

The original documents are located in Box 15, folder “12/16/74 S433 Safe Drinking Water Act (1)” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

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MEMORANDUM OF DISAPPROVAL

I am today returning without my approval S. 433, the "Safe Drinking Water Act."

At the outset, let me say unequivocally that assuring the purity of public drinking water systems is a vital concern of my Administration. That is why the Executive Branch proposed legislation in 1973 to provide for the establishment of national drinking water standards as a yardstick for States and localities to use in safeguarding the health of their citizens.

While I can readily support a bill establishing national health standards, I cannot accept a bill that would preempt the regulatory programs of States and localities, or superimpose direct Federal regulation as this bill would do.

Under the bill that the Administration repeatedly urged the Congress to accept the public would have the protection it needs and rightly deserves without submitting to continuous direct Federal intervention or increased Federal taxation.

This bill goes beyond health standards, and requires regulation of the location of drinking water treatment facilities, the quality of the intake water, and the operation and maintenance of the plants.

This bill contains an elaborate enforcement mechanism that preempts State regulatory programs, and returns to the State governments the responsibility and authority to enforce the national standards only through delegation by a Federal official. To obtain the approval of that Federal official, terms and conditions must be agreed to that many State



governments may be unable or unwilling to meet within the deadlines established -- at which time the Federal bureaucracy would take over direct monitoring of all public drinking water systems in the State and take direct enforcement action. Even after a State receives approval to enforce the standards, every variance or exemption granted by a State government is subject to review, modification, and revocation by the Federal bureaucracy.

Both State and Federal regulatory programs would be supported by new Federal appropriations and grants which I believe are unnecessary.

This bill would also establish a regulatory program for underground waste injection aimed at protecting ground water purity. It has most of the objectionable features of the drinking water treatment program, and in addition is premature in that the problem is not yet well enough defined or preventions well enough understood to call for a Federal regulatory program now.

In conclusion, I appreciate and agree with the efforts of the Congress to pass legislation to protect the public health. At the same time, I do not believe the public should be asked to pay such a high price in either unnecessary Federal intervention or unnecessary Federal taxation as this bill demands.

I look forward to cooperating with the Congress on a bill which protects the public health without the objectionable features of S. 433.

THE WHITE HOUSE

December , 1974

SAFE DRINKING WATER ACT

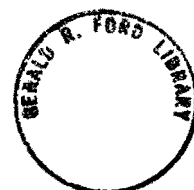
This report consists of (I) an outline of the major provisions of the enrolled bill, the Safe Drinking Water Act; (II) a discussion of the significant issues; (III) a discussion of the costs of the legislation; and (IV) a recommendation that the legislation be signed into law by the President.

I. Outline of Major Provisions of the Enrolled Bill - Safe Drinking Water Act

The objective of the legislation is to provide for the safety of drinking water supplies throughout the United States through the establishment and enforcement of national drinking water standards. The Federal Government (EPA) will have the primary responsibility of establishing the national standards and States will have the primary responsibility for their enforcement and otherwise supervising the public water supply systems and sources of drinking water.

A public water system is defined as a system which provides piped water for human consumption if it has at least fifteen service connections or regularly serves at least twenty-five people.

Interim primary regulations would be promulgated within 6 months and made effective within 2 years. Revised primary regulations would be promulgated 9 months after a two year study of health effects of contaminants in drinking water by the



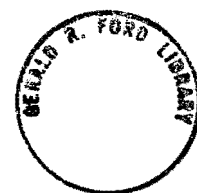
National Academy of Sciences and made effective 18 months later, or a total of 4 years and 3 months after enactment. These standards would be designed to protect the public health to the extent feasible through the best treatment methods generally available taking cost into consideration. They would include maximum contaminant levels; treatment techniques; and general criteria for operation, maintenance, siting, and intake water quality.

Secondary regulations pertaining only to odor and appearance of drinking water would be prescribed but would not be enforceable unless the States determined to enforce them.

The States could continue to enforce its laws and regulations with respect to drinking water supplies until the national interim primary regulations became effective in two years, and even thereafter at their option.

When interim regulations are promulgated (6 months after enactment) and the requirements for the review of State programs are prescribed (within 9 months), States with regulations equal to the interim regulations and with appropriate administrative and enforcement procedures would qualify for primary enforcement responsibility for the new drinking water program.

Two years after enactment of the legislation, when the interim regulations became effective, if in a State that has assumed primary responsibility but does not exercise it

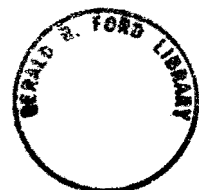


adequately, or if in a State that has not assumed primary responsibility, the Administrator finds that a system does not comply with any primary regulation he may commence a civil action to require compliance. Prior to taking any such action in a State with primary authority he is required to give sixty days notice and provide advice and technical assistance. If sufficient progress were not made within sixty days he could commence the civil action.

Public water supply systems would be required to give notice to users of water and the news media for failure to comply with the primary regulations or with a schedule of compliance.

Variances and exemptions could be granted in appropriate situations from the drinking water regulations. A variance could be granted because of inability to comply due to the character of the available water source, or because the raw water is of such good quality that a required treatment is unnecessary. Exemptions could be granted of up to seven years (nine years for regional systems) for systems unable to comply due to compelling reasons including economic factors.

If State and local authorities fail to act, the Administrator may take action to prevent or abate a contamination of drinking water which poses an imminent hazard to health.



If shortages of chlorine or other chemicals necessary to treat drinking water or waste water occur, a case-by-case allocation of needed supplies is authorized.

A regulatory program for the protection of underground sources of drinking water is authorized. The program largely parallels the public water supply program. The Administrator would establish requirements to protect underground sources of drinking water within one year. States needing such programs would assume primary responsibility within two years or the Administrator would prescribe a control program for the State. Enforcement would be similar to that for public water supplies. Regulations could not be established which would interfere with oil or natural gas production, unless such regulations would be essential to prevent danger to underground drinking water sources.

