The original documents are located in Box 15, folder "12/16/74 S433 Safe Drinking Water Act (2)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

APPROVED
DEC 16 1974

Statement issued 12/17/74

THE WHITE HOUSE

WASHINGTON

ACTION

Last Day: December 17

December 16, 1974

MEMORANDUM FOR THE PRESIDENT

FROM: KEN COLE

SUBJECT: Enrolled Bill S. 433
Safe Drinking Water Act

Attached for your signature is S. 433, sponsored by Senator Byrd of West Virginia and three others, which:

-- Directs EPA to establish national health standards for public drinking water;

-- requires public notice of violations; and

-- provides for citizen suits as enforcement mechanisms.

Additional information is provided in Roy Ash's enrolled bill report at Tab A. Last week, at your instructions, Ron Nessen announced your decision to sign this bill.

Recommendations

That you sign the bill and approve the signing statement (Tab C) which has been cleared by Bill Timmons, Phil Areeda and Paul Theis.

Decision - S. 433

Sign HR 9 (Tab B) See Me _____

Signing Statement (Tab C)

Approve HR 7 See Me _____

SAFE DRINKING WATER ACT

S. 433

I am pleased to sign the Safe Drinking Water Act today. Much effort has gone into the development of this legislation as much as for any enacted in this session of Congress.

This Administration proposed a Safe Drinking Water Act and several others were introduced by members of Congress. All of these bills had the same objectives, to increase protection of the public's health. Many compromises had to be made before this bill reached my desk. Yet it is a strong bill, reflecting the combined efforts of the Congress and the Administration.

This legislation will enhance the safety of public drinking water supplies in this country through the establishment and enforcement of national drinking water standards. The Environmental Protection Agency has the primary responsibility for establishing our national standards. The States have the primary responsibility of enforcing them and for otherwise ensuring the quality of drinking water. In some situations where States fail to enforce the standards, the Federal Government could. I believe this will seldom be necessary. During the extensive consideration of this legislation spokesmen for the Administration opposed extensive Federal involvement in what has traditionally been State and local regulatory matters, and unnecessary costs to the Federal Government. Even with the compromises that were made, I still have reservations about those two aspects of this bill; and I intend that it be adminstered so as to minimize both Federal involvement and costs.

The bill enhances the ability of the Federal Government to conduct research into the health effects of contaminants in drinking water. Recent news stories have highlighted several potential drinking water problems that can only be resolved through research. I am pleased to say that we are already moving ahead on these problems.

Nothing is more essential to the life of every single American than clean air, pure food, and safe drinking water. There have been strong national programs to improve the quality of our air and the purity of our food. This bill today will provide us with the protection we need for drinking water.

APPROVED
DEC 16 1974

THE WHITE HOUSE

WASHINGTON

DEC 12 1974

MEMORANDUM FOR THE PRESIDENT

FROM: ROY L. ASH

SUBJECT: Enrolled Bill S. 433 - Safe Drinking Water Act

This memorandum highlights the issue set forth in the attached enrolled bill memorandum.

Issue

The issue raised by S. 433 is not whether it would add to the protection of the public health -- it would. The issue is whether the degree of Federal take-over of State and local functions, and the establishment of Federal grants to pay States for conducting a monitoring and enforcement program are too high a price to pay for the increased protection provided.

Purpose

The bill directs EPA to establish national health standards for public drinking water, requires public notice of violations, and provides for citizen suits as enforcement mechanisms. The Administration has supported these provisions. The bill also provides for Federal enforcement of national standards, regulation of the quality of intake water, the operation and maintenance of treatment plants and even the siting of treatment plants, plus a grant program to pay the administrative costs of State regulatory agencies, all of which we have opposed.

It also establishes a regulatory program for underground waste injection which shares the objectionable Federal-State relationship problem described below.

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	Approval
Council on Environmental Quality	Approval
Department of Commerce	No objection
Department of Labor	No objection
Council of Economic Advisers	No objection
Department of Justice	Defers to EPA
Department of Agriculture	Defers to EPA (Informally)
Department of the Interior	Defers to EPA
Department of Health, Education and Welfare	Defers to EPA (Informally)
Advisory Commission on Intergovernmental Relations	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 4¼ 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 4¼-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

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

December 16, 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 of December 4, 1974, for comments by this department on the enrolled enactment S. 433, the "Safe Drinking Water Act."

We concur in the purposes of such an act but defer to the Environmental Protection Agency for a position as to the need for the program contemplated by this Act. However, since the department has a loan and grant program, as well as a program for land and water conservation designed to reduce sediment born pollutants that will be affected by the act, we offer the following comments.

As a result of this act, the demand for assistance under programs administered by the department will likely increase significantly, due to increased construction cost and systems needing improvements because of the more stringent regulations. It is also likely that there will be an increase in the demand for resource conservation and development measures and for projects for watershed protection and flood prevention as alternative sources of clean water supplies. It is also anticipated that higher facility operation and maintenance costs will result.

Section 1412 of the act provides that the administrator of EPA will establish national drinking water regulations. To prevent a delay in administering existing programs, there should be close coordination with Federal and state agencies that will be involved in programs affected by the act in developing regulations pursuant to the act and in the enforcement of such regulations.

The Consolidated Farm and Rural Development Act which is administered by this department provides for loans and grants in rural areas and towns of up to 10,000 population to assist in the development of community water and waste disposal facilities. The act further provides that in certain instances priority will be given to those facilities in rural communities having a population not in excess of 5,500. Therefore, it is suggested that the Rural Water Survey to be conducted in accordance with Section 3 of the Safe Drinking Water Act be conducted to at least include the two population categories described above. Close coordination with this department is needed to assure that such a survey will include those items of concern to the department. This is particularly necessary to assure compatability with the Department's procedures and technology in land inventoring and monitoring.

Sincerely,

J. Phil Campbell

J. Phil Campbell
Under Secretary

ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF THE
ADMINISTRATOR

DEC 5 1974

Dear Mr. Ash:

This is in response to your request for the comments of the Environmental Protection Agency on the enrolled bill, "The Safe Drinking Water Act."

The legislation would provide for the safety of drinking water supplies in the United States through the establishment and enforcement of national drinking water standards. EPA would have the primary responsibility for establishing the national standards and the States would have the primary responsibility for their enforcement and for otherwise supervising the public water supply systems and sources of drinking water.

I recommend that the enrolled bill be approved. The bill is similar in many ways and would accomplish the same objectives in essentially the same manner as would the Safe Drinking Water Act submitted to the Congress by the Administration at the beginning of the 93rd Congress. Both bills provide for the issuance of national primary standards by the Federal Government; for States to assume the responsibility of enforcing the standards; for a strong base upon which EPA could institute research and studies necessary to determine the extent and means to control health-related contaminants; for technical assistance to States and communities; for citizen suits; and for public notification by suppliers of water to users if standards are violated.

There are some provisions in the enrolled bill which differ from the proposal submitted by the Administration. These related primarily to the scope of the standards, the possible extent of Federal involvement, the groundwater

protection requirements, and the State grants authority. A close analysis of all of these provisions indicate to me that none of them should delay the immediate approval of the enrolled bill.

The possible extent of Federal involvement in what has traditionally been a State and local enforcement matter and the new categorical grants programs to States have caused the Administration the most concern. 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. I am confident that the States will meet their responsibility under the enrolled bill. Such confidence was the central premise of the Administration's own proposal for safe drinking water legislation. As to the State program grants, they are of course subject to the normal budgeting process of the executive and legislative branches. I believe there is adequate flexibility in the budgeting process to exercise appropriate control over this new grants program.

When the Administration proposed its Safe Drinking Water Act to the Congress in February of 1973, ample justification was submitted showing the overdue need from a health and safety standpoint for better surveillance and control of our drinking water supplies. Others testifying on this legislation provided strong additional justification. Even more recently new information relating to viruses in drinking water, submicroscopic asbestos particles in the drinking water supply of Lake Superior and elsewhere, and carcinogenic substances in drinking water supplies and sources have raised additional serious questions as to the safety of drinking water making the need for this legislation even more urgent than anticipated two years ago.

With the widespread national concern about the health aspects of drinking water, certainly a veto would be severely criticized. To disapprove this legislation on the issues of Federal enforcement when States fail to act, or grant assistance to States, would not, in my view, be justified. To attempt to rationalize a veto on such basis would be misunderstood by many as straining for straws to thwart needed legislation. I feel disapproval would be unwise.

Further, in the event of a veto, there would be no way for the legislation to be revised and passed again in this session of Congress. All the issues of concern to the

Administration were extensively considered and debated and in large measure reflected in the enrolled bill. It is not realistic to expect any appreciable change in the bill should the Congress be obliged to reconsider it.

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.

I firmly believe that it would be in the best interests of the Nation to sign this legislation into law and therefore recommend that the Safe Drinking Water Act be signed by the President.

There is enclosed with my letter a more complete outline of the enrolled bill and a discussion of the several issues which received most attention during the development of the legislation.

Sincerely yours,

Russell E. Train
Administrator

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

Enclosure

Calendar No. 220

93D CONGRESS
1st Session

SENATE

REPORT
No. 93-231

SAFE DRINKING WATER ACT OF 1973

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE

ON

S. 433

TO ASSURE THAT THE PUBLIC IS PROVIDED WITH AN ADEQUATE QUANTITY OF SAFE DRINKING WATER, AND FOR OTHER PURPOSES

JUNE 20, LEGISLATIVE DAY JUNE 18, 1973.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
83-010 WASHINGTON : 1973

CONTENTS

Calendar No. 220

93D CONGRESS
1st Session

SENATE

REPORT
No. 93-231

SAFE DRINKING WATER ACT OF 1973

JUNE 20, LEGISLATIVE DAY JUNE 18, 1973.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Commerce, submitted the following

REPORT

[To accompany S. 433]

The Committee on Commerce, to which was referred the bill (S. 433) to assure that the public is provided with an adequate quantity of safe drinking water, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

SUMMARY AND PURPOSE

The proposed legislation would establish a program within the Environmental Protection Agency (EPA) to regulate drinking water. Currently, the regulation of public drinking water systems is primarily a State responsibility. The Federal Government does exercise some control over drinking water aboard interstate carriers under the Public Health Service Act (42 U.S.C. 201, *et seq.*) but that authority is limited to prohibiting the use of contaminated water aboard carriers and does not apply directly to the system supplying water to the carrier or to other drinking water systems.

Under S. 433, prime responsibility for maintaining the quality of drinking water will remain with State and local government, but the Federal Government will exercise a new responsibility to set standards and provide assistance in order to protect public water supplies from contamination.

As reported by the Committee on Commerce, the proposed legislation provides that—

(1) EPA establish minimum Federal drinking water standards prescribing maximum limits for contaminants as well as standards for the operation and maintenance of drinking water systems and surveillance, monitoring, site selection and construc-

tion standards for public water systems to assure safe dependable drinking water;

(2) EPA establish recommended standards to assure esthetically adequate drinking water;

(3) the States could establish standards which are more stringent than the Federal drinking water standards;

(4) the States will be primarily responsible for enforcing the standards with Federal enforcement if the States fail to act or in cases of imminent hazard;

(5) a National Drinking Water Council be established to advise the administrator on scientific and engineering matters;

(6) EPA conduct and promote research, technical assistance, and training of personnel for water supply occupations;

(7) EPA conduct a rural water survey within two years of enactment;

(8) EPA make grants for special study and demonstration projects with respect to water supply technology;

(9) EPA make grants to the States to defray the costs of State programs; and

(10) citizens be authorized to bring injunctive suits against violators of primary drinking water standards and against the Administrator for failing to perform mandatory duties.

Need for the Legislation

No need is more basic for all human beings than a dependable, disease-free supply of drinking water. The supply of adequate amounts of high quality drinking water has become a service that is not only hoped for but expected.

Yet, despite our needs and expectations, quality drinking water available at the tap has not become a reality. Dr. J. H. Lehr, Executive Director of the National Water Well Association clearly described the problem in hearings before the Subcommittee on the Environment:

> Overconfidence or apathy seems to pervade the public's attitude with respect to drinking water. Common daily experience plus a current myth about the future, falsely implies that the quality, safety and adequacy of our municipal water supply systems are above reproach. Perhaps the myth can be stated as follows: "Everyone knows we have launched a massive water pollution control effort and that waterborne disease outbreaks are a thing of the past."
>
> This statement is simply not true and the dangers of this misinformation are illustrated by the epidemic at Riverside, California in 1965 which affected 18,000 people, the 30 percent gastroenteritis attack rate in Angola, New York in 1968 due to a failure in the disinfection system, and the 60 percent infectious hepatitis attack rate which affected the Holy Cross football team in 1969 as a result of ineffective cross connection control procedures.
>
> The recent discovery of critical amounts of mercury in our water supplies as a result in industrial waste disposal is

more conclusive evidence of the existence of very current water hygiene problems.[1]

In mid-1970, what is now the Division of Water Supply Programs of the Environmental Protection Agency completed a study of 969 drinking water supply systems. According to that study, approximately 8 million people in this country are served water that is potentially dangerous in that it fails to meet the mandatory standards set by the Federal Government with respect to interstate carrier systems. In the majority of cases, the deficient systems were smaller systems serving smaller communities.

During the ten-year period from 1961 to 1970, there were at least 128 known outbreaks of disease or poisoning attributed to drinking water. Most of these 128 outbreaks were a result of drinking water from a system not controlled by a municipality, but rather from private systems serving, for example, restaurants, camp grounds, gas stations, hospitals, and State institutions.

Seventy-nine percent of the systems checked had no sanitary survey by regulatory officials in the year preceding the survey, with only 64 percent having had a sanitary survey in the preceding three years. Ninety percent failed to meet the biological surveillance criteria of the current drinking water standards for interstate carriers, with 85 percent failing to take the minimum of samples over a given period of time.

At hearings of the Subcommittee on the Environment on May 31, the General Accounting Office reported on the results of a six state survey on drinking water programs. The results add to EPA's earlier findings. Mr. Henry Eschwege, Director of the Resources of Economic Development Division of GAO testified:

> Of the 446 systems [checked in the survey], only 60 were in compliance with both federal bacteriological and sampling requirements and could be classified as approved.
>
> Mr. Chairman, on the basis of our review we believe that the local governments and utilities need to expand, replace, or improve water treatment facilities.
>
> The States need to improve their water quality monitoring programs. The States need to insure that water treatment plant operators are qualified and adequately trained, and the States, local governments, and utilities need to establish more effective programs for eliminating cross connections. These are physical connections between drinking water distribution systems and systems containing substances which could contaminate the drinking water.

Mr. Eschwege continued:

> In conclusion, Mr. Chairman, we believe that legislation before this subcommittee is designed to provide reasonable solutions to the problems we identified.

A common misconception is that cleaning up our rivers and lakes through pollution control will result in adequate water for drinking

[1] Hearing before the Committee on Commerce, United States Senate, March 20, 1972, Serial No. 92-57.

and further work will not be necessary. However, few have argued that water pollution control will have the immediate effect that will be necessary to prevent drinking water contamination. In addition, conditions within the drinking water system must be regulated to prevent contamination after it comes from the raw source. Finally, drinking water may be contaminated from non-pollution sources; for example, alkaline water in many of our western States. Drinking water is not perfect in nature and even if pollution were to stop immediately, problems in drinking water supply would still exist.

An illustration of the imbalance that has existed with respect to drinking water supply programs and water pollution control efforts can be found in a comparison of the Federal funding levels of the two. Current Federal funding of the water pollution control effort now exceeds $1 billion per year. In contrast, Federal efforts with respect to drinking water supply programs reached only $4.3 million in fiscal year 1973. Even with the $10 million added that the States spend annually on drinking water supply programs, the imbalance is great indeed.

Legislative Background

On January 18, 1973, Senators Magnuson, Hart, and Tunney introduced S. 433, the Safe Drinking Water Act of 1973. Twenty cosponsors were added later. S. 433 is similar to S. 3994 which passed the Senate in the 92d Congress.

The Administration's bill, S. 1735, was introduced by Senators Magnuson and Cotton, by request on May 8, 1973.

A hearing was held on May 31 on both S. 433 and S. 1735.

On June 5, the Committee ordered S. 433, with amendments, reported.

Similar legislation (H.R. 1059 and others) is pending before the House Committee on Interstate and Foreign Commerce.

Section by Section Analysis

Section 1. Short title

The short title of the proposed legislation is the "Safe Drinking Water Act of 1973."

Section 2. Findings

This section establishes Congressional findings with respect to drinking water as follows—(1) increasing quantities of contaminants are entering public water systems and that many of these contaminants are neither detected nor removed by existing treatment methods; (2) the public should be provided with adequate quantities of drinking water and that the origins of such contaminants involve interstate commerce resulting in a responsibility of the Federal Government to establish minimum standards for all public water systems and to encourage State and local governments to establish similar or more stringent standards; and (3) the Congress recognizes the needs of State and local governments for assistance to assure quality water for drinking and other human uses and that the Federal Government should supply technical assistance, research, monitoring, and testing information as well as assistance to the States in operating drinking water surveillance programs.

Section 3. Definitions

This section defines the various terms used throughout the proposed legislation. Of particular importance is the definition of the term "public water system" as this definition defines the reach of the proposed legislation with respect to the Federal regulation of drinking water systems.

As defined, the term has four elements. First, the term means "any system which provides drinking water, including bottled drinking water, (i) to ten or more premises not owned or controlled by the supplier of water or (ii) to forty or more individuals receiving such drinking water from a system not serving travelers in interstate commerce." Included within this definition are all public water systems except those small systems serving premises which number less than ten. In addition, small factories or other businesses which serve 40 or less people would be excluded from coverage. While many States regulate systems serving less than ten premises or 40 individuals, the evidence with respect to the extent of the problem with extremely small systems aside from facilities serving interstate travelers remains inconclusive. While some studies have indicated problems with certain types of individual water wells, it is felt that Federal regulation should concentrate, at least initially, on the larger water supply systems. However, if future studies clearly define the problems with the small systems, such systems could be included within the regulatory framework under the fourth element of the definition described below.

Second, the definition includes "any system which provides drinking water to carriers serving travelers in interstate commerce." Current Federal authority with respect to drinking water is limited to the regulation of drinking water aboard interstate carriers. In order to provide more effective regulation of this source of drinking water, it is intended to include the systems which supply carriers.

Third, the definition includes "any system which provides drinking water to facilities or establishments serving travelers in interstate commerce, except that the Administrator may by regulation exempt any such system or class of such systems if he determines that such exemption will not result in any unreasonable threat to public health." This element of the definition includes all individual water supply systems which serve facilities serving interstate travelers, including such facilities as restaurants, campgrounds, and service stations. Studies by the Environmental Protection Agency have indicated that of the 128 outbreaks of illness attributable to drinking water that occurred from 1961 through 1970, 28 of these outbreaks were attributable to restaurants, campgrounds, and service stations. In addition, EPA studies of these types of facilities along interstate highways in Virginia, Oregon, and Kansas have indicated that 56% of such systems checked exceeded either the recommended or mandatory limits now in effect for water aboard interstate carriers. In addition, 15% exceeded bacteriological standards and 92% were found to have inadequate bacteriological monitoring. The General Accounting Office, in its report to the committee confirmed the fact that serious problems exist with respect to such systems. Thus, this portion of the definition includes those establishments which have been the cause of illness, but would allow the Environmental Protection Agency to exempt any such sys-

tem or class of systems if unreasonable threats will not result. Thus, if a State is doing a proper job of regulating such establishments or facilities or if self regulation of a class of facilities is sufficient, EPA could then exempt those facilities or establishments. EPA would be expected to determine which system or classes of systems would qualify for an exemption under this portion of the definition as soon as is possible. Until such time as those determinations are made systems serving interstate travelers will be included within the regulatory framework of the proposed legislation. However, as a practical matter, EPA will be expected to concentrate its enforcement efforts under section 5 on those systems for which problems have been demonstrated.

Finally, the definition includes "any other system or class of systems which provides drinking water if the Administrator determines by regulation that such system or class of systems may pose an unreasonable threat to public health." This portion of the definition would allow EPA to include within the umbrella of Federal-State regulatory responsibility those small systems not included within the other elements of the definition if studies by the Environmental Protection Agency or other competent sources indicate that unreasonable threats to health may exist with respect to such small systems.

Section 4. National Drinking Water Standards

This section requires the Administrator, after consulting with the Secretary of Health, Education, and Welfare, to issue initial proposed regulations prescribing national primary drinking water standards within 180 days after the date of enactment of this Act. National primary drinking water standards are those standards and programs which are requisite to reasonably protect the public health.

The Administrator would be prohibited from requiring the addition of any substance other than for the purpose of treating contaminants. Thus, EPA could not require the addition of fluorides or other substances to a public water supply system for medicinal purposes. Nor could EPA prevent the addition of fluorides up to maximum allowable under the standard. While EPA could not require the addition of a substance for medicinal purposes, it would have full authority to limit the addition of such a substance if necessary to prevent excessive levels from occurring.

The national primary drinking water standards will contain four separate features.

First, the standards are to prescribe the maximum permissible levels of any contaminants which may exist in any public water supply system.

Second, the standards may apply to any feature of the water supply system, including the treatment, storage, and distribution facilities. This element of the standards will be of particular importance in regulating bottled drinking water. For example, EPA may choose to limit the type of container in which bottled drinking water may be stored or sold to prevent contamination. Standards might also be set to place limits on the shelf life of bottled drinking water in order to prevent the build-up of bacteria or other organisms while on the shelf. With respect to municipal or other water supply systems, standards could be set for the type of treatment facilities required in order to ensure a back-up capability if the primary treatment facility should

fail. For example, EPA may require dual chlorination systems so that the supply of drinking water would not cease if the primary system failed.

Third, the standards shall include requirements for the adequate operation, maintenance, surveillance, and monitoring of water quality. The community water supply study, completed by EPA in 1971, revealed that many water supply systems were operated by improperly trained personnel. A requirement under this portion of the standards could establish minimum qualifications for water supply systems operators. To assure that quality water is provided on a continuing basis, the standards are also to include surveillance and monitoring of water quality as well as standards for sanitation and other facets of operation. This portion of the standards will be particularly useful in reducing the hazards of lead in drinking water. As demonstrated recently in Boston, lead pipes in homes can cause lead levels at the tap to reach hazardous proportions. The problem is acute when the drinking water is acidic. For example, the ph of Boston drinking water ranges from approximately 5.5 up to about 6.5. Consequently, if the ph of drinking water like Boston's is raised to approximately 8.0, the corrosive properties of the water are greatly reduced and lead in drinking water from lead pipes in homes ceases to be a problem. In such cases, EPA would be expected to require the addition of an alkaline substance to raise the ph of the drinking water to appropriate levels.

Finally, standards shall be set for site selection and construction of public water supply systems to protect facilities from floods and other natural disasters. During the 1972 floods associated with hurricane Agnes, many public water supply systems, particularly the smaller systems, were vulnerable to flood waters. Because of the record high waters, the loss of many of these systems was unavoidable. However, if the site selection and construction standards had been in effect, many other systems might have been saved or damage reduced with only a minimum of inconvenience.

With respect to the second, third, and fourth elements of the standards, it is anticipated that levels of performance will vary to meet the needs of the various classes of systems which will be regulated. For example, it may be entirely proper to require a higher degree of expertise and training of the operators of a large metropolitan water supply system than of an operator of an individual system serving a restaurant. Likewise, monitoring and surveillance of water supply systems should be tailored to reasonably protect the public health. Again, stiff requirements could be imposed on the larger systems which have the potential of affecting large numbers of people, while lesser requirements might be appropriate for smaller systems where the threat of widespread illness is less severe or where other factors make stiff requirements unreasonable.

This section also requires the Administrator to issue proposed regulations prescribing national secondary drinking water standards within the same 180 day period after the date of enactment of this Act. National secondary drinking water standards are to be advisory in nature and will specify a level of quality which is requisite reasonably to assure aesthetically adequate drinking water. The standards

could apply to any constituent of drinking water which may affect taste, odor or appearance or which might otherwise be necessary to assure aesthetically adequate drinking water. The Administrator must consider the difficulties that may arise in different areas of the country to achieve aesthetically adequate drinking water. Thus, the standards could vary according to geographic area depending upon what can reasonably be achieved. The committee recognizes that a given contaminant may be of public health significance at one level and of aesthetic significance at a lower level. For example, the presence of copper in drinking water at low levels is primarily of aesthetic concern. However, as the levels of copper rise, adverse physiological effects might become evident. Thus it may be preferable to specify that a given limit has aesthetic significance rather than to specify a given contaminant as being of aesthetic significance. EPA would be expected to take these factors into account in prescribing both national primary and secondary drinking water standards.

In establishing and revising standards under this section, the Administrator is to take into consideration the views and recommendations of the National Drinking Water Advisory Council established under section 7 of the Act.

At the time any national primary or secondary drinking water standard is proposed, the Administrator would be required to publish such criteria and information as is necessary to reflect the nature and extent of the identifiable effects on public health which might be expected from the presence of any contaminant which is the object of the proposed drinking water standard. The Administrator would also be required to publish information and data on drinking water treatment methods and technology for the control of such contaminant.

The purpose of this provision is to require EPA to publish the types of information that form the criteria for any national primary or secondary drinking water standard. Thus, all of the information which is relevant to the interests the Administrator must weigh in setting standards will be published and available for public scrutiny.

The Administrator would be required to review the adequacy of primary and secondary drinking water standards at least once every three years. The purpose of this requirement is to assure EPA's self-examination of the standards. The standards now in effect with respect to drinking water aboard interstate carriers were last revised in 1962. Although revision is currently underway, these efforts are long overdue. While any interested party will have the right to petition EPA for a change in the standards, self-examination by EPA of the standards should be a positive force to keep the standards current.

Section 5. Enforcement of Standards

This section establishes the relationship between the Federal and State governments with respect to enforcement of drinking water standards.

A State will retain primary enforcement responsibility if it is operating under a plan approved under section 11(d) and such plan is not being unreasonably deviated from to any significant extent. With respect to this subsection, the phrase "unreasonably deviated from to any significant extent" must be interpreted in terms of the quality of the State's enforcement effort and whether the State can

better enforce the standards than EPA even though significant deviations from the plan exist. Whereas under section 11(e) the phrase "unreasonably deviated from to any significant extent" relates to the good faith efforts made by a State to comply with its plan, the meaning of the phrase under this subsection must relate to the factors described above. However, should a State not have primary enforcement responsibility under this section it could still be eligible for program grants under section 11 to fund its drinking water program even though it is unable to prevent significant deviations from that plan due to circumstances reasonably beyond its control, if the State is attempting in good faith to comply with its plan.

If a violation of a national primary drinking water standard is detected within a State which has primary enforcement responsibility, EPA would not be authorized to bring an enforcement action of its own until 30 days after the Administrator notifies the State. If the violation continues past 30 days after such notification, the Administrator would be required to give public notice of the failure to comply and the extent of the dangers posed and, if appropriate remedial action has not been taken, to commence an enforcement action under section 16 or issue an administrative order in accordance with subsection (d) of this section. Thus, if a State is doing a proper job of enforcement, or a supplier of water has taken appropriate action, EPA could not bring an action of its own. On the other hand, if a State is not aggressively pursuing its action, EPA would be authorized to bring a suit of its own in Federal court. Additionally, the Administrator would be authorized to take action under section 6 when imminent hazards are posed.

While national primary drinking water standards will specify a maximum limit for contaminants, the point in time at which such contamination becomes unreasonable will vary depending upon the contaminant. For example, if a contaminant presents a hazard of acute toxicity, the unreasonable risk may occur in a very short period of time and EPA should not delay in enforcing the standard after the thirty-day grace period. If, however, the contaminant presents hazards that are of a chronic or long-term nature, unreasonable threats may not occur until much later. In the latter case, EPA would give greater latitude to the supplier of water or the State to remedy the problem without bringing an enforcement action.

If a State does not have primary enforcement responsibility, EPA would be required to give public notice of any violations it finds upon the detection of the violation along with a notice of the dangers to develop a new standard, EPA or the Attorney General would be required to commence an enforcement action under section 16 or issue an administrative order in accordance with subsection (d) of this section. To cite an example, assume that EPA detects a violation of primary drinking water standards and gives public notice. In order to eliminate the violation, a city council may have to meet to authorize funds for the construction of facilities. If the city council meets and the Administrator is satisfied that the necessary facilities will be installed to prevent any unreasonable threats, he would not bring an action or issue an administrative order. On the other hand, if he is not so satisfied, enforcement action would follow.

Any notification required by EPA under this section for violations of national primary drinking water standards should be given through local newspapers or by any other means which will alert users of the public water system of the standard being violated and the extent of the dangers posed.

If the Administrator finds that a national secondary drinking standard, or aesthetic standard, is being violated, he would be required to notify the State in which the violation takes place and request such State to take appropriate remedial action. If, after a reasonable length of time following such notification, the Administrator finds that such State has not taken action, the Administrator would be required to give public notification of such finding in a manner suitable to inform users of such violation.

Finally, subsection (d) authorizes the Administrator to issue administrative orders in the appropriate cases described above. Any such order could include such relief as may be appropriate to prevent any unreasonable endangerment to public health. Such relief could include a requirement to cease the violation, to notify customers of the violation, or to furnish emergency supplies of drinking water. Administrative orders would be issued after opportunity and notice for an adjudicative hearing in accordance with section 554 of title 5, United States Code.

Section 6. Imminent Hazards

This section authorizes the Administrator, or the Attorney General upon request of the Administrator, to petition the district courts to issue orders to eliminate imminent hazards. An imminent hazard is defined to exist "when there is reason to believe that a constituent of the drinking water of a public water system will result in a serious risk to health prior to the conclusion of an administrative hearing or other formal proceeding held pursuant to this Act, and that a State or local authority or the supplier of water has not acted to eliminate such risk."

There are two instances under which imminent hazards could occur under the proposed legislation. First, a violation of an applicable national primary drinking water standard may be so severe so as to present a serious risk to health prior to the conclusion of the thirty-day grace period for State enforcement. If the State or the supplier of water has not acted to eliminate the risk, the Administrator or the Attorney General, would be authorized to seek a court order to eliminate the imminent hazard.

Second, new information may arise which demonstrates the inadequacy of an existing standard. If the evidence shows that a serious risk to health would occur prior to the rulemaking proceedings necessary to develop a new standard, EPA or the Attorney General would be authorized to seek a court order immediately changing the standard. In that case, the Administrator would also be required simultaneously to propose a regulation to change the standard.

Section 7. National Drinking Water Council

This section would require the Administrator to establish a National Drinking Water Council consisting of fifteen scientifically qualified members. The purpose of the Council is to advise the Administrator

on scientific matters relating to the activities of EPA under this Act. Of the fifteen members of the Council, none could have an economic interest in the supply of drinking water. As State and local regulatory officials could provide valuable advice for the Administrator with respect to his activities under the Act, provision is made for representation on the Council of individuals responsible for the regulation of drinking water. To insure that the Council is not dominated by such officials, this section further specifies that not more than one-third of the members shall be regulatory officials. The terms of the members will be staggered to provide an orderly turnover of Council members.

Any report and dissenting views of the Council will be considered as a part of the record in any proceeding taken with respect to the Administrator's actions. It is intended that the meetings and deliberations of the Council will be open to the public and that qualified scientists who are not members of the Council will have an opportunity to make their views known.

The Administrator would be required to appoint members of the Council from individuals recommended to him by the National Academy of Sciences or from such other sources as he may deem advisable. The Administrator is authorized to reimburse the Academy for its expenses incurred in carrying out this section. Members of the Council who are not employees of the United States will receive compensation and travel expenses as authorized by section 5701 of title 5, United States Code, for persons in the government service employed intermittently.

Section 8. Research, Technical Assistance, Information, Training of Personnel

This section requires the Administrator to conduct and promote the coordination of research, studies, and investigations into the problems of drinking water. The Administrator would be authorized to render financial, technical, and other assistance to public agencies, institutions, water supply utilities, and individuals in the conduct of research and investigations relating to contaminants of drinking water, or to the provision of adequate supplies of safe drinking water.

The state of the art with respect to drinking water problems is in many respects primitive. For example, the Environmental Protection Agency testified at hearings of the Subcommittee on the Environment that viruses are suspected of being present in finished drinking water. While the evidence is as yet incomplete, these initial findings may prove to be the first indication of much greater problems to come. As harmful viruses are widespread in the environment it is imperative that protection be provided through treatment of drinking water. Yet, as EPA stated at those hearings, we know very little about how to detect viruses let alone remove them from drinking water. One of the primary needs for research that would be authorized by this section would be investigations into the extent of viral contamination of drinking water and appropriate means of treatment.

EPA would be required to conduct a study of the contamination of ground water resources in the United States. The study is to include but shall not be limited to a survey of the nature of the extent of the causes of ground water contamination and the extent to which existing law is effective in controlling such contamination. The results of this

study are to be submitted to the Congress within one year after enactment of this act along with any legislative recommendations that EPA deems necessary. This is a study provision only and vests no regulatory authority in the Administrator of EPA at this time over ground water resources.

This section also authorizes EPA to finance training programs for careers in the management and safe operation of drinking water supply. The Community Water Supply Study, completed in 1970, revealed that many water supply systems are manned by improperly trained personnel. The authority granted by this section should help to properly train the operators of drinking water treatment plants.

This section contains a specific authorization for appropriations for the current fiscal year as well as the next two fiscal years. The amounts authorized shall not exceed $14,000,000 for fiscal year 1974, $23,000,000 for fiscal year 1975, and $31,000,000 for fiscal year 1976.

Section 9. Rural Water Survey

This section requires the Administrator, after consultation with the Secretary of Agriculture and the States, to conduct a survey of the quantity, quality and availability of rural drinking water supplies. The survey will include consideration of the number of rural residents being inadequately served by a public or private drinking water supply system, having inadequate or no access to drinking water, and who are exposed to increased health hazards because of the inadequacies or absence of a drinking water supply system.

The survey is to be completed within two years after the date of enactment of the proposed legislation and a final report submitted to the President for transmittal to the Congress within the six months after the completion of the survey. The report is to include recommendations for improving rural water supplies.

The rural water survey will be especially helpful to the Administrator in gathering information about the nature and extent of the extremely small water supplies for their possible inclusion within the definition of a public water supply system under section 3. Knowledge with respect to the nature and extent of rural water supply problems is deficient at this time. The information gathered by the survey will be invaluable in demonstrating these types of problems.

It is intended that the survey be as comprehensive as is reasonably possible. The Administrator should not be limited by the use of population statistics as might be used by other agencies to define the areas of study under this section. Nor should the survey exclude those sparsely populated areas isolated from rural population centers or those areas of varying population density located on the fringes of rural population centers. As the goal of the survey is not only to determine which systems might come under the umbrella of this legislation but to determine what additional authority might be necessary to solve rural water supply problems, the survey must define not only those rural areas or types of rural systems which are worrisome, but, also, the cost of solving those problems in a reasonable manner.

Section 10. Special Study and Demonstration Project Grants

This section authorizes the Administrator to make grants of not to exceed two-thirds of the cost of construction and 75 percent of other

costs of demonstrating the feasibility of new means of providing safe drinking water. This section of the proposed legislation should be particularly useful in demonstrating the benefits of the research that will be developed under section 8. Often it is not feasible for a municipality or private supplier of water to institute on an operational basis new research which is as yet untried even though the technology appears promising. This section will allow EPA to demonstrate whether or not new technology will serve a useful purpose.

It is intended that grants made under this section will be used solely to demonstrate new technology and should not be used to finance the construction and operation of any facility unless that facility will demonstrate new technology. In other words, the section is not intended to authorize construction grants for drinking water treatment facilities unless such facility meets the specified criteria.

A specific three-year authorization for appropriations is also included for this section in amounts not to exceed $2,000,000 for fiscal year 1974, $5,000,000 for fiscal year 1975, and $10,000,000 for fiscal year 1976.

Section 11. State Drinking Water Supply Program Grants

This section authorizes the Administrator to make grants to the States to assist them in establishing and maintaining adequate programs to asure the safety of public drinking water. The Administrator would determine each State's share on the basis of (1) population, (2) financial needs, and (3) the extent of the water supply problem within such State. Any such payment to a State is not to exceed two-thirds of the cost of any such State program. The basis for apportioning funds under this section is similar to the criteria contained in the existing Federal Water Pollution Control Act and the amendments to that Act now pending before the Congress. Moreover, among the amendments adopted by the committee was Amendment No. 31 to S. 433, introduced by Senator Stevens, which provides that each State (except Guam, American Samoa, and the Virgin Islands) shall receive no less than 1 percent of the annual appropriations for program grants. The Administrator, however, would be authorized to reduce the percentage if he determines it necessary applying the criteria specified above. As a check against the inappropriate allocation of funds, the proposed legislation would require that the Administrator make payments to the States in accordance with regulations developed by EPA. Thus, the States will have an opportunity for administrative and judicial review of the allocations.

One major conclusion of the EPA Community Water Supply Study and the GAO study is that the States are unable to allocate sufficient funds from their own sources to do a proper job of monitoring and regulating public water supply systems. For example, 79% of the systems checked under the EPA study had no sanitary survey by regulatory authorities in the year preceding the study, with only 64% having had a sanitary survey in the preceding three years. Another example is that only 483 people made up the water surveillance staffs of 38 States servicing 155 million people, an average of 13 public health personnel per State with an average funding of $160,000.

The Administrator shall approve a State plan if such plan contains the following elements:

(1) drinking water standards which are no less stringent than the national primary drinking water standards prescribed under this Act;

(2) appropriate regulations and procedures for the implementation and enforcement of the State standards;

(3) administration of the plan by the State agency charged with responsibility for drinking water;

(4) plans, policies, and procedures to be followed by the State in carrying out the plan;

(5) accounting, budgeting, and other fiscal methods and procedures as are necessary for the proper and efficient administration of the plan;

(6) annual or more frequent reports as the Administrator may reasonably require in such form and containing such information as the Administrator may require;

(7) an emergency plan of action for each public water system within the State for use in times of emergency including provision for emergency reserves or alternate sources of suitable drinking water; and

(8) a standards violation notification procedure whereby the users of a public water system will be notified of the nature and extent of violations and any possible health effects which might arise and any remedial measures which will be taken to correct the problem.

The Administrator would be authorized to terminate payments under this section if he finds that a State plan is being unreasonably deviated from to any significant extent. If the State is making a good faith effort to comply with its plan but through circumstances which were not reasonably foreseeable, such State is unable to prevent significant deviations from the plan, then that State would still be eligible for program grants under this section. For example, if a natural disaster destroyed a State facility necessary to detect violations of the standards, a State should still be eligible for program grants under this section. Any approval or disapproval of a State plan or termination of payments because of unreasonable deviations will be in accordance with the procedures for administrative and judicial review under section 12.

This section further requires the Administrator to make a survey of State programs at least once every three years to determine if the States are unreasonably deviating from their plan to any significant extent.

The committee is aware that the revenue sharing proposals may provide some financial help to the States in administering drinking water programs. However, it should be recognized that these proposals will not provide the type of financial assistance that will be required to adequately improve State programs. For example, if the maximum allocation to the States of $3 billion per year as envisioned by renvenue sharing is realized at the end of five year,s the amount of funds utilized by the States from this source for drinking water programs will probably amount to less than $1 million per year assuming current spending patterns remain the same. Yet, the Environmental Protection

Agency has estimated that the States should be spending about $22 million more per year than they are spending currently. While revenue sharing funds will probably be used, at least in part, to defray the costs of the State share of water supply programs, revenue sharing, however meritorious it may be, by itself is an inadequate solution to the problems facing the States.

In addition, Federal financial assistance for State drinking water programs must be provided to avoid an entirely Federal drinking water program. As Federal enforcement ensues if the States fail to act or a State is not operating under an approved plan under this section, the States must be willing to assume the responsibility for regulating drinking water. The most effective way to ensure that end is to provide the States with the resources to operate their programs.

Section 12. Regulations, Procedures, and Judicial Review

This section specifies the mechanism by which regulations will be developed under the proposed legislation and the form of judicial review of those regulations.

The Administrator would be authorized to issue regulations to carry out the purposes of the Act and to amend or rescind them at any time. Proposed regulations must be published in the Federal Register at least sixty days prior to the time they become final. Any person adversely affected by a proposed regulation may file objections with the Administrator and request a public hearing. The Administrator would be required to grant such request. If public hearings are held, the issuance of final regulations would be held in abeyance pending the conclusion of the hearing. The Administrator would be authorized to structure the hearing in a manner he deems fit. Thus, he could afford full rights of cross examination if necessary to gather the facts, or he could limit the hearings to the presentation of oral or written statements.

Any judicial review of final regulations promulgated under the proposed legislation would be in accordance with the Administrative Procedures Act, except that with respect to relief pending review the court would be authorized to stay the agency action only if the party seeking such stay (a) is likely to prevail on the merits of the review proceeding and (b) will suffer irreparable harm pending such proceeding.

This section also contains a provision for remanding a case to the Administrator to adduce additional evidence if the evidence sought to be included is material and was not available at the time of the proceeding before the Administrator or that the failure to include such evidence in the proceeding was an arbitrary or capricious act of the Administrator. In effect, this provision affords judicial review of the form of the agency hearing. If the evidence sought to be presented is material to the decision and the Administrator refused to include the evidence in an arbitrary or capricious manner, the court could order such additional evidence to be taken upon such terms and conditions as the court may deem proper.

