Is It Safe?

The Tale of America's Drinking Water Systems

By G. Tracy Mehan III

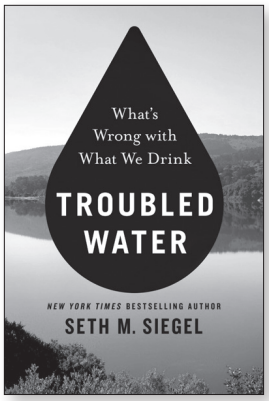
Martin Doyle, director of the Water Program at Duke's Nicholas Institute for Environmental Policy Solutions, recently observed, "Being able to blithely drink water from just about any faucet in the United States without concern is one of the greatest achievements of American Society."

The report from the 2019 Aspen-Nicholas Water Forum, titled "Ensuring Water Quality: Innovating on the Clean Water & Safe Drinking Water Acts for the 21st Century," notes that "The [Safe Drinking Water Act] has achieved remarkable improvements in drinking water quality with more than 90% of community water systems achieving all water quality standards all of the time." Noting that there are still numerous challenges, and that the law's effectiveness has "plateaued," the report recognizes that "this is an incredible accomplishment."

Even as the crisis in Flint, Michigan, spotlighted the remaining legacy issues with the 6.1 to 10 million lead service lines still existent, the EPA states in its proposed revisions to its Lead and Copper Rule that "the United States has made tremendous progress in lowering children's blood levels." Specifically, "the median concentration of lead in the blood of children aged 1 to 5 years dropped from 15 micrograms per deciliter in 1976-1980 to 0.7 micrograms per deciliter in 2013-2014, a decrease of 95 percent."

Also, "the number of the nation's large drinking water systems with a 90th percentile sample value exceeding the LCR action level of 15 parts per billion has decreased by over 90 percent since the initial implementation of the LCR," according to the agency's October 2016 white paper. This has been achieved by means of corrosion-control techniques implemented by drinking water utilities.

Seth Siegel would argue this is an overly positive assessment of the state of the nation's drinking water, and has written a book, *Troubled Water: What's Wrong with What We Drink,* offering a systematic critique of the Safe Drinking Water Act, especially the 1996 amendments, as well as the actions of the vital players: EPA; the "water industry," or public utilities; and the Congress, whose failure to embrace something very much like a European-style Precautionary Principle regulating thousands of chemicals until proven innocent, a kind of reverse onus, so to speak. Siegel does not use these terms but that is the substance of his argument. He further argues that EPA has been captured by the regulated community and is more concerned with keeping costs down rather than showing regard for safe drinking water and human health.



Troubled Water: What's Wrong With What We Drink.
By Seth M. Siegel.
Thomas Dunne Books;
330 pages; $29.99.

Siegel's first book was a very fine one on the rise of Israel as a leader in water management, policy, and technology entitled, *Let There Be Water: Israel's Solution For A Water-Starved World.* "Israel is the only country in the world which has less area covered by desert today than fifty years ago," writes Siegel. Israel does it all: long-range transport of water; full-cost pricing; reuse of sewage (85 percent versus 8 percent for the United States); 75 percent of its irrigated fields utilizing drip irrigation; new seeds for water-efficient crops; and five desalination plants developed on its coast in less time than it took to get one built in California. Compared to the sprawling United States, a federal, continental nation of 327 million with over 50,000 community water systems, Israel is a model of purposeful and focused effort when it comes to water.

Troubled Water, however, tells a darker story, leaving readers with the impression that rival factions are vying for control of American drinking water law and policy. The "water industry," the White House Office of Management and Budget, and EPA are on one side. Selected advocates, NGOs and academics are on the other.

Full disclosure: this reviewer works for an association representing drinking water utilities and served two tours at EPA. Hence his concern with passages in the book such as the following: "And when they couldn't stop a contaminant from getting on the EPA list of chemicals that had to be screened, then utilities would have an incentive to have the threshold for acceptable contamination set as high as possible, thereby making the utility's treatment costs as low as possible," claims Siegel. "Strangely, rather than resisting this effort to keep the Safe Drinking Water Act from leading to the best drinking water possible, the

EPA was mostly willing to oblige the utilities' wish for minimal enforcement."

