



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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AUGUST 8, 1979

B-166506

The Honorable Henry A. Waxman
Chairman, Subcommittee on Health and *HSE 03 304*
the Environment
Committee on Interstate and Foreign Commerce
House of Representatives

Dear Mr. Chairman:

As requested, we are providing information concerning the Environmental Protection Agency's (EPA's) program operations for seven States 1/ which are not enforcing the Safe Drinking Water Act and the manpower being expended by EPA *AGC 00024* on its enforcement effort in these States. The information was obtained at EPA headquarters, Washington, D.C.; and its Philadelphia (Region III), Chicago (Region V), Kansas City (Region VII), San Francisco (Region IX), and Seattle (Region X) regional offices. The information contained in the report was discussed informally with EPA officials who generally concurred in its accuracy. We did not verify the State or EPA resource estimates.

BACKGROUND

In December 1974 the Congress passed the Safe Drinking Water Act (42 U.S.C. 300f et seq.) to insure that public water supply systems throughout the Nation met minimum national health standards. The act was the first national commitment to safeguard public drinking water supplies. Prior to this time, Federal authority to regulate drinking water quality had been restricted to water provided on interstate carriers and to foreign and domestically bottled water sold interstate.

1/The term "State" as defined for the Safe Drinking Water Act and as used in this report includes the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands.

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The act authorized the establishment of a joint Federal-State program for insuring compliance with the national drinking water regulations. EPA, through its Administrator, is responsible for establishing regulations to insure the safety of the Nation's drinking water supplies and to protect the public health. The intent of the Congress was that the States adopt and enforce these regulations which apply to the estimated 250,000 public water systems throughout the Nation. The act thus provides for States to assume primary enforcement responsibility or "primacy," for monitoring the public water systems within their boundaries. The implementing regulations defined a public water system as one which has at least 15 service connections or regularly serves at least 25 people a minimum 60 days out of the year.

In establishing the national interim primary drinking water regulations, EPA classified public water systems as either community or noncommunity. The former serves year-round residents; the latter serves all others--that is, transient populations in such places as motels, restaurants, and campgrounds.

The national regulations for all public water systems became effective June 24, 1977. The monitoring requirements for community systems became effective the same date; however, the monitoring requirements for noncommunity systems became effective on June 24, 1979.

How a State implements a drinking water program

The Safe Drinking Water Act specified five basic requirements for a State to obtain enforcement authority or primacy. EPA, in its implementation regulations, expanded the 5 requirements to 15 by further defining what they considered to be an adequate enforcement program. Meeting many of the 15 requirements was not considered a problem for most States as their existing water supply programs had similar requirements. However, for some requirements, States had to enact legislation and adopt new regulations which in many cases was a long and time-consuming process. For example, two such requirements--public notification and a program for variances and exemptions--were generally not included in traditional State programs.

Under public notification, States must have authority to require a public water system to notify its consumers when it violates regulations. Such notification is to publicize potential or actual health hazards and to develop an awareness of the problems facing public water systems.

Granting variances and exemptions to public water systems basically means that States can issue waivers from the drinking water regulations in certain limited situations.

To help States develop and implement primacy programs, the act authorized EPA to award grants to supplement existing State funding. The act stipulated that the grants could not exceed 75 percent of States' total program costs. To qualify for the initial grants, the States basically had to indicate an intent to assume primacy within 1 year from the date of the act. Subsequent grants were awarded to States who had either assumed primacy or were obviously trying to.

Federal grants in the following amounts have been provided to the participating States. The act provides the basis for the State allocation.

<u>Fiscal year</u>	<u>Amount</u> (000 omitted)
1976	\$ 7,500
1976 transitional quarter	2,056
1977	16,737
1978	<u>20,500</u>
Total	<u>\$46,793</u>

For fiscal year 1979, the Congress appropriated \$26.4 million to EPA for program operations.

As of September 1, 1978, 40 States had established drinking water programs which met the primacy requirements and were approved by EPA. Another 10 States are pursuing primacy and are expected to meet the October 1, 1979, statutory deadline.

The remaining seven States--District of Columbia, Indiana, Oregon, Pennsylvania, South Dakota, Utah, and Wyoming--have chosen not to seek primacy. Several reasons

were given by the States when their decisions were made, including (1) the lack of guaranteed continued Federal funding (2) limited State resources (personnel and funds) and (3) inadequate State legislative authority.

RESOURCES EXPENDED ON THE ACT BY EPA

In May 1977 the EPA Administrator asked the regional administrators for a realistic estimate of the number of additional positions needed immediately to implement a minimum primacy program in nonparticipating States and to fulfill other responsibilities under the Safe Drinking Water Act. The total response was for 237 positions; four regional offices, where EPA assumed responsibility requested 56 positions for the primacy programs in the seven States. In August 1977 EPA's Office of Water Supply advised these four offices that it could not satisfy their requests completely but would allocate them 28 positions and ask the Office of Management and Budget for the remaining positions. 1/ Fourteen of the positions were permanent while the other 14 were temporary.

