RCAP
Rural Community Assistance Partnership

"Improving the quality of life in rural communities"

RURAL COMMUNITY ASSISTANCE PARTNERSHIP DISCUSSION ON SMALL DRINKING WATER SYSTEMS VARIANCES

Issue

EPA is considering a revision to the Safe Dinking Water Act's (SDWA) affordability criteria for small system variances. When promulgating new rules for chronic drinking water contaminants the SDWA requires EPA to ensure that there are compliance technologies that are *affordable* for small drinking water systems (those serving less than 10,000 people). Affordability was not defined in the SDWA. EPA adopted 2.5% of median household income as its affordability criterion. This 2.5% is on a cumulative basis (not 2.5% for each new regulation). According to SDWA if affordable compliance technologies cannot be identified, EPA must develop a list of affordable small system *variance* technologies that are still "protective of public health" even though the mandated Maximum Contaminate Level (MCL) is not achieved.

To date using the 2.5% MHI criterion for four new rules for chronic contamination (arsenic, DBP 1 and 2, and uranium), EPA has found that affordable compliance technologies were available and therefore did not have to identify small system variance technologies.

EPA is now considering a change to the currently adopted standards and procedures that in the opinion of RCAP and virtually every other stakeholder would jeopardize public health while providing little if any financial relief for small communities and would create a useless and unproductive administrative burden on states and small communities.

Recent EPA Actions Regarding Small System Affordability

In March 2006 EPA solicited comments on adopting an incremental approach to determine affordability with options of 0.25%, 0.50% and 0.75% MHI; in addition, comments were requested on having an alternate "protective of public health" level of ***three times*** the MCL if the affordability threshold is tripped and a small system variance granted. EPA ignored the recommendation of its own National Drinking Water Advisory Council that affordability be defined as 1% of MHI on an incremental, rule-by-rule basis and that all other measures be taken prior to any consideration of granting a variance.

Comments received by EPA overwhelmingly rejected the new proposals; including those from EPA's own National Drinking Water Advisory Council, every state drinking water administrator that responded, every major national water association, every national consumer and environmental group, equipment manufacturers, public health professionals and university-based researchers, and hundreds of concerned consumers. Only the National Rural Water Association

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(NRWA), two manufactured housing associations and a couple dozen boards or managers of utility members of NRWA supported the EPA proposal.

Inherent Weaknesses of EPA's Proposal

Creation of a New MCL for Contaminants – a "Two-Tiered" Approach to Public Health

States would be deciding on a case-by-case basis if "the variance ensure(s) adequate protection of human health". EPA has suggested that contaminant levels at 3 times the currently adopted MCL could be considered protective of human health. However, EPA has conducted no research on any contaminant current or past that would support such a finding; that would be left to the states to determine. EPA must continue to develop a single, sound drinking water standard for each contaminant. Some respondents suggested that perhaps the acceptable level should be 4 times the MCL or even higher – further ignoring the entire rigorous scientific processes used to determine the current levels that are required by the SDWA to protect public health. A two-tired system of public health protection, with one level of protection for customers of small utilities and a more protective level for everyone else, should not be even considered. Arguments can also be made about the impact on all consumers in our now increasingly mobile society. Ensuring for the proper notification for all consumers who might consume non-compliant water will be extremely difficult, further eroding arguments for a two-tiered system. Finally, the possible implementation of such a "two-tiered" system would also raise an immediate environmental justice issue as many of these small communities are home to significant ethnic minority populations.

Recommendations of National Drinking Water Advisory Council and the Science Advisory Board Ignored

EPA must not ignore the recommendations it received from the expert panels that were asked to review the small system variance provisions. No consideration was given to the recommendation that the affordability threshold be one percent of MHI for any rule, evaluated for the median size system in each small system category (as mentioned earlier, EPA asked for comments on options of 0.25%, 0.50% and 0.75%). Also ignored were the recommendations to use all of the other tools available to achieve compliance (discussed later) prior to consideration of variances.

Small System Variance Technologies are not Available

Much of the variance process is dependent on EPA identifying a "variance technology ... that is applicable to the size and source water quality conditions of the public water system". To date EPA has yet to identify a single variance technology and has instead determined that compliance technologies are affordable for all systems; this includes determinations made for arsenic, disinfection by-products and uranium. The American Water Work Association (AWWA) has flatly stated that such variance technologies do not exist. Further complicating any identification of variance technologies would be the need to distinguish between the various sizes of small water systems and the variability of the quality of the source water.

Small System Variance Technologies Create Additional Problems

Even if a variance technology is identified, further problems and issues arise that have not been considered by EPA. The small water utility still must install, operate and maintain these new technology systems in accordance with EPA requirements. Left unanswered is what would be the cost for these variance technologies? How would that compare to the cost of the compliance technologies? Is the difference in cost reasonable or supportable in relation to the amount of contamination removed? Has the cost to be borne by the community in applying for the variance and the cost to the state in evaluating and monitoring the variance been considered? Will EPA or

the states provide technical assistance and training in the use of these variance technologies? EPA currently has ended all direct technical assistance and training support for small systems by the lapse of its technical grants through the Rural Community Assistance Partnership and the National Rural Water Association. In addition, there has been no suggestion by EPA that it would support additional resources to the states to implement this ill-conceived, time-consuming and potentially unworkable system. The bottom line is that small communities under the best possible scenario would still have to pay to install a new treatment technology that holds little chance for improved public health safety at a cost less than that available with the compliance technologies.

