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**Statement of Angela Logomasini
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Good Morning, Mr. Chairman and Members of the committee, thank you for the opportunity to testify. I am Angela Logomasini, Director of Risk and Environmental policy with the Competitive Enterprise Institute (CEI). CEI is a public policy group that focuses on promoting market-based solutions to policy problems.

Today, I am going to offer a rather different view on this issue, one that I haven't seen others offer anywhere. Everyone is suggesting that the District of Columbia's recent activities related to lead levels in D.C. drinking water are a result of gross mismanagement. Frankly, the news coverage has been so intensely critical that one is almost led into thinking that D.C. officials were engaged in a plot to allow residents to slowly be poisoned. Following this line of reasoning, the next common conclusion that everyone seems to be making is that federal regulators must now search around the nation for similarly irresponsible public officials who are doing the same thing to their residents.

But it's time to step back and reevaluate this analysis. D.C. may have made mistakes, but I will argue that the inflexible attributes associated with the federal drinking water law have contributed to this situation. D.C. shouldn't bear all the blame here, and ceding more authority to the Environmental Protection Agency (EPA) won't provide a solution. In addition, media hype has distorted the situation, making the response to this risk disproportionate to the actual risk level. Congress can't do anything to change media behavior. However, Congress can make its laws more rational and eliminate triggers that contribute to the hype.

The issue raises an overarching problem with the Safe Drinking Water Act. The law applies a "one-size-fits-all" policy to address multiple and innately different problems and issues in tens of thousands of communities around the nation. It's as if Congress decided to mandate that the answer to any mathematical equation must always be "four." We know that the answer "four" will be wrong in multiple cases even if Congress says differently.

Several years ago, the Congressional Budget Office (CBO) produced a report that pointed out the pitfalls of such uniform regulatory approaches, and highlighted the need for more flexible approaches. CBO noted at the time that greater flexibility in the federal drinking water law would not only reduce costs, it could enhance benefits.¹ CBO explained that uniform federal standards translate into “welfare costs”—the situation in which a regulation costs more than the benefits it returns. The reason for using the word “welfare” is to remind us that those financial losses translate into reductions in quality of life. As the law is now written, the EPA considers costs to large systems when conducting cost-benefit analysis, but because of the economies of scale, the costs to households in small systems are far higher than that of the large systems on which the standards are based. As a result, what EPA considers an acceptable cost is often far higher than reasonable for rural residents, many of whom live on already tight incomes.

In particular, CBO explained:

Considerations of information highlight the advantages of a decentralized approach to setting standards. The per-household cost of treating drinking water varies greatly among communities—particularly with differences in the size of water systems. Preferences for protecting drinking water also vary among communities. Local governments are therefore in the best position to choose drinking water standards that reflect those variations in costs and preferences.

The local nature of costs and benefits of treating drinking water and considerations of information provide a rationale for allowing local governments to set their own standards. However, the reality of the situation is otherwise: the federal government currently sets standards for drinking water protection. Those standards may impose welfare losses on communities compelled to undertake more treatment than their unique circumstances justify. Welfare losses represent the decrease in net benefits (benefits minus costs) that communities experience because of meeting federal standards.

As part of the study, CBO conducted a case study on one proposed drinking water rule for “adjusted gross alpha emitters,” which it defined as “forms of radionuclides classified as human carcinogens.” It found that the rule produced annual welfare losses ranging from \$38 to \$774 per household. Households in small communities paid the most.

In the lead case, we have seen that the disinfection byproducts regulations have basically forced communities to switch from established disinfection technology to an alternative one. These changes were based on the idea that the older disinfection method created byproducts that might be dangerous to human health. This new disinfection product may have proven more corrosive to pipes, which may have led to the release of additional levels of lead in drinking water. There has been considerable controversy regarding whether the science supports the disinfection byproduct rule, and it may

¹ U.S. Congressional Budget Office, *Federalism and Environmental Protection: Case Studies for Drinking Water and Ground-Level Ozone* (Washington D.C.: CBO, 1997), <http://www.cbo.gov/showdoc.cfm?index=250&sequence=0&from=1>.

provide little benefit. Ironically, byproducts of the alternative technologies pose new risks that regulators didn't anticipate, but that will be subject of another debate.

This issue highlights the key problem with uniform federal mandates. When they are applied in real world, they can have unintended consequences that create new problems. When mandated across the board for every community, the costs of such decisions are magnified. If communities were not forced into switching disinfection methods, some might have decided to stick with the old method because they might have considered the potential lead issue. Some communities might have decided to switch anyway because their systems don't have lead lines. And some communities might have decided that the costs of addressing very small theoretical risks did not warrant shifting funds from other priorities—such as health care, public housing, education, emergency preparedness, and other priorities. When Congress passes such mandates it needs to realize that communities are in fact making such tradeoffs, the result of which can be net loss of public health and safety.

