A Safe Harbor for Water Companies That Comply with Safe Drinking Water Standards: State Legislation

National Association of Regulatory Utility Commissioners
Committee on Water
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Presented By

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California Trial Courts

- A complaint containing a host of theories, including wrongful death, was filed on April 24, 1997, in Los Angeles Superior Court on behalf of 140 plaintiffs naming only Southern California Water Company, a utility regulated by the California Public Utilities Commission (PUC).
- No contaminators/polluters were named as defendants.
- Case alleged contaminated water had been served to plaintiffs in San Gabriel Valley for some twenty years (Superfund site).
- In January 1998, two cases were filed in Sacramento by approximately 800 plaintiffs.
- The allegations were the same as those made in the Los Angeles/San Gabriel Basin area.

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California Trial Courts *(cont'd)*

- Over the next two years an additional nineteen cases were filed naming only investor-owned water purveyors and some public entity water utilities as defendants.
- Plaintiffs totaled approximately 2,000.
- The water companies involved (except the public entities) were all Class A Regulated Utilities governed by the California Public Utilities Commission.
- The California PUC is a state agency of constitutional origin with far-reaching duties, functions, and powers. (California Constitution Article 12 §§ 1-6).

PUC Response

- On March 12, 1998, the PUC issued an Order Instituting Investigation (OII).
- Required each of the twenty-five Class A water purveyors in California to give a history of each well in its state-wide system for past twenty-five years, exercising its ongoing jurisdiction of water companies.

Trial Courts React to PUC's OII

- Beginning in June 1998, Superior Courts in Los Angeles and Sacramento stayed or halted all legal proceedings against the water companies, pending outcome of the PUC's OII.
- A judge in Ventura County (where one of the cases had been transferred) dismissed the water companies on jurisdictional grounds.
- Plaintiffs appealed both sets of rulings.
- Plaintiffs finally began serving the polluters/ contaminators with suits in both Los Angeles and Sacramento.
- Approximately one-hundred polluters/contaminators were named in Los Angeles, but only two in Sacramento.

PUC Conclusions

The PUC concluded in September 1999, some eighteen months later, that:

- Existing DHS drinking water quality standards adequately protect the public health and safety.
- Over the past twenty-five years PUC-Regulated Utilities, including defendants in these lawsuits, had provided water that was "in no way harmful or dangerous to health."
- PUC-Regulated Utilities satisfactorily complied with DHS drinking water quality requirements.

Court of Appeal Decision

- In September 1999, the California Court of Appeal ruled unanimously that the cases were preempted insofar as they seek remedies against PUC-Regulated Utilities. Justice Barbara Jones wrote the unanimous opinion of the Court.
- The victory, however, was short-lived.
- On December 15, 1999, the California Supreme Court granted review of the Court of Appeal decision.

Supreme Court Decision

- On February 4, 2002, the California Supreme Court issued its unanimous ruling in the case of *Hartwell v. Superior Court*, which included several significant holdings.
- The Court held that PUC § 1759 barred actions for damages against water purveyors regulated by the PUC arising out of exposure to contaminated drinking water, where such actions challenge the adequacy of drinking water standards, or sought damages for exposure to water that met applicable regulatory standards.
- The PUC provides a safe harbor for utilities meeting those water quality standards, and a holding that the existing standards were inadequate would undermine this policy by holding the utilities liable for damages caused by their failure to undertake action that the PUC had determined was not required.

Supreme Court Decision *(cont'd)*

- The Court did allow plaintiffs to pursue "damage claims based on the theory that the water supplied by the defendants failed to meet federal and state drinking water standards."
- Plaintiffs won the right to replead their claims in the Superior Court on the theory that the water failed to meet federal and state safe drinking water standards.
- The cases were thereafter assigned to Superior Court Judges in Los Angeles and Sacramento to restart the litigation process in the spring of 2002.

Remand to Trial Court

- From the Spring of 2002 over the course of the next 2 ½ years, the twenty-four contamination cases in Los Angeles and Sacramento proceeded.
- The Los Angeles cases were consolidated in the Los Angeles Superior Court in the complex litigation program.
- The defendants were divided up into Industrials (Polluters), PUC-Regulated Water Companies, and Non-Regulated Public Entity Water Companies. Each group had a liaison counsel.
- The Court established four phases of the case: definition of a "standard," definition of a "violation," whether or not a violation of a standard occurred, and dispositive motions.

