

DATE: September 8, 2006, Revised January 30, 2013; **September 4, 2014**

TO: Office of Drinking Water Staff

FROM: John J. Aulbach II, P.E., Director 
Office of Drinking Water

SUBJECT: PERMITS & PROJECT REVIEW – Policy for Issuing Operation Permits

Revision Highlights: The waterworks definition has been revised to comply with recent legislation.

Clarification has been added that the use of bottled water is not allowed to be used as a substitute for compliance with the definition of a waterworks.

Clarification has been added that water systems that provide subsequent treatment may be classified as waterworks, in certain cases.

Inappropriate references to former Working Memos have been deleted.

SUMMARY STATEMENT

This memo clarifies the Office of Drinking Water's (ODW) authority for issuing Waterworks Operation Permits. Clarification is provided with respect to the sub-classifications of noncommunity water systems. This memo also provides guidance on reliability requirements, grandparented waterworks, permit exemptions and variances. It is intended to be used as an interim guide for ODW staff, while working with the Office of Environmental Health Services (OEHS) to identify water systems currently under OEHS' jurisdiction, and transition oversight of those determined to be waterworks to the ODW.

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I. DEFINITIONS

A. "Waterworks"

Waterworks means a system that serves piped water for human consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year. "Waterworks" includes all structures, equipment and appurtenances used in the storage, collection, purification, treatment and distribution of pure water except the piping and fixtures inside the building where such water is delivered (see § 32.1-167 of the *Code of Virginia*).

Exemptions. Section 32.1-168 of the *Code of Virginia* states: "The provisions of this article shall not be applicable to a waterworks which meets all of the following conditions:

1. The waterworks consists only of distribution and storage facilities and does not have any collection or treatment facilities;
2. The waterworks obtains all of its water from, but is not owned or operated by, a waterworks to which this article is applicable;
3. The waterworks does not sell water to any person; and,
4. The waterworks is not a carrier which conveys passengers in interstate commerce".

NOTE: To help clarify Item #3 above, a distributor of water for human consumption "sells" water if it charges consumers for the water as a separate item or bills separately for the water it provides. Conversely, if the distributor includes the charges for water in the rental fee, then it is not selling water. It is irrelevant whether water is sold for a profit or not, or whether the distributor is a public or private entity. (see EPA WSG118, dated March 13, 1998, in Appendix C.)

Excluded Facilities. In addition, ODW has intentionally excluded from regulation the following facilities that are connected to a primary waterworks:

1. Apartment/condo complexes which sub-meter individual units if the local utility charges the residents directly, or if water usage is included as part of the monthly rent or fees. (See EPA WSG 118 in Appendix C)
2. Hotels (and like institutions) connected to a waterworks that provide ancillary water treatment would need to be individually evaluated to determine the nature and purpose of the treatment. An ODW evaluation would normally be initiated by a request from the waterworks that serves the facility. Situations do exist where treatment of the water, after purchase, would create a consecutive system. In those situations discussions with the Central Office prior to action are necessary. This is a developing situation primarily in hospital, healthcare, and large building situations often related to Legionella control.

B. "Grandparenting"

With respect to operation permits, grandparenting means issuing an operating permit to a waterworks with pre-existing conditions that may not comply with Part III (Manual of Practice for Waterworks Design) or IV (Exceptions to Manual of Practice for Noncommunity Waterworks) of the current *Waterworks Regulations (Regulations)*.

C. "Reliability"

Reliability means that a waterworks is able to demonstrate its ability to provide pure water of adequate quantity and quality. All waterworks shall provide adequate treatment and pure water (see 12VAC 5-590-490 B of the *Regulations*). Additionally, the owner shall assure a high degree of capability and reliability in accordance with 12VAC5-590-360 A of the *Regulations*, which states:

"The [waterworks owner] shall provide and maintain conditions through the entirety of the water supply system in a manner which will assure a high degree of capability and reliability to effect compliance with these standards. This requirement shall pertain to the source of supply, treatment, transmission, storage, and distribution facilities and the operation thereof. In addition, this requirement shall include specific and continuing assessment of the capability, effectiveness, and reliability of the treatment process in relation to potential contaminants in the source of supply. Finally, this requirement shall include the identification and evaluation of all factors having potential for impairing the quality of the water as delivered to customers and appropriate preventive and control measures."

