

Street, San Francisco, California 94105, (415) 744-1391, the following Administrative Complaint:

In the Matter of Hilo Coast Power Company and Brewer Environmental Industries, Pepeekeo Mill Power Generating Facility, Docket No. CWA-9-2003-0002.

For the alleged violations set forth in the Administrative Complaint, EPA proposes to assess penalties of up to One Hundred Thirty-seven Thousand and Five Hundred Dollars (\$137, 500) for violations of NPDES Permit No. HI0000191 and section 301(a) of the Act, 33 U.S.C. 1311(a), at the Pepeekeo Mill Power Generating Facility in Pepeekeo, Hawaii.

Procedures by which the public may comment on a proposed Class II penalty or participate in a Class II penalty proceeding are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II penalty is forty days after issuance of public notice.

FOR FURTHER INFORMATION CONTACT:

Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed assessment, or otherwise participate in the proceeding should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744-1391. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the Respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to forty (40) days after the date of publication of this notice.

Dated: August 19, 2003.

John Kemmerer,

Acting Director, Water Division.

[FR Doc. 03-22054 Filed 8-27-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7550-4]

Public Water System Supervision Program Revision for the State of New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of New Mexico is revising its approved Public Water System Supervision Program. New Mexico has revised its administrative penalty authority, its public water system definition, adopted the Consumer Confidence Report Rule, the Interim Enhanced Surface Water Treatment Rule, the Stage 1 Disinfection By Products Rule, the new Variances and Exemptions Rule, the revised Public Notification Rule, the new Radionuclides Rule, the Lead and Copper Rule Minor Revisions, the Arsenic Rule, and the Filter Backwash Recycling Rule. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these program revisions.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by September 29, 2003 to the Regional Administrator at the EPA Region 6 address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 29, 2003, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on September 29, 2003. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for

inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: New Mexico Environment Department, Drinking Water Bureau, 525 Camino De Los Marquez, Suite 4, Santa Fe, New Mexico, 87505 and the United States Environmental Protection Agency, Region 6, Drinking Water Section (6WQ-SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Kim Ngo, EPA Region 6, Drinking Water Section at the Dallas address given above or at telephone (214) 665-7158, or ngo.kim@epa.gov.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: August 20, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 03-22052 Filed 8-27-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7550-7]

Applicability of the Safe Drinking Water Act to Submetered Properties

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is seeking public comment on revising the current policy regarding regulatory requirements under the Safe Drinking Water Act (SDWA) of submetered properties. The draft revised policy is shown in the Supplementary Information section below, in the memorandum form it would take if the policy is made final. Under SDWA section 1411, the national primary drinking water regulations apply to public water systems (PWS) that have their own water source, treat, or "sell" water. EPA staff and program managers have previously issued memoranda stating that any building or property owner who meets the definition of a PWS and receives water from a regulated public water system, but bills tenants separately for this water, is "selling" the water and therefore is independently subject to SDWA's drinking water requirements. As a way to promote full cost and conservation pricing to achieve water conservation, the EPA now proposes to change its interpretation of section 1411 as it applies to a limited aspect of

submetering and direct billing of residential tenants. EPA believes this change in interpretation would not adversely affect public health protection for consumers served by these submetered systems.

DATES: Comments must be submitted on or before October 27, 2003.

ADDRESSES: Comments may be submitted by mail to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW-2003-0065. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions as provided in section I.C. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For more information please contact Ronald Bergman at bergman.ronald@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Draft Revised Policy

If the revised policy is made final, the following statement will be announced by EPA Assistant Administrator for Water, G. Tracy Mehan III, to the Regional Administrators

Draft Memorandum

From: G. Tracy Mehan, III, *Assistant Administrator, Office of Water*
To: Regional Administrators Regions I–X
Subject: Applicability of the Safe Drinking Water Act to Submetered Properties

Water conservation is an integral part of watershed protection, particularly in arid and drought-stricken areas. In recent speeches, I have called for full cost and conservation pricing to achieve water conservation. The use of water meters by which to measure consumption is a necessary prerequisite to using these price mechanisms. For those 15% of Americans who live in apartments, submeters are needed if their water consumption is to be linked to prices. Throughout the country, submetering of apartment buildings has been found to be an effective but little-used tool to support water conservation.

Some owners of multifamily housing, however, have expressed concern that, under EPA's current policy, the installation of submeters subjects them to the full regulatory requirements of the Safe Drinking Water Act (SDWA). In 1996, Congress also expressed concern about EPA's policy in this specific situation, and, in response, EPA agreed to reconsider the matter and issue

further guidance.¹ This memorandum represents the promised further guidance on this issue and sets out a revised policy with respect to residential properties such as apartment buildings that submeter for water.

Under the revised policy, a property owner who had not previously been (or would not be) subject to SDWA national primary drinking water regulations through SDWA section 1411, and who installs submeters to accurately track usage of water by tenants on his or her property, will not then be subject to SDWA regulations solely as a result of taking the action to submeter and bill. The water being provided would already meet drinking water standards because the water would be coming from a regulated public water system.

Background

Section 1401 of SDWA defines a public water system (PWS) as a system that provides water through pipes or other constructed conveyances to the public for human consumption, if the system has at least 15 service connections or regularly serves at least 25 people. Under SDWA section 1411, the SDWA national primary drinking water regulations apply to PWSs that have their own water source, treat, or "sell" water. EPA staff and program managers have issued several memoranda stating that any building or property owner who meets the definition of a PWS and receives water from a regulated public water system without adding further treatment, but bills tenants separately for this water, is "selling" the water and therefore is independently subject to SDWA's drinking water requirements. Today's memorandum reflects a change in EPA's interpretation of section 1411 as it applies in the specific context of submetering and direct billing of tenants.

