

The Future of Drinking Water Regulation
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Scott J. Rubin
Attorney · Consultant
3 Lost Creek Drive
Selinsgrove, PA 17870
scott@publicutilityhome.com
(570) 743-2233

Thank you. I appreciate the opportunity to be here today.

When I worked for the government, I always started speeches with that all-too-familiar disclaimer – you know, you can't believe anything I say, you can't rely on it, it doesn't represent anyone's opinion.

But now I have my own practice. I work for myself. So, you're actually getting my opinion. You can do whatever you want with it. Just don't try to pin it on my clients, who have no idea what I'm saying today. And that's especially true since one of those clients is AWWA and, as you'll see, they have no clue what I'm about to say.

I have been asked to give a consumer's perspective on the future of drinking water regulation. So, fasten your seat belts, here we go.

Okay, so two nuns were taking a drive out in the country – what, you don't see the relevance to the future of drinking water regulation? Hold on, you will ... So, two nuns were taking a drive out in the country when, all of a sudden, the car just died. The driver looked on the dash board and realized that they had run out of gas. Fortunately, there was a farm just up the road. So the nuns walked over to the farm house and explained their problem. The farmer was very gracious, and said he would siphon some gas out of his car for them. The only problem, he said, was that he didn't have a gas can. They looked around the barn and the only thing they could find to pour the gas into was an old, metal bedpan. It will work, said the farmer, and there's a gas station just a couple of miles up the road, so the bedpan should hold enough to get you there.

So, the nuns fill up the bedpan and carefully walk back to their car. As they get to their car, they see another car parked behind, with a gentleman sitting behind the wheel who is obviously an orthodox Jew – complete with yarmulke, beard, the whole bit – getting ready to come and help. The nuns wave at him, tell him they're fine, and one starts pouring from the bedpan into their gas tank, while the other says a brief prayer of thanks for the kindness of the farmer.

The man in the car is a bit flabbergasted – all he sees is one nun praying and the other pouring from a bedpan into the gas tank. But the nuns assure him everything's fine. So, the man starts to drive away, then stops and says: "Ladies, you know that we don't share the same religious beliefs, but, boy, do I admire your faith!"

I admire your faith. If you are a consumer who drinks water that comes from a public water supply system, boy do I admire your faith.

You have faith that your water supply system is being operated and maintained in a safe, professional, and cost-effective manner. You have faith that your water supplier is doing all of the testing and monitoring that it's supposed to do. You have faith that your supplier is reporting the results of those tests truthfully to regulators and to the public when necessary.

You have faith that the regulators are making the best decisions they can, weighing the scientific evidence, fairly evaluating the costs and benefits involved with no pre-conceived ideas of the right outcome, accounting for tradeoffs and other hidden consequences of new regulations.

And you have faith that legislators write laws that send the right messages to regulators and water suppliers – that drinking water regulation is about protecting public health, that there must be a recognition that public health protection comes at a cost and some people can't afford to pay that cost, and that drinking water standards should not be used for any purpose other than protecting public health.

About 2 or 3 weeks ago, I started giving some serious thought to what I was going to say today. And my faith was challenged.

I picked up the newspaper and there was a story that the Surgeon General found an epidemic of oral disease in the United States. One of the major contributing factors to this epidemic was the failure of many water suppliers to fluoridate their water, and the failure of the federal government to require fluoridation to protect public health. According to the Surgeon General, over 100 million Americans drink water that is not fluoridated.¹

I began questioning my faith.

I read further. That same day, in that same newspaper, I read the first report from Walkerton, Ontario about the E. coli outbreak in the town's drinking water supply. Four people had died by then from drinking the water. By the end of May, the dead numbered seven. Hundreds of others got sick, in a town of just 5,000 people. The manager and directors of the water system knew of the contamination for at least a week, but failed to notify health officials or the public.²

My faith was shaken.