Remand to Trial Court (*cont'd*)

- The Court adopted the definitions of "Standard" and "Violation" as proposed by the PUC-Regulated Utilities.
- After extensive document production, plaintiffs could find no violations on the particular wells by any of the PUC-Regulated Utilities.
- In August 2004, the Los Angeles cases were dismissed as to all of the PUC-Regulated Utilities and Public Entity Utilities on jurisdictional grounds. **This ruling was appealed.**
- In the Fall of 2004, the cases against the PUC-Regulated Utilities in Sacramento were also dismissed on jurisdictional grounds. **Those cases were not appealed.**

Los Angeles and Sacramento Cases Conclude

Sacramento

- Of the 800 plaintiffs, some 600 were dismissed by the court on motion or released by plaintiffs' counsel.
- Approximately 125 plaintiffs settled with the major polluter, Aerojet General.
- In February 2006, trial began against Aerojet for approximately fourteen plaintiffs, and twelve actually went to verdict.
- Those twelve obtained a verdict of $11 million and a jury finding that punitive damages were justified.
- Before the punitive damages phase, the twelve plaintiffs settled for a total of $25 million.

Los Angeles

- In 2004 and 2005, approximately 1,800 plaintiffs settled with approximately 85 Defendants.
- Settlements paid by the polluters/contaminators totaled near $20 million.
- Only one PUC-Regulated Utility settled.
- Four PUC-Regulated Utilities and three Public Entity Utilities remained in the appeal.

Plaintiffs' Arguments at the Court of Appeal in 2007

- PUC-Regulated Utilities are liable for providing water contaminated with substances, which at the time of the contamination, were unregulated by DHS/PUC.
- Plaintiffs should be allowed to use the standards of PUC General Order 103 (1956) arguing that the terms "pure," "wholesome," and "potable" can be used to assess liability.
- For example, if TCE was unregulated before 1980, and yet found to be in certain wells of certain providers before 1980, what is unhealthful at that period of time would come down to "what was known and who knew it." Expert witnesses would offer testimony as to what was "healthful and what was not healthful" at that point in time.
- Plaintiffs conceded that once an MCL or AL or predecessor numerical standard is established by DHS, that constitutes the legal standard. Plaintiffs argued, however, that until a numerical standard is established they should be allowed to pursue damage claims based on the failure to provide "pure," "wholesome," and "potable" water, or simply that the water was unhealthful and the water companies knew or should have known it.

Court of Appeal Holdings

- On August 24, 2007, the Court issued a unanimous decision in favor of the water companies in *In re Groundwater Cases,154 Cal. App. 4th 659.*
- California has imposed enforceable numerical drinking water standards since the 1940s.
- Plaintiffs' argument is that "in light of present day knowledge, the prior water quality standards adopted by DHS and the PUC were inadequate and insufficiently protective of public health." This is contrary to *Hartwell.* **Such an argument would allow experts to classify as "unhealthful" water that met all applicable standards in effect at the time the water was supplied.**
- This kind of argument would permit courts and juries to second guess carefully considered decisions of the regulatory agencies on technical water quality issues. It would in effect "flout the legislature's policy choice to entrust such matters to DHS and the PUC." (regulation by litigation)

Court of Appeal Holdings *(cont'd)*

- Water purveyors regulated by DHS/PUC might be held liable in the future for water they are currently supplying if regulatory agencies should **later** determine contaminants unregulated today present a danger.
- The words "pure," "wholesome," and "potable" are goals of California's drinking water system. These "goals" are different from drinking water standards and do not themselves establish drinking water standards.
- Isolated exceedances of numerical standards, including MCLs, do not constitute a violation of the regulatory scheme. In some instances, DHS regulations permit the continued delivery of water after detection of MCL exceedances.
- Finally, the Court held that the "touchstone" for determining when a violation has taken place within the meaning of *Hartwell* is whether the PUC-Regulated Utility has failed to comply with the regulatory standards and policies set by DHS/PUC.

Litigation Costs Of Defending The Twenty-Four Contamination Cases

- The litigation began on April 24, 1997, and concluded on September 24, 2007.
- Costs to water companies of successful defense totaled multiple millions of dollars.
  - Attorneys fees.
  - Expert fees.
  - Litigation expenses.
  - Dedication of company resources.
- If water companies lost, costs to water companies and rate payers could be staggering.

Prevention of Similar Suits

- How do we prevent similar suits in the future?
- Establishing "safe harbor" from suit in return for compliance with federal/state safe drinking water standards is the goal.

