

### Response to Comments

In proposing this policy, EPA did not intend to imply that private wells do not provide safe drinking water to users. There are millions of people in the nation that obtain water from wells with good drinking water quality. However, it must be acknowledged that there are situations where the public health of citizens would be better protected by creating a public water system supplying drinking water that is required to meet all health-based standards. States need the flexibility to address these important public health concerns.

The Agency recognizes that every situation is different, and that in many cases construction of a public water system is not the most cost-effective solution to addressing problems caused by poor ground water quality or poorly constructed wells. In response to the comments received, we have added an additional condition that must be met before a loan can be issued to construct a public water system. This condition requires that a State determine that the project proposed to create a public water system is a cost-effective solution to resolve the problem causing a risk to public health.

It is important to remember that these projects are funded using loans, which must ultimately be repaid by the users of the system. The DWSRF program requires that all applicants have adequate technical, financial and managerial capacity to operate a system. States are also required by the Safe Drinking Water Act to ensure that any new system created after October 1, 1999 will have adequate capacity to ensure provision of safe drinking water. If the cost of a project is too high or if community support for a project is lacking, it becomes more difficult to guarantee repayment of a loan, and the project would not receive assistance. States have also indicated that they have little interest in promoting the creation of new small systems, which often have more trouble complying with drinking water regulations. These controls, along with the condition described above and other requirements, should ensure that only cost-effective projects that are needed to protect public health receive assistance.

Public participation is an important element of the 1996 SDWA Amendments and the DWSRF program. States are required to release their Intended Use Plans for public review and comment before they can receive federal funds. States have policies in place to ensure that there is sufficient notification at the local level as well.

For example, all projects are required to undergo an environmental review, which includes requirements for public notification. Additionally, in some States, where communities must approve debt, the public must approve a project by referendum. EPA strongly encourages States to ensure that homeowners which would be served by a proposed PWS get adequate notice and informational material to allow them to make an informed decision.

The issue of growth is important for the Agency as well as for environmental organizations. The DWSRF program cannot be used to finance projects where the primary purpose is growth and only allows for growth considered to be reasonable. The Agency has been hesitant to define "reasonable" because one definition would not capture the variability between States. For example, what is reasonable in Arizona may be completely unacceptable in New Hampshire. Many States are also sensitive to the issue of growth and have developed their own policies to address what is reasonable. For example, in one State, a proposed service area would only be allowed to encompass two properties (wells) beyond the last contaminated well. In another State the amount of growth that is considered reasonable is that which would increase capacity of the existing user base by 10%. Additionally, in most cases, requirements for environmental review should ensure that unworthy projects are not funded.

Minor changes to the final policy were also made in response to comments asking for clarification regarding such eligibility issues as creation of a system to replace a surface water source or creation of a regional public water system to consolidate smaller systems.

### Final Policy

EPA will allow for the creation of a community water system (publicly or privately owned) to address an existing public health problem caused by unsafe drinking water provided by individual wells or surface water sources. This policy also extends to a situation where a new regional PWS is created by consolidating several existing PWS's that have technical, financial or managerial difficulties.

When reviewing an application for assistance the State must ensure that the applicant has given sufficient public notice to potentially affected parties and has considered alternative solutions to addressing the problem.

A proposed project may only receive assistance if the following conditions are met:

(a) Upon completion of the project, the entity responsible for the loan must meet the definition of a Federal community public water system;

(b) The project must be on the State's fundable list and must address an actual public health problem with serious risks;

(c) The project must be limited in scope to the specific geographic area affected by contamination;

(d) The project can only be sized to accommodate a reasonable amount of growth expected over the life of the facility—growth cannot be a substantial portion of the project;

(e) The project must meet the same technical, financial and managerial capacity requirements that the SDWA requires of all DWSRF assistance recipients; and

(f) The project is a cost-effective solution to solving the public health problem.

**FOR FURTHER INFORMATION CONTACT:** The Safe Drinking Water Act Hotline, telephone (800) 426-4791. Information about the DWSRF program, including program guidelines and State contact information, is available from the EPA Office of Ground Water and Drinking Water Web Site at the URL address "<http://www.epa.gov/safewater>."

Dated: October 22, 1998.

