

August 27, 1997 Meeting

in Washington D.C. at EPA Headquarters

EXECUTIVE SUMMARY

Background

The National Drinking Water Advisory Council (NDWAC) met by conference call on Wednesday, August 27, 1997, to discuss the Small Systems Working Group report that was presented to them by NDWAC members, Diane Kiesling, William VanDeValk and John Scheltens. All members, with the exception of Paul Nannis, were present on the call. Also, present in the room were:

EPA

Peter Shanaghan, DFO Designee
Robert Blanco (by phone)
John Bender (by phone)

Public

Jack Sullivan, AWWA
John Montgomery
Bridget O'Grady, ASDWA
Jim Dunlap, NRWA
Jason Gray, Virginia Water Project, Inc.
Mindi Richland, U.S. Navy

The meeting began at 2:06 p.m. EDT. After brief introductions, Rob Johnson and Jim Dunlap, National Rural Water Association, Jason Gray, Virginia Water Project, Inc., and Bridget O'Grady, Association of State Drinking Water Administrators, made statements during the public participation portion of the meeting.

Council discussion followed on the report provided. Diane Kiesling, with a second from Will VanDeValk, made a motion to forward the package concerning EPA's implementation of the capacity development provisions of the 1996 Amendments to the Safe Drinking Water Act (SDWA) to EPA as presented. This motion included the following recommendations:

Recommendations

Guidance

The guidance documents have been designed to help the States *understand and implement statutory requirements* related to capacity development in the 1996 SDWA Amendments. The Small Systems Working Group recommends that the guidance documents be published as three separate chapters of one document, with an introductory chapter discussing the concepts of technical, financial, and managerial capacity . The recommended guidances are:

- 1) *Guidance for States on Ensuring that All New CWS's and NTNCWS's Demonstrate Technical, Managerial, and Financial Capacity*
- 2) *Guidance for States on Preparation of Capacity Development Strategies (What States need to do to avoid SRF withholding)*
- 3) *Guidance for States on Assessing Technical, Managerial, and Financial Capacity of Water Systems Seeking SRF Assistance*

Information

The five information documents, shown below, are intended to support and facilitate the use of the guidance documents by the States, with the exception of one document written for the public. In essence, these documents are designed to offer ideas and inspiration to States to assist them in taking advantage of their flexibility to fashion programs tailored to their unique circumstances but also consistent with the basic guidances recommended above. The recommended information products are:

- 1) *Information for States on the Legal Authority and Other Means to Ensure that All New CWS's and NTNCWS's Demonstrate Technical, Managerial, and Financial Capacity*
- 2) *Information for States on Options They Can Consider in Developing Their Capacity Development Strategies*
- 3) *Information for States on Options for Assessing the Technical, Managerial, and Financial Capacity of Systems Seeking SRF Assistance*
- 4) *Information for States to Assist Them in Developing Affordability Criteria*
- 5) *Information for the Public to Better Enable Them to Participate with States in the Development of State Capacity Development Strategies*

The Small Systems Working Group recommends that the three capacity-related information documents be published as three separate chapters of one document, while the information documents on affordability and public participation be published individually.

Summary of Recommendations

Guidance

Guidance for States on Ensuring that All New CWS's and NTNCWS's Demonstrate Technical, Managerial, and Financial Capacity. This guidance document, which is explicitly required by the statute, discusses the requirements under §1420(a) that a State have the legal authority or other means to ensure that all new water systems demonstrate the technical, managerial, and financial capacity to comply with National Primary Drinking Water Regulations (NPDWR). The guidance states that, in satisfying this requirement, a State must explain the basis of its authority for new systems (statutory and/or regulatory). This authority must allow a State to prevent the creation of systems which cannot demonstrate technical, managerial, and financial capacity. Also, the State must explain the control points in the process of new system creation at which it will exercise its authority. Finally, the State must provide a plan for periodic evaluation of the State program to ensure new system capacity.

Guidance for States on Preparation of Capacity Development Strategies (What States Need to do to Avoid SRF Withholding). Section 1420(c) of the amended SDWA requires States wishing to receive their full SRF allotment to develop and implement a strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity. In section 1420(c)(2) the statute specifies the specific issues which a State must consider, solicit public comment on, and include as appropriate in preparing its strategy.