Prevention of Similar Suits *(cont'd)*

- A number of options are available:
  - Federal statutes.
  - State statutes.
  - Regulations from a state health or environmental regulatory authority.
  - Regulations, tariff, or advice letter from a state PUC, PSC, or similar regulatory authority.

Federal Statutes

- The breadth of these cases and the sweeping nature of the court's opinion could simplify proposed legislation.
- The goal should be a "safe harbor" provision for water utilities, which comply with all federal and state safe drinking water regulations during the timeframe alleged in the complaint.

Federal Statutes *(cont'd)*

- No matter what the provisions in each individual state's tort law, as long as the utility is in compliance with all federal and state regulations, the safe harbor exists.
- If California's lead in this opinion were to be followed in federal legislation, water allegedly contaminated with unregulated contaminants will **NOT** be a basis for suit under any theory.
- However, politically unlikely at present.

State Statutes

- The State of Ohio enacted a statue in 2002 in recognition of the litigation in both northern and southern California. Advocates for the legislation presented five main reasons for its necessity. The bill became law in June of 2002, approximately four months after the California Supreme Court decision in *Hartwell*. (*See* Appendix A.)
- The statute provides a safe harbor from tort liability for both an existing "water supplier" or an "acquiring water supplier" that acquires ownership in an existing water system. Each of the two types of water companies may obtain a safe harbor if they comply with certain conditions.
- The statute provides a safe harbor from civil tort liability for a water supplier that has **not** been found to be in significant **noncompliance** with drinking water standards, with respect to harm caused by substances for which there are drinking water standards.

State Statutes *(cont'd)*

- State of Arizona has a statute providing a safe harbor for any actions brought against public entities or public employees. This statute provides a safe harbor from personal injury suits as long as the water complies with "the more stringent of the primary maximum contaminant levels that are established" either pursuant to Arizona Water Quality Control law or the Federal Safe Drinking Water Act. (*See* Appendix B.)
- Arizona does not have a "safe harbor" statute for investor-owned water companies.

State Non-Statutory Options

- State Regulations by Health or Environmental Regulatory Authority.
- State Regulations, Tariff, or Advice Letter from the PUC, PSC, or Similar Regulatory Authority.

Legal/Policy Considerations

- The initial public interest created by the filing of these cases in California has subsided.
- Though the filing of cases involving ingestion of contaminated water has decreased, so have general filings of civil litigation across the country. Is the first a consequence of the latter?
- The attorneys who filed the original suits do not seem eager to file new suits against water companies now, but what about the future?
- **NOW** is the time to attempt to get state statutes, regulations, and other mechanisms changed, because opposition may be less likely.

Legal/Policy Considerations *(cont'd)*

- Despite fewer case filings, the public still holds considerable concern over pollution of drinking water.
- Legitimate concerns over the nation's drinking water infrastructure pose additional potential risks to water purveyors.
- Congress is focusing on water issues; the House recently created a Water Caucus to look at a variety of water-related issues.

Legal/Policy Considerations *(cont'd)*

- After 10 ½ years, California, through the judicial process, has re-affirmed the existence of a safe harbor.
- **How much easier and less costly would it have been if a statute or regulations had been in place in 1997?**

BENEFITS OF SAFE HARBOR LEGISLATION

- Consistent application of water regulations and greater certainty with respect to consequences of supplying water by the regulated utilities.
- Additional certainty of water safety for rate payers, because they know water companies will have more incentive to comply with all state and federal standards.
- Protection of rate payers from costs passed back to them caused by unnecessary, frivolous lawsuits – no "regulation by litigation."

BENEFITS OF SAFE HARBOR LEGISLATION *(cont'd)*

- Assurance to federal and state health agencies that compliance with their regulations is important to the regulated utilities.
- The utility commissions and their staffs will have more certainty with respect to ratemaking and the potential consequences of a water utility's compliance or noncompliance.

BENEFITS OF SAFE HARBOR LEGISLATION *(cont'd)*

- Rate payer advocates will have a much clearer picture of the consequences of regulated water utilities' compliance.
- Assurance to the water industry that utility commissions support the "safe harbor" concept, and further motivation to the utilities to ensure compliance with drinking water standards on their own.

Brief Overview of Legislation

- Ohio passed legislation in 2002.
- Arizona passed legislation in 1994.
- North Carolina has a bill pending in its state senate for "An act to provide that a provider of water services who satisfies the standards of the North Carolina Drinking Water Act is not an insurer of the quality of water provided." (*See* Appendix C for copy of DRS 35333-LH-129.)

