



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 14 1989

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Regulation of Nontransient Noncommunity Water
Systems which Use Bottled Water for Drinking
Purposes

FROM: Michael B. Cook, Director
Office of Drinking Water

A handwritten signature in black ink, appearing to read "Peter S. Cook".

TO: Walter Andres, Chief
Drinking Water and Ground Water
Protection Branch, Region II

This is in response to your request for written guidance on the following question: Is a nontransient noncommunity water system which uses piped water only for lavatories and sinks, but provides bottled water for drinking purposes, a public water system under the Sage Drinking Water Act (SDWA)?

A Public water system is defined by Section 1401(4) of the SDWA as a system for the provision to the public of piped water for human consumption." "Human consumption" has been interpreted by the U.S. District Court for the Eastern District of California in the case of U.S. v. Midway Heights County Water District as including such normal uses as bathing, showering, cooking, dishwashing, and oral hygiene. The nontransient noncommunity system using the piped water for lavatories and sinks, therefore is providing water for human consumption and thus is a public water system.

The fact that a sign is posted indicating that the water is not potable would not, by itself, affect this determination since human consumption includes more than simply drinking the water. In addition, under our regulations at 40 CFR 141.101, a public water system may not use bottled water or point of use devices as a means of achieving compliance with a maximum contaminant level (MCL). Bottled water and point of use devices may only be used on a temporary basis, usually as a condition of a variance or an exemption, to avoid an unreasonable risk to health. Point of entry

devices may be used to achieve compliance with an MCL only if the conditions specified in 40 CFR 141.100 are satisfied.

In conclusion, in general, the nontransient noncommunity water systems in question are public water systems and must comply with the National Primary Drinking Water Regulations (NPDWRs) I hope this is responsive to your concerns. Should you have any questions on this matter, please call Bob Blanco (FTS 382-5522) or have your staff contact, Betsy Devlin (FTS 382-2303).

cc: Drinking Water/Groundwater Protection Branch Chiefs Region I and III - X

III. DEFINITIONS: POLICY AND REGULATORY

Issue No. 5: Meaning of "Human Consumption" and "Graywater Uses" as it relates to Public Water Systems

On February 26, 1988, the United States District Court settled the U.S. v. Midway Heights case in part by claiming "human consumption includes drinking, bathing, showering, cooking, dishwashing, and maintaining oral hygiene." Do these statements claim that inhalation alone can constitute human consumption? For example, a hospital has its own well which it uses solely for laundry purposes (the rest of its water is supplied by a Public Water System), would this use constitute human consumption? In addition, what types of water consumption are included in EPA's definition of "gray water uses?"

Response:

In U.S. v. Midway Heights County /water District, the water district contended as part of its defense that it was not a public water system and thus not subject to the Safe Drinking Water Act (SDWA) or the National Primary Drinking Water Regulations (NPDWRs) because it did not supply water for "human consumption", that is, drinking. The court, as noted above, found that human consumption was more than just drinking. Moreover, the court found that the defendant knew or should have known that the water was being used for human consumption (due to the pipes running into the homes and other facts specific to this case) and that the agreement between the district and the customers which "apparently purports to limit the use(s) of defendant's water to irrigation is ineffective to take defendant's water system out of reach of the Safe Drinking Water Act which was enacted to protect the public health."

In its opinion, the court did not expressly deal with the question of inhalation as it was not dealing with types of exposure to contaminants. It is our opinion, however, that the court was interpreting consumption in a broad sense, that is, human consumption includes all normal, everyday purposes. If an individual uses the water provided by a system for bathing or dishwashing, arguably, that individual would be exposed to contaminants in the water through inhalation. In this sense, then inhalation could be considered consumption.

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OFFICE OF
WATER

Charles S. Mahan, M.D.
Deputy Secretary for Health
and State Health Officer
Department of Health and Rehabilitative
Services
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

Dear Mr. Mahan:

This is in response to your August 16, 1989, letter requesting clarification on EPA's official position on the use of bottled water by a noncommunity system to avoid being considered a public water system subject to the Safe Drinking Water Act (SDWA). I understand that this has particular importance to the Florida program as systems subject to the SDWA are under the jurisdiction of the Florida Department of Environmental Regulation and the "other" systems are under the control of the Florida Department of Health and Rehabilitative Services.

A public water system is defined by Section 1401(4) of the SDWA as "a system for the provision to the public of piped water for human consumption." "Human consumption" has been interpreted by the U.S. District Court for the Eastern District of California in the case of U.S. v. Midway Heights County Water District as including such normal uses as bathing, showering, cooking, dishwashing, and oral hygiene. If a system provides water for these normal uses, then it is providing water for human consumption and is a public water system subject to regulation under the SDWA.

The fact that a noncommunity water system provides bottled water for drinking would not, by itself, affect this determination since human consumption includes more than simply drinking the water. Further, it is important to keep in mind that according to 40 CFR 141.101, a public water system may not use bottled water or point of use devices as a means of achieving compliance with a maximum contaminant level (MCL). Bottled water and point of use devices may only be used on a temporary basis,

usually as a condition of a variance or an exemption, to avoid an unreasonable risk to health. Point of entry devices may be used to achieve compliance, with an MCL only if the conditions specified in 40 CFR 141.100 are satisfied.

In conclusion, in general, a noncommunity water system may not escape regulation by providing bottled water for drinking if this system provides water for other normal, everyday uses. In such situation, the system is providing water for human consumption and its subject to the SDWA and the National Primary Drinking Water Regulations (NPDWRs).

I would be pleased to discuss this further. If you have any further questions on this matter, please contact me or have your staff contact Betsy Devlin at (202)382-2302.

Sincerely,

A handwritten signature in black ink that reads "Peter L. Cook for". The signature is written in a cursive style and is positioned above a horizontal line.

Michael B. Cook, Director
Office of Drinking Water

cc: Mike Leonard, Region IV