The following table summarizes EPA's proposed staffing plan for the seven nonparticipating States. Figures reflect a program covering community water systems only. Estimates were not established for operating the noncommunity program.

1/The Office of Management and Budget approved about 150 agencywide positions for EPA. The Administrator allocated 75 positions to the water supply program.

EPA regional office	Number of nonparticipating States	Program positions		
		Requested by regional office (June 1977)	Allocated by headquarters	
			Permanent	Temporary
Chicago	1	12	3	3
Denver	3	23	4	5
Philadelphia	2	13	4	2
Seattle	<u>1</u>	<u>8</u>	<u>3</u>	<u>4</u>
Total	<u>7</u>	<u>56</u>	<u>14</u>	<u>14</u>

The following table shows the staffing that the nonparticipating States estimated they would need to effectively implement a drinking water program, for both community and noncommunity systems, in accordance with EPA regulations.

<u>State</u>	States' estimated staffing requirements for fully implemented primacy program
District of Columbia	6
Indiana	50
Oregon	61
Pennsylvania	137
South Dakota	15
Utah	<u>a/17</u>
Wyoming	<u>13</u>
Total	<u>299</u>

a/EPA estimate.

The following sections describe EPA's primacy program in three of the nonparticipating States--Pennsylvania, Indiana, and Oregon--and the impact that the proposed staffing limitation will have on program operations.

Pennsylvania

As of June 24, 1977, EPA Region III assumed primacy for the estimated 3,000 community water systems in Pennsylvania. The State had declined to pursue primacy because of funding limitations and a lack of legislative authority. According to Pennsylvania officials, the State would need new drinking water legislation to meet the primacy requirements.

A 1976 report on Pennsylvania's drinking water program highlighted the problems resulting from a lack of budget and staff. The report pointed out that 4,000 of the estimated 18,000 (community and noncommunity) water systems regulated by the State were neither being inspected nor having their water sampled; 10,000 of the 18,000 water systems had never been chemically analyzed; and 10,000 of the 18,000 water supplies in the State were not covered by any State environmental health laws or regulations. These supplies basically serve motels, apartment complexes, shopping centers, service stations, industries, and recreational areas. The report estimated that about 2 million persons were risking illness from these supplies.

The report further stated that the State received numerous complaints about the water at these facilities, but could not enforce its regulations because it did not have legislative authority to do so. For 1974 through 1977, Pennsylvania led the Nation each year in the number of waterborne disease outbreaks.

In its primacy plan (as compared to its staffing plan), for Pennsylvania, EPA proposed a minimum program based on a 23 staff-year effort for the 3,000 community water systems. No provision was made for a noncommunity system program. A regional official told us his office expected only limited staff resources from EPA headquarters.

In 1977 a Pennsylvania official estimated that in 5 years Pennsylvania would need a staff of 137 and an annual budget of \$4.2 million to maintain a full primacy program. His estimate was based on then current national regulations, a 5-year phase-in, and a program covering both community and noncommunity systems.

As of September 1978 the EPA region had 17 staff members for the Pennsylvania program. Fourteen were in the water supply branch and 3 were in other support activities. Regional officials acknowledged that any program developed would fall far short of a fully effective State program.

Sanitary surveys, considered to be the backbone of any water supply program, generally will not be conducted except when violations occur, and then only on a priority basis. EPA estimated that, with a 10-percent monthly violation rate (300 systems), 66 personnel would be needed to make the followup surveys. The region does plan to conduct surveys on those water systems which request variances and exemptions from the regulations.

The region will not perform any plan and construction reviews of water systems other than to require a professional engineer to certify that a system was designed and constructed in accordance with regulations.

Indiana

As of June 14, 1977, EPA Region V assumed primacy for the estimated 1,100 community water systems in the State of Indiana. In a letter to the regional administrator, the Governor of Indiana gave the following reasons for rejecting primacy under the Safe Drinking Water Act:

- The State was carrying out a highly satisfactory public water supply program.
- The State has the primary role for surveillance and enforcement of public water supply activities.
- The Safe Drinking Water Act and regulations and grants were not realistic.

Under Indiana's existing water supply program, the State is regulating about 520 of the 1,100 community water systems. It is also regulating the water systems of 500 mobile home parks as part of a licensing requirement. The program is run by a staff of eight with a yearly budget of \$400,000. Authorized program strength is 17 positions.

The State estimated it would require 40 additional staff members and an additional \$1.2 million yearly to assume primacy with a fully phased-in program which would

include both community and noncommunity systems. This cost was in addition to the estimated \$300,000 in grants expected from EPA.

In its primacy plan for Indiana, the EPA region proposed a 12 staff-year program. Eight of the positions were for the water supply branch and four for other support activities. The plan calls for close cooperation with the State and assumes that the State will continue its existing program, which covers about one-half of the State's community water systems. In addition, the plan states that the EPA region will develop a comprehensive program to investigate potential health hazards and to supervise the many small community systems in the State.