Brief Overview of Legislation *(cont'd)*

- The bill seems aimed at protecting water purveyors from negligence and breach of the warranties of merchantability and particular purpose.
- Because North Carolina does not have strict products liability and generally negligence must be proved, this sounds like an attempt to knock out potential suits on a theory-by-theory basis and create a "safe harbor."

Brief Overview of Legislation *(cont'd)*

- The state of New York has a bill pending relating to tort claims against certain water authorities in four counties. The Act requires potential claimants against water authorities in those four particular counties to make written claims, triggering certain rights of the county. This is not really "safe harbor" legislation. It merely adds a procedure to how claims are presented against water authorities in those counties.

Basics of Safe Harbor Legislation

- The cases in California were an attack on the regulatory compact that exists between the regulatory authority and the regulated utilities.
- Both the California Supreme Court and the Court of Appeal rejected these attempts in two published opinions, *Hartwell* in 2002 and *In re Groundwater Cases* in 2007.

Basics of Safe Harbor Legislation *(cont'd)*

- The California Court of Appeal, in its August 2007 opinion, set forth clearly the elements of a "safe harbor":
  - Courts and juries cannot reweigh the regulatory agencies' determination of water quality standards.
  - Vaguely worded goals such as "pure," "wholesome," and "potable" are not standards.

Basics of Safe Harbor Legislation *(cont'd)*

- Violations of standards can only be related to regulatory agencies' standards and policies.
- Isolated exceedances of numerical standards do not constitute violations.
- Water companies that provide water which meets all federal and state safe drinking water standards during the timeframe alleged in the lawsuit cannot be subject to suit.

Conclusions

- The specter of "regulation by litigation,"—different juries in different jurisdictions determining what drinking water is "safe"—remains a serious threat to drinking water providers across the country.
- California's landmark judicial decisions in 2002 and 2007, emanating from one of the most liberal state jurisdictions in the country, have nicely "set the table" for state-by-state safe harbor legislation.

Conclusions *(cont'd)*

- The trend has already begun with Ohio and Arizona enacting legislation, and North Carolina proposing legislation. The emphatically worded opinion of the California Court of Appeal in August 2007 lays the foundation for even stronger "safe harbor" legislation to be proposed in other states.
- States likely to enact safe harbor legislation need to be identified, and a concerted effort to enact such legislation started in those states.

Conclusions *(cont'd)*

- NARUC has an opportunity to take the lead in encouraging states across the country to enact safe harbor legislation that will provide some assurance against litigation-caused rate increases, provide even greater incentives to drinking water utilities to provide water that always meets standards, and provide further assurance to consumers that one of the most basic necessities of life is safe.

Appendix A

As Re-referred by the House Committee on Rules and Reference

124th General Assembly
Regular Session
2001-2002

Sub. S. B. No. 65

Senators Mumper, Jacobson, Harris, Spada

A BILL

To enact section 6109.35 of the Revised Code to specify that if a water supplier that acquires ownership of an existing water system enters into a written agreement with the Environmental Protection Agency to bring the system into compliance with drinking water standards within a specified period of time and then does so, the water supplier has certain civil immunities concerning the system's previous failure to meet those drinking water standards, and to confer other qualified immunities from tort liability upon a water supplier.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 6109.35 of the Revised Code be enacted to read as follows:

Sec. 6109.35. (A) As used in this section:

(1) "Water supplier" means an entity that is subject to this chapter and rules adopted under it and that supplies drinking water through pipes, through tubing, or in a similar manner to consumers within this state.

(2) "Acquiring water supplier" means a water supplier that satisfies both of the following:

(a) The water supplier acquires ownership of an existing water supplier.

(b) The water supplier and the acquired existing water supplier do not have any mutual directors, officers, controlling shareholders, or other persons with an ownership interest prior to the acquisition.

(3) "Drinking water standards" means safe drinking water standards established by the environmental protection agency under this chapter or established by the United States environmental protection agency under the Safe Drinking Water Act.

