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EC95-815 Extending the Safe Drinking Water Act: Issues and Alternatives

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Extending the Safe Drinking Water Act--Issues and Alternatives

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Author's note: This publication was written in the months immediately prior to the beginning of the 104th Congress in January, 1995. While the basic issues have not changed, the schedule for reauthorization of the Safe Drinking Water Act and the approach to issues may have been altered by the change in political-party leadership in the Congress. For example, contamination standards for drinking water may become a part of general "risk-assessment" legislation in 1995.

In 1974, Congress passed the Safe Drinking Water Act (SDWA), P.L. 93-523. Its purpose was to protect the nation's drinking water from harmful biological and chemical contaminants. The act also addressed groundwater protection, specifically providing for controls on the underground injection of wastes, e.g., from oil-drilling, that might contaminate water supplies.

Under the act, the Environmental Protection Agency (EPA) was given responsibility for establishing quality standards and treatment requirements for drinking water. States were asked to implement national standards and enforce compliance.

Amendments to the SDWA in 1986 generally strengthened earlier provisions relating to quality standards and enforcement authority. In addition, groundwater protection received more attention. EPA was given a mandate to issue drinking water regulations for 83 contaminants within three years after passage of the amendments. Regulatory rules for an additional 25 contaminants were to be added every three years thereafter. (By early 1994, EPA had issued rules for 84 contaminants.) The 1986 amendments also required all public water systems using surface water to disinfect and, in some cases, filter drinking water.

Relatively few of the nation's 217,000 public water systems have been contaminated in recent years. That is, the water being supplied to the public has had neither microbes nor chemical residues in excess of standards. However, some worry about the long-term effects of chemicals, both those already regulated and those for which standards have not yet been set.

Authorization for federal funding under the amended SDWA expired on September 30, 1991. Since then, some funding has continued through annual appropriations laws. In 1994, both the Senate and

House approved bills that would have authorized extension of the SDWA. However, differences in the bills could not be resolved before adjournment of the 103rd Congress. As a result, $600 million appropriated in fiscal 1994 and $700 million appropriated in fiscal 1995 for local drinking water treatment plants will not be available. Further deliberations are expected in 1995.

Nebraska's Stake in the SDWA

The SDWA applies to about 700 cities, villages, rural water districts and other user groups in Nebraska. (All privately or publicly owned systems that serve at least 25 people or 15 homes are covered under the law.)

The SDWA presents an ongoing dilemma in the state. On one hand, no city or other entity responsible for providing drinking water wants people to become ill from unsanitary water. But the SDWA also imposes a financial burden on local communities. In Hastings, for example, the cost of testing for biological and chemical contaminants has gone from less than $10,000 to more than $100,000 in recent years. In small communities or rural water districts, required improvements in water systems can push water rates to especially burdensome levels.

In the discussion that follows, major issues associated with the reauthorization of the SDWA are first outlined, followed by a listing of possible alternatives for addressing the issue. Some alternatives are those approved in either the Senate or House bill in 1994. Others are possibilities that have been identified by clientele groups.

Contamination Standards

Perhaps the most contentious issue in the SDWA debate relates to how water contamination standards are set.

At the present time, EPA establishes a maximum contamination goal for each regulated substance in drinking water. A goal corresponds to a level at which no adverse health effects from exposure to that contaminant are expected. Then, using the best technology available, EPA sets a standard for the contaminant as close to the goal as possible.

The same standard applies to all drinking water systems, regardless of the likelihood of the contaminant being found or the system's technical and financial capability to monitor for and treat the contaminant. Some have argued that the one-size-fits-all standard is not appropriate.

In addition, the emphasis in the 1986 amendments appeared to be on determining standards for a specific number of contaminants. As such, EPA was given relatively little discretion to set priorities with regard to establishing standards for the most important contaminants. Some believe authority for determining priorities should be granted to EPA and/or the states.

Alternatives:

1. Make no changes in monitoring requirements; that is, neither the likelihood of finding the contaminant nor technical/financial considerations would be factors in setting monitoring requirements.
2. Allow EPA flexibility in selecting and regulating contaminants and issuing compliance/monitoring schedules to the states.
3. Weigh human health risks against the cost of monitoring for or controlling the substance.

4. Allow more flexibility to small drinking water systems to comply with current and future requirements. This might include lengthening the implementation period and/or altering the technology used for testing water.
5. Expect the federal government to assume additional costs for water-system testing and/or state monitoring.
6. Reduce the contamination problem (and the need for testing/monitoring) by focusing on stopping pollution at its source.

Responsibilities of the States

The states have been encouraged to accept primary implementation and monitoring responsibilities under the Act. Most, including Nebraska, have accepted. In Nebraska, the Act is administered by the Department of Health and Human Services System.

Participating states agree to 1) maintain drinking water standards within the state at least as strict as national standards; 2) implement procedures for enforcing the standards, including such monitoring and inspection activities as may be required by EPA; 3) meet record keeping and reporting requirements; 4) responsibly issue any variances or exemptions; and 5) develop a plan for providing emergency water supplies.