D. "Pure water"

Pure water means water fit for human consumption that is (i) sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts and (ii) adequate in quantity and quality for the minimum health requirements of the persons served (see § 32.1-167 et seq. of the *Code of Virginia*).

E. "Human consumption"

Human consumption means drinking, food preparation, dishwashing, bathing, showering, hand washing, teeth brushing, and maintaining oral hygiene (see § 32.1-167 et seq. of the *Code of Virginia*).

F. "Year-round Resident"

Year-round resident (or residential consumer) means an individual whose primary residence is served by the water system. The individual need not live at the residence for 365 day a year for it to be considered his/her year-round residence.¹

G. "Population Served"

Population served (for any type of system) means the number of residential consumers plus the average of the number of regular consumers served, per day, during a month plus the average of the number of transient consumers served, per day, during a month.²

II. WATERWORKS TYPES

The type of waterworks (except Item D) are defined in 12 VAC5-590-10 of the *Regulations* as follows:

- A. Community Waterworks – means a waterworks that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

¹ This definition comes from the August 21, 1991 EPA memo titled "Definitions of Types of Public Water Systems and Populations Served by Those Systems" found at www.epa.gov/safewater/wsg/wsg_66a.pdf

² *Ibid*

- B. Noncommunity Waterworks – means a waterworks that is not a community waterworks but operates at least 60 days out of the year. The 60 days out of the year do not have to be consecutive.
- C. Nontransient Noncommunity (NTNC) Waterworks – means a waterworks that is not a community waterworks and that regularly serves at least 25 of the same people over 6 months out of the year. “Regularly serves” means four or more hours per day, for four or more days per week, for 26 or more weeks per year.³
- D. Transient Noncommunity (TNC) Waterworks– means a noncommunity water system that is not a nontransient noncommunity water system. These waterworks serve water for human consumption to at least 25 individuals (transient consumers) daily for at least 60 days out of the year.
- E. Consecutive waterworks – means a waterworks that has no water production or source facility of its own and obtains all of its water from another permitted waterworks.

III. ODW’S AUTHORITY

ODW’s authority extends to any water system that meets the definition of a waterworks (see § 32.1- 167 *et seq.* of the *Code of Virginia* and 12VAC5-590 *et seq.* of the *Regulations*).

ODW will extend its authority to those water systems that have applied for a Waterworks Operation Permit with the intention of becoming a waterworks. By applying to ODW for a construction permit, the water system owner is voluntarily submitting to, and accepting, regulation by ODW as a waterworks. If at some later date, the water system still does not qualify as a waterworks under the statutory and regulatory definition, and the owner challenges our authority⁴ to regulate the system, ODW may initiate the process to revoke the permit and cease regulating the system as a waterworks.

The following describes ODW’s policy regarding water systems whose population or service connections do not clearly meet the definition of a waterworks:

A. Proposed Waterworks

ODW will issue the owner of a proposed water system a Waterworks Operation Permit when the following conditions are met:

1. The owner has confirmed to ODW that the water system will eventually meet the definition of a waterworks (12VAC5-590-10); and,
2. The owner has met the requirements of the Construction and Operation Permit application process.

ODW may initiate revocation of the Waterworks Operation Permit for a proposed waterworks that does not meet the 15/25 criterion for a waterworks within 36 months of issuance of the Operation Permit. (see Section V. of this document for further information on permit revocations.) The waterworks shall be required to meet all of requirements of the *Regulations* until the permit revocation process has been completed. See **Appendix A**, Examples 1, 2, & 3.