The crux of the plan is a supplemental sanitary survey program. EPA regional officials told us that currently sanitary surveys of all Indiana community systems are performed at least once every 2 years. (EPA advocated a yearly survey.) EPA estimated that a 10-percent monthly violation rate (110 systems) would require 24 people to conduct the followup surveys.

In September 1978 EPA's primacy program in Indiana consisted of five professionals in the water supply branch and two in other support activities. To date, the region's efforts have been centered primarily on manually reviewing the monthly reports required of the public water systems.

A regional official acknowledged that his office had established a bare minimum program for Indiana. The official, however, pointed out that the Indiana program was tailored after the guidance furnished by EPA headquarters.

In an August 9, 1977, letter to EPA's Office of Water Supply concerning the need for additional regional positions, the deputy regional administrator stated:

"The creditability of the new water supply program rests almost entirely now with the effectiveness of the implementation at the State and local level. For this reason, the vast majority of any new positions must be given to the regions for direct supervision of water systems where the States do not assume primacy."

Like the other regions with primary enforcement responsibilities, Region V will sustain a considerably increased workload when Indiana's estimated 10,000 noncommunity water systems become subject to EPA's monitoring requirements.

Oregon

As of June 24, 1977, Region X assumed primacy for the 1,000 community water systems in Oregon. The State had decided not to pursue primacy and abolished its own water supply program in July 1977.

Oregon officials told us that the lack of a Federal financial assistance program to help public water systems make needed capital improvements was one of the key reasons the State did not pursue primacy. A State advisory committee report estimated it would cost about \$106 million to improve the State's water systems to meet the new act's standards. Oregon officials also said the act's Federal grants were inadequate to establish the type of program the EPA regulations required.

When Oregon abolished its water supply program on July 1, 1977, 14 staff positions were eliminated, and the personnel were either reassigned or terminated. State health officials admitted their former program was inadequate and was not sufficiently funded.

A January 1976 EPA regional evaluation of Oregon's water supply program showed that from 60 to 74 percent of the community water systems were not in compliance with the State bacteriological standards during fiscal years 1972 through 1974. During that same period, noncompliance among the noncommunity systems was even higher. The State's water-borne disease outbreak rate was seven times the national average. The EPA evaluation concluded that the State program was neither staffed nor budgeted adequately to provide supervision, surveillance, and technical assistance--or to assume primary enforcement responsibility--for the water systems in the State. The report estimated that, to be effective, a staff of 80 was necessary.

In March 1977 the region realized that Oregon would not assume primacy and advised the EPA deputy assistant administrator for water supply that 12 staff-years of effort would be required to operate the community systems program.

Eleven of the positions were to be used in establishing a minimum primacy program in Oregon. The other position was to be used in establishing a program for Federal agencies.

In May 1977 the region told EPA headquarters that it was able to obtain 4 of the 12 positions through regional reprogramming and requested 8 positions for the Oregon program. EPA headquarters allocated the region seven positions--three permanent and four temporary. A regional official told us that he believed the program would be inadequate for protecting the public health. He further believed it was only minimally acceptable for responding to the most serious public health problems. The region subsequently estimated a staff of 24 would be needed to implement a minimum primacy program covering both community and noncommunity water systems.

The region will not conduct any preventive-type surveillance or routine sanitary surveys of water systems. Surveys will be limited to following up on violations to the extent possible. The region does not intend to establish a program to assure the design and construction of adequate public water systems.

Despite the inadequacies in Oregon's former water supply program, the EPA Regional Administrator stated in a letter to the Director of Oregon's Department of Human Resources that the EPA program would undoubtedly be less effective than the State's. In testimony before Oregon legislative committees, an EPA Region X official stated:

"If the State is unable to assume responsibility for the program, EPA will do its best to assure that the national requirements be met. Our efforts, however, will be severely limited by resource constraints and limitations in regulatory authority. Our efforts by necessity, will be enforcement related and will not include critical services in the areas of plan review, technical assistance training, and monitoring support."

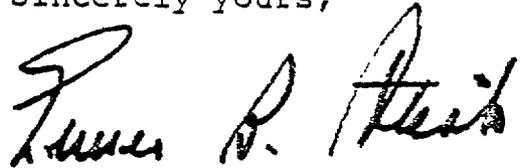
Regional officials also testified that the region's 11 staff-year effort would not be sufficient to conduct the extensive water supply supervision program anticipated by the Congress under the Safe Drinking Water Act. As of September 1978, 10 staff members were carrying out the primacy program.

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In summary it is obvious that in those States which do not have primacy, the coverage by EPA may be severely limited as a result of resource constraints and may not meet the same standards as required by EPA for those States which do assume primacy.

As arranged with your office, we plan to release this report today to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "James P. Heath".

Comptroller General
of the United States

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