Comprehensive authority is provided to conduct research and studies on water supply related matters, including health, technological, and economic problems. Specific mandates for several studies are set out including a study of viruses in drinking water, a study of the contamination of drinking water and drinking water sources by carcinogenic chemicals, and a provision for a rural water survey.

Aid would be provided to States to improve their drinking water programs through technical assistance, training of personnel

and program grant support. A loan guarantee provision to assist small water systems in meeting the regulations which cannot reasonably find financing elsewhere is included.

The legislation includes citizen suit provisions similar to those contained in the Federal Water Pollution Control Act, the Clean Air Act, and the Noise Control Act.

Provisions for record keeping, inspections, issuance of regulations and judicial review are set out.

A 15 member National Drinking Water Advisory Council would be established to advise the Administrator on scientific responsibilities under the Act.

The Secretary of Health, Education, and Welfare would be required to conform the standards for bottled drinking water to the primary regulations issued under the new legislation, or publish reasons for not doing so.

Appropriations totalling \$156 million are authorized for fiscal years 1975, 1976, and 1977.

II. Discussion of Significant Issues

The significant provisions in the enrolled bill which have caused concern relate to the scope of the national primary regulations, the possible extent of Federal involvement in the enforcement of the regulations, the groundwater protection provisions, and the State program grants assistance provisions.

Scope of National Primary Regulations

The primary regulations in the enrolled bill would include maximum contaminant levels; treatment methods; and criteria for operation, maintenance, siting, and intake water quality. The Administration supported a provision limiting primary standards to maximum contaminant levels and requirements for monitoring and reporting water quality. The Administration bill, however, would have required EPA at the time it promulgated the primary standards to publish guidelines relating to maintenance, operation, treatment and other matters to assist States in meeting the standards.

It is generally thought by those currently engaged in drinking water regulatory programs that regulations should include criteria for operation and maintenance, siting, and intake water quality, especially for the many small systems. The Administration's bill had intended that the States develop and promulgate these from the guidelines required to be published. The enrolled bill goes a step further and establishes the minimum criteria in regulations for these purposes, which could be adopted by States in essentially the same form. The broader standards provisions of the enrolled bill may thus enable the States to move ahead more rapidly and assume primary responsibility as they are expected to do.

Further, the House Committee which developed the primary standards provisions stated that it was not intended to authorize the Administrator to prescribe operational and maintenance requirements except as necessary to assure safety of drinking water from gross abuse; to designate specific facility sites; to prescribe treatment techniques unless it was environmentally or technologically infeasible to prescribe and enforce maximum contaminant levels; or to prescribe standards for intake water quality if treatment would achieve the prescribed contaminant levels. The specific requirements would still be left to State and local authorities where they could take into account matters such as geographic and weather conditions and any other matters of local concern.

It would appear that the broader standards to be included in the primary regulations under the enrolled bill would not entail any larger Federal effort than expected under the Administration's proposal. It would also appear that the enrolled bill provisions would assist States in more rapidly issuing their own regulations and assuming primary enforcement.

The broader standard setting authority in the enrolled bill would also have a significant impact directly for EPA should it have to exercise primary enforcement authority.

In the event that States or EPA takes an enforcement action, in addition to requesting the court to issue an order enforcing the maximum contaminant levels, they could also request the court to provide in its order what the public water system has to do with regard to such matters as maintenance and operation in order to meet the required contaminant levels or reduce such contaminants insofar as possible. Here these broader standards would greatly assist the States and EPA, the court, and the water system in determining what had to be done. In the Administration's bill, since there could be no EPA enforcement except for public notification, monitoring, and imminent hazards there was not the same need to have maintenance and operation type requirements as there was no case where EPA would have occasion to enforce such. Under the enrolled bill, where there is at least a possibility of Federal enforcement, the broader standards could expedite compliance and limit Federal involvement.

We therefore do not believe that the provisions in the enrolled bill broadening the scope of the primary standards is objectional. Moreover, it would seem likely that such will assist the States, and EPA should it become necessary, to gain compliance with the primary requirements.

Federal Involvement in Enforcement

The enforcement responsibilities of the Federal Government

and the States are set out in detail in part I above. We believe that the provisions of the enrolled bill are carefully designed to retain for States all the authority they now have to supervise drinking water systems and to enable them to assume the responsibility under the new program in an orderly manner at the earliest practicable time. EPA cannot enforce any of the regulations until two years when the interim regulations become effective, and then only if a State fails to assume primary enforcement authority. Other provisions of the enrolled bill such as the 60 day notice requirements before seeking civil action are designed to encourage States to take responsibility for the drinking water program.

Two other important provisions in the enrolled bill are also designed to curtail or eliminate the necessity for Federal (or State) enforcement. These are the user notice and citizen suit provisions. We believe that the suppliers of drinking water will not be able to withstand the public pressure from their customers if the suppliers must give notice individually and through the news media, as the enrolled bill requires, of failure to comply with the primary standards. Also the possibility of a citizen suit provides a strong additional incentive for suppliers

to meet the standards. These two provisions were key elements in the drinking water proposal submitted by the Administration. The Congress accepted them and in fact improved upon the notice provisions. With the broadened scope of the standards and of the enforcement requirements, these provisions take on considerably more significance in the enrolled bill.

We believe that the bill does not anticipate extensive Federal enforcement; nor do we anticipate it as we have confidence that States will assume this responsibility and that the user notice and citizen suit provisions will be effective.

Protection of Underground Sources of Drinking Water

We did not propose a ground water regulatory program and requested the House Committee which developed the provisions to delete or defer it until we were able to better evaluate the protection of groundwater under existing authority. While it is still in the enrolled bill its implementation is deferred to a considerable extent. Requirements for State programs would be promulgated within one year and another year would be provided for States (those listed as needing underground water protection programs) to establish approved programs and assume primary enforcement. If a State did not implement the program EPA would be required to establish a program



for the State within 90 days after the two year period.