Section 13. Records

This section requires each supplier of water subject to a standard under section 4 or anyone who receives financial assistance under this Act to establish and maintain such records and to make such reports

as the Administrator may reasonably require. Suppliers of water and others subject to State enforcement would be required to submit the reports and make the records available to the appropriate State agency for inclusion in the reports required of such State.

This section further authorizes officers and employees of the Environmental Protection Agency, upon presenting the appropriate credentials and a written notice of inspection authority, to enter establishments, facilities, or other property of suppliers of water or persons receiving grants under this Act for the purposes of inspecting records files, papers, processes, controls, and facilities to determine the adequacy of operations. Inspections would be required to be commenced and completed with reasonable promptness and the person whose facilities are inspected will be notified of the results of the inspection.

Of course, in each instance where a court ordered warrant is constitutionally required, the Administrator and his officers and employees would be expected to comply with those requirements. In other words, the inspection authority granted by this section will be used only in those cases where a warrant is not constitutionally required, and then only upon presentation of appropriate credentials and a written notice of inspection authority.

Section 14. State Regulations

This section provides that nothing in this Act shall affect the authority of any State or local government to establish drinking water standards or make other requirements for purposes similar to those in this Act, except that any such standards or requirements shall not be less stringent than those of this Act or regulations thereunder.

Section 15. Prohibited Act

This section specifies the various acts under the proposed legislation which are prohibited as follows:

(1) The failure to comply with any final regulation issued by the Administrator pursuant to this Act, except that noncompliance with a national secondary drinking water standard under section 4(b) of this Act is not prohibited;

(2) The failure or refusal to establish and maintain records, make reports, and provide information as required under section 13(a) of this Act;

(3) The refusal to allow entry and inspection of establishments, facilities, or other property pursuant to section 13(b) of this Act; or

(4) The failure of any person to comply with any order issued under section 5(d) of this Act.

Section 16. Penalties and Remedies

This section first specifies a criminal penalty of not more than $15,000 for each day of violation or imprisonment of not more than one year, or both, for willful violations of the Act.

Second, this section authorizes the Administrator to assess civil penalties of not more than $10,000 for each day of violation after an adjudicative hearing in accordance with section 554 of title 5, United States Code for nonwillful violations of the Act. Before assessing such penalties, the Administrator would be required to consider the

nature, circumstances, and extent of such violation, the practicability of such compliance, and any good faith efforts made by the violator to comply with such provisions. If the offending party fails to pay the civil penalty the Administrator would be authorized to commence an action in the district courts to obtain such relief as may be appropriate or he may request the Attorney General to do so.

Finally, this section authorizes the Administrator or the Attorney General to bring an action in an appropriate district court for equitable relief to redress violations of the Act.

Section 17. Citizen Civil Action

This section authorizes any person to bring a civil action for injunctive relief against violators of national primary drinking water standards and against the Administrator where he has failed to perform mandatory duties. Any such person would have standing to bring suit if he could maintain the constitutional requirement of a case or controversy. This section is similar to the citizen civil action provisions of the Clean Air Act, Federal Water Pollution Control Act, and the Noise Control Act of 1972.

Injunctive suits under this section would not be authorized prior to sixty days after the plaintiff gives notice of the violation to the Administrator, to the alleged violator, and to the State in which the violation occurs. Further, suits would be prohibited if the Administrator, the Attorney General, or the appropriate State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the national drinking water standard alleged to be violated. In any such action, any person could intervene as a matter of right. In an action to enjoin the Administrator to perform a mandatory duty, suits would be prohibited prior to sixty days after the Administrator has been given notice of such action. Notification to the Administrator will be given in such manner as he may require by regulation. In any action under this section, the Adminstrator or the Attorney General, if not a party, may also intervene as a matter of right.

As a deterrent against frivolous suits, the court would be authorized to award the costs of litigation to any party whenever the court determines such an award appropriate.

Finally, this section would not restrict any right which any person or class of persons may have under any statute or common law to seek enforcement of any national primary drinking water standard or to seek any other relief.

Section 18. Confidentiality

This section establishes as a general principle that "copies of any communications, documents, reports, or any other information received or sent by the Administrator or the results of any drinking water quality analyses or any other information pertaining to drinking water quality possessed by the Administrator shall be made available to the public upon identifiable request and at reasonable costs unless the information may not be released under the terms of subsection (b).

Whereas subsection (a) establishes as a general principle access to the public of information, there is no legal requirement to make

information available if it is not required to be made available under the Freedom of Information Act (5 U.S.C. 552(b)). Subsection (a) must be read in conjunction with paragraph 2 of subsection (b) which states: "Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552 Title 5, U.S.C. or which is otherwise protected by law from disclosure to the public". Although nothing in the section "shall be deemed to require" release of any information, this section authorizes the Administrator or any officer or employee of the agency to make public any communications, documents, reports or other information which are not trade secrets.

Trade secrets may not be disclosed by the Administrator, employees of the Agency, or any member of the National Drinking Water Council except under certain specified situations. The purpose of this qualification is to protect the business community, particularly the bottled water community, from competitive harm. Black's law dictionary defines "trade secret" to mean: "a plan or process, tool, mechanism, or compound known only to its owner and those of his employees to whom it is necessary to confide it . . .; a secret, formula, or process not patented, but known only to certain individuals using it and compounding some article or trade having a commercial value. . . ." To give added protection to possessors of trade secrets, disclosure of trade secrets to the public when disclosure is necessary to protect their health could not be made without notice to the person to which the information appertains for comment in writing or discussion in closed session during a period of fifteen days following the notice. Of course, the 15 day period could be waived if the resulting delay would be detrimental to the public health.

There is a final qualification to the general principle of complete public access to information. This section prevents disclosure of the names or other means of identification of injured persons without their express written consent.

The protections granted by subsection (b) will rarely be used as little of the data received or sent by the Administrator will be a trade secret subject to protection. However, in the case of bottled water, information may be received or sent which could relate to processes or other matter which would fall within the definition of a trade secret. Thus, the language of this section is necessary to protect such trade secret information.

Subsection (c) of this section mandates that any communication from a person to the Administrator or any other employee of EPA or any member of the council established under section 7 concerning a matter presently under consideration in a rulemaking or adjudicatory proceeding shall be made a part of the public file of that proceeding unless it is entitled to protection as outlined above.

Section 19. Federal Facilities

This section requires each Federal installation to comply with all national primary drinking water standards and, to the maximum extent practicable, to comply with any national secondary, or esthetic, drinking water standards.

Subsection (b) of this section authorizes the administrator to waive compliance with the above requirements upon receiving information from the Secretary of Defense that the waiver is necessary in the

interests of national security. In the case of the Coast Guard, the Secretary of the Department in which the Coast Guard is operating would request the waiver. Upon issuance of the waiver, the Administrator would be required to publish a notice of the waiver in the Federal Register unless the Administrator has been requested not to publish the waiver because the publication would be contrary to the interests of national security. This provision is to cover those instances where, owing to national security requirements, installations or vessels of the Navy or the Coast Guard cannot comply with such requirements.

Section 20. Relationship to Other Laws

This section terminates the authority of the Secretary of Health, Education, and Welfare to regulate bottled drinking water under the Federal Food, Drug, and Cosmetic Act on the effective date of initial primary drinking water standards pertaining to bottled water under section 4 of this Act. The national primary drinking water standards will embody the regulation of bottled drinking water, and therefore the repeal of HEW's authority is necessary.

In bringing bottled water within the scope of this proposed legislation, the expertise and regulatory authority of the Environmental Protection Agency will be brought to bear on all public water supply systems. Consolidating jurisdiction, with EPA assuming the authority over bottled drinking water as well as other drinking water systems, should result in a better utilization of Federal resources. As section 4 requires EPA to develop standards with respect to bottled drinking water, the regulation of bottled drinking water and the enforcement of standards should be equivalent to that provided for other public water supply systems with special consideration for bottled water where necessary. This is in contrast to the current system of regulation of bottled drinking water by HEW which provides only a minimal spot-checking of bottled drinking water in the absence of any final standards for contaminants whatsoever.

Section 21. Authorization for Appropriations

This section authorizes funds to be appropriated in addition to the individual authorizations contained in sections 8, 9, 10 and 11 for the administration of the proposed legislation by EPA. Again, a three-year authorization is provided at a level not to exceed $8,000,000 for fiscal year 1974, $11,000,000 for fiscal year 1975, and $13,000,000 for fiscal year 1976.

Cost Estimate

Pursuant to the requirements of section 252 of the Legislative Reorganization Act of 1970, the committee estimates the cost of the proposed legislation for each of the first five fiscal years as follows:

	Fiscal year—				
	1974	1975	1976	1977	1978
Sec. 8. Research, technical assistance, and training grants	$14,000,000	$23,000,000	$31,000,000	$33,300,000	$37,300,000
Sec. 9. Rural water survey	1,000,000	2,000,000	1,000,000	0	0
Sec. 10. Special study and demonstration project grants	2,000,000	5,000,000	10,000,000	11,000,000	12,000,000
Sec. 11. State program grants	8,000,000	15,000,000	21,300,000	22,700,000	23,700,000
Sec. 21. All other EPA activities	8,000,000	11,000,000	13,000,000	14,000,000	15,000,000
Total	33,000,000	56,000,000	76,300,000	81,000,000	88,000,000

The committee knows of no cost estimate made by any Federal agency which differs from those tabulated above.

Changes in Existing Law

There is no change in existing law. Section 20, however, does repeal the authority of the Secretary of Health, Education and Welfare to regulate bottled water under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321, et seq.) on the effective date of national primary drinking water standards pertaining to bottled drinking water under section 4.

Text of S. 433 as Reported

(Omit the part struck through and insert the part printed in italics.)

A BILL To assure that the public is provided with an adequate quantity of safe drinking water, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be cited as the "Safe Drinking Water Act of 1973"~~.

Short Title and Table of Contents

Sec. 1(a) This Act may be cited as the "Safe Drinking Water Act of 1973".

(b) Table of contents.

~~DECLARATION OF POLICY~~ *FINDINGS*

Sec. 2. (a) The Congress finds *that*—

(1) ~~that~~ increasing quantities and types of chemicals, bacteria, viruses, toxic metals, and other contaminants are entering the public water systems that serve as sources which supply ~~the Nation~~ *American people* with water for drinking many of which are either not detected or *are not* removed by established water testing and treatment methods and which are consumed by or come in contact with the public, thereby presenting hazards or potential hazards to the public health;

(2) ~~that~~ the public should be provided with adequate quantities of water that is safe for drinking and other human uses;

(3) ~~that~~ the sale and shipment *in interstate commerce* of *such* contaminants of drinking water or products made through the use or production of such contaminants ~~through interstate commerce~~ present a danger to the public from consuming water containing such contaminants;

(4) ~~that~~ the Federal Government has the responsibility of establishing minimum national drinking water standards for all public water systems and to encourage State and local governments to establish equivalent or more stringent standards; and

(5) ~~that~~ State and local governments ~~are in~~ need ~~of~~ Federal assistance ~~in assuring~~ *to assure* the quality of water required for drinking and other human uses, and to that end the Federal Government should supply technical assistance, research and development information, monitoring, and testing information, assistance for the planning and implementation of comprehensive State drinking water programs, assistance for the development and demonstration of new or improved methods of making water safe for drinking, and assistance for the training of individuals involved in the management and safe operation of ~~our~~ *the* Nation's public water supply systems.

DEFINITIONS

SEC. 3. As used in this Act—

(1) ~~The term~~ "Administrator" means the Administrator of the Environmental Protection Agency.

(2) ~~The term~~ "Agency" means the Environmental Protection Agency.

~~(10)~~ *(3)* ~~The term~~ "Bottled drinking water" means water for human consumption *which is* sold in a closed container.

~~(9)~~ *(4)* ~~The term~~ "Contaminant" means any physical, chemical, biological, radiological, or other substance or matter which may cause or transmit infectious disease, chemical poisoning, chronic disease, or other impairment to ~~man,~~ *human beings* or which may have any other deleterious effect on the public health.

~~(8)~~ *(5)* ~~The term~~ "Council" means the National Drinking Water Council, established under section 7 of this Act,

~~(4)~~ *(6)* ~~The term~~ "Municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law and having jurisdiction over the supply of water to the public' and an Indian tribe or an authorized Indian tribal organization.

~~(5)~~ *(7)* ~~The term~~ "Person" includes a State or political subdivision thereof, municipality, corporation, partnership, association, private or public nonprofit institution, or an individual.

~~(6)~~ *(8)* ~~The term~~ "Public water system" means—

(A) any system which provides drinking water, including bottled drinking water, ~~(i)~~ to ten or more premises not owned or controlled by the supplier of water or ~~(ii)~~ to forty or more individuals receiving such drinking water from a system not serving travelers in interstate commerce;

(B) any system which provides drinking water to carriers serving travelers in interstate commerce;

(C) any system which provides drinking water to facilities or establishments serving travelers in interstate commerce, except that the Administrator may by regulation exempt any such system or class of such systems if he determines that such exemption will not result in any unreasonable threat to public health; and

(D) any other system or class of systems which provides drinking water if the Administrator determines by regulation that such system or class of systems may pose an unreasonable threat to public health.

~~(3)~~ *(9)* ~~The term~~ "State" means *any* State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

~~(7)~~ *(10)* ~~The term~~ "Supplier of water" means any person who controls, owns, or operates a public water system.

NATIONAL DRINKING WATER STANDARDS

SEC. 4. (a) The Administrator shall, after consultation with the Secretary of Health, Education, and Welfare, ~~(A)~~ *(1)* issue initial proposed regulations prescribing national primary drinking water standards within one hundred and eighty days after the date of enactment of this Act and ~~(B)~~ *(2)* issue initial proposed regulations prescribing national secondary drinking water standards within one hundred and eighty days after the date of such enactment. The Administrator shall specify in such proposed regulations the date on which such regulations shall take effect, which shall be as soon as is practicable.

(b)(1) National primary drinking water standards ~~as described under subsection (a) of this section,~~ shall be drinking water standards and programs, the attainment and maintenance of which, are requisite to reasonably protect the public health, except that the Administration shall not prescribe the addition of any substance other than for the purpose of treating contaminants. Such standards—

(A) shall prescribe the maximum permissible levels for any contaminants which may exist in any public water system in the United States which may cause or transmit disease, chemical poisoning, or other impairments to man, allowing adequate margins of safety;

(B) may apply to any feature of the water supply system including, but not limited to, the treatment, storage, and distribution facilities;

(C) shall include requirements for the adequate operation, maintenance, surveillance, and monitoring of water quality adequate to assure a dependable supply of drinking water which meets the requirements of subparagraph (A); and

(D) shall include requirements for construction and site selection of public water system facilities to protect such facilities from floods and other natural disasters.

(2) National secondary driking water ~~standards, as described under subsection (a) of this section,~~ *standards* shall specify the level of quality of drinking water the attainment and maintenance of which is requisite to reasonably assure aesthetically adequate drinking water. Such standards may apply to any constituent of drinking water ~~(A)~~

which may affect the taste, odor, or appearance of such water or ~~(B)~~ which may otherwise be necessary to assure aesthetically adequate drinking water.

(3) In establishing or revising standards under this section, the Administrator shall ~~take into consideration~~ *consider* the views and recommendations of the Council established pursuant to section 7 of this Act.

(c) The Administrator shall publish simultaneously with the issuance of any proposed national primary or national secondary drinking water standard under this section—

(1) such criteria and information as, in his judgment, are necessary to accurately reflect the nature and extent of all identifiable effects on public health or welfare which may be expected from the presence of the contaminant which is the object of such proposed drinking water standards*; and*

(2) information and data on drinking water treatment methods and technology for the control of the contaminant which is the object of such proposed drinking water standard. Such information and data shall apply to each feature of the water supply system at which control of the contaminant may be exercised including, but not limited to, treatment, storage, and distribution facilities and the adequate construction, maintenance, and operation thereof. Such information and data shall include the costs of such treatment and ~~the~~ *its* effectiveness ~~of such treatment~~ in controlling such contaminant.

(d) The Administrator shall, at least *once* every three years, review the adequacy of any national primary or secondary drinking water standard *prescribed* under ~~subsection (a) of~~ this section and the criteria, information, and data published under ~~subsection (c) of~~ this section. The Administrator shall publish his finding in the Federal Register.

ENFORCEMENT OF STANDARDS

SEC. 5. (a) For the purposes of this Act, a State ~~will be considered to have~~ *has* primary enforcement responsibility during any period for which the Administrator has approved a plan in accordance with section 11(d) of this Act and such plan is not being unreasonably deviated from to any significant extent by such State. If any such State has primary enforcement responsibility, the Administrator shall monitor the activities of such State only to the extent necessary to determine if such plan is being unreasonably deviated from to any significant extent. To the maximum extent practicable, any such monitoring shall not duplicate the activities of such State.

(b)(1) Whenever, on the basis of information available to him, the Administrator finds during a period in which a State has primary enforcement responsibility under subsection (a) of this section that any public water system in such State does not comply with any national primary drinking water standard he shall notify ~~the~~ *such* State ~~in which such water system is operating~~ of ~~the~~ *such* noncompliance. If the Administrator finds that such failure to comply with such standard extends beyond the thirtieth day after such notification he shall give public notice of such failure to comply with such standard and the extent of the dangers posed *by such noncompliance* and shall, if appropriate

remedial action has not been taken to prevent any unreasonable endangerment to public health, ~~(i)~~ (*A*) commence an action under section 16 of this Act, or request the Attorney General to do so, or ~~(ii)~~ (*B*) issue an order in accordance with subsection (d) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds during a period in which a State does not have primary enforcement responsibility under subsection (a) of this section, that ~~a~~ *any* public water system in such State does not comply with any national primary drinking water standard he shall give public notice of such finding and the extent of the dangers posed, and shall, if appropriate remedial action will not be taken to prevent any unreasonable endangerment to public health, ~~(i)~~ (*A*) commence an action under section 16 of this Act, or request the Attorney General to do so, or ~~(ii)~~ (*B*) issue an order in accordance with subsection (d) of this section.

(c) Whenever, on the basis of information available to him, the Administrator finds that any public water system in a State does not comply with any national secondary drinking water standards, he shall notify such State and request such State to take appropriate remedial action. If, after a reasonable time following such notification, the Administrator finds that such State has not taken remedial action, he shall give public notification of such finding in a manner suitable to inform users of such public water system of such violation.

(d)(1) Any order issued under subsection (b) of this section shall specify such relief as may be appropriate to prevent any unreasonable endangerment to public health. Such relief may ~~include an order requiring~~ *require* the person responsible for the violation which results in ~~the~~ *such* order to cease such violation, to notify customers of such violation in accordance with section 11(d)(8) of this Act, or to furnish emergency supplies of drinking water.

(2) Any order *issued* under ~~this subsection~~ *subsection (b) of this section* shall be issued only after notice and opportunity for a hearing in accordance with section 554 of title 5, United States Code.

IMMINENT HAZARDS

SEC. 6. (a) An imminent hazard shall be considered to exist when there is reason to believe that a constituent of the drinking water of a public water system will result in a serious risk to health prior to the conclusion of an administrative hearing or other formal proceeding held pursuant to this Act and that a State or local authority or the supplier of water has not acted to eliminate such risk.

(b) If an imminent hazard exists, the Administrator may petition an appropriate district court of the United States, or he may request the Attorney General to do so, to order such action as is necessary to eliminate the imminent hazard. The Administrator shall simultaneously, if he has not previously done so, propose any regulation which might be necessary under section 4 of this Act, or he may commence an action under section 16 of this Act.

NATIONAL DRINKING WATER COUNCIL

SEC. 7. (a) There shall be established in the Environmental Protection Agency a National Drinking Water Council consisting of

fifteen scientifically qualified members. The Administrator shall appoint members of the ~~board~~ *Council* from a list of individuals recommended to him by the National Academy of Sciences or from such other sources as he deems advisable. Such Council shall include qualified scientists none of which shall have any economic interest in the supply of drinking water and not more than one-third of which shall have any responsibility for the regulation of drinking water. Each member of such Council shall hold office for a term of three years, except that—

(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term;

(2) the terms of the members first taking office shall expire as follows—(i) five shall expire three years after the date of enactment of this Act, (ii) five shall expire two years after such date, and (iii) five shall expire one year after such date, as designated by the Administrator at the time of appointment; and

(3) the members of such Council shall be eligible for reappointment.

(b) The National Academy of Sciences shall maintain a list of qualified scientists to assist the Administrator in appointing members to such Council.

(c) Such Council shall advise, consult with, and make recommendations to the Administrator on matters relating to the scientific review of data, including engineering data, relating to the activities of the Agency under this Act. Such Council shall, upon the request of the Administrator, review any proposed action of the Administrator and shall report its views and reasons therefor in writing to the Administrator within a reasonable time, as specified by the Administrator. ~~All proceedings and deliberations of such Council and their reports and reasons therefor shall be public record.~~ The report of the Council and any dissenting views shall be considered as part of the record in any proceeding taken with respect to the Administrator's action.

~~(c)~~ (*d*) The Administrator is authorized to reimburse the National Academy of Sciences for expenses incurred in carrying out this section.

~~(d)~~ (*e*) *While serving on the business of the Council*, members ~~of such Council~~ who are not regular full-time employees of the United States shall~~, while serving on business of the Council,~~ be entitled to compensation at rates fixed by the Administrator, ~~but~~ not ~~exceeding~~ *to exceed* the daily rate applicable at the time of such service to grade GS~~-18~~ of the Classified Civil Service, including traveltime~~; and~~. While ~~so~~ serving away from their homes or regular places of ~~business~~, *business*, *members* ~~they~~ may be allowed travel expenses, including per diem in lieu of subsistence as authorized ~~by~~ *under* section 5701 of title 5, United States Code, for persons in the Government service employed intermittently.

RESEARCH, TECHNICAL ASSISTANCE, INFORMATION, TRAINING OF PERSONNEL

SEC. 8. (a) The Administrator shall conduct and promote the coordination of research, studies, and investigations and render finan-

cial, technical, and other assistance to appropriate public agencies, institutions, water supply utilities, and individuals in the conduct of research, studies, and investigations relating to the causes, diagnosis, treatment, control, and prevention of diseases and impairments of ~~man~~ *human beings* resulting directly or indirectly from contaminants in drinking water, or to the provision of an adequate quality and quantity of safe drinking water. Such research, studies, or investigations may include, but shall not be limited to, the development of *new and improved methods*—

(1) ~~new and improved methods~~ to identify and measure the existence of contaminants in drinking water and to identify the source of such contaminants;

(2) ~~new and improved methods~~ to identify and measure the health effects of contaminants in drinking water;

(3) ~~new and improved methods~~ of treating water to prepare it for drinking, to improve the efficiency of water treatment and to remove contaminants from the water; and

(4) ~~new and improved methods~~ for providing *the public with* adequate quantities of safe water for drinking, ~~to the public,~~ including improvements in water purification and distribution, and methods of assessing the health-related hazards of other characteristics of drinking water supplies.

(b) In carrying out this Act, the Administrator is authorized to—

(1) collect and make available information pertaining to research and investigations, with respect to providing adequate quality and quantity of safe drinking water together with appropriate recommendations in connection therewith;

(2) make available research facilities of the Agency to appropriate public agencies, institutions, water supply utilities, and individuals engaged in studies and research relating to water supply; and

(3) make grants to, and contracts with, any State or other public agency, educational institution, water supply utility, any other organization, and individuals in accordance with procedures prescribed by the Administrator, under which he may pay all or a part of the costs (as may be determined by the Administrator) of any project or activity which is designed *to*—

(A) ~~to~~ develop, expand, or carry out a program (which may combine training, education, and employment) for training persons for occupations involving the management and safe operation aspects of providing safe drinking water; and

(B) ~~to~~ train instructors and supervisory personnel to train or supervise persons in occupations involving the management and safe operation aspects of providing safe drinking water.

(c) (1) The Administrator shall conduct a study of the contamination of ground water resources in the United States which are utilized for the provision of drinking water. Such study shall include, but shall not be limited to, a survey of the nature, extent, and causes of such contamination and the extent to which existing State and Federal law controls such contamination.

(2) Not later than one year after the enactment of this Act, the Administrator shall submit the results of such study to the Congress

along with such legislative recommendations as he may deem appropriate.

~~(c)~~ *(d) To carry out the provisions of this section*, there is hereby authorized to be appropriated ~~to carry out the provisions of this section~~ *not to exceed* $14,000,000 for the fiscal year ending June 30, 1974; *not to exceed* $23,000,000 for the fiscal year ending June 30, 1975; and *not to exceed* $31,000,000 for the fiscal year ending June 30, 1976. Sums appropriated pursuant to this section shall remain available for obligation through the close of the following fiscal year.

RURAL WATER SURVEY

SEC. 9. (a) The Administrator shall (after consultation with the Secretary of Agriculture and the several States) enter into *such* arrangements with public or private entities as may be appropriate to conduct a survey of the quantity, quality, and availability ~~or~~ *of* rural drinking water supplies. Such survey shall include, but not be limited to, the consideration of the number of residents in each rural area—

(1) presently being inadequately served by a public or private drinking water supply system, or by an individual home drinking water supply system;

(2) presently having inadequate access to or no access to drinking water; and

(3) who, due to the absence or inadequacy of a drinking water supply system, are exposed to an increased health hazard.

(b) Such survey shall be completed within two years of the date of enactment of this Act and a final report thereon submitted, not later than six months after the completion of such survey, to the President for transmittal to the Congress. Such report shall include recommendations for improving rural water supplies.

(c) *To carry out the provisions of this section*, there is hereby authorized to be appropriated ~~to carry out the provisions of this section~~ *not to exceed* $1,000,000 for the fiscal year ending June 30, 1974; *not to exceed* $2,000,000 for the fiscal year ending June 30, 1975; and *not to exceed* $1,000,000 for the fiscal year ending June 30, 1976.

SPECIAL STUDY AND DEMONSTRATION PROJECT GRANTS

SEC. 10. (a) The Administrator is authorized to make grants to appropriate public and private agencies, institutions, water supply utilities, and individuals for the purposes of *assisting in the development and demonstration of any project which will—*

(1) ~~assisting in the development and demonstration of any project which will~~ demonstrate a new or improved method, approach, or technology for providing a safe supply of drinking water to the public in both urban and rural areas of the Nation; and

(2) ~~assisting in the development and demonstration of any project which will~~ investigate and demonstrate the health implications involved in the reclamation, recycling, and reuse of waste waters for drinking and related uses or which will demonstrate processes and methods for the safe and ~~esthetic~~ *aesthetic* preparation of such waters.

(b) Grants made by the Administrator under this section shall not—

(1) exceed 66⅔ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator;

(2) be made for any project involving the construction or modification of any facility in any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water; and

(3) be made for any project unless the Administrator determines, after consulting the Council, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking or other useful purposes.

(c) Nothing in this section shall affect the authority of the Administrator to make grants for Alaska village safe water and pollution elimination or control demonstration projects under section 113 of the Federal Water Pollution Control Act ~~(86 Stat. 832)~~ *(33 U.S.C. 466)*.

(d) ~~For the purposes of this section~~ *To carry out the provisions of this section*, there is hereby authorized to be appropriated *not to exceed* $2,000,000 for the fiscal year ending June 30, 1974; *not to exceed* $5,000,000 for the fiscal year ending June 30, 1975; and *not to exceed* $10,000,000 for the fiscal year ending June 30, 1976.

STATE DRINKING WATER SUPPLY PROGRAMS ~~GRANTS~~

SEC. 11. (a) There is hereby authorized to be appropriated *not to exceed* $8,000,000 for the fiscal year ending June 30, 1974; *not to exceed* $15,000,000 for the fiscal year ending June 30, 1975; and *not to exceed* $21,300,000 for the fiscal year ending June 30, 1976, for grants to the States to assist them in establishing and maintaining adequate programs to assure the safety of public drinking water.

(b) From the sums available ~~pursuant to~~ *for any fiscal year under* subsection (a) ~~for any fiscal year~~ *of this section* the Administrator shall from time to time make payments to the several States in accordance with regulations. *Such payments shall be made* on the basis of (1) the population, (2) the financial needs, and (3) the extent of the actual or potential water supply problem, except that any such payment shall not be greater than an amount equal to two-thirds of the cost of any such State program. *No State shall receive less than 1 per centum of the annual appropriation for grants under this section: Provided, That the Administrator may, by regulation, reduce such percentage in accordance with the criteria specified under this subsection: And provided further, That such percentage shall not apply to grants allotted to Guam, American Samoa, or the Virgin Islands.*

(c) The Administrator shall pay to each State an amount equal to its allotment under subsection (b) for the purposes of defraying the cost of carrying out its State plan approved under subsection (d) of this section, including the cost of training personnel for State and local public water supply work and the cost of administering the State plan.

Such payments shall not be made if such plan has not been approved by the Administrator.

(d) The Administrator shall approve any plan *which is submitted by a State* for establishing and maintaining a program to assure the safety of public drinking water ~~which is submitted by the State,~~ if such plan—

(1) provides for the formal adoption by the State of drinking water standards which are no less stringent than the national primary drinking water standards prescribed under section 4 of this Act;

(2) provides for the adoption by the State of appropriate regulations and procedures for the implementation and enforcement of such State standards;

(3) provides for administration or for the supervision of administration of the plan by the State agency charged with the responsibility for the safety of drinking water;

(4) sets forth the plans, policies, and procedures to be followed in carrying out the State plan;

(5) provides for such accounting, budgeting, and other fiscal methods and procedures as are necessary for the proper and efficient administration of the plan;

(6) provides that the appropriate State agency will make annual reports, or such more frequent reports as the Administrator may reasonably require, in such form and containing such information as he may require;

(7) provides for the establishment of an emergency plan of action for each public water system within the State for use in case of an emergency affecting the safety of the treated drinking water or the effective operation of the treatment facility, including provision for emergency reserves or alternate sources of water suitable for drinking and culinary purposes; and

(8) provides for the implementation of a standards violation notification procedure, ~~whereby~~ *under which* any supplier of water found to be in violation of any Federal or State drinking water standard will be required to so notify its customers, in transmitting water bills or through other appropriate means, of the nature and extent and possible health effects of such violation and the remedial measures which will be taken to correct the problem.

(e) If a State plan has been approved, and the Administrator subsequently finds that such plan is being unreasonably deviated from to any significant extent, the Administrator is authorized to terminate any further payments *to* such *State* under this section. ~~to such State.~~

(f) Any approval or disapproval of a State plan under subsection (d) of this section, or termination of payments under subsection (e) of this section, shall be in accordance with and subject to the procedures and judicial review provisions of section 12 of this Act.

(g) For the purposes of determining whether any State plan approved under subsection (d) of this section is being unreasonably deviated from to any significant extent, the Administrator shall cause

to be made, at least once every three years, a complete audit of such State's water supply programs.

REGULATIONS, PROCEDURE, AND JUDICIAL REVIEW

SEC. 12. (a) *(1)* At his own initiative, or upon the petition of any person, the Administrator is authorized to issue regulations to carry out the purposes of this Act. ~~and to~~ *He may* amend or rescind such regulations at any time.

~~(b)~~ *(2)* The Administrator shall publish any regulations proposed under this Act, or proposals to amend or rescind such regulations, and his justification therefor in the Federal Register at least sixty days prior to the time when such regulations shall become final. The Administrator shall also publish in the Federal Register a notice of all petitions received under ~~subsection (a)~~ *paragraph (1) of this subsection*, and, if such petition is denied, his reasons therefor. Such notice shall identify the purpose of the petition and include a statement of the availability of any data submitted in support of such petition. If any person adversely affected by a proposed regulation files objections and requests a public hearing within forty-five days of the date of publication of the proposed regulation, the Administrator shall grant such request. If such public hearing is held, final regulations shall not be promulgated by the Administrator until after the conclusion of such hearing. All public hearings authorized by this subsection shall consist of the oral and written presentation of data, views, or arguments in accordance with such conditions or limitations as the Administrator may make applicable thereto.

~~(c)~~ *(3)* Proposed and final regulations issued under this Act shall set forth findings of fact on which the regulations are based and the relationship of such findings to the regulations issued.

~~(c)~~ *(b)* Except as expressly modified by the provisions of this section, the provisions of chapter 5, of title 5 of the United States Code, shall apply to proceedings conducted by the Administrator under this Act.

~~(d)~~ *(c)(1)* Any judicial review of final regulations promulgated under this Act shall be in accordance with section 701–706 of title 5, United States Code, except that, with respect to relief pending review, no stay of an Agency action may be granted unless the reviewing court determines that the party seeking such stay ~~(a)~~ is likely to prevail on the merits in the review proceeding and ~~(b)~~ will suffer irreparable harm pending such proceeding.

~~(f)~~ *(2)* If the party seeking judicial review applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court either ~~(1)~~ that the information is material and was not available at the time of the proceeding before the Administor or ~~(2)~~ that failure to include such evidence in the proceeding was an arbitrary or capricious act of the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing, in such manner and upon such terms and conditions as ~~to~~ the court may deem proper. The Administrator may modify his finding as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or

new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

RECORDS

SEC. 13. (a) ~~Every~~ *Each* supplier of water who is subject to a standard prescribed under section 4 *of this Act* or *each* grantee shall establish and maintain such records, make such reports, and provide such information as the Administrator shall reasonably require to assist him in establishing standards and regulations under this Act and in determining whether such person has acted or is acting in compliance with this Act. Suppliers of water and other *persons* subject to State enforcement under section ~~4(c)~~ *5* of this Act shall submit such reports and make available such records and information to the appropriate State agency for inclusion in State reports required under section 11(d)(6) of this Act.

(b) Any officer or employee duly designated by the Administrator, upon presenting appropriate credentials and a written notice of inspection authority to any supplier of water subject to a standard prescribed under section 4 of this Act or any grantee (or person in charge of any of its property), is authorized to enter any establishment, ~~or~~ facility, or other property of such ~~person~~ *supplier of water or grantee* in order to determine whether such *person* ~~supplier or grantee~~ has acted or is acting in compliance with this Act. ~~including for this purpose, inspection~~ *Such officer or employee may inspect*, at reasonable times, ~~of~~ records, files, papers, processes, controls, and facilities, ~~or in order to~~ *and may* test any feature of a public water system, including its raw water source. Each inspection shall be commenced and completed with reasonable promptness and ~~the~~ *such* supplier *of water* or grantee notified of the results of such inspection.

(c) For purposes of this section, the term "grantee" means any person who receives financial assistance under this Act.

STATE REGULATIONS

SEC. 14. Nothing in this Act shall affect the authority of any State or local government to establish drinking water standards or to make other requirements for purposes similar to those contained in this Act, except that any such standards or requirements shall not be less stringent than the requirements of this Act or regulations ~~thereunder~~ *issued under this Act.*

PROHIBITED ACTS

SEC. 15. The following acts and the causing thereof are prohibited:

(1) the failure to comply with any final regulation issued by the Administrator ~~pursuant to~~ *under* this Act, except that noncompliance with a national secondary drinking water standard under section 4(b) of this Act is not prohibited;

(2) the failure or refusal to establish and maintain records, make reports, and provide information as required under section 13(a) of this Act;

(3) the refusal to allow entry and inspection of establishments, facilities, or other property pursuant to section 13(b) of this Act; or

(4) the failure of any person to comply with any order issued under section ~~5(d)~~ (*b*) of this Act.

PENALTIES AND REMEDIES

SEC. 16. (a) Any person willfully violating section 15 of this Act shall on conviction be fined not more than $15,000 for each day of violation or imprisoned for not more than one year, or both.

(b)(1) Any person ~~not willfully~~ violating section 15 of this Act *other than willfully* shall be liable to the United States for a civil penalty of a sum which is not more than $10,000 for each day of violation, to be assessed by the Administrator after notice and opportunity for an adjudicative hearing conducted in accordance with section 554 of title 5, United States Code, and after ~~he~~ *the Administrator* has considered the nature, circumstances, and extent of such violation, the practicability of compliance with the provisions violated, and any good-faith efforts to comply with such provisions.

(2) ~~Upon failure of~~ *If* the offending party *fails* to pay ~~the~~ *such* civil penalty, the Administrator may commence an action in an appropriate district court of the United States for such relief as may be appropriate or *may* request the Attorney General to commence such an action.

(c) The Attorney General or the Administrator may bring an action in the appropriate district court of the United States for equitable relief to redress a violation by any person of any provision of section 15 of this Act. ~~and~~ The district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

CITIZEN CIVIL ACTION

SEC. 17, (a) Except as provided in subsection (b) of this section, any person may commence a civil action for injunctive relief on his own behalf, whenever such action constitutes a case or controversy—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any national primary drinking water standard promulgated under section 4 of this Act, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator. Any action brought against the Administrator under this paragraph shall be brought in the District Court of the District of Columbia.

The district courts shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(b) No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to any alleged violator of such standard and (iii) to the State in which the violation occurs,

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil

action in a court of the United States to require compliance with such standard, but in any such action any person may intervene as a matter of right.

(2) under subsection (a) (2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such an award is appropriate.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any national primary drinking water standard or to seek any other relief.

CONFIDENTIALITY

SEC. 18. (a) Copies of (1) any communications, documents, reports, or other information received or sent by the Administrator or (2) the results of any drinking water quality analyses or other information pertaining to drinking water quality possessed by the Administrator shall be made available to the public upon identifiable request, and at reasonable cost unless such information may not be publicly released under the terms of subsection (b) of this section.

(b) (1) The Administrator or any officer or employee of the Agency or the Council established under section 7 of this Act shall not disclose any information which concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information may be disclosed by the Administrator—

(A) to other Federal Government departments, agencies, and officials for official use, upon request, and with reasonable need for such information;

(B) to committees of Congress having jurisdiction over the subject matter to which the information relates;

(C) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding;

(D) if relevant in any proceeding under this Act, except that such disclosure shall preserve the confidentiality to the extent possible without impairing the proceeding; and

(E) to the public in order to protect their health, after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the person to which the information appertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health).

In no event shall the names or other means of identification of injured persons be made public without their express written consent.

(2) Nothing contained in this section shall be demed to require the release of any information described by subsection (b) of section 552,

title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(c) Any communication from a person to the Administrator or any other employee of the Environmental Protection Agency concerning a matter presently under consideration in a rulemaking or adjudicative proceeding in the Environmental Protection Agency shall be made a part of the public file of that proceeding unless it is communication entitled to protection under subsection (b) of this section.

FEDERAL FACILITIES

SEC. 19. (a) Except as provided for in subsection (b) of this section, each Federal department or agency having jurisdiction over any building, installation, or other property, which is or will be served by a federally owned or maintained public water system, shall comply with all national primary drinking water standards prescribed under section 4 of this Act and shall, to the maximum extent practicable comply with any national secondary drinking water standard prescribed under such section.

(b) The Administrator may waive compliance with the requirements of subsection (a) of this section, in whole or in part, upon receiving information from the Secretary of Defense or from the Secretary of the Department in which the United States Coast Guard is operating that such waiver is in the interest of national security. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for good cause shown by the Secretary of Defense or by the Secretary of the Department in which the United States Coast Guard is operating, in the interest of national security, unless the Administrator has been requested by the applicable Secretary to omit such publication because it would be contrary to the interests of national security.

RELATIONSHIP TO OTHER LAWS

SEC. 20. The authority of the Secretary of Health, Education, and Welfare to regulate bottled drinking water under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, et seq.) shall be repealed on the effective date of initial national primary drinking water standards pertaining to bottled drinking water under section 4 of this Act.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 21. In addition to the authorizations for appropriations contained in sections 8, 9, 10, and 11 of this Act, there are hereby authorized to be appropriated such sums as may be necessary, but not to exceed $8,000,000, $11,000,000, and $13,000,000, for the fiscal years ending on June 30, 1974, June 30, 1975, and June 30, 1976, respectively, for the purposes and administration of ~~the~~ *this* Act.

AGENCY COMMENTS

The following agency comments were received by the committee on S. 433 and S. 1735.

ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., February 27, 1973.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: I am pleased to transmit a proposed bill, "The Safe Drinking Water Act of 1973," which is designed "to assure that the public is provided with safe drinking water, and for other purposes."

The proposed bill is forwarded in accordance with the Environmental and National Resources State of the Union Message of the President.

The Safe Drinking Water Act of 1973 would provide an effective solution to the problem associated with providing safe drinking water for the public. The legislation would insure that adequate standards are developed, require that citizens receive prompt notification if their drinking water fails to meet health standards, and provide that primary enforcement, reporting, and monitoring authorities will rest with State and local governments where they properly belong. The proposal is essentially a preventive measure intended to assure safe drinking water now and for the future.

Under the proposed bill, the Administrator of the Environmental Protection Agency would establish national mandatory drinking water standards, designed to protect the public health. Recommendatory standards relating to non-health characteristics of drinking water would also be issued. States would have responsibility for implementing and assuring compliance with the mandatory national standards. In the event of non-compliance, the supplier of water would be obliged to notify users, the State, and EPA. We believe that the public awareness to be achieved through the notification requirement will best assure continuing safe drinking water to the Nation. Additional assurance of compliance would be achieved through a citizen suit provision. Direct Federal enforcement would be available in the event of an imminent health hazard. Research and studies addressed to drinking water supply problems would also be provided.

We recommend that the bill be referred to the appropriate Committee for consideration and that it be enacted.

