

March 27, 2001

The Honorable Christine Todd Whitman  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

**Subject: EPA Review of Arsenic Safe Drinking Water Standard**

Dear Administrator Whitman:

We are writing in support of your recent decision to revisit the 10 ppb arsenic standard that was promulgated in January of this year. The Office of Advocacy of the U.S. Small Business Administration was established by Congress pursuant to Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. One of the primary functions of the office is to measure the costs and other effects of Government regulation on small businesses and make recommendations for eliminating excessive or unnecessary regulation of small businesses.

We strongly agree that the Environmental Protection Agency (EPA) should take time to carefully examine the various issues involved in the establishment of this Safe Drinking Water Act standard. In our review of the record last year, we concluded that the available science and cost evidence did not justify the 10 ppb standard at that time. We support the swift implementation of an interim final regulation, pending the establishment of an arsenic standard that can be supported by the science evaluations still underway at EPA. We would retain the current schedule for implementation in the final rule (effective in 2006). Thus, the new rule would not cause any reduction in public health benefits over the January final rule.

In 1999, the Office of Advocacy, Office of Management and Budget, and EPA participated in a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel regarding arsenic in drinking water. During the Panel, Advocacy supported lowering the arsenic standard to a level that is protective of public health. Questions were raised about the costs and benefits of lowering the arsenic standard (Maximum Contaminant Limit) from the current 50 ppb to a much lower standard. To do so would be expensive for small water systems. National costs would exceed \$180 million annually, by EPA's estimate. The average costs to households in the smallest systems (under 100 persons served) would exceed \$320 per year. Hundreds of small systems, predominantly in poorer rural America, would be forced to bear the costs of this rule with undemonstrated benefits.

The EPA Science Advisory Board (SAB) noted numerous factors that would lead EPA to an overestimate of the health risks by using high concentration risk data from the Taiwanese population, which has different nutritional, selenium, zinc and arsenic food intake characteristics than the U.S. population. In addition, in the only large scale study of arsenic exposure in the U.S., the SAB found "no evidence of either bladder or lung cancer where mean drinking water concentrations approached 200 ppb. While these concentrations are up to an order of magnitude lower than found in sites where positive associations with cancer have been obtained, these results give rise to significant questions about whether the Taiwan data apply quantitatively to those U.S. populations that have a more adequate nutritional status." SAB Report at 30. Thus, there is no direct evidence that U.S. citizens would experience any excess bladder or lung cancers due to arsenic exposure at the concentrations found in the U.S.

Further, the National Research Council and the SAB suggested that the risk at lower levels found in the U.S. would be significantly less than the risk indicated by the default linear extrapolation model employed by EPA. While both agreed that the burden of proof of existence of these nonlinear modes of action had not been met, and EPA properly employed the model in the risk estimates, both agreed that the risk was significantly overestimated in this regard.

As the SBREFA panel stated, it would be poor public policy to set a standard that was too low, require water utilities to make the considerable investment in treatment capacity, only to learn too late that the arsenic effects at low levels were considerably smaller or nonexistent. The SAB advocated a phased standard setting approach, which would establish an interim standard protecting the higher risk populations that would be superseded after a period of additional research and analysis. SAB Report at 39. We agree wholeheartedly with the SAB phased approach. A phased approach would allow the arsenic research to proceed and avoid waste of taxpayer and ratepayer resources.

A higher standard would be sound public policy. It would also be consistent with the Safe Drinking Water Act provision allowing EPA to select a less stringent standard that “maximizes health risk reduction benefits at a cost that is justified by the benefits.”

We look forward to working with EPA and interested parties in the expeditious promulgation of a new standard that would address the health needs of our Nation, without unnecessary damage to small water companies, small communities, and our citizens in rural America.

Sincerely,

Susan M. Walthall  
Acting Chief Counsel for Advocacy