

Approved: February 24, 2004 Carl D. Holmes
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:10 a.m. on February 18, 2004 in Room 231-N of the Capitol.

All members were present except: Representative Eric Carter

Committee staff present: Dennis Hodgins, Legislative Research
Mary Torrence, Revisor of Statutes
Jo Cook, Administrative Assistant

Conferees appearing before the committee: Ed Jaskinia, Associated Landlords of Kansas
Johnni Vosseller

Others attending: See Attached List

HB 2772 - Public utilities, excluding certain landlords from definition

Chairman Holmes opened the hearing on **HB 2772**.

Ed Jaskinia, Associated Landlords of Kansas, appeared before the committee in support of **HB 2772**. Mr. Jaskinia provided a brief history of the bill, as it had been before the committee in 2001 and had been passed out of the house and stalled in the Senate. Mr. Jaskinia detailed the advantages of the bill, allowing the owner/landlord to install sub-meters for the purpose of billing tenants for actual water usage.

Johnni Vosseller, appearing as a private citizen and landlord, testified in support of **HB 2772** (Attachment 1). Ms. Vosseller told the committee that the bill would allow the landlord to adjust rent payments without having to add, or bill separately, charges for water consumption. It also promotes water use efficiency.

Martha Neu Smith, Executive Director for the Kansas Manufactured Housing Association, submitted written testimony in support of **HB 2772** (Attachment 2).

Mr. Jaskinia and Ms. Vosseller responded to questions from the committee.

Chairman Holmes closed the hearing on **HB 2772**.

In response to questions from the committee on February 6, SBC provided information on their business and residential DSL offers, as well as a listing of non-satellite broadband availability (Attachment 3).

The meeting adjourned at 9:33 a.m.

The next meeting will be Thursday, February 19, 2004.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 18, 2004

NAME	REPRESENTING
Marna Sue Smith	KUMHA
Jim Gardner	SBC
Bob Jayroe	SBC
James C. Dunn	The Associated Builders & Contractors
Johnnie Vossell	Self
Dale Miller	Self
ED JASKINIA	TALK

Hi, my name is Johnni Vosseller. I live at 510 S. Monroe, La Harpe, KS, 66751. My husband and I are landlords in 4 counties. We are for HB-2772. This would give the landlord the right to meter water usage to his rental units. This would allow the landlord not to charge more rent to cover high cost of water usage by the tenant.

An example of this we drove by our duplex to just check on how it was looking and realized that the tenants had gone into business for themselves. They were having a car wash on the property. Needless to say the outside water faucet came out the next day. But the water bill still had to be **paid, by me.**

When the tenant is paying the water bill it is a better chance that the landlord will be called to fix any running toilets or leaking faucets faster than if the landlord is paying the utility bill.

I have with me a copy of a memorandum from the EPA on applicability of the Safe Drinking Water Act to Submetered Properties. Also an article from the EPA to promote water efficiency by encouraging landlords to bill apartment dwellers only for actual water usage.

Thank you for your time. Are there any questions?

Johnni Vosseller

620-380-1562

HOUSE UTILITIES

DATE: 2-18-04

ATTACHMENT 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 16 2003

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Applicability of the Safe Drinking Water Act to Submetered Properties

FROM: G. Tracy Mehan III,
Assistant Administrator

A handwritten signature in black ink, appearing to read "G. Tracy Mehan III".

TO: Regional Administrators, Regions I-X

The purpose of this memorandum is to announce EPA's revised policy concerning the applicability of the Safe Drinking Water Act (SDWA) to submetered properties. Submetering, as applied in this policy, means a billing process by which a property owner (or association of property owners, in the case of co-ops or condominiums) bills tenants based on metered total water use; the property owner is then responsible for payment of a water bill from a public water system. Under the revised policy, a property owner who installs submeters to track usage of water by tenants on his or her property will not be subject to SDWA regulations solely as a result of taking the administrative act of submetering and billing. Property owners must receive all of their water from a regulated public water system to qualify under the terms of this policy revision for submetered properties.