The Office of Management and Budget has advised that the enactment of this proposed legislation would be in accord with the program of the President.

Sincerely yours,

WILLIAM D. RUCKELSHAUS,
Administrator.

Enclosure.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., June 6, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the comments of the Environmental Protection Agency on S. 433, the "Safe Drinking Water Act of 1973."

The bill requires the Administrator of EPA to promulgate national primary and secondary drinking water standards. Primary standards are to be health-based and shall include not only constituent levels for contaminants, but also operation, maintenance, surveillance, and monitoring requirements. Furthermore, standards for construction and site selection to protect facilities from floods and other natural disasters are mandated. The Administrator has an option of establishing standards, among other things, for treatment, storage, and distribution facilities. Secondary standards are to be based on aesthetic considerations such as taste, odor, and appearance. Responsibility for enforcing primary standards is largely the responsibility of the States, but procedural mechanisms are available to the Administrator that allow him to act if the States fail to do so. In case of secondary standards, the Administrator shall notify a State when he learns that a supplier is not in compliance. If the State fails to take remedial action within a reasonable time, the Administrator shall publicly notify users of the system of the violation.

In addition to the standard-setting and enforcement capabilities conferred upon him, the Administrator is empowered to conduct research, assist others in their research efforts, provide technical assistance, conduct training programs, and initiate a demonstration grant program. The bill also authorizes State program grants for States whose plans are approved by the Administrator.

The bill also provides for the establishment of a National Drinking Water Advisory Council to advise the Administrator. Additional provisions provide for citizen suits and the regulation of bottled drinking water.

The Environmental Protection Agency is in accord with the objectives of this legislation. However, we believe that the Administration's bill (S. 1735), possesses certain features that make its enactment preferable to that of S. 433.

The most important point in favor of the Administration's bill is its recognition of the importance of State and local efforts in providing the Nation with safe drinking water. In recognition of this fact, S. 1735 provides for a distinct division of labor between Federal, State, and local authorities, with the Federal role circumscribed to those activities for which it is best suited; standard setting and requiring adequate monitoring of the quality of the Nation's drinking water at its point of use.

This division of labor has several implications for the Administration's bill. First, the scope of the primary health-related standards is limited in S. 1735 to constituent limits, and monitoring and reporting requirements. The operation and maintenance requirements found in S. 433 are, we believe, better left to State and local determination. Variances in the character of treatment systems around the country—from the cold northern to the warm southern climates—make a Federal standard for operation and maintenance clearly inappropriate. We feel focusing Federal attention at the point of use serves to take full advantage of Federal standard setting capabilities without displacing State and local responsibility.

A second implication of recognizing the importance of State and local efforts is in enforcement. The broad scope of the primary standards under S. 433 coupled with the backup Federal enforcement mechanism of section 5 holds out the possibility of far-flung and intensive Federal enforcement actions. In contrast, S. 1735 embodies a self-executing enforcement mechanism that precludes the need for an extensive Federal presence in the enforcement area. Under the Administration's bill violation of a primary standard calls into play an automatic notification procedure that in conjunction with citizen suits and State enforcement efforts allows for a low Federal profile.

We also believe that the Federal role with regard to secondary (aesthetic) standards should be even more limited. Since these standards will vary greatly from place to place, we feel they should be completely under State and local control. Furthermore, the fact that they are based on aesthetics would seem to make it a local decision as to whether the costs of their adoption are in line with what the State or locality desires to pay for aesthetic benefits. We therefore believe that S. 1735, by providing only for the issuance of recommended secondary standards for adoption by State and local agencies, lays out the appropriate Federal role.

Our concern for State and local initiative also leads us to argue against the enactment of the State program grant provisions of S. 433. Such grants would have several undesirable side effects. State and local initiative would be weakened since EPA would be funding programs and setting priorities in an area of traditional State and local responsibility. Furthermore, both the Congress and the Administration have been concerned with the proliferation of categorical aid programs and these grants would only exacerbate this problem. It is our belief that the costs of treatment, testing and monitoring should be borne by the users of the water supply. Experience has shown that an adequate safe drinking water program can be funded from State and local sources.

We also recommend against establishing a statutory National Drinking Water Advisory Council to assist the Administrator on matters arising under this legislation. The Administrator will (and as a matter of fact has sought such advice in the past) need to seek advice from outside experts, but we do not believe it is necessary to establish another statutory advisory committee.

The inclusion of bottled water within S. 433's regulatory scheme is another provision we do not recommend be enacted. The Food and Drug Administration has an ongoing program in this area and adequate legal authority to insure the safety of bottled water. We can see no reason for duplicating FDA's efforts.

Accordingly, we recommend enactment of S. 1735, the Administration's Safe Drinking Water Act of 1973 in lieu of S. 433.

We are advised by the Office of Management and Budget that the submission of this report is in accord with the program of the President.

Sincerely yours,

ROBERT W. FRI,
Acting Administrator.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 17, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: By letter of March 1, 1973, you requested our comments on S. 433, 93d Congress, a bill which if enacted would be cited as the "Safe Drinking Water Act of 1973."

S. 433 would authorize the Administrator of the Environmental Protection Agency (EPA) to issue standards for drinking water to assure that the public is provided with an adequate and wholesome supply of water for drinking and other human uses.

Sections 8(b)(3) and 10(a) would authorize the Administrator of the Environmental Protection Agency to make grants to public and private agencies, institutions, water supply utilities, and individuals. However, there is no provision in the bill authorizing the Comptroller General, or his representative, to have access for the purpose of audit to the records of the recipients of the Federal grants proposed in the bill. Such authority is provided to the Comptroller General with respect to grants-in-aid to States pursuant to section 202 of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1101). We recommend that similar authority be provided with respect to recipients of Federal funds below the State level as well as other recipients under the proposed legislation. This could be accomplished by adding two new subsections to section 13 of the bill as follows:

(d) Each recipient of Federal assistance under this Act, pursuant to grants, subgrants, contracts, subcontracts, loans or other arrangements, entered into other than by formal advertising, and which are otherwise authorized by this Act, shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(e) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in subsection (d) of this section, have access for the purpose of audit and examination to any books, documents, papers and records of such recipients which in the opinion of the Administrator or the Comptroller General may be related or pertinent to the grants, contracts, subcontracts, subgrants, loans, or other arrangements referred to in subsection (d).

On page 24, line 20, "section 4(c)" should be changed to "section 5." On page 26, line 13, "section 5(d)" should be changed to "section 5(b)."

Sincerely yours,

PAUL G. DEMBLING,
For the Comptroller General
of the United States.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., June 1, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to S. 433, a bill "To assure that the public is provided with an adequate quantity of safe drinking water, and for other purposes."

It is noted that the Administration's proposal, covering the same subject matter as S. 433, has been introduced as S. 1735. Accordingly, the Department of Defense recommends the enactment of S. 1735 in lieu of S. 433.

However, if notwithstanding the above, favorable consideration is given to S. 433, the Department of Defense strongly supports the retention of the waiver provision included as section 19(b) of the bill.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

L. NIEDERLEHNER,
Acting General Counsel.

ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., June 4, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for our best estimate of each State's share of the drinking water supply program grants that would be authorized under S. 433. The grants would be distributed to the States in accordance with regulations on the basis of (1) population, (2) financial need, and (3) the extent of the actual or potential water supply problem existing in the State.

Attached is a table which indicates the estimate of the share for each State under each of the criteria set out in the bill and how each estimate was determined. We have not determined how the several criteria set out in the bill should be weighted or if in fact each should be given equal weight in arriving at each State's share. We assume this could be provided for in the regulations authorized under the program grants section.

These estimates of each State's share is provided on an informational basis in response to your request and of course do not represent an endorsement of the State program grants concept in S. 433. As we stated in our testimony on this legislation on May 31, we recommend against enactment of the State program grant provisions. We believe that an adequate safe drinking water program can and should be funded from State and local sources.

We are advised by the Office of Management and Budget that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely yours,

ROBERT G. RYAN,
Acting Director,
Office of Legislation.

Attachment.

DISTRIBUTION OF STATE PROGRAM GRANT FUNDS

S. 433, the Safe Drinking Water Act of 1973, would provide water supply program grants to assist the States in the conduct of effective water supply programs. The Act indicates that the funds are to be distributed on the basis of: (1) the population; (2) the extent of the actual or potential water supply problem; and (3) the financial need.

The attached table contains a distribution of grant funds, based upon the three stated criteria. The figures were derived as follows:

(1) Population—Basic population data was obtained from the 1972 Statistical Abstract of the U.S. The population distribution is the result of dividing the State population by the total population for the States and other political entities as defined in the Act.

(2) Extent of the Problem—The extent of the actual or potential water supply problems could take into account the degree of compliance of each water supply system with Standards to be promulgated under the Act and the seriousness of the deficiencies. However, only limited data in a small number of States is currently available to depict the problem. Furthermore, each State would be required to maintain the surveillance over all water supply systems subject to the Act and to carry out other activities that would not be in direct proportion to the problem. Therefore, it is felt that a more appropriate measure of the problem is the cost of an adequate State water supply program. This was developed by multiplying the estimated number of water supply systems in each State by the surveillance cost per system. The results for each State was then represented as a percentage of the total cost for all States.

(3) Financial Need—The financial need was calculated as the average national per capita income divided by the average State per capita income and then normalized to 100%. Income figures for 1970, as listed in the 1971 Statistical Abstract, were utilized for the 50 States and the District of Columbia. Comparable data for Puerto Rico, the Virgin Islands, Guam and American Samoa was not available, therefore, for the purpose of these calculations they were assumed to be the same as the national average.

DISTRIBUTION OF STATE PROGRAM GRANT FUNDS

State	Percent population	Percent program cost	Relative financial need percent
Connecticut	1.47	1.19	1.36
Maine	.48	.47	2.03
Massachusetts	2.76	1.32	1.53
New Hampshire	.36	.36	1.82
Rhode Island	.46	.17	1.68
Vermont	.21	.55	1.88
New Jersey	3.48	1.71	1.45
New York	8.85	5.57	1.38
Puerto Rico	1.32	.41	1.68
Virgin Islands	.03	.01	1.68
Delaware	.27	.15	1.55
District of Columbia	.37	.07	1.19
Maryland	1.90	1.01	1.55
Pennsylvania	5.72	3.80	1.68
Virginia	2.26	3.13	1.83
West Virginia	.85	1.60	2.24
Alabama	1.67	1.35	2.32
Florida	3.29	3.70	1.83
Georgia	2.23	4.26	2.00
Kentucky	1.56	1.28	2.15
Mississippi	1.08	1.75	2.57
North Carolina	2.47	4.84	2.07
South Carolina	1.26	1.16	2.25
Tennessee	1.90	1.37	2.15
Illinois	5.39	4.63	1.46
Indiana	2.52	1.45	1.75
Michigan	4.31	1.95	1.63
Minnesota	1.85	1.83	1.73
Ohio	5.17	2.75	1.65
Wisconsin	2.14	1.91	1.77
Arkansas	.93	1.22	2.40
Louisiana	1.77	1.70	2.15
New Mexico	.49	.91	2.15
Oklahoma	1.24	1.63	2.02
Texas	5.43	7.32	1.87
Iowa	1.37	2.01	1.77
Kansas	1.09	1.62	1.73
Missouri	2.27	2.33	1.80
Nebraska	.72	1.34	1.78
Colorado	1.07	1.12	1.75
Montana	.34	.52	1.95
North Dakota	.30	.54	2.24
South Dakota	.32	1.18	2.07
Utah	.51	1.05	2.05
Wyoming	.16	.28	1.92
Arizona	.86	2.27	1.85
California	9.68	13.07	1.46
Hawaii	.37	.24	1.45
Nevada	.24	.22	1.45
American Samoa	.01	.09	1.68
Guam	.04	.02	1.68
Alaska	.15	.19	1.41
Idaho	.35	.68	2.05
Oregon	1.01	1.38	1.78
Washington	1.65	1.32	1.65

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., June 6, 1973.

MR. MICHAEL BROWNLEE,
Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR MIKE: In accordance with your request attached is the supplemental information to our letter to Senator Magnuson of June 4 concerning the possible distribution of State water supply program grants under S. 433. We are also enclosing a breakdown by activity of the funding projections of the Administration's Safe Drinking Water Act of 1973 as you requested.

Please advise us if we can be of further assistance.

Sincerely yours,

ROBERT G. RYAN,
Acting Director,
Office of Legislation.

Attachments.

DISTRIBUTION OF STATE PROGRAM GRANT FUNDS

Combination of Factors:

Attachment A consists of the three factors, by State, that are used in the calculation of grant fund distribution among the States.

Percent population is the distribution of the total population among the various States.

Percent program cost is the distribution of the total cost of conducting adequate State water supply surveillance programs.

Relative financial need (percent) is based upon the inverse of the State per capita income divided by the national per capita income.

Attachment B consists of the combination of the three factors in three different ways.

The equal weight method is the arithmetic average of the three factors.

The 20–40–40 and the 10–45–45 are the adjusted weight arithmetic averages of the three factors.

ATTACHMENT A

DISTRIBUTION OF STATE PROGRAM GRANT FUNDS

State	Percent population	Percent program cost	Relative financial need (percent)	State	Percent population	Percent program cost	Relative financial need (percent)
Connecticut	1.47	1.19	1.36	Ohio	5.17	2.75	1.65
Maine	.48	.47	2.03	Wisconsin	2.14	1.91	1.77
Massachusetts	2.76	1.32	1.53	Arkansas	.93	1.22	2.40
New Hampshire	.36	.36	1.82	Louisiana	1.77	1.70	2.15
Rhode Island	.46	.17	1.68	New Mexico	.49	.91	2.15
Vermont	.21	.55	1.88	Oklahoma	1.24	1.63	2.02
New Jersey	3.48	1.71	1.45	Texas	5.43	7.32	1.87
New York	8.85	5.57	1.38	Iowa	1.37	2.01	1.77
Puerto Rico	1.32	.41	1.68	Kansas	1.09	1.62	1.73
Virgin Islands	.03	.01	1.68	Missouri	2.27	2.33	1.80
Delaware	.27	.15	1.55	Nebraska	.72	1.34	1.78
District of Columbia	.37	.07	1.19	Colorado	1.07	1.12	1.75
Maryland	1.90	1.01	1.55	Montana	.34	.52	1.95
Pennsylvania	5.72	3.80	1.68	North Dakota	.30	.54	2.24
Virginia	2.26	3.13	1.83	South Dakota	.32	1.18	2.07
West Virginia	.85	1.60	2.24	Utah	.51	1.05	2.05
Alabama	1.67	1.35	2.32	Wyoming	.16	.28	1.92
Florida	3.29	3.70	1.83	Arizona	.86	2.27	1.85
Georgia	2.23	4.26	2.00	California	9.68	13.07	1.46
Kentucky	1.56	1.28	2.15	Hawaii	.37	.24	1.45
Mississippi	1.08	1.75	2.57	Nevada	.24	.22	1.45
North Carolina	2.47	4.84	2.07	American Samoa	.01	.09	1.68
South Carolina	1.26	1.16	2.25	Guam	.04	.02	1.68
Tennessee	1.90	1.37	2.15	Alaska	.15	.19	1.41
Illinois	5.39	4.63	1.46	Idaho	.35	.68	2.05
Indiana	2.52	1.45	1.75	Oregon	1.01	1.38	1.78
Michigan	4.31	1.95	1.63	Washington	1.65	1.32	1.65
Minnesota	1.85	1.83	1.73				

ATTACHMENT B

DISTRIBUTION OF STATE PROGRAM GRANT FUNDS, $8,000,000—FISCAL YEAR 1974

State	Percent of—			In thousands—		
	Equal weight	20–40–40	10–45–45	Equal weight	20–40–40	10–45–45
Connecticut	1.34	1.30	1.28	107.2	104.0	102.4
Maine	.99	1.08	1.16	79.2	86.4	92.8
Massachusetts	1.87	1.68	1.54	149.6	134.4	123.2
New Hampshire	.85	.93	1.00	68.0	74.4	80.0
Rhode Island	.77	.82	.86	61.6	65.6	68.8
Vermont	.88	1.01	1.10	70.4	80.8	88.0
New Jersey	2.21	1.95	1.75	176.8	156.0	140.0
New York	5.27	4.54	4.00	421.6	363.2	320.0
Puerto Rico	1.14	1.09	1.06	91.2	87.2	84.8
Virgin Islands	.57	.67	.75	45.6	53.6	60.0
Delaware	.66	.73	.77	52.8	58.4	61.6
District of Columbia	.54	.56	.59	43.2	44.8	47.2
Maryland	1.49	1.40	1.33	119.2	112.0	106.4

ATTACHMENT B—Continued

DISTRIBUTION OF STATE PROGRAM GRANT FUNDS, $8,000,000—FISCAL YEAR 1974—Continued

State	Percent of—			In thousands—		
	Equal weight	20–40–40	10–45–45	Equal weight	20–40–40	10–45–45
Pennsylvania	3.73	3.33	3.03	298.4	266.4	242.4
Virginia	2.41	2.43	2.44	192.8	194.4	195.2
West Virginia	1.56	1.70	1.80	124.8	136.0	144.0
Alabama	1.78	1.79	1.80	142.4	143.2	144.0
Florida	3.53	2.86	2.80	282.4	228.8	224.0
Georgia	2.83	2.94	3.03	226.4	235.2	242.4
Kentucky	1.66	1.68	1.68	132.8	134.4	134.4
Mississippi	1.80	1.93	2.03	144.0	154.4	162.4
North Carolina	3.13	3.24	3.34	250.4	259.2	267.2
South Carolina	1.56	1.61	1.65	124.8	128.8	132.0
Tennessee	1.81	1.78	1.76	144.8	142.4	140.8
Illinois	3.83	3.50	3.26	306.4	280.0	260.8
Indiana	1.91	1.78	1.68	152.8	142.4	134.4
Michigan	2.63	2.29	2.03	210.4	183.2	162.4
Minnesota	1.80	1.79	1.77	144.0	143.2	141.6
Ohio	3.19	2.79	2.48	255.2	223.2	198.4
Wisconsin	1.94	1.88	1.85	155.2	150.4	148.0
Arkansas	1.52	1.62	1.71	121.6	129.6	136.8
Louisiana	1.87	1.89	1.89	149.6	151.2	151.2
New Mexico	1.18	1.31	1.43	94.4	104.8	114.4
Oklahoma	1.63	1.69	1.75	130.4	135.2	140.0
Texas	4.87	4.74	4.67	389.6	379.2	373.6
Iowa	1.72	1.77	1.82	137.6	141.6	145.6
Kansas	1.48	1.54	1.59	118.4	123.2	127.2
Missouri	2.13	2.10	2.07	170.4	168.0	165.6
Nebraska	1.28	1.38	1.47	102.4	110.4	117.6
Colorado	1.31	1.35	1.40	104.8	108.0	112.0
Montana	.94	1.04	1.10	75.2	83.2	88.0
North Dakota	1.03	1.16	1.28	82.4	92.8	102.4
South Dakota	1.19	1.35	1.49	95.2	108.0	119.2
Utah	1.20	1.34	1.44	96.0	107.2	115.2
Wyoming	.79	.90	1.01	63.2	72.0	80.8
Arizona	1.66	1.81	1.93	132.8	144.8	154.4
California	8.07	7.73	7.49	645.6	618.4	599.2
Hawaii	.69	.74	.78	55.2	59.2	62.4
Nevada	.64	.70	.76	51.2	56.0	60.8
American Samoa	.59	.70	.79	47.2	56.0	63.2
Guam	.58	.67	.75	46.4	53.6	60.0
Alaska	.58	.66	.72	46.4	52.8	57.6
Idaho	1.03	1.16	1.25	82.4	92.8	100.0
Oregon	1.39	1.46	1.52	111.2	116.8	121.6
Washington	1.54	1.51	1.49	123.2	120.8	119.2

SAFE DRINKING WATER ACT OF 1973

[In thousands of dollars]

	1974	1975	1976	1977	1978
5-year projections of EPA costs for implementing administration bill [1]	9,000	15,000	20,000	20,000	20,000

[1] Estimates include current funding levels of approximately $4,300,000 annually.

SAFE DRINKING WATER ACT OF 1973, ADMINISTRATION BILL

[Dollars in millions]

Activity	1974	1975	1976	1977	1978
Drinking water standards (sec. 4)	0.3	0.5	0.5	0.5	0.5
Monitoring and enforcement (secs. 5, 8, 15)	1.6	2.5	2.5	3.5	4.1
Imminent hazards (sec. 6)	.6	1.0	1.0	1.0	1.2
Research, technical assistance and information (sec. 7)	6.5	11.0	16.0	15.0	14.2
Total	9.0	15.0	20.0	20.0	20.0

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 93-1185

SAFE DRINKING WATER ACT

JULY 10, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

MR. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H.R. 13002]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 13002) to amend the Public Health Service Act to assure that the public is provided with safe drinking water, having considered the same, report favorably thereon with one amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause and inserts a new text which appears in italic type in the reported bill.

PURPOSE OF LEGISLATION

The purpose of the legislation is to assure that water supply systems serving the public meet minimum national standards for protection of public health. At present, the Environmental Protection Agency is authorized to prescribe Federal drinking water standards only for water supplies used by interstate carriers. Furthermore, these standards may only be enforced with respect to contaminants capable of causing communicable disease. In contrast, this bill would (1) authorize the Environmental Protection Agency to establish Federal standards for protection from all harmful contaminants, which standards would be applicable to all public water systems, and (2) establish a joint Federal-State system for assuring compliance with these standards and for protecting underground sources of drinking water.

BRIEF SUMMARY

In summary, this legislation would—

(1) (a) require the Administrator of the Environmental Protection Agency to prescribe national primary drinking water regulations for contaminants which may adversely affect the public health;

(b) provide that such regulations are to apply to public water systems and are to protect health to the maximum extent feasible;

(c) provide that interim primary regulations are to be prescribed initially and that, after a study by the National Academy of Sciences, health goals (recommended maximum contaminant levels) are to be established and revised primary regulations are to be promulgated;

(d) provide that primary regulations are to include a maximum contaminant level, if it is feasible to monitor the level of that contaminant, or treatment technique requirements, if such monitoring is not feasible for that contaminant;

(e) require primary regulations to include criteria and procedures to assure compliance with the preceding requirements;

(f) authorize States which adopt and implement adequate standards and enforcement measures to grant certain variances from the national regulations, to grant exemptions to extend the time for compliance by any public water system, and to establish compliance schedules, including interim control measures and increments of progress;

(g) authorize the Administrator to grant variances and exemptions in any State which fails to adopt and implement adequate standards and enforcement measures;

(h) authorize the Administrator to enforce national primary drinking water regulations when a State fails to assure timely compliance with at least equally stringent requirements;

(2) authorize the Administrator to prescribe secondary drinking water regulations designed to provide guidance to the States, but which are not to be Federally enforceable;

(3) establish Federal-State programs to protect underground sources of drinking water;

(4) authorize the Administrator on a temporary basis to certify the need for chlorine (or other water treatment substances) to be allocated to public water systems and require the President (or his delegate) to issue necessary allocation orders;

(5) provide for Federal grants to assist State surveillance and enforcement programs under the bill; and

(6) provide for certain additional grants, loan guarantees, research and demonstrations to assist in carrying out the above purposes.

In general the bill provides for informal rulemaking procedures in accordance with 5 U.S.C. 553, except in the case of actions required by the bill to be taken on the record after notice and opportunity for a hearing.

Legislative Background

a. The 92d Congress

During the 92d Congress, the Subcommittee on Public Health and Environment held two sets of hearings on bills relating to protection of the public health through assurance of safe community drinking water supplies. On May 24, 25, and 26, 1971, the Subcommittee held hearings on H.R. 1093, H.R. 5454, and H.R. 437. On May 10, 1972, a clean bill, H.R. 14899 was introduced. Supplemental hearings upon that bill were conducted June 7 and 8, 1972. None of the aforementioned bills were ordered reported by the full committee during the 92d Congress.

b. The 93d Congress

On January 3, 1973, Representatives Rogers, Kyros, Preyer, Symington, Roy, Nelsen, Hastings, and Robison introduced H.R. 1059—the "Safe Drinking Water Act."

The Administration's bill, H.R. 5368, was introduced by Represenatives Staggers and Devine, by request, on March 7, 1973. An identical bill, H.R. 5395, was introduced on March 8, 1973, by Representative Carter.

Hearings on these bills were held before the Subcommittee on Public Health and Environment on March 8 and 9, 1973.

Subsequently, the Subcommittee ordered reported as clean bills, H.R. 9726 and H.R. 10955. Each of these represented modified versions of H.R. 1059. Finally, on February 21, 1974, a new clean bill, H.R. 13002, was introduced by Representatives Rogers, Kyros, Preyer, Symington, Roy, Nelsen, Carter, Hastings, Heinz, Hudnut, Gunter, and Robison and was ordered reported by the Subcommittee to the Committee on Interstate and Foreign Commerce.

On June 20, 1974, the Committee by voice vote (one member dissenting) ordered reported H.R. 13002, as amended.

Comparable legislation (S. 433) was passed by voice vote of the Senate on June 22, 1973.

Need for Legislation

The Committee has concluded that present legislative authority is inadequate to assure that the water supplied to the public is safe to drink.

Section 361 of the Public Health Service Act authorizes the Secretary of the Department of Health, Education, and Welfare to "make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases." Pursuant to this provision, the Secretary promulgated regulations establishing standards for drinking water supplied to and by interstate carriers. See 42 C.F.R. § 72, Subpart H. Under Reorganization Plan No. 3 of 1970, the authority to establish and revise drinking water standards for interstate carriers was transferred to the Administrator of the Environmental Protection Agency.

The Department of Health, Education, and Welfare had interpreted this authority as permitting enforcement of standards only with respect to contaminants which may cause or carry a communicable disease. Standards for contaminants which could cause chemical poisoning or other non-communicable disease were held by the Office of General Counsel not to be enforceable. This opinion has not been reversed by EPA's Office of General Counsel.

Moreover, there is no provision in Federal law to protect members of the public who are not traveling on interstate conveyances from being supplied with drinking water which may cause communicable or noncommunicable illness, although it is arguable that existing authority under section 361 of the Public Health Service Act could be utilized in a more expansive way to deal with part of the problem of unsafe drinking water.

Some progress has been made in protecting underground sources of drinking water. Recent amendments to the Federal Water Pollution Control Act (section 402(b)(1)(D) of the Act, as amended by P.L. 92–500) have required States seeking to operate their own discharge permit programs to "control the disposal of pollutants into wells." Moreover, EPA is required to review State applications to operate such permit systems and may disapprove such applications if the requirements of that Act are not met.

However, while it appears that EPA may prescribe its own program to control the disposal of pollutants into wells if it disapproves a State's permit authority application, this conclusion has not yet been reached in any judicial decision. Moreover, the Federal Water Pollution Control Act's restrictive definition of pollutant may prevent any Federal control system from adequately protecting underground drinking water sources. Finally, it appears that the Federal Water Pollution Control Act may not authorize any regulation of deep well injection of wastes which is not carried out in conjunction with a discharge into navigable waters. See U.S.E.P.A., *Opinion of Acting Deputy General Counsel*, #590, December 13, 1973. For these reasons and for the reasons which follow, the Committee has determined that broadened and strengthened legislation to assure safe drinking water is necessary.

Until relatively recently the fundamental elements of life—clean air to breathe, safe water to drink—have been taken for granted in the United States. However, recent investigations demonstrate that public confidence in the safety of drinking water supplies may, in many instances, be misplaced.

During the ten-year period 1961–1970, there were 130 outbreaks of disease or poisoning attributed to drinking water. These outbreaks resulted in 46,374 illnesses and 20 deaths. On the average, this represents one reported waterborne outbreak per month with something over 350 persons becoming ill.*

Furthermore, in August 1970, the Department of Health, Education, and Welfare completed a representative sampling of the Nation's public water supply systems. In all, 969 systems were studied. The major findings of the study were as follows:

Quality of water being delivered

Thirty-six percent of 2,600 individual tap water samples contained one or more bacteriological or chemical constituents exceeding the limits in the Public Health Service Drinking Water Standards (established under section 361 of the Public Health Service Act).

Nine percent of these samples contained bacterial contamination at the consumer's tap evidencing potentially dangerous quality.

Thirty percent of these samples exceeded at least one of the chemical limits indicating waters of inferior quality.

*It should be noted, however, that these figures represent only those incidents: (1) that have been reported; (2) that involve at least two cases of communicable disease; and (3) for which an epidemiological investigation was performed and the waterborne route established as the cause. Figures from the Center for Disease Control for the 1961–1970 period indicated only 72 outbreaks and 23,574 cases; this is only one-half the number that was ultimately found after the Environmental Protection Agency made a review of medical and engineering literature, searched newspaper clippings, and contracted State sanitary engineers and epidemiologists.

Eleven percent of the samples drawn from 94 systems using surface waters as a source of supply exceeded the recommended organic chemical limit of 200 parts per billion.

Status of physical facilities

Fifty-six percent of the systems evidenced physical deficiencies including poorly protected groundwater sources, inadequate disinfection capacity, inadequate clarification capacity, and/or inadequate system pressure.

In the eight metropolitan areas studied, the arrangements for providing water service were archaic and inefficient. While a majority of the population was served by one or a few large systems, each metropolitan area also contained small inefficient systems.

Operators' qualifications

Seventy-seven percent of the plant operators were inadequately trained in fundamental water microbiology; and 46 percent were deficient in chemistry relating to their plant operation.

Status of community programs

The vast majority of systems were unprotected by programs to prevent drinking water supply pipes from being cross-connected with sewage or storm drainage pipes, programs for plumbing inspection on new construction, or programs for continuing surveillance of public water system operations.

Status of State inspection and technical assistance programs

Seventy-nine percent of the systems were not inspected by State or county authorities in 1968, the last full calendar year prior to the study. In 50 percent of the cases, plant officials did not remember when, if ever, a State or local health department had last surveyed the supply.

An insufficient number of bacteriological samples were analyzed for 85 percent of the water systems—and 69 percent of the systems did not even analyze half of the numbers required by the PHS Drinking Water Standards.

Small systems

Similar problems have been discovered with respect to small systems which serve the public, such as recreational areas, trailer parks, restaurants and gas stations, but which are not part of a community water supply system. A recent EPA study of drinking water systems at recreational sites operated in conjunction with Corps of Engineers reservoirs revealed that 19% of the systems did not meet the bacteriological limits of the Drinking Water Standards. A similar study of drinking water systems at Bureau of Reclamation Reservoirs shows that 12% did not meet the bacteriological standards. Only 7% of the systems practiced a bacteriological surveillance program meeting the Drinking Water Standards. A third study of semi-public water systems along interstate highways, including highway rest stops, showed that fifteen percent of these systems failed to meet the bacteriological limit of the Drinking Water Standards.

On November 15, 1973, the General Accounting Office reported that potentially hazardous water is being delivered to some consumers, particularly by small water water supply systems serving populations of

5,000 or less. Of 446 systems studied, GAO found that only 60 were in compliance with both Federal bacteriological and sampling requirements. See Report to the Congress by the Comptroller General of the United States, *Improved Federal and State Programs Needed To Insure the Purity and Safety of Drinking Water in the United States* (Nov. 15, 1973).

Reasons for findings

There appear to be multiple reasons for these findings. First, the public has not been made adequately aware of the potential danger to health to which it is exposed from drinking contaminated or inadequately treated water. This in turn has resulted in a lack of demand for public and private action to correct and prevent the public health threat in drinking water.

Second, in many cities and small towns reasonably available treatment technology, techniques, and other safeguards are not being applied to assure safe water. Third, for some constituents of water adequate treatment technology has not been developed or is too costly for general use. Fourth, certain economic, industrial, agricultural, and environmental practices have resulted in increasing concentrations of potentially harmful chemicals entering the Nation's drinking water sources. Environmental requirements limiting atmospheric and surface disposal of waste have made underground disposal practices more attractive from an economic standpoint. Fifth, new compounds, such as the various herbicides, pesticides, and mercury, have been introduced into the environment before full knowledge of their ultimate health effects are known.

In addition to these factors, government at all levels—Federal, State, regional, local—have not developed, applied, and enforced adequate standards and procedures for protection of the public's health.

The USPHS Drinking Water Standards, while recognized as the most authoritative set of standards for drinking water in use in this country today, do little more than mention viruses, do not contain limits for numerous inorganic chemicals which are known to be toxic to man, and identify only one index to cover the entire family of organic chemical compounds. These standards need continuous updating and broadening to include limits for all known or potentially dangerous constituents found in sources of raw water supply and in treated drinking water.

There is no Federal statutory authority and many of the States lack authority to require compliance with existing standards by public water systems. While the Federal Government can, and does, prohibit interstate carriers from using water from unsafe community water supply systems, it cannot protect the citizens living in these communities from using potentially dangerous water. Nor can the Federal Government even require that citizens be notified of such unsafe condition. Between July 1, 1970 and December 19, 1973, 54 interstate carrier water supply systems were classified "use prohibited" for various periods of time on the ground that they presented an unreasonable threat to the health of the traveling public.

The States, which have the primary responsibility to supervise water supplies, have authority and regulations that range from good to very poor. A review of State drinking water standards, performed in 1971,

indicated that only 14 had officially adopted the USPHS Drinking Water Standards. Enforcement of these regulations is frequently poor.

Sufficient surveillance of community water systems by public agencies at all levels of government has likewise been lacking. The EPA Community Water Supply Study revealed that an insufficient number of bacteriological samples were taken in more than one of the previous 12 months at 85% of the systems studied. In the area of chemical analysis, only 10% of the systems studied had the benefit of complete chemical analysis in 1968. Most of the remaining 90% had little or no idea what the chemical quality of their drinking water was. In this same year, only one out of five of these supplies benefited from an engineering survey visit. In the case of over half of the supplies a sanitary survey had never been performed or the system operator did not know if one had ever been done.

A 1970 survey by the Conference of State Sanitary Engineers indicated that most state sanitary engineers judged their own surveillance program to be deficient.

The value of survillance is illustrated by comparing the supplies studies in the Community Water Supply Study with interstate carrier water supplies. The Interstate Quarantine Regulations require annual evaluation and certification of supplies serving interstate carriers. As a result, these supplies receive improved surveillance as compared to other community supplies. Bacteriological quality of the Community Water Supply Study systems failed to meet the standards twice as often as those of the interstate carrier program.

Still another aspect of the problem of unsafe drinking water is the difficulty which many public water systems have experienced in recent months in obtaining adequate supplies of chlorine and other substances necessary for effective treatment of contaminants. According to the Environmental Protection Agency, in the past year 57 water and wastewater utilities had reported shortages of chlorine (down to 1–10 days' supply on hand) and 33 wastewater and four public water supply treatment systems were reported to have ceased chlorinating for periods up to two weeks. It appears that only a portion of the shortages have been reported to EPA. Among the cities experiencing such shortages have been Denver, Jersey City, Newark, Chicago, and New York, and many smaller public water supply systems. Increased demand from private industry, delay in the construction of new chlorine production facilities, and downtime in existing facilities have contributed to this problem. Moreover, existing authorities probably do not permit Federal authorities to allocate chlorine and other necessary substances in order to assure protection of the public's health.

Other problems which increase the potential health risk from drinking water are lack of adequate training and certification procedures for water supply system operators, lack of adequate, inexpensive monitoring or measurement methods, the proliferation of small water systems which cannot support well-trained full-time operators and necessary equipment, inadequate health effects research, and the increasing demand for drinking water at a time of increasing pressure to dispose of contaminants in ways that may endanger the quality of drinking water.

Need for Congressional action

The lack of comprehensive cost, health effects, technological assessment, and monitoring data cannot justify any further delay in Congressional and administrative action. While it would be desirable to have complete health effects research, effective treatment technology, and accurate, inexpensive monitoring systems in operation prior to commencing a system of regulation, this is simply not possible. It is the Committee's intent that EPA, the States, and the public water systems begin now to maximize protection of the public health insofar as possible and to continue and expand these efforts as new more accurate data, technology, and monitoring equipment become available.

While the Committee views the problem of unsafe drinking water as a matter which is and should be primarily the concern of State and local governments, the Committee has determined that the Federal government also has a responsibility to ensure the safety of the water its citizens drink. In the Committee's view, this responsibility arises from two main factors. First, the causes and effects of unhealthy drinking water are not confined within the borders of State or local jurisdictions. Second, the solution to the problem of unsafe drinking water, in the Committee's view, must be found in a cooperative effort in which the Federal government assists, reinforces, and sets standards for the State and local efforts.

That the causes and effects of unhealthy drinking water are national in scope is evident from a variety of facts. Federal air and water pollution control legislation have increased the pressure to dispose of waste materials on or below land, frequently in ways, such as subsurface injection, which endanger drinking water quality. Moreover, the national economy may be expected to be harmed by unhealthy drinking water and the illnesses which may result therefrom. This is the case for several reasons. First, outbreaks of waterborne disease are likely to inhibit interstate travel and tourism in or through the areas in which the water is unsafe. Second, the economic productivity of those engaged in interstate commerce or activities affecting commerce is likely to be diminished to the extent that unsafe drinking water causes illness and absence from the place of employment. Third, agricultural employees who migrate across State lines may properly be reluctant to work in areas with only contaminated water supplies. Those who have contracted communicable disease may be barred from entering other States. Fourth, diseases caused by contaminated drinking water may be communicable beyond State lines. Fifth, contaminants which endanger the public health when present in drinking water are frequently generated by business engaged in or enterprises affecting interstate commerce. Sixth, the unavailability of a reliably safe drinking water supply may well be a primary limiting factor in the economic growth of a town or region and ultimately in the growth of the Nation's economy.

Other factors also illustrate the need for national concern about unsafe drinking water. Underground drinking sources which carry contaminants may cross State boundaries. In general, water in the hydrologic cycle does not respect State borders. The Nation also has an important fiscal interest in minimizing drinking water related disease, since such disease may well contribute significantly to the drain on the Federal health care financing system—Medicare, Medi-

caid, etc.—unless the quality of the Nation's drinking water supplies is protected.

These concerns are not merely speculative potentialities in the Committee's view. The hearing records on safe drinking water legislation are replete with examples of these problems having actually occurred.

Moreover, it is abundantly clear that additional Federal assistance, research, and support is necessary in order to enable State and local efforts to provide safe water to be successful. Under these circumstances, the Committee finds that the Federal government must bear a shared responsibility with State and local governments to ensure protection of the public's health and the safety of drinking water supplies.

It is true that some existing Federal programs do relate to drinking water supply systems. Federal agencies with a significant involvement in drinking water supply are the Farmers Home Administration, the Department of Housing and Urban Development, and the Economic Development Agency. The Indian Health Service in the Department of Health, Education, and Welfare operates a direct construction program to provide sanitation facilities to Indian and Alaskan natives. However, in the Committee's view these grant programs to construct drinking water supply systems are not necessarily adequate to assure that safe drinking water will be available, even from those systems which are constructed with such aid.

Cost Estimate

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91–510), your Committee estimates that the following costs will be incurred in carrying out the functions assigned to the Environmental Protection Agency by H.R. 13002 as amended by the Committee.

5-YEAR COST PROJECTIONS—H.R. 13002 SAFE DRINKING WATER ACT

[Dollars in millions]

	1974	1975	1976	1977	1978
Standards (1212, 1221, 4)	$1.7	$2.4	$2.5	$2.5	$3.5
Monitoring and enforcement (1213, 1214, 1215, 1223, 1224, 1237)	3.6	9.4	12.0	15.0	15.0
Emergency powers (1231)	.6	1.2	1.2	1.2	1.2
Research, demonstration, technical assistance, (1232, 1234, 3)	15.3	36.7	48.0	48.0	46.0
Program grants (1233)	.6	11.7	14.6	24.6	34.6
Total	21.8	61.4	78.3	91.3	100.3

Section-by-Section Analysis of the Reported Bill

Section 1. Short title

The first section of H.R. 13002, as reported by the committee, provides that this legislation may be cited as the "Safe Drinking Water Act".

Section 2. Public water systems

This section amends the Public Health Service Act by inserting a new title XIV.

PART A—DEFINITIONS

SECTION 1401 DEFINITIONS

"Primary drinking water regulations"

Section 1401 of the new title defines "primary drinking water regulation" as a national regulation which is intended to protect health to the maximum extent feasible. This definition, which applies to both interim and revised primary regulations under section 1412, establishes the crucial framework for regulation under the Act.

The definition provides that primary regulations apply to "public water systems", which is also a defined term. Primary regulations must specify contaminants which in the judgment of the Administrator may have an adverse effect on the health of persons when found in drinking water. The words used by the Committee were carefully chosen. Because of the essentially preventive purpose of the legislation, the vast number of contaminants which may need to be regulated, and the limited amount of knowledge presently available on the health effects of various contaminants in drinking water, the Committee did not intend to require conclusive proof that any contaminant *will* cause adverse health effects as a condition for regulation of a suspect contaminant. Rather, all that is required is that the Administrator make a reasoned and plausible judgment that a contaminant *may* have such an effect. Moreover, the contaminant need not have the adverse effect directly in order for the Administrator to regulate it as a primary contaminant. If it is a precursor to a contaminant which may have such effect or if it may contribute to such effect, the contaminant should be controlled under primary regulations.

