



The Committee on Energy and Commerce

Joe Barton, Chairman U.S. House of Representatives

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Witness Testimony

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Tapped Out? Lead in the District of Columbia and
the Providing of Safe Drinking Water
Subcommittee on Environment and Hazardous
Materials
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Mr. Chairman and members of the subcommittee, thank you for the invitation to testify before you today.

My name is Donald Correll. Since August of 2003 I have served as President and CEO of Pennichuck Corporation. Pennichuck Water Works was founded in 1852 and has grown to become the largest investor-owned water company in the state of New Hampshire, serving a population of 120,000 people in 22 communities throughout southern New Hampshire and in Massachusetts.

Pennichuck Corporation is a holding company with five wholly owned operating subsidiaries. The Company is comprised of three private water utilities, Pennichuck Water Works, Inc., Pittsfield Aqueduct Company and Pennichuck East Utility that are regulated by the New Hampshire Public Utilities Commission, and two non-regulated companies, Pennichuck Water Service Company and The Southwood Corporation. Pennichuck is the oldest continuously operated company in New

Hampshire.

Prior to joining Pennichuck, from 1990 to 2001, I served as Chairman and CEO of United Water, one of the largest water service companies in the United States with operations and investment in 19 states, Canada, Mexico and the UK. I also serve as an advisory director with Underground Solutions Inc., a water technology and service company, based in Sarver, Pennsylvania, which is involved in the water infrastructure industry.

I am testifying today on behalf of The National Association of Water Companies, NAWC is the only national organization exclusively representing all aspects of the private and investor-owned water industry. The range of our members' business includes ownership of regulated drinking water and wastewater utilities and the many forms of public-private partnerships and management contract arrangements. NAWC has more than 150 members, which in turn own or operate thousands of utilities in 38 States around the country.

ROLE OF THE PRIVATE SECTOR

The private sector has long played a vital role in the provision of water in our nation, and stands ready to do much more. The privately owned water utility business traces its roots back to before the very existence of our nation. And today, one out of every six Americans receive their drinking water service from a private water company.

However, outright private ownership is but one-model localities can pursue as a means of addressing their infrastructure challenges. Another large and growing option is some form of public-private partnerships, including contract operations, wherein the municipality retains ownership of the asset; in this case a water utility and its infrastructure, but the management and operations of the facility are contracted out to a private company.

Management contract or public-private partnership arrangements between municipalities and private companies represent a newer model (started in the 1970s), and have become hugely popular in a very short period of time. Today, private firms operate more than 2,400 publicly owned water and wastewater facilities for nearly 2,000 municipalities. Such arrangements have proven to be very popular with municipalities and enjoy a 90% contract renewal rate.

History has shown that the private sector can and does provide the public with safe and efficient water service through market-based solutions. The private water industry has been on the cutting edge of technical innovation and research. Furthermore, in this time of increased utility security awareness, the private sector has once again been on the forefront of these initiatives, bringing to the industry firsthand security experience derived from working in some of the world's hot spots.

THE AGING INFRASTRUCTURE CHALLENGE AND SOLUTIONS

NAWC commends the Subcommittee for tackling the complex issue of safe drinking water and specifically the lead problems we have seen. Many of the issues are related to the broader infrastructure problem this committee has been looking at for some time. Let me start there, and then I will talk specifically about the lead issue.

It has been well established from a number of sources that cities, towns and utilities face a major challenge over the next several decades replacing aging and worn-out drinking water infrastructure. According to the EPA infrastructure gap analysis, issued in 2002, drinking water systems will spend between \$154 and \$446 billion through 2019. Wastewater systems will spend between \$331 and \$450 billion over that same period. In addition to EPA, the Congressional Budget Office and the General Accounting office have done studies on the country's infrastructure challenge and their cost estimates are similar to EPA's.

Utilities and localities must take the lead in addressing this infrastructure challenge by accessing the many organizational, managerial and financial tools at their disposal. Clearly, the Federal Government has a role in assisting with this challenge, but that role does not need to be taking on the major financial responsibility for infrastructure. Instead the role should be to encourage utilities to pursue smart business-like management practices including improving operating efficiencies to free up cash for infrastructure replacement, charging what it costs to provide the service including capital investments, selecting cost-effective infrastructure replacement technologies, and implementing an infrastructure replacement program that will assure the utility's viability.

Public-private partnerships can often provide a proven model for accomplishing all of the above.

Direct government loan assistance to utilities is another government role, but, like the Drinking Water-SRF, should be carefully managed and targeted only where and when necessary. An inappropriate role of government would be to subsidize the water industry indefinitely with a massive federal grant program, as some have advocated.

