



MEMORANDUM

July 23, 2020

To: Subcommittee on Environment and Climate Change Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on “There’s Something in the Water: Reforming Our Nation’s Drinking Water Standards”

On **Tuesday, July 28, 2020, at 11 a.m. (EDT) via Cisco Webex online video conferencing**, the Subcommittee on Environment and Climate Change will hold an oversight hearing entitled, “There’s Something in the Water: Reforming Our Nation’s Drinking Water Standards.” The hearing will examine the requirements and implementation of standard setting provisions set forth in section 1412(b) of the Safe Drinking Water Act (SDWA).

I. BACKGROUND

SDWA requires the Environmental Protection Agency (EPA) to set standards for naturally-occurring and man-made contaminants in the Nation’s public water supply.¹ The statute also authorizes EPA to provide infrastructure funding, technical assistance, and guidance for states, water utilities, schools, and others. Additionally, SDWA established EPA’s Underground Injection Control program, which protects underground sources of drinking water from underground injection, including oil and gas exploration and production and carbon sequestration.

Congress last significantly amended SDWA in 1996, and since then, the new standard setting process has relied on a five-year cycle. The process begins with the publication of the Contaminant Candidate List (CCL), which is required under the law to be revised every five years. The next step is publication of the Unregulated Contaminant Monitoring Rule (UCMR), which is intended to develop occurrence data needed to make regulatory decisions for the candidate contaminants; the UCMR is also supposed to be revised every five years. The third step is regulatory determinations. SDWA requires EPA to decide whether or not to regulate at least five contaminants. If EPA determines regulation is warranted, it begins the rulemaking process. Since 1996, all regulatory determinations have been determinations not to regulate, except for one regulatory determination on perchlorate, which the EPA reversed last year.²

¹ 42 U.S.C. § 300f.

² The final regulatory determination for perchlorate was published in 2011, and the proposed rule was published in June 2019. See Environmental Protection Agency, *National Primary*

Drinking water standards have two primary components, a Maximum Contaminant Level Goal (MCLG) and a Maximum Contaminant Level (MCL) or Treatment Technique. A Treatment Technique is an enforceable requirement to employ a particular treatment or demonstrate a performance level. The MCLG is set at a level where no adverse health effects are anticipated (including a margin of safety). It is not an enforceable requirement. Under the statute, an MCL or Treatment Technique is supposed to be set as close to the MCLG as feasible.³ However, SDWA allows EPA to set a weaker MCL or Treatment Technique than what is feasible based on a prescriptive cost-benefit analysis included in the law.⁴

Currently, national primary drinking water standards regulate more than 90 contaminants or contaminant groups, including microorganisms, disinfection byproducts, radionuclides, and heavy metals such as arsenic, mercury, and lead.⁵ A total of 84 standards were adopted before the 1996 amendments. Standards that have been adopted since, including those for arsenic, radium, and disinfection byproducts, were done so pursuant to specific deadlines and alternative processes included in the law.⁶

SDWA requires EPA to review and, as necessary, revise existing drinking water standards every six years,⁷ but the revision process takes considerably longer than that. For example, EPA determined in 2003, pursuant to the first six-year review, that the standard for fecal coliform in drinking water needed revision but did not publish that revision until 2013. In the second six-year review, which actually took seven years, EPA determined that the standard for acrylamide needed revision.⁸ Six years later, in the third six-year review, EPA reversed course and labeled acrylamide a low priority for revision.⁹ All in all, of the 13 standards EPA identified for revision, the agency has only revised one.

Drinking Water Regulations: Perchlorate, 84 Fed. Reg. 30524 (Jun. 26, 2019) (proposed rule) and Environmental Protection Agency, *Drinking Water: Final Action on Perchlorate*, 85 Fed. Reg. 43990 (Jul. 21, 2020).

³ SDWA § 1412(b)(4). The definition of “feasible” includes cost considerations.

⁴ SDWA § 1412(b)(6).

⁵ U.S. Environmental Protection Agency, *National Primary Drinking Water Regulations* (May 2009) (epa.gov/sites/production/files/2016-06/documents/npwdr_complete_table.pdf).

⁶ SDWA § 1412(b)(12).

⁷ SDWA § 1412(b)(9).

⁸ Environmental Protection Agency, *National Primary Drinking Water Regulations; Announcement of the Results of EPA’s Review of Existing Drinking Water Standards and Request for Public Comment and/or Information on Related Issues*, 75 Fed. Reg. 15499 (Mar. 29, 2010).

⁹ Environmental Protection Agency, *National Primary Drinking Water Regulations; Announcement of the Results of EPA’s Review of Existing Drinking Water Standards and*

SDWA largely delegates implementation of the standards to the states and territories, who are able to apply for primary enforcement authority, known as primacy. EPA must respond to any primacy application within 90 days and grant primacy to any state or territory demonstrating that state requirements in place are at least as stringent as the Federal requirements.¹⁰ In states with primacy, EPA maintains backstop enforcement authority.¹¹ If a state does not have primacy, then EPA enforces the standards.

II. WITNESSES

The following witnesses have been invited to testify:

Shellie Chard

Director, Water Quality Division

Oklahoma Department of Environmental Quality

On behalf of Association of State Drinking Water Administrators (ASDWA)

Diane VanDe Hei

Chief Executive Officer

Association of Metropolitan Water Agencies (AMWA)

Mae Wu

Senior Director, Health and Food, Healthy People and Thriving Communities Program

Natural Resources Defense Council (NRDC)

Request for Public Comment and/or Information on Related Issues, 82 Fed. Reg. 3518 (Jan. 11, 2017).

¹⁰ SDWA § 1413; 42 U.S.C. § 300g-2.

¹¹ SDWA § 1414; 42 U.S.C. § 300g-3(a)(1)(B).