Such a judgment may be based upon epidemiological, toxicological, physiological, biochemical, or statistical research or studies or extrapolations therefrom. (Thus, for example, such a judgment may be based on evidence of either animal or human toxicity or disease.) Such a judgment may alternatively be based on knowledge concerning behaviors of groups of contaminants or behaviors of analogous contaminants or behaviors of the same contaminants in other media.

It must be noted that more than 12,000 chemical compounds are now being used commercially, not counting additional variants and fractions. About 500 new chemical compounds are added each year. Many of these will find their way into the nation's drinking water supplies. It is, of course, impossible for EPA to regulate each of these contaminants which may be harmful to health on a contaminant-by-contaminant basis. Therefore, the Committee anticipates that the Administrator will establish primary drinking water regulations for some groups of contaminants, such as organics and asbestos. The establishment of such group-wide regulations should help to assure that the public health will be protected from currently undiscovered, unidentified or underresearched subgroups or specific contaminants within the group.

However, the Committee believes that effective and adequate protection of the public health can only be assured by a comprehensive approach to standard setting. In the Committee's view, such an approach must combine such group-wide regulations with regulations for certain sub-groups and specific contaminants within the group of

substances being regulated. These regulations are needed both for those sub-groups and contaminants which are most prevalent in drinking water supplies and also for those which are very hazardous at low concentrations (carcinogens, for example).

Thus, for example, the Committee anticipates that revised national primary drinking water regulations would include regulation of organics as a group and subgroups, such as haloethers, polycyclic aromatic hydrocarbons, and nitrosamines.

In prescribing which groups, subgroups, and specific contaminants will be subject to revised regulations, the Administrator is expected to include those substances contained in World Health Organization, *Maximum Permissible Concentrations of Harmful Substances in the Water of Watercourses Used for Hygienic and Domestic Purposes* (1970); World Health Organization, *European Standards for Drinking Water*, 2d Ed., Rev., Geneva (1970); National Institute of Occupational Safety and Health annual list of toxic substances; and toxic substances listed under section 307 of the Federal Water Pollution Control Act. If the Administrator determines not to include any of these substances in the revised primary regulations, the Committee anticipates that he would publish such determination along with the reasons for finding such regulation to be unnecessary. However, the Committee does not intend the Administrator to publish a separate determination and statement of reasons for each identified substance which is not included in the revised regulations. Rather, the Committee expects the fullest possible explanation on a group or class basis of why the identified substances have been omitted.

The Committee, of course, anticipates that all contaminants currently subject to interstate carrier drinking water regulations or to recommended standards would be controlled under both interim and revised regulations, unless the Administrator finds that no health threat may be posed by any such contaminant. In addition, all other contaminants which the Administrator judges may have an adverse effect on the health of persons should be regulated as soon as possible.

Maximum contaminant level or treatment techniques

Once the Administrator specifies contaminants, including groups and subgroups thereof, subject to national primary drinking water regulations, he must prescribe for each contaminant a maximum contaminant level. The only circumstance in which a maximum contaminant level is not to be prescribed for any contaminant is if he finds that it is not technologically or economically feasible for most public water systems to monitor for that contaminant. If the Administrator so finds, he must prescribe regulations which (1) list all known treatment techniques for that contaminant which meet the requirement of section 1412 concerning maximum feasible protection of the public health, and (2) require the use of at least one of those listed.

For the purposes of making the finding regarding the feasibility of monitoring for any given contaminant, the Administrator must first determine, with respect to a given contaminant, what effective monitoring techniques, if any, are technologically available. Next the Administrator must determine at what frequencies such techniques should be employed to assure detection of any violation prior to the time such violation will actually cause or contribute to any signifi-

cantly increased health hazard. Then the Administrator must determine whether such monitoring at such frequency is economically feasible.

One example of a group of contaminants for which monitoring might be judged to be infeasible would be viruses, which are currently prohibitively expensive to isolate and measure on a routine basis. Therefore, the Committee expects that the Administrator would prescribe all known treatment techniques for controlling viruses rather than establishing a maximum contaminant level for viruses. A second example might be as follows: where several specific contaminants occur within a general group, the cumulative expense of monitoring for each individual contaminant might similarly lead to a judgment that such contaminants are ones for which treatment technique regulations should be prescribed. Treatment techniques which the Administrator is authorized to prescribe should include appropriate provision for storage and distribution techniques.

If in the Administrator's judgment, however, it is economically and technologically feasible to monitor for any contaminant (or group or subgroup), he is directed to prescribe a maximum contaminant level for that contaminant. Of course, in this case, the Administrator would be expected to require public water systems to use at least one of the monitoring techniques which he has judged to be feasible.

The choice as to which of the permissible treatment techniques should be used by any public water system would be left essentially to that system (and to State and local policy). Moreover, under section 1415 if a system (or any other person including a vendor) could demonstrate that any other treatment technique not listed by the Administrator was at least as effective as those listed by him, then that technique could be used under a variance which the Administrator would be authorized to issue. If, on the other hand, the Administrator finds monitoring for any contaminant is not feasible (economically or technologically), he must prescribe the full range of available treatment techniques which he determines meet the requirements of section 1412.

Assumed intake water quality

In prescribing national primary drinking water regulations the Administrator must make some assumptions about the quality of the intake waters which will be processed by the treatment techniques which he has found to be generally available. The Committee recognizes that intake water quality is likely to vary throughout the Nation. If the Administrator were to assume that intake waters would in general be extremely contaminated, then many areas which are relatively clean could meet the maximum contaminant levels which the Administrator would prescribe without the use of the most effective treatment methods. This result would be inconsistent with the Committee's overriding intent to maximize protection of the public health. The Committee does not intend that primary regulations be set at levels which would permit systems with relatively clean intake water sources to provide water which is more contaminated than the recommended maximum contaminant level (i.e., the health goal which is to be established by the Administrator after consideration of the report of the National Academy of Sciences pursuant to section 1412(b)(1) of the

bill), unless those systems have been required to utilize the most effective generally available treatment methods.

Therefore, it is the intent of the Committee that the Administrator, in prescribing national primary drinking water regulations, assume that intake waters will be sufficiently uncontaminated so that with application of the most effective treatment method(s) a public water system would be able to protect the public health (including attainment of the recommended maximum contaminant levels).

This policy may in some instances result in those public water systems with extremely contaminated intake water sources being unable to comply with national primary drinking water regulations. In light of this policy, the Committee has authorized variances for public water systems which cannot comply with the regulations due to poor source water quality. The Committee anticipates that full implementation of the Federal Water Pollution Control Act, selection of alternative intake water sources, and other legal or technological measures will enable most systems to achieve the requisite intake water quality within a period of three to six years at the latest.

Other requirements

In addition, under section 1401 "primary drinking water regulations" must contain enforceable requirements for quality control, testing (including monitoring,* if feasible) proper operation and maintenance, siting for new facilities, and intake water quality minimum requirements for public water systems. It is the belief of the Committee that these safeguards may be essential to assure that public water systems dependably supply safe drinking water. Such regulations are not intended to stifle diversity, innovation, or responsiveness to local conditions. Nor are such regulations intended to permit Federal dictation of the ideal water system. They are intended, however, to assure that all systems will meet the essential minimal criteria necessary to safeguard the public's health.

Intake water quality requirements

Thus, for example, in the Committee's view, regulation of the quality of raw water sources is not an end in itself; nor is it necessary for all all contaminants. The Committee intends that intake water quality standards should be prescribed by EPA only for those contaminants for which the Administrator determines that existing treatment techniques may be inadequate to assure achievement of recommended maximum contaminant levels (i.e., health goals). If available techniques are adequate to achieve these levels regardless of the quality of the intake water to which the techniques are applied, then no intake water quality regulation should be prescribed.

In making this judgment, the Administrator should not undertake a water system-by-water system analysis. Rather, he should examine (on a contaminant-by-contaminant basis) the most contaminated raw water source which is likely to be used by a public water system. If use of the most efficient treatment techniques will permit the achievement of the health goal with respect to a given contaminant even from the most contaminated raw water source, then no intake water requirement

* Since drinking water regulations are intended to be met at the consumer's tap, the committee anticipates that monitoring would include tap sampling.

or limitation should be established by EPA with respect to such contaminant.

By providing for a carefully circumscribed exercise of authority by EPA, the Committee seeks to achieve the primary purpose of protection of the public health while leaving to State and local governments and the public water systems maximum flexibility in determining whether to achieve this purpose by reliance on clean source water, treatment technology, or other effective means.

Operating requirements

Likewise operating requirements which are authorized to be prescribed by EPA under this section should be as limited as possible while still permitting assurance that safe drinking water will be provided. Except with respect to those contaminants for which a treatment technique requirement is established rather than a maximum contaminant level, State, local, and public water system discretion should be constrained only to meet minimum criteria, such as those preventing the system from being left unattended by competent personnel or requiring regular cleaning of equipment and facilities. The technical details of how to operate an efficient public water system should not be dictated by regulations under this authority, except to the extent reasonably necessary to assure that treatment technique requirements promulgated as part of the national primary drinking water regulations are effectively implemented.

Siting requirements

The Committee likewise intends that EPA's regulation of siting for new facilities for public water systems be structured so as to effectuate the purpose of this legislation. This means that regulations should establish siting criteria only to the extent necessary to provide adequate assurance that public water systems will be able to provide a continuous supply of healthful drinking water. Such criteria should include considerations relating to protection from floods, earthquakes, fires, and other manmade and natural disasters which could cause breakdown of the public water system or a portion thereof.

The Committee does not intend to convey to EPA the authority to impose a siting permit system or to designate water system facility sites. Responsibility for such action rests with the public water systems and with State and local governments. EPA is expected merely to establish general siting criteria which must be considered in siting decisions and to establish the most limited or narrow system of procedural review necessary to assure compliance. Where a State has established adequate siting criteria and review procedures, the Committee intends EPA's review to be limited only to assuring that the State's criteria and review process are being implemented in good faith.

Moreover, the Committee anticipates that siting regulations established by EPA will be reasonable. If, for example, all areas in which a new facility might be located are subject to some risk of earthquake damage, the regulations should not flatly prohibit the location of the facility. Rather, they should encourage location in the portion of the area where such risk is minimized and should take into account construction techniques which may be available to minimize earthquake damage.

Furthermore, the EPA siting regulations should be designed to assure adequate consideration of disaster risks and of other considerations necessary to assuring healthful drinking water reliably. However, these considerations are not intended to be the exclusive factors dictating siting decisions. A variety of social, technological, environmental, legal, and economic considerations may legitimately enter into siting decisions by public water systems and State and local governments. EPA's siting regulations should be designed so as to maximize the likelihood that water meeting national primary drinking water regulations and recommended maximum contaminant levels will be delivered reliably to consumers. If legitimate considerations other than those contained in EPA's regulations dictate siting decisions which increase the risk of disaster damage (or other problems which could undermine assurance of a healthful and reliable drinking water supply system) and if the State and local government and public water systems have fairly taken account of such risk in their siting decisions, EPA's siting regulations should respect the State and local decisions.

Under no circumstances, however, may any siting decision exempt a public water system from the duty to comply with maximum contaminant level, treatment technique, or intake water quality regulations.

Quality control and testing requirements

In establishing quality control and testing procedures for the source, treatment, and distribution systems of public water systems, EPA should establish a minimum sampling frequency for each contaminant for which a maximum contaminant level has been set. More frequent monitoring should be required by regulation for classes of systems facing local conditions which justify such increased monitoring. In prescribing regulations requiring more frequent monitoring or sampling than the mimimum, the Administrator is expected to take into account, among other factors, the nature and type of the water source, historical data characterizing the water quality, anticipated variations in water quality, vulnerability of the source to accidental or deliberate contamination, the population at risk, the type of treatment provided, and the level of the contaminant which is generally found as it relates to the established limit.

Monitoring should insure to the extent feasible the detection of a violation before such violation causes or contributes to any adverse health effect. The Committee expects that the Administrator would require that, upon initial detection of a suspected violation, monitoring frequency would be increased.

Limitation on standard setting authority

The Administrator under this section would be prohibited from requiring the addition of any substance other than for the purpose of treating contaminants. Thus, EPA could not require the addition of fluorides or other substances to a public water system for medicinal purposes. Nor could EPA prevent the addition of fluorides or other substances up to the maximum amount allowable under a maximum contaminant level. While EPA could not require the addition of a substance for medicinal purposes, the Agency would have full authority to limit the addition of such a substance if necessary to prevent excessive levels from occurring or to prevent such substance from interfering with the effectiveness of any required treatment techniques.

"Secondary drinking water regulations"

Section 1401 also defines "secondary drinking water regulation". This is a regulation which establishes maximum allowable contaminant levels to protect the public welfare. Such regulations are intended to establish contaminant levels to prevent odor or appearance of drinking water which may cause a substantial number of persons served by the public water system providing such water to discontinue its use. These levels are intended as guidelines to the States. On the other hand, if a substance may cause or contribute to an interaction with pipes which may endanger public health, the Committee would anticipate that that substance would be regulated as a primary drinking water contaminant. Both primary and secondary drinking water regulations may be established for the same contaminant, if the statutory criteria are met.

"Public water system"

Section 1401 defines certain other terms, including "public water system". A "public water system" is a system which has 15 or more service connections or regularly serves 25 or more persons, regardless of whether the system is publicly or privately owned or operated. This definition, thus, encompasses nearly all public accommodations, such as restaurants, motels, and trailer parks which serve the public.

"Contaminant"

Section 1401 defines "contaminant" to mean "any physical, chemical, biological, or radiological substance or matter in water." This, of course, would include any radioactive materials whether or not they originated from any source under the jurisdiction of the Atomic Energy Commission.

"Municipality"

Section 1401 (10) defines "municipality" to mean "a city, town, or other public body created by or pursuant to State law, or an Indian tribal organization authorized by law." In the Committee's view, this definition would include counties, boroughs, and parishes, since these entities are created by or pursuant to State constitutional or statutory law.

PART B—PUBLIC WATER SYSTEMS

SECTION 1411. COVERAGE

Section 1411 provides that except insofar as variances may be granted under section 1415 or exemptions granted under section 1416, national primary drinking water regulations apply to each public water system in each State. The section also exempts any entity which would otherwise qualify as a "public water system" within the meaning of the bill, if it only distributes and stores water but does not collect, treat, or sell it and if it relies entirely on a public water system to provide the water which the entity ultimately makes available to the public.

Each of these three conditions specified in section 1411 must be met in order for a public water system to be exempt from the duty to comply with national primary drinking water regulations. 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 parks, and other businesses serving the public if the business in question maintains its own well or water supply. The Committee 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.

SECTION 1412. NATIONAL DRINKING WATER REGULATIONS

Interim regulations

Section 1412 requires the Administrator of EPA to establish both interim and revised primary drinking water regulations. The Committee intends that the interim regulations be established quickly and, therefore, anticipates that these regulations would be based largely on a review and updating of the USPHS drinking water standards. Such a review has already been completed. EPA Advisory Committee on the Revision and Application of the Drinking Water Standards, as recommended to the Administrator, *Drinking Water Standards*, September 20, 1973. The Committee anticipates that the Advisory Committee recommendations would serve largely as the basis for the interim primary regulations.

On the other hand, the Committee intends that revised regulations contain a comprehensive program of control of drinking water contamination. Thus, the Committee has permitted a substantially longer period for development of the revised primary regulations.

National interim primary drinking water regulations are to be promulgated within 180 days after date of enactment of the bill. Promulgation is to be preceded by proposal and opportunity to comment in accordance with 5 U.S.C. § 553, and consultation with the Secretary of HEW and the National Drinking Water Advisory Council. National interim primary regulations take effect not later than one year after promulgation. These interim regulations must protect health to the maximum extent feasible using treatment methods which are generally available on the date of enactment. In determining what methods are generally available, the Administrator is directed to take costs into account.

Reasonable cost

It is evident that what is a reasonable cost for a large metropolitan (or regional) public water system may not be reasonable for a small system which serves reatively few users. The Committee believes, however, that the quality of the Nation's drinking water can only be upgraded if the systems which provide water to the public are organized so as to be most cost-effective. In general, this means larger systems are to be encouraged and smaller systems discouraged. For this reason, the Committee intends that the Administrator's determination of what methods are generally available (taking cost into account) is to be based on what may reasonably be afforded by large metropolitan or regional public water systems.

This, of course, means that some small water systems which cannot afford the methods determined by the Administrator to be "generally available" will be unable promptly to comply with all primary regulations. For this reason, authority to grant exemption from the effective date of the primary regulations and thus to delay the date for compliance by public water systems has been provided in section 1416. However, this period should be used to develop a regional water system which can afford to purchase and use such methods, to seek additional sources of funding such as State aid, or to develop a plan for otherwise serving the affected population after any existing inadequate system is closed.

It is not the Committee's intent to cause any area to be deprived of existing drinking water supply services. Thus, the Committee anticipates that during the next three years the States and localities and the Environmental Protection Agency will review this matter and will determine whether any additional legislative authorities are needed.

NAS study

The Committee was concerned that adequate data on the health effects of contaminants in drinking water is not now available. Section 1412(e), therefore, mandates the Administrator to make arrangements with the National Academy of Sciences to conduct a study of the maximum contaminant levels which should be allowed in drinking water. These levels should assure that the health of persons will be protected against known or anticipated adverse effects, allowing an adequate margin of safety.

In addition, the NAS is directed to develop a list of contaminants, the levels of which in drinking water cannot be determined but which may have an adverse effect on the health of persons. The NAS list is to be considered by the Administrator in deciding whether to include such contaminants on his own list and thus whether to prescribe treatment technique requirements for such contaminant in a national primary drinking water regulation.

The results of the NAS study, including proposals for recommended maximum contaminant levels (i.e. health goals) are to be reported to Congress no later than two years after date of enactment.

In conducting its study and making its report, the NAS is directed to consider only what is required for protection of the public health, not what is technologically or economically feasible or reasonable. In the Committee's view, the question of what is necessary for adequate protection of the public health is and ought to be considered sep-

arately from the question of what degree of contaminant control is technologically or economically feasible.

The Committee wishes to ensure that the NAS report is based solely on considerations of public health and is not influenced by political, budgetary or other considerations. For these reasons, the prior release of any draft or the final report to any Federal agency (other than EPA) is prohibited.

The NAS is further directed to develop its proposals for recommended maximum contaminant levels so as to protect susceptible groups in the population; so as to take account of long-term exposures, exposures to contaminants in other media, and synergistic effects of multiple contaminants; so as to prevent body changes which are reasonably suspect of increasing the risk or severity of illness; and so as to incorporate an adequate margin of safety.

In recommending an adequate margin of safety, the National Academy of Sciences is directed to consider, among other factors, the margins of safety which are currently used in regulating foods and drugs, pesticides, radiation, air and water pollution, occupational exposures to contaminants, and other relevant regulatory systems. However, as in the rest of the study, economic or technological feasibility is not to be weighed in deciding how much margin of safety is necessary to give reasonable assurance that health of persons will be protected. Economic and technological feasibility are to be considered by EPA (and under section 1416 by the States) and then only for the purpose of determining how soon it is possible to reach recommended maximum contaminant levels and how much protection of the public health is feasible until then.

The NAS study should also examine and identify future research needs in the area of health effects of drinking water contamination. In this portion of its study, the NAS should consider not only what research is necessary on the effects of contaminants which have already been included in the USPHS drinking water standards; NAS should also consider the research needs for those other contaminants which the Academy concludes have the greatest potential for adverse effect on human health. Finally, the study should establish priorities for research needs and estimate the costs necessary to implement the recommended research program. In deciding which contaminants to include in the list for revised primary regulations, it is anticipated that the Administrator will carefully consider the recommendations of the Academy.

Recommended maximum contaminant levels

One hundred days after the NAS report is submitted to Congress, the Administrator must publish regulations, promulgated in accordance with 5 U.S.C. 553, establishing recommended maximum contaminant levels and listing the contaminants the level of which he finds cannot be determined in drinking water but which he determines may have an adverse effect on public health. The recommended maximum contaminant levels are goals which are to be set at levels sufficient to prevent the occurrence of any known or anticipated adverse health effects with an adequate margin of safety. They are to be based on the NAS report, but may differ from the NAS' proposals if the Adminis-

trator finds that adequate justification for such differences exists and if such finding is published and explained by the Administrator.

The incorporation of an adequate margin of safety is not to be confused with the anticipation of adverse health effects. Recommended maximum contaminant levels are to be established by a three-step process. First, the known adverse health effects of contaminants are to be compiled. Second, the Administrator must decide whether any adverse effects can be reasonably anticipated, even though not proved to exist. It is at this point that the Administrator must consider the possible impact of synergistic effects, long-term and multi-media exposures, and the existence of more susceptible groups in the population. Finally, the recommended maximum level must be set to prevent the occurrence of any known or anticipated adverse effect. It must include an adequate margin of safety, unless there is no safe threshold for a contaminant. In such a case, the recommended maximum contaminant level should be set at the zero level.

Revised regulations

The revised national drinking water regulations must be proposed at the time of promulgation of the recommended maximum levels. The revised regulations must be promulgated within 180 days after the proposal is published. Promulgation must be preceded by opportunity to comment in accordance with 5 U.S.C. § 553 and by consultation with the Secretary of HEW and the National Drinking Water Advisory Council. The revised primary regulations must specify the contaminant level (or treatment methods, if monitoring is infeasible) which provides maximum feasible protection for human health, using generally available methods of treatment or control.

These revised regulations take effect not later than one year after promulgation, except as provided in sections 1415 and 1416. In setting the revised regulations, the Administrator shall consider all technology that can be mass produced and put into operation in time for implementation of such regulations.

The promulgation of revised regulations for any contaminant will not automatically revoke interim regulations applicable to that contaminant. Only if the Administrator's revised regulations expressly provide that the interim regulations are superceded would such interim regulations cease to be effective. In deciding whether or not to supercede interim regulations, the Administrator should consider the length of time which they have been in effect, the amount of money spent to comply with such regulations, the compatibility of compliance strategies and techniques for meeting interim and revised regulations, and other appropriate factors, in addition to the public health implications of leaving the interim regulations in effect. If interim regulations remain in effect when revised regulations are promulgated, each public water system would be required to comply with both interim and revised regulations in accordance with the timetables and under the conditions set forth in the bill.

Secondary regulations

Finally, section 1412 requires the Administrator to propose national secondary drinking water regulations within 270 days after enactment and to promulgate such regulations within 90 days thereafter.

SECTION 1413. STATE PRIMARY ENFORCEMENT RESPONSIBILITY

It is the Committee's intent that States and public water systems take the primary responsibility for assuring the safety of the Nation's drinking water supplies. While Federal standard setting and back-up enforcement is authorized, the Committee is hopeful that State and Federal cooperation will be the rule and that the States will take the lead in adopting standards, reviewing compliance strategies, and where necessary bringing enforcement actions.

Section 1413 defines the substantive conditions under which the Administrator may determine that a State has primary enforcement responsibility for assuring compliance by public water systems within that State with national primary drinking water regulations. These conditions include (1) the adoption of State regulations which the State can demonstrate are at least equally as stringent as national primary regulations; (2) the adoption and implementation of adequate surveillance and enforcement procedures; and (3) if the State permits variances and exemptions, the adoption and implementation of measures to assure that such variances and exemptions are permitted under conditions and in a manner which is at least equally stringent as the requirement of sections 1415 and 1416.

Section 1413 also provides that the procedures by which the Administrator will make the determinations as to whether a State has primary enforcement responsibility for public water systems are to be prescribed by rule of the Administrator in accordance with 5 U.S.C. § 553. Proposal of such regulations is required within 180 days after enactment of this bill and promulgation is required within 90 days thereafter.

This section also requires the Administrator to take final action within 90 days after date of submission of an application for a determination of State primary enforcement responsibility. If the Administrator's decision is negative, he must notify the State in writing of the reasons for such decision.

The significance of this determination cannot be overestimated. Authority for States to grant variances and exemptions under sections 1415 and 1416, to receive notice prior to the commencement of Federal enforcement actions under section 1414, and to receive grants under section 1434 (except as may be provided during the first year) is dependent upon this determination. Therefore, the Committee intends EPA to exercise utmost care in passing upon such applications and to deny any such application only upon a clear failure by the State to meet the requirements of this section.

Section 1413 also specifies certain conditions which must be met before an EPA determination to revoke a State's primary enforcement responsibility may be effective. First, the Administrator must submit to the State in writing a statement of the specific requirements which he finds the State is no longer meeting and the basis for this finding. Second, the Administrator must provide an opportunity for public hearing. The Administrator's final determination to revoke or leave in effect the State's primary enforcement responsibility is not required to be made on the record of this hearing, however.

For the purpose of this section, the phrase "adequate procedures for the enforcement of such State regulations" includes sufficiently expeditious administrative and judicial authorities and procedures to assure that, if properly exercised, these procedures and authorities will obviate the necessity for Federal enforcement under section 1414. This means that a State must be able to take effective action within 60 days after receipt of a notice of noncompliance from EPA to bring a system into compliance at the earliest feasible time.

SECTION 1414. FAILURE BY STATE TO ASSURE ENFORCEMENT OF DRINKING WATER REGULATIONS

Conditions for Federal enforcement

This section sets forth the conditions under which Federal enforcement of primary drinking water regulations may occur. If the Administrator finds a violation is occurring in a State which has primary enforcement responsibility, he must give notice of the alleged violation to the State.

If the Administrator finds that the noncompliance extends beyond the thirtieth day, he is required to notify the public of this finding. He is also required to request the State to report within 15 days as to the steps it is taking to bring the system into compliance.

The Committee intends that such reply be as specific as possible. It should specify a timetable by which compliance will be achieved and include interim steps that will be taken. It should also include a statement of the legal authority which the State intends to rely upon and any remaining legal steps that will be taken by the State to assure that the timetable is followed. Mere declarations of intent to commence legal proceedings or other similar vague declarations of intent would not be sufficient to constitute the required reply under this section. It is further expected that the State would amend its reply if, after the initial submission of such reply to EPA, such State had reason to believe the compliance timetable, including interim steps would not be met. The Committee expects that the Administrator will promulgate requirements for regular followup reports from the State on progress being made toward bringing about compliance pursuant to the Administrator's authority under section 1413 to issue regulations concerning State programs.

If a system remains in noncompliance sixty days after the initial notice by EPA and if the State has failed to submit the report requested within the 15 day period or the Administrator determines that by failing to implement adequate procedures by the sixtieth day to bring the system into compliance by the earliest feasible date the State has abused its discretion in carrying out its primary enforcement responsibility, then the Administrator may commence an enforcement action under subsection (b).

In using the phrase "abused its discretion in carrying out its primary enforcement responsibility", the Committee intends that any failure by a State to implement by the sixtieth day adequate procedures to bring a system into compliance by the earliest feasible time be considered a *per se* abuse of discretion by the State. Such a failure is both a necessary and sufficient condition for enforcement action by

the Administrator. Such a failure would constitute an abuse of discretion whether it results from negligence, inattention, lack of adequate technical and enforcement personnel, or from any other cause. Thus, in the Committee's view no defense to an enforcement action by EPA would lie on the ground that, though the State had failed to implement such adequate procedures by the sixtieth day, the State did not abuse its discretion.

In reviewing the date determined by the State to be the earliest feasible time for any system to come into compliance, the Administrator should consider, among other matters, all technological alternatives and financial resources which may be available to the public water system or to the entity which operates it. If a State has not initiated procedures which would bring the system into compliance at the earliest feasible time, this would constitute an abuse of discretion within the meaning of section 1414, such that Federal enforcement efforts would be authorized. In addition, a State would be deemed to have abused its discretion if at any time prior to compliance being achieved, such State fails to carry out properly any follow-up or enforcement procedures necessary to achieve compliance within the time contemplated by those procedures.

The Administrator is also authorized to commence enforcement action upon request of the Governor (or other chief executive officer) of a State or upon request of the agency of the State responsible for assuring compliance with drinking water regulations.

Continuous violations of primary drinking water regulations would of course, be basis for Federal enforcement actions under the conditions stated above. The Committee also intends that sporadic but repeated violations of the regulations be subject to Federal enforcement under the conditions described above. It should be noted in this regard that a violation occurs whenever a maximum contaminant level is exceeded or a treatment technique is not followed however briefly. While the Committee does not intend to require enforcement actions to be commenced with respect to each isolated violation, it is intended that the public receive notice of each violation which is found to occur.

In the event the Administrator finds that a violation is occurring in a State which does not have primary enforcement responsibility, he is not required to give the State notice prior to commencing a suit to compel compliance with the national primary regulations.

Judicial enforcement

Section 1414 also provides that courts entertaining suits under this section may enter such judgment as the public health may require, taking into account the time necessary to comply and the availability of alternative water supplies. Therefore, the Committee intends that courts which are considering remedies in enforcement actions under this section are not to apply traditional balancing principles used by equity courts. Rather, they are directed to give utmost weight to the Committee's paramount objective of providing maximum feasible protection of the public health at the times specified in the bill.

Although requiring prompt compliance by some small outdated systems may in effect force the closing thereof, such a court order would be both permissible and warranted if an expansion of existing

regional water service or other State or local assistance could be provided to assure the availability of adequate and safe drinking water supplies to those presently serviced.

Notice to users

Section 1414(c) requires public water systems to give notice to the users of the system and to the public under five separate circumstances: (1) when the system fails to comply with a maximum contaminant level requirement of a national primary drinking water regulation; (2) when the system fails to use any of the required treatment techniques of a national primary drinking water regulation; (3) when the system fails to perform testing or monitoring as required by such a regulation or by section 1445; (4) when a system has received a variance under section 1415(a)(1)(A) or 1415(a)(2) (for an inability to meet a maximum contaminent level requirement) or has received an exemption under section 1416; or (5) when a system has failed to comply with any schedule or control measure prescribed pursuant to a variance or exemption.

The purpose of this notice requirement is to educate the public as to the extent to which public water systems serving them are performing inadequately in light of the objectives and requirements of this bill. Such public education is deemed essential by the Committee in order to develop public awareness of the problems facing public water systems, to encourage a willingness to support greater expenditure at all levels of government to assist in solving these problems, and to advise the public of potential or actual health hazards.

In keeping with this purpose, the Committee has specified certain methods and frequencies for giving notice to the public and has conferred authority for the Administrator to prescribe the form and manner of this notice. The regulations of the Administrator must, of course, be reasonable and related to the purpose expressed above. Notice should inform the public, not unduly alarm it. Thus, the Committee expects that the Administrator's regulations would permit public water systems to give fair explanation of the significance or seriousness for the public health of any violation, failure, exemption or variance. These regulations should also permit fair explanation of steps taken by the system to correct any problem.

On the other hand, the Administrator's regulations should assure that unduly technical language, small print, or other methods which would hinder public awareness are not used. Moreover, it may be necessary to require bi-lingual notice in certain communities to assure adequate notice is given to all segments of the public. The Administrator's regulations should also require that the three-month notice include all violations not previously reported, even though they have been corrected at the time of notification.

The Committee recognizes that in some instances apparent violations may result from monitoring error. Only if the public water system could provide persuasive proof that readings in excess of regulations were due to such error would the system be excused from the notice requirement under section 1414. In such a case, the Committee anticipates that the system will notify appropriate public authorities of such monitoring or sampling errors.

The Administrator's regulations would be expected to differentiate between the type of notice which might be ordered in case of imminent and substantial endangerment under section 1431 and that which is required in less serious cases under this section.

Section 1414(c) also contains provision making punishable by a fine of up to $5,000 a willful failure to give the required notice.

Secondary drinking water regulations

National secondary drinking water regulations are not federally enforceable. If the Administrator finds that these regulations are not being complied with and that the State is failing to take reasonable action to assure compliance, he must notify the State.

Retention of State and local authority

Section 1414 retains in the States and political subdivisions the right to adopt and enforce any drinking water regulations or laws it chooses. However, no person may be relieved of the duty to comply with requirements under this bill by any State or local regulations or laws (except insofar as variances, exemptions, or temporary permits may be issued by States pursuant to authorities expressly conferred by this bill).

Public hearings to encourage compliance

Finally, section 1414(f) authorizes the Administrator, upon receipt of a petition by a State with primary enforcement responsibility or by a public water system or by any person served by a system which the Administrator finds is not in compliance with any national primary drinking water regulation or with any other requirement under section 1415 or 1416, to conduct public hearings with respect to such noncompliance. The purpose of these hearings is to gather information on the ways in which the system can be brought into compliance at the earliest feasible time. The purpose is also to explore means for the maximum feasible protection of the public health during any period of noncompliance. These hearings shall be the basis for recommendations by the Administrator. These recommendations are to be submitted to the State, the public water system, and to the communications media and are to be made available to the public.

Nothing in subsection (f) is intended by the Committee to limit the Administrator's authority to act *sua sponte* to hold hearings or to make recommendations to effectuate the purposes of this bill. Nor is the authority in subsection (f) intended in any way to be construed as a condition precedent to Federal enforcement.

SECTION 1415. VARIANCES

State variance authority

Section 1415 authorizes variances from primary drinking water regulations to be granted on two separate bases.

First, a State which has primary enforcement responsibility for public water systems may grant one or more variances to any system which cannot meet maximum contaminant level requirements despite application of the most effective treatment methods. This variance is intended to deal with the situation in which the system cannot comply

with primary regulation intake requirements (and thus cannot comply with maximum contaminant level output limits) despite all reasonable technological, economic, and legal efforts to do so. The Committee anticipates that in exercising this authority States will periodically review variances to assure that they are still necessary and that all reasonable efforts to obtain access to a satisfactory raw water source are being made by the system.

Second, States with primary enforcement responsibility may grant a variance from a primary drinking water regulation which requires the use of treatment technique(s) if a satisfactory showing is made by a public water system that such treatment is unnecessary to protect the public health. This variance is designed to apply to situations in which the system's raw water source is substantially cleaner than the minimum intake water requirements.

The Committee anticipates that any such variance would, under the Administrator's regulations, be conditioned upon monitoring and periodic review to assure that its continuation is warranted. Furthermore, section 1415 requires notice and opportunity for a public hearing before any such variance may take effect. Separate notice and hearing is not required of each variance, however.

EPA review of State action

The Committee contemplates that EPA will carefully review the variances which are granted by States to assure that the State has not abused its discretion in granting variances and has not failed to impose reasonable control measures.

If the Administrator finds that, in a substantial number of cases, the State has granted variances which were clearly unwarranted or has failed to impose reasonable control measures during the period of the variances, he must notify the State of this finding. The notice must include, among other things, proposed revocations of specific variances or revised control measure requirements or both.

Reasonable notice and public hearing on the notice must be provided by the Administrator before any final action may be taken. After such hearing the Administrator must either rescind his finding or must take action to promulgate the variance revocations and revised control measure requirements which he proposed. In order to afford States an adequate opportunity to take corrective action in response to the Administrator's notice, section 1415 precludes any action by the Administrator from taking effect for 90 days after the Administrator has sent notice of the proposed revocations and revised control measures. Moreover, if such timely corrective State action is forthcoming, the Administrator is required to rescind the application of his finding to the variance or control measure or other requirement which has been corrected.

This system of EPA oversight is intended by the Committee to confer maximum responsibility on States which make appropriate efforts to effectuate the purposes of the Act. While some EPA review of State granted variances from national regulations was deemed necessary by the Committee to assure the effectuation of the national policy, it is not intended that EPA engage in a case-by-case review or substitute its judgment for the well-exercised judgment of a State. EPA notice to

a State is warranted only when a significant number of cases can be shown of State action inconsistent with the intent of this bill.

In determining what constitutes a significant number of cases, the number of consumers affected by such variances should be considered.

EPA variance authority

Section 1415 also provides that public water systems in States which do not have primary enforcement responsibility may obtain variances from EPA in the same manner and under the same conditions as they could from the State, if it had primary enforcement responsibility.

In addition to the two types of variances which States may grant, section 1415 authorizes the Administrator to grant a different type of variance.

Under this final variance authority, the Administrator may grant a variance, upon application of a public water system or other interested person, if the applicant makes a showing to the Administrator's satisfaction that another treatment technique is of at least equal effectiveness to any treatment technique required by the Administrator under a primary drinking water regulation. A variance under this provision must be conditioned on the use of the alternative technique which is the basis of the variance.

Section 1415 also provides that the conditional requirements of variances, whether granted by EPA or by the States, are enforceable by EPA as if they were part of a national primary drinking water regulation.

SECTION 1416. EXEMPTIONS

Section 1416 authorizes any State which has primary enforcement responsibility to exempt a public water system from any maximum contaminant level requirement or from any treatment technique requirement upon a finding that the system is unable to comply due to compelling factors. These factors may include economic factors, such as the high cost of purchasing and constructing necessary equipment or facilities and the low per capita income and small number of residents in a community served by the system.

The authority to grant such exemptions is limited to public systems in operation on the effective date of the primary regulation. New systems which are placed into operation after that date are expected to comply with the requirements without any exemption. Moreover, in considering whether economic factors are sufficiently compelling to warrant an exemption under this section, it is anticipated that the States will weigh any planned expansion of existing facilities of the system. In the Committee's view, if a system has sufficient funds to permit substantial expansion of capacity and service, these funds should first be used to assure the safe quality of the drinking water presently being supplied. In such cases, States should be extremely reluctant to grant exemptions on economic grounds.

If a State does grant an exemption to any public water system under section 1416, it must within one year thereafter prescribe a schedule for bringing the system into compliance (including increments of progress) and for interim control measures during the pendency of the exemption. These schedules may be prescribed by the State only after notice and opportunity for a public hearing on the proposed schedule.

The compliance schedule must provide for compliance by the system with the requirements of the primary regulations as expeditiously as practicable. In any event, however, the compliance date must be no later than January 1, 1981, in the case of an exemption from an interim regulation, and no later than seven years after the effective date of a revised regulation in the case of an exemption from such regulations (except that in either case two additional years may be granted if the system is entering into a regional water system).

This section also provides for a system of EPA review of State-granted exemptions. EPA is required to complete such a review within 18 months after the effective date of the interim regulations. The procedures and criteria for EPA review of State granted exemptions are parallel to those with respect to variances.

Section 1416 also provides that public water systems in States which do not have primary enforcement responsibility may obtain exemptions from EPA in the same manner and under the same conditions as they could from the State, if it had primary enforcement responsibility.

PART C—PROTECTION OF UNDERGROUND SOURCES OF DRINKING WATER

SECTION 1421. REGULATIONS FOR STATE PROGRAMS

Guidelines for State programs

Section 1421 is intended to establish a Federal-State system of regulation to assure that drinking water sources, actual and potential, are not rendered unfit for such use by underground injection of contaminants. The guidelines for the States' regulatory programs are to be promulgated by the Administrator within 360 days after enactment. Such promulgation is to be preceded by proposal and opportunity for public hearing as well as opportunity to comment in accordance with 5 U.S.C. 533. Such promulgation is also to be preceded by consultation with the Secretary and the Council and other appropriate Federal and State entities.

The Administrator's guidelines for State underground injection control programs must, as a minimum, require States to (1) prohibit unauthorized underground injection effective three years after enactment of this bill; (2) require applicants for underground injection permits to bear the burden of proving to the State that its injection will not endanger drinking water sources; (3) refrain from adopting regulations which either on their face or as applied would authorize underground injection which endangers drinking water sources; (4) adopt inspection, monitoring, recordkeeping, and reporting requirements for the purpose of this Part; and (5) apply their injection control programs to underground injections by Federal agencies and by any other person whether or not occurring on Federally-owned or leased property.

Furthermore, the Committee seeks to have several major policies implemented. First, potential as well as presently-used drinking water sources are to be protected. Second, the protection is to apply to any injected substance (or derivative thereof) whether or not that substance is a contaminant subject to national primary drinking water regulations. Thus the injection is to be subject to regulation or pro-

hibition if the injected substance may cause or contribute to noncompliance with a national primary drinking water regulation or if it may otherwise adversely affect the public health, including causing or contributing to the water's unfitness for human consumption.

Numerous public and private agencies which have considered the matter have become concerned about the substantial hazards and dangers associated with deep well injection of contaminants. Dow Chemical Corporation, which had pioneered deep well injection as a method of industrial waste disposal, has decided to stop drilling new wells and to phase out existing wells, because of these hazards. New York State has declared that it will regard deep well injection as a "last resort" after evaluation of all other methods. Nine other States currently reject or discourage applications for injection systems. The U.S. Geological Survey and the Bureau of Mines have expressed increasing worry about the indiscriminate "sweeping of our wastes underground." Some commentators have even termed injection well actions as "ultrahazardous activity".

Nonetheless, underground injection of contaminants is clearly an increasing problem. Municipalities are increasingly engaging in underground injection of sewage, sludge, and other wastes. Industries are injecting chemicals, byproducts, and wastes. Energy production companies are using injection techniques to increase production and to dispose of unwanted brines brought to the surface during production. Even government agencies, including the military, are getting rid of difficult to manage waste problems by underground disposal methods. Part C is intended to deal with all of the foregoing situations insofar as they may endanger underground drinking water sources.

