



**American Water Works
Association**

The Authoritative Resource on Safe Water SM

Government Affairs Office
1300 Eye Street NW
Suite 701W
Washington, DC 20005-3314
T 202.628.8303
F 202.628.2846
www.awwa.org

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August 11, 2009

The Honorable Henry A. Waxman
Chair
The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C.

Dear Mr. Chairman and Mr. Ranking Member,

As the House Committee on Energy and Commerce addresses the issue of chemical security at our nation's drinking water utilities via H.R. 3258, the American Water Works Association (AWWA) would like to thank you for meeting with us in the development of this legislation, and to share our thoughts about ways in which the bill could be even further improved. We would appreciate this letter being included in the Committee's hearing record on this bill.

First, AWWA thanks the Committee for the open manner in which chemical security legislative language has been developed over the past few months. We appreciate having been able to provide some input to the issues contained in the bill. We have seen significant improvements in the legislation as it was being drafted. We still have concerns, but we look forward to continuing this dialogue with the Committee in a constructive manner.

In particular, we thank the Committee for two significant improvements in the draft bill. First, we appreciate the fact that disclosure of sensitive information is now a criminal violation in the bill rather than merely a civil one. The public disclosure of a vulnerability assessment or a site security plan is equivalent to publishing a handbook on how to sabotage a specific drinking water treatment plant or distribution system, thereby endangering employees and local citizens. Prohibiting the disclosure of this information is extremely important, and criminal penalties are appropriate for its unauthorized disclosure.

Second, we also believe the provisions of H.R. 3258 under "Methods to Reduce the Consequences of a Chemical Release from an Intentional Act" have been improved. Early drafts gave the U.S. Environmental Protection Agency the ability to decide which materials and processes a local utility would use in treating and distributing drinking water. As currently drafted, the bill would place the final decision on this matter with state drinking water primacy agencies. State regulators do have greater working knowledge of environmental and other local

issues affecting the choice of disinfectant chemicals and processes than do federal officials. Having said that, we continue to have significant concerns over this provision and believe further changes would significantly improve the bill.

For example, the states will likely be unable to exercise their authority over the choice of disinfectants absent a significant commitment of federal resources to support this work. The bill promises an unspecified amount, and only for the first year. We urge you to work with the Association of State Drinking Water Administrators to ensure that adequate funds are authorized for states to exercise these provisions, if they remain in the bill.

There are also significant limitations on state authority built into the bill, such as federal (not state) determination of when a utility “methods” analysis is complete, and federal authority to override the state if EPA determines that the state has not made a timely decision.

Finally and very importantly, the factors the states are allowed to consider in making its decision are limited, and do not allow for a full consideration of risk-risk tradeoffs, risk shifting, and unintended consequences for community impacts and for public health. These must be taken into account, given the serious potential consequences of altering long-established disinfection practices without fully considering all aspects of the change.

An Informed Local Decision is the Best Approach

AWWA continues to strongly believe the best approach to the issue of reducing the consequences of an intentional release is to require local officials to make an informed decision concerning disinfectant chemicals and processes after a full analysis. Drinking water utilities tailor their treatment and distribution processes according to regulatory obligations (such as the federal requirement to use chlorine in some form and to achieve certain levels of disinfection), to critical variations in source water characteristics (such as temperatures, pH, pathogens, etc.), and to other local factors (such as delivery options for disinfectant chemicals, the need to maintain reserve supplies in the event of supply interruption, spatial limitations at the plant site, local ambient temperatures that affect the “shelf life” of chemicals and the attendant chemical degradation and breakdown products, etc.). Another issue that may be of concern to the Committee is the “energy profile” of disinfection alternatives. For example, many alternatives require significantly greater electricity inputs, compared to gas chlorine, and would thus work contrary to efforts to reduce the utility’s carbon footprint. All of these factors and others must be taken into account in selecting disinfectant processes.

