

submetering and direct billing of residential tenants. EPA believes this change in interpretation would not adversely affect public health protection for consumers served by these submetered systems.

DATES: Comments must be submitted on or before October 27, 2003.

ADDRESSES: Comments may be submitted by mail to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW-2003-0065. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions as provided in section I.C. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For more information please contact Ronald Bergman at bergman.ronald@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Draft Revised Policy

If the revised policy is made final, the following statement will be announced by EPA Assistant Administrator for Water, G. Tracy Mehan III, to the Regional Administrators

Draft Memorandum

From: G. Tracy Mehan, III, *Assistant Administrator, Office of Water*
To: Regional Administrators Regions I–X
Subject: Applicability of the Safe Drinking Water Act to Submetered Properties

Water conservation is an integral part of watershed protection, particularly in arid and drought-stricken areas. In recent speeches, I have called for full cost and conservation pricing to achieve water conservation. The use of water meters by which to measure consumption is a necessary prerequisite to using these price mechanisms. For those 15% of Americans who live in apartments, submeters are needed if their water consumption is to be linked to prices. Throughout the country, submetering of apartment buildings has been found to be an effective but little-used tool to support water conservation.

Some owners of multifamily housing, however, have expressed concern that, under EPA's current policy, the installation of submeters subjects them to the full regulatory requirements of the Safe Drinking Water Act (SDWA). In 1996, Congress also expressed concern about EPA's policy in this specific situation, and, in response, EPA agreed to reconsider the matter and issue

further guidance.¹ This memorandum represents the promised further guidance on this issue and sets out a revised policy with respect to residential properties such as apartment buildings that submeter for water.

Under the revised policy, a property owner who had not previously been (or would not be) subject to SDWA national primary drinking water regulations through SDWA section 1411, and who installs submeters to accurately track usage of water by tenants on his or her property, will not then be subject to SDWA regulations solely as a result of taking the action to submeter and bill. The water being provided would already meet drinking water standards because the water would be coming from a regulated public water system.

Background

Section 1401 of SDWA defines a public water system (PWS) as a system that provides water through pipes or other constructed conveyances to the public for human consumption, if the system has at least 15 service connections or regularly serves at least 25 people. Under SDWA section 1411, the SDWA national primary drinking water regulations apply to PWSs that have their own water source, treat, or "sell" water. EPA staff and program managers have issued several memoranda stating that any building or property owner who meets the definition of a PWS and receives water from a regulated public water system without adding further treatment, but bills tenants separately for this water, is "selling" the water and therefore is independently subject to SDWA's drinking water requirements. Today's memorandum reflects a change in EPA's interpretation of section 1411 as it applies in the specific context of submetering and direct billing of tenants.

The EPA memoranda referenced above were based on a single statement in the 1974 legislative history for the SDWA in which Congress explained its intent in enacting section 1411. In that legislative history, the Committee report states that it "intends to exempt businesses which merely store and distribute water provided by others, unless that business sells water as a separate item or bills separately for water it provides."² Under EPA's interpretation to date, an apartment building or similar residential property

that is exempt under section 1411 but that merely installs a submeter and bills the tenants for the water, or simply begins billing tenants (even without a submeter), would become a fully regulated public water system, even though there had been no other change relevant to the delivery or potential health concerns associated with the water. This application of the legislative history has been cited as a discouragement to submetering and, as a result, to water conservation measures.

After further review, we no longer believe that Congress intended the legislative history to be applied in this manner for the following reasons:

- The legislative history from 1974 does not specifically address the submetering of apartment buildings for water conservation purposes. Rather, the legislative history was one Committee's attempt to explain broadly what the term "selling" water in section 1411 might mean. The statute itself does not define the term "selling" or suggest an interpretation that any billing of water would automatically trigger full SDWA regulation.

- A Congressional committee expressed its concern that this application of SDWA might discourage the practice of submetering, as owners of a multifamily housing property (e.g., apartment buildings and/or complexes, mobile home parks) would become subject to national primary drinking water regulations if they billed separately for water. Congress asked that EPA review its guidance on this matter to prevent unnecessary requirements that do not further public health protection and that might inhibit water conservation efforts.³

- EPA's approach in previous memoranda—simply applying the concept of "sell" to every billing transaction—may have created a disincentive to water conservation, which can undermine water quality over the long term.

- Finally, it makes no sense, as a matter of statutory interpretation, health protection, or SDWA implementation policy, to subject an entity to the full suite of SDWA requirements simply as a result of a decision about who sends a water bill, especially when the water is already coming from a regulated public water system. As a result, we no longer consider that the blanket approach to defining "sell" as meaning any type of billing in any circumstance is appropriate.

¹ H. Rep. 104-632 (104th Cong., 2d Sess.) at 55 and 134 (1996).

² H. Rep. 93-1185 (93rd Cong., 2nd Session), reprinted in *A Legislative History of the Safe Drinking Water Act*, Committee Print Serial 97-9 (1982) at 549.

³ H. Rep. 104-632 at 55 (1996)