In requiring EPA to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources, the Committee intends to ratify EPA's policy on deep well injection. (See 39 Fed. Reg. 12922–3, April 9, 1974) This policy was first adopted by the Federal Water Quality Administration of the Department of the Interior on October 15, 1970. The policy opposes storage or disposal of contaminants by subsurface injection "without strict control and clear demonstration that such wastes will not interfere with present or potential use of subsurface water supplies, contaminate interconnected surface waters or otherwise damage the environment." The Committee thus intends EPA to use these policy guidelines—including the exploration of alternative measures and the determination that they are less satisfactory than underground injection; preinjection tests; a geologic-hydrologic-geochemical survey and submission of such other information as is necessary to evaluate the acceptability of any proposed underground injection; the use of best available measures for pre-treatment; the use of best available techniques for design, siting, construction, operation, maintenance, and abandonment of the injection system; provisions for adequate and continuous monitoring of operations and effects—as the basis for establishing minimum requirements for effective State programs.

In addition, the Committee intends that the Administrator should incorporate in such guidelines requirements for preparation of adequate contingency plans to cope with malfunction or failure of the system including alarm and fail-safe measures; provisions for the

posting of bond or such other measures as may be necessary to assure the availability of adequate financial resources for dealing with underground injection systems which either must be abandoned or cause damage to, or contamination of, public or private drinking water sources; limitations on the aggregate volume of contaminants which may be injected and on the pressure at which such injection may occur; and, if necessary to effectuate the purpose of Part C, prohibition of underground injection in designated areas which are unsuitable for this purpose because of the presence of presently-used or potential drinking water sources.

Procedures for controlling underground injections

In order to implement these controls to protect drinking sources with minimum administrative redtape, the Committee decided to allow EPA discretion to require States to utilize a permit system, rulemaking, or a combination of the two to control underground injection.

In adopting this approach, the Committee was intent on allowing the Environmental Protection Agency sufficient leeway to adopt a program which would be administratively compatible with, and nonduplicative of, the permit provisions of the Federal Water Pollution Control Act.

Temporary permit authority

The Committee recognized that some States may be unable to process all permit applications for new and existing underground injection wells within the three year deadline established by the bill. Consequently, upon application by the Governor, the Administrator may at his discretion allow the States to issue temporary permits for an additional year. The Administrator may only allow the issuance of such temporary permits, however, under the following conditions: (1) the State must bear the burden of proving that it could not process all permit applications in time; (2) the temporary permits may only be issued for unprocessed permit applications for injection wells in operation at the time of EPA's approval of the State program; (3) the temporary permits must require use of generally available techniques to minimize the likelihood of contaminating drinking water sources; and (4) the Administrator must determine that the issuance of temporary permits is warranted notwithstanding the adverse environmental (including public health) effects.

In addition to authorizing EPA to allow State issuance of one year temporary permits, section 1421(c)(2) authorizes EPA to allow States to issue one-year temporary permits a particular injection well and for the underground injection of a particular fluid if there is no method for safe injection of the fluid and if injection would be less harmful to the public health than other alternative means of treating or dealing with it.

These temporary permits under section 1421(c)(2), which are in effect variances, are to be allowed only in very limited circumstances. First, they may not be made effective beyond four years after date of enactment of this bill. This is true whether or not a temporary permit has been issued under such section 1421. If the injection cannot be made so as not to endanger drinking water sources within four years after enactment, the operation of the well must be termi-

nated. Second, all efforts must be made to reduce the harmfulness of the injected fluid and to maximize protection of the public health during the pendency of the temporary permit. Third, such a temporary permit may only be authorized if the State has held a formal adjudication, has made the requisite determinations on the record of the hearing, and has submitted an application signed by the Governor for authority to issue such a temporary permit.

"*Underground injection*"

Finally, section 1421 contains two important definitions. The definition of "underground injection" is intended to be broad enough to cover any contaminant which may be put below ground level and which flows or moves, whether the contaminant is in semi-solid, liquid, sludge, or any other form or state.

This definition is not limited to the injection of wastes or to injection for disposal purposes; it is intended also to cover, among other contaminants, the injection of brines and the injection of contaminants for extraction or other purposes. While the Committee does not intend this definition to apply to septic tanks or other individual residential waste disposal systems, it does intend that the definition apply to a multiple dwelling, community, or regional system of injection of waste.

The application of Part C to the activities of oil and natural gas producing industries was a subject of substantial discussion before the Committee. The Committee rejected an amendment comparable to the exclusionary language of section 502(6) of the Federal Water Pollution Control Act. Instead, the Committee adopted an amendment expressing its intent not to authorize needless interference with oil or gas production. This amendment prohibits regulations for State underground injection control programs from prescribing requirements which would interfere with production of oil or natural gas or disposal of biproducts associated with such production, except that such requirements are authorized to be prescribed if essential to assure that underground sources of drinking water will not be endangered by such activity.

The Committee's intent in adopting this amendment was not to require EPA to bear an impossible burden of proof as a condition of promulgation of any such regulation. Rather, the Committee sought to assure that constraints on energy production activities would be kept as limited in scope as possible while still assuring the safety of present and potential sources of drinking water. Similar provisions were adopted with respect to EPA regulations which are to be promulgated when a State fails to adopt an approvable underground injection control program.

In deciding what is an "essential" requirement, the Committee intends that the types of measures referred to in the Administrator's Decision Statement Number 5 and those referred to in this report be considered to be "essential" unless the contrary could be demonstrated with respect to a specific well or injection. Moreover, in using the words "interfere with or impede" the Committee did not intend to include every regulatory requirement which would necessitate the expenditure of time, money, or effort. Rather, the Committee intended to refer to those requirements which could stop or substantially delay production of oil or natural gas.

Endangerment of drinking water sources

The section also defines "underground injection which endangers drinking water sources." It is the Committee's intent that the definition be liberally construed so as to effectuate the preventive and public health protective purposes of the bill. The Committee seeks to protect not only currently-used sources of drinking water, but also potential drinking water sources for the future. This may include water sources which presently exceed minimum intake water quality requirements or maximum contaminant levels or which are not presently accessible for use as a community drinking water supply source.

Thus, for example, the Committee expects the Administrator's regulations at least to require States to provide protection for subsurface waters having less than 10,000 p.p.m. dissolved solids, as is currently done in Illinois and Texas, even though water containing as much as 9,000 p.p.m. would probably require treatment prior to human consumption.

Further contamination of such sources should not be permitted if there is any reasonable likelihood that these sources will be needed in the future to meet the public demand for drinking water and if these sources may be used for such purpose in the future.

The Committee was concerned that its definition of "endangering drinking water sources" also be construed liberally. Injection which causes or increases contamination of such sources may fall within this definition even if the amount of contaminant which may enter the water source would not by itself cause the maximum allowable levels to be exceeded. The definition would be met if injected material were not completely contained within the well, if it may enter either a present or potential drinking water source, and if it (or some form into which it might be converted) may pose a threat to human health or render the water source unfit for human consumption. In this connection, it is important to note that actual contamination of drinking water is not a prerequisite either for the establishment of regulations or permit requirements or for the enforcement thereof.

Coordination with USGS

The Committee intends that the Environmental Protection Agency will, in the exercise of its responsibilities under this bill, coordinate and consult with the United States Geological Survey so that EPA will not duplicate efforts of the U. S. G. S. to prevent groundwater contamination under the Mineral Leasing Act. The Committee does not intend any of the provisions of this bill to repeal or limit any authority the U. S. G. S. may have under any other legislation.

SECTION 1422. STATE PRIMARY ENFORCEMENT RESPONSIBILITY

This section requires the Administrator to list all States which ought to have underground injection control programs. It is anticipated that this list, which must be published within 180 days of enactment, would include all 50 States, but perhaps not the District of Columbia and various territories and possessions.

Each State which is listed must adopt an underground injection control program which meets the requirements of the Administrator's regulations for such program. The State's program must be adopted

after reasonable notice and public hearing and must be submitted to EPA within 270 days after promulgation of the Administrator's regulations. In addition, the State must submit evidence that it will implement its program and will keep records and reports required by EPA.

Upon receipt of a State's submission, EPA is directed to give public notice thereof, provide opportunity for public hearing, and solicit public comment in accordance with 5 U.S.C. 553. Within 90 days after receipt of the State's submission, the Administrator shall approve or disapprove (in part or whole) the State's underground injection control program.

If the Administrator approves the State's program, the State will have primary enforcement responsibility for underground water sources. If he disapproves, or a State fails to submit a timely application for such primary enforcement responsibility, the Administrator must promptly propose, provide opportunity for public hearing, and solicit comment in accordance with 5 U.S.C. 553 on a program for underground injection control for that State. Within 90 days after his disapproval or the date on which the State is required to make its submission, the Administrator must promulgate such a program for the State.

Once a State is determined to have primary enforcement responsibility for underground water sources, it continues to do so until the Administrator makes a contrary determination in accordance with 5 U.S.C. 553 and after opportunity for public hearing.

When the Administrator amends any regulation under section 1421 so as to revise or add a requirement respecting State underground injection control programs, each State is to submit to the Administrator a notice containing a satisfactory showing that the State's program meets the requirements of the Administrator's regulations in effect under section 1421, as amended. The timeframe and procedure for EPA's review and approval (or disapproval/promulgation) of a State's notice is the same as for the Agency's review of a State's initial application for primary enforcement responsibility for underground water sources.

SECTION 1423. FAILURE OF STATE TO ASSURE ENFORCEMENT OF PROGRAM

Basically, this section parallels the provisions of 1414. It requires notice by the Administrator to any State with primary enforcement responsibility for underground water sources before EPA may commence enforcement actions against any alleged violator of a requirement of an applicable underground injection control program. No such notice is required if the State does not have primary enforcement responsibility for underground water sources.

As is the case in section 1414, the notice by EPA must be followed by a 15-day opportunity for the State to submit a report as to the steps being taken by the State to secure compliance by the alleged violator. If this report is not submitted in timely fashion by the State, the Administrator would be authorized to commence an enforcement action. Even if such a report were submitted in timely fashion if the State failed to abate the violation within 60 days after the original

notice, this would *per se* constitute an abuse of discretion by the State and Federal enforcement would be authorized. Thus, one respect in which this section differs from section 1414 is that here compliance by the violation must occur within 60 days in order to preempt Federal enforcement, whereas in section 1414 all that is required is that the State implement adequate procedures within 60 days to bring the system into compliance by the earliest feasible time.

Suits for injunctive relief are authorized to be brought by the Administrator in Federal district courts to compel compliance with the applicable control program. Violations are also punishable by civil penalties of up to $5,000 per day. Willful violations are subject to an additional criminal fine of up to $5,000 per day.

Finally, the section preserves the rights of State (and local) governments to adopt and enforce any requirement concerning underground injection. The section makes clear, however, that compliance with any such requirement will not relieve any person of any duty to comply with requirements imposed pursuant to this legislation.

SECTION 1424. INTERIM REGULATION OF UNDERGROUND INJECTIONS

Section 1424 is designed to deal with a limited problem which may arise in the three year period before State underground injection control programs become effective under section 1421. This problem may arise if an area has one acquifer which is the sole or principal drinking water source and which would pose a significant hazard to public health (short of imminent and substantial endangerment), if it were contaminated.

In such a case the Administrator is authorized upon petition of any person to designate this area as one in which no new underground injection well (as that term is defined in subsection (d)) may be operated, unless he has issued a permit for such operation. The Administrator's authority to make such a designation terminates on the date on which the applicable underground injection control program for that area becomes effective.

Public notice and opportunity to comment must be provided prior to the making of any designation under this section, unless the Administrator waives such procedures for just cause under 5 U.S.C. 553. Final action by the Administrator on a petition under this section is required within 30 days after notice is published.

Once the designation is made, no new injection wells (as defined) may be operated in that area without a permit from the Administrator. Petitions for permits are to be considered after notice and opportunity for hearing on the record. Final disposition of such a petition must be made within 120 days of publication of notice receipt of the petition.

In this proceeding the burden of proof would, of course, be on the petitioner. The Administrator may issue a permit under this section only if he finds that operation of the proposed injection well will not cause contamination of the acquifer so as to create a significant hazard to public health.

Section 1424(c) provides for injunctive relief, civil and criminal penalties which may be imposed on any violator of the provisions of this section.

PART D—GENERAL PROVISIONS

SECTION 1431. EMERGENCY POWERS

Section 1431 reflects the Committee's determination to confer completely adequate authority to deal promptly and effectively with emergency situations which jeopardize the health of persons.

The authority conferred by this section is intended to override any limitations upon the Administrator's authority found elsewhere in the bill. Thus, the section authorizes the Administrator to issue such orders as may be necessary (including reporting, monitoring, entry and inspection orders) to protect the health of persons, as well as to commence civil actions for injunctive relief for the same purpose.

The authority to take emergency action is intended to be applicable not only to potential hazards presented by contaminants which are subject to primary drinking water regulations, but also to those presented by unregulated contaminants.

The authority conferred hereby is intended to be broad enough to permit the Administrator to issue orders to owners or operators of public water systems, to State or local governmental units, to State or local officials, owners or operators of underground injection wells, to area or point source polluters, and to any other person whose action or inaction requires prompt regulation to protect the public health. Such orders may be issued and enforced notwithstanding the existence of any exemption, variance, permit, license, regulation, order or other requirement. Such orders may be issued to obtain relevant information about impending or actual emergencies, to require the issuance of notice so as to alert the public to a hazard, to prevent a hazardous condition from materializing, to treat or reduce hazardous situations once they have arisen, or to provide alternative safe water supply sources in the event any drinking water source which is relied upon becomes hazardous or unuseable.

Willful violation of the Administrator's order is made punishable by a fine of up to $5,000 per day of violation.

In using the words "that appropriate State or local authorities have not acted to protect the health of persons," the Committee intends to direct the Administrator to refrain from precipitous preemption of effective State or local emergency abatement efforts. However, if State or local efforts are not forthcoming in timely fashion or are not effective to prevent or treat the hazardous condition, this provision should not bar prompt enforcement by the Administrator.

In using the words "imminent and substantial endangerment to the health of persons," the Committee intends that this broad administrative authority not be used when the system of regulatory authorities provided elsewhere in the bill could be used adequately to protect the public health. Nor is the emergency authority to be used in cases where the risk of harm is remote in time, completely speculative in nature, or *de minimis* in degree. However, as in the case of *U.S.* v. *United States Steel*, Civ. Act. No. 71–1041 (N.D. Ala. 1971), under the Clean Air Act, the Committee intends that this language be construed by the courts and the Administrator so as to give paramount importance to the objective of protection of the public health. Administrative and judicial implementation of this authority must occur early enough to prevent

the potential hazard from materializing. This means that "imminence" must be considered in light of the time it may take to prepare administrative orders or moving papers, to commence and complete litigation, and to permit issuance, notification, implementation, and enforcement of administrative or court orders to protect the public health.

Furthermore, while the risk of harm must be "imminent" for the Administrator to act, the harm itself need not be. Thus, for example, the Administrator may invoke this section when there is an imminent likelihood of the introduction into drinking water of contaminants that may cause health damage after a period of latency.

Among those situations in which the endangerment may be regarded as "substantial" are the following: (1) a substantial likelihood that contaminants capable of causing adverse health effects will be ingested by consumers if preventive action is not taken; (2) a substantial statistical probability that disease will result from the presence of contaminants in drinking water; or (3) the threat of substantial or serious harm (such as exposure to carcinogenic agents or other hazardous contaminants).

SECTION 1441. ASSURANCE OF AVAILABILITY OF ADEQUATE SUPPLIES OF CHEMICALS NECESSARY FOR TREATMENT OF WATER

Temporary certification authority

Section 1441 authorizes the Administrator to issue certificates of need for chlorine or other chemicals or substances necessary for treatment of water in public water systems or in public wastewater treatment works. A certificate of need may be issued upon a petition of any person who uses such chemical or substance in a public water system or public treatment works, but who is (or will be) unable to obtain the amount needed for effective treatment. This provision is intended to permit a petition to be filed in advance of the date on which the system or treatment works will completely run out of the required chemical or substance.

The procedures governing submission and consideration of a petition for certification of need are set forth in subsection (b). No later than 30 days after the notice of receipt of a petition has been published, unless such notice is waived to protect the public health, the Administrator must act to grant or deny the certificate. This period is a maximum, and the Committee would anticipate even more prompt action by EPA in the case of a severe shortage or complete lack of necessary substances. The Committee, of course, encourages producers to take the initiative upon the publication of notice to voluntarily supply the petitioners, thereby making a government action unnecessary.

If, however, the requirements of the petitioner are not met on a voluntary basis and if the Administrator issues a certificate of need, he is to specify the chemical or substances needed, the amount which is needed, and the time period for which it is needed. No certificate may remain in effect for more than one year, although subsequent additional certifications may be issued to the same person. The purpose of this provision is to assure that at least annually the Administrator will take a fresh look at market conditions and the efforts of the petitioner to see whether the chemical or substance would continue to be unavailable to that person, absent mandatory allocation orders.

Required allocation order

Not later than seven days after the issuance of a certificate of need, the President (or the agency or department to whom he delegates the responsibility) must issue a mandatory allocation order which will assure that the needed amount of the chemical or substance will be provided at the required time to the person for whom the certificate of need was issued. (Here again prompt action by the President or his delegate is expected by the Committee in case of serious shortage or depletion of supply.) The President (or his delegate), thus, has discretion in deciding who will be ordered to supply the certified amount, but not in whether to issue an order to do so.

When the President exercises his discretion as to whom allocation orders will be directed, the Committee intends that the aggregate of the orders under this section are to apply equitably within the class of manufacturers, producers, and processors and within the class of repackagers and distributors. The purpose of this provision is to prevent any one segment of the suppliers industry from being subject to unreasonable or disproportionate burdens under this section.

In carrying out the requirement for equitable apportionment of allocation orders, the President (or his delegate) is directed to consider a number of factors. Among these are geographical and established commercial relationships; in the case of chlorine, the amount of chlorine historically supplied by each producer for the purposes specified in this section and each producer's share of the total annual production of chlorine in the United States; and such other factors as are relevant to assuring equitable apportionment.

Orders, like certifications, under this section may remain in effect for only 1 year. However, additional orders may be issued to the same person to supply a person he has previously been ordered to supply if additional certifications of need have been issued.

Orders are not to be issued to a producer, manufacturer, or processor who produces these chemicals or substances solely for its own use. If the Administrator determines that a producer, processor, or manufacturer switches to completely "in-house" use of chemicals or substances with intent to avoid being subject to orders under this section, the Administrator should promptly notify the House Interstate and Foreign Commerce Committee, so that appropriate legislative action can be taken, although the Committee expects that the industry will not attempt to circumvent the intent of this section.

Finally, criminal and civil penalties and injunctive relief by violation of orders under this section are provided. Either the Administrator of EPA or the President (or his delegate) is authorized to commence suits for injunctive relief to enforce allocation orders.

The authority provided under this section expires after June 30, 1977.

SECTION 1442. RESEARCH, TECHNICAL ASSISTANCE, INFORMATION, TRAINING OF PERSONNEL

Section 1442 authorizes the Administrator to conduct research, studies, and demonstrations, relating to the causes, diagnosis, treatment, control, and prevention of disease resulting from contaminants in water or relating to the provision of a dependably safe supply

of drinking water. The purposes explicitly mentioned in section 1442(a)(1) are intended to be illustrative, not limiting in nature.

The Administrator is also directed, to the maximum extent feasible, to provide technical assistance to the States and municipalities in the establishment and administration of "public water system supervision programs" (as defined in section 1443(c)(1)). This direction is in keeping with the Committee's basic intent to assure that State and local government will be primarily responsible for assuring the safety of drinking water.

In addition to these broad authorities contained in section 1421(a)(1), the Administrator is mandated to conduct certain specified studies. First, he is required to study the costs of implementing the national drinking water regulations and to make periodic reports to Congress thereon. These reports should be submitted at least biennially. Second, the Administrator is required to conduct a survey of waste disposal practices (including practices other than underground injection) which may contaminate presently used or poential underground drinking water supplies. This study, which must evaluate means of controlling waste disposal practices to prevent such contamination, is to be completed within one year after date of enactment of the title.

Section 1442 also mandates studies of methods of nonpolluting underground injection; methods of preventing, detecting, and dealing with surface spills of contaminants which may pollute underground drinking water sources; methods of controlling virus contamination of drinking water; the impact of abandoned wells, pesticides and fertilizers, and surface disposal of contaminants on surface and underground drinking water sources. These studies should be completed within two years after the date of enactment of the title.

The Committee intends that the development and implementation of EPA's research program be commenced promptly upon enactment of this bill. It is not intended that research planning and funding be delayed until the NAS completes its study and makes its report under section 1412. Rather, the NAS report should be used to assist and guide the research program which EPA has begun to carry out.

Moreover, it should be clear that the research program authorized in this section must be tailored to produce the information necessary to effectuate the mandates of the bill. Funds to obtain other information which the Administrator believes helpful or interesting should not be committed until all research needs to effectuate this legislation have been fulfilled.

The provisions of section 1442 are among the most essential for the development and implementation of effective State underground injection control programs. Without studies and research on the causes, treatment, control and prevention of contamination of ground water, efforts to protect this important source of drinking water will be severely hindered. In past years, responsibility for research on ground water contamination has been carried out in EPA's Robert S. Kerr Environmental Center. However, the existing staff of researchers at the Kerr Center is limited to 8 persons. In the Committee's view, this

number will have to be increased to at least 40 persons in order to meet the mandates of this bill within the time constraints imposed. In light of this need, the Committee anticipates that the Administrator will use the authorized funds under this section to continue, increase, and expand the direct research, technical assistance, and research grant and contract programs of the Kerr Center pertaining to protection of underground water sources.

For the purposes of this section, there are authorized to be appropriated $15,000,000 for FY 1975; $25,000,000 for FY 1976, and $35,000,000 for FY 1977.

SECTION 1443. GRANTS FOR STATE PROGRAMS

Section 1443 requires the Administrator to make start-up and continuation grants to those States which he determines will assume primary enforcement responsibility for public water systems within a year after award of the grant. To the extent that the applicable appropriation permits, an allotment of $50,000 per State (with approved grant application) is to be made by the Administrator. Additional amounts from the sums appropriated must be allotted on the basis of population, area, number of public water systems, and other relevant factors.

For each fiscal year during which the State is in compliance with grant regulations established by the Administrator, he is required to pay out of that State's allotment not more than 75 per cent of the costs of carrying out a "public water system supervision program", as that phase is defined in section 1443(c)(1). No continuation grant to a State may be made, unless the State has been determined by the Administrator to have primary enforcement responsibility for public water systems.

To carry out subsection (a), there are authorized to be appropriated $15,000,000 for FY 1976 and $25,000,000 for FY 1977.

Subsection (b) establishes a similar grant program for aiding States which will assume primary enforcement responsibility for underground water sources. There are several noteworthy differences, however. First, subsection (b) allows up to two years for the State to start up this part of its program while receiving grant assistance. Second, subsection (b) imposes no flat allotment requirement. Third, in making grants under subsection (b) the Administrator is expected to consider any awards which have been made to the State for similar purposes under the Federal Water Pollution Control Act. This consideration should be geared to avoiding duplication and payments which in the aggregate exceed 75 per cent of costs. Too carry out subsection (b), there are authorized to be appropriated $5,000,000 for FY 1976 and $7,500,000 for FY 1977.

The Committee recognizes that the grants to State programs envisaged here were not proposed by the Administration in its drinking water bill. However, the Committee believes that without such assistance to the States the shared objective of primary enforcement responsibility in the States would be frustrated.

SECTION 1444. SPECIAL STUDY AND DEMONSTRATION PROJECT GRANTS; GUARANTEED LOANS

This section authorizes the Administrator to make project grants to develop and demonstrate new or improved methods for providing dependably safe drinking water and to investigate and demonstrate health implications involved in reuse of waste water for drinking and processes and methods for assuring its safety. The Committee has, in particular, directed that the Administrator give priority in the award of special project grants to those areas and projects designed to deal with removal of particles, such as asbestos, or other contaminants, such as virus, which may not be removable from the drinking water supply with normally used treatment methods technology or other means.

An example of the type of situation which the Committee intends to receive priority funding is the removal of sub-microscopic asbestos particles from the drinking water supply of Lake Superior. A Federal Inter-agency Task Force is presently examining this problem. The Committee intends that this provision be used to support and extend the Task Force's effort.

There are authorized to be appropriated for special project grants $7,500,000 for FY 1975; $7,500,000 for FY 1976; and $10,000,000 for FY 1977.

In addition, the section authorizes the Administrator to guarantee loans made by private lenders to small public water systems to enable them to comply with national primary drinking water regulations. What constitutes a "small" system is to be defined by the regulations of the Administrator. However, one indicator that a system should be considered small is if it cannot generate adequate revenue to permit compliance with the regulations through reasonable user charges. Loan guarantees are authorized only if the system would otherwise be unable to obtain necessary financial assistance and if the facilities constructed, equipment purchased, or other purchase made with the borrowed funds would not be rendered obsolete by reasonably anticipatable changes in the primary regulations. The bill contains a $10,000 limit on the aggregate amount of indebtedness which may be guaranteed under this provision.

SECTION 1445. RECORDS AND INSPECTIONS

This section establishes broad authority in the Administrator to make rules requiring record keeping, reporting, monitoring, and the provision of information to enable him to carry out the purposes of the bill. In this regard, the Committee believes that informing the public of the quality of water being delivered to consumers is a primary purpose of the Act. Consequently, the Committee expects that the Administrator would require all public water systems to notify him frequently of the quality of the water being provided for human consumption and that he would make such information public if the system has not already done so.

Section 1445 further authorizes the Administrator to enter and inspect the property of any person who supplies water, who is or may be subject to a national primary drinking water regulation or to an

applicable underground injection control program, who is or may be subject to a permit requirement under section 1424 or to an order under section 1441, or who is a grantee, to enable the Administrator to effectuate the purposes of the bill. The Administrator is also authorized with respect to any such person to require the establishment and maintenance of records, the making of reports, the conduct of monitoring or sampling, and the provision of information. Such requirements must, of course, be reasonable. Federal agencies are subject to such requirements to the same extent as any other person.

Failure to comply with the record keeping, reporting, monitoring, and information providing requirements established by the Administrator or to permit entry and inspection shall make the person responsible liable to a criminal fine of up to $5,000.

Subsection (d) provides that in general trade secret or secret process information is not to be disclosed by the Administrator. However, such information may be disclosed under circumstances specified in paragraph (2), notwithstanding the prohibition of 18 U.S.C. 1905. Moreover, the Committee intends that the claimant of the right of confidentiality bear the burden of proving that its disclosure would divulge a trade secret or secret process.

Finally, the section indicates that Federal agencies are subject to the same reporting, record keeping, monitoring, information providing, and entry and inspection requirement as any other person.

SECTION 1446. NATIONAL DRINKING WATER ADVISORY COUNCIL

Section 1446 provides for the appointment of a 15 member National Drinking Water Advisory Council. Council members are to be appointed by the Administrator after consultation with the Secretary of HEW. The Council is to provide advice and recommendations to the Administrator or proper administration and implementation of the act. Finally, the section provides three general categories from which membership of the committee is to be selected. In order to assure balance on the Council, the Committee anticipates that the Administrator would include in his appointments at least one representative of an environmental protection group, one consumer representative, one representative of State agencies regulating water service and prices, and one represenative of industry engaging in underground injection.

In addition, the Committee anticipates that some representation by the water supply industry would be provided on the National Council.

SECTION 1447. FEDERAL AGENCIES

Section 1447 requires each Federal agency with jurisdiction over a public water system or underground injection activities to comply with national primary drinking water regulations and with requirements of applicable underground injection control programs. Waiver of the duty to comply with underground injection control programs is authorized, but only if the President determines such waiver is necessary for the National security. No such waiver of the duty to comply with national primary drinking water regulations is author-

ized. In enforcing compliance by Federal agencies, each agency is expected to be initially responsible with States and EPA exercising ultimate responsibility, including the duty to commence enforcement actions under sections 1414 and 1423, in the event the agency in question fails to assure timely compliance or obtain a waiver.

It is the intent of the Committee that the States with primary enforcement responsibility and EPA will treat Federally-owned or operated public water systems or underground injection wells or any other system or underground injection wells on Federal property the same as any other public water system or underground injection well and will enforce applicable regulations to the same extent and under the same procedures. Thus, for sample, if permits are required to be obtained by non-Federal agencies and by private persons, Federal agencies would likewise be subject to the requirement to obtain permits. The only exception to this mandate is a Presidential waiver.

This provision and the provision contained in section 1421(b) are intended to constitute express consent to be sued, which thus waives the traditional sovereign immunity principle and defense.

SECTION 1448. GENERAL PROVISIONS

This section establishes general provisions for implementation of the title. First, the Administrator is granted authority to prescribe such regulations as are appropriate to carry out his functions under the bill.

Second, the section precludes the award of any grant to profit-making groups or associations. Third, the section requires the Administrator to request the Attorney General to represent him in any civil action brought under this title. If the Attorney General fails to notify him within a reasonable time of his willingness to represent him, the Administrator is authorized to be represented by attorneys of the Environmental Protection Agency. Fourth, the section preserves all pre-existing authority of the Administrator.

Fifth, the section provides for EPA to submit an annual report to Congress on its progress in implementing the legislation. The annual report is required to include a statement of the actual and anticipated cost to public water systems (on a State-by-State basis) of compliance with the requirements of the bill.

The Committee expects these annual statements to be as complete as possible. In reexamining this legislation prior to expiration of the authorizations herein, the Committee will carefully review the costs which are being and will be imposed on public water systems to assure that they are justified.

It is also expected that the annual report will include information on the number, duration, and location of variances, exemptions, violations, Federal enforcement actions commenced, petitions for hearing under section 1414(f), hearings conducted in response to such petitions, actions taken to implement section 1431, and other appropriate information respecting the Agency's activities in implementing this bill during the reporting period.

Provisions in previous bills reported by the subcommittee, H.R. 9726 and H.R. 10955, pertaining to the applicability of the National

Environmental Policy Act to actions taken under this bill have been deleted. The determination was made that this is a matter which should properly be considered by the Committee on Merchant Marine and Fisheries, from which the National Environmental Policy Act originated.

Section 3. Rural water survey

This section requires the Administrator of EPA to conduct a survey of the drinking water situation in rural areas of the country, including the public health hazards to which rural populations may be exposed. This survey is to be completed within 18 months after date of enactment and a report is to be submitted within six months thereafter. For the purpose of the survey and report, there are authorized to be appropriated $1,000,000 for FY 1975, $2,000,000 for FY 1976, and $1,000,000 for FY 1977.

Section 4. Bottled drinking water

This section amends Chapter IV of the Federal Food, Drug, and Cosmetic Act by creating a new section 410. This section leaves the responsibility for regulating bottled drinking water with the Secretary of HEW. However, the new section 410 requires the Secretary to consult with the Administrator prior to establishing regulations for bottled drinking water. Moreover, it requires the Secretary, within 180 days after the Administrator promulgates national interim or revised primary drinking water regulations either to amend regulations applicable to bottled drinking water to take account of the administrator's action or to publish his reasons for not doing so in the Federal Register.

Agency Comments

The following agency comments were received by the Committee on H.R. 13002:

United States Environmental Protection Agency,
Washington, D.C., April 25, 1974.

Hon. Harley O. Staggers,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

Dear Mr. Chairman: In response to a letter from Senator Magnuson, Chairman of the Senate Commerce Committee, we have provided to his Committee our comments on the Working Draft (dated April 3, 1974) of S. 2846, the Senate "Emergency Chlorine Allocation Act of 1974."

As our comments on the Senate bill are also relevant to section 1432 (relating to chlorine allocation) of H.R. 13002, the "Safe Drinking Water Act" pending before your Committee, we are forwarding our comments on the Senate bill to you for consideration by your Committee.

Sincerely yours,

Russell E. Train,
Administrator.

Enclosure.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., April 11, 1974.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for our comments on the Working Draft (dated April 3, 1974) of S. 2846. the "Emergency Chlorine Allocation Act of 1974."

The bill would authorize the Administrator of EPA to certify to the Secretary of the Department of Commerce that there is a shortage of chlorine or other chemicals necessary for the treatment of drinking water or of chlorine necessary to protect the public health. Upon receiving such certification the Secretary would require the allocation of chlorine or other chemicals to assure an adequate supply to treat drinking water or to protect the public health. Procedures are set out in the bill for the Administrator and the Secretary to carry out their responsibilities. The legislation would expire on June 30, 1976.

The Environmental Protection Agency testified before your Committee on January 29, 1974, on S. 2846. In our statement we gave our views relating to the possibility of a chlorine shortage this year and our recommendations of what Federal legislation is needed. With several exceptions the Working Draft of S. 2846 is consistent with our views and we would support its enactment if revised in accordance with our recommendations set out below.

Our principal problems with the Working Draft relate to the (1) inclusion of chlorine allocation authority for wastewater and other purposes in addition to drinking water, (2) inclusion of "other chemicals" in addition to chlorine that may be subject to allocation, (3) the public notice provisions required by the Administrator and the Secretary before they may make the certification or allocation, and (4) the authority for the issuance of a 180 day allocation order and expiration date of the Act.

In our statement before the Committee on January 29 we pointed out that there is ample justification for providing standby chlorine allocation authority for insuring the safety of drinking water which is not present in other shortage situations. For the reasons given in our testimony, it is still our recommendation that the authority be limited to drinking water and not cover wastewater or other purposes.

We also believe that only cholrine should be subject to standby allocation orders and that the authority should not extend to other chemicals that may be used to treat drinking water. Other chemicals serve important public health roles in the treatment of drinking water although less important than chlorine. However, at the present time they are either not in significantly short supply or substitutes are available. For example, soda ash is in very short supply but lime and caustic soda are usually available as substitutes; alum and fluoride chemicals serve important uses but a serious shortage is not anticipated. While we did support in our January 29 statement the inclusion of other chemicals in the standby allocation authority, upon further review we now believe that this is not necessary.

With regard to the public notice provisions required of the Administrator and the Secretary before a certification may be made or an

allocation order may be issued by each, respectively, we believe that notice and publication in the *Federal Register* should not be required as the Working Draft provides. We believe that the standby authority should only be used where there is a shortage expected which constitutes an emergency and the Administrator and Secretary should then be able to act immediately. Where a time period is allowed and publication required in the *Federal Register*, with provisions for comments, this would tend to make users of cholrine file applications andticipating shortages and providing for the time to have the application processed, published and commented upon. There might not be a shortage if they could file their application later and expect immediate action. Much paper work and the review of a large number of applications could be prevented we believe if the extended public notice provisions were deleted.

We also do not believe that it is necessary to authorize the allocation orders to remain in effect for not to exceed 180 days. The allocation orders will be on a case-by-case basis and while we anticipate that an order could cover more than one single allocation, we do not want chlorine users to make application in order to guarantee up to a six months supply. We also do not believe that the cholrine shortage will extend into 1975 or 1976 and recommend that the Act be made to expire on December 31, 1974.

We also support a number of other revisions to the Working Draft which are being submitted to you in the response from the Department of Commerce. These relate to matters such as submission of reports to the Administrator and Secretary, inspection of records, and for confidentiality of material submitted.

Accordingly, we support the enactment of the Working Draft of S. 2846 if revised in accordance with our above recommendations.

We are advised by the Office of Management and Budget that there is no objection to the submission of this report from the standpoint of the program of the President.

Sincerely yours,

RUSSELL E. TRAIN,
Administrator.

In addition, the following agency comments were received by the Committee on H.R. 10955, which was a bill comparable to H.R. 13002.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., November 28, 1973.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I wish to take this opportunity to comment on H.R. 10955, the Safe Drinking Water Act of 1973, which is awaiting action by the Committee on Interstate and Foreign Commerce.

I am aware that the Subcommittee on Public Health and the Environment held numerous sessions and the Subcommittee and its staff devoted many hours to the safe drinking water legislation during the past several months. I am also aware of the extended deliberations that were held by the Subcommittee during the Spring and Summer to develop this legislation and the fact that EPA staff worked closely

with the Subcommittee and its staff while the bill was under consideration. The Subcommittee is to be congratulated for the progress that it has made in developing the safe drinking water legislation which is now ready for review by the full Committee. It is my hope that the Committee will be able to take up the Subcommittee bill, H.R. 10955, in the near future. As you know, the Senate passed its Safe Drinking Water Act in June of this year.

The President proposed in his message on natural resources and the environment and forwarded to the Congress a safe drinking water bill. The bill, H.R. 5368, was introduced by you and Mr. Devine on March 7, 1973. The President reemphasized his commitment to this legislation on September 10, 1973 in his message to the Congress when he urged that the safe drinking water legislation be passed this year.

H.R. 10955, the Subcommittee bill which will be considered by the full Committee is in accord with the objective of the bill submitted by the President and the bills have many similar provisions. For instance, both bills would provide mandatory health-related standards applicable to public water supplies in the Nation; a public notification provision requiring the supplier of water to notify users if the drinking water fails to meet the health-related standards; Federal authority to proceed against imminent hazards; and a comprehensive authorization for research and studies addressed to drinking water supply problems.

The Subcommittee bill does, however, differ in several important respects from the proposal of the President to which I would like to call the Committee's attention. The issues which I would urge the Committee to reconsider are: (1) possibility of Federal domination of local enforcement authority, (2) Federal standards for operation and maintenance, (3) public notification and citizen suit requirements, (4) an expanded Federal assistance program, and (5) the ground water protection provisions.

POSSIBILITY OF FEDERAL DOMINATION OF LOCAL ENFORCEMENT AUTHORITY; FEDERAL STANDARDS FOR OPERATION AND MAINTENANCE; PUBLIC NOTIFICATION AND CITIZEN SUIT REQUIREMENTS

These provisions are so interrelated that they will be discussed together.

I believe that consideration of drinking water legislation should proceed from a proper identification of the differing Federal, State, and local responsibilities. Major responsibility for carrying out the day-to-day operations to assure safe drinking water should remain at the State and local levels.

I believe that the Federal responsibility should be limited to establishing national primary drinking water standards addressed to health-related constituents and including requirements for monitoring and reporting of water quality.

I do not think it is the role of the Federal Government to promulgate other standards for the implementation of State and local drinking water supply programs such as taste, appearance and odor control, operation and maintenance of systems, and selection of sources and sites for facilities—many of which would vary depending upon local conditions and desires. These should largely be left to State

and local regulation. I believe that mandatory Federal standards should be addressed to the essential end product—safe drinking water meeting health standards.

The enforcement approach that we favor is premised on the belief that a Federal requirement that suppliers of drinking water notify consumers of contaminants in their drinking water will institute the necessary enforcement action. An informed public is the best guardian of its own health and safety. Accordingly, I believe the legislation should require that whenever water delivered by a water supply system fails to meet the health standards, the supplier be obligated to notify its users of such failure and the possible resultant health effects. Such a notification provision, coupled with a citizen suit provision would I believe, render enforcement actions by Federal, State or other regulatory agencies largely unnecessary. I believe that suppliers of drinking water, who in almost all cases charge for their products could not withstand the public pressure if their customers have notice that they are receiving water not in compliance with mandatory health standards. The possibility of a citizen suit provides a strong additional incentive to suppliers to maintain compliance with the standards.

Under these circumstances Federal enforcement would be required only to insure that requirements for proper monitoring and reporting of the condition of a public water supply is being carried out, or in cases of imminent hazard.

Except in one important respect (a citizen suit requirement) H.R. 10955 would accomplish the objectives I have outlined above with regard to standard setting and enforcement. But the bill goes much further in providing more Federal enforcement authority than I believe is necessary or desirable.

I also strongly recommend that the legislation provide for Federal mandatory standards addressed only to the essential health-related factors of water constituents and monitoring and reporting. For instance, the legislation should not provide Federal mandatory standards on operation and maintenance. We believe this is unnecessary with the incentives that would result from public notification of contaminant violations. Furthermore, we are reluctant to prohibit State and local governments from tailoring their individual maintenance and operation requirements due to specific differences such as geography and climate.

H.R. 10955 does have an appropriate public notification requirement. As a complement to this provision, I strongly urge the addition of a citizen suit provision.

FEDERAL FINANCIAL ASSISTANCE

H.R. 10955 contains several provisions for extensive Federal financial assistance with regard to drinking water which I do not believe are necessary. These are State program grants, demonstration grants and guaranteed loans to assist small public water supplies in meeting the standards.

I believe that the safe drinking water program contemplated by the legislation will stimulate State and local interest to adequately fund such programs. The costs of treatment, testing, and monitoring have been and should continue to be derived from the users of the

water supply. I see no compelling reason for Federal intrusion in this area.

With regard to the demonstration grants provision in H.R. 10955, the need for extensive demonstrations is not apparent at this time. To the extent that special demonstrations are required, they would be funded under the general research provisions in the legislation.

An authorization is also provided for guaranteed loans to small public water systems where they cannot otherwise finance improvements needed to comply with primary standards. We are unaware of any widespread need for such assistance. However, in the event that problems should emerge, the Farmers Home Administration has authority to provide low interest loans to small communities for use on public water systems. Accordingly we do not recommend inclusion of the loan guarantee provision since it is unnecessary and would overlap the authority administered by the Farmers Home Administration.

PROTECTION OF UNDERGROUND SOURCES OF DRINKING WATER

H.R. 10955 includes extensive provisions for a program to protect the underground sources of drinking water.

The Federal Water Pollution Control Act Amendments of 1972 contain a number of significant provisions relating to ground water protection. Since neither we nor the States and local communities have had opportunity to implement these provisions, it is premature to ascertain whether additional legislative protection of ground water is necessary. We have not yet been able to fully gauge the extent that the provisions in this Act will go toward providing protection of these underground sources. I would therefore recommend that the provisions in the Safe Drinking Water Act relating to underground source protection be deferred at this time until we are able to fully evaluate the protection provided under existing authority.