Grants are a very inefficient method of providing assistance to utilities. Grants send the wrong conservation signals and can result in bad management practices,

The Construction Grants Program of the 1970s had many problems, which could very likely be reborn if a similar program were reconstituted. Those problems included procurement regulations that discounted quality for the sake of lowest price, lack of reliable capital replacement accounts to ensure that funds exist for future replacement (such as today), and little local buy-in or ownership on the part of grant recipients, which resulted in sometimes wildly overbuilt systems and wasted tax dollars.

The best means for providing federal funds are the State Revolving Loan Funds along with the

use of creative and innovative solutions. We can make considerable progress toward solving our infrastructure needs by avoiding the mistakes of the past and securing our water infrastructure for the future. I encourage Congress therefore to retain the State Revolving Loan Funds as the primary conduit of assistance to water utilities.

Congress should also ensure that Federal assistance is used to encourage strong management practices by water utilities. This should include full cost of service rates, asset management, consolidation and support for public-private partnerships.

Full Cost of Service Rates

Across the country, many water utilities are charging customers water rates that are misleading and do not cover the cost of providing the service. This has resulted in a devaluation of water as resource, which not only causes utilities to rely on federal subsidies for investment in infrastructure replacement, but also sends the wrong signals to consumers about the value of water and the need for conservation.

In some cases the actual cost of providing water service is greater than the rates charged by utilities. In fact, Dr. Janice Beecher of Beecher Policy Research said before this Subcommittee in March of 2001

"...when municipalities provide electricity and natural gas services, revenues exceed total capital and operating expenditures. For water and sewer services... total expenditures exceed revenues. The findings generally suggest that municipal water customers do not cover expenditures through rates and other user charges."

Also, in a study on this issue released by the General Accounting Office, they found the amount of funds obtained from user charges and other local sources of revenue was less than the full cost of providing service for over a quarter of drinking water utilities. Indeed many

municipalities pride themselves on their low rates, and publish their comparative rates as being lower than other when in fact, they are not charging the full cost of service.

This clearly demonstrates the need for full cost of service rates. Utilities must be able to generate the revenue needed to cover costs and invest in replacing aging infrastructure. This can only happen when we are charging customers the true cost of the services provided.

However, NAWC recognizes that increasing rates will put low-income families at risk of not being able to afford their water bills. To address this, NAWC supports a federal water rate payer assistance program modeled after the Low-Income Home Energy Assistance Program (LIHEAP).

However, we do not believe that the increased rates will be an overwhelming burden for most Americans. According to the Congressional Budget Office, Americans currently pay roughly 0.5% of their total household income for water and wastewater service. This is significantly less than other utility costs, which range from 2% to 5% of household income, and suggest room for increases.

Asset Management

Generally, privately owned and operated utilities manage their infrastructure assets, such as pipelines and other equipment to maximize the useful lives of the assets, increase efficiency, minimize costs, and maintain service to customers. Careful management of assets is essential if we are to successfully meet the infrastructure financing challenge. However, many localities do not have in place such asset management plans. In fact the General Accounting Office has estimated that as many as 25% of all utilities do not have such a plan.

Since good management of assets can go along way toward avoiding an infrastructure-financing gap as well as addressing the infrastructure replacement challenge, NAWC believes utilities

should adopt such practices. Congress should therefore encourage, as part of the SRF Funding process, the implementation of sound asset management practices.

Consolidation

There are over 50,000 community water systems in the United States today, many of which are very small. In many, but not all cases, the financial challenges facing these utilities can be addressed by improving their economies of scale through consolidation. By tying consideration of SRF funding to consolidation, Congress will encourage utilities to put aside parochial interests, expand their vision and improve the service to customers. Over the last five years, Pennichuck has consummated dozens of acquisitions of smaller systems, many of which would not have financially viable over the long-term. It is important to note, that consolidation does not work everywhere, and is not the answer for all problems. However, it is clear that consolidating ownership and/or management functions with other facilities can streamline a utility and save money.

Public-Private Partnerships

Municipalities large and small all over the country have realized great savings and success through partnerships with private firms. These partnerships take many forms, from contracting out small portions of a utility's operations such as billing or meter reading, to multi-year all inclusive management contracts wherein a private firm runs and manages all aspects of a municipally owned utility, to the transfer of assets to a private company. Cost savings that localities have realized over the years from such arrangements range up to 40%, freeing up much needed capital for infrastructure replacement, without burdening either the customer or the American taxpayer. Likewise these arrangements have often allowed municipalities to avoid significant rate adjustments while still meeting the higher EPA water quality standards.

