



January 14, 2025

Jane Nishida
Acting EPA Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: *Food & Water Watch v. EPA*, Case No. 17-CV-02162-EMC.

Dear Acting Administrator Nishida,

The Association of Metropolitan Water Agencies (AMWA) is an organization of the largest publicly-owned drinking water systems in the United States, with members collectively providing safe and affordable drinking water to more than 160 million Americans. In the interest of maintaining the role of the Safe Drinking Water Act (SDWA) as the sole federal statute through which drinking water contaminants are regulated, AMWA respectfully urges EPA to appeal the United States District Court for the Northern District of California’s ruling in *Food & Water Watch v. EPA*, Case No. 17-CV-02162-EMC.

In its September decision, the court set aside the conclusions of agency scientific experts and instead relied on its own interpretation of complex scientific data to conclude that fluoride in drinking water, at the optimal level recommended by the Centers for Disease Control and Prevention (CDC) to promote dental health, “poses an unreasonable risk of reduced IQ in children.” Based on its own scientific conclusions, the court found that EPA erred in denying a citizens’ petition to regulate fluoride in drinking water under the Toxic Substances Control Act (TSCA) and directed EPA to “initiate rulemaking pursuant to Subsection 6(a) of TSCA.”

While AMWA believes that the choice on whether to add fluoride to drinking water should be made by each community, the association is concerned about the precedent set by this decision and the implications for EPA’s ability to properly oversee the safety of public water supplies should the court’s decision be allowed to stand. Specifically, the decision risks undermining SDWA’s role as the federal regulatory mechanism for overseeing drinking water quality and EPA’s implementation of that statute.

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The Safe Drinking Water Act is the Best Tool for Regulating Drinking Water to Protect Public Health

SDWA establishes a comprehensive and effective process for developing protective standards for drinking water. Under this Act, EPA has adopted standards for over 90 contaminants to date. The SDWA facilitates ongoing evaluation and evolution of these standards through the six-year review process, which includes robust opportunities for public comment, and requires drinking water standards to be grounded in meaningful opportunities to protect public health.

Under SDWA, EPA has established legal limits on fluoride in drinking water by establishing a Maximum Contaminant Level (MCL) for fluoride. Through four cycles of six-year reviews that evaluated the best available peer-reviewed science, EPA has evaluated the benefits of fluoride against the risks of overexposure and has continuously found that the fluoride MCL protects public health. In the event revision is warranted, EPA has a clear avenue through the SDWA to reduce MCL thresholds in a protective fashion, without the opportunity for backsliding.

The Toxic Substances Control Act is Not Designed to Regulate Drinking Water.

The primary focus of TSCA is the regulation of the production, importation, use, and disposal of specific chemicals with evaluation of multiple exposure pathways including air, soil, and workplace exposures. It is not focused on regulating drinking water and lacks the balanced public health approach Congress adopted specifically for controlling drinking water exposures.

The Decision Invites Litigation

If the district court decision stands, its precedent could be used to collaterally attack the MCLs for the 90 regulated contaminants already being effectively managed through SDWA. In fact, it could be used to collaterally attack any EPA scientific decision.

AMWA understands that the American Dental Association and other associations support an appeal of this ruling and concurs with ADA's assessment that citizen petitions and the resulting burden will occupy a disproportionate amount of EPA's resources. AMWA also adds that this places water systems in a difficult position with the recent example of the class action lawsuit in Buffalo, NY, calling for the re-introduction of fluoride. Should the *Food & Water Watch* decision go unchallenged, water systems could potentially face similar class action lawsuits seeking fluoride removal.

AMWA encourages EPA to appeal this decision to maintain the role of the Safe Drinking Water Act as the statute that governs the drinking water quality and ensure that TSCA will not be used to circumvent Safe Drinking Water Act public health protections.

Conclusion

In the event EPA is ultimately required to pursue a regulation of fluoride under TSCA, AMWA believes that the most appropriate means of doing so should be through SDWA as allowed in section 2608 of TSCA. This section states that risk "*could be eliminated or reduced to a sufficient extent by actions taken under the authorities contained in such other Federal laws, the*

Administrator shall use such authorities to protect against such risk unless the Administrator determines, in the Administrator's discretion, that it is in the public interest to protect against such risk by actions taken under this chapter.” (15 U.S. Code § 2608(a)(1)(B))

AMWA is committed to providing safe drinking water, and believes that the most appropriate means of providing that is through the mechanisms of the aptly-named Safe Drinking Water Act. An appeal of the court's decision in *Food & Water Watch v. EPA* will provide an avenue for this approach to continue.

Thank you for your consideration of our request and support for an appeal. For more information, please contact Kaline Gabriel, AMWA's Manager of Regulatory and Scientific Affairs, at gabriel@amwa.net.

Sincerely,



Thomas Dobbins
Chief Executive Officer
Association of Metropolitan Water Agencies

CC: Dimple Chaudhary, Acting General Counsel
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