In accordance with your request, we are enclosing a five-year projection of Federal costs for implementing H.R. 10955.

These cost estimates do not reflect possible changes in the scope or quality of the proposed program which might result from experience gained in the implementation phase, from a reexamination of the priorities of all of the Agency's programs, or from other causes. Therefore, these estimates do not present a commitment as to the amounts to be included in future budgets.

In conclusion Mr. Chairman, I strongly endorse the objective of H.R. 10955 and many of its specific provisions. I respectfully request, however, that you and your Committee consider the views and recommendations I have suggested.

Please be assured that members of my staff and I stand ready to assist you in any way that we are able.

The Office of Management and Budget advises that it concurs with the views set forth in this letter.

Sincerely yours,

RUSSELL E. TRAIN.

In addition, the following agency comments were received on H.R. 11876, a bill which deals with subject matter similar to that dealt with in section 1432 of H.R. 13002:

U.S. ENVIRONMENTAL PROTECTION AGENCY,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., February 8, 1974.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foregin Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for our comments on H.R. 11876, the "Emergency Chlorine Allocation Act of 1973" which is pending before the House Interstate and Foreign Commerce Committee.

The bill would direct the Administrator of the Environmental Protection Agency to promulgate regulations within 30 days after its enactment providing for the mandatory allocation of chlorine. He would also be authorized in consultation with the Secretary of Commerce to promulgate regulations providing mandatory allocation of other chemicals or substances used in the treatment of drinking water or wastewater as he deems necessary. Such regulations may require the performance of contracts relating to supplying chlorine or other chemicals for drinking water and wastewater treatment, and must delineate which functions under the legislation would be performed by EPA, Department of Commerce, or other Federal agencies. The bill would also provide exemptions from certain of the antitrust laws when complying with the Act. Finally, the legislation would expire on June 30, 1975.

The Environmental Protection Agency is in accord with the broad objectives of H.R. 11876. However, we believe that the bill goes further than is necessary and is otherwise not the appropriate mechanism to provide the Federal Government with necessary authority to deal with the chlorine shortage. We believe that the necessary authority to deal with any chlorine shortage which may materialize could best be provided through authority along the lines of the Defense Production Act.

The Environmental Protection Agency has given much consideration to the chlorine shortage problem during the past several months. Shortage and outage problems that have come to our attention this past year indicate that at least 27 water and wastewater utilities had shortages (down to 1–10 days supply on hand) during 1973; 9 wastewater utilities and at least 1 public water supply ceased chlorinating for periods up to two weeks because of outages or almost outages; and 6 repackaging companies had outages. These are only reported incidents that have come to our attention; it is very likely that many other shortages or even outage incidents actually occurred.

Chlorine is forecast to be in short supply throughout most of 1974 if current economic conditions continue. This could have a serious impact on chlorine users for drinking water and wastewater treatment. However, the shortfall will potentially affect only some fraction of these users since many producers have chosen to continue to provide supplies in spite of the shortage. Nearly one-half million tons of chlorine are estimated to be required for 1974 for drinking water and wastewater treatment. Even when there may technically be no shortages nationally, distribution problems could result in some shortages.

The Environmental Protection Agency has been keeping in close touch with local, State and other Federal agencies concerned with the chlorine shortage problem. We have also had some contact with chlorine producers and distributors. We have been dealing with individual shortage situations and have prevented some outage problems by contacting or meeting with public and industry officials. We have also provided our Regional Offices with guidance on responding to these shortage problems. Further, we have collaborated with the Department of Commerce and the General Services Administration with respect to determining and developing the appropriate role of Federal, State, and local agencies in responding to chlorine shortages.

Despite these efforts by EPA and other Federal agencies to remedy shortage problems through voluntary means, we are concerned that this may not be sufficient to cope with serious shortage situations if such should develop during 1974.

We therefore believe that there should be available, in case the need should arise, the necessary Federal authority to deal swiftly and effectively with critical public health problems that may be caused by shortage of chlorine. It is our view that this Federal authority should be limited to the following: (1) it should provide for *standby* authority to be used on case-by-case or other limited basis and not require the establishment of an extensive program for dealing with shortage situations; (2) it should authorize the standby mandatory authority to be used only in situations where there is a shortage or outage of chlorine and other chemicals necessary only for drinking water purification.

We also believe that efforts should be made to prevent and correct shortages through voluntary efforts prior to exercising the standby mandatory authority. Finally, we believe that the lead agency to administer an allocation program should be the Department of Commerce or some agency already having allocation experience with appropriate consultation and input from the Environmental Protection Agency and other Federal agencies.

We do not believe that it is necessary for the Federal Government to undertake an extensive mandatory allocation system for a situation that we believe is not going to occur on a large scale basis or in a great number of instances. We therefore do not see the need to have a large administrative force implementing an extensive program to prevent a relatively few shortage situations. On the other hand, a shortage or outage of chlorine or other necessary chemicals for drinking water purification is such a critical matter that it must be dealt with immediately and effectively. We strongly believe that while mandatory allocation authority is necessary, it need only be standby authority and not authority requiring the Federal Government to undertake a broad mandatory allocation system.

We also believe it sufficient to authorize this standby allocation authority for chlorine and other chemical substances necessary only for drinking water purification. Providing mandatory allocation authority to insure the safety of drinking water is readily distinguishable from other situations where shortages may occur. People that are served by public water supplies have no option but to drink the water

that is supplied to them; there is no reasonable substitute for safe water and usually no other place to obtain it. There must be no delay in obtaining a supply of chlorine should a shortage appear imminent—in other shortage situations there is time to proceed to overcome the shortage without an extreme emergency developing. Further, at this time there is no reasonable substitute for the chlorination of drinking water and because of the nature of this product it is not possible to guard against shortage situations by storing a supply. Even a short term interruption of the chlorination of drinking water while obtaining a new supply cannot be tolerated. Accordingly, there seems to be ample justification for providing standby allocation authority for insuring the safety of drinking water which is not present in other shortage situations.

We recommend that the Environmental Protection Agency not be the lead agency for an allocation program. The responsibilities of the EPA Administrator in the provision of safe drinking water direct that he should have an important function in the proposed allocation program. However, we believe that the primary responsibility for the allocation program should be conducted by a Federal agency which already has responsibilities in the allocation of scarce materials such as the Department of Commerce. It would be a waste of resources for EPA to duplicate the administrative machinery already in other agencies for implementing a standby mandatory allocation system of scarce materials. We would expect the Environmental Protection Agency to have the responsibility to provide surveillance and monitoring of such drinking water treatment operations and to keep the Department of Commerce and other agencies fully informed as to the adequacy of treatment and supplies of chlorine and other chemicals for drinking water in order that they may take any necessary action with regard to allocation.

We therefore do not recommend enactment of H.R. 11876 but believe that its purpose could be best accomplished by legislation along the lines of the Defense Production Act authorities but in a separate Act. We are exploring these mechanisms with the Department of Commerce, General Services Administration, and other Federal agencies and will report back to the Committee shortly.

We are advised by the Office of Management and Budget that there is no objection to the submission of this report from the standpoint of the program of the President.

Sincerely,

RUSSELL E. TRAIN,
Administrator.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., January 29, 1974.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of December 17, 1973, requests the views of the General Services Administration on H.R. 11876, 93rd

Congress, a bill "To amend the Public Health Service Act to assure an adequate supply of chlorine and certain other chemicals and substances which are necessary for safe drinking water and for waste water treatment."

The General Services Administration (GSA) recognizes the potential urgency of the need for legislation to insure adequate supplies of chlorine and other chemicals used for the purification of water. The Director of the Office of Preparedness, GSA, has endorsed the need for standby legislation in this area in light of the severe threat to public health posed by the lack or inadequacy of treatment of public water supplies. Accordingly, GSA supports the concept of legislation providing standby authority to deal with the actual occurrence of a chlorine shortage emergency. However, we do not believe that legislation is needed that would require the institution now of mandatory allocation of chlorine or related chemicals.

Based on information supplied by the Environmental Protection Agency and the Department of Commerce, we feel that there is a significant probability that measures to insure proper chlorine distribution will be necessary during the coming months, although such need is by no means certain. Under these circumstances, the institution of a mandatory program at this time would be unnecessary and thus wasteful of Federal resources. Standby authority to meet any actual shortage or outage situations that may arise, however, seems imperative in view of the potentially serious public health hazard involved and the need for immediate Federal action if a crisis develops.

In our view, it is also important that any legislation developed to meet this potential threat to public health be designed to utilize the priorities and allocations mechanism currently in use for other materials. Also, since the coordination among Federal allocations programs is currently achieved through the Office of Preparedness within GSA, use of existing mechanisms would insure that chlorine allocation actions are fully coordinated with other mandatory Federal priorities and allocations programs. Creating a whole new set of arrangements for the allocation of chlorine alone, when existing arrangement could be used, does not appear practical or economical. Accordingly, we would propose that the objective of providing chlorine and other chemicals for purification of drinking water on a standby, emergency basis, be achieved either by amending Title I of the Defense Production Act of 1950, as amended, or by enactment of similar, but separate legislation.

These alternatives are now being considered by GSA and other concerned agencies. We will submit a further report shortly.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely,

ALLAN G. KAUPINEN,
Assistant Administrator.

GENERAL COUNSEL,
DEPARTMENT OF COMMERCE,
Washington, D.C., February 14, 1974.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department with respect to H.R. 11876, a bill "To amend the Public Health Service Act to assure an adequate supply of chlorine and certain other chemicals and substances which are necessary for safe drinking water and for waste water treatment."

Since H.R. 11876 provides for mandatory institution of allocations of these materials, we are opposed to its enactment. Further, we believe it inappropriate to vest allocation authority in the Environmental Protection Agency, when this Department already has a priorities and allocations system in being for other materials.

This Department is aware of the difficulties that some municipalities have experienced in obtaining supplies of chlorine and other substances. We are monitoring the situation closely, and have already been instrumental in the following initiatives:

Direct contact with chlorine producers to determine what action they are prepared to take to provide chlorine for municipal use.

Collaboration with EPA and GSA in the determination and development of the role of Federal, local, and state governments with respect to this matter.

Interagency reviews of the subject.

As a matter of principle, we believe at this time that the primary vehicle for meeting requirements for chlorine and other substances necessary for water treatment and purification should continue to be through voluntary efforts in the private sector. Nevertheless, we recognize the voluntary efforts to correct maldistribution problems may ultimately prove inadequate to assure availability of chlorine supplies at the proper place and at the proper time. Accordingly, we would support Federal legislation which would provide standby authority to establish priorities and allocations for appropriate distribution of these materials, if needed.

The compelling considerations which may ultimately warrant government controls over the distribution of chemicals for water treatment include the following:

Pure drinking water is essential to the public.

The public is generally dependent on municipal supplies of drinking water.

Unsafe drinking water could lead to local outbreaks of communicable diseases which could spread rapidly to become of nationwide importance.

Continuous chlorination is the only present, practical method to insure supplying safe drinking water.

Interruption of chlorination for more than a few hours could lead to a breakdown in the integrity of the drinking water system.

Establishing a stockpile of chlorine is not practical because of the nature of the material.

The current extreme shortage of chlorine is expected to be relieved by early 1975, at which time the free market should insure adequate supplies being available for water treatment.

Consequently, the Department of Commerce believes that the unique nature of the near term situation regarding supplies of safe drinking water requires that the government be in a position to take direct and prompt action to alleviate any crisis situations. While we are hopeful that voluntary actions will be effective, and while we intend to aggressively pursue all possible voluntary approaches, we believe the Executive Branch should have standby authority for mandatory allocation at such time as it may be required. We are exploring various alternatives to determine which would be the most effective to achieve this and will submit appropriate recommendations to you shortly.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

KARL E. BAKKE,
General Counsel.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

PUBLIC HEALTH SERVICE ACT

TITLE I—SHORT TITLE AND DEFINITIONS

* * * * * * *

DEFINITIONS

SEC. 2. When used in this Act—

(a) * * *

* * * * * * *

(f) The term "State" means a State or the District of Columbia, Puerto Rico, or the Virgin Islands, except that (*1*) as used in section 361(d) such term means a State, or the District of Columbia, *and* (*2*) *as used in title XIV such term includes Guam, American Samoa, and the Trust Territory of the Pacific Islands*

* * * * * * *

TITLE XIV—SAFETY OF PUBLIC WATER SYSTEMS

PART A—DEFINITIONS

DEFINITIONS

SEC. 1401. For purposes of this title:

(1) The term "primary drinking water regulation" means a regulation which—

(A) applies to public water systems;

(B) specifies contaminants which, in the judgment of the Administrator, may have any adverse effect on the health of persons;

(C) specifies for each such contaminant either—

(i) a maximum contaminant level, if, in the judgement of the Administrator, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems, or

(ii) if, in the judgment of the Administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 1412; and

(D) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to (i) the minimum quality of water which may be taken into the system and (ii) siting for new facilities for public water systems.

(2) The term "secondary drinking water regulation" means a regulation which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the Administrator, are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water (A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of persons served by the public water system providing such water to discontinue its use, or (B) which may otherwise adversely affect the public welfare. Such regulations may vary according to geographic and other circumstances.

(3) The term "maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

(4) The term "public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes (A)

any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (B) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(5) The term "supplier of water" means any person who owns or operates a public water system.

(6) The term "contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(7) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(8) The term "Agency" means the Environmental Protection Agency.

(9) The term "Council" means the National Drinking Water Advisory Council established under section 1446.

(10) The term "municipality" means a city, town, or other public body created by or pursuant to State law, or an Indian tribal organization authorized by law.

(11) The term "Federal agency" means any department, agency, or instrumentality of the United States.

(12) The term "person" means an individual, corporation, company, association, partnership, State, or municipality.

Part B—Public Water Systems

COVERAGE

Sec. 1411. Subject to sections 1415 and 1416, national primary drinking water regulations under this part shall apply to each public water system in each State; except that such regulations shall not apply to a public water system—

(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply; and

(3) which does not sell water to any person.

NATIONAL DRINKING WATER REGULATIONS

Sec. 1412. (a)(1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after the date of enactment of this title. Within 180 days after such date of enactment, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.

(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means, which the Administrator determines are generally available (taking costs into consideration) on the date of enactment of this title.

(3) The interim primary regulations first promulgated under paragraph (1) shall take effect not later than one year after the date of their promulgation.

(b)(1)(A) Within 10 days of the date the report on the study conducted pursuant to subsection (e) is submitted to Congress, the Administrator shall publish in the Federal Register, and provide opportunity for comment on, the—

(i) proposals in the report for recommended maximum contaminant levels for national primary drinking water regulations, and

(ii) list in the report of contaminants the levels of which in drinking water cannot be determined but which may have an adverse effect on the health of persons.

(B) Within 90 days after the date the Administrator makes the publication required by subparagraph (A), he shall by rule establish recommended maximum contaminant levels for each contaminant which, in his judgment based on the report on the study conducted pursuant to subsection (e), may have any adverse effect on the health of persons. Each such recommended maximum contaminant level shall be set at a level at which, in the Administrator's judgment based on such report, no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety. In addition, he shall, on the basis of the report on the study conducted pursuant to subsection (e), list in the rules under this subparagraph any contaminant the level of which cannot be accurately enough measured in drinking water to establish a recommended maximum contaminant level and which may have any adverse effect on the health of persons. Based on information available to him, the Administrator may by rule change recommended levels established under this subparagraph or change such list.

(2) On the date the Administrator establishes pursuant to paragraph (1)(B) recommended maximum contaminant levels he shall publish in the Federal Register proposed revised national primary drinking water regulations (meeting the requirements of paragraph (3)). Within 180 days after the date of such proposed regulations, he shall promulgate such revised drinking water regulations with such modifications as he deems appropriate.

(3) Revised national primary drinking water regulations promulgated under paragraph (2) of this subsection shall be primary drinking water regulations which specify a maximum contaminant level or require the use of treatment techniques for each contaminant for which a recommended maximum contaminant level is established or which is listed in a rule under paragraph (1)(B). The maximum contaminant level specified in a revised national primary drinking water regulation for a contaminant shall be as close to the recommended maximum contaminant level established under paragraph (2) for such contaminant as is feasible. A required treatment technique for a contaminant for which a recommended maximum contaminant level has been established under paragraph (2) shall reduce such contaminant to a level which is as close to the recommended maximum contaminant level for such contaminant as is feasible. A required treatment technique for a contaminant which is listed under paragraph (1)(B) shall require treatment necessary in the Administrator's judgment to prevent known or anticipated adverse effects on the health of persons to the extent feasible. For purposes of this paragraph, the

term "feasible" means feasible with the use of technology, treatment techniques, and other means, which the Administrator finds are generally available (taking cost into consideration).

(4) Revised national primary drinking water regulations shall be amended whenever changes in technology, treatment techniques, and other means permit greater protection of the health of persons, but in any event such regulations shall be reviewed at least once every 5 years.

(5) Revised national primary drinking water regulations promulgated under this subsection (and amendments thereto) shall take effect not later than 1 year after the date of their promulgation. Regulations under subsection (a) shall be superseded by regulations under this subsection to the extent provided by the regulations under this subsection.

(c) The Administrator shall publish proposed national secondary drinking water regulations within 270 days after the date of enactment of this title. Within 90 days after publication of any such regulation, he shall promulgate such regulation with such modifications as he deems appropriate. Regulations under this subsection may be amended from time to time.

(d) Regulations under this section shall be prescribed in accordance with section 553 of title 5, United States Code (relating to rulemaking). In proposing and promulating regulations under this section, the Administrator shall consult with the Secretary and the National Drinking Water Advisory Council.

(e)(1) The Administrator shall enter into appropriate arrangements with the National Academy of Sciences (or with another independent scientific organization if appropriate arrangements cannot be made with such Academy) to conduct a study to determine (A) the maximum contaminant levels which should be recommended under subsection (b)(2) in order to protect the health of persons from any known or anticipated adverse effects, and (B) the existence of any contaminants the levels of which in drinking water cannot be determined but which may have an adverse effect on the health of persons.

(2) The result of the study shall be reported to Congress no later than 2 years after the date of enactment of this title. The report shall contain (A) a summary and evaluation of relevant publications and unpublished studies; (B) a statement of methodologies and assumptions for estimating the levels at which adverse health effects may occur; (C) a statement of methodologies and assumptions for estimating the margin of safety which should be incorporated in the national primary drinking water regulations; (D) proposals for recommended maximum contaminant levels for national primary drinking water regulations, based on the methodologies, assumptions, and studies referred to in clauses (A), (B), and (C) and in paragraph (4); (E) a list of contaminants the level of which in drinking water cannot be determined but which may have an adverse effect on the health of persons; and (F) recommended studies and test protocols for future research on the health effects of drinking water contaminants, including a list of the major research priorities and estimated costs necessary to conduct such priority research.

(3) In developing its proposals for recommended maximum contaminant levels under paragraph (2)(D) the National Academy of Sciences (or other organization preparing the report) shall evaluate

and explain (separately and in composite) the impact of the following considerations:

(A) The existence of groups or individuals in the population which are more susceptible to adverse effects than the normal healthy adult.

(B) The exposure to contaminants in other media than drinking water (including exposures in food, in the ambient air, and in occupational settings) and the resulting body burden of contaminants.

(C) Synergistic effects resulting from exposure to or interaction by two ar more contaminants.

(D) The contaminant exposure and body burden levels which alter physiological function or structure in a manner reasonably suspected of increasing the risk of illness.

(4) In making the study under this subsection, the National Academy of Sciences (or other organization) shall collect and correlate (A) morbidity and mortality data and (B) monitored data on the quality of drinking water. Any conclusions based on such correlation shall be included in the report of the study.

(5) 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.

(6) Of the funds authorized to be appropriated to the Administrator by this title, such amounts as may be required shall be available to carry out the study and to make the report directed by paragraph (2) of this subsection.

STATE PRIMARY ENFORCEMENT RESPONSIBILITY

SEC. 1413. (a) For purposes of this title, a State has primary enforcement responsibility for public water systems during any period for which the Administrator determines (pursuant to regulations prescribed under subsection (b)) that such State—

(1) has adopted drinking water regulations which (A) during the period beginning on the date the national interim primary drinking water regulations are promulgated under section 1412 and ending on the date such regulations take effect are no less stringent than such regulations, and (B) after such effective date are no less stringent than the interim and revised national primary drinking water regulations in effect under such section;

(2) has adopted and is implementing adequate procedures for the enforcement of such State regulations, including conducting such monitoring and making such inspections as the Administrator may require by regulation;

(3) will keep such records and make such reports with respect to its activities under paragraphs (1) and (2) as the Administrator may require by regulation; and

(4) if it permits variances or exemptions, or both, from the requirements of its drinking water regulations which meets the requirements of paragraph (1), permits such variances and exemptions under conditions and in a manner which is not less stringent than in conditions under, and the manner in, which

variances and exemptions may be granted under sections 1415 and 1416.

(b)(1) The Administrator shall, by regulation (proposed within 180 days of the date of the enactment of this title), prescribe the manner in which a State may apply to the Administrator for a determination that the requirements of paragraphs (1), (2), (3), and (4) of subsection (a) are satisfied with respect to the State, the manner in which the determination is made, the period for which the determination will be effective, and the manner in which the Administrator may determine that such requirements are no longer met. Such regulations shall require that before a determination of the Administrator that such requirements are no longer met with respect to a State may become effective, the Administrator shall notify such State of the determination and the reasons therefor and shall provide an opportunity for public hearing on the determination. Such regulations shall be promulgated (with such modifications as the Administrator deems appropriate) within 90 days of the publication of the proposed regulations in the Federal Register. The Administrator shall promptly notify in writing the chief executive officer of each State of the promulgation of regulations under this paragraph. Such notice shall contain a copy of the regulations and shall specify a State's authority under this title when it is determined to have primary enforcement responsibility for public water systems.

(2) When an application is submitted in accordance with the Administrator's regulations under paragraph (1), the Administrator shall within 90 days of the date on which such application is submitted (A) make the determination applied for, or (B) determine that he is unable to make such determination and notify the applicant in writing of the reasons for his inability to make such determination.

FAILURE BY STATE TO ASSURE ENFORCEMENT OF DRINKING WATER REGULATIONS

SEC. 1414. (a)(1) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for public water systems (within the meaning of section 1413(a)) that any public water system—

(A) for which a variance under section 1415 or an exemption under section 1416 is not in effect, does not comply with any national primary drinking water regulation in effect under section 1412, or

(B) for which a variance under section 1415 or an exemption under section 1416 is in effect, does not comply with any schedule, control measure, or other requirement imposed pursuant thereto, he shall so notify the State and provide such advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with such regulation or requirement by the earliest feasible time. If the Administrator finds such failure to comply extends beyond the thirtieth day after the date of such notice, he shall give public notice of such findings and request the State to report within fifteen days from the date of such public notice as to the steps being taken to bring the system into compliance (including reasons for anticipated steps to be taken to bring the system

into compliance and for any failure to take steps to bring the system into compliance). If—

(A) such failure to comply extends beyond the sixtieth day after the date of the notice given pursuant to the first sentence of this paragraph, and

(B) (i) the State fails to submit the report requested by the Administrator within the time period prescribed by the preceding sentence, or

(ii) the State submits such report within such period but the Administrator, after considering the report, determines that by failing to implement by such sixtieth day adequate procedures to bring the system into compliance by the earliest feasible time the State abused its discretion in carrying out primary enforcement responsibility for public water systems,

the Administrator may commence a civil action under subsection (b).

(2) Whenever, on the basis of information available to him, the Administrator finds during a period during which a State does not have primary enforcement responsibility for public water systems that a public water system in such State—

(A) for which a variance under section 1415(a)(2) or an exemption under section 1416(f) is not in effect, does not comply with any national primary drinking water regulation in effect under section 1412, or

(B) for which a variance under section 1415(a)(2) or an exemption under section 1416(f) is in effect, does not comply with any schedule, control measure, or other requirement imposed pursuant thereto,

he may commence a civil action under subsection (b).

(b) The Administrator may bring a civil action in the appropriate United States district court to require compliance with a national primary drinking water regulation or with any schedule, control measure, or other requirement imposed pursuant to a variance or exemption granted under section 1415 or 1416 if—

(1) authorized under paragraph (1) or (2) of subsection (a), or

(2) if requested by (A) the chief executive officer of the State in which is located the public water system which is not in compliance with such regulation or requirement, or (B) the agency of such State which has jurisdiction over compliance by public water systems in the State with national primary drinking water regulations or State drinking water regulations.

The court may enter such judgment as protection of public health may require, taking into consideration the time necessary to comply and the availability of alternative water supplies.

(c) Each owner or operator of a public water system shall give notice to the persons served by it—

(1) of any failure on the part of the public water system to—

(A) comply with an applicable maximum contaminant level or treatment technique requirement of, or a testing procedure prescribed by, a national primary drinking water regulation, or

(B) perform monitoring required by section 1445(a), and

(2) if the public water system is subject to a variance granted under section 1415(a)(1)(A) or 1415(a)(2) for an inability to meet a maximum contaminant level requirement or is subject to an exemption granted under section 1416, of—

(A) the existence of such variance or exemption, and

(B) any failure to comply with the requirements of any schedule or control measure prescribed pursuant to the variance or exemption.

The Administrator shall by regulation prescribe the form and manner for giving such notice. Such notice shall be given not less than once every 3 months, shall be given by publication in a newspaper of general circulation serving the area served by each such water system (as determined by the Administrator), and shall be furnished to the other communications media serving such area. If the water bills of a public water system are issued more often than once every 3 months, such notice shall be included in at least one water bill of the system every 3 months, and if a public water system issues its water bills less often than once every 3 months, such notice shall be included in each of the water bills issued by the system. Any person who willfully violates this subsection or regulations thereunder shall be fined not more than $5,000.

(d) Whenever, on the basis of information available to him, the Administrator finds that within a reasonable time after national secondary drinking water regulations have been promulgated, one or more public water systems in a State do not comply with such secondary regulations, and that such noncompliance appears to result from a failure of such State to take reasonable action to assure that public water systems throughout such State meet such secondary regulations, he shall so notify the State.

(e) Nothing in this title shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems but no such law or regulation shall relieve any person of any requirement otherwise applicable under this title.

(f) If the Administrator makes a finding of noncompliance (described in subparagraph (A) or (B) of subsection (a)(1)) with respect to a public water system in a State which has primary enforcement responsibility, the Administrator may, for the purpose of assisting that State in carrying out such responsibility and upon the petition of such State or public water system or persons served by such system, hold, after appropriate notice, public hearings for the purpose of gathering information from technical or other experts, Federal, State, or other public officials, representatives of such public water system, persons served by such system, and other interested persons on—

(1) the ways in which such system can within the earliest feasible time be brought into compliance with the regulation or requirement with respect to which such finding was made, and

(2) the means for the maximum feasible protection of the public health during any period in which such system is not in compliance with a national primary drinking water regulation or requirement applicable to a variance or exemption.

On the basis of such hearings the Administrator shall issue recommendations which shall be sent to such State and public water system and shall be made available to the public and communications media.

VARIANCES

SEC. 1415. (a) Notiwthstanding any other provision of this part, variances from national primary drinking water regulations may be granted as follows:

(1) (A) A State which has primary enforcement responsibility for public water systems may grant one or more variances from an applicable national primary drinking water regulation to one or more public water systems within its jurisdiction which, becuse of characteristics of the raw water resources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation despite application of the technology, treatment techniques, or other means, which the Administrator finds are generally available (taking costs into consideration). A variance granted under this subparagraph shall be conditioned on each system to which it applies implementing such control measures as the State finds can be complied with during the period the variance is in effect.

(B) A State which has primary enforcement responsibility for public water systems may grant to one or more public water systems within its jurisdiction one or more variances from any provision of a rational primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the State that such treatment technique is not necessary to protect the healh of persons because of the nature of the raw water source of such system. A variance granted under this subparagraph shall be conditioned on such monitoring and other requirements as the Administrator may prescribe.

(C) Before a variance proposed to be granted by a State under subparagraph (A) or (B) may take effect, such State shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The State shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance and documentation of the need for the variance.

(D) (i) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting variances under subparagraph (A) or (B) or that in a substantial number of cases the State has failed to impose reasonable control measures or monitoring or other requirements during the period the variances are in effect, the Administrator shall notify the State of his finding. Such notice shall—

(I) identify each public water system with respect to which the finding was made,

(II) specify the reasons for the finding, and

(III) as appropriate, propose revocations of specific variances or propose revised control measures or monitoring or other monitoring or other requirements for specific public water systems granted variances, or both.

(ii) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to clause (i) of this subparagraph. After a hearing on a notice pursuant to such clause, the Administrator shall (I) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (II) promulgate (with such modifications as he deems appropriate) such variance revocations and revised variance control measures or other requirements proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to clause (i) of this subparagraph, the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(iii) If a State is notified under clause (i) of this subparagraph of a finding of the Administrator made with respect to a variance granted a public water system within that State or to a control measure or other requirement for a variance and if before a revocation of such variance or a revision of such control measure or other requirement promulgated by the Administrator takes effect, the State takes corrective action with respect to such variance or control measure or other requirement which the Administrator determines makes his finding inapplicable to such variance or control measure or other requirement, the Administrator shall rescind the application of his finding to that variance or control measure or other requirement. No variance revocation or revised control measure or other requirement may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised control measure or other requirement was proposed.

(2) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to grant variances in such State as the State would have under paragraph (1) if it had primary enforcement responsibility.

(3) The Administrator may grant a variance from any treatment technique requirement of a national primary drinking water regulation upon a showing by any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant with respect to which such requirement was prescribed. A variance under this paragraph shall be conditioned on the use of the alternative treatment technique which is the basis of the variance.

(b) Any control measure or other requirement on which a variance granted under this section is conditioned may be enforced under section 1414 as if such control measure was part of a national primary drinking water regulation.

(c) For purposes of this section, the term "treatment technique requirement" means a requirement in a national primary drinking

water regulation which specifies for a contaminant (in accordance with section 1401(1)(C)(ii)) each treatment technique known to the Adminstrator which leads to a reduction in the level of such containment sufficient to satisfy the requirements of section 1412(b)(3).

EXEMPTIONS

SEC. 1416. (a) A State which has primary enforcement responsibility may exempt any public system within the State's jurisdiction from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that—

(1) due to compelling factors (which may include economic factors), the public water system is unable to comply with such contaminant level or treatment technique requirement, and

(2) the public water system was in operation on the effective date of such contaminant level or treatment technique requirement.

(b)(1) If a State grants a public water system an exemption under subsection (a), it shall prescribe, within one year of the date the exemption is granted, a schedule for—

(A) compliance (including increments of progress) by the public water system with each contaminant level requirement and treatment technique requirement with respect to which the exemption was granted, and

(B) implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subsection may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

(2)(A) A schedule prescribed pursuant to this subsection for a public water system granted an exemption under subsection (a) shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but (except as provided in subparagraph (B))—

(i) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the interim national primary drinking water regulations promulgated under section 1412(a), not later than January 1, 1981; and

(ii) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by revised national primary drinking water regulations, not later than seven years after the date such requirement takes effect.

(B) Notwithstanding clauses (i) and (ii) of subparagraph (A) of this paragraph, the final date for compliance prescribed in a schedule prescribed pursuant to this subsection for an exemption granted for

a public water system which (as determined by the State granting the exemption) has entered into an enforceable agreement to become a part of a regional public water system shall—

(i) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by interim national primary drinking water regulations, be not later than January 1, 1983; and

(ii) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by revised national primary drinking water regulations, be not later than nine years after such requirement takes effect.

(3) Each public water system's exemption granted by a State under subsection (a) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to this subsection. The requirements of each schedule prescribed by a State pursuant to this subsection shall be enforceable by the State under its laws. Any requirement of a schedule on which an exemption granted under this section is conditioned may be enforced under section 1414 as if such requirement was part of a national primary drinking water regulation.

(4) Each schedule prescribed by a State pursuant to this subsection shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under subsection (d) (2) or the schedule is revised by the Administrator under such subsection.

(c) Each State which grants an exemption under subsection (a) shall promptly notify the Administrator of the granting of such exemption. Such notification shall contain the reasons for the exemption and document the need for the exemption.

(d) (1) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the exemptions granted (and schedules prescribed pursuant thereto) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of exemptions and schedules as he deems necessary to carry out the purposes of this title.

(2) (A) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting exemptions under subsection (a) failed to prescribe schedules in accordance with subsection (b), the Administrator shall notify the State of his finding. Such notice shall—

(i) identify each exempt public water system with respect to which the finding was made,

(ii) specify the reasons for the finding, and

(iii) as appropriate, propose revocations of specific exemptions or propose revised schedules for specific exempt public water systems, or both.

(B) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to subparagraph (A). After a hearing on a notice pursuant to subparagraph (A), the Administrator shall (i) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (ii) promulgate (with such modifications as he deems appropriate)

such exemption revocations and revised schedules proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to subparagraph (A), the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(C) If a State is notified under subparagraph (A) of a finding of the Administrator made with respect to an exemption granted a public water system within that State or to a schedule prescribed pursuant to such an exemption and if before a revocation of such exemption or a revision of such schedule promulgated by the Administrator takes effect the State takes corrective action with respect to such exemption or schedule which the Administrator determines makes his finding inapplicable to such exemption or schedule, the Administrator shall rescind the application of his finding to that exemption or schedule. No exemption revocation or revised schedule may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule was proposed.

(e) For purposes of this section, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 1401(1)(C)(ii)) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 1412(b)(3).

(f) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to exempt public water systems in such State from maximum contaminant level requirements and treatment technique requirements under the same conditions and in the same manner as the State would be authorized to grant exemptions under this section if it had primary enforcement responsibility.

Part C—Protection of Underground Sources of Drinking Water

REGULATIONS FOR STATE PROGRAMS

Sec. 1421. (a)(1) The Administrator shall publish proposed regulations for State underground injection control programs within 180 days after the date of enactment of this title. Within 180 days after publication of such proposed regulations, he shall promulgate such regulations with such modifications as he deems appropriate. Any regulation under this subsection may be amended from time to time.

(2) Any regulation under this section shall be proposed and promulgated in accordance with section 553 of title 5, United States Code (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary, the National Drinking Water Advisory Council, and other appropriate Federal entities and with interested State entities.

(b)(1) Regulations under subsection (a) for State underground injection programs shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources within the meaning of subsection (d)(2). Such regula-

tions shall require that a State program, in order to be approved under section 1422—

(A) shall prohibit, effective three years after the date of the enactment of this title, any underground injection in such State which is not authorized by a permit issued by the State (except that the regulations may permit a State to authorize underground injection by rule);

(B) shall require (i) in the case of a program which provides for authorization of underground injection by permit, that the applicant for the permit to inject must satisfy the State that the underground injection will not endanger drinking water sources, and (ii) in the case of a program which provides for such an authorization by rule, that no rule may be promulgated which authorizes any underground injection which endangers underground water sources;

(C) shall include inspection, monitoring, recordkeeping, and reporting requirements; and

(D) shall apply (i) as prescribed by section 1447(b), to underground injections by Federal agencies, and (ii) to underground injections by any other person whether or not occurring on property owned or leased by the United States.

(2) Regulations for State underground injection control programs may not prescribe requirements which interfere with or impede—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

(c)(1) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i)) temporary permits for underground injection which may be effective until the expiration of four years after the date of enactment of this title, if—

(A) the Administrator finds that the State has demonstrated that it is unable and could not reasonably have been able to process all permit applications within the time available;

(B) the Administrator determines the adverse effect on the environment of such temporary permits is not unwarranted;

(C) such temporary permits will be issued only with respect to injection wells in operation on the date on which such State's permit program approved under this part first takes effect and for which there was inadequate time to process its permit application; and

(D) the Administrator determines the temporary permits require the use of adequate safeguards established by rules adopted by him.

(2) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i)), but after reasonable notice and public hearing, one or more tem-

porary permits each of which is applicable to a particular injection well and to the underground injection of a particular fluid and which may be effective until the expiration of four years after the date of enactment of this title, if the State has found, on the record of such hearing—

(A) that technology (or other means) to permit safe injection of the fluid in accordance with the applicable underground injection control program is not generally available (taking costs into consideration);

(B) that injection of the fluid would be less harmful to health than the use of other available means of disposing of waste or producing the desired product; and

(C) that available technology or other means have been employed (and will be employed) to reduce the volume and toxicity of the fluid and to minimize the potentially adverse effect of the injection on the public health.

(d) For purposes of this part:

(1) The term "underground injection" means the subsurface emplacement of fluids by well injection.

(2) Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.

STATE PRIMARY ENFORCEMENT RESPONSIBILITY

SEC. 1422. (a) Within 180 days after the date of enactment of this title, the Administrator shall list in the Federal Register each State for which in his judgment a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources. Such list may be amended from time to time.

(b)(1)(A) Each State listed under subsection (a) shall within 270 days after the date of promulgation of any regulation under section 1421 (or, if later, within 270 days after such State is first listed under subsection (a)) submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State—

(i) has adopted after reasonable notice and public hearings, and will implement, an underground injection control program which meets the requirements of regulations in effect under section 1421; and

(ii) will keep such records and make such reports with respect to its activities under clause (i) as the Administrator may require by regulation.

(B) Within 270 days of any amendment of a regulation under section 1421 revising or adding any requirement respecting State underground injection control programs, each State listed under subsection (a) shall submit (in such form and manner as the Administrator may require) a notice to the Administrator containing a showing satisfactory to him that the State underground injection control program meets the revised or added requirement.

(2) Within ninety days after the State's application under paragraph (1)(A) or notice under paragraph (1)(B) and after reasonable opportunity for presentation of views, the Administrator shall by rule either approve, disapprove, or approve in part and disapprove in part, the State's underground injection control program.

(3) If the Administrator approves the State's program under paragraph (2), the State shall have primary enforcement responsibility for underground water sources until such time as the Administrator determines, by rule, that such State no longer meets the requirements of clause (i) or (ii) of paragraph (1)(A) of this subsection.

(4) Before promulgating any rule under paragraph (2) or (3) of this subsection, the Administrator shall provide opportunity for public hearing respecting such rule.

(c) If the Administrator disapproves a State's program (or part thereof) under subsection (b)(2) or if a State fails to submit an application or notice before the date of expiration of the period specified in subsection (b)(1), the Administrator shall by regulation within 90 days after such disapproval or expiration date (as the case may be) prescribe (and may from time to time by regulation revise) a program applicable to such State meeting the requirements of section 1421(b). Such program may not include requirements which interfere with or impede—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection. Such program shall apply in such State to the extent that a program adopted by such State which the Administrator determines meet such requirements is not in effect. Before promulgating any regulation under this section, the Administrator shall provide opportunity for public hearing respecting such regulation.

(d) For purposes of this title, the term "applicable underground injection control program" with respect to a State means the program (or most recent amendment thereof) (1) which has been adopted by the State and which has been approved under subsection (b), or (2) which has been prescribed by the Administrator under subsection (c).

FAILURE OF STATE TO ASSURE ENFORCEMENT OF PROGRAM

SEC. 1423. (a)(1) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for underground water sources (within the meaning of section 1422(b)(3)) that any person who is subject to a requirement of an applicable underground injection control program in such State is violating such requirement, he shall so notify the State and the person violating such requirement. If the Administrator finds such failure to comply extends beyond the thirtieth day after the date of such notice, he shall give public notice of such finding and request the State to report within 15 days after the date of such public notice as to the steps being taken to bring such person into compliance with such requirement

(including reasons for anticipated steps to be taken to bring such person into compliance with such requirement and for any failure to take steps to bring such person into compliance with such requirement). If—

(A) such failure to comply extends beyond the sixtieth day after the date of the notice given pursuant to the first sentence of this paragraph, and

(B) (i) the State fails to submit the report requested by the Administrator within the time period prescribed by the preceding sentence, or

(ii) the State submits such report within such period but the Administrator, after considering the report, determines that by failing to take necessary steps to bring such person into compliance by such sixtieth day the State abused its discretion in carrying out primary enforcement responsibility for underground water sources,

the Administrator may commence a civil action under subsection (b) (1).

(2) Whenever the Administrator finds during a period during which a State does not have primary enforcement responsibility for underground water sources that any person subject to any requirement of any applicable underground injection control program in such State is violating such requirement, he may commence a civil action under subsection (b) (1).

(b) (1) When authorized by subsection (a), the Administrator may bring a civil action under this paragraph in the appropriate United States district court to require compliance with any requirement of an applicable underground injection control program. The court may enter such judgment as protection of public health may require, including, in the case of an action brought against a person who violates an applicable requirement of an underground injection control program and who is located in a State which has primary enforcement responsibility for underground water sources, the imposition of a civil penalty of not to exceed $5,000 for each day such person violates such requirement after the expiration of 60 days after receiving notice under subsection (a) (1).

(2) Any person who violates any requirement of an applicable underground injection control program to which he is subject during any period for which the State does not have primary enforcement responsibility for underground water sources, shall be subject to a civil penalty of not more than $5,000 per day. In addition, if such violation or failure to comply is willful, such person shall be punished by a fine of not more than $5,000 per day.

(c) Nothing in this title shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting underground injection but no such law or regulation shall relieve any person of any requirement otherwise applicable under this title.