EPA is authorized to provide public water system supervision grants to cover up to 75 percent of states' costs of administering the program. However, there has been a widening gap between the authorization level and funds actually appropriated. This suggests that a growing number of states may refuse to administer all or parts of the law in the future. (In 1994, EPA estimated that the states face a current annual shortfall of $162 million for implementing SDWA requirements.)

Some governors and other state leaders identify the SDWA as an example of an unfunded--at a minimum, an underfunded--federal mandate. Why not force the federal government (specifically, the EPA) to administer its own law, they argue.

Alternatives:

1. Make no change in current responsibilities of the states.
2. Reaffirm, and perhaps strengthen, the federal mandate regarding states' responsibilities under the Act.
3. Allow the states to turn over any unwanted administrative/monitoring responsibilities to EPA.
4. Provide additional federal funding for the state administrative/monitoring responsibilities. The first objective might be to fund 75 percent of states' costs as authorized under the 1986 amendments.

Public Water Systems' Responsibilities and Costs

Public water systems pay for the cost of testing and treating drinking water through user-charges. EPA estimates that full compliance with current requirements of the SDWA could cost water systems, and ultimately consumers, at least $2.5 billion annually. In addition, capital expenditures of as much as $10 billion for testing equipment may be needed before full compliance is possible.

The problem is particularly acute for small public water systems, where many of the most serious violations of current drinking water regulations have occurred. Of the $10 billion in capital expenditures needed, EPA estimates that about $6 billion is accounted for by systems serving less than 10,000 people.

Many of these communities simply have neither the financial nor the technical resources to test and treat drinking water according to current EPA regulations.

The 1986 amendments to the SDWA gave EPA the authority to determine maximum contaminant levels (MCLs) for all drinking water systems on the basis of treatment technologies for "large" systems, i.e., those serving 50,000 persons or more. Only 5 percent of all public water systems nationally are this large, and in Nebraska the percentage is even lower. More importantly, the technology is not necessarily scale neutral; it is either inappropriate or excessively costly on a per-user basis for many small-scale systems.

Alternatives:

1. Continue the present law; mandate that all public water systems meet all clean drinking water standards regardless of the cost per user.
2. Provide more direct federal funding, with special attention given to small public water systems.
3. Create state revolving funds to finance the construction and improvement of drinking water treatment facilities. Seed money would come from the federal government.
4. Adjust maximum contaminant levels to take into account the potential toxicity of the contaminant, the cost of appropriate treatment and the number of persons affected.
5. Encourage small public water systems to find alternative water sources as a substitute for building treatment facilities to comply with EPA regulations.
6. Do nothing: Allow federal authorization and appropriations to expire. States and/or local governments could be encouraged to pass their own laws and regulations relating to clean drinking water.

Groundwater Protection

In 1991, EPA issued a groundwater strategy report that leaves primary responsibility for protecting groundwater to the states. The report further said that groundwater protection policies should focus on drinking water as opposed to water used for other purposes.

Some environmental groups advocate a stronger role for the federal government in establishing groundwater protection goals and strategies than that envisioned in the 1991 strategy report. Moreover, they question whether groundwater protection policies should be any different for drinking water than for water used for other purposes. Some would set zero degradation of groundwater as a national goal.

Others, including industry representatives, say that it is not necessary for all groundwater to meet drinking water standards. They argue that the use of the water, the threat to human health and the environment, and other site-specific circumstances should be factors in determining whether groundwater should meet such standards.

Alternatives:

1. Protection of the nation's groundwater should be mostly the responsibility of the states and their political subdivisions.
2. The federal government should become more proactive in protecting groundwater.
3. A national goal should be established to bring all groundwater to drinking water quality standards.
4. Only some groundwater should be maintained or treated to drinking water standards.

Enforcement Provisions

Enforcement efforts may be impeded by inconsistent language in the current law. As many as seven different enforcement provisions can be identified, some of which address federal responsibilities and the remainder, state responsibilities.

In addition, some members of Congress have accused the states of not addressing violations for which they have monitoring responsibility.

Alternatives:

1. Make no changes in current law.
2. Streamline enforcement provisions, with an objective of making all such provisions more consistent. One possibility is to place all enforcement provisions in one title of the Act. Another is to clearly delineate all federal and state responsibilities, including appropriate interactions.
3. Reduce the number of enforcement provisions to those that are essential, the idea being to reduce the possibility of internal inconsistencies.
4. Generally de-emphasize enforcement provisions in a reauthorization of the Act; expect those responsible for drinking water systems to follow the law and implementing regulations.
5. Withhold federal funds to the states if the latter do not properly address violations.

Concluding Thought

Hardly anyone could quarrel with the objective of assuring safe drinking water for all Americans. The questions are how to accomplish it, how to pay for it and how much of a safety margin to provide in the process.

Congressional consideration of extensions for the Safe Drinking Water Act and the Clean Water Act have been on parallel paths. Both would appear to require additional federal funding to assure full compliance at the state/local levels. But with current federal budget pressures, perhaps the best that can be hoped for is an appropriate rationing of available federal funds to meet the most critical objectives of both acts.

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