior to promulgation, open docket, etc.).

Why is An Alternative Necessary?

Traditional notice-and-comment rule-making is an adversarial process. Parties with conflicting interests generally do not collaborate in an effort to reach mutually agreeable solutions; rather, parties attempt to defend their position and discredit their opponents' position and block the opponent(s) from attaining their objectives. This adversarial process generally leads to extreme positions, with USEPA receiving much criticism of draft rules, with little in the way of constructive solutions. As a result of this process, about 80% of USEPA's rules are challenged in court, leading to costly legal battles and significant delays in implementation. Reg-neg provides an alternative to this process in which conflict is channeled into creativity.

Advantages and Disadvantages of Reg-neg

Advantages. By engaging interested parties in a forum where they are guided by dispute resolution professionals to engage in collaborative problem-solving, reg-neg results in rules which are generally much better and more acceptable to all parties. The time and expense of rule-making is reduced, because the need for extensive revision and response to public comment is virtually eliminated (because all interested parties or their representatives have participated in the development of the rule, and have agreed not to challenge it). The frequency of challenge in court is also much less, for the same reason (of the 13 reg-negs USEPA has successfully completed to date, only 2 of them have been challenged; USEPA won both of those lawsuits).

Because the rule is finalized sooner, it is implemented earlier, and there is a higher compliance rate (because parties feel that they have "ownership" of the rule). Finally, reg-neg allows for the development of cooperative relationships, which can be valuable at present or in the future.

Disadvantages. The primary disadvantage of reg-neg is that it is extremely resource-intensive. Parties usually meet once or twice a month for several days, and the process usually takes 6 to 18 months. Between meetings, intensive effort is required to evaluate and modify alternatives presented, and gain the support of the individual members of the interest groups represented. There is also the potential for significant intra-group conflict, because there are far more possible solutions to be decided upon than under the normal adversarial process, where an interest group just states and defends a single position. Finally, the outcome of reg-neg is more uncertain than is the outcome of the traditional process, where USEPA and/or a judge will select from a limited number of options (vs. the wide range of possibilities that can arise out of reg-neg).

The Reg-Neg Process

Reg-neg consists of the following five phases:

1. Evaluation: USEPA conducts preliminary evaluation of likelihood of success of a negotiated rule, based on initial interviews with parties;
2. Convening Phase I: Mediator, under contract to USEPA, conducts in-depth interviews, makes preliminary selection of 15 - 25 participants, and reports to USEPA on the likelihood of success (*as of July 20, USEPA is in this phase*);
3. Convening Phase II: Publication of "notice of intent to negotiate" in Federal Register, respond to comment, adjust negotiating committee membership if necessary, conduct orientation and training for committee members;
4. Negotiations: Establish groundrules, define consensus, set meeting schedule, negotiate text or outline of rule;
5. Rule-Making: Negotiations concluded, draft rule undergoes Administrative Procedures Act requirements.

For Additional Information

The single best source of written information on this topic is a book by David M. Pritzker and Deborah S. Dalton, "Negotiated Rule-making Sourcebook", published by the Administrative Conference of the United States in January 1990 (923 pages, available from NTIS, number 052-003-01134-4, \$26.00).

WP/ACWAREGN

ATTACHMENT 2

List of Affected Interests and Potential Participants for D/DBP Regulatory Negotiation

Regulators:

U.S. Environmental Protection Agency
Jim Elder

Association of State Drinking Water Administrators
Barker G. Hamill, New Jersey Department of
Environmental Protection

Regulated Industry:

American Water Works Association
George Haskew, Hackensack Water Company

Association of Metropolitan Water Agencies
Donald Jackson, South Central Connecticut
Regional Water Authority

National Association of Water Companies
Ronald Twillman, St. Louis County Water

National Rural Water Association
John Montgomery

National Water Resources Association
Edward G. Means, Metropolitan Water District
of Southern California

Consumer Groups:

National Association of State and Utility Consumer Advocates
Scott J. Rubin, Pennsylvania Office of the Consumer
Advocate

One additional group to be decided

Other State and Local Government Officials:

National League of Cities
To be decided

National Association of Regulatory Utility Commissioners
Paul Foran, Illinois

Environmental Groups:

Natural Resources Defense Council
Erik Olson

Environmental Defense Fund
Robert Harris

Two other groups to be decided

Health Professionals:

Association of State and Territorial Health Officials
To be decided

National Environmental Health Association
Chris J. Wiant

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