



**DEPARTMENT OF  
ENVIRONMENT &  
CONSERVATION**

**Subject: Tennessee's Submetering Policy**

Consistent with the policy of the Environmental Protection Agency (EPA) published in the December 23, 2003 Federal Register (Vol. 68, No. 246) the Tennessee Department of Environment and Conservation (hereinafter "the Department") has adopted the following policy with regard to the regulation of submetered properties in Tennessee.

Appearing to meet the definition of a Public Water System as defined by the Federal Safe Drinking Water Act (SDWA) and otherwise requiring regulatory supervision, EPA in its interpretation of Section 1411 as stated in its December 23, 2003 policy holds that submetered properties do not meet the definition of a Public Water System (PWS). The authority to issue such policy was recently upheld by the 4<sup>th</sup> Circuit Court of Appeals in a lawsuit brought by the Manufactured Housing Institute.

**EPA's December 23, 2003 policy states the following:**

- The submetered property shall be owned by a single, named entity. The entity may be a single owner, association, corporation or partnership.
- The submetered property shall receive all water from a regulated community water system and shall not change the quality of water provided to customers. (Refer to December 23, 2003 FR regarding the requirement that the system be supplied by a public water system.)
- The scope of the policy is not intended to extend where the property has a large distribution system, serves a large population or serves a mixed (commercial/residential) population (e.g., military installations or large mobile home parks).
- EPA did not automatically include Ratio Utility Billing Systems (RUBS) and Hot Water Hybrids (HWHs) in its definition of "submetered property".
- The policy grants to each state primacy agency the flexibility to determine if RUBS and HWH systems are "selling water" within the meaning of the Safe Drinking Water Act.

The Department has reviewed this issue at length. Both the Safe Drinking Water Act and the Tennessee Safe Drinking Water Act exclude certain public water

systems from coverage. The drinking water rules in Chapter 1200-5-1 apply to all public water systems except those that meet all of the following criteria:

- (a) Consist of distribution and storage facilities only and do not have any collection or treatment facilities;
  - (b) Obtain all water from, but are not owned or operated by, a public water system to which such rules apply;
  - (c) Do not sell water to any person; and
  - (d) Are not carriers which convey passengers in interstate commerce.
- See Rule 1200-5-1-.03

The Department also notes that:

- The Tennessee Regulatory Authority has determined that submetered properties, RUBS and HWHs are not selling water but are only recovering the cost of water charged by a regulated public water system. Therefore, the Tennessee Regulatory Authority does not regulate the billing practices or the amount charged for water by these systems.
- There is not any substantial difference in recovering the cost of water by including the cost in the rental or lease agreement than in recovering the cost by metering the amount of water used, or using a ratio or hybrid billing system. Each of these methods is a form of cost recovery and does not meet the definition of "selling" under the Safe Drinking Water Act.
- There are many existing properties, some much larger than some of those that currently submeter or use a ratio or hybrid billing system, that are not subject to the requirements of the Safe Drinking Water Act.

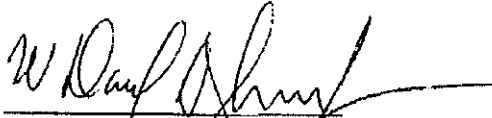
Therefore, it is the Department's interpretation of the scope of the exclusion in rule 1200-5-1-.03 that systems that meet all of the following criteria are not required to meet all of the requirements of the rules:

- The water system must receive all of its water from a fully regulated public water system and have no cross connections with another water source;
- The water system must be on land owned entirely by one person, as defined in the rules (1200-5-1-.04(54));
- The system either meters the total water used by each connection or individual unit and bills accordingly or utilizes a RUBS or Hybrid billing system; and
- The system must not do anything to allow the quality of the water to change from that which it receives.

Examples of systems that might qualify for this exemption from the drinking water regulations include apartment complexes, condominiums, mobile home parks,

and shopping malls. Anyone who thinks an operation might be exempt should contact the Division to seek an official determination.

Effective date of policy: January 5, 2007.

A handwritten signature in black ink, appearing to read "W. David Draughon, Jr.", with a long horizontal flourish extending to the right.

W. David Draughon, Jr.  
Director  
Division of Water Supply