³ *Ibid*

⁴ Indicates in writing that the service area does not meet the definition of a waterworks as planned, and requests that the operation permit be revoked

B. Reduced Service Connections

ODW's policy is to strongly discourage owners from splitting systems simply to avoid regulation as a waterworks.

1. System Breakups:

If a system has multiple sources, it can fall below the criteria used in defining a waterworks by removing physical interconnections between sources, such that one or more sources is directed to a discrete service zone of fewer than 15 connections and less than 25 individuals. The distribution piping for each service zone must be physically separated. The waterworks continues to meet the definition of a waterworks if there are any valved interconnections (even those intended for "emergency" purposes, such as those with a physical separation that can easily be bridged by a spool piece), since the use of these connections are too difficult to monitor to ensure the distribution systems actually remain separate. ODW will continue to regulate the waterworks until a physical separation can be confirmed.⁵

2. Permanent Reductions in Connections or Service Population:

Occasionally, an owner reduces service for various reasons and requests a revocation of the Waterworks Operation Permit. Simply shutting off/locking out service or having unused connections is insufficient to avoid regulation as a waterworks. The owner must demonstrate that the waterworks definition does not apply by taking the following actions:

- Physically removing and capping connections in excess of 14; and,
- Certifying in writing that the population has decreased below 25 persons and that the owner will notify ODW if the population exceeds 25 persons in the future.

ODW requires confirmation from the owner of physical removal or capped connections. This will usually require removing the service connection to below grade to prevent re-occupancy of the lot. Simply proving vacancy will not qualify for the change in status because it is too difficult to monitor occupancy. Staff will continue to regulate the waterworks until the revocation process is complete. (see Appendix A, Example 4)

C. Unused Service Connections

There are some water systems, such as mobile home parks or small housing developments, that have 15 or more existing connections, but the used connections may fluctuate above and below 15. ODW and EPA consider such systems to be active; and, therefore, subject to the *Regulations*, even during those times when the waterworks does not have at least 15 connections in use.

Simply having unused service connections will not disqualify a system from the definition of a waterworks. Following EPA policy, ODW determines inactivity based on the number of service connections that remain unused for one year or more. If less than 15 connections are used AND less than 25 people are served for a period of a year or more, then the waterworks should be inactivated (from SDWIS inventory) and the Waterworks Operation Permit revoked. Inactive waterworks are not required to monitor, report, or conduct routine surveillance.

D. Reduced Operation Periods

Some facilities with seasonal operations, such as: schools, summer camps or migrant labor camps will not continuously meet the population criteria of the waterworks definition. Even during these timeframes, the waterworks shall remain active in SDWIS and subject to ODW's authority.

⁵ Confirmation can include, but will not be limited to, ODW staff present when the zones are segregated, signed statement from the owner, photographic evidence provided by the owner, etc.

Monitoring is suspended for seasonal waterworks that have a defined annual operating period and winterize facilities (e.g. TNC campgrounds and resorts). Seasonal waterworks that provide water (e.g. schools w/ office staff) during the “off” season shall continue to monitor.

E. Churches

It is ODW policy to only designate as waterworks those water systems serving churches or similar religious institutions if they serve a permanent staff of at least 25 or operate day care or school facilities serving at least 25 people. (Defined by ODW policy only.)

IV. PERMITTING POLICY FOR EXISTING WATERWORKS

This section applies to newly-discovered waterworks, reclassified waterworks, or waterworks with a change in ownership, capacity, or treatment. In accordance with § 32.1-172 E of the *Code of Virginia*:

“Whenever application shall be made to the Commissioner for a permit he shall examine the application and as soon as practicable thereafter shall issue the permit if in his judgment the proposed waterworks will furnish pure water. If the proposed waterworks is not in compliance with all regulations of the Board but in the opinion of the Commissioner the public health will not be jeopardized, the Commissioner may issue a temporary permit for such a period of time and subject to such conditions as the Commissioner may deem appropriate for the owner to achieve compliance with such regulations.”