Here as in the public water system programs we believe that the States will assume the responsibility. While we would have preferred that this program be deferred longer, it had a great deal of support in the Congress for getting it underway as soon as possible.

State Program Grant Assistance Provisions

The enrolled bill has included several significant provisions to assist States in taking over the additional responsibilities under the new legislation. The Administrator, to the maximum extent feasible, is directed to provide technical assistance to State and municipalities in the establishment and administration of public water supervision programs; to carry out programs (which may combine training and employment) for training persons for occupations involving the public health aspects of providing safe drinking water; and to make grants to States to assist in developing programs to carry out the public water supply (or the underground water source protection) programs.

These grant provisions are carefully structured to provide that States receiving such grants will establish public water system supervision programs and assume primary enforcement within one year after receipt of the grant (within two years in the case of underground water source protection). A strong

case was made before both Houses of Congress that States would need some special support if they were to assume responsibility for the new programs established under the enrolled bill, thus keeping Federal involvement at a minimum.

It is frequently stated that since drinking water supply programs are a revenue producing utility, the necessary funds for operating and supervising them should be derived from those revenues and that Federal assistance is not warranted. The enrolled bill carries forward this premise.

No construction grant assistance is authorized in the legislation, no program grant assistance is made to local authorities or water suppliers for supervision or enforcement; such matters can readily be funded from the revenues of water utility.

However much of the supervision of the water supply programs established under the enrolled bill falls upon the State authorities. In most States there is no readily available mechanism for obtaining or transferring funds from the local water utility where the revenue is produced to the State supervisory agency. It may be possible to develop this kind of mechanism such as a special tax to provide State

supervision or a fee for State inspection services but little of this has been done.

It seems reasonable therefore to provide this support to States for developing or expanding supervision programs in order that they may assume responsibility in the beginning before there is any necessity for Federal involvement. The authorization for grants to States in the enrolled bill is slightly over \$50 million for FY 1976 and FY 1977.

The grants are only for a two year period and should not be renewed if it is found that they are unnecessary after that period. The amount of the authorization does not seem excessive. The replacement value of public drinking water supply systems in this country is roughly estimated to be around \$80 billion with \$2.5 billion annual maintenance and operation costs. States presently are estimated to be spending around \$15 million annually to supervise this industry. In three or four years when the new provisions of the legislation are being implemented it is expected that States will have to be spending \$100 to 150 million annually to supervise the systems under the new regulations.

III. Costs of Legislation

One final comment should be made as to the total appropriation authorizations for this legislation. \$156 million are authorized for the first three years under the legislation

or an average of slightly over \$50 million per year. As stated above the replacement value of public water supply systems is around \$80 billion with an estimated \$2.5 billion annual maintenance operation costs. This would not seem an excessive amount to devote to research and supervision of an industry of this magnitude that affects the health and well being of every American.

A substantial proportion of this total authorization is to assist States as outlined above. The remainder would be largely devoted to research, studies and demonstrations to determine health effects related to drinking water and how to assure a dependably safe supply to all Americans. The Federal Government is the only entity that could accomplish this in any effective manner. Public water supply systems are owned by municipalities or other local public bodies or by relatively small privately owned public utilities; none of these groups could possibly undertake the type of research and studies necessary to provide the technical base to assure safe drinking water. The drinking water industry is not made up of large corporations that could be expected to man a substantial share of the research necessary.

The enrolled bill specifically directs that several projects or studies be undertaken, such as; health implications involved in the reuse of waste water for drinking and methods for assuring its safety; removal of sub-microscopic asbestos particles from the drinking water supply of Lake Superior; virus contamination

of drinking water sources and means of control of such contamination; and a comprehensive study of water supplies and sources to determine extent and means of controlling contaminants that may be carcinogenic. These problems have all been highlighted since the original submission of the legislation. They make it more urgent that it be enacted.

The authorizations in the enrolled bill are in line with estimates provided by EPA at the request of the House Committee as to what would be necessary to conduct the program envisioned by the legislation.

Some questions have been raised as to the cost to the local public water supply systems of meeting the new regulations. Many systems will already have to make improvements in order to comply with existing or proposed State requirements as well as existing Federal requirements if the systems supplies water to interstate carriers. Thus all the additional costs can not be based solely upon the requirements of the new legislation. However, the Congress recognized that the legislation could have some impact upon local systems and specifically provided, when this matter was considered, to authorize variances and exemptions of up to seven years to public water systems (nine years in the case of regional systems) upon a finding that the system is unable to comply due to compelling

reasons such as economic factors. Economic factors would be matters such as the high cost of purchasing and constructing necessary equipment or facilities or the low per capita income and small number of residents in a community served by the system. The Congress also took notice of the fact that there are no good estimates of the cost of updating the Nation's drinking water systems and directed that EPA make a study of the costs of implementing the national drinking water regulations and to make periodic reports to Congress. With the variances and exemptions as well as the other deferred aspects of the legislation there should not be any serious problems for communities. Should problems develop or be discovered in making the study, modifications of the regulations or the legislation could be made.

One last point should be made with respect to the total costs of this legislation to local communities. The total costs of meeting the health related (primary standards) for public water supply systems would be essentially the same under the Administration's bill as it would under the enrolled bill. In this regard, the end requirement, safe drinking water, would be the same. The differences in the two bills are not total costs for making water safe to drink.

Except as to the additional cost of the ground water protection program, the enrolled bill has not greatly increased the costs of improving drinking water systems over what it would be in the Administration's bill. On the other hand the variances and exemptions provided (of up to seven years or nine years for a regional system) in the enrolled bill is a substantial improvement and would spread out the impact to local communities.

IV. Recommendation

The enrolled bill has the same objectives and would accomplish these objectives in essentially the same manner as the Administration proposed in its safe drinking water bill. Both bills provide for the issuance of national primary (health related) standards by the Federal government; for the States to assume the responsibility for enforcing the standards; for a strong base upon which the Federal government could institute the type of research and study programs necessary to determine the extent and means of control of health related contaminants; for technical assistance to States and communities; and both bills contain citizen suits and public notification. The differences relate to the scope of the standards, the possibility of Federal involvement in enforcement, ground water protection,

and program grants to States. These differences have been discussed in detail above.