Nevertheless, Siegel does make several arguments and recommendations deserving of careful consideration by the policy community. Some have been around a long time without gaining purchase with federal, state, or local legislators or governors or mayors. More money for safe drinking water, say, bumps up against the reality that federal funding for water and wastewater has been flat for sixty years.

Siegel calls for consolidation of water utilities. This is an eminently sensible idea. California has 7,500 utilities compared to 23 in the entire United Kingdom. Unfortunately, despite years of EPA's pleading with states, rural water utilities, and municipalities, little has changed. Kentucky did a good job of consolidating utilities from a couple of thousand to a couple of hundred almost twenty years ago, but few other states have followed that example. And it is hard to envision a forced consolidation, as was mandated by a centralized British government and was followed by privatization, in an American federal system. Time, expense, and personnel shortages may force some regionalization or consolidation, but it will be a slow, organic process.

Most controversial is Siegel's proposal to move the drinking water program out of EPA into the Department of Health and Human Services as if, somehow, HHS will be any more removed from the inevitable policy and political influence of the White House and OMB. It will not repeal the Administrative Procedure Act or the executive orders requiring benefit-cost analysis of government regulations that have persisted through both Democratic and Republican administrations going back to Ronald Reagan's.

Siegel does not appreciate how inherently political, and therefore controversial, regulatory issues are, such as, how safe is safe? what level of protection at what cost? and, who pays for what? HHS would struggle with those questions, just as EPA has for over 40 years.

Siegel echoes those who have lost patience with the admittedly lengthy, science-based, data-driven approach to regulation under the 1996 SDWA amendments, themselves a reaction to the 1986 amendments. Such is his concern with thousands of chemicals in use today, Siegel would repeal the 1996 amendments and allow the setting of standards of any kind if feasible without concern for meaningful improvements to health, cost, or benefits.

Water, water everywhere and nearly all of it fit to drink

Siegel is silent on how problematic the 1986 amendments actually were. These amendments required EPA to issue drinking water standards for 83 specified contaminants and for 25 additional contaminants every three years. This reviewer was on the receiving end of this process as a state official and was hard put to explain the science or other justification for this cascade of regulation to state appropriators, utilities, or customers.

Robert Perciasepe, former deputy administrator at EPA in the Obama administration and head of the water office in the Clinton administration, testified to the House Subcommittee on Environment, Energy and Natural Resources in 1994 that "this rigid '25 every 3 years' statutory requirement outpaces the agency's ability to critically assess whether there are public health threats posed by thousands of contaminants that may appear in drinking water before developing regulations."

Continued Perciasepe, "Future regulations may not be aimed at the highest priority public health risks, potentially increasing the already significant regulatory burden on EPA, the states and public water systems with only marginal benefits."

Seth Siegel is spot on, however, on the need to improve governance of public drinking water utilities. Under the heading "Keep Mayors Away from Water," he argues, persuasively, that "to improve decision making, the counterproductive connection between water utilities and municipal government needs to be decoupled." Many utilities are totally embedded in city government, rather than an enterprise fund, and subject to political, not public health or business imperatives.

As this reviewer has often argued, raising water rates to maintain the system is often viewed by an elected official as a tax increase, a root canal in political terms. Whether it be an independent water authority (Denver), a separate corporation owned by the city (Louisville) or a private, investor-owned utility, anything that creates distance from the electoral cycle will improve utility management and finance. Washington, D.C.'s water and wastewater utility improved immensely since becoming a separate authority. Yet, as Siegel points out, "De-linking water utilities from mayoral politics, though, need not lead to unaccountability." City or county elected officials can reserve the right to appoint the board members or commissioners, ideally for fixed terms.

Regulation is hard work. There are no shortcuts. Data, science, technology, and economics are all part of the mix and need to be brought to bear on the challenges of determining actual risks to human health and what to do about them so that benefits exceed the costs. Otherwise, regulators will practice precaution without principle.

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