A. Permitting Actions

ODW’s goal is to issue permits timely once all of the permit application requirements are satisfied pursuant to § 32.1-172 of the *Code of Virginia*. The following identifies the permitting options available to the ODW:

1. Temporary Waterworks Operation Permit (“Temporary Permit”): ODW may issue a temporary permit as authorized by § 32.1-172 of the *Code of Virginia*. A temporary permit is an operation permit with an expiration date and specific conditions that the waterworks must address within designated time frames. When an imminent danger to public health or welfare exists (for example, when water quality data showing levels of PMCL contaminants greater than the Unreasonable Risk to Health (URTH)⁶ values), a temporary permit should be issued. [Note: A Water Advisory may be included as a specific condition of a temporary permit to protect public health.] A temporary permit provides ODW an additional tool to compel compliance, gather additional data, or set time limits for unresolved issues. Typically, a temporary permit will be issued because of: unresolved issues with the standard permit application process, a newly found system, or following revocation of a previous permit due to new owner or formal enforcement action.
 - a. A temporary permit may be issued when the waterworks is not demonstrating reliability and additional time is necessary for any of the following:
 - Complying with an administrative order;
 - Complying with a requirement to conduct an engineering evaluation or study, or perform tests to determine yield or drawdown;
 - Complying with a requirement to install treatment or storage; or

⁶ Unreasonable Risk to Health. Contaminant levels above the PMCL in which EPA has determined a significant risk exists to the public health due to consumption or use of the water. Water containing a contaminant above the URTH should not be consumed (used).

- Developing a monitoring or performance history.
- b. A temporary permit shall be issued for new non-conventional treatment methods, processes or equipment (formerly “Provisional” Operation Permits).
 - c. A temporary permit may also be issued under the following circumstances:
 - A consecutive system has a purchase contract with a limited duration.
 - A waterworks has been purchased and will be connected to another system by a specified date.
 - Failure of the owner to submit required permitting documentation in a timely manner for existing unregulated waterworks or existing waterworks transferred to ODW's jurisdiction. The required documentation may include: Permit Application, WBOP, Cross Connection Control Plan, or sampling plan(s).

In general, a temporary permit will not be required for newly-constructed waterworks.

2. Standard Waterworks Operation Permit (“Standard Permit”): ODW shall issue a standard permit when ODW determines a waterworks to be:
 - a. reliable (see IV. B. Demonstration of Reliability below for clarification), and
 - b. designed and constructed in accordance with Part III. and IV. of the *Regulations* (or eligible for “grandparenting” (see IV. C. for requirements).

B. Determination of Reliability (see definition on Page 4)

ODW's determination of reliability may affect the permit type (i.e. standard or temporary) and eligibility for grandparenting.

1. Adequate Water Quality: Reliability relating to water quality is the ability to provide adequate treatment and potable water that consistently meets the requirements of Part II of the *Regulations*. Reliability related to water quality shall be considered when issuing a Temporary or Standard Permit.
2. Adequate Capacity: ODW shall assume a waterworks is reliable with regard to capacity unless there is evidence of water pressure problems, excessive leakage, or periodic water outages. Evidence that shows failure to maintain performance or failure to correct problems may consist of, but is not limited to VDH investigations, sanitary survey findings, or complaints.

The timeframe for ODW's reliability determination shall normally be the past five years of operation with more recent information given greater weight. ODW may determine the waterworks to be unreliable if the owner has failed to resolve current or continuing water quality and quantity problems or has not resolved complaints by consumers.

C. Grandparented Waterworks

1. Policy Application

Grandparenting status for permitting is only conferred upon existing waterworks with regard to Parts III (Design Manual) and IV (Noncommunity Exceptions) of the *Regulations*. There is no grandparenting with regard to Part II (Operational Regulations) or for newly-constructed

waterworks.⁷ A waterworks is eligible for grandparenting when the waterworks has demonstrated reliability for capacity and water quality through satisfactory performance. For community waterworks, this data shall include meter readings (if meter is installed), pressure readings, bacteriological and chemical test results. A temporary permit may be necessary to collect this information. For noncommunity waterworks currently in operation, this data may be limited to water quality test results.

