

Testimony of Katherine Funk
Committee on Government Reform, United States House of Representatives
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Good morning. My name is Katherine Funk. I am an antitrust attorney here in Washington for a national law firm. But today I sit here in two other roles: as a homeowner in the District of Columbia and, most importantly, as a mother of a five-month old daughter, Kathryn Agnes Stearns, who is with me today. I'll address the key points of my testimony here, and ask that my full statement be included in the record.

Thank you, Chairman Davis, for holding this hearing on the issue of excessive amounts of lead in DC's drinking water. I'd also like to thank Delegate Eleanor Holmes Norton for her leadership on this very important public health issue facing our community.

I would like to discuss some issues that I - and other DC homeowners and parents - have faced, and to urge passage of the Lead Free Drinking Water Act of 2004, which would help prevent the problems these problems from recurring again in DC - often referred to as the "Nation's Laboratory" - and in other cities with aging water infrastructures. As Senator Crapo of Idaho told me in my living room last month at a public gathering on the issue, safe, clean drinking water is the No. 1 environmental problem facing the United States.

As we all know by now, thousands of homes in DC have tested for lead levels in drinking water far above the EPA action level of 15 parts per billion. Our home, just a few blocks away from here - on Capitol Hill in sight of the Capitol, is one of them. WASA tested our lead levels at 29 parts per billion on the first draw, and 100 parts per billion on the second draw. Many of our neighbors have tested higher.

The problem is two-fold: First, that in 2004, this problem even exists, especially here, in this nation's capitol; and second, in the maddeningly unresponsive response to the problem by WASA, the EPA, the Corps of Engineers and the DC government. They've basically given DC residents the stiff-arm. Most unfortunately, the current law and regulations let them do it. I'll give you a few examples, and point out how this legislation would help.

1. For at least two years, WASA, the EPA and DC Health officials knew that water samples throughout the city were showing wildly elevated levels of lead. Yet, despite some test results showing lead levels in the hundreds and even thousands parts per billion, the people at WASA, the EPA and the DC Government did not inform the people in the homes that tested high, let alone the general public. Why? As it turns out, the current law and regulations do not require that such results be shared unless 10% of the test results are elevated.

Why does this matter? When I was pregnant last year, I drank glass after glass of DC water, daily, for nine months just as my doctor suggested. Every evening, I took my pre-natal vitamin with a glass of DC water. Who would have thought this act, which should have been good for my

child, could instead have been endangering her development? If WASA had only announced that its testing showed elevated lead levels, and that certain persons – pregnant and nursing women and small children – should take precautions I would have been able to make an informed decision about my health and that of my daughter.

This legislation requires notification to persons in all homes that test above the EPA action level. A relatively cost-free solution.

2. WASA's lack of knowledge of its own inventory, which hinders its ability to solve the problem, and its unwillingness to fill in its information gaps. As I mentioned, our water has elevated lead levels. Yet WASA does not know, and has taken no steps to determine, whether our water service line is lead. According to published reports, 10s of thousands of other homes in DC are in the same position. Further, no one at EPA or the DC Government has thought it necessary to insist that WASA find out the answer.

Why is this information important? Because as an “unknown” WASA has not offered to us any of their remedial efforts – including filters -- despite the fact that we have elevated lead levels AND an infant in our home and I am nursing. Even in today's Washington Post story WASA officials only mention those person with “lead service lines” completely ignoring us “unknowns.”

This legislation requires local water agencies to maintain up to date information about their service line inventory. Again, a relatively low-cost solution.

3. The nullification by EPA and WASA of test results showing a clear problem years ago. When enough water tests returned results putting WASA over the threshold for replacing service lines, WASA began nullifying results. Incredibly, the EPA which has the role of oversight allowed them to do this. Let's call it what it is – a cover-up and it put thousands of DC children and pregnant women at risk. Additionally, the entire testing protocol is inadequate in that not enough homes are tested; essentially, the number of samples required is not consistent with accepted scientific protocols.

This legislation would eliminate the existing loophole allowing systems to avoid replacing lead service lines by conducting water tests. And it would mandate sampling at a sufficient level to obtain an accurate picture of the situation.

Today's story in the Post makes it seem that this is a problem of water chemistry. However, the story presents a stark choice – too much lead or a chlorine, known carcinogenic. The real problem is the presence of lead in the service lines and in home plumbing – which leads me to my final two examples:

4. The misinformation and outright lies promulgated by WASA, the DC government, including, bizarrely, its Department of Health. Since the day that the toxicity of DC's drinking water became public knowledge, WASA and DC Government officials have sought to minimize the problem. In public forums, WASA officials described the EPA action level as “the level at which water is safe.” With regard to its pilot program for replacing some lead service lines in

this city, WASA has misled residents as to the how, when, what and the cost to the consumer of the replacement. And now, WASA won't take phone calls from residents seeking clarification or more information.

This legislation revamps public notice requirements and establishes baselines for public education about the risks posed by lead contamination. Further, it sets out a protocol for lead-line replacement, clearing marking each participant's roles and responsibilities.

5. The problem is not entirely with water agencies because lead-free doesn't really mean lead-free. When defending their actions, WASA officials blamed excess lead levels on home plumbing fixtures. WASA may actually have a point. Currently, the Safe Drinking Water Act defines lead-free as 8 percent lead.

This legislation would define lead-free as .2 percent. And going forward, it would be unlawful to install plumbing fixtures and components with lead levels higher than that in any residence. Again, this is a relatively cost-free solution.

Some will say that water is a very small contributor to the problem of excessive lead levels in pregnant women and young children, especially in urban areas where lead paint and lead dust abound. I remind them that the goal of U.S. public health agencies since at least the 1980s has been zero exposure to lead, and I ask them, why not take action to address this source of the problem?

Some might think this is a DC problem, and one that does not affect their constituents and their families. I ask them _ has your local water agencies tested your water lately? Has the EPA let them nullify results? How old is your city's infrastructure? What are your water service lines made of? In the interests of all our children, shouldn't we know the answers to all these questions?

Some will say this legislation would be too burdensome on water agencies and too costly for them and for consumers. But as I've demonstrated here, it really doesn't. Well, when experts do cost-benefit analysis, they certainly don't include their own children in the cost side of the equation. Further, DC consumers – rich and poor – are spending lots of money on bottled water, filters and pitchers. And more important, I ask them what monetary value they place on the mental development of a fetus and a growing child?

I urge you to pass this legislation so that one day, in your district, you don't have to face the mother of a child who is developmentally delayed because of lead exposure and have to say to her, "I'm sorry. I could have fixed the problem when I had a chance. But I thought it cost too much."