Therefore Congress should, whenever appropriate, encourage the development of such partnerships as a tool for addressing our infrastructure replacement challenges.

Access to State Revolving Loan Funds for Private Water Companies

Access to the DW-SRF (and the Clean Water SRF for that matter) should be based on need and need alone. The ownership of the utility should not be a factor. After all, it's the taxpayers, all taxpayers, not just those of municipal utilities that fund The SRFs.

When Congress established the DW-SRF in 1996 they knew that the benefits of the SRF would flow to the customers of privately owned utilities, not the owners or stockholders. And this is working well in many states. NAWC has many examples of privately owned utilities working with States, receiving SRF assistance and extending service to underserved or badly served populations. These are some of the best examples of public-private partnerships.

However, we regret to report that there are still ten States (Alabama Arkansas, Colorado, Georgia, Kansas, Mississippi, North Carolina, Oklahoma, Tennessee, Wyoming) that, despite Congress's clear intent, do not allow private utilities access to the DW-SRF. Incredibly, these States are still allowed to use private utilities in their needs survey, and thus receive SRF capitalization grant funds based on this private utility need, a need they have no intention of meeting. NAWC believes that Congress should only allow EPA to provide SRF allocation grants to the States for the needs the State is willing to actually meet. If a State does not allow private utility access to the DW-SRF, EPA should reduce their allocation grant accordingly.

Also, I must report that in some of the states that allow private access to the SRF, there are often burdensome application requirements and fees that, in some cases, municipal utilities don't face. Also in some States, their priority lists clearly favor municipally owned utilities, and the

needy private utilities often receive little or no funding.

These processes are not in line with Congressional intent when you granted private utility access to the SRF. We hope to continue working with you on these issues.

Private Activity Bonds

Another role that the federal government, and specifically Congress can play is passing legislation to eliminate the state volume caps on Private Activity Bonds (PABs) for water and wastewater projects, thus providing billions of dollars in capital that can be used to invest in water infrastructure replacement. Changing the tax code and exempting water and sewage facilities from the state volume caps could be one of the most productive incentives Congress can provide to stimulate infrastructure investment and replacement. In fact, billions of potential investment will be stimulated by the tax change but it will cost the federal government less than \$150 million over ten years, according to the Joint Committee on Taxation.

I understand that this issue does not fall under the jurisdiction of this Committee, however it is an important tool for addressing the infrastructure challenge, and therefore, I wanted to bring it to your attention.

LEAD AND DRINKING WATER

Lead is a naturally occurring metal that was used regularly in a number of industrial capacities for most of the 20th Century. Lead was used as a component of paint, piping (including water service lines), solder, brass, and as a gasoline additive until the 1980's. According to the U.S. Environmental Protection Agency (USEPA), lead paint and the contaminated dust and soil it generates is the leading household source of lead exposure today. Research has confirmed that lead is highly toxic. Ingestion of lead can pose a serious health risk to humans, especially children.

Lead contamination in drinking water almost always occurs after water has left the treatment plant when it travels through piping and plumbing containing lead. Water is naturally corrosive, and in some cases will corrode the pipes and plumbing through which it passes, picking up lead. This corrosion can occur in home fixtures as well.

To control the corrosion, and thus the lead in water, many public water systems add a corrosion inhibitor such as zinc orthophosphate to the water. While this is often effective as a means of corrosion control, it does have a downside, which is increased phosphate content in wastewater in that community.

NAWC has a number of recommendations to address the lead issue before this Subcommittee. Our recommendations closely follow those of the American Water Works Association, including the idea that EPA must rethink the "Silo" approach to regulation. Today rules are generally developed in isolation from one another, without consideration to the potential interconnectivity one rule may have with another. The recent experiences some communities have had with lead may be due to the drawbacks of the silo approach. We believe a holistic approach to drinking water regulation is needed that takes into account simultaneous compliance with existing drinking water and environmental regulations. In addition to this, NAWC recommends the following:

1. NATIONAL LEAD REDUCTION STRATEGY.

NAWC advocates a comprehensive approach to reducing lead contamination from all sources. Congress should require a respected body such as the Centers for Disease Control to complete a comprehensive study of lead exposure from all sources, and to develop a national strategy to reduce lead exposure from all significant sources. Such research should include a determination of the contribution to lead in drinking water from lead service lines, pipes inside the home, and plumbing fixtures.

NAWC also strongly advocates a continuing public education program concerning all sources and hazards of lead exposure and effective protective measures. Public education is a key component of a lead exposure reduction strategy. Water suppliers, working in cooperation with local and state public health officials and others, can help deliver the needed messages on the dangers of lead and the part everyone has to play in reducing risks. Since most lead contamination occurs inside the home from paint chips and dust or comes from home plumbing, increased public awareness is especially important.