The law does require the EPA to consider whether the regulation is affordable for the public. However, EPA's rule for assessing affordability allows the agency to impose regulatory costs of up to 2.5 percent of the median income—which amounts to about \$1,000 per family per rule. At this rate, one rule is hardly affordable to most families, and surely families can't shoulder such costs for the 80-plus rules combined!

Other parts of the law contributed to D.C.'s problems as well. The notification provisions of the Safe Drinking Water Act are too inflexible. Every community must notify the public when violations occur according to Washington dictates on how they must report.

Clearly the underlying goal of notification is a good one. An educated public will be better able to demand solutions and keep officials accountable. But the problem is that these notifications are not educating people. Instead, they are being used to trigger alarm scenarios that are amplified by the media. The resulting crisis mentality is not educating the public, it's scaring them needlessly. The end result is "crisis" management-styled policy—which demands a response that is disproportionate to the risks. Communities are then forced to pursue more federally determined "solutions" that divert funds from greater concerns.

The reality is that every violation means something different, and each deserves a different response. Clearly, Milwaukee public officials needed to provide urgent notification when they discovered the infectious cryptosporidium microbe in the city's water supply in 1993. They faced a pending public health emergency. That is different from periodic and modest violations of excessively conservative drinking water standards, which pose very little risk. While a rapid response and quick alert system is necessary in one case, it is unwarranted and potentially counter-productive in the second case. But federal notification requirements don't allow for enough differentiation.

The D.C. lead case may lie somewhere between these two examples. For many residents, the levels deviated insignificantly, while levels for others were far higher. D.C. officials might have needed to have different alert levels for different communities in the city. But the law wouldn't allow that. In any case, I am not saying they did the greatest job on Earth. Frankly, it is extremely difficult to judge from the outside, particularly with everyone pointing fingers and fomenting controversy. I will note that it was rational for D.C. officials to attempt to deal with this problem without raising the issue to panic levels. However, this approach may have put them at odds with the law, which demands the triggering of a public health scare through an inflexible notification process.

The desire to avoid a crisis mentality in this case is commendable for several reasons. First, it is simply not right to needlessly scare the public. Second, a health scare would likely lead to panicked responses that divert huge amounts of limited government resources away from far more serious public health and community problems. Meanwhile, a less inflamed debate might have allowed city officials to find an affordable means for addressing the problem, while allowing other resources to continue to flow to address other issues. But instead, D.C. is likely to spend millions replacing lead service lines, which might not even solve the problem because homes might have other lead pipes or connectors that are contributing to the problem. If Congress attempts to demand more prescriptive notification, we can expect even more politically created "crisis scenarios" and more panicked responses, and more inappropriate "solutions."

For example, according to reports from EPA's recently assembled panel of experts on lead in drinking water, the City of Cincinnati spent tens of millions dollars to replace a substantial portion of their lead services lines. Yet despite the high cost, the city gained few benefits as lead decreased only slightly.

It is worth noting that D.C. was correct in its assessment that the lead issue didn't warrant a panicked response. The science and the history related to lead exposure strongly indicates that lead in drinking water—even at levels that are multiple times higher than federal standards—does not warrant the frenzied reaction we've seen in D.C. A recently released Centers for Disease Control and Prevention (CDC) study reinforces these findings.² It found that the elevated lead levels in D.C. water did not raise the level of lead in anyone's blood to a level of concern. They noted that lead levels are largely affected by other sources, particularly peeling lead paint and dust from such paint. Addressing drinking water levels, as a result, will have little impact, although it will force communities to divert resources away from areas of genuine need. While other sources of exposure remain an issue, progress is being made. The average lead blood level has declined substantially (80 percent) since the late 1970s, according to the CDC.³

² "Blood Lead Levels in Residents of Homes with Elevated Lead in Tap Water—District of Columbia, 2004," *Morbidity and Mortality Weekly Report*, 53, no. 30, (April. 2, 2004): 268-270.

³ "Blood Lead Levels in Young Children—United States and Selected States, 1996-1999," *Morbidity and Mortality Weekly Report* 49, no. 50 (December 22, 2000): 1133-7.