It would appear that the benefits which would result by approval of the enrolled bill far outweigh the impact of the differences between the Safe Drinking Water Act in the enrolled bill and the Safe Drinking Water Act proposed by the Administration. It is therefore recommended that the enrolled bill be signed into law by the President.

**EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY**

722 JACKSON PLACE, N. W.

WASHINGTON, D. C. 20006

December 9, 1974

Dear Mr. President:

The Council on Environmental Quality strongly recommends that you sign S.433, the "Safe Drinking Water Act".

The Administration proposed drinking water legislation in 1973 because available information indicated that public health was threatened by unsafe drinking water. Over the decade 1961-70, at least 130 outbreaks of disease or poisoning, resulting in 46,374 illnesses and 20 deaths, are known to have occurred. Further, an HEW study of a sample of public water systems showed that large numbers of systems were delivering unsafe water, and that procedures and practices to assure safe water were widely lacking.

Since then, a new source of danger has been identified -- chemical contaminants such as trace metals, nitrates, asbestos fibers, pesticides, and other organic chemicals. Although direct links between the known contaminants and public health have not yet been rigorously established, many of these contaminants are known or suspected to cause cancer, birth defects, or other toxic effects in test animals. In the few cities where the presence of such contaminants in drinking water has been studied, human cancer rates appear to be higher than national averages. As a result of these studies and recent coverage by the media, the public has a heightened awareness of the size and scope of the problems addressed by this legislation.

The Council on Environmental Quality played a major role in the development of the Administration's proposed legislation. We thought at that time (and still believe) that the central features of safe drinking water legislation should be

- establishment of national primary drinking water standards to protect public health
- administration by state and local governments
- encouragement of compliance through (a) public notification to users of violations of standards and (b) citizen suits
- authority for Federal intervention in cases of imminent and substantial threats to health

These basic features are embodied in the legislation which the Congress has enacted.

The Congress has also provided several additional authorities, including

- Federal enforcement if a State fails to act
- a Federal-State program to protect underground sources of drinking water
- allocation of chlorine if shortages develop
- grants and loans to state and local governments

We believe that a program to protect underground sources of drinking water is of high environmental importance. We find the other authorities less desirable but not objectionable as embodied in the enrolled bill.

In conclusion, we believe that the "Safe Drinking Water Act" provides needed and effective legislative authority for protecting the public health, and we strongly urge your approval of the enrolled bill.

Sincerely,

Russell W. Peterson

Russell W. Peterson
Chairman

Honorable Gerald R. Ford
The President
The White House
Washington, D.C. 20500





**GENERAL COUNSEL OF THE
DEPARTMENT OF COMMERCE**
Washington, D.C. 20230

DEC 11 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Ash:

This is in reply to your request for the views of this Department concerning S. 433, an enrolled enactment

"To amend the Public Health Service Act to assure
that the public is provided with safe drinking water,
and for other purposes, "

to be cited as the "Safe Drinking Water Act. "

The principal purpose of S. 433 is to amend the Public Health Service Act so as to broaden Federal authority to regulate drinking water. In particular, it includes authority for the Administrator of the Environmental Protection Agency (EPA) to (1) establish primary and secondary drinking water standards applicable to each public water system in each State, (2) establish regulations for underground injection control programs affecting drinking water, (3) provide financial and technical assistance to States to carry out public water system supervision programs, (4) initiate research, information, and training programs to upgrade drinking water supplies, and (5) on a temporary basis, to certify the need for allocations by the President or his delegate (presumably the Department of Commerce) of chlorine or other water treatment substances. Remedies are provided for assuring compliance with EPA's standards and regulations. Provision is also made for the establishment of a National Drinking Water Advisory Council to consult with and make recommendations to the Administrator of EPA on matters relating to drinking water. S. 433 also amends the Federal Food, Drug and Cosmetic Act to require the Secretary of Health, Education, and Welfare to either establish bottled drinking water regulations or publish his reasons for not doing so in the Federal Register.

This Department would have no objection to approval by the President of S. 433. We do, however, have the following comments on certain provisions of S. 433.

2.

Section 1412(e)(1) relating to a study of contaminant levels provides in paragraph (5) that "neither the report of the study under this subsection nor any draft of such report shall be submitted to the Office of Management and Budget or to any other Federal agency (other than the Environmental Protection Agency) prior to its submission to Congress."

Since this report will set recommended contaminant levels which must be published for public comment within 10 days of the submission of the report to Congress, and since these contaminant levels are required to be promulgated 90 days after publication, we believe this requirement amounts to a circumvention of the interagency review process and is tantamount to making EPA an arm of Congress and not the executive branch.

We believe that the authority in section 1441 to order the allocation of chemicals necessary for the treatment of water should be vested in the Department of Commerce which currently administers most defense allocations. This would reflect the position taken by the Administration during the consideration of S. 2846, a bill for the same general purpose as section 1441, that EPA should certify and Commerce should allocate. In any event the allocation authority should be separated from the authority to certify since placing both in one agency would permit it to exercise effective control over not only use of chemicals for water treatment but for other purposes as well. It should be noted that if an allocation program becomes necessary for any chemical, the program may mushroom as allocations divert supplies from normal channels of distribution thereby creating additional shortages requiring further allocations.

Although this Department does not foresee, at this time, the need to allocate in the near future any of the chemicals or substances mentioned in section 1441, we have no objection to such standby authority in the event severe shortages were to arise.

Section 1414(c) requires the operator of a public water system to give broad notice, including notice in the communications media and in bills to customers every three months whenever there is a failure to comply with the maximum contaminant levels set in the national primary drinking water regulation. We believe this requirement is excessive and should have been restricted to failures to comply which result in an imminent hazard.

3.