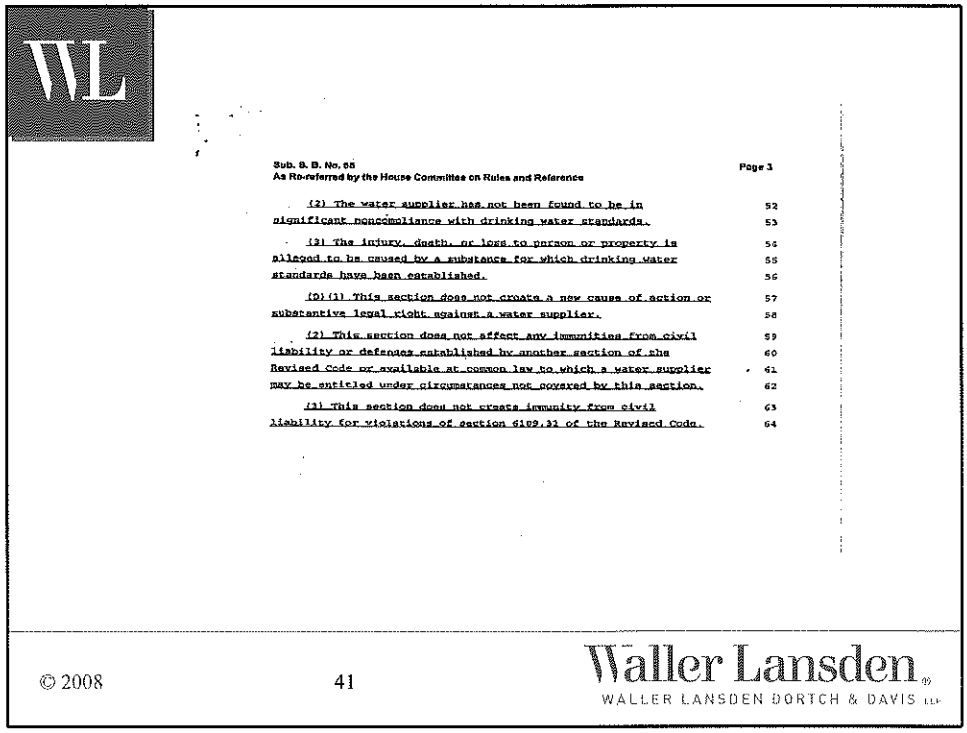
(B) An acquiring water supplier that acquires ownership of an existing public water system is not liable in damages in a civil action for injury, death, or loss to person or property that occurred prior to the acquisition and that was allegedly caused by the previous water supplier's failure to comply with drinking water standards if the acquiring water supplier does both of the following:

(1) Enters into a written agreement with the environmental protection agency to bring the water system into compliance with drinking water standards within a specified period of time;

(2) Brings the water system into compliance with drinking water standards within the time period agreed to under division (B)(1) of this section.

(C) A water supplier that operates a public water system is not liable in damages in a civil action to any person for injury, death, or loss to person or property that allegedly arises from the person's consumption of water supplied by the water supplier if all of the following apply:

(1) During the period of time that the water supplier supplies water to the person, the water supplied by the water supplier meets all applicable drinking water standards.



Sub. S. B. No. 65
As Re-referred by the House Committee on Rules and Reference

Page 3

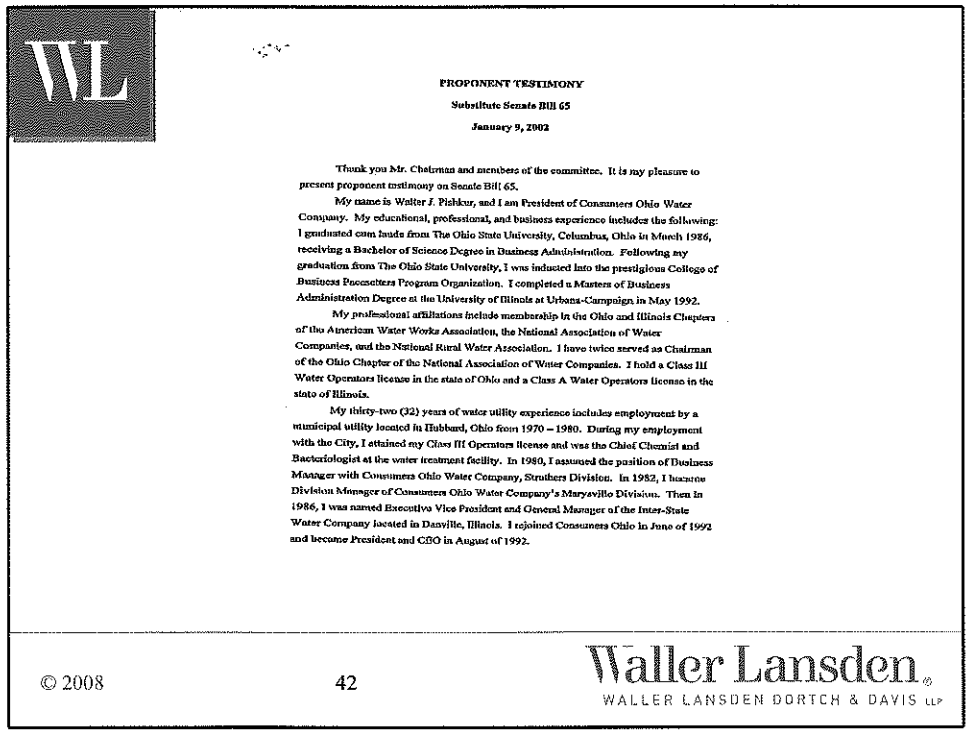
(2) The water supplier has not been found to be in significant noncompliance with drinking water standards.