EPA proposed the revised policy in the *Federal Register* on August 28, 2003 (68 FR 51777) and requested public comment. In response, the Agency received strong support for the revised policy on submetering from a variety of stakeholders. In light of this response, and because a key objective of the Agency is to promote water efficiency and conservation, EPA has decided to change the policy for submetering.

Throughout the country, submetering of apartment buildings has been found to be an effective but little-used tool to support water conservation. Water conservation is an integral part of watershed protection, particularly in arid and drought-stricken areas. In addition to helping reduce the risk of water shortages, water conservation also provides other important benefits. Water conservation helps ensure in-stream flows, thereby providing protection for ecosystems, which can become out of balance when demands stress water resources. Water conservation also helps reduce stress on water supply and wastewater infrastructure

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making them less prone to failure. Further, the use of submeters to measure water consumption is a necessary pre-requisite to achieving full-cost and conservation pricing.

Background

Section 1401 of SDWA defines a public water system (PWS) as a system that provides water through pipes or other constructed conveyances to the public for human consumption, if the system has at least 15 service connections or regularly serves at least 25 people. Under SDWA Section 1411, the SDWA national primary drinking water regulations apply to PWSs that have their own water source, treat, or "sell" water. EPA staff and program managers had issued several memoranda stating that any building or property owner who met the definition of a PWS and received water from a regulated public water system without adding further treatment, but billed tenants separately for this water, would be considered to be "selling" the water and, therefore, would be independently subject to SDWA's drinking water requirements. Today's memorandum reflects a change in EPA's interpretation of Section 1411 as it applies in the specific context of submetering.

The EPA memoranda referenced above were based on a single statement in the 1974 legislative history for the SDWA in which Congress explained its intent in enacting Section 1411. In that legislative history, the Committee report stated that it "intends to exempt businesses which merely store and distribute water provided by others, unless that business sells water as a separate item or bills separately for water it provides."¹ Under EPA's previous interpretation, an owner of an apartment building or similar property who is exempt under Section 1411 but merely installed a submeter and billed the tenants for the water, or simply began billing tenants (even without a submeter), would then be considered to be operating a fully regulated public water system, even though there had been no other change relevant to the delivery or potential health concerns associated with the water. This application of the legislative history has been cited as a discouragement to submetering and, as a result, to water conservation measures.

After further review, we no longer believe that Congress originally intended the statute to be applied in this manner, or that it should continue to be the Agency's interpretation for the following reasons:

- The legislative history from 1974 does not specifically address the submetering of apartment buildings or similar properties for water conservation purposes. Rather, the legislative history was one Committee's attempt to explain broadly what the term "selling" water in Section 1411 might mean. The statute itself does not define the term "selling" or suggest an interpretation that any billing of water would automatically trigger

¹ H. Rep. 93-1185 (93rd Cong., 2nd Session), reprinted in A Legislative History of the Safe Drinking Water Act, Committee Print Serial 97-9 (1982) at 549.

full SDWA regulation.

- Some owners of apartment buildings and other multifamily housing expressed concern that, under EPA's previous policy, the installation of submeters subjected them to the full regulatory requirements of the Safe Drinking Water Act (SDWA), comparable to the requirements imposed on water utilities.
- In 1996, a Congressional committee expressed its concern that this application of SDWA might discourage the practice of submetering, as owners of a multifamily housing property (e.g., apartment buildings and/or complexes) would become subject to national primary drinking water regulations if they billed separately for water. Congress asked that EPA review its guidance on this matter to prevent unnecessary requirements that do not further public health protection and that might inhibit water conservation efforts.² In response, EPA agreed to reconsider the matter and issue further guidance.³
- EPA's approach in previous memoranda may have created a disincentive to water conservation, which can undermine water quality over the long term.
- Simply applying the concept of "sell" to every billing transaction is not appropriate.

Revised Policy

Consistent with Congressional requests to reconsider this matter, the Agency now believes that certain property owners, who had not previously been (or would not be) subject to SDWA's national primary drinking water regulations, and who install submeters to accurately track usage of water by tenants on his or her property, should not be subject to regulations solely as a result of taking the action to submeter and bill.

