



# The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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SUZANNE M. BUMP, ESQ.  
AUDITOR

May 24, 2011

Mr. Robert A. Marquis  
Superintendent  
Swansea Water District  
700 Wilbur Avenue  
Swansea, Massachusetts 02777

**RE: *Chemical Safety Control Strategy Requirements of the Massachusetts Department of Environmental Protection (DEP), Drinking Water Program***

Dear Mr. Marquis:

This letter is in response to your request regarding the Local Mandate Law, General Laws Chapter 29, Section 27C, and the Department of Environmental Protection (DEP) requirement that public and private water suppliers implement chemical safety strategies at water treatment plants. These requirements are detailed in DEP's *Guidelines and Policies for Public Water Systems*, effective in June 2010. As a result, you explain that the Swansea Water District must incur costs to retrofit the chemical feed systems at each of your facilities. On behalf of the District's Board of Water Commissioners, you ask whether the Local Mandate Law applies to the cost of implementing these requirements. As further explained below, it is the opinion of the Division of Local Mandates (DLM) that the Local Mandate Law does not apply in this case, primarily because the Swansea Water District is not a city or town.

As you may know, the Local Mandate Law was adopted as part of Proposition 2½, Chapter 580 of the Acts of 1980. Although the most significant effect of Proposition 2½ was the limitation of municipal property taxes, the initiative included various provisions limiting the prior authority of other governmental bodies to impose unlimited costs upon cities and towns. Among other things, Proposition 2½ repealed school committee fiscal autonomy, capped assessments payable to counties and certain districts, and limited the ability of state agencies and the state legislature to impose additional costs on cities and towns.

As to the limit on the authority of state government, the Local Mandate Law provides that any post-1980 state law, rule or regulation that imposes a direct cost obligation *upon any city or town* must either be fully funded by the Commonwealth, or subject to local acceptance. In light of the property tax limits of Proposition 2½, cities and towns were viewed as the parties to be shielded from mandated costs. A subsequent amendment extends this protection to regional school

districts and educational collaboratives, but not to other governmental entities. (See Section 24 of Chapter 71 of the Acts of 1993.)

The Swansea Water District is not a city or town, but an independent body corporate created by Chapter 137 of the Acts of 1949. The Act directs the District's Board of Water Commissioners to set equitable prices and rates, and to collect payments from Swansea residents for the various costs associated with providing potable water. This income is earmarked to support the full range of expenses the District may incur. In short, the Swansea Water District operates as a separate entity, governed by a Board of Commissioners, funded by ratepayers, independent of the property tax base of the Town of Swansea. For these reasons, DLM concludes that the Local Mandate Law does not apply to the cost of complying with the DEP chemical safety control strategy requirements that may be incurred by the Swansea Water District.

Additionally, staff at the DEP Drinking Water Program indicate that chemicals are necessary to meet federal water quality standards, and chemical safety controls are required to ensure compliance with the federal standards. It is DLM's opinion that the Local Mandate Law does not apply to a state law, rule, or regulation implementing a federal requirement.

Nonetheless, DEP officials expressed a willingness to discuss any possibilities to mitigate the cost of implementing chemical safety control strategies in the Swansea Water District. The Drinking Water Program Director, David Terry, may be reached at 617-292-5529. I thank you for bringing this matter to our attention. Please call with further questions or comments you may have.

Sincerely,

A handwritten signature in cursive script that reads "Emily D. Cousens". The signature is written in dark ink and is positioned above the typed name and title.

Emily D. Cousens, Esq., Director  
Division of Local Mandates

cc: Deputy Auditor Gerald A. McDonough  
David Y. Terry, DEP Program Director