Stuart Shapiro
05/28/2002 02:48:52

Record Type: Record

To: John F. Morrall III/OMB/EOP@EOP

cc:
Subject: Comments on OMB's "Draft Report to Congress on the Costs and Benefits of Federal Regulation"

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Mike Keegan <keegan@bookcase.com>
05/28/2002 01:39:02 PM

Record Type: Record

To: Stuart Shapiro/OMB/EOP@EOP

cc:
Subject: Comments on OMB's "Draft Report to Congress on the Costs and Benefits of Federal Regulation"

National Rural Water Association
101 Constitution Ave., NW Suite 900
Washington, DC 20001
[p] 202-742-4416 [f] 202-742-4422
keegan@bookcase.com

TO: John Morrall, Office of Information and Regulatory Affairs,
FROM: Mike Keegan, Analyst
RE: Comments on OMB's "Draft Report to Congress on the Costs and Benefits of Federal Regulation"
DATE: 5/24/2002

We are writing in response to OMB's "Draft Report to Congress on the Costs and Benefits of Federal Regulation" request for nominations of "specific" agency actions that impose large burdens on small communities and are the result of "inadequate" analysis.

We urge you to call for further analysis or reconsideration of two administrative decisions made by the USEPA in promulgating the drinking water rule for arsenic:

1) EPA's failure to identify particular levels of arsenic concentrations envisioned by the Safe Drinking Water **Act,** and

2) EPA's decisions do not authorize any use of variance (affordable) technology for small communities.

1) EPA'S DECISIONS ON PARTICULAR LEVELS

As you are aware, the U.S. EPA established a standard of 10 parts per billion (ppb) for arsenic in drinking water. It would seem that common sense would dictate that any level above the standard would be a health risk. However, when pressed by the statue and Congress to confirm this, EPA didn't or couldn't.

In a March report, EPA did not find that arsenic concentrations above their standard necessarily present an "unreasonable risk to health." [USEPA, Exemptions & the Arsenic Rule, March 2002, p. 11, #71

Instead of identifying the levels of arsenic that are "protective of public" [42USC300g-1(b)(15)(B)] or don't present "an unreasonable risk *to* health" [42USC300g-5(a)(3)] as named in the Safe Drinking Water Act and that the Agency was requested to name by several Congressmen, EPA creatively chose to identify what these levels are not.

"EPA is determining what does not pose an unreasonable risk to health with respect to arsenic, rather than address the much more complex issue of what does constitute an unreasonable risk to health."
[USEPA, Exemptions & the Arsenic Rule, March 2002, p. **11,** #71

Does this make sense? EPA can't say what "is" a health risk, only what is "not" a health risk. Are citizen's supposed to be persuaded by EPA that they should triple their water rates on low income families to treat their water when EPA can't say their arsenic level is not protective or is an unreasonable risk?

EPA's decision, not to identify for the public, levels of arsenic that are an unreasonable risk to health (even identifying that their maximum contaminant levels expresses this level) is confounding consumers who are expected to be persuaded of the health risks of arsenic levels above the EPA standard.

Should EPA be able to not make difficult decisions because they are "complex" determinations? If EPA can't determine what arsenic level is "protective of public health" or "an unreasonable risk to health" they can't claim that their 10ppb standard presents an "an unreasonable risk to health" or that 10.5 or 20 ppb is not "protective of public health."

We believe that EPA should be required to identify the level contemplated in the law. If they can't, we should not remove authority to make these decisions from the local families that have drink water and pay for the treatment.

Since the agency has not provided a clear definition or principle for determining URTH, it will be impossible to apply the definition to the other 90+ regulated contaminants - which it should.

2) EPA's DECISION NOT TO USE AFFORDABLE TECHNOLOGY

In 1996, the Safe Drinking Water Act Amendments included a variance technology (affordable technology) provision intending to make compliance affordable for small communities. However, since the 1996 amendments, the only variance we have seen granted by EPA was for the City of Columbus, Ohio.

The January 22, 2001 arsenic rule did not authorize any use of variance (affordable) technology for small communities because EPA adopted a policy that families can "afford" the rule's required treatment costs. To make that determination, EPA decided that households can afford annual water rates totaling 2.5% of nationwide median household income (MHI) - or over $1,000 per household according to the U.S. Census Bureau, Current Population Survey. Obviously, many rural households, with only a fraction of nationwide median household income, can't reasonably afford over $1,000 a year. We feel that EPA's determination to use the 2.5% MHI affordability level may not have adequately considered environmental justice issues including the ability of low-income and rural populations to afford water service. This EPA decision needs to be changed. The $1,000 figure is far too high for residents of such communities.

The MHI standard appears to adversely impact rural communities that have higher percentages of people living in poverty. However, the arsenic rule primarily impacts rural communities. The MHI standard does not consider the important differences between median-income households and low-income households' ability to afford up to $1,000 a year in water bills. EPA concluded that there was insufficient evidence to accept the contention that "an increase in water bills would force a low-income household to trade off health care or some other 'essential' expenditure to pay the water bill." However, numerous studies show that low-income households already are forced to make serious tradeoffs that affect their health and well-being, including foregoing food and medical care.

For any small system variance technology, did EPA utilize the broadest definition of "other means" to include low cost simply (innovative) treatment? For example, in the Columbus variance, EPA did not even limit their variance technology to treating the drinking water.

CONCLUSION

Every community wants to provide safe water and meet all drinking water standards. However, small communities face unlimited challenges and needs - with limited financial, administrative, and technical resources. Ensuring the best possible public health protection in those communities means ensuring that resources are allocated in the most effective manner. We would emphatically reiterate that we hope you will be able to write a rule that allows for small systems to utilize all the flexibility that Congress included in the Act.

Office of Management and Budget, NEOB, Room 10235, 725 17th Street, NW., Washington, DC 20503.
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 - rural water comments.doc

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In a March report, EPA did not find that arsenic concentrations above their standard necessarily present an "unreasonable risk to health." [USEPA, Exemptions & the Arsenic Rule, March 2002, p. **11, #7]**

Instead of identifying the levels of arsenic that are "protective of public" **[42USC300g-1(b)(15)(B)]** or don't present "an unreasonable risk to health'' **[42USC300g-5(a)(3)]** as named in the Safe Drinking Water Act and that the Agency was requested to name by several Congressmen, EPA creatively chose to identify what these levels are not.

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