The EPA memoranda referenced above were based on a single statement in the 1974 legislative history for the SDWA in which Congress explained its intent in enacting section 1411. In that legislative history, the Committee report states that it "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."² Under EPA's interpretation to date, an apartment building or similar residential property

that is exempt under section 1411 but that merely installs a submeter and bills the tenants for the water, or simply begins billing tenants (even without a submeter), would become a fully regulated public water system, even though there had been no other change relevant to the delivery or potential health concerns associated with the water. This application of the legislative history has been cited as a discouragement to submetering and, as a result, to water conservation measures.

After further review, we no longer believe that Congress intended the legislative history to be applied in this manner for the following reasons:

- The legislative history from 1974 does not specifically address the submetering of apartment buildings for water conservation purposes. Rather, the legislative history was one Committee's attempt to explain broadly what the term "selling" water in section 1411 might mean. The statute itself does not define the term "selling" or suggest an interpretation that any billing of water would automatically trigger full SDWA regulation.

- A Congressional committee expressed its concern that this application of SDWA might discourage the practice of submetering, as owners of a multifamily housing property (e.g., apartment buildings and/or complexes, mobile home parks) would become subject to national primary drinking water regulations if they billed separately for water. Congress asked that EPA review its guidance on this matter to prevent unnecessary requirements that do not further public health protection and that might inhibit water conservation efforts.³

- EPA's approach in previous memoranda—simply applying the concept of "sell" to every billing transaction—may have created a disincentive to water conservation, which can undermine water quality over the long term.

- Finally, it makes no sense, as a matter of statutory interpretation, health protection, or SDWA implementation policy, to subject an entity to the full suite of SDWA requirements simply as a result of a decision about who sends a water bill, especially when the water is already coming from a regulated public water system. As a result, we no longer consider that the blanket approach to defining "sell" as meaning any type of billing in any circumstance is appropriate.

¹ H. Rep. 104-632 (104th Cong., 2d Sess.) at 55 and 134 (1996).

² H. Rep. 93-1185 (93rd Cong., 2nd Session), reprinted in *A Legislative History of the Safe Drinking Water Act*, Committee Print Serial 97-9 (1982) at 549.

³ H. Rep. 104-632 at 55 (1996)

Revised Policy

Consistent with Congressional requests to reconsider this matter, we now believe that, if a property owner, who had not previously been (or would not be) subject to PWS national primary drinking water regulations, installs submeters to accurately track usage of water by residential tenants on his or her property, that owner should not then be subject to regulations solely as a result of taking the action to submeter and bill. Likewise, a property owner who does not submeter, but charges tenants for water based on a ratio utility billing or other apportioning system, would also remain exempt from full SDWA requirements.

The addition of a submeter, or direct billing, should not in any way change the public health protections provided to water consumers on the property, as they are still subject to plumbing codes and provided water from a PWS that is fully regulated by SDWA. The PWS providing water to the property is still responsible for providing public notification under 40 CFR 141.201(c) (or approved State equivalent) to consumers and making "good faith" efforts to provide the tenants with the annual Consumer Confidence Reports under 40 CFR 141.155(b). A submetered property would still be considered a PWS under SDWA section 1401, hence States and EPA would retain the ability to take corrective action under SDWA's emergency powers authority (section 1431) if public health risks arise.

Although EPA is not requiring that submetered systems be tracked, each State has flexibility to determine whether, and how, to best track multifamily residential properties that submeter. For example, in Alabama, the State defines a submetered property as a "segmented public water system" and requires that it have access to a certified operator. Texas requires that submetered properties allow access to the property by the public water system providing water, register with the Texas Commission on Environmental Quality and follow regulations for submetering. Other States may place submetered properties under the jurisdiction of public utility commissions.

While submetering and billing for water usage may positively induce water conservation actions, States may still want to take other steps to ensure that apartment owners convert to water efficient fixtures and appliances. For example, Texas requires that apartment buildings have water-efficient plumbing fixtures and appliances as a condition of approval of a submetered billing system.

This memorandum clarifies EPA's policy change and reconfirms our strong interest in advocating water conservation. Any previous EPA statements or policy memoranda on this issue are superceded by this memorandum.

1. Request for Comments

While comments will be accepted on any portion of the draft revised policy, EPA would specifically appreciate comments on the following issues:

- i. Should the parent public water system be required to have access to submetered properties for the purposes of monitoring, inspection, repair, etc., to assure compliance with SDWA?
- ii. Are there public health risks raised by this submetering policy that EPA has not taken into consideration?
- iii. Should EPA maintain the limitation of the draft revised policy to residential properties such as apartment buildings, or is it appropriate to extend the SDWA exemption for submetering to other property types?
- iv. Does data exist that indicates submetering may present a disincentive to landlords to convert to water efficient fixtures and appliances, or could this approach impact other methods that promote water conservation?

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW-2003-0065. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426. For access to docket materials, please call (202) 566-2426 to schedule an appointment.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet

under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will

be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OW-2003-0065. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW-*

Docket@epa.gov, Attention Docket ID No. OW-2003-0065. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send three copies of your comments to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW-2003-0065.

3. *By Hand Delivery or Courier.* Deliver your comments to: Environmental Protection Agency, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Attention Water Docket ID No. OW-2003-0065. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To insure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Dated: August 22, 2003.

G. Tracy Mehan III,

Assistant Administrator, Office of Water.

[FR Doc. 03-22053 Filed 8-27-03; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 20, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 27, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to Leslie.Smith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at (202) 418-0217 or via the Internet at Leslie.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0692.