(3) The injury, death, or loss to person or property is alleged to be caused by a substance for which drinking water standards have been established.

(D)(1) This section does not create a new cause of action or substantive legal right against a water supplier.

(2) This section does not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which a water supplier may be entitled under circumstances not covered by this section.

(3) This section does not create immunity from civil liability for violations of section 6109.31 of the Revised Code.



PROPONENT TESTIMONY

Substitute Senate Bill 65

January 9, 2002

Thank you Mr. Chairman and members of the committee. It is my pleasure to present proponent testimony on Senate Bill 65.

My name is Walter J. Pishkur, and I am President of Consumers Ohio Water Company. My educational, professional, and business experience includes the following: I graduated cum laude from The Ohio State University, Columbus, Ohio in March 1986, receiving a Bachelor of Science Degree in Business Administration. Following my graduation from The Ohio State University, I was inducted into the prestigious College of Business Pacesetters Program Organization. I completed a Masters of Business Administration Degree at the University of Illinois at Urbana-Campaign in May 1992.

My professional affiliations include membership in the Ohio and Illinois Chapters of the American Water Works Association, the National Association of Water Companies, and the National Rural Water Association. I have twice served as Chairman of the Ohio Chapter of the National Association of Water Companies. I hold a Class III Water Operators license in the state of Ohio and a Class A Water Operators license in the state of Illinois.

My thirty-two (32) years of water utility experience includes employment by a municipal utility located in Hubbard, Ohio from 1970 – 1980. During my employment with the City, I attained my Class III Operators license and was the Chief Chemist and Bacteriologist at the water treatment facility. In 1980, I assumed the position of Business Manager with Consumers Ohio Water Company, Struthers Division. In 1982, I became Division Manager of Consumers Ohio Water Company's Marysville Division. Then in 1986, I was named Executive Vice President and General Manager of the Inter-State Water Company located in Danville, Illinois. I rejoined Consumers Ohio in June of 1992 and became President and CEO in August of 1992.

Consumers Ohio Water Company is Ohio's largest investor-owned water utility providing quality drinking water to nearly, 259,000 people while owning water systems in 43 communities statewide located in 5 counties.

I am providing testimony today from a varied background in water utility employment that ranges from line operations to executive responsibilities. The bill you are considering has passed the Senate without dissent and will protect consumers of both investor-owned and municipal water utilities from increased water rates due to frivolous litigation.

The provisions of this bill also enhance the potential for financially stable water utilities to take ownership of existing non-compliant water systems. This is a highly desired outcome and is endorsed by the OEPA and the Ohio Public Utility Commission. Under the provisions of the bill, a water supplier who acquires ownership of an existing water system must enter into a compliance agreement with the Ohio Environmental Protection Agency. Under this agreement, the new suppliers have a certain amount of time to bring the system into compliance with drinking water standards. If the water supplier meets all state and federal requirements, that entity would have certain civil immunities against lawsuits resulting from the previous owner's actions. Senate Bill 65 also confers other qualified immunities from tort liability upon water suppliers that meet all state and federal guidelines for drinking water.

I believe that water suppliers should act responsibly to provide our communities with a safe water supply. If they have fulfilled their legal obligations to do so, I do not believe they should be open to attack by overzealous class action lawsuits that erode uniform nationwide water quality standards.

The provisions of this bill do not eliminate or reduce the water quality standards promulgated by the federal Safe Drinking Water Act initially passed in 1974. This law requires the development of national standards for drinking water that water suppliers must meet. These standards have been developed over many years based on health effects of chemicals, measurement capabilities, and technical feasibility. They are the product of extensive Congressional debate and expert testimony over the need to protect public health and costs of treatment.