The addition of a submeter should not in any way change the quality of water provided to customers on the property. A PWS that provides water to a property maintains responsibility for providing public notification under 40 CFR 141.201(c) (or approved State equivalent) to consumers. In addition, the PWS must make "good faith" efforts to provide the tenants with the annual Consumer Confidence Reports under 40 CFR 141.155(b). A submetered property would still be considered a PWS under SDWA Section 1401, hence States and EPA would retain the ability to take corrective action under SDWA's emergency powers authority (Section 1431) if public health risks arise.

Scope of Revised Policy

EPA received numerous comments asking that the revised policy be expanded beyond apartment buildings. EPA agrees that submetering to achieve water conservation may be appropriate for other property types, which share similar characteristics to an apartment building, and likewise should not be considered as "selling" under SDWA Section 1411, simply because a

² H. Rep. 104-632 at 55 (1996)

³ H. Rep. 104-632 (104th Cong., 2d Sess.) at 55 and 134 (1996).

submeter is installed and the property owner begins direct billing for the water. This description is the basis for the definition of submetering. Determinations of whether billing for water is a "sale" for purposes of Section 1411, and whether systems are "submetering" as that term is used in this policy, should be made by the Primacy Agency.

In making a determination, the Primacy Agency should consider if the property has certain characteristics, such as a limited distribution system with no known backflow or cross connection issues; the majority of its plumbing is within a structure instead of underground; and property ownership is a single/individual (or association of property owners, in the case of co-ops or condominiums). Of course, for any system to be excluded under Section 1411, it must receive all of its water from a regulated public water system.

In general, the scope of this policy is not intended to extend where the property in question has a large distribution system, serves a large population or serves a mixed (commercial/residential) population (e.g., many military installations/facilities or large mobile home parks).

Although EPA is not requiring that submetered systems be regulated, each State has the flexibility to determine whether, and how, to best track properties that submeter. For example, in Alabama, the State defines a submetered property as a "segmented public water system" and requires that it have access to a certified operator. Texas requires that submetered properties allow access to the property by the public water system that provides it with water, register with the Texas Commission on Environmental Quality, and follow regulations for submetering.

While submetering and billing for water usage may positively induce water conservation actions, States may still want to take other steps to ensure that property owners and others convert to water efficient fixtures and appliances. For example, Texas requires that apartment buildings have water-efficient plumbing fixtures and appliances as a condition of approval of a submetered billing system.

Ratio Utility Billing Systems (RUBS) and Hybrid Billing Systems (HWH)

Several commenters raised the issue of ratio utility billing systems (RUBS)⁴ and other allocation billing systems. Some commenters suggested that EPA should include this type of

⁴ A ratio utility billing system (RUBS) or an allocation formula, divides a property's water bill among its residents based on a ratio of floor space, number of occupants, or some other quantitative measure. With RUBS, a price signal based on actual use is not sent to the tenant as with submetering, and the amount of water saved by these systems is unclear. A hot water hybrid (HWH) billing system is a combination of submetering and allocation where hot water is submetered and a formula is applied to estimate the resident's total water use based on the volume of hot water metered. HWH systems provide more of a price signal than RUBS but less than that for submetering.

billing in the revised policy because it would have no negative effect on water quality. Other commenters encouraged EPA to exclude RUBS, stating that RUBS may not result in water conservation, and may, in fact, reduce incentives to install submeters and charge on the basis of actual water usage. Water savings, if any, from RUBS and hot water hybrid billing systems (HWH) are uncertain. At this time, EPA believes that RUBS or other allocation billing systems do not meet the definition of submetering, as used in this policy, and do not encourage water conservation. Therefore, a property using these billing systems is not addressed by this policy. Primacy Agencies will need to determine whether such properties are "selling" water within the meaning of SDWA Section 1411.