This guidance would provide a framework for a limited review of State capacity development strategies. Such a review would focus only on determining whether or not the State has satisfied the statutory conditions for avoiding an SRF withholding.

Guidance for States on Assessing Technical, Managerial, and Financial Capacity of Water Systems Seeking SRF Assistance. This guidance document addresses the need for States to ensure that all water systems receiving assistance from the State Revolving Fund have, or will obtain, adequate technical, managerial, and financial capacity. The guidance states that, as provided in §1452(a)(3)(A), a State cannot provide SRF assistance to a water system lacking technical, managerial, and financial capacity to maintain SDWA compliance. However, one exception does apply. A State may provide funding to a water system lacking capacity if 1) the use of SRF assistance will ensure [long-term] SDWA compliance, and 2) the owner or operator agrees to undertake appropriate changes in operations that will ensure capacity over the long-term.

Information

Information for States on the Legal Authority and Other Means to Ensure that All New CWS's and NTNCWS's Demonstrate Technical, Managerial, and Financial Capacity. This information document provides ideas to support the guidance document on new system capacity. It offers information about the different types of authorities and control points that might be used. It also includes ideas regarding actions that may create or enhance State authority for ensuring the capacity of new systems, such as adding or strengthening control points, coordinating agency capacity efforts, and consideration of water system restructuring.

Information for States on Options They Can Consider in Developing Their Capacity Development Strategies. This information document provides background on the capacity development provisions, and the significance of a capacity development strategy as a proactive tool for protecting public health. Primarily, however, the document is to serve as a resource for the States as they build their capacity development strategies. The document contains six chapters, five of which directly address each of the five requirements of the capacity development strategy content stated in §1420(c)(2). The sixth chapter provides information concerning the different needs of non-transient non-community water systems. Finally, the information document provides several tools that may be used to prepare a capacity development strategy.

Information for States on Options for Assessing the Technical, Managerial, and Financial Capacity of Systems Seeking Assistance. This information document supports the guidance on assessment of capacity by providing a context for assessing technical, managerial, and financial capacity of systems seeking SRF assistance in accordance with §1452(a)(3), (which states that no system that lacks capacity shall receive SRF assistance). Capacity is defined and expanded on, and methods of assessing capacity are provided. Finally, the document provides a list of tools that can be used to assess technical, managerial, and financial capacity.

Information for States to Assist Them in Developing Affordability Criteria. This information document fulfills the statutory requirement under §1415(e)(7)(B), which requires that EPA publish information to assist the States in developing affordability criteria. This information, published in consultation with the States and the Rural Utilities Service (RUS) of the U.S. Department of Agriculture, covers past studies on affordability as well as current methodologies for assessing affordability. Further, the issues such as willingness-to-pay and ability-to-pay, and household affordability and water system affordability are explored. Finally, the information provides a framework for assessing affordability that will help States recognize affordability issues and explore options for addressing affordability concerns.

Information for the Public to Better Enable Them to Participate with States in the Development of State Capacity Development Strategies. This information document, written for the public, helps to provide the public with sufficient information to facilitate their active participation in the development of a State capacity development strategy.

COUNCIL ACTION

The motion carried to submit the above recommendations to the Agency, with three opposing votes from Council members, James Cleland, Nina McClelland and Patrick Banegas. With all business before the Council complete, the meeting was adjourned by Chair, L.D. McMullen at 4:27 p.m. EDT.

There were minority opinions considered during Council deliberation. They follow:

Minority Opinions

Although the Small Systems Working Group agreed almost unanimously on several major issues, two Minority Opinions have been submitted with these final recommendations. As shown below, these Minority Opinions arose from substantive concerns from a small number of working group members. Despite efforts to address these concerns throughout the four meetings, the working group was unable to come to resolution.

RECOMMENDATIONS	MINORITY OPINION
EPA Should publish Guidance for States on Preparation of Capacity Development Strategies (What States need to do to avoid the SRF withholding).	EPA should publish information, not guidance in this area. (Jim Sheldon and Teresa Rissmiller)
The Guidance for States on Assessing Capacity of Systems Seeking SRF Assistance should require States to provide a brief description of their capacity assessment procedures as part of their SRF grant application.	The guidance should require a comprehensive description. (William VanDeValk and Donna Shell)