2. OPTIMIZATION OF CORROSION CONTROL.

NAWC advocates the treatment technique of optimizing corrosion control as the best way of reducing exposure from lead in drinking water. Determining the corrosivity of water is complex and depended on several characteristics of the water. Lead contamination of drinking water is primarily the result of lead in home plumbing and fixtures beyond the control of a drinking water utility. The means available to drinking water systems to mitigate the degradation of water passing through pipes and fixtures in home plumbing is through implementation or modification of the corrosion control process. This can be done by adjusting the finished water's pH and alkalinity or by adding corrosion inhibitors.

If source water were the only way lead could enter drinking water, establishing a maximum contaminant level (MCL) for a utility to meet at the plant or in the distribution system would be sufficient to protect public health as it is for the majority of regulated contaminants. If lead were to occur in source waters, it could be removed in the treatment process. Public water systems are clearly responsible for and can control water quality at treatment facilities. However, the major source of lead in drinking water is not source water, it is lead from plumbing systems and faucets in homes that are beyond the control of drinking water utilities. The contribution of lead service lines to lead

contamination is uncertain.

Some have suggested establishing an MCL for lead at the end user's tap. This would have the effect of holding water suppliers legally responsible not only for lead sources that they cannot control but also the mistakes, omissions, and even illegal activities of others. There is still lead solder in home plumbing although it was banned in 1986. Studies have shown that brass faucets holding lead free water for an eight-hour period can leach lead into water at levels of 10 ppb and higher. Grounding of electrical circuits in homes to water pipes and galvanic action between two dissimilar metals may increase corrosion that could cause lead to leach into the water. Customers who soften their water or otherwise change its corrosivity can affect the lead content of the water. These types of problems cannot be solved by an MCL at the tap or in the public water system. Each of these by themselves or in combination can cause lead to leach into drinking water. The SDWA limits EPA authority to regulating public water systems. A tap within a residence is not and should not be considered to be part of a public water system.

The SDWA also specifically prohibits USEPA from imposing both an MCL and a treatment technique for the same contaminant. Therefore NAWC advocates a lead control strategy of optimizing corrosion control in conjunction with public education and a lead service line replacement program as the best method to protect public health.

3. REPLACEMENT OF LEAD SERVICE LINES.

NAWC advocates lead service line removal as a means of reducing lead contamination in drinking water when the lead service line is significantly contributing to lead contamination. However, lead service line replacement is complicated by the ownership of the lines. In some instances, the water utility owns the entire line. In others, the property owner owns the entire service line. And in still other cases, part of the lead service line is owned by the utility and part by the property owner.

A public water system can only be held legally liable for replacing the service line or part of the service line owned by the utility. A public water system has no legal means to compel a property owner to replace a lead service line or portion of a lead service line. Requiring a water utility to remove privately owned lead service lines raises constitutional legal issues with regard to private property and eminent domain. All agree that partial replacement of a lead service increases lead levels in water and should be avoided. Further, removing a lead service line may not reduce lead contamination of drinking water. Tests have revealed high lead levels in homes that have no lead service line and low to no measurable lead contamination in homes with lead service lines. Removing lead service lines alone is not the complete solution to reducing lead exposure from drinking water.

Because of the costs involved and the likelihood there will be little or no public health benefit in some cases, lead service removal programs should focus on removing lead service lines owned by a utility that are significantly contributing to lead contamination as a high priority.

4. INDEPENDENT STUDY OF LEAD PROBLEMS AND LEGISLATIVE AND REGULATORY CHANGES.

NAWC advocates an independent study of the drinking water lead contamination incidents to evaluate what if any changes may need to be made in the law or regulation. Based on recent USEPA data (http://www.epa.gov/safewater/lcrmr/lead_data.html) there is no reason, at this time, to believe that there is a nationwide problem that would require changes to the SDWA. The current SDWA requirements protect public health and USEPA currently is engaged in an extensive national review of the Lead and Copper Rule implementation to identify how well the rule is performing across the nation and what gaps exist in federal guidance and regulation. The Lead and Copper Rule should not be revised until this review is completed.

NAWC recommends that Congress direct an independent study of the high lead levels in the District of Columbia water system be conducted. This could be done very soon in an appropriations bill.

CONCLUSION

We appreciate the leadership role that this Subcommittee has taken to address water infrastructure problems, and we also appreciate the concern that you have expressed regarding the need for cost-effective solutions. These are long-term challenges, and we look forward to working with the Committee to achieve long-term solutions that will allow the drinking water industry to stand on its own two feet.



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