

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

September 1, 1993

To: Board of Directors (Special Committee on Water Quality and  
Environmental Compliance--Information)  
(Finance & Insurance--Information)  
(Engineering & Operations--Information)

From: General Counsel

Subject: Potential Penalties for Failure to Comply with Provisions of  
the Safe Drinking Water Act

### Report

A director recently inquired what consequences the District might face should it fail to comply with proposed health based treatment standards currently being promulgated by the United States Environmental Protection Agency (USEPA) pursuant to the federal Safe Drinking Water Act.

The Safe Drinking Water Act, 42 U.S.C. §300f, et seq., requires establishment of treatment standards and maximum contaminant levels (MCLs) for public drinking water systems to protect public health. It also sets forth rigorous mandatory public notification requirements aimed at assuring that the public is informed of the quality of its drinking water supplies. In addition, the statute authorizes the Administrator of the USEPA to issue administrative compliance orders. The statute also provides that any person who fails to comply with the public notice requirements is subject to a potential civil penalty of \$25,000 and any person who violates, or fails to comply with, an administrative order issued by the USEPA is liable for a civil penalty of up to \$25,000 per day.

### Notice Requirements

Under provisions of the Act, a public water system which has failed to comply with the prescribed treatment methods or monitoring requirements must report such violations to the State or USEPA within ten days after discovery and notify the public in accordance with certain requirements set forth in the regulation.

The notices required under the regulations are set forth in detail in Title 40 of the Code of Federal Regulations. Tier 1 violations, which include failure to comply with a primary MCL, or failure to comply with a prescribed treatment technique, require public notices to be

published in a daily newspaper of general circulation, and by electronic media for certain violations which pose an acute risk to public health. The regulations require that such notices provide a clear and readily understandable explanation of the violation and identify any potential adverse health effects, which may include cancer and possible birth defects, the population at risk, the steps that the public water system is taking to correct the violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the violation is corrected, for example recommending the use of bottled water.

Failure to comply with the notice provisions as outlined in the federal statute and regulations would subject the District to a potential civil penalty of up to \$25,000.

#### Administrative Orders

Under section 1414, subdivision (a), of the federal Safe Drinking Water Act (Act), if the administrator of the USEPA finds that any public water system does not comply with any national primary drinking water regulation under section 1412, the USEPA shall notify the State and the public water system of the violation in order to bring it into compliance by the earliest feasible time. If, after 30 days of USEPA notification, the State has not commenced appropriate enforcement action, the administrator of the USEPA is required to issue an order to require compliance after notice and opportunity for public hearing and after conferring with the State. Violation of such orders may result in penalties of up to \$25,000 per day. In the alternative, the USEPA may commence a civil action seeking penalties of up to \$25,000 for each day a violation occurs.

#### State Enforcement

Because California has primacy in the enforcement of state and federal drinking water law, following adoption by the state of treatment standards, which by law must be at least as stringent as the federal standards, the District would also be subject to an enforcement action brought by the state. Applicable sections of the California Health and Safety Code provide the Department of Health Services with a host of enforcement mechanisms ranging from suspension of permits to operate a public water system to imposition of civil penalties of up to \$25,000 per day for violation of a compliance order.

Board Committee Assignments

This letter is referred for information to:

The Special Committee on Water Quality and Environmental Compliance, because of its authority to study, advise and make recommendations with regard to existing and proposed federal, state, and local water quality and environmental statutes and regulations.

The Finance & Insurance Committee, because of its authority to study, advise and make recommendations with regard to the preparation of budgets and authorization of appropriations.

The Engineering and Operations Committee, because of its authority to study, advise and make recommendations with regard to the initiation, scheduling, contracting and performance of construction programs and work as well as the operation, protection and maintenance of the facilities required for the treatment and delivery of water.

Recommendation

For information only.



N. Gregory Taylor