This memorandum clarifies EPA's policy change and reconfirms our strong interest in advocating water conservation. Any previous EPA statements or policy memoranda on this issue are superseded by this memorandum. I appreciate your efforts in working with States to foster water conservation while ensuring protection of public health. If you have further questions about this issue, please contact Cynthia C. Dougherty, Director of the Office of Ground Water and Drinking Water, at (202) 564-3750.

cc: EPA Regional Water Division Directors
State Drinking Water Administrators

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EPA to promote water efficiency by encouraging landlords to bill apartment dwellers only for actual water usage

September 8, 2003

As part of the celebration of the 30th anniversary of the passage of the Clean Water Act, EPA has taken several steps to promote water efficiency, an important part of drinking water protection, particularly in dry and drought-stricken areas. To help apartment dwellers save water, EPA is proposing to change the regulatory policy on apartment buildings in order to encourage property owners to bill residents only for

their actual water usage.

"Water efficiency is one of the four pillars of our strategy to make the nation's water infrastructure sustainable," said G. Tracy Mehan III, EPA's Assistant Administrator for Water. "We have seen that consumers use less water if they are billed not on just a flat rate but on what they actually use. Americans can save substantial amounts of water through water efficiency programs -- helping to make them aware of how much water they are using and the cost is one of the steps to produce environmental benefits."

Water meters, used to measure consumption, are necessary to conduct this usage billing, and "submeters" may be needed for the 15 percent of Americans who live in apartments. One way to encourage more residential submetering is to remove the potential regulatory burden currently faced by apartment building owners who install submeters and bill tenants separately for water.

EPA is proposing to revise its current policy regarding submetering of residential properties. Under the Safe Drinking Water Act, the national primary drinking water regulations apply to public water systems (PWS) that have its own water source, treat or sell water.

EPA has previously issued guidance stating that any building or property owner who meets the definition of a PWS and receives water from a regulated public water system, but bills tenants separately for this water, is selling the water and is independently subject to safe drinking water requirements. As a way to promote full cost and conservation pricing to achieve water conservation, the Agency now proposes to change the policy as it applies to a limited aspect of submetering and direct billing of residential tenants.

The 60-day comment period on this proposed policy change began when it was published in the Federal Register on August 28, 2003. For more information on water efficiency, go to:
<http://www.epa.gov/owm/water-efficiency> .

This page originally created: Monday, September 8, 2003

EPA's Environment Kids Club





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TESTIMONY BEFORE THE
HOUSE COMMITTEE ON
UTILITIES

TO: Representative Carl Holmes, Chairman
And Members of the Committee

FROM: Martha Neu Smith, Executive Director
Kansas Manufactured Housing Association

DATE: February 18, 2004

RE: HB 2772 – Definition of Public Utilities

Chairman Holmes and Members of the Committee, my name is Martha Neu Smith and I am the Executive Director of the Kansas Manufactured Housing Association (KMHA). I appreciate the opportunity to comment. KMHA represents all facets of the manufactured housing industry in Kansas (i.e., manufacturers, retailers, community owners and operators, finance and insurance companies, suppliers and transporters).

KMHA would like to express our support for HB 2772. KMHA has several members that are currently regulated by the Kansas Corporation Commission for sub-metering water to their residents. The association feels that HB 2772 clarifies that if a landlord meets the definition of subsection (a)(6) of K.S.A. 58-25, 111 he would no longer be considered a "public utility". We feel this is a reasonable approach to allowing sub-metering, which in turn encourages water conservation.

Thank you for the opportunity to comment and I would respectfully ask for your support of HB 2772.

