

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WSG 6A

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Revised by: Wendy Warren

MEMORANDUM

TO: Victor J. Kimm
Deputy Assistant Administrator
for Water Supply (WH-550)

FROM: Thomas A. Lergen (signed by T. A. L.)
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Water Quality Division (A-131)

THRU: Roger D. Lee, Chief
Drinking Water Regulations Implementation Branch
Office of Water Supply (WH-550)

SUBJECT: Applicability of the Safe Drinking Water Act to Water Haulers

Region V has requested an interpretation as to whether water haulers are public water systems under the Safe Drinking Water Act.

A "public water system" is defined by Section 1401(4) as:

...a system for the provision to the public of water for human consumption, through pipes or other constructed conveyances if such system has at least fifteen service connections or regularly¹ serves an average of at least twenty-five individuals daily at least 60 days out of the year.

Although the term "piped water" is not defined by the Act or the NIPDWR, hauled water is piped into the carrier vehicle, withdrawn by similar mechanism into the user's cistern, and in most cases, piped again from cistern to faucet. Therefore, a hauler presumably provides piped water.

¹The regulations under the SDWA explain the term "regular" by stating that a public water system must have at least fifteen service connections or regularly serve an average of twenty-five individuals daily at least sixty days out of the year. 40 CFR 35.603(c), 41 F.R. 2913, Jan. 20, 1976.

This interpretation is reinforced by the legislative history of the SDWA which clearly intends a broad meaning for "public water system" to insure comprehensive protection of public health. (See House Report No. 93-1185, at 1).

The broad purpose of the SDWA "is to assure that water supply systems serving the public meet minimum national standards for protection of public health". (House Report No 93-1185, at 1). Whether water for public use is withdrawn from a transport vehicle, a river, or a well is irrelevant under the comprehensive regulatory scheme.

Thus, a water hauler, whether independent or owned or operated by a public water system, is itself a public water system under the NIPDWR if it meets minimum standards for number of outlets or customers served.

Furthermore, if the water hauler serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents, then the hauler is a "community water system" as defined by Section 141.2(a)(i). Otherwise, it is a non-community system which would be subject to less stringent monitoring requirements than a community system.

The coverage section of NIPDWR, Section 141.3, includes any public water system, unless it satisfies all of the following conditions:

- (a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities):
- (b) Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;
- (c) Does not sell well water to any person; and
- (d) Is not a carrier which conveys passengers in interstate commerce.

If independently owned or operated, a water hauler's business presumably is to sell water. Therefore, condition (c) is not met. To "sell" water is given broad meaning under the Act. For example, a sale transaction cannot be disguised as a service charge to circumvent condition (c). Note the House Committee's interpretation:

Thus, for example, a municipal system which imposes water and sewage taxes or charges would not be exempt, because it sells water within the meaning of the section. Any distributor of water for human consumption, whether public or private, would be subject to the primary regulations unless he can show that he receives his water supplies from a system which is subject to the regulations and he does not charge consumers for the water that he provides. The purpose of this provision is to exempt from Federal regulation those facilities such as hotels, which

merely by virtue of having a storage tank and acting as a conduit from public water system to consumer would otherwise be subject to Federal regulation as a public water system.

By this provision the Committee intends that primary regulations would apply to housing developments, motels, restaurants, trailer parkers, and other businesses serving the public, if the business in question maintains its own well or water supply. The Committee intends to exempt business 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. (Emphasis added). House Report No. 93-1185, at 17.

In the case of a water hauler which is owned or operated by a public water system to which the NIPDWR apply, and from which the hauler obtains all its water, condition (b) of the coverage in Section 141.3 is not satisfied. Neither, presumably, is the non-sale condition of subparagraph (c) satisfied. The broad meaning of to "sell" water under SDWA does not intend to permit circumvention of condition (c) by resort to accounting devices, e g., arranging to have users make direct payments to the source supplier and be billed separately by the hauler for a "service charge". (See above quoted passage from House Report No 93-1185, at 17.)

Note, however, the effect of Section 141.29 of the NIPDWR, which provides for modifications in monitoring requirements for "consecutive public water systems" to the extent that the interconnection of the systems justifies treating them as a single system for purposes of monitoring. Thus, if a water hauler qualifying as a "public water system" obtains all of its water from another "public water system," then the state may treat the two as a single system for purposes of monitoring, where the state finds the interconnection of the two systems is justified for this limited purpose, and the modified monitoring is conducted pursuant to a schedule specified by the state and concurred in by the Administrator of EPA. See Section 141.29 of the NIPDWR.