Creation of a Public/Consumer Relations Disaster

Ten years after the adoption of the SDWA Amendments of 1996, EPA has yet to implement § 300-g-4(e)(7) "Regulations and Guidance". This section requires that consumers be informed if a variance is being proposed and must allow for a public hearing on the variance before it can be granted. This section also requires EPA to provide requirements for identifying the financial and technical capability of the small system to operate the variance treatment system, including operator training and certification. Further EPA was directed to consult with the states and the Rural Utility Service in developing affordability criteria (with a subsequent review every five years); none of this has taken place. Outside of the cost, time and effort required for individual public hearings for every proposed community variance, imagine consumers' reaction to proposals that would increase costs substantially while still allowing for water contamination three times or more than what has been deemed protective of public health.

Viable Solutions

There is no argument that new drinking water regulations financially impact small communities much greater than larger communities. Economies of scale, the availability and access to resources make compliance for larger communities much more affordable. Without granting variances what measures can be taken? First the requirements or conditions contained in the SDWA must be met (first two options below). Second, other viable alternative approaches must also be explored.

An alternative source of water supply first must be considered (§ 300-g-4(e)(3)) prior to considering a variance. This could range from relocation of ground water pumps to access portions of the aquifer with better water quality; drilling new water wells in other locations; blending of water with better sources; and/or purchase of water from other sources. States would have to ensure that all of these options (and more) have been investigated prior to considering a variance. Many systems would fall into this category and achieve compliance given proper application of the rule.

Restructuring or consolidation – another SDWA requirement prior to considering a variance. Many small water systems will remain non-sustainable even if granted a variance. States have been reluctant or even refuse to mandate restructuring or consolidation for existing small water systems that cannot meet SDWA requirements. Many of the systems that might violate new drinking water standards could be consolidated with nearby systems or operated more efficiently if managed by a larger entity responsible for multiple small utilities within a region. There are numerous examples of where cities have reached out to consolidate operations by small utilities, where private water companies have purchased small systems and consolidated regionally, and where other state or regional governmental entities have acquired or managed small systems on a

regional basis. States must take effective measures to ensure that this alternative is investigated in every case prior to consideration of a variance.

Directed financial assistance through the Drinking Water State Revolving Funds (DWSRF). EPA provides funds to states for drinking water improvements. The priority for these must be small communities that lack access to capital or need the low-interest loans or loan forgiveness that are available through the program. DWSRF funds should not be supporting large utilities that can access the private bond market at rates and terms that make those types of loans affordable to large utilities and their customers. Many states make few if any small systems loans through the DWSRF and/or do not have a disadvantaged community component built into the program.

Additional funding for the USDA – Rural Development's Water and Environmental Programs. This program is specifically targeted to communities under 10,000. Funding for these programs has not increased in recent years as new regulatory requirements have been adopted; recent years' funding levels have been approximately $900 million for loans and $300 million for grants. The documented backlog of applications exceeds $2 billion. Notably, in 2006 RD funded 39 small community projects that corrected arsenic violations. Additional grant funding directed exclusively at correcting drinking water contamination issues for the smallest communities is needed; this alone would solve a large percentage of future violations.

Increased use of Exemptions. SDWA provides for exemptions that can be issued to grant up to 11 additional years for compliance. This time period would allow for the use of the options above while not deeming the system out of compliance and subject to enforcement action. This would also allow for additional time to develop appropriate, affordable compliance technologies for small systems.

Increased Training and Technical Assistance. Small systems frequently are operated by part-time or insufficiently trained staff. Often technical assistance directed at optimizing existing treatment facilities can reduce contaminant levels without capital expenditures. Financial and managerial assistance is needed to evaluate management options (including alternate sources of water and restructuring/consolidation), develop appropriate rate structures, and access grant and loans sources. EPA investment in this area is minimal. In FY 06 only $19 million was provided for rural drinking water technical assistance nationwide, with the majority of that amount going to research projects or source water protection programs; for FY 07 only $7.6 million will be provided – a 60% reduction at a time when small water utilities need more assistance than ever. As many states do not fund any technical assistance programs for water, this is the only funding available for the over 40,000 community water systems that the EPA defines as small (3,300 population).

Conclusions

Weakening drinking water standards creates potential health and equity issues. Affordability concerns have yet to be borne out by current and past implementation of new standards. Projections regarding future costs to small systems are merely conjecture and not grounded by sound research. Alternatives are available that can solve many potential small system violations without high costs or a sacrifice to public health. Current SDWA variance requirements, related to alternate means of service provision have not been adequately explored or implemented. Variance technologies are not available and even if developed holds little hope for reductions in costs to the consumer. Implementation of a variance procedure will be an exceedingly time and resource intensive pursuit when such funds should be directed at compliance support. Small

communities must have better access to sources of financial and technical support to ensure compliance with current and future drinking water standards. Finally, EPA has only at best anecdotal evidence concerning the opinions of customers of small water utilities regarding this issue. All of the above discussed factors must be considered prior to implementing a procedure that would weaken public health standards. As stated herein and in our previously submitted comments to EPA, RCAP is opposed to the proposed modifications.