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The reason this bill was introduced in the Senate and why I am asking you to give it your support is to avoid a potential flurry of legal activity similar to that launched by the plaintiffs bar in California.

In recent months, the plaintiff's bar has organized and commenced mass tort lawsuits against a number of California water suppliers (public agencies and private companies) for allegedly delivering contaminated water. One lawsuit in Southern California involves more than 300 plaintiffs; another has nearly 200. A third lawsuit has now been filed in Northern California. Often times, the plaintiff's bar will place advertisements in local papers encouraging residents to join class action lawsuits against these companies.

These new tort cases present the following problems for the water industry and Federal and State regulators:

1. *Undermining Water Quality Regulations.* This litigation could result in 12 jurors in a state courtroom setting national drinking water standards. These standards are far different from those set by the federal and state agencies under the regulatory process. Water suppliers, facing uncertainty about which standards to meet, will be pressured to adopt excessive standards set by any jury in the country to avoid liability. National uniformity (and uniformity within the states) will continue to be eroded.

2. *Retroactive Application of Current Standards.* Some of these claims seek damages for contaminants that could not be detected or treated at the time of the alleged damage.

3. *Water Cost Increases.* The litigation will place upward pressure on water prices due to the costs of defense (which will be substantial given the expert testimony and multiple plaintiffs) and the unexpected expenses of new water treatment technologies – technology beyond that required by federal and state regulations to avoid potential liability. This economic burden will fall most heavily on working

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class families where water, a necessity of life, will take a bigger share of their paychecks.

4. *Threat to Financial Stability of Water Agencies.* Mass tort litigation can result in catastrophic judgements against utilities and public agencies and insurance may not be available to cover these new liabilities. Most water suppliers do not have reserves for damages of this magnitude and have limited access to outside sources of funds. Sudden and substantial rate increases are likely.

5. *Hindrance To Desirable Consolidation*
Ohio has approximately 1,231 public water systems. Many lack scale economy and some are not compliant with current water quality standards. The customers of these water systems often pay high rates due to lack of scale economy or will be faced with extra ordinary rate increases to bring the system into compliance. In most cases, the best long-term outcome for the customer is consolidation into a larger system with the financial and technical capability to provide quality service. Any unjustified risk of liability for past non-compliance could be a deterrent to consolidation and deny these residents access to quality water service or create a financial hardship that is avoidable.

It is my hope that this bill will protect consumers from higher water rates by reducing frivolous litigation and eliminating a potential roadblock to consumer beneficial consolidation of water systems. I thank you for your time and ask for your favorable consideration of Senate Bill 65.

Walter Z. Fishbaugh Testimony
Senate Bill 65
04/09/03

S.B. 65
Tort Reform Bill
Became law: June 2002

Bill Analysis

Alan S. Montano — *Legislative Service Commission*

Sub. S.B. 65
124th General Assembly
(As Reported and Referred by Rules and Reference)

Sens. Mumper, Jacobson, Harris, Spada

BILL SUMMARY

- Creates a specified civil immunity from tort liability for a water supplier that acquires ownership of an existing water system, enters into a written agreement with the Ohio Environmental Protection Agency, and complies with certain conditions in the agreement.
- Creates a specified civil immunity from tort liability for a water supplier that has not been found to be in significant noncompliance with drinking water standards with respect to harm caused by substances for which there are drinking water standards and during a period of time when the water supplied by the water supplier meets all applicable drinking water standards.

CONTENT AND OPERATION

Tort immunity for acquiring water suppliers

The bill provides that a water supplier that acquires ownership of an existing water system is not liable in damages in a civil action for injury, death, or loss to person or property (tort action) allegedly caused by the failure of the previous owner of the acquired water system to comply with drinking water standards if the acquiring water supplier does both of the following: (1) enters into a written agreement with the Ohio Environmental Protection Agency (OEPA) to bring the acquired water system into compliance with drinking water standards within a specified period of time, and (2) brings the acquired water system into compliance with drinking water standards within that time period (sec. 6109.35(B)).

Tort immunity for existing water suppliers

The bill provides that a water supplier that operates a public water system is not liable in a tort action that allegedly arises from the person's consumption of

water supplied by the water supplier if all of the following apply: (1) during the period of time that the water supplier supplies water to the person, the water supplied by the water supplier meets all applicable drinking water standards, (2) the water supplier has not been found to be in significant noncompliance with drinking water standards, and (3) the injury, death, or loss to person or property is alleged to be caused by a substance for which drinking water standards have been established. (Sec. 6109.35(C).)