Then I picked up the Wall Street Journal – that same day (and, no I'm not making this up – it was Friday, May 26). And there's a report on a draft study on global warming. Some of the highlights of this study, that looks out over the next 100 years, are that water levels will rise in many coastal areas, growing seasons will change, the risk of drought will increase in the Great Plains and the Southeast, winter rains will become much heavier in the West meaning that reservoirs will need to be enlarged, the Pacific Northwest will face water shortages because of declining winter snowfalls.³

I read this, and I wondered how many water suppliers were thinking about any of these possibilities. I read a lot of information that AWWA puts out and I don't recall seeing one word

about any of these problems. I see lots of information about regulations, laws, politics, money, stakeholders, internal politics, health research – you know the litany. But not one word about the dramatic climate changes that could fundamentally alter some of our most basic planning and operational assumptions.

My faith was fading fast.

But I wasn't ready to give up. I did some more reading. I read about AWWA's support for the "Enlibra doctrine."⁴ That's the policy pronouncement from the Western Governors' Association that basically says the federal government doesn't know what it's doing and should not be allowed to set national standards. And AWWA, apparently, thinks that's a great idea. That I should be able to travel around the country and have no idea if the local water supply meets any particular standards. Indeed, AWWA's letter in support says "the drinking water community has often borne the brunt of overly prescriptive federal requirements [and] policies based on poor science."⁵

Then I read about AWWA's infrastructure studies and I read the WIN report⁶ – yes, I actually read the report, not just the press release.

Now, as I understand this, state and local governments are complaining that they just don't have the money to maintain their water systems, so they need the federal government to help out with a major federal grant program, amounting to tens or hundreds of billions of dollars over the next decade.

The economy is booming. In 1999, state and local governments had a \$51 billion surplus. This year, the Commerce Department projects a \$60 billion surplus at the state and local level.⁷ Taxpayer dollars are being spent to build stadiums for multi-millionaires. But we just don't have the money to maintain our water systems. Let's forget the fact that Nashville, Tennessee decided to finance its new professional football stadium by putting a surcharge on its water bills – we just don't have the money to replace those 100-year-old pipes. Somehow, my home state of Pennsylvania is finding a few hundred million dollars to build four new stadiums – one each for the Pirates, Steelers, Phillies, and Eagles – but they can't find the money to replace some old water mains.

Let me get this straight. We're supposed to trust state and local governments to set and police their own standards and provide us with safe water. But they aren't willing to spend money to maintain their existing water infrastructure?

My faith was disappearing – the water equivalent of atheism was looking better and better. Don't trust anyone, don't believe that anyone is looking out for your best interests, take care of yourself, and hope for the best.

All of this leads to one logical question. You folks are the drinking water industry and its regulators. How do you go about restoring my faith? How do you make me believe that you have my best interests in mind? How do you make me believe again that you are protecting public health in a cost-effective manner?

Here's my modest proposal – let's call it my "five-step faith fantasy":

Step One – Stop whining and get to work. Stop complaining about regulators and poor science. How much money have you spent trying to make that science better? I know what AWWARF does – but what percentage of your utility’s revenues go to AWWARF or to fund other scientific research? Work hard to help regulators set policies that make sense, but stop complaining about the process. All this whining just contributes to consumers’ lack of faith in the process.

Step Two – We need national regulation of drinking water, period. Get over it, it’s not going away. Remember your history – we have the regulatory system we have now because a less prescriptive approach didn’t work. Consumers need it because not everybody is professional and responsible and caring and looking out for the public’s best interests. Water suppliers don’t like to spend money, politicians don’t like to raise taxes or user fees, and you don’t create a lot of new jobs or attract tourists by saying “we have the best water system in the state.” As consumers and taxpayers, we know that all too many state and local governments will not spend money on water systems – they have a long history of ignoring problems that can be hidden or dealt with by the next administration.

And, by the way, utilities need federal regulatory standards, too, because it provides you with some measure of certainty and protection against law suits. Or would you rather be like other industries where your practices are set by insurance companies and plaintiffs’ lawyers?