Section 1412(b)(3) provides that the national primary drinking water standard shall specify "a maximum contaminant level or require the use of treatment techniques for each contaminant ..."

We are concerned that this language which authorizes the Administrator of EPA to specify treatment processes tends to discourage the development of innovative technology.

The provisions relating to the allocation of water treatment substances are assigned to the President or his delegate. In the event the delegation is to this Department, additional appropriations would be required to handle the allocation functions if severe shortages were to develop in the supplying of any such chemicals. The amount of such additional appropriations would depend on the number of certifications received from EPA. In addition, the requirement to comment on various regulations and standards proposed by EPA may require some increase in personnel.

Sincerely,

Karl E. Bakke

General Counsel

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

DEC 10 1974

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Ash:

This is in response to your request for our views on S. 433 an enrolled enactment to amend the Public Health Services Act to assure that the public is provided with safe drinking water and for other purposes.

The bill creates authority within the Environmental Protection Agency to protect and regulate the public water systems in the United States.

We have no objection to Presidential approval of the bill.

Sincerely,

A handwritten signature in cursive script, reading "Peter J. Brennan".

Secretary of Labor

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

December 9, 1974

Dear Mr. Rommel:

The Council of Economic Advisers has no objections to the President's signing S. 433, "The Safe Drinking Water Act."

Sincerely,



Alan Greenspan

Mr. Wilfred H. Rommel
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D. C. 20506



Department of Justice
Washington, D.C. 20530

DEC 11 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D.C. 20503

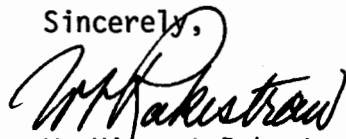
Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 433, 93d Congress, the "Safe Drinking Water Act."

The enrolled bill relates most expressly to the activities of the Environmental Protection Agency, and it is to that agency that we defer on the issue of Executive approval.

The Department's only question concerns section 1450(f) of the bill, wherein it states that "[u]nless, within a reasonable time, the Attorney General notifies the Administrator that he will appear in such action, attorneys appointed by the Administrator shall appear and represent him." We would prefer that language such as that suggested in your circular no. A-99 be used. However, we do not believe that the variance is such that the language needs to be changed.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. Vincent Rakestraw", written in a cursive style.

W. Vincent Rakestraw
Assistant Attorney General



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 11 1974

Dear Mr. Ash:

This responds to your request for our views on the enrolled bill S. 433, "To amend the Public Health Service Act to assure that the public is provided with safe drinking water, and for other purposes."

While we have no objection to approval by the President of the enrolled bill, we defer to the views of the Environmental Protection Agency.

The key provisions of the bill would give the Environmental Protection Agency the authority to set national standards for such things as the quality of raw water sources, maximum contaminant levels and water treatment procedures. The States are to have primary responsibility for enforcing EPA's standards. Federal intervention would be permitted only if a State abused its discretion in carrying out its primary responsibility. Then, EPA could bring a court suit for enforcement if violations were not corrected, generally within 60 days, under State supervision.

The bill would require States to regulate underground drinking water sources and the underground injection of wastes, including brine caused by oil and gas production. The EPA would have authority to act quickly in any drinking water emergency.

States would be able to grant variances and exemptions from compliance with EPA's standards for public water system. The bill would allow States to give communities unable to meet the standards quickly because of economic factors seven to nine years to come into compliance.

The bill amends Section 2(f) of the Public Health Service Act to include Guam, American Samoa, and the Trust Territory of the Pacific Islands in the Act's definition of State. This will impose upon the Trust Territory the same safe drinking water standards that EPA will require from all States under the Act. The Department,



Save Energy and You Serve America!

at this time, cannot predict what steps the Trust Territory will have to take to come into compliance with the standards imposed by enrolled bill S. 433. Enrolled bill S. 433 does not specifically authorize funds that would enable the Trust Territory to take the necessary steps to come into compliance with the bill's standards if such action will be necessary. The Department hopes that funds authorized for demonstration projects, technical assistance, and grants to set up a system of enforcement by the bill will be sufficient to cover any necessary compliance measures on the part of the Trust Territory.

Sincerely yours,


Assistant Secretary of the Interior

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C. 20503



ADVISORY
COMMISSION ON INTERGOVERNMENTAL RELATIONS
WASHINGTON, D.C. 20575

December 5, 1974

Mr. W. H. Rommel
Assistant Director for Legislative Reference
Office of Management and Budget
262 Executive Office Building
Washington, D.C. 20575

Dear Mr. Rommel:

We have reviewed the proposed "Safe Drinking Water Act", an amendment to the Public Health Service Act. Section 1442 authorizes the Administrator to make certain grants for training persons for occupations involving the public health aspects of providing safe drinking water and for developing State and local capabilities for carrying out their responsibilities under the Act. Section 1443 authorizes grants to States to carry out public water supervision programs and underground water source protection programs. It appears to us that these public health activities fall within the scope of activities that can be funded by grants under the Partnership for Health Act (42 USC 246(d)).

In its 1967 report, Fiscal Balance in the American Federal System, the Commission recommended that "Congress and the President strive toward a drastic decrease in the numerous separate authorizations for Federal grants . . ." Consistent with this recommendation, and in light of the availability of funding under the Partnership for Health Act as noted, we would urge deletion of the provisions for the above-cited grants in the proposed legislation.

Thank you for the opportunity to comment.

Sincerely yours,

David B. Walker

David B. Walker
Assistant Director

DBW:bh

Discussion

The Federal-State relationship problem arises because:

- The power to regulate intrastate activities resides with the States. Some have adopted existing Public Health Service standards (now applicable only to drinking water on interstate carriers) as the basis for their regulations and some have not.
- Whether a State has standards and a regulatory program in place or not (many do), the State must also comply in all respects with this bill or submit to direct Federal regulation of every public water supply system in the State.
- In order to conduct regulation and enforce national standards under this bill, a State government must receive the approval of the Administrator of EPA, under conditions established by the bill plus others to be established by the Administrator.
- If a State government does not apply, or does not receive approval, EPA establishes a Federal regulatory program in the State.
- States who operate their own approved enforcement programs are subject to continuous EPA monitoring and each variance, exemption, or potential enforcement action is subject to EPA approval, modification, or override.
- States who establish enforcement programs will have part of their administrative costs paid through a new Federal grant program.