Waterworks with pre-existing structural or design conditions that do not meet Parts III or IV of the *Regulations*, or where information is unavailable, but show reliability regarding capacity and water quality, are eligible for consideration. For waterworks that qualify for grandparenting status, ODW policy is to permit the waterworks to the number of existing connections and existing conditions (usage as in number of restaurant seats) even if it exceeds the limiting values determined through engineering analysis.

ODW's policy is to grant an exclusion from Part III of the *Regulations* (Manual of Practice for Waterworks Design) to newly-discovered waterworks *provided* that the system has a history of reliability and that reliability is verified by ODW. This policy also applies to existing waterworks transferred to ODW's jurisdiction.

2. Grandparented Status - New Ownership

The grandparented status of a waterworks may be granted to a new owner provided that the waterworks:

- has historically met and continues to meet the reliability requirements; and
- maintains the number of connections and existing conditions of the previous permit.

In this case, the new owner is issued a Standard Waterworks Operation Permit. The Field Office staff shall meet with each new owner to discuss the *Regulations*, ownership requirements, and *recommend* waterworks improvements be made so the system will comply with Part III of the *Regulations*. ODW shall apprise the owner in writing that grandparenting status may be terminated by expansion, modification, or failure to maintain reliability, and that there is no guarantee that the grandparented status will be granted to subsequent owners.

3. Loss of Grandparented Status

a. Failure to Achieve or Maintain Reliability:

If a grandparented waterworks fails to demonstrate reliability, ODW shall notify the owner of the deficiencies, issue an NOV, and recommend correction of the deficiencies. If the deficiencies are not resolved, ODW shall issue the owner a Notice of Intent to Revoke the standard Waterworks Operation Permit and schedule an administrative proceeding to determine whether to revoke the Operation Permit and the grandparented status.

b. Expansions and/or New Construction to Meet Additional Demand:

In accordance with 12VAC5-590-50 B of the *Regulations*:

“Compliance with design criteria set forth in Part III and Part IV is necessary for waterworks modification and construction commenced after the effective date of these revised regulations [after September 1, 1974].”

⁷ “Newly constructed” means after the effective date of the most recently promulgated *Waterworks Regulations*.

Grandparented waterworks that expand service (an increase in their permitted service population or number of connections) lose grandparented status. (see **Appendix B**, Examples 1 & 2)

V. PERMIT REVOCATION

The Commissioner may revoke any permit pursuant to § 32.1-174 of the *Code of Virginia* and 12VAC5-590-320 of the *Regulations*.

Additionally, permit revocation may be initiated by ODW or voluntarily by written request from the owner when the system no longer meets or has not yet met the definition of a waterworks. When revocation is initiated by the owner, it is imperative that the owner provide adequate justification in a written request to show the system no longer qualifies as a waterworks. ODW will reasonably attempt to verify the owner's justification, including discussions with the local health department and other local authorities. Once ODW determines that the justification is adequate, the field office may initiate permit revocation procedures. The system will continue to be regulated as a waterworks until the operation permit is revoked.

ODW shall request that the C and NTNC owners voluntarily notify all customers of any change in the status of the waterworks and any outstanding water quality issues (such as PMCL, SMCL, or monitoring violations). If the owner declines to notify the customers 60 days before revocation of the permit, ODW shall consult with the local health director regarding the need to notify customers directly.

VI. WATERWORKS REQUESTING EXEMPTIONS TO PERMITS

12VAC5-590-150 allows for the Commissioner to grant exemptions to PMCLs or treatment technique requirements due to compelling factors (which may include economic factors). ODW will evaluate requests for exemptions when received, and will make recommendations to the Commissioner about granting or denying such requests. Granting of an exemption will be a rare instance.