Not surprisingly, the District government and the CDC discovered that every child they found with elevated lead levels in D.C. also lives in a home with peeling lead paint, lead-containing dust from renovations, or both. Based on tests of about 1,100 children, 14 children were found with elevated lead levels. Six of these children didn't even live in homes with lead service lines. Moreover, tests on about 200 people of all ages from homes with the highest lead levels in the water didn't find anyone with blood containing lead at levels of concern. As Daniel R. Lucey, the District's interim chief medical officer, recently told *The Washington Post*: "We are not seeing any widespread lead toxicity attributable to the water in D.C."

Accordingly, we could replace all the lead lines in the nation at an enormous cost, and still have little impact on lead blood levels. The cost to replace lead service lines in D.C. is estimated at \$300-\$500 million plus an additional cost for upgrading lines owned by homeowners of \$50 to \$60 million, according estimates presented by the Association of Metropolitan Water Agencies during other hearings on this issue.⁴ Remember that means there will be that much less money available for D.C. to allocate to other needs, such as upgrading schools and providing essential services to the community. Congress can agree to cover some of service line replacement costs, but congressional authorizations are rarely enough to cover such costs. In addition, Congress' pockets are not unlimited and expenditures here mean either smaller expenditures elsewhere or greater federal debt obligations.

Moreover, a federally mandated policy promoting lead service line replacements assumes we have a simple solution: Replace lines and lead problems will disappear. But the reality is quite different. Because many homes may still have lead lines inside, replacement of service lines might still fail to provide measurable benefits in many instances. One problem is that lead problems may come not from service lines but directly from the tap.⁵ Another problem revolves around whether a water system will be able to locate piping that is causing the lead.⁶ In addition, mandated line replacement means systems do not have any flexibility in determining whether better options exist.

The lead issue also raises issues of personal responsibility. In many cases, problems stem from piping that is owned by the user, not the public water systems. The cost of line replacements is high, and it raises questions as to whether the homeowner who owns the lines or taxpayers in general should be the ones to pay.

⁴ As cited by Patricia Ware, "Aging Water Pipes Cause High Lead Levels, Water Utilities Tell House Subcommittee," *Daily Environment Report*, April 29, 2004, A-8.

⁵ American Water Works Association, "Comments on EPA's Proposed Minor Revisions to the Lead and Copper Rule," July 11, 1996; Conclusions regarding lead sources at the tap were drawn from an AWWA survey of 1,000 water systems.

⁶ Back in 1991, EPA identified one problem with replacement mandates is that some communities might have a difficult time just finding the exact location of their lead service lines. It noted that many systems explained that they lacked records on location of lines; *Federal Register* 56, June 7, 1991, 26506. The AWWA makes similar observations in American Water Works Association, "Comments on EPA's Proposed Minor Revisions to the Lead and Copper Rule," July 11, 1996.

In the end the goal should be public health protection. That should involve rational approaches and sharing of good information rather than the advancement of alarming rhetoric and panic-induced regulatory measures that demand vast outlays of resources without regard to the impact of such policies on other priorities. D.C. and the myriad other communities regulated under the law have other health issues and other community needs—and their funds are not endless.

EPA can play an important role in this process. It can serve as a source of information and assistance to communities, rather than hammer them with mandates and compliance orders. The agency should be held to high scientific standards and should contribute to provision of accurate information, rather than the crisis mentality.

Congressional action at this time should focus on making the law more flexible. The Safe Drinking Water Act (SDWA) does include provisions that are supposed to allow for some flexibility, but they don't work very well. The EPA can grant variances (allowing the systems to deviate from EPA standards if they address the regulatory priority in a different way) and exemptions (allowing localities to vary their standards and use resources to address other needs in the community). But these provisions are so rarely used—because of the bureaucracy associated with them—that they are essentially useless:

- ◆ The CBO notes that between 1990 and 1994, the EPA issued zero variances and only 15 exemptions. “Given that approximately 200,000 public water systems are subject to federal regulations (of which over 85 percent are small), that is a strikingly small number,” noted CBO.⁷
- ◆ Little has changed since the passage of the 1996 amendments. In its latest compliance report, the EPA stated that “few public water systems were operating under a variance or exemption, and only 8 new variances or exemptions were granted.”⁸

If Congress does anything in the near future on drinking water, it should be to provide genuine and workable regulatory relief. In addition, Congress should be engaged in vigorous review of all upcoming standards to prevent the agency from passing new regulations that are not supported by strong science. The costs of misguided rules, particularly to rural communities, can reduce quality of life and public health.

⁷ CBO, *Federalism and Environmental Protection*, 20.

⁸ U.S. EPA, Office of Enforcement and Compliance Assurance, *Providing Safe Drinking Water in America: 1998 National Public Water Systems Compliance Report* (Washington, D.C.: USEPA, 2000).