This combination of objectionable features which establishes direct interlocked Federal-State bureaucracies, substantially insulated from State and local elected governments, is common to other environmental legislation and leads directly to the kind of problems we face under the Clean Air Act and the Water Pollution Control Act. In this area, public drinking water, they are not even necessary because the

responsibility for failing to meet health standards is readily identifiable -- making direct action much easier in this case. The detailed arguments are set forth in the attached enrolled bill memorandum.

The ease with which a veto here can be turned against you is obvious, considering the Congressional mood, the recent publicity about possible carcinogens in drinking water supplies in the lower Mississippi, the Reserve Mining controversy, and bacteria contamination in Maryland. Nevertheless, there have been remarkably few documented deaths from contaminated water -- twenty in the 1961-70 period -- and a surprisingly small documented illness rate. Nonetheless, there are potential health problems, known violations of health standards and a large range of unknowns surrounding long term effects of drinking water with minute amounts of chemical content and viruses. In addition, it certainly can be argued that despite the shortcomings outlined above, the same regulatory mechanism used in air and water pollution programs is entirely appropriate for assuring the safety of drinking water. Finally, the Administration's record of opposition to this bill has been read as a veto threat, but the general expectation in Congress is that the bill will either be signed or Congress will override a veto.

Recommendations

- EPA Administrator Train personally recommends approval of the bill, and reports that Congressman John Rhodes also urges approval.
- CEQ Chairman Peterson recommends approval.
- All other agencies either register no objection or defer to EPA.
- The National Governors Conference opposed the bill while it was in conference, but have not registered their views since enactment. Several individual Governors have been reported in favor of approval.
- I recommend disapproval because I believe the long range impact of the objectionable features of this bill far outweigh the potential improvement in public health protection. I believe we should work to sustain a veto and try again to obtain a better bill in the next Congress. A draft Veto Message is attached should you decide on disapproval.

Enclosures



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 12 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 433 - Safe Drinking Water Act
Sponsor - Sen. Byrd (D) West Virginia and 3 others

Last Day for Action

December 17, 1974 - Tuesday

Purpose

Directs EPA to establish national standards for public drinking water supplies and to establish programs to protect underground sources of drinking water; provides for States to assume enforcement responsibility, subject to Federal approval and review; creates standby authority to allocate chlorine and other purification chemicals; authorizes research on health effects of contaminants; provides grants for demonstration projects and for operator training; and for other purposes.

Agency Recommendations

Office of Management and Budget

Disapproval (Veto
message attached)

Environmental Protection Agency
Council on Environmental Quality
Department of Commerce
Department of Labor
Council of Economic Advisers
Department of Justice
Department of Agriculture
Department of the Interior
Department of Health, Education
and Welfare
Advisory Commission on
Intergovernmental Relations

Approval
Approval
No objection
No objection
No objection
Defers to EPA
Defers to EPA (S. Kennedy)
Defers to EPA
Defers to EPA (S. Kennedy)
No recommendation

Discussion

The present Federal authority to regulate the quality of public water supplies is limited to EPA regulation of interstate water carriers under the Public Health Service Act. At the present time, 23 States have adopted enforceable standards for intrastate drinking water similar to the PHS standards. During the 10-year period 1961-1970, there were 130 outbreaks of disease or poisoning attributed to drinking water, resulting in 46,000 illnesses and 20 deaths. An HEW survey in 1970 showed that a large number of systems did not meet minimum health standards, that many treatment plants were inadequate, operators were poorly trained, and local authorities did not conduct sufficient monitoring and inspections. However, virtually all of the health problems identified originated in small rural areas from the infiltration of septic tank discharge into wells. Recently, concern has arisen about potential carcinogenic agents in the drinking water of some cities.

Basic features of the bill

The enrolled bill would direct EPA to:

- issue interim regulations, designed to take effect 2 years after enactment, to insure that public water systems produce water which meets national standards; these national standards would be based on health effects, and the regulations would also include criteria for siting, operation, maintenance, and quality of intake water;
- promulgate revised (final) regulations, following a 2-year study by the National Academy of Sciences, such revised regulations to take effect no later than 4 years and 3 months after the date of enactment;
- promulgate optional standards for the taste, odor and color of drinking water;
- establish a Federal-State permit program for control of wastes injected into the ground which may threaten underground sources of drinking water;

- issue regulations under which States could assume primary responsibility for enforcing both the drinking water and underground injection programs, subject to Federal approval and review, with Federal enforcement for States which fail to qualify; and,
- review every State permit for variance or exemption from any aspect of the national standards, and approve, modify, or set aside the State action.

S. 433 would also authorize:

- grants to the States to cover administrative expenses;
- an extensive program of new technology demonstrations;
- a program of loan guarantees for small water systems;
- grants for the training of water system operators; and,
- standby authority to allocate chlorine and other chemicals used for water purification and for wastewater treatment.

Major Differences between Administration bill and Enrolled bill

The Administration proposed its own drinking water bill early in the 93rd Congress. Many of the basic features of that bill and the enrolled bill are similar, or differ in an unobjectionable way. There are, however, three major differences which raise the question as to whether or not the enrolled bill should be approved. These are the Federal enforcement role, control of underground waste injections, and grant and loan guarantee authorizations.

Federal enforcement role. During the 2-year period before interim Federal standards take effect, States must satisfy EPA that they have adequate authority and resources to enforce these standards. If they fail to do so, EPA preempts

the traditional State authority to enforce the standards pending subsequent State qualification. If a State having responsibility failed to act, EPA could take enforcement action after certain conditions are met. By contrast, the Administration's bill provided for direct Federal action only in emergencies that threatened public health, requiring publication to water users of all violations, and providing for citizen suits, thus strengthening the hand of State and local governments and informed citizens to insist that their suppliers meet Federal standards.