We want to emphasize that many utilities can change disinfection processes without compromising the safety of the community drinking water supply. Indeed, many have already done so. But where that has been done, it has been done as an informed local decision after careful study and full consideration of many important local factors, such as those identified above. Local officials are in the best position to evaluate these factors and to weigh the risk tradeoffs, feasibility, and full range of consequences associated with the available disinfection processes. So while having the state approve this decision is better than having EPA do it, we think the decision is so dependent on local factors and so critical to water safety, that it is vastly better to require an informed local decision.

In order to help utilities and local elected officials undertake an analysis of disinfectant choices and reach an informed decision, AWWA has recently released guidance titled “Selecting Disinfectants in a Security-Conscious Environment” to aid utilities with this decision process. We believe that this guide substantially advances the Committee’s objectives on this issue, and

we offer it to the Committee to cite in bill report language as an example of a tool utilities can use in conducting assessments of alternative materials and processes.

The bill could also be improved in a number of other respects:

An Appeal Process is Needed

If the decision of whether to implement alternative methods or materials in water treatment is to remain with state officials, we believe a state-level administrative appeals process should be included in the bill to address disagreements between a water utility and the state. We would be willing to work with the Committee and representatives of state agencies to find an appropriate administrative appeals process, as is found in other environmental laws.

Sensitive Information Must be Better Protected

As noted above, disclosure of sensitive information under H.R. 3258 would be approximately equivalent to a Class A misdemeanor, meaning those found guilty of such a crime would face not more than one year in prison and a fine up to \$10,000. AWWA believes it would be more appropriate to consider such a disclosure as tampering with a water system, consistent with the provisions of 42 USC 300i-1, as amended by the 2002 Bioterrorism Act. This would mean that conviction would result in imprisonment for not more than 10 years and a civil penalty of not more than \$1,000,000 for such tampering, or not more than \$100,000 for attempting or threatening such actions. This would provide an appropriate level of deterrence to such dangerous disclosures.

One Federal Agency Should Oversee Water and Wastewater

Many local governments, such as cities or townships, operate drinking water and wastewater utilities under a single agency or department. In some instances, communities are served by a joint drinking water/wastewater utility that is privately owned or investor owned. In either case, we urge the Committee on Energy and Commerce to work with other House committees to place both drinking water and wastewater utilities under the jurisdiction of one federal entity for the purposes of this bill, respecting, of course, the role of state agencies. This would enable more efficient implementation at the local level, and eliminate the need for officials at joint water and wastewater utilities to operate under the jurisdiction of two different federal agencies for chemical security.

Outsider Participation is Not Appropriate

We agree that supervisory and non-supervisory employees should be included in the development of vulnerability assessments and site security plans because of their hands-on, working knowledge of a facility's operation. However, we do not agree with H.R. 3258's specific inclusion in these processes of employee bargaining agents that may not themselves be employees of the utility. As mentioned earlier, there is very sensitive information involved. Therefore, access to this information must be restricted to as few people as necessary, and only to those for whom there is a direct "need to know." Many entities, including AWWA, have significant expertise, tools and guidance in the area of security and preparedness, and make these accessible to utilities and their employees. However, we do not seek – and cannot support provisions – to mandate the participation of specific types of organizations and/or their representatives from outside the utility itself. If employee safety is a concern with regard to this issue, we note that water utilities already must comply with extensive regulations for employee safety and training under the Occupational Safety and Health Act and the Clean Air Act.

Again, we thank the Committee for the opportunity to comment and we offer the expertise of our membership as the Committee's work continues. AWWA is an international non-profit, scientific

and educational society dedicated to the improvement of drinking water quality and supply. Our 60,000 members include more than 4,600 utilities that supply roughly 80 percent of the American people with safe drinking water. Many of our utility members also provide sewer and sanitation services.

Sincerely,

A handwritten signature in black ink that reads "Tom Curtis". The signature is written in a cursive style with a prominent initial "T".

Tom Curtis
Deputy Executive Director for Government Affairs

Cc/Members, House Committee on Energy and Commerce