Non-preemption provision

The immunities created by the bill do not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which a water supplier may be entitled under circumstances not specifically covered above. Additionally, the immunities in the bill do not create a new cause of action or substantive legal right against a water supplier. Finally, the immunities created by the bill do not create an immunity from civil liability for violations of the Safe Drinking Water Law. (Sec. 6109.35(D).)

Definitions

The bill defines the following terms for its purposes:

(1) "Water supplier" means an entity that is subject to the Safe Drinking Water Law and rules adopted under it and that supplies drinking water through pipes, through tubing, or in a similar manner to consumers within this state.

(2) "Acquiring water supplier" means a water supplier that satisfies both of the following: (a) the water supplier acquires ownership of an existing water supplier, and (b) the water supplier and the acquired existing water supplier do not have any mutual directors, officers, controlling shareholders, or other persons with an ownership interest prior to the acquisition.

(3) "Drinking water standards" means safe drinking water standards established by OEPA under the Safe Drinking Water Law or by the United States Environmental Protection Agency under the Safe Drinking Water Act. (Sec. 6109.35(A).)

COMMENT

1. "Public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if the system has at least 15 service connections or regularly serves at least 25 individuals. "Public water system" includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in

connection with the system, any collection or pretreatment storage facilities not under such control that are used primarily in connection with the system, and any water supply system serving an agricultural labor camp. (Sec. 6109.01(A), not in the bill.)

2. The immunities created by the bill do not apply to a public water system that meets all of the following conditions:

(1) The public water system consists only of distribution and storage facilities and does not have any collection and treatment facilities.

(2) The public water system obtains all of its water from, but is not owned or operated by, a public water system.

(3) The public water system does not sell water to any person.

(4) The public water system is not a carrier that conveys passengers in interstate commerce.

Such a system is excluded from the Safe Drinking Water Law, and thus the bill's immunities do not apply. (Sec. 6109.02, not in the bill.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-06-01	p. 190
Reported, S. Judiciary on Civil Justice	06-21-01	p. 687
Passed Senate (32-0)	06-27-01	p. 716
Recommended re-referral to Rules & Reference, H. Energy & Environment	10-16-01	p. 925
Reported & referred to H. Civil & Commercial Law, H. Rules & Reference	10-17-01	p. 948

S0065-Referred.124/jc

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Appendix B

A.R.S. § 12-820.08

ARIZONA REVISED STATUTES
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CURRENT THROUGH THE FIRST REGULAR SESSION OF THE 48TH LEGISLATURE (2007)
Annotations current through cases posted on Lexis.com as of January 4, 2008

TITLE 12. COURTS AND CIVIL PROCEEDINGS
CHAPTER 7. SPECIAL ACTIONS AND PROCEEDINGS IN WHICH THE STATE IS A PARTY
ARTICLE 2. ACTIONS AGAINST PUBLIC ENTITIES OR PUBLIC EMPLOYEES

Go to the Arizona Code Archive Directory

A.R.S. § 12-820.08 (2007)

§ 12-820.08. Potable water systems; standard of care

With regard to actions for personal injury arising out of the use or consumption of water, water shall be deemed reasonably safe and fit for consumption and use if it complies with the more stringent of the primary maximum contaminant levels that are established either pursuant to title 49, chapter 2, article 9, or to the safe drinking water act (P.L. 93-523; 88 stat. 1666; 42 United States Code section 201).

HISTORY: Last year in which legislation affected this section: 1994

Source: Legal > States Legal - U.S. > Arizona > Find Statutes, Regulations, Administrative Materials & Court Rules > AZ - Arizona Revised Statutes Annotated
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Appendix C

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S D

SENATE DRS35333-LH-129 (02/23)

Short Title: No Liability:Water Meets Water Standards. (Public)

Sponsors: Senator Rand.

Referred to

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PROVIDER OF WATER SERVICES WHO SATISFIES THE STANDARDS OF THE NORTH CAROLINA DRINKING WATER ACT IS NOT AN INSURER OF THE QUALITY OF WATER PROVIDED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-315 is amended by adding a new subsection to read:

"(g) A provider of water services regulated under this Article shall not be deemed to be an insurer of the quality of the water provided, so long as the water meets or exceeds the enforceable standards of the Safe Drinking Water Act and shall not be deemed to provide any warranty under the Uniform Commercial Code, including, but not limited to, an implied warranty of merchantability or an implied warranty for a particular purpose."

SECTION 2. This act is effective when it becomes law.

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