INTERIM REGULATION OF UNDERGROUND INJECTIONS

SEC. 1424. (a) (1) Any person may petition the Administrator to have an area of a State (or States) designated as an area in which no new underground injection well may be operated during the period

beginning on the date of the designation and ending on the date on which the applicable underground injection control program covering such area takes effect unless a permit for the operation of such well has been issued by the Administrator under subsection (b). The Administrator may so designate an area within a State if he finds that the area has one acquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health.

(2) Upon receipt of a petition under paragraph (1) of this subsection, the Administrator shall publish it in the Federal Register and shall provide an opportunity to interested persons to submit written data, views, or arguments thereon. Not later than the 30th day following the date of the publication of a petition under this paragraph in the Federal Register, the Administrator shall either make the designation for which the petition is submitted or deny the petition.

(b) (1) During the period beginning on the date an area is designated under subsection (a) and ending on the date the applicable underground injection control program covering such area takes effect, no new underground injection well may be operated in such area unless the Administrator has issued a permit for such operation.

(2) Any person may petition the Administrator for the issuance of a permit for the operation of such a well in such an area. A petition submitted under this paragraph shall be submitted in such manner and contain such information as the Administrator may require by regulation. Upon receipt of such a petition, the Administrator shall publish it in the Federal Register. The Administrator shall give notice of any proceeding on a petition and shall provide opportunity for agency hearing. The Administrator shall act upon such petition on the record of any hearing held pursuant to the preceding sentence respecting such petition. Within 120 days of the publication in the Federal Register of a petition submitted under this paragraph, the Administrator shall either issue the permit for which the petition was submitted or shall deny its issuance.

(3) The Administrator may issue a permit for the operation of a new underground injection well in an area designated under subsection (a) only if he finds that the operation of such well will not cause contamination of the acquifer of such area so as to create a significant hazard to public health. The Administrator may condition the issuance of such a permit upon the use of such control measures in connection with the operation of such well, for which the permit is to be issued, as he deems necessary to assure that the operation of the well will not contaminate the acquifer of the designated area in which the well is located so as to create a significant hazard to public health.

(c) Any person who operates a new underground injection well in violation of subsection (b) shall be subject to a civil penalty of not more than $5,000 for each day in which such violation occurs. In addition, if such violation is willful, such person shall be punished by a fine of not more than $5,000 for each day in which such violation occurs. If the Administrator has reason to believe that any person is violating or will violate subsection (b), he may petition the United States district court to issue a temporary restraining order or injunction (including a mandatory injunction) to enforce such subsection.

(d) For purposes of this section, the term "new underground injection well" means an underground injection well whose operation was not approved by appropriate State and Federal agencies before the date of the enactment of this title.

Part D—Emergency Powers

EMERGENCY POWERS

Sec. 1431. (a) Notwithstanding any other provision of this title, the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the health of persons, and that appropriate State or local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. Such action may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

(b) Any person who willfully violates or fails or refuses to comply with any order issued by the Administrator under subsection (a)(1) shall be punished by a fine of not more than $5,000 per day of violation.

Part E—General Provisions

ASSURANCE OF AVAILABILITY OF ADEQUATE SUPPLIES OF CHEMICALS NECESSARY FOR TREATMENT OF WATER

Sec. 1441. (a) If any person who uses chlorine, activated carbon, lime, ammonia, soda ash, potassium permanganate, caustic soda, or other chemical or substance for the purpose of treating water in any public water system or in any public treatment works determines that the amount of such chemical or substance necessary to effectively treat such water is not reasonably available to him or will not be so available to him when required for the effective treatment of such water, such person may apply to the Administrator for a certification (hereinafter in this section referred to as a "certification of need") that the amount of such chemical or substance which such person requires to effectively treat such water is not reasonably available to him or will not be so available when required for the effective treatment of such water.

(b)(1) An application for a certification of need shall be in such form and submitted in such manner as the Administrator may require and shall (A) specify the persons the applicant determines are able to provide the chemical or substance with respect to which the application is submitted, (B) specify the persons from whom the applicant has sought such chemical or substance, and (C) contain such other information as the Administrator may require.

(2) Upon receipt of an application under this section, the Administrator shall (A) publish in the Federal Register a notice of the receipt of the application and a brief summary of it, (B) notify in writing

each person whom the President or his delegate (after consultation with the Administrator) determines could be made subject to an order required to be issued upon the issuance of the certification of need applied for in such application, and (C) provide an opportunity for the submission of written comments on such application. The requirements of the preceding sentence of this paragraph shall not apply when the Administrator for good cause finds (and incorporates the finding with a brief statement of reasons therefor in the order issued) that waiver of such requirements is necessary in order to protect the public health.

(3) Within 30 days after—

(A) the date a notice is published under paragraph (2) in the Federal Register with respect to an application submitted under this section for the issuance of a certification of need, or

(B) the date on which such application is received if as authorized by the second sentence of such paragraph no notice is published with respect to such application,

the Administrator shall take action either to issue or deny the issuance of a certification of need.

(c) (1) If the Administrator finds that the amount of a chemical or substance necessary for an applicant under an application submitted under this section to effectively treat water in a public water system or in a public treatment works is not reasonably available to the applicant or will not be so available to him when required for the effective treatment of such water, the Administrator shall issue a certification of need. Not later than seven days following the issuance of such certification, the President or his delegate shall issue an order requiring the provision to such person of such amounts of such chemical or substance as the Administrator deems necessary in the certification of need issued for such person. Such order shall apply to such manufacturers, producers, processors, distributors, and repackagers of such chemical or substance as the President or his delegate deems necessary and appropriate, except that such order may not apply to any manufacturer, producer, or processor of such chemical or substance who manufactures, produces, or processes (as the case may be) such chemical or substance solely for its own use. Persons subject to an order issued under this section shall be given a reasonable opportunity to consult with the President or his delegate with respect to the implementation of the order.

(2) Orders which are to be issued under paragraph (1) to manufacturers, producers, and processors of a chemical or substance shall be equitably apportioned, as far as practicable, among all manufacturers, producers, and processors of such chemical or substance; and orders which are to be issued under paragraph (1) to distributors and repackagers of a chemical or substance shall be equitably apportioned, as far as practicable, among all distributors and repackagers of such chemical or substance. In apportioning orders issued under paragraph (1) to manufacturers, producers, processors, distributors, and repackagers of chlorine, the President or his delegate shall, in carrying out the requirements of the preceding sentence, consider—

(A) the geographical relationships and established commercial relationships between such manufacturers, producers, processors, distributors, and repackagers and the persons for whom the orders are issued;

(B) in the case of orders to be issued to producers of chlorine, the (i) amount of chlorine historically supplied by each such producer to treat water in public water systems and public treatment works, and (ii) share of each such producer of the total annual production of chlorine in the United States; and

(C) such other factors as the President or his delegate may determine are relevant to the apportionment of orders in accordance with the requirements of the preceding sentence.

(3) Subject to subsection (f), any person for whom a certification of need has been issued under this subsection may upon the expiration of the order issued under paragraph (1) upon such certification apply under this section for additional certifications.

(d) There shall be available as a defense to any action brought for breach of contract in a Federal or State court arising out of delay for failure to provide, sell, or offer for sale or exchange a chemical or substance subject to an order issued pursuant to subsection (c)(1), that such delay or failure was caused solely by compliance with such order.

(e)(1) Whoever knowingly fails to comply with any order issued pursuant to subsection (c)(1) shall be fined not more than $5,000 for each such failure to comply.

(2) Whoever fails to comply with any order issued pursuant to subsection (c)(1) shall be subject to a civil penalty of not more than $2,500 for each such failure to comply.

(3) Whenever the Administrator or the President or his delegate has reason to believe that any person is violating or will violate any order issued pursuant to subsection (c)(1), he may petition a United States district court to issue a temporary restraining order or injunction (including a mandatory injunction) to enforce the provision of such order.

(f) No certification of need or order issued under this section may remain in effect—

(1) for more than one year, or

(2) after June 30, 1977,

whichever occurs first.

RESEARCH, TECHNICAL ASSISTANCE, INFORMATION, TRAINING OF PERSONNEL

SEC. 1442. (a)(1) The Administrator may conduct research, studies, and demonstrations relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments of man resulting directly or indirectly from contaminants in water, or to the provision of a dependably safe supply of drinking water, including—

(A) improved methods (i) to identify and measure the existence of contaminants in drinking water (including methods which may be used by State and local health and water officials), and (ii) to identify the source of such contaminants;

(B) improved methods to identify and measure the health effects of contaminants in drinking water;

(C) new methods of treating raw water to prepare it for drinking, so as to improve the efficiency of water treatment and to remove contaminants from water;

(D) improved methods for providing a dependably safe supply of drinking water, including improvements in water purification and distribution, and methods of assessing the health related hazards of drinking water; and

(E) improved methods of protecting underground water sources of public water systems from contamination.

(2) The Administrator shall, to the maximum extent feasible, provide technical assistance to the States and municipalities in the establishment and administration of public water system supervision programs (as defined in section 1443(c)(1)).

(3) The Administrator shall conduct studies, and make periodic reports to Congress, on the costs of carrying out regulations prescribed under section 1412.

(4) The Administrator shall conduct a survey and study of—

(A) disposal of waste (including residential waste) which may endanger underground water which supplies, or can reasonably be expected to supply, any public water systems, and

(B) means of control of such waste disposal.

Not later than one year after the date of enactment of this title, he shall transmit to the Congress the results of such survey and study, together with such recommendations as he deems appropriate.

(5) The Administrator shall carry out a study of methods of underground injection which do not result in the degradation of underground drinking water sources.

(6) The Administrator shall carry out a study of methods of preventing, detecting, and dealing with surface spills of contaminants which may degrade underground water sources for public water systems.

(7) The Administrator shall carry out a study of virus contamination of drinking water sources and means of control of such contamination.

(8) The Administrator shall carry out a study of the nature and extent of the impact on underground water which supplies or can reasonably be expected to supply public water systems of (A) abandoned injection or extraction wells; (B) intensive application of pesticides and fertilizers in underground water recharge areas; and (C) ponds, pools, lagoons, pits, or other surface disposal of contaminants in underground water recharge areas.

(b) In carrying out this title, the Administrator is authorized to—

(1) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water together with appropriate recommendations in connection therewith;

(2) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to the purposes of this title;

(3) make grants to, and enter into contracts with, any public agency, educational institution, and any other organization, in accordance with procedures prescribed by the Administrator, under which he may pay all or a part of the costs (as may be determined by the Administrator) of any project or activity which is designed—

(A) to develop, expand, or carry out a program (which may combine training education and employment) for training persons for occupations involving the public health aspects of providing safe drinking water;

(B) to train inspectors and supervisory personnel to train or supervise persons in occupations involving the public health aspects of providing safe drinking water; or

(C) to develop and expand the capability of programs of States and municipalities to carry out the purposes of this title (other than by carrying out State programs of public water system supervision or underground water source protection (as defined in section 1443(d))).

(c) There are authorized to be appropriated to carry out the provisions of this section $15,000,000 for the fiscal year ending June 30, 1975; $25,000,000 for the fiscal year ending June 30, 1976; and $35,000,000 for the fiscal year ending June 30, 1977.

GRANTS FOR STATE PROGRAMS

SEC. 1443. (a)(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out public water system supervision programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State—

(A) has established or will establish within one year from the date of such grant a public water system supervision program, and

(B) will, within that one year, assume primary enforcement responsibility for public water systems within the State.

No grant may be made to a State under paragraph (1) for any period beginning more than one year after the date of the State's first grant unless the State has assumed primary enforcement responsibility for public water systems within the State.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, a public water system supervision program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, number of public water systems, and other relevant factors. To the extent the applicable appropriation permits, the allotment of a State for any fiscal year shall not be less than $50,000.

(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1976, and $25,000,000 for the fiscal year ending June 30, 1977.

(b) (1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out underground water source protection programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State—

(A) has established or will establish within two years from the date of such grant an underground water source protection, and

(B) will, within such two years, assume primary enforcement responsibility for underground water sources within the State.

No grant may be made to a State under paragraph (1) for any period beginning more than two years after the date of the State's first grant unless the State has assumed primary enforcement responsibility for underground water sources within the State.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, an underground water source protection program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, and other relevant factors.

(5) For the purposes of making grants under paragraph (1) there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1976, and $7,500,000 for the fiscal year ending June 30, 1977.

(c) For purposes of this section:

(1) The term "public water system supervision program" means a program for the adoption and enforcement of drinking water regulations (with such variances and exemptions from such regulations under conditions and in a manner which is not less stringent than the conditions under, and the manner in, which variances and exemptions may be granted under sections 1415 and 1416) which are no less stringent than the national primary drinking water regulations under section 1412, and for keeping records and making reports required by section 1413(a)(3).

(2) The term "underground water source protection program" means a program for the adoption and enforcement of a program which meets the requirements of regulations under section 1421 and for keeping records and making reports required by section 1422(b)(1)(A)(ii).

SPECIAL STUDY AND DEMONSTRATION PROJECT GRANTS; GUARANTEED LOANS

SEC. 1444. (a) The Administrator may make grants to any person for the purposes of—

(1) assisting in the development and demonstration (including construction) of any project which will demonstrate a new or im-

proved method, approach, or technology for providing a dependably safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health implications involved in the reclamation, recycling, and reuse of waste waters for drinking and the processes and methods for the preparation of safe and acceptable drinking water.

(b) Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66⅔ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consulting the National Drinking Water Advisory Council, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(4) Priority for grants under this section shall be given where there are known or potential public health hazards which require advanced technology for the removal of particles which are too small to be removed by ordinary treatment technology.

(c) For the purposes of making grants under subsections (a) and (b) of this section there are authorized to be appropriated $7,500,000 for the fiscal year ending June 30, 1975; and $7,500,000 for the fiscal year ending June 30, 1976; and $10,000,000 for the fiscal year ending June 30, 1977.

(d) The Administrator during the fiscal years ending June 30, 1975, and June 30, 1976, shall carry out a program of guaranteeing loans made by private lenders to small public water systems for the purpose of enabling such systems to meet national primary drinking water regulations (including interim regulations) prescribed under section 1412. No such guarantee may be made with respect to a system unless (1) such system cannot obtain financial assistance necessary to comply with such regulations from any other source, and (2) the Administrator determines that any facilities constructed with a loan guaranteed under this subsection is not likely to be made obsolete by subsequent changes in primary regulations. The aggregate amount of indebtedness guaranteed with respect to any system may not exceed $10,000,000. The Administrator shall prescribe regulations to carry out his subsection.

RECORDS AND INSPECTIONS

SEC. 1445. (a) Every person who is a supplier of water, who is or may be otherwise subject to a primary drinking water regulation prescribed under section 1412 or to an applicable underground injection control program (as defined in section 1422(c)), who is or may be subject to the permit requirement of section 1424 or to an order issued

under section 1441, or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations under this title, in determining whether such person has acted or is acting in compliance with this title, or in administering any program of financial assistance under this title.

(b) The Administrator, or representatives of the Administrator duly designated by him, upon presenting appropriate credentials and a written notice to any supplier of water or other person subject to a primary drinking water regulation prescribed under section 1412 or applicable underground injection control program (or person in charge of any of the property of such supplier or other person), is authorized to enter any establishment or facility or other property of such supplier or other person in order to determine whether such supplier or other person has acted or is acting in compliance with this title, including for this purpose, inspection, at reasonable times, records, files, papers, processes, controls, and facilities, or in order to test any feature of a public water system, including its raw water source. The Administrator or the Comptroller General (or any representative designated by either) shall have access for the purpose of audit and examination to any records, reports, or information of a grantee which are required to be maintained under subsection (a) or which are pertinent to any financial assistance under this title.

(c) Whoever fails or refuses to comply with any requirement of subsection (a) or to allow the Administrator, the Comptroller General, or representatives of either, to enter and conduct any audit or inspection authorized by subsection (b) shall be fined not more than $5,000.

(d)(1) Subject to paragraph (2), upon a showing satisfactory to the Administrator by any person that any information required under this section from such person, if made public, would divulge trade secrets or secret processes of such person, the Administrator shall consider such information confidential in accordance with the purposes of section 1905 of title 18 of the United States Code. If the applicant fails to make a showing satisfactory to the Administrator, the Administrator shall give such applicant thirty days' notice before releasing the information to which the applicant relates (unless the public health or safety requires an earlier release of such information).

(2) Any information required under this section may be disclosed (1) to other officers, employees, or authorized representatives of the United States concerned with carrying out this title, (2) when relevant in any proceeding under this title, or (3) to the extent it deals with the level of contaminants in drinking water. For purposes of this subsection the term "information required under this section" means any papers, books, documents, or information, or any particular part thereof, reported to or otherwise obtained by the Administrator under this section.

(e) For purposes of this section, (1) the term "grantee" means any person who applies for or received financial assistance, by grant, contract, or loan guarantee under this title, and (2) the term "person" includes a Federal agency.

NATIONAL DRINKING WATER ADVISORY COUNCIL

SEC. 1446. (a) (1) There is established a National Drinking Water Advisory Council which shall consist of fifteen members appointed by the Administrator after consultation with the Secretary. Five members shall be appointed from the general public; five members shall be appointed from appropriate State and local agencies concerned with water hygiene and public water supply; and five members shall be appointed from representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. Each member of the Council shall hold office for a term of three years, except that—

(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(2) the term of the members first taking office shall expire as follows: Five shall expire three years after the date of enactment of this title, five shall expire two years after such date, and five shall expire one year after such date, as designated by the Administrator at the time of appointment.

The members of the Council shall be eligible for reappointment.

(b) The Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this title.

(c) Members of the Council appointed under this section shall, while attending meetings or conferences of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including travel-time) during which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(d) Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

FEDERAL AGENCIES

SEC. 1447. (a) Each Federal agency having jurisdiction over any federally owned or maintained public water system shall comply with all national primary drinking water regulations in effect under section 1412.

(b) (1) Each Federal agency shall comply with any applicable underground injection control program, and shall keep such records and submit such reports as may be required under such program.

(2) The Administrator shall waive compliance with paragraph (1) of this subsection upon request of the Secretary of Defense and upon a determination by the President that the requested waiver is necessary in the interest of national security. The Administrator shall maintain a written record of the basis upon which such waiver was granted

and make such record available for in camera examination when relevant in a judicial proceeding under this title. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for national security purposes, unless, upon the request of the Secretary of Defense, the Administrator determines to omit such publication because the publication itself would be contrary to the interests of national security, in which event the Administrator shall submit notice to the Armed Services Committee of the Senate and House of Representatives.

GENERAL PROVISIONS

SEC. 1448. (a)(1) The Administrator is authorized to prescribe such regulations as are necessary or appropriate to carry out his functions under this title.

(2) The Administrator may delegate any of his functions under this title (other than prescribing regulations) to any officer or employee of the Agency.

(b) The Administrator, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as he deems necessary to assist him in carrying out the purposes of this title.

(c) Upon the request of a State or interstate agency, the Administrator may assign personnel of the Agency to such State or interstate agency for the purposes of carrying out the provisions of this title.

(d)(1) The Administrator may make payments of grants under this title (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as he may determine.

(2) Financial assistance may be made available in the form of grants only to individuals and nonprofit agencies or institutions. For purposes of this paragraph, the term 'nonprofit agency or institution' means an agency or institution no part of the net earnings of which inure, or may lawfully inure, to the benefit of any private shareholder or individual.

(e) The Administrator shall take such action as may be necessary to assure compliance with provisions of the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a–276a(5)). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

(f) The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this title to which the Administrator is a party. Unless, 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.

(g) The provisions of this title shall not be construed as affecting any authority of the Administrator under part G of title III of this Act.

(h) Not later than April 1 of each year, the Administrator shall submit to the Congress a report respecting the activities of the Agency under this title and containing such recommendations for legislation as he considers necessary. The report of the Administrator under this subsection which is due not later than April 1, 1975, and each subsequent report of the Administrator under this subsection shall include a statement on the actual and anticipated cost to public water systems in each State of compliance with the requirements of this title. The Office of Management and Budget may review any report required by this subsection before its submission to Congress, but the Office may not revise any such report, require any revision in any such report, or delay its submission beyond the day prescribed for its submission, and may submit to Congress its comments respecting any such report.

FEDERAL FOOD, DRUG, AND COSMETIC ACT

* * * * * * *

CHAPTER IV—FOOD

* * * * * * *

BOTTLED DRINKING WATER STANDARDS

SEC. 410. Whenever the Administrator of the Environmental Protection Agency prescribes interim or revised national primary drinking water regulations under section 1412 of the Public Health Service Act, the Secretary shall consult with the Administrator and within 180 days after the promulgation of such drinking water regulations either promulgate amendments to regulations under this chapter applicable to bottled drinking water or publish in the Federal Register his reasons for not making such amendments.

* * * * * * *

○

S. 433

Ninety-third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-first day of January, one thousand nine hundred and seventy-four

An Act

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Safe Drinking Water Act".

PUBLIC WATER SYSTEMS

SEC. 2. (a) The Public Health Service Act is amended by inserting after title XIII the following new title:

"TITLE XIV—SAFETY OF PUBLIC WATER SYSTEMS

"PART A—DEFINITIONS

"DEFINITIONS

"SEC. 1401. For purposes of this title:

"(1) The term 'primary drinking water regulation' means a regulation which—

"(A) applies to public water systems;

"(B) specifies contaminants which, in the judgment of the Administrator, may have any adverse effect on the health of persons;

"(C) specifies for each such contaminant either—

"(i) a maximum contaminant level, if, in the judgment of the Administrator, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems, or

"(ii) if, in the judgment of the Administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 1412; and

"(D) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to (i) the minimum quality of water which may be taken into the system and (ii) siting for new facilities for public water systems.

"(2) The term 'secondary drinking water regulation' means a regulation which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the Administrator, are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water (A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use, or (B) which may otherwise adversely affect the public welfare. Such regulations may vary according to geographic and other circumstances.

"(3) The term 'maximum contaminant level' means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

"(4) The term 'public water system' means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes (A) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (B) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

"(5) The term 'supplier of water' means any person who owns or operates a public water system.

"(6) The term 'contaminant' means any physical, chemical, biological, or radiological substance or matter in water.

"(7) The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(8) The term 'Agency' means the Environmental Protection Agency.

"(9) The term 'Council' means the National Drinking Water Advisory Council established under section 1446.

"(10) The term 'municipality' means a city, town, or other public body created by or pursuant to State law, or an Indian tribal organization authorized by law.

"(11) The term 'Federal agency' means any department, agency, or instrumentality of the United States.

"(12) The term 'person' means an individual, corporation, company, association, partnership, State, or municipality.

"PART B—PUBLIC WATER SYSTEMS

"COVERAGE

"SEC. 1411. Subject to sections 1415 and 1416, national primary drinking water regulations under this part shall apply to each public water system in each State; except that such regulations shall not apply to a public water system—

"(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

"(2) which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

"(3) which does not sell water to any person; and

"(4) which is not a carrier which conveys passengers in interstate commerce.

"NATIONAL DRINKING WATER REGULATIONS

"SEC. 1412. (a)(1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after the date of enactment of this title. Within 180 days after such date of enactment, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.

"(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means, which the Administrator determines are generally available (taking costs into consideration) on the date of enactment of this title.

"(3) The interim primary regulations first promulgated under paragraph (1) shall take effect eighteen months after the date of their promulgation.

"(b)(1)(A) Within 10 days of the date the report on the study conducted pursuant to subsection (e) is submitted to Congress, the Administrator shall publish in the Federal Register, and provide opportunity for comment on, the—

"(i) proposals in the report for recommended maximum contaminant levels for national primary drinking water regulations, and

"(ii) list in the report of contaminants the levels of which in drinking water cannot be determined but which may have an adverse effect on the health of persons.

"(B) Within 90 days after the date the Administrator makes the publication required by subparagraph (A), he shall by rule establish recommended maximum contaminant levels for each contaminant which, in his judgment based on the report on the study conducted pursuant to subsection (e), may have any adverse effect on the health of persons. Each such recommended maximum contaminant level shall be set at a level at which, in the Administrator's judgment based on such report, no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety. In addition, he shall, on the basis of the report on the study conducted pursuant to subsection (e), list in the rules under this subparagraph any contaminant the level of which cannot be accurately enough measured in drinking water to establish a recommended maximum contaminant level and which may have any adverse effect on the health of persons. Based on information available to him, the Administrator may by rule change recommended levels established under this subparagraph or change such list.

"(2) On the date the Administrator establishes pursuant to paragraph (1)(B) recommended maximum contaminant levels he shall publish in the Federal Register proposed revised national primary drinking water regulations (meeting the requirements of paragraph (3)). Within 180 days after the date of such proposed regulations, he shall promulgate such revised drinking water regulations with such modifications as he deems appropriate.

"(3) Revised national primary drinking water regulations promulgated under paragraph (2) of this subsection shall be primary drinking water regulations which specify a maximum contaminant level or require the use of treatment techniques for each contaminant for which a recommended maximum contaminant level is established or which is listed in a rule under paragraph (1)(B). The maximum contaminant level specified in a revised national primary drinking water regulation for a contaminant shall be as close to the recommended maximum contaminant level established under paragraph (1)(B) for such contaminant as is feasible. A required treatment technique for a contaminant for which a recommended maximum contaminant level has been established under paragraph (1)(B) shall reduce such contaminant to a level which is as close to the recommended maximum contaminant level for such contaminant as is feasible. A required treatment technique for a contaminant which is listed under paragraph (1)(B) shall

require treatment necessary in the Administrator's judgment to prevent known or anticipated adverse effects on the health of persons to the extent feasible. For purposes of this paragraph, the term 'feasible' means feasible with the use of the best technology, treatment techniques, and other means, which the Administrator finds are generally available (taking cost into consideration).

"(4) Revised national primary drinking water regulations shall be amended whenever changes in technology, treatment techniques, and other means permit greater protection of the health of persons, but in any event such regulations shall be reviewed at least once every 3 years.

"(5) Revised national primary drinking water regulations promulgated under this subsection (and amendments thereto) shall take effect eighteen months after the date of their promulgation. Regulations under subsection (a) shall be superseded by regulations under this subsection to the extent provided by the regulations under this subsection.

"(6) No national primary drinking water regulation may require the addition of any substance for preventive health care purposes unrelated to contamination of drinking water.

"(c) The Administrator shall publish proposed national secondary drinking water regulations within 270 days after the date of enactment of this title. Within 90 days after publication of any such regulation, he shall promulgate such regulation with such modifications as he deems appropriate. Regulations under this subsection may be amended from time to time.

"(d) Regulations under this section shall be prescribed in accordance with section 553 of title 5, United States Code (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary and the National Drinking Water Advisory Council.

"(e)(1) The Administrator shall enter into appropriate arrangements with the National Academy of Sciences (or with another independent scientific organization if appropriate arrangements cannot be made with such Academy) to conduct a study to determine (A) the maximum contaminant levels which should be recommended under subsection (b)(2) in order to protect the health of persons from any known or anticipated adverse effects, and (B) the existence of any contaminants the levels of which in drinking water cannot be determined but which may have an adverse effect on the health of persons.

"(2) The result of the study shall be reported to Congress no later than 2 years after the date of enactment of this title. The report shall contain (A) a summary and evaluation of relevant publications and unpublished studies; (B) a statement of methodologies and assumptions for estimating the levels at which adverse health effects may occur; (C) a statement of methodologies and assumptions for estimating the margin of safety which should be incorporated in the national primary drinking water regulations; (D) proposals for recommended maximum contaminant levels for national primary drinking water regulations, based on the methodologies, assumptions, and studies referred to in clauses (A), (B), and (C) and in paragraph (4); (E) a list of contaminants the level of which in drinking water cannot be determined but which may have an adverse effect on the health of persons; and (F) recommended studies and test protocols for future research on the health effects of drinking water contaminants, including a list of the major research priorities and estimated costs necessary to conduct such priority research.

"(3) In developing its proposals for recommended maximum contaminant levels under paragraph (2)(D) the National Academy of Sciences (or other organization preparing the report) shall evaluate and explain (separately and in composite) the impact of the following considerations:

"(A) The existence of groups or individuals in the population which are more susceptible to adverse effects than the normal healthy adult.

"(B) The exposure to contaminants in other media than drinking water (including exposures in food, in the ambient air, and in occupational settings) and the resulting body burden of contaminants.

"(C) Synergistic effects resulting from exposure to or interaction by two or more contaminants.

"(D) The contaminant exposure and body burden levels which alter physiological function or structure in a manner reasonably suspected of increasing the risk of illness.

"(4) In making the study under this subsection, the National Academy of Sciences (or other organization) shall collect and correlate (A) morbidity and mortality data and (B) monitored data on the quality of drinking water. Any conclusions based on such correlation shall be included in the report of the study.

"(5) 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.

"(6) Of the funds authorized to be appropriated to the Administrator by this title, such amounts as may be required shall be available to carry out the study and to make the report directed by paragraph (2) of this subsection.

"STATE PRIMARY ENFORCEMENT RESPONSIBILITY

"SEC. 1413. (a) For purposes of this title, a State has primary enforcement responsibility for public water systems during any period for which the Administrator determines (pursuant to regulations prescribed under subsection (b)) that such State—

"(1) has adopted drinking water regulations which (A) in the case of the period beginning on the date the national interim primary drinking water regulations are promulgated under section 1412 and ending on the date such regulations take effect are no less stringent than such regulations, and (B) in the case of the period after such effective date are no less stringent than the interim and revised national primary drinking water regulations in effect under such section;

"(2) has adopted and is implementing adequate procedures for the enforcement of such State regulations, including conducting such monitoring and making such inspections as the Administrator may require by regulation;

"(3) will keep such records and make such reports with respect to its activities under paragraphs (1) and (2) as the Administrator may require by regulation;

"(4) if it permits variances or exemptions, or both, from the requirements of its drinking water regulations which meet the requirements of paragraph (1), permits such variances and exemptions under conditions and in a manner which is not less stringent than the conditions under, and the manner in, which variances and exemptions may be granted under sections 1415 and 1416; and

"(5) has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances.

"(b)(1) The Administrator shall, by regulation (proposed within 180 days of the date of the enactment of this title), prescribe the manner in which a State may apply to the Administrator for a determination that the requirements of paragraphs (1), (2), (3), and (4) of subsection (a) are satisfied with respect to the State, the manner in which the determination is made, the period for which the determination will be effective, and the manner in which the Administrator may determine that such requirements are no longer met. Such regulations shall require that before a determination of the Administrator that such requirements are met or are no longer met with respect to a State may become effective, the Administrator shall notify such State of the determination and the reasons therefor and shall provide an opportunity for public hearing on the determination. Such regulations shall be promulgated (with such modifications as the Administrator deems appropriate) within 90 days of the publication of the proposed regulations in the Federal Register. The Administrator shall promptly notify in writing the chief executive officer of each State of the promulgation of regulations under this paragraph. Such notice shall contain a copy of the regulations and shall specify a State's authority under this title when it is determined to have primary enforcement responsibility for public water systems.

"(2) When an application is submitted in accordance with the Administrator's regulations under paragraph (1), the Administrator shall within 90 days of the date on which such application is submitted (A) make the determination applied for, or (B) deny the application and notify the applicant in writing of the reasons for his denial.

"FAILURE BY STATE TO ASSURE ENFORCEMENT OF DRINKING WATER REGULATIONS

"SEC. 1414. (a)(1)(A) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for public water systems (within the meaning of section 1413(a)) that any public water system—

"(i) for which a variance under section 1415 or an exemption under section 1416 is not in effect, does not comply with any national primary drinking water regulation in effect under section 1412, or

"(ii) for which a variance under section 1415 or an exemption under section 1416 is in effect, does not comply with any schedule or other requirements imposed pursuant thereto,

he shall so notify the State and provide such advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with such regulation or requirement by the earliest feasible time.

"(B) If the Administrator finds such failure to comply extends beyond the thirtieth day after the date of the notice given pursuant to subparagraph (A), he shall give public notice of such finding and request the State to report within fifteen days from the date of such public notice as to the steps being taken to bring the system into compliance (including reasons for anticipated steps to be taken to bring the system into compliance and for any failure to take steps to bring the system into compliance). If—

"(i) such failure to comply extends beyond the sixtieth day after the date of the notice given pursuant to subparagraph (A); and

"(ii)(α) the State fails to submit the report requested by the Administrator within the time period prescribed by the preceding sentence; or

"(β) the State submits such report within such period but the Administrator, after considering the report, determines that the State abused its discretion in carrying out primary enforcement responsibility for public water systems by both—

"(I) failing to implement by such sixtieth day adequate procedures to bring the system into compliance by the earliest feasible time, and

"(II) failing to assure by such day the provision through alternative means of safe drinking water by the earliest feasible time;

the Administrator may commence a civil action under subsection (b).

"(2) Whenever, on the basis of information available to him, the Administrator finds during a period during which a State does not have primary enforcement responsibility for public water systems that a public water system in such State—

"(A) for which a variance under section 1415(a)(2) or an exemption under section 1416(f) is not in effect, does not comply with any national primary drinking water regulation in effect under section 1412, or

"(B) for which a variance under section 1415(a)(2) or an exemption under section 1416(f) is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

he may commence a civil action under subsection (b).

"(b) The Administrator may bring a civil action in the appropriate United States district court to require compliance with a national primary drinking water regulation or with any schedule or other requirement imposed pursuant to a variance or exemption granted under section 1415 or 1416 if—

"(1) authorized under paragraph (1) or (2) of subsection (a), or

"(2) if requested by (A) the chief executive officer of the State in which is located the public water system which is not in compliance with such regulation or requirement, or (B) the agency of such State which has jurisdiction over compliance by public water systems in the State with national primary drinking water regulations or State drinking water regulations.

The court may enter, in an action brought under this subsection, such judgment as protection of public health may require, taking into consideration the time necessary to comply and the availability of alternative water supplies; and, if the court determines that there has been a willful violation of the regulation or schedule or other requirement with respect to which the action was brought, the court may, taking into account the seriousness of the violation, the population at risk, and other appropriate factors, impose on the violator a civil penalty of not to exceed $5,000 for each day in which such violation occurs.

"(c) Each owner or operator of a public water system shall give notice to the persons served by it—

"(1) of any failure on the part of the public water system to—

"(A) comply with an applicable maximum contaminant level or treatment technique requirement of, or a testing procedure prescribed by, a national primary drinking water regulation, or

"(B) perform monitoring required by section 1445(a), and

"(2) if the public water system is subject to a variance granted under section 1415(a)(1)(A) or 1415(a)(2) for an inability to meet a maximum contaminant level requirement or is subject to an exemption granted under section 1416, of—

"(A) the existence of such variance or exemption, and

"(B) any failure to comply with the requirements of any schedule prescribed pursuant to the variance or exemption.

The Administrator shall by regulation prescribe the form and manner for giving such notice. Such notice shall be given not less than once every 3 months, shall be given by publication in a newspaper of general circulation serving the area served by each such water system (as determined by the Administrator), shall be furnished to the other communications media serving such area, and shall be furnished to the communications media as soon as practicable after the discovery of the violation with respect to which the notice is required. If the water bills of a public water system are issued more often than once every 3 months, such notice shall be included in at least one water bill of the system every 3 months, and if a public water system issues its water bills less often than once every 3 months, such notice shall be included in each of the water bills issued by the system. Any person who willfully violates this subsection or regulations thereunder shall be fined not more than $5,000.

"(d) Whenever, on the basis of information available to him, the Administrator finds that within a reasonable time after national secondary drinking water regulations have been promulgated, one or more public water systems in a State do not comply with such secondary regulations, and that such noncompliance appears to result from a failure of such State to take reasonable action to assure that public water systems throughout such State meet such secondary regulations, he shall so notify the State.

"(e) Nothing in this title shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this title.

"(f) If the Administrator makes a finding of noncompliance (described in subparagraph (A) or (B) of subsection (a)(1)) with respect to a public water system in a State which has primary enforcement responsibility, the Administrator may, for the purpose of assisting that State in carrying out such responsibility and upon the petition of such State or public water system or persons served by such system, hold, after appropriate notice, public hearings for the purpose of gathering information from technical or other experts, Federal, State, or other public officials, representatives of such public water system, persons served by such system, and other interested persons on—

"(1) the ways in which such system can within the earliest feasible time be brought into compliance with the regulation or requirement with respect to which such finding was made, and

"(2) the means for the maximum feasible protection of the public health during any period in which such system is not in compliance with a national primary drinking water regulation or requirement applicable to a variance or exemption.

On the basis of such hearings the Administrator shall issue recommendations which shall be sent to such State and public water system and shall be made available to the public and communications media.

"VARIANCES

"SEC. 1415. (a) Notwithstanding any other provision of this part, variances from national primary drinking water regulations may be granted as follows:

"(1)(A) A State which has primary enforcement responsibility for public water systems may grant one or more variances from an applicable national primary drinking water regulation to one or more public water systems within its jurisdiction which, because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation despite application of the best technology, treatment techniques, or other means, which the Administrator finds are generally available (taking costs into consideration). Before a State may grant a variance under this subparagraph, the State must find that the variance will not result in an unreasonable risk to health. If a State grants a public water system a variance under this subparagraph, the State shall prescribe within one year of the date of the variance is granted, a schedule for—

"(i) compliance (including increments of progress) by the public water system with each contaminant level requirement with respect to which the variance was granted, and

"(ii) implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subparagraph may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice. A schedule prescribed pursuant to this subparagraph for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable (as the State may reasonably determine).

"(B) A State which has primary enforcement responsibility for public water systems may grant to one or more public water systems within its jurisdiction one or more variances from any provision of a national primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the State that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system. A variance granted under this subparagraph shall be conditioned on such monitoring and other requirements as the Administrator may prescribe.

"(C) Before a variance proposed to be granted by a State under subparagraph (A) or (B) may take effect, such State shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The State shall promptly notify the Administrator

of all variances granted by it. Such notification shall contain the reason for the variance (and in the case of a variance under subparagraph (A), the basis for the finding required by that subparagraph before the granting of the variance) and documentation of the need for the variance.

"(D) Each public water system's variance granted by a State under subparagraph (A) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to that subparagraph. The requirements of each schedule prescribed by a State pursuant to that subparagraph shall be enforceable by the State under its laws. Any requirement of a schedule on which a variance granted under that subparagraph is conditioned may be enforced under section 1414 as if such requirement was part of a national primary drinking water regulation.

"(E) Each schedule prescribed by a State pursuant to subparagraph (A) shall be deemed approved by the Administrator unless the variance for which it was prescribed is revoked by the Administrator under subparagraph (G) or the schedule is revised by the Administrator under such subparagraph.

"(F) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the variances granted under subparagraph (A) (and schedules prescribed pursuant thereto) and under subparagraph (B) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of variances and schedules as he deems necessary to carry out the purposes of this title, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (i) provide information respecting the location of data and other information respecting the variances to be reviewed (including data and other information concerning new scientific matters bearing on such variances), and (ii) advise of the opportunity to submit comments on the variances reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review together with findings responsive to comments submitted in connection with such review.

"(G)(i) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting variances under subparagraph (A) or (B) or that in a substantial number of cases the State has failed to prescribe schedules in accordance with subparagraph (A), the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting variances in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the variances and if the requirements applicable to the granting of the variances were complied with. A notice under this clause shall—

"(I) identify each public water system with respect to which the finding was made,

"(II) specify the reasons for the finding, and

"(III) as appropriate, propose revocations of specific variances or propose revised schedules or other requirements for specific public water systems granted variances, or both.

"(ii) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to clause (i) of this subparagraph. After a hearing on a notice pursuant to such clause, the Administrator shall (I) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (II) promulgate (with such modifications as he deems appropriate) such variance revocations and revised schedules or other requirements proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to clause (i) of this subparagraph, the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

"(iii) If a State is notified under clause (i) of this subparagraph of a finding of the Administrator made with respect to a variance granted a public water system within that State or to a schedule or other requirement for a variance and if, before a revocation of such variance or a revision of such schedule or other requirement promulgated by the Administrator takes effect, the State takes corrective action with respect to such variance or schedule or other requirement which the Administrator determines makes his finding inapplicable to such variance or schedule or other requirement, the Administrator shall rescind the application of his finding to that variance or schedule or other requirement. No variance revocation or revised schedule or other requirements may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule or other requirement was proposed.

"(2) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to grant variances in such State as the State would have under paragraph (1) if it had primary enforcement responsibility.

"(3) The Administrator may grant a variance from any treatment technique requirement of a national primary drinking water regulation upon a showing by any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant with respect to which such requirement was prescribed. A variance under this paragraph shall be conditioned on the use of the alternative treatment technique which is the basis of the variance.

"(b) Any schedule or other requirement on which a variance granted under paragraph (1)(B) or (2) of subsection (a) is conditioned may be enforced under section 1414 as if such schedule or other requirement was part of a national primary drinking water regulation.

"(c) If an application for a variance under subsection (a) is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

"(d) For purposes of this section, the term 'treatment technique requirement' means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 1401(1)(C)(ii)) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 1412(b)(3).

"EXEMPTIONS

"SEC. 1416. (a) A State which has primary enforcement responsibility may exempt any public water system within the State's jurisdiction from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that—

"(1) due to compelling factors (which may include economic factors), the public water system is unable to comply with such contaminant level or treatment technique requirement, and

"(2) the public water system was in operation on the effective date of such contaminant level or treatment technique requirement, and

"(3) the granting of the exemption will not result in an unreasonable risk to health.