VII. WATERWORKS REQUESTING VARIANCES TO PERMITS

12VAC5-590-140 allows the Commissioner to grant a variance to an operational regulation, treatment technique requirement, primary maximum contaminant level (PMCL) or secondary maximum contaminant level (SMCL) by following appropriate procedures set forth in the *Regulations*. It is ODW policy to consider granting variances for some operator requirements and for metering of TNC waterworks expected to use less than 10,000 gpd. No variances shall be issued for SMCLs. ODW will evaluate requests for variances when received and will make recommendations to the Commissioner. Granting of a variance for treatment techniques requirements or PMCLs will be a rare instance.

END OF MEMO

APPENDIX A

Operation Permit Examples

Example 1:

A developer has applied for a new Operation Permit. Six homes are occupied, and 50 homes are proposed. Although the system does not yet meet the definition of a waterworks, it will be regulated as the owner intends to become a waterworks. If the number of connections or persons served does not meet the 15/25 criteria within 36 months, the field office shall consider revoking the permit. See Section III A. 1.

Example 2:

A preschool is licensed for 15 “slots.” Fifteen children attend morning sessions and ten other children attend afternoon sessions, three days per week, September through May. Five staff members are present. On the surface this waterworks may appear to be an NTNC since it serves at least 25 of the same persons per day. However, 3 days per week for 38 weeks = 114 days which is less than 6 months, and therefore it is to be regulated as a TNC.

Example 3:

A day care center is licensed for 40 “slots.” Actual attendance varies, but the sum of children and staff is frequently less than 25 persons. Unless the service population is consistently below 25 (and verified via records) or the facility operates less than 6 months out of the year, this facility is to be regulated as an NTNC.

Example 4:

An existing mobile home park is currently served by a facility that has nine service connections in use and contains an additional six unused service connections. The facility has requested to have its permit revoked to avoid regulation. Since ODW assumes occupancy of 3 persons per trailer, the owner must provide evidence of the population being less than 25 and a plan to maintain the population below 25. If the owner provides evidence, has service lines removed to below grade, and the field office verifies this - the permit can be revoked.

APPENDIX B
Grandparented Status During Expansion

Example 1:

A grandparented community system with an Operation Permit for 48 existing connections wishes to add 3 more homes. It has one well of unknown capacity and inadequate storage based on Part III of the *Regulations*. Due to the expansion, the waterworks will forfeit its grandparented status.

Example 2:

A grandparented mobile home park with 54 connections has been found to have exceeded its permitted capacity of 49 existing connections. This may be due to unauthorized connections or in response to hardship conditions (private wells have gone dry). It has one well and inadequate storage based on Part III of the *Regulations*.

Corrective Action Steps The Field Office shall:

Step 1: Issue an NOV. Make an evaluation of the performance of the system capacity by reviewing files, records of complaints, site visit to install pressure recorder, sanitary surveys, etc. If it is determined that the waterworks is reliable relating to capacity, ODW may proceed with Step 2 or 3. If it is determined that the waterworks is not reliable relating to capacity, ODW should proceed with Step 4.

Step 2:

Comply with the existing permit/Grandparented status can be retained. Give the owner an opportunity to reduce connections by a specific deadline, to return to compliance and routine surveillance.

Or,

Step 3:

Proceed with Expansion/Grandparented status is forfeited due to expansion. Issue a Temporary Permit for 54 existing connections that provides a reasonable amount of time for improvements. Add a condition of the Temporary Permit that requires the acquisition of additional capacity (a second source and adequate storage per Part III of the *Regulations*). Proceed to the next step.

Step 4: Upon expiration of the Temporary Permit, a Standard Operation Permit may be issued if improvements have been completed. If not, an NOV is issued for operating without a permit and ODW will proceed with enforcement actions as necessary.