HOUSE UTILITIES
DATE: 2-18-04
ATTACHMENT 2

January 2004
Non-Satellite Broadband Availability

	Exchange	BB Available	BB Not Available	BB Provider
1	Almena	X		Nex-Tech
2	Andale	X		Seabridge Connections
3	Attica	X		Cyberlodge
4	Bird City	X		City of St. Francis (wireless)
5	Bucklin	X		Midway Internet (wireless)
6	Burns		X	
7	Canton	X		Farmer Co-op and Grain Supply
8	Cedarvale	X		SKT Internet Services
9	Chapman	X		Galaxy Cable and Tri-County Telephone
10	Chase		X	
11	Chetopa		X	
12	Dearing		X	
13	Coldwater	X		Giant Communications and Pixius (both wireless)
14	Florence		X	
15	Fowler	X		Rural Link (wireless)
16	Frankfort	X		Carson Communications
17	Garden Plain	X		Cox Cable Company
18	Gypsum		X	
19	Hamilton/Virgil		X	
20	Hanover/Hollenberg	X for Hanover	X for Hollenberg	Blue Valley Telephone (wireless)
21	Hartford		X	
22	Herndon		X	
23	Howard	X		SKT Internet Services
24	Jewell	X		Cunningham Cable
25	Leon	X		SKT Internet Services
26	Mankato	X		Cunningham Cable
27	Marquette	X		Kasinet
28	McDonald		X	
29	Minneola	X		Rural Link (wireless)
30	Moline	X		SKT Internet Services
31	Mount Hope	X		Prairie inet
32	Nickerson	X		Cox Cable Company
33	Norcatur		X	
34	Pawnee Rock	X		Golden Belt Telephone Company
35	Peabody		X	
36	Protection	X		Giant Communications
37	St. Paul		X	
38	Scandia		X	
39	Severy	X		SKT Internet Services
40	Solomon		X	
41	Stafford	X		Hello Earth
42	Topeka West/Dover		X	
43	Topeka West/Maple Hill		X	
44	Towanda	X		Cox Cable Company
45	Wichita/Sedgwick	X		Cox Cable Company
46	Wichita/Whitewater		X	
47	Williamsburg		X	
		28	20	
All areas are presumed to have high speed internet accesses via national satellite availability				
Data was collected through personal knowledge of SBC EA managers and contacts with City Managers.				

HOUSE UTILITIES

DATE: 2-18-04

ATTACHMENT 3

SBC Yahoo!® DSL Special Offers¹

We're passing our savings onto you. Get SBC Yahoo! DSL for **\$29.95 per month*** when you order online.

Learn how to save even more with [SBC Connections](#).

SBC Yahoo! DSL Package	Downstream Speed	Upstream Speed	IP Address	Monthly Price	Order Now
<u>Basic Package</u>	Up to 384Kbps	128Kbps	1 Dynamic	\$29.95*	<u>Order Now</u>
Order SBC Yahoo! DSL for a one-year term for \$29.95 per month, and receive a \$149 SBC Yahoo! DSL Wireless Home Networking kit, \$179 laptop Home Networking bundle or a \$99 DSL modem, and receive a \$99 Instant Credit (taxes and a \$12.95 shipping and handling fee apply). Plus, get free activation and a free self-installation kit.					
<u>Basic-S Package</u>	Up to 384Kbps	128Kbps	5 Static	\$54.95	<u>Order Now</u>
Order a one-year term and get a \$199 Instant Credit towards a \$199 DSL Router or \$199 Office Gateway Kit and free activation.					
<u>Standard Plus Package</u>	384Kbps-1.5Mbps	128Kbps	1 Dynamic	\$29.95*	<u>Order Now</u>
Order SBC Yahoo! DSL for a one-year term for \$29.95 per month, and receive a \$149 SBC Yahoo! DSL Wireless Home Networking kit, \$179 laptop Home Networking bundle or a \$99 DSL modem, and receive a \$99 Instant Credit (taxes and a \$12.95 shipping and handling fee apply). Plus, get free activation and a free self-installation kit.					
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Order a one-year term and get a \$199 Instant Credit towards a \$199 DSL Router or \$199 Office Gateway Kit and free activation.					
<u>Symmetric 384-S Package</u>	384Kbps	384Kbps	5 Static	\$89.99	<u>Order Now</u>
Order a one-year term and pay only \$89.99 per month for your first twelve months, plus get a \$199 Instant Credit towards a \$199 DSL Router or \$199 Office Gateway Kit and free activation.					
<u>Expert Plus Package</u>	1.5-3.0Mbps	384Kbps	1 Dynamic	\$44.99	<u>Order Now</u>
Order SBC Yahoo! DSL for a one-year term for \$44.99 per month, and receive a \$149 SBC Yahoo! DSL Wireless Home Networking kit, \$179 laptop Home Networking bundle or a \$99 DSL modem, and receive a \$99 Instant Credit (taxes and a \$12.95 shipping and handling fee apply). Plus, get free activation and a free self-installation kit.					