Step Three – For the regulators out there – let’s remember that the goal is public health protection. It’s not environmental protection, or racking up victories in court, or pushing the industry toward one technology or another. The goal is to protect public health in the most cost-effective manner possible. Of course we don’t want all those nasty chemicals in our water, and we don’t want the water to make us sick, but we also need to be able to pay the water bill – so we can buy food and shelter and medical care. That’s a very real issue for tens of millions of people in this country – even with the booming economy. Don’t forget them, don’t just pay them lip service or relegate their concerns to a couple of pages in a regulatory impact analysis – we’re talking about some of our most vulnerable citizens who need our help.

Step Four – We are not “ratepayers” or “stakeholders” or “affected sub-populations” – we are the people who consume the water, pay for it, and if things don’t work out, get sick from it and sometimes die from it. Treat us like your most valuable asset instead of a nuisance. Work to restore our faith in the regulatory process. Work to restore our faith in the safety, quality, reliability, and value of the product that we are forced to buy from you.

And, for heaven’s sake, regulators and utilities alike, have the decency to tell us the truth. Tell us that you need to spend a lot of money to replace pipes that are 50 or 100 years old and failing. We can understand that – nothing lasts forever, especially when it’s been neglected by “prior administrations.”

Tell us that the water isn’t perfectly safe – nothing is – but you’re working to make it better, and that’s what the new regulations are designed to do. And a message to the regulators again: if you can’t say that with a straight face – if you don’t believe the increased cost is worthwhile – have the guts to change the regulation.

Tell us how you're going to make sure that the poor, the elderly, the disabled and the sick have a safe and reliable supply of water that they can afford. Yes, it means some of the rest of us may have to pay for it, and a bunch of us won't like it, but it's the right thing to do and it sure beats the alternatives – more free hospital stays, more homelessness, more people in nursing homes at government expense - which will cost us a lot more.

And Step Five – if you don't want to be in this business, get out of it. There are plenty of folks around who would love to own and operate your water system. Get in the business – get professional leadership, make some tough decisions, get serious about maintaining and upgrading your facilities, raise and spend the capital that's needed to do it right. Or get out of the business and let someone else come in who understands this business and wants to do it right. Believe me, I don't have much faith in mammoth utilities and privatization, but I have even less faith in governments and private utilities that neglect their essential services and refuse to do what's necessary to protect their communities.

These actions will help to restore our faith in what you are doing.

Did I answer the question: What's the future of regulation? If I didn't make it clear, here's my prediction: The future of regulation is bright. The federal government will continue to set nationwide drinking water standards and will not pay you to implement those standards. Are some improvements needed? Absolutely. But the basic process will not change. We will not replace federal regulation with self-regulation, state regulation or local regulation. Get over it and get on with the business of providing safe, reliable, and cost-effective water service.

I am a member of AWWA, and I am also a member of NRDC and other environmental organizations, not because any of these organizations are perfect, but because I continue to have faith in their ability to ask the right questions and search for the right answers. And I continue to have faith in your ability to do the job and to do it well. So let's get back to the real work and stop complaining about regulation.

¹ Karen Gullo, "Surgeon general: 'Epidemic' of oral disease," *Associated Press*, May 26, 2000.

² Tom Cohen, "Town straining under E. coli outbreak," *Associated Press*, May 26, 2000.

³ John J. Fialka, "U.S. Study on Global Warming May Overplay Dire Side," *The Wall Street Journal*, May 26, 2000.

⁴ Western Governors' Association, "Principles for Environmental Management in the West," Policy Resolution 98-001, Feb. 24, 1998.

⁵ Letter from John H. Sullivan, Deputy Executive Director AWWA to Shaun McGrath, Western Governors' Association, November 30, 1998.

⁶ The Water Infrastructure Network, "Clean & Safe Water for the 21st Century," April 2000.

⁷ "U.S. Says Surplus of State, Locals to Reach \$60 Billion," *The Wall Street Journal*, June 1, 2000.