APPENDIX C
EPA Water Supply Guidance (WSG) #118

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WSG 118
WSG 118
Date Signed: March 13, 1998

MEMORANDUM

SUBJECT: Submetering Water Systems

FROM: Cynthia C. Dougherty, Director
Office of Ground Water and Drinking Water

TO: Water Division Directors
Regions I - X

Drinking Water/Ground Water Representatives
Regions I - X

There have been numerous requests for guidance on whether an apartment complex or other similar residential communities (e.g. subdivisions and mobile home parks) which receives water from a public water system (PWS) through a master meter and then resells it to the residents qualifies as a PWS. It has long been and remains the Environmental Protection Agency's (EPA) position that apartment complexes and similar residential communities that sell water to their tenants constitute PWSs and are subject to the Safe Drinking Water Act (SDWA) regulations. However, EPA also recognizes that these PWSs may not require as stringent monitoring as PWSs which do not receive their water from another PWS, and thus States have the flexibility to modify the monitoring requirements for these apartment complexes or similar residential communities.

On March 31, 1997, in response to the above concerns, EPA held a meeting with several stakeholders to discuss the regulatory provisions and the guidance that had already been issued on these subjects. After this meeting, we received a few requests for more clarification to which we responded by individual letters. To make sure that everyone understands the Agency's position and to alleviate any confusion, we have incorporated the substance of our responses into this memorandum. Please share this information with your respective States.

Statutory Requirements

Under Section 1411 of the SDWA, a PWS is subject to regulation unless it is a system which meets all of the following four criteria:

- (1) consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
- (2) obtains all of its water from, but is not owned or operated by, a public water system to

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which the regulations apply;
(3) does not sell water to any person; and
(4) is not a carrier which conveys passengers in interstate commerce.

Assuming that apartment complexes and other similar residential communities meet the criteria enumerated in (1), (2), and (4), the issue is whether or not submetering of water to tenants constitutes selling water within the context of the SDWA.

Interpretation of to "Sell"

We believe that to "sell" should be given broad meaning under the SDWA. Construing the statute this way is consistent with the purpose of the SDWA which is to assure that the water supply systems that serve the public meet minimum national standards for protection of public health to the maximum extent feasible. (House Report No. 93-1185). The House Report further says, in explaining this provision, that Congress intends the primary drinking water regulations to apply to housing developments, motels, restaurants, trailer parks, and other business serving the public if the business in question maintains its own well or water supply and sells water.

A distributor of water for human consumption "sells" water within the meaning of the Act if it charges consumers for the water as a separate item or bills separately for the water it provides. (House Report No. 93-1185). Conversely, if the entity includes the charges for water in the rental fee, then it is not selling water within the context of the Act. It is irrelevant whether water is sold for a profit or not, or whether the distributor is a public or private entity. Thus, it is appropriate to interpret to "sell" to include submetering.

If an apartment building or similar residential community that submeters wants to avoid PWS classification, it would either need to remove the complex's master meter and allow the local water utility to bill the residents directly, or include water usage as part of the monthly rent or fees.

Monitoring Flexibility of "Consecutive" Water Systems

While an apartment complex that submeters is considered a PWS and thus subject to the requirements under the SDWA, it nonetheless may be afforded certain monitoring modifications if it is considered a "consecutive" water system. "Consecutive" water systems are water systems that purchase water from another public water system. Under federal regulations at 40 CFR 141.29, States have the flexibility to modify the monitoring requirements to the extent that the interconnection of the systems justifies treating them as a single system. This flexibility allows States considerable discretion to avoid unnecessary compliance activities for "consecutive" water systems consistent with the public health objectives of the Act. Because we support the practice of submetering to encourage water conservation and to provide an equitable method of distributing costs, we believe that it is appropriate for States to use this flexibility consistent with their

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assessment of the need for these "consecutive" systems to conduct additional monitoring to protect the public health of their customers.

If you have any question concerning this guidance, please call Jennifer Melch at (202) 260-7035.