<u>Expert Plus-S Package</u>	1.5-6.0Mbps 384Kbps 5 Static	\$99.99	<u>Order Now</u>
Order a one-year term and pay only \$99.99 per month for your first twelve months, plus get a \$199 Instant Credit towards a \$199 DSL Router or \$199 Office Gateway Kit and free activation.			
<u>Office Gateway</u>	Purchase an Office Gateway with SBC Yahoo! DSL and get a \$99 Instant Credit!		<u>Order Now</u>
<u>SBC Web Advantage</u>	Get your own Web site. Combine the power of SBC Yahoo! DSL with SBC Yahoo! Web Hosting and save up to 20% on monthly hosting fees.		<u>Learn More</u>

View SBC Yahoo! DSL Standard Features.

¹Must be new subscriber to order online.

*Pricing available if SBC Yahoo! DSL is ordered online or if purchased as part of a qualifying SBC bundle that includes available SBC local toll or SBC long distance service(s).

3-3

SBC Yahoo!® DSL Special Offers¹

We're passing our savings onto you. Get SBC Yahoo! DSL for **\$29.95 per month*** when you order online.

Sign up now and you will also receive the following limited time offers:**

- \$10 Movielink Money™ good for movie downloads
- 10 MusicNow music downloads

SBC Yahoo! DSL Package	Downstream Speed	Upstream Speed	IP Address	Monthly Price	Order Now
<u>Basic Package</u>	Up to 384Kbps	128Kbps	1 Dynamic	\$29.95*	<u>Order Now</u>
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<u>Symmetric 384-S Package</u>	384Kbps	384Kbps	5 Static	\$89.99	<u>Order Now</u>
Order a one-year term and pay only \$89.99 per month for your first twelve months, plus get a \$199 Instant Credit towards a \$199 DSL Router and free activation.					

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<u>Expert Plus Package</u>	1.5Mbps-3.0Mbps	384Kbps	1 Dynamic	\$44.99	<u>Order Now</u>
Order SBC Yahoo! DSL for a one-year term for \$44.99 per month, and receive a \$149 SBC Yahoo! DSL Wireless Home Networking kit, \$179 laptop Home Networking bundle or a \$99 DSL modem, and receive a \$99 Instant Credit (taxes and a \$12.95 shipping and handling fee apply). Plus, get free activation and a free self-installation kit.					
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Order a one-year term and pay only \$99.99 per month for your first twelve months, plus get a \$199 Instant Credit towards a \$199 DSL Router and free activation.					
<u>Home Networking</u>	Purchase Home Networking with SBC Yahoo! DSL and get a \$99 Instant Credit.				<u>Order Now</u>

View SBC Yahoo! DSL Standard Features.

¹Must be new subscriber to order online.

*Pricing available if SBC Yahoo! DSL is ordered online or if purchased as part of a qualifying SBC bundle that includes available SBC local toll or SBC long distance service(s).

**Instructions on how to receive your \$10 in Movielink Money™ and 10 MusicNow downloads will be sent to your SBC Yahoo DSL email address by SBC Internet Services within two weeks after successful registration of your SBC Yahoo DSL service. Unredeemed value of MovieLink Money/MusicNow downloads will expire 90 days after receiving the email or when full face value of Movielink Money/MusicNow downloads is used whichever comes first. This is a limited time non-transferable offer requiring the purchase of SBC Yahoo! DSL and is available when customer orders before March 31, 2004 and completes the registration process for SBC Yahoo! DSL by April 30, 2004. Movielink and MusicNow limited time offers are available to residential customers only and are not available for Apple Macintosh users. Movielink online movie delivery service provided by Movielink, LLC. MusicNow digital music service provided by FullAudio Corporation. Acceptance of Movielink and MusicNow respective terms of service required. Additional terms and conditions apply for redemption of Movielink Money. Customer required to submit email address and other information to Movielink and Full Audio to use respective services. Services subject to respective Movielink and Full Audio Privacy Policies.

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