"(b)(1) If a State grants a public water system an exemption under subsection (a), the State shall prescribe, within one year of the date the exemption is granted, a schedule for—

"(A) compliance (including increments of progress) by the public water system with each containment level requirement and treatment technique requirement with respect to which the exemption was granted, and

"(B) implementation by the public water system of such control measures as the State may require for each containment, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subsection may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

"(2)(A) A schedule prescribed pursuant to this subsection for a public water system granted an exemption under subsection (a) shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but (except as provided in subparagraph (B))—

"(i) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the interim national primary drinking water regulations promulgated under section 1412(a), not later than January 1, 1981; and

"(ii) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by revised national primary drinking water regulations, not later than seven years after the date such requirement takes effect.

"(B) Notwithstanding clauses (i) and (ii) of subparagraph (A) of this paragraph, the final date for compliance prescribed in a schedule prescribed pursuant to this subsection for an exemption granted for a public water system which (as determined by the State granting the exemption) has entered into an enforceable agreement to become a part of a regional public water system shall—

"(i) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by interim national primary drinking water regulations, be not later than January 1, 1983; and

"(ii) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by revised national primary drinking water regulations, be not later than nine years after such requirement takes effect.

"(3) Each public water system's exemption granted by a State under subsection (a) shall be conditioned by the State upon compliance by the public water system with the schedule prescribe by the State pursuant to this subsection. The requirements of each schedule prescribed by a State pursuant to this subsection shall be enforceable by the State under its laws. Any requirement of a schedule on which an exemption granted under this section is conditioned may be enforced under section 1414 as if such requirement was part of a national primary drinking water regulation.

"(4) Each schedule prescribed by a State pursuant to this subsection shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under subsection (d)(2) or the schedule is revised by the Administrator under such subsection.

"(c) Each State which grants an exemption under subsection (a) shall promptly notify the Administrator of the granting of such exemption. Such notification shall contain the reasons for the exemption (including the basis for the finding required by subsection (a)(3) before the exemption may be granted) and document the need for the exemption.

"(d)(1) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the exemptions granted (and schedules prescribed pursuant thereto) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of exemptions and schedules as he deems necessary to carry out the purposes of this title, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (A) provide information respecting the location of data and other information respecting the exemptions to be reviewed (including data and other information concerning new scientific matters bearing on such exemptions), and (B) advise of the opportunity to submit comments on the exemptions reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review together with findings responsive to comments submitted in connection with such review.

"(2)(a) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting exemptions under subsection (a) or failed to prescribe schedules in accordance with subsection (b), the Administrator shall notify the State of his finding. In determining if a State has abused its discretion in granting exemptions in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the exemptions and if the requirements applicable to the granting of the exemptions were complied with. A notice under this subparagraph shall—

"(i) identify each exempt public water system with respect to which the finding was made,

"(ii) specify the reasons for the finding, and

"(iii) as appropriate, propose revocations of specific exemptions or propose revised schedules for specific exempt public water systems, or both.

"(B) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to subparagraph (A). After a hearing on a notice pursuant to subparagraph (A), the Administrator shall (i) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (ii) promulgate (with such modifications as he deems appropriate) such exemption revocations and revised schedules proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to subparagraph (A), the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

"(C) If a State is notified under subparagraph (A) of a finding of the Administrator made with respect to an exemption granted a public water system within that State or to a schedule prescribed pursuant to such an exemption and if before a revocation of such exemption or a revision of such schedule promulgated by the Administrator takes effect the State takes corrective action with respect to such exemption or schedule which the Administrator determines makes his finding inapplicable to such exemption or schedule, the Administrator shall rescind the application of his finding to that exemption or schedule. No exemption revocation or revised schedule may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule was proposed.

"(e) For purposes of this section, the term 'treatment technique requirement' means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 1401(1)(C)(ii) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 1412(b)(3).

"(f) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to exempt public water systems in such State from maximum contaminant level requirements and treatment technique requirements under the same conditions and in the same manner as the State would be authorized to grant exemptions under this section if it had primary enforcement responsibility.

"(g) If an application for an exemption under this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

"PART C—PROTECTION OF UNDERGROUND SOURCES OF DRINKING WATER

"REGULATIONS FOR STATE PROGRAMS

"SEC. 1421. (a)(1) The Administrator shall publish proposed regulations for State underground injection control programs within 180 days after the date of enactment of this title. Within 180 days after publication of such proposed regulations, he shall promulgate such regulations with such modifications as he deems appropriate. Any regulation under this subsection may be amended from time to time.

"(2) Any regulation under this section shall be proposed and promulgated in accordance with section 553 of title 5, United States Code (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary, the National Drinking Water Advisory Council, and other appropriate Federal entities and with interested State entities.

"(b)(1) Regulations under subsection (a) for State underground injection programs shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources within the meaning of subsection (d)(2). Such regulations shall require that a State program, in order to be approved under section 1422—

"(A) shall prohibit, effective three years after the date of the enactment of this title, any underground injection in such State which is not authorized by a permit issued by the State (except that the regulations may permit a State to authorize underground injection by rule);

"(B) shall require (i) in the case of a program which provides for authorization of underground injection by permit, that the applicant for the permit to inject must satisfy the State that the underground injection will not endanger drinking water sources, and (ii) in the case of a program which provides for such an authorization by rule, that no rule may be promulgated which authorizes any underground injection which endangers drinking water sources;

"(C) shall include inspection, monitoring, recordkeeping, and reporting requirements; and

"(D) shall apply (i) as prescribed by section 1447(b), to underground injections by Federal agencies, and (ii) to underground injections by any other person whether or not occurring on property owned or leased by the United States.

"(2) Regulations of the Administrator under this section for State underground injection control programs may not prescribe requirements which interfere with or impede—

"(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

"(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

"(c)(1) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i)) temporary permits for underground injection which may be effective until the expiration of four years after the date of enactment of this title, if—

"(A) the Administrator finds that the State has demonstrated that it is unable and could not reasonably have been able to process all permit applications within the time available;

"(B) the Administrator determines the adverse effect on the environment of such temporary permits is not unwarranted;

"(C) such temporary permits will be issued only with respect to injection wells in operation on the date on which such State's permit program approved under this part first takes effect and for which there was inadequate time to process its permit application; and

"(D) the Administrator determines the temporary permits require the use of adequate safeguards established by rules adopted by him.

"(2) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b) (1) (B) (i)), but after reasonable notice and hearing, one or more temporary permits each of which is applicable to a particular injection well and to the underground injection of a particular fluid and which may be effective until the expiration of four years after the date of enactment of this title, if the State finds, on the record of such hearing—

"(A) that technology (or other means) to permit safe injection of the fluid in accordance with the applicable underground injection control program is not generally available (taking costs into consideration);

"(B) that injection of the fluid would be less harmful to health than the use of other available means of disposing of waste or producing the desired product; and

"(C) that available technology or other means have been employed (and will be employed) to reduce the volume and toxicity of the fluid and to minimize the potentially adverse effect of the injection on the public health.

"(d) For purposes of this part:

"(1) The term 'underground injection' means the subsurface emplacement of fluids by well injection.

"(2) Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.

"STATE PRIMARY ENFORCEMENT RESPONSIBILITY

"SEC. 1422. (a) Within 180 days after the date of enactment of this title, the Administrator shall list in the Federal Register each State for which in his judgment a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources. Such list may be amended from time to time.

"(b) (1) (A) Each State listed under subsection (a) shall within 270 days after the date of promulgation of any regulation under section 1421 (or, if later, within 270 days after such State is first listed under subsection (a)) submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State—

"(i) has adopted after reasonable notice and public hearings, and will implement, an underground injection control program which meets the requirements of regulations in effect under section 1421; and

"(ii) will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation.

"(B) Within 270 days of any amendment of a regulation under section 1421 revising or adding any requirement respecting State underground injection control programs, each State listed under subsection (a) shall submit (in such form and manner as the Administra-

tor may require) a notice to the Administrator containing a showing satisfactory to him that the State underground injection control program meets the revised or added requirement.

"(2) Within ninety days after the State's application under paragraph (1)(A) or notice under paragraph (1)(B) and after reasonable opportunity for presentation of views, the Administrator shall by rule either approve, disapprove, or approve in part and disapprove in part, the State's underground injection control program.

"(3) If the Administrator approves the State's program under paragraph (2), the State shall have primary enforcement responsibility for underground water sources until such time as the Administrator determines, by rule, that such State no longer meets the requirements of clause (i) or (ii) of paragraph (1)(A) of this subsection.

"(4) Before promulgating any rule under paragraph (2) or (3) of this subsection, the Administrator shall provide opportunity for public hearing respecting such rule.

"(c) If the Administrator disapproves a State's program (or part thereof) under subsection (b)(2), if the Administrator determines under subsection (b)(3) that a State no longer meets the requirements of clause (i) or (ii) of subsection (b)(1)(A), or if a State fails to submit an application or notice before the date of expiration of the period specified in subsection (b)(1), the Administrator shall by regulation within 90 days after the date of such disapproval, determination, or expiration (as the case may be) prescribe (and may from time to time by regulation revise) a program applicable to such State meeting the requirements of section 1421(b). Such program may not include requirements which interfere with or impede—

"(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

"(2) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection. Such program shall apply in such State to the extent that a program adopted by such State which the Administrator determines meets such requirements is not in effect. Before promulgating any regulation under this section, the Administrator shall provide opportunity for public hearing respecting such regulation.

"(d) For purposes of this title, the term 'applicable underground injection control program' with respect to a State means the program (or most recent amendment thereof) (1) which has been adopted by the State and which has been approved under subsection (b), or (2) which has been prescribed by the Administrator under subsection (2).

"FAILURE OF STATE TO ASSURE ENFORCEMENT OF PROGRAM

"SEC. 1423. (a)(1) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for underground water sources (within the meaning of section 1422(b)(3)) that any person who is subject to a requirement of an applicable underground injection control program in such State is violating such requirement, he shall so notify the State and the person violating such requirement. If the Administrator finds such failure to comply extends beyond the thirtieth day after the date of such notice, he shall give public notice of such finding and request the State to report

within 15 days after the date of such public notice as to the steps being taken to bring such person into compliance with such requirement (including reasons for anticipated steps to be taken to bring such person into compliance with such requirement and for any failure to take steps to bring such person into compliance with such requirement). If—

"(A) such failure to comply extends beyond the sixtieth day after the date of the notice given pursuant to the first sentence of this paragraph, and

"B) (i) the State fails to submit the report requested by the Administrator within the time period prescribed by the preceding sentence, or

"(ii) the State submits such report within such period but the Administrator, after considering the report, determines that by failing to take necessary steps to bring such person into compliance by such sixtieth day the State abused its discretion in carrying out primary enforcement responsibility for underground water sources,

the Administrator may commence a civil action under subsection (b) (1).

"(2) Whenever the Administrator finds during a period during which a State does not have primary enforcement responsibility for underground water sources that any person subject to any requirement of any applicable underground injection control program in such State is violating such requirement, he may commence a civil action under subsection (b) (1).

"(b) (1) When authorized by subsection (a), the Administrator may bring a civil action under this paragraph in the appropriate United States district court to require compliance with any requirement of an applicable underground injection control program. The court may enter such judgment as protection of public health may require, including, in the case of an action brought against a person who violates an applicable requirement of an underground injection control program and who is located in a State which has primary enforcement responsibility for underground water sources, the imposition of a civil penalty of not to exceed $5,000 for each day such person violates such requirement after the expiration of 60 days after receiving notice under subsection (a) (1).

"(2) Any person who violates any requirement of an applicable underground injection control program to which he is subject during any period for which the State does not have primary enforcement responsibility for underground water sources (A) shall be subject to a civil penalty of not more than $5,000 for each day of such violation, or (B) if such violation is willful, such person may, in lieu of the civil penalty authorized by clause (B), be fined not more than $10,000 for each day of such violation.

"(c) Nothing in this title shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting underground injection but no such law or regulation shall relieve any person of any requirement otherwise applicable under this title.

"INTERIM REGULATION OF UNDERGROUND INJECTIONS

"SEC. 1424. (a) (1) Any person may petition the Administrator to have an area of a State (or States) designated as an area in which no new underground injection well may be operated during the period beginning on the date of the designation and ending on the date on which the applicable underground injection control program covering

such area takes effect unless a permit for the operation of such well has been issued by the Administrator under subsection (b). The Administrator may so designate an area within a State if he finds that the area has one aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health.

"(2) Upon receipt of a petition under paragraph (1) of this subsection, the Administrator shall publish it in the Federal Register and shall provide an opportunity to interested persons to submit written data, views, or arguments thereon. Not later than the 30th day following the date of the publication of a petition under this paragraph in the Federal Register, the Administrator shall either make the designation for which the petition is submitted or deny the petition.

"(b) (1) During the period beginning on the date an area is designated under subsection (a) and ending on the date the applicable underground injection control program covering such area takes effect, no new underground injection well may be operated in such area unless the Administrator has issued a permit for such operation.

"(2) Any person may petition the Administrator for the issuance of a permit for the operation of such a well in such an area. A petition submitted under this paragraph shall be submitted in such manner and contain such information as the Administrator may require by regulation. Upon receipt of such a petition, the Administrator shall publish it in the Federal Register. The Administrator shall give notice of any proceeding on a petition and shall provide opportunity for agency hearing. The Administrator shall act upon such petition on the record of any hearing held pursuant to the preceding sentence respecting such petition. Within 120 days of the publication in the Federal Register of a petition submitted under this paragraph, the Administrator shall either issue the permit for which the petition was submitted or shall deny its issuance.

"(3) The Administrator may issue a permit for the operation of a new underground injection well in an area designated under subsection (a) only if he finds that the operation of such well will not cause contamination of the aquifer of such area so as to create a significant hazard to public health. The Administrator may condition the issuance of such a permit upon the use of such control measures in connection with the operation of such well, for which the permit is to be issued, as he deems necessary to assure that the operation of the well will not contaminate the aquifer of the designated area in which the well is located so as to create a significant hazard to public health.

"(c) Any person who operates a new underground injection well in violation of subsection (b) (1) shall be subject to a civil penalty of not more than $5,000 for each day in which such violation occurs, or (2) if such violation is willful, such person may, in lieu of the civil penalty authorized by clause (1), be fined not more than $10,000 for each day in which such violation occurs. If the Administrator has reason to believe that any person is violating or will violate subsection (b), he may petition the United States district court to issue a temporary restraining order or injunction (including a mandatory injunction) to enforce such subsection.

"(d) For purposes of this section, the term 'new underground injection well' means an underground injection well whose operation was not approved by appropriate State and Federal agencies before the date of the enactment of this title.

"(e) If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would

create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

"PART D—EMERGENCY POWERS

"EMERGENCY POWERS

"SEC. 1431. (a) Notwithstanding any other provision of this title, the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

"(b) Any person who willfully violates or fails or refuses to comply with any order issued by the Administrator under subsection (a)(1) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day in which such violation occurs or failure to comply continues.

"PART E—GENERAL PROVISIONS

"ASSURANCE OF AVAILABILITY OF ADEQUATE SUPPLIES OF CHEMICALS NECESSARY FOR TREATMENT OF WATER

"SEC. 1441. (a) If any person who uses chlorine, activated carbon, lime, ammonia, soda ash, potassium permanganate, caustic soda, or other chemical or substance for the purpose of treating water in any public water system or in any public treatment works determines that the amount of such chemical or substance necessary to effectively treat such water is not reasonably available to him or will not be so available to him when required for the effective treatment of such water, such person may apply to the Administrator for a certification (hereinafter in this section referred to as a 'certification of need') that the amount of such chemical or substance which such person requires to effectively treat such water is not reasonably available to him or will not be so available when required for the effective treatment of such water.

"(b)(1) An application for a certification of need shall be in such form and submitted in such manner as the Administrator may require

and shall (A) specify the persons the applicant determines are able to provide the chemical or substance with respect to which the application is submitted, (B) specify the persons from whom the applicant has sought such chemical or substance, and (C) contain such other information as the Administrator may require.

"(2) Upon receipt of an application under this section, the Administrator shall (A) publish in the Federal Register a notice of the receipt of the application and a brief summary of it, (B) notify in writing each person whom the President or his delegate (after consultation with the Administrator) determines could be made subject to an order required to be issued upon the issuance of the certification of need applied for in such application, and (C) provide an opportunity for the submission of written comments on such application. The requirements of the preceding sentence of this paragraph shall not apply when the Administrator for good cause finds (and incorporates the finding with a brief statement of reasons therefor in the order issued) that waiver of such requirements is necessary in order to protect the public health.

"(3) Within 30 days after—

"(A) the date a notice is published under paragraph (2) in the Federal Register with respect to an application submitted under this section for the issuance of a certification of need, or

"(B) the date on which such application is received if as authorized by the second sentence of such paragraph no notice is published with respect to such application,

the Administrator shall take action either to issue or deny the issuance of a certification of need.

"(c) (1) If the Administrator finds that the amount of a chemical or substance necessary for an applicant under an application submitted under this section to effectively treat water in a public water system or in a public treatment works is not reasonably available to the applicant or will not be so available to him when required for the effective treatment of such water, the Administrator shall issue a certification of need. Not later than seven days following the issuance of such certification, the President or his delegate shall issue an order requiring the provision to such person of such amounts of such chemical or substance as the Administrator deems necessary in the certification of need issued for such person. Such order shall apply to such manufacturers, producers, processors, distributors, and repackagers of such chemical or substance as the President or his delegate deems necessary and appropriate, except that such order may not apply to any manufacturer, producer, or processor of such chemical or substance who manufactures, produces, or processes (as the case may be) such chemical or substance solely for its own use. Persons subject to an order issued under this section shall be given a reasonable opportunity to consult with the President or his delegate with respect to the implementation of the order.

"(2) Orders which are to be issued under paragraph (1) to manufacturers, producers, and processors of a chemical or substance shall be equitably apportioned, as far as practicable, among all manufacturers, producers, and processors of such chemical or substance; and orders which are to be issued under paragraph (1) to distributors and repackagers of a chemical or substance shall be equitably apportioned, as far as practicable, among all distributors and repackagers of such chemical or substance. In apportioning orders issued under paragraph (1) to manufacturers, producers, processors, distributors, and repackagers of chlorine, the President or his delegate shall, in carrying out the requirements of the preceding sentence, consider—

"(A) the geographical relationships and established commercial relationships between such manufacturers, producers, processors, distributors, and repackagers and the persons for whom the orders are issued;

"(B) in the case of orders to be issued to producers of chlorine, the (i) amount of chlorine historically supplied by each such producer to treat water in public water systems and public treatment works, and (ii) share of each such producer of the total annual production of chlorine in the United States; and

"(C) such other factors as the President or his delegate may determine are relevant to the apportionment of orders in accordance with the requirements of the preceding sentence.

"(3) Subject to subsection (f), any person for whom a certification of need has been issued under this subsection may upon the expiration of the order issued under paragraph (1) upon such certification apply under this section for additional certifications.

"(d) There shall be available as a defense to any action brought for breach of contract in a Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange a chemical or substance subject to an order issued pursuant to subsection (c)(1), that such delay or failure was caused solely by compliance with such order.

"(e)(1) Whoever knowingly fails to comply with any order issued pursuant to subsection (c)(1) shall be fined not more than $5,000 for each such failure to comply.

"(2) Whoever fails to comply with any order issued pursuant to subsection (c)(1) shall be subject to a civil penalty of not more than $2,500 for each such failure to comply.

"(3) Whenever the Administrator or the President or his delegate has reason to believe that any person is violating or will violate any order issued pursuant to subsection (c)(1), he may petition a United States district court to issue a temporary restraining order or preliminary or permanent injunction (including a mandatory injunction) to enforce the provision of such order.

"(f) No certification of need or order issued under this section may remain in effect—

"(1) for more than one year, or

"(2) after June 30, 1977,

whichever occurs first.

"RESEARCH, TECHNICAL ASSISTANCE, INFORMATION, TRAINING OF PERSONNEL

"SEC. 1442. (a)(1) The Administrator may conduct research, studies, and demonstrations relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments of man resulting directly or indirectly from contaminants in water, or to the provision of a dependably safe supply of drinking water, including—

"(A) improved methods (i) to identify and measure the existence of contaminants in drinking water (including methods which may be used by State and local health and water officials), and (ii) to identify the source of such contaminants;

"(B) improved methods to identify and measure the health effects of contaminants in drinking water;

"(C) new methods of treating raw water to prepare it for drinking, so as to improve the efficiency of water treatment and to remove contaminants from water;

"(D) improved methods for providing a dependably safe supply of drinking water, including improvements in water purification and distribution, and methods of assessing the health related hazards of drinking water; and

"(E) improved methods of protecting underground water systems from contamination.

"(2) The Administrator shall, to the maximum extent feasible, provide technical assistance to the States and municipalities in the establishment and administration of public water system supervision programs (as defined in section 1443(c)(1)).

"(3) The Administrator shall conduct studies, and make periodic reports to Congress, on the costs of carrying out regulations prescribed under section 1412.

"(4) The Administrator shall conduct a survey and study of—

"(A) disposal of waste (including residential waste) which may endanger underground water which supplies, or can reasonably be expected to supply, any public water systems, and

"(B) means of control of such waste disposal.

Not later than one year after the date of enactment of this title, he shall transmit to the Congress the results of such survey and study, together with such recommendations as he deems appropriate.

"(5) The Administrator shall carry out a study of methods of underground injection which do not result in the degradation of underground drinking water sources.

"(6) The Administrator shall carry out a study of methods of preventing, detecting, and dealing with surface spills of contaminants which may degrade underground water sources for public water systems.

"(7) The Administrator shall carry out a study of virus contamination of drinking water sources and means of control of such contamination.

"(8) The Administrator shall carry out a study of the nature and extent of the impact on underground water which supplies or can reasonably be expected to supply public water systems of (A) abandoned injection or extraction wells; (B) intensive application of pesticides and fertilizers in underground water recharge areas; and (C) ponds, pools, lagoons, pits, or other surface disposal of contaminants in underground water recharge areas.

"(9) The Administrator shall conduct a comprehensive study of public water supplies and drinking water sources to determine the nature, extent, sources of and means of control of contamination by chemicals or other substances suspected of being carcinogenic. Not later than six months after the date of enactment of this title, he shall transmit to the Congress the initial results of such study, together with such recommendations for further review and corrective action as he deems appropriate.

"(b) In carrying out this title, the Administrator is authorized to—

"(1) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water together with appropriate recommendations in connection therewith;

"(2) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to the purposes of this title;

"(3) make grants to, and enter into contracts with, any public agency, educational institution, and any other organization, in accordance with procedures prescribed by the Administrator, under which he may pay all or a part of the costs (as may be

determined by the Administrator) of any project or activity which is designed—

"(A) to develop, expand, or carry out a program (which may combine training education and employment) for training persons for occupations involving the public health aspects of providing safe drinking water;

"(B) to train inspectors and supervisory personnel to train or supervise persons in occupations involving the public health aspects of providing safe drinking water; or

"(C) to develop and expand the capability of programs of States and municipalities to carry out the purposes of this title (other than by carrying out State programs of public water system supervision or underground water source protection (as defined in section 1443(d))).

"(c) There are authorized to be appropriated to carry out the provisions of this section $15,000,000 for the fiscal year ending June 30, 1975; $25,000,000 for the fiscal year ending June 30, 1976; and $35,000,000 for the fiscal year ending June 30, 1977.

"GRANTS FOR STATE PROGRAMS

"SEC. 1443. (a)(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out public water system supervision programs.

"(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State—

"(A) has established or will establish within one year from the date of such grant a public water system supervision program, and

"(B) will, within that one year, assume primary enforcement responsibility for public water systems within the State.

No grant may be made to a State under paragraph (1) for any period beginning more than one year after the date of the State's first grant unless the State has assumed and maintains primary enforcement responsibility for public water systems within the State.

"(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, a public water system supervision program.

"(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, number of public water systems, and other relevant factors. No State shall receive less than 1 per centum of the annual appropriation for grants under paragraph (1): *Provided*, That the Administrator may, by regulation, reduce such percentage in accordance with the criteria specified in this paragraph: *And provided further*, That such percentage shall not apply to grants allotted to Guam, American Samoa, or the Virgin Islands.

"(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1976, and $25,000,000 for the fiscal year ending June 30, 1977.

"(b)(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out underground water source protection programs.

"(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State—

"(A) has established or will establish within two years from the date of such grant an underground water source protection, and

"(B) will, within such two years, assume primary enforcement responsibility for underground water sources within the State.

No grant may be made to a State under paragraph (1) for any period beginning more than two years after the date of the State's first grant unless the State has assumed and maintains primary enforcement responsibility for underground water sources within the State.

"(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, an underground water source protection program.

"(4) In each fiscal year, the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, and other relevant factors.

"(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1976, and $7,500,000 for the fiscal year ending June 30, 1977.

"(c) For purposes of this section:

"(1) The term 'public water system supervision program' means a program for the adoption and enforcement of drinking water regulations (with such variances and exemptions from such regulations under conditions and in a manner which is not less stringent than the conditions under, and the manner in, which variances and exemptions may be granted under sections 1415 and 1416) which are no less stringent than the national primary drinking water regulations under section 1412, and for keeping records and making reports required by section 1413(a)(3).

"(2) The term 'underground water source protection program' means a program for the adoption and enforcement of a program which meets the requirements of regulations under section 1421 and for keeping records and making reports required by section 1422(b)(1)(A)(ii).

"SPECIAL STUDY AND DEMONSTRATION PROJECT GRANTS; GUARANTEED LOANS

"SEC. 1444. (a) The Administrator may make grants to any person for the purposes of—

"(1) assisting in the development and demonstration (including construction) of any project which will demonstrate a new or improved method, approach, or technology, for providing a dependably safe supply of drinking water to the public; and

"(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health implications involved in the reclamation, recycling,

and reuse of waste waters for drinking and the processes and methods for the preparation of safe and acceptable drinking water.

"(b) Grants made by the Administrator under this section shall be subject to the following limitations:

"(1) Grants under this section shall not exceed 66⅔ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

"(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

"(3) Grants under this section shall not be made for any project unless the Administrator determines, after consulting the National Drinking Water Advisory Council, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

"(4) Priority for grants under this section shall be given where there are known or potential public health hazards which require advanced technology for the removal of particles which are too small to be removed by ordinary treatment technology.

"(c) For the purposes of making grants under subsection (a) and (b) of this section there are authorized to be appropriated $7,500,000 for the fiscal year ending June 30, 1975; and $7,500,000 for the fiscal year ending June 30, 1976; and $10,000,000 for the fiscal year ending June 30, 1977.

"(d) The Administrator during the fiscal years ending June 30, 1975, and June 30, 1976, shall carry out a program of guaranteeing loans made by private lenders to small public water systems for the purpose of enabling such systems to meet national primary drinking water regulations (including interim regulations) prescribed under section 1412. No such guarantee may be made with respect to a system unless (1) such system cannot reasonably obtain financial assistance necessary to comply with such regulations from any other source, and (2) the Administrator determines that any facilities constructed with a loan guaranteed under this subsection is not likely to be made obsolete by subsequent changes in primary regulations. The aggregate amount of indebtedness guaranteed with respect to any system may not exceed $50,000. The aggregate amount of indebtedness guaranteed under this subsection may not exceed $50,000,000. The Administrator shall prescribe regulations to carry out this subsection.

"RECORDS AND INSPECTIONS

"SEC. 1445. (a) Every person who is a supplier of water, who is or may be otherwise subject to a primary drinking water regulation prescribed under section 1412 or to an applicable underground injection control program (as defined in section 1422(c)), who is or may be subject to the permit requirement of section 1424 or to an order issued under section 1441, or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations under this title, in determining whether such person has acted or is acting in compliance with this title, or in administering any program of financial assistance under this title.

"(b)(1) Except as provided in paragraph (2), the Administrator, or representatives of the Administrator duly designated by him, upon presenting appropriate credentials and a written notice to any supplier of water or other person subject to a national primary drinking water regulation prescribed under section 1412 or applicable underground injection control program (or person in charge of any of the property of such supplier or other person), is authorized to enter any establishment, facility, or other property of such supplier or other person in order to determine whether such supplier or other person has acted or is acting in compliance with this title, including for this purpose, inspection, at reasonable times, of records, files, papers, processes, controls, and facilities, or in order to test any feature of a public water system, including its raw water source. The Administrator or the Comptroller General (or any representative designated by either) shall have access for the purpose of audit and examination to any records, reports, or information of a grantee which are required to be maintained under subsection (a) or which are pertinent to any financial assistance under this title.

"(2) No entry may be made under the first sentence of paragraph (1) in an establishment, facility, or other property of a supplier of water or other person subject to a national primary drinking water regulation if the establishment, facility, or other property is located in a State which has primary enforcement responsibility for public water systems unless, before written notice of such entry is made, the Administrator (or his representative) notifies the State agency charged with responsibility for safe drinking water of the reasons for such entry. The Administrator shall, upon a showing by the State agency that such an entry will be detrimental to the administration of the State's program of primary enforcement responsibility, take such showing into consideration in determining whether to make such entry. No State agency which receives notice under this paragraph of an entry proposed to be made under paragraph (1) may use the information contained in the notice to inform the person whose property is proposed to be entered of the proposed entry; and if a State agency so uses such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency has provided him satisfactory assurances that it will no longer so use information contained in a notice under this paragraph.

"(c) Whoever fails or refuses to comply with any requirement of subsection (a) or to allow the Administrator, the Comptroller General, or representatives of either, to enter and conduct any audit or inspection authorized by subsection (b) may be fined not more than $5,000.

"(d)(1) Subject to paragraph (2), upon a showing satisfactory to the Administrator by any person that any information required under this section from such person, if made public, would divulge trade secrets or secret processes of such person, the Administrator shall consider such information confidential in accordance with the purposes of section 1905 of title 18 of the United States Code. If the applicant fails to make a showing satisfactory to the Administrator, the Administrator shall give such applicant thirty days' notice before releasing the information to which the application relates (unless the public health or safety requires an earlier release of such information).

"(2) Any information required under this section (A) may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this title or to committees of the Congress, or when relevant in any proceeding under this title, and (B) shall be disclosed to the extent it deals with the level of contaminants in drinking water. For purposes of this subsection the

term 'information required under this section' means any papers, books, documents, or information, or any particular part thereof, reported to or otherwise obtained by the Administrator under this section.

"(e) For purposes of this section, (1) the term 'grantee' means any person who applies for or receives financial assistance, by grant, contract, or loan guarantee under this title, and (2) the term 'person' includes a Federal agency.

"NATIONAL DRINKING WATER ADVISORY COUNCIL

"SEC. 1446. (a) (1) There is established a National Drinking Water Advisory Council which shall consist of fifteen members appointed by the Administrator after consultation with the Secretary. Five members shall be appointed from the general public; five members shall be appointed from appropriate State and local agencies concerned with water hygiene and public water supply; and five members shall be appointed from representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. Each member of the Council shall hold office for a term of three years, except that—

"(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

"(2) the terms of the members first taking office shall expire as follows: Five shall expire three years after the date of enactment of this title, five shall expire two years after such date, and five shall expire one year after such date, as designated by the Administrator at the time of appointment.

The members of the Council shall be eligible for reappointment.

"(b) The Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this title.

"(c) Members of the Council appointed under this section shall, while attending meetings or conferences of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

"(d) Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

"FEDERAL AGENCIES

"SEC. 1447. (a) Each Federal agency having jurisdiction over any federally owned or maintained public water system shall comply with all national primary drinking water regulations in effect under section 1412, and each Federal agency shall comply with any applicable underground injection control program, and shall keep such records and submit such reports as may be required under such program.

"(b) The Administrator shall waive compliance with subsection (a) upon request of the Secretary of Defense and upon a determination

by the President that the requested waiver is necessary in the interest of national security. The Administrator shall maintain a written record of the basis upon which such waiver was granted and make such record available for in camera examination when relevant in a judicial proceeding under this title. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for national security purposes, unless, upon the request of the Secretary of Defense, the Administrator determines to omit such publication because the publication itself would be contrary to the interests of national security, in which event the Administrator shall submit notice to the Armed Services Committee of the Senate and House of Representatives.

"JUDICIAL REVIEW

"SEC. 1448. (a) A petition for review of—

"(1) action of the Administrator in promulgating any national primary drinking water regulation under section 1412, any regulation under section 1413(b)(1), any regulation under section 1414(c), any regulation for State underground injection control programs under section 1421, or any general regulation for the administration of this title may be filed only in the United States Court of Appeals for the District of Columbia Circuit; and

"(2) action of the Administrator in promulgating any other regulation under this title, issuing any order under this title, or making any determination under this title may be filed only in the United States court of appeals for the appropriate circuit.

Any such petition shall be filed within the 45-day period beginning on the date of the promulgation of the regulation or issuance of the order with respect to which review is sought or on the date of the determination with respect to which review is sought, and may be filed after the expiration of such 45-day period if the petition is based solely on grounds arising after the expiration of such period. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

"(b) The United States district courts shall have jurisdiction of actions brought to review (1) the granting of, or the refusing to grant, a variance or exemption under section 1415 or 1416 or (2) the requirements of any schedule prescribed for a variance or exemption under such section or the failure to prescribe such a schedule. Such an action may only be brought upon a petition for review filed with the court within the 45-day period beginning on the date the action sought to be reviewed is taken or, in the case of a petition to review the refusal to grant a variance or exemption or the failure to prescribe a schedule, within the 45-day period beginning on the date action is required to be taken on the variance, exemption, or schedule, as the case may be. A petition for such review may be filed after the expiration of such period if the petition is based solely on grounds arising after the expiration of such period. Action with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

"(c) In any judicial proceeding in which review is sought of a determination under this title required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence and shows to the satisfaction

of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

"CITIZEN'S CIVIL ACTION

"SEC. 1449. (a) Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

"(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement prescribed by or under this title, or

"(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this title which is not discretionary with the Administrator.

No action may be brought under paragraph (1) against a public water system for a violation of a requirement prescribed by or under this title which occurred within the 27-month period beginning on the first day of the month in which this title is enacted. The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce in an action brought under this subsection any requirement prescribed by or under this title or to order the Administrator to perform an act or duty described in paragraph (2), as the case may be.

"(b) No civil action may be commenced—

"(1) under subsection (a)(1) of this section respecting violation of a requirement prescribed by or under this title—

"(A) prior to sixty days after the plaintiff has given notice of such violation (i) to the Administrator, (ii) to any alleged violator of such requirement and (iii) to the State in which the violation occurs, or

"(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or

"(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator.

Notice required by this subsection shall be given in such manner as the Administrator shall prescribe by regulation. No person may commence a civil action under subsection (a) to require a State to prescribe a schedule under section 1415 or 1416 for a variance or exemption, unless such person shows to the satisfaction of the court that the State has in a substantial number of cases failed to prescribe such schedules.

"(c) In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

"(d) The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any requirement prescribed by or under this title or to seek any other relief.

"GENERAL PROVISIONS

"SEC. 1450. (a)(1) The Administrator is authorized to prescribe such regulations as are necessary or appropriate to carry out his functions under this title.

"(2) The Administrator may delegate any of his functions under this title (other than prescribing regulations) to any officer or employee of the Agency.

"(b) The Administrator, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as he deems necessary to assist him in carrying out the purposes of this title.

"(c) Upon the request of a State or interstate agency, the Administrator may assign personnel of the Agency to such State or interstate agency for the purposes of carrying out the provisions of this title.

"(d)(1) The Administrator may make payments of grants under this title (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as he may determine.

"(2) Financial assistance may be made available in the form of grants only to individuals and nonprofit agencies or institutions. For purposes of this paragraph, the term 'nonprofit agency or institution' means an agency or institution no part of the net earnings of which inure, or may lawfully inure, to the benefit of any private shareholder or individual.

"(e) The Administrator shall take such action as may be necessary to assure compliance with provisions of the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a–276a(5)). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

"(f) The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this title to which the Administrator is a party. Unless, 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.

"(g) The provisions of this title shall not be construed as affecting any authority of the Administrator under part G of title III of this Act.

"(h) Not later than April 1 of each year, the Administrator shall submit to the Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives a report respecting the activities of the Agency under this

title and containing such recommendations for legislation as he considers necessary. The report of the Administrator under this subsection which is due not later than April 1, 1975, and each subsequent report of the Administrator under this subsection shall include a statement on the actual and anticipated cost to public water systems in each State of compliance with the requirements of this title. The Office of Management and Budget may review any report required by this subsection before its submission to such committees of Congress, but the Office may not revise any such report, require any revision in any such report, or delay its submission beyond the day prescribed for its submission, and may submit to such committees of Congress its comments respecting any such report.

"(i)(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

"(A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this title or a proceeding for the administration or enforcement of drinking water regulations or underground injection control programs of a State,

"(B) testified or is about to testify in any such proceeding, or

"(C) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this title.

"(2)(A) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the 'Secretary') alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

"(B)(i) Upon receipt of a complaint filed under subparagraph (A), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within 90 days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by clause (ii) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

"(ii) If in response to a complaint filed under subparagraph (A) the Secretary determines that a violation of paragraph (1) has occurred, the Secretary shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (III) compensatory damages, and (IV) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess

against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

"(3)(A) Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5 of the United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

"(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

"(4) Whenever a person has failed to comply with an order issued under paragraph (2)(B), the Secretary shall file a civil action in the United States District Court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages. Civil actions filed under this paragraph shall be heard and decided expeditiously.

"(5) Any nondiscretionary duty imposed by this section is enforceable in mandamus proceeding brought under section 1361 of title 28 of the United States Code.

"(6) Paragraph (1) shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this title."

(b) Section 2(f) of the Public Health Service Act is amended by inserting "(1)" after "except that" and by inserting before the semicolon at the end thereof the following: ", and (2) as used in title XIV such term includes Guam, American Samoa, and the Trust Territory of the Pacific Islands".

RURAL WATER SURVEY

SEC. 3. (a) The Administrator of the Environmental Protection Agency shall (after consultation with the Secretary of Agriculture and the several States) enter into arrangements with public or private entities as may be appropriate to conduct a survey of the quantity, quality, and availability of rural drinking water supplies. Such survey shall include, but not be limited to, the consideration of the number of residents in each rural area—

(1) presently being inadequately served by a public or private drinking water supply system, or by an individual home drinking water supply system;

(2) presently having limited or otherwise inadequate access to drinking water;

(3) who, due to the absence or inadequacy of a drinking water supply system, are exposed to an increased health hazard; and

(4) who have experienced incidents of chronic or acute illness, which may be attributed to the absence or inadequacy of a drinking water supply system.

(b) Such survey shall be completed within eighteen months of the date of enactment of this Act and a final report thereon submitted, not later than six months after the completion of such survey, to the President for transmittal to the Congress. Such report shall include recommendations for improving rural water supplies.

(c) There are authorized to be appropriated to carry out the provisions of this section $1,000,000 for the fiscal year ending June 30, 1975; $2,000,000 for the fiscal year ending June 30, 1976; and $1,000,000 for the fiscal year ending June 30, 1977.

BOTTLED DRINKING WATER

SEC. 4. Chapter IV of the Federal Food, Drug, and Cosmetic Act is amended by adding after section 409 the following new section:

"BOTTLED DRINKING WATER STANDARDS

"SEC. 410. Whenever the Administrator of the Environmental Protection Agency prescribes interim or revised national primary drinking water regulations under section 1412 of the Public Health Service Act, the Secretary shall consult with the Administrator and within 180 days after the promulgation of such drinking water regulations either promulgate amendments to regulations under this chapter applicable to bottled drinking water or publish in the Federal Register his reasons for not making such amendments.".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

FOR IMMEDIATE RELEASE DECEMBER 17, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I am pleased to have signed the Safe Drinking Water Act (S. 433). Much effort has gone into the development of this legislation as much as for any enacted in this session of Congress.

This Administration proposed a Safe Drinking Water Act and several others were introduced by Members of Congress. All of these bills had the same objectives: to increase protection of the public's health. Many compromises had to be made before this bill reached my desk. Yet it is a strong bill, reflecting the combined efforts of the Congress and the Administration.

This legislation will enhance the safety of public drinking water supplies in this country through the establishment and enforcement of national drinking water standards. The Environmental Protection Agency has the primary responsiblity for establishing our national standards. The States have the primary responsibility of enforcing them and for otherwise ensuring the quality of drinking water. In some situations where States fail to enforce the standards, the Federal Government could. I believe this will seldom be necessary. During the extensive consideration of this legislation, spokesmen for the Administration opposed extensive Federal involvement in what has traditionally been State and local regulatory matters, and unnecessary costs to the Federal Government. Even with the compromises that were made, I still have reservations about those two aspects of this bill; and I intend that it be administered so as to minimize both Federal involvement and costs.

The bill enhances the ability of the Federal Government to conduct research into the health effects of contaminants in drinking water. Recent news stories have highlighted several potential drinking water problems that can only be resolved through research. I am pleased to say that we are already moving ahead on these problems.

Nothing is more essential to the life of every single American than clean air, pure food, and safe drinking water. There have been strong national programs to improve the quality of our air and the purity of our food. This bill will provide us with the protection we need for drinking water.

# # #

(2)

December 5, 1974

Dear Mr. Director:

The following bills were received at the White House on December 5th:

S. 433
S. 3537
H. J. Res. 444

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

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