Underground Injection Program. S. 433 also provides for a large Federal role in the program for regulating underground waste injection wells. The bill contains provisions for a permit program to be run by the States, but the enforcement mechanism allows for Federal preemption and for Federal back-up authorities, similar to the enforcement provisions for drinking water. The Administration's bill made no provision for such a program because the dimensions of the problem of underground waste injections and their solution is still unknown, and because EPA already has authorities under the Federal Water Pollution Control Act.

Grants and loan guarantees. The enrolled bill provides a total 2-year authorization of \$52.5 million for grants to States for administrative expenses. A total of \$25 million over a 3-year period would also be authorized for demonstrations of new water purification technology, in addition to the authorizations for general research and investigations. Finally, \$50 million would be authorized for loan guarantees to small public water systems which could not otherwise obtain financing in private markets. The Administration's bill made no provision for State grant authorizations because it was considered that such costs should be met by fees imposed on water suppliers, which would be passed on in turn as charges to water users or, at the option of the State, its agency could be supported through direct appropriations at the State level. Demonstration grants were considered unnecessary, and the Farmers Home Administration already has authority to guarantee loans.

Arguments in favor of Approval

1. The quality of drinking water obviously bears directly on human health, and the evidence shows that the quality of public drinking water does fall below national health

standards with some frequency. Indeed, it is this very fact that led the Administration to support authority for the Federal Government to set standards for all public water supply facilities.

2. Given point one above, the Administration would face a potentially massive Congressional and public outcry if the bill were vetoed, undoubtedly accompanied by charges of callousness towards human health. In this connection it may be noted that, in the face of strong Administration opposition to Federal enforcement, the bill passed the House by a vote of 296-84, and in the Senate by a voice vote.
3. The Federal enforcement role under the bill is generally the same in concept as that in the Clean Air Act and the Federal Water Pollution Control Act. Given these precedents, it will be difficult to convince Congress that the Federal enforcement role goes too far, especially in dealing with public drinking water.
4. The bill allows up to 2 years before interim standards have to be enforced and up to 4½ years before final standards must be enforced. Administrator Train states: ". . . As I understand the legislation, and as I intend to administer it should it become law, the Federal enforcement role is to be kept to a minimum; used only as a last resort." Statutory extensions in the 2-year and 4½-year periods could be sought if experience indicates that States need more time to come into compliance.
5. With respect to the control of groundwater injection, the bill generally provides that the program shall not go into effect until 3 years after enactment. This will enable EPA to carry forward its research to define the problems and develop solutions, and if these do not become available within 3 years, a timely extension can be sought on the basis of the data available then.
6. With respect to State grants, if States are expected to undertake these new enforcement responsibilities, then it would appear appropriate to give them funding

assistance at the beginning (after this start-up period, fees could be imposed on suppliers to be passed on to the users); these grants and demonstration grants are, as Administrator Train points out, subject to budgetary control and are only authorized for 2 to 3 years, respectively.

Arguments in favor of Veto

1. In submitting its own bill, the Administration carefully avoided preempting State and local regulatory authority, and viewed the establishment of direct regulation by a Federal bureaucracy as unnecessary. It was considered that adequate enforcement was provided for by requiring notice of violations to all water users, and providing authority for citizen suits against suppliers. The recent public outcry concerning potential carcinogens in New Orleans drinking water underscores the potential effectiveness of citizen action.
2. It should be possible to meet criticism about a veto by reiterating, in the veto message, strong Administration support for improved drinking water quality, for the setting of Federal standards for all drinking water, and pointing out that users can have safe drinking water without pervasive and continuous Federal regulation, or added Federal taxation to pay both Federal and State bureaucracies.
3. While it is true that the Federal enforcement mechanism here is no more far reaching than the air and water pollution control mechanisms, the latter are designed to deal with problems where there is no direct link between those who suffer from polluted air and water and those who cause such pollution. In the case of water supply systems, the users paying for water are in a position to insist that those who supply it meet quality standards, and those responsible for failing to do so are readily identifiable.
4. With respect to obtaining subsequent time extensions and other amendments, experience has shown that it is very difficult to get these enacted, as this year's Clean Air Act experience indicates.

5. The groundwater regulation program that would be established by the bill is premature. At this time there is not yet any real definition of the problem, much less a basis for inaugurating a program aimed at solving it. Authorities to regulate underground waste disposal already exist in EPA, and have been implemented as problems have been identified.
6. Budget costs for grants to State agencies are unjustified in this period of strong Administration opposition to unnecessary programs. Such agencies can and should be supported through inspection fees or by State appropriations. Our experience over the last few years shows that, once in place, it is almost impossible to terminate a grant program that supports 50 State bureaucracies. It would be difficult to exercise effective budget control and administrative coordination in view of State and local pressures.
7. In addition, experience has shown that a combination of Federal standards and demonstration grants almost inexorably moves toward a construction grant program which could run into billions of dollars for water supply systems throughout the nation.

Agency Views

In recommending approval, EPA's enrolled bill letter states, in addition to the points already made above:

"Nothing is more essential to the life of every single American than clean air, pure food, and safe water. There has been for some time strong national programs to improve the quality of our air and the purity of our food; but except for limited protection against communicable disease to a relatively few riders in interstate carriers, no national protection has been provided to the American people with respect to their drinking water. The time is overdue for a Safe Drinking Water Act."

In its enrolled bill letter recommending approval, CEQ notes recent studies that have identified chemical contaminants in water which may be cancer-inducing, and that: "As a result of these studies and recent coverage by the media, the public has a heightened awareness of the size and scope of the problems addressed by this legislation." The letter also states:

"We believe that a program to protect underground sources of drinking water is of high environmental importance . . . In conclusion, we believe that the 'Safe Drinking Water Act' provides needed and effective legislative authority for protecting the public health"

OMB Recommendation

We believe that the disapproval arguments above outweigh those in favor of approval. Once the degree of Federal enforcement provided for in the bill becomes embedded in the law, it will be almost impossible to dislodge it. The proposed groundwater injection program is unrealistic given the present state of the art, and there is no real justification for inaugurating the very costly demonstration grant and loan guarantee programs, especially given their potential for turning into construction grants running into the billions.

Attached for your consideration is a proposed veto message prepared in this Office. We believe that it can point out the objectionable features of the bill, yet make a very strong case for unqualified Administration support of safe drinking water in general and national standards in particular.



Director

Enclosures

MEMORANDUM OF DISAPPROVAL

I am today returning without my approval S. 433, the "Safe Drinking Water Act."

At the outset, let me say unequivocally that assuring the purity of public drinking water systems is a vital concern of my Administration. That is why the Executive Branch proposed legislation in 1973 to provide for the establishment of national drinking water standards as a yardstick for States and localities to use in safeguarding the health of their citizens.

While I can readily support a bill establishing national health standards, I cannot accept a bill that would preempt the regulatory programs of States and localities, or superimpose direct Federal regulation as this bill would do.

Under the bill that the Administration repeatedly urged the Congress to accept the public would have the protection it needs and rightly deserves without submitting to continuous direct Federal intervention or increased Federal taxation.

This bill goes beyond health standards, and requires regulation of the location of drinking water treatment facilities, the quality of the intake water, and the operation and maintenance of the plants.

This bill contains an elaborate enforcement mechanism that preempts State regulatory programs, and returns to the State governments the responsibility and authority to enforce the national standards only through delegation by a Federal official. To obtain the approval of that Federal official, terms and conditions must be agreed to that many State

governments may be unable or unwilling to meet within the deadlines established -- at which time the Federal bureaucracy would take over direct monitoring of all public drinking water systems in the State and take direct enforcement action. Even after a State receives approval to enforce the standards, every variance or exemption granted by a State government is subject to review, modification, and revocation by the Federal bureaucracy.

Both State and Federal regulatory programs would be supported by new Federal appropriations and grants which I believe are unnecessary.

This bill would also establish a regulatory program for underground waste injection aimed at protecting ground water purity. It has most of the objectionable features of the drinking water treatment program, and in addition is premature in that the problem is not yet well enough defined or preventions well enough understood to call for a Federal regulatory program now.

In conclusion, I appreciate and agree with the efforts of the Congress to pass legislation to protect the public health. At the same time, I do not believe the public should be asked to pay such a high price in either unnecessary Federal intervention or unnecessary Federal taxation as this bill demands.

I look forward to cooperating with the Congress on a bill which protects the public health without the objectionable features of S. 433.

THE WHITE HOUSE

December , 1974

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: December 14, 1974

Time: 11:00 a.m.

FOR ACTION: Bill Timmons *O.K.*
Phil Areeda *O.K.*

cc (for information):

FROM THE STAFF SECRETARY

DUE: Date: December 14, 1974

Time: 2:00 p.m.

SUBJECT:

Proposed Signing Statement for S. 433 -
Safe Drinking Water Act

ACTION REQUESTED:

☐ For Necessary Action☐ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ For Your Comments☐ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

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LOG NO.:

Date: December 14, 1974

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Phil Areeda

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☐ For Necessary Action

☐ For Your Recommendations

☐ Prepare Agenda and Brief

☐ Draft Reply

☒ For Your Comments

☐ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

The signing statement has been approved by Paul Theis.

Good
P. Areeda

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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Warren Hendriks
for the President

THE WHITE HOUSE

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~~Philinda~~

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☐ For Your Recommendations

☐ Prepare Agenda and Brief

☐ Draft Reply

☒ For Your Comments

☐ Draft Remarks

REMARKS:

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The signing statement has been approved by Paul Theis.

yes, okay.
BT

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren Hendriks
for the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 773
~~772~~

Date: December 12, 1974

Time: 5:30 p.m.

FOR ACTION: Mike Duval
Bill Timmons *OK sign*
Phil Areeda *OK sign*
Paul Theis

cc (for information): Warren Hendriks
Jerry Jones
Norm Ross

FROM THE STAFF SECRETARY

DUE: Date: Friday, December 13

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill S. 433 - Safe Drinking Water Act

Pres not veto SS. + screen

ACTION REQUESTED:

☐ For Necessary Action☒ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ For Your Comments☐ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor, West Wing

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K. R. COLE, JR.
For the President

ACTION MEMORANDUM

THE WHITE HOUSE

WASHINGTON

LOG NO.: 773

Date: December 12, 1974

Time: 5:30 p.m.

FOR ACTION: ~~Mike Duval~~
~~Bill Timmons~~ ✓
~~Phil Areeda~~
~~Paul Theis~~

cc (for information): Warren Hendriks
Jerry Jones
Norm Ross

~~TO~~ FROM THE STAFF SECRETARY

DUE: Date: Friday, December 13

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill S. 433 - Safe Drinking Water Act

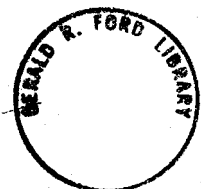
ACTION REQUESTED:

☐ For Necessary Action☒ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ For Your Comments☐ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor, West Wing

Sign it !!
BT



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 773

Date: December 12, 1974

Time: 5:30 p.m.

FOR ACTION: Mike Duval
Bill Timmons
Phil Areeda ✓
Paul Theis

cc (for information): Warren Hendriks
Jerry Jones
Norm Ross

FROM THE STAFF SECRETARY

DUE: Date: Friday, December 13

Time: 1:00 p.m.

SUBJECT:

Enrolled Bill S. 433 - Safe Drinking Water Act

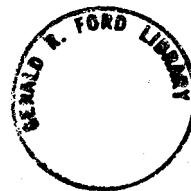
ACTION REQUESTED:

☐ For Necessary Action☒ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ For Your Comments☐ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor, West Wing

Approval
P. Areeda

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President