**Elizabeth Fellows,**

*Acting Director, Office of Ground Water and Drinking Water.*

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### ENVIRONMENTAL PROTECTION AGENCY

[PB-402404-KY; FRL-6032-8]

#### Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Commonwealth of Kentucky's Authorization Application

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for comments and opportunity for public hearing.

**SUMMARY:** On August 28, 1998, the Commonwealth of Kentucky submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Kentucky's application, provides a 45-day public

comment period, and provides an opportunity to request a public hearing on the application. Kentucky has provided a certification that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will take effect in Kentucky.

**DATES:** Comments on the authorization application must be received on or before December 18, 1998. Public hearing requests must be received on or before November 17, 1998.

**ADDRESSES:** Submit all written comments and/or requests for a public hearing identified by docket control number "PB-402404-KY" (in duplicate) to: Environmental Protection Agency, Region IV, Air, Pesticides and Toxics Management Division, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303-3104. Comments, data, and requests for a public hearing may also be submitted electronically to: beldinquinones.john@epamail.epa.gov. Follow the instructions under Unit IV. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

**FOR FURTHER INFORMATION CONTACT:** John A. Beldin-Quinones, Project Officer, Air, Pesticides and Toxics Management Division, Environmental Protection Agency, Region IV, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303-3104, Telephone: (404) 562-9171, e-mail address: beldinquinones.john@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), entitled "Lead Exposure Reduction."

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these

activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL-5389-9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application.

Pursuant to section 404(b) of TSCA, EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before authorizing the program. Therefore, by this notice EPA is soliciting public comment on whether Kentucky's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

**II. State Program Description Summary**

The following summary of Kentucky's proposed program has been provided by the applicant:

The Commonwealth of Kentucky, through the Kentucky Department of Public Health (KDPH), is seeking authorization from EPA to administer and enforce its own lead-based paint activities program. The authority to administer and enforce the Kentucky Lead-Based Paint Program was established in the 1996 regular session of the Kentucky General Assembly.

The State lead-based paint program regulations are applicable to persons engaged in lead-based paint activities in target housing and child-occupied facilities. The State certification program requirements include the certification of firms, inspectors, risk assessors, supervisors, project designers and workers, as well as work practice standards for all of these disciplines, adopted from section 402 of TSCA.

Persons and companies seeking certification must apply using specified form(s), pay an application fee, and provide proof of accredited training, education and experience for the discipline which they are applying. Companies must also provide a list and certification number of KDPH-certified employees, and provide a notarized affidavit stating that its employees will follow standard work practices established by Kentucky regulations.

Training providers shall submit their name, address, and telephone number, a fee for each course, a list of courses proposed for accreditation, and documentation of the training manager's qualifications. In addition, training providers must submit documentation establishing reciprocity between the accreditation by another State and Kentucky's requirements; or a statement signed by the training manager certifying that the training program meets the requirements established by Kentucky regulations, with submission of manuals and course information; or provide information indicating that the training provider is using materials developed by EPA.

Except for the worker discipline, all individuals must successfully pass the third party exam, administered by the Department of Technical Education (Kentucky Tech System), applicable to the discipline in order to be certified.

The State program requires abatement permits prior to the commencement of abatement activity. The KDPH will investigate tips and complaints, and enforce certification, accreditation, and permitting requirements for all disciplines, and for all abatement-

related activities, including training. The KDPH will refer possible waste disposal violations to the Department of Environmental Protection. The State program provides for the suspension, revocation, or modification of training program accreditation and certifications of individuals and firms.

### III. Federal Overfiling

TSCA section 404(b) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

### IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number "PB-402404-KY." Copies of this notice, the Commonwealth of Kentucky's authorization application, and all comments received on the application are available for inspection in the Region IV office, from 8 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA Region IV Library, Environmental Protection Agency, Atlanta Federal Center, 9th Floor, 61 Forsyth St., SW., Atlanta, GA.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked "confidential," "CBI," or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at:

beldin-quinones.john@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in

WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "PB-402404-KY." Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

### V. Regulatory Assessment Requirements

#### A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 ("Regulatory Planning and Review," 58 FR 51735, October 4, 1993), and Executive Order 13045 ("Protection of Children from Environmental Health Risks and Safety Risks," 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### B. Executive Order 12875

Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals

containing significant unfunded mandates."

Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

#### C. Executive Order 13084

Under Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

**Authority:** 15 U.S.C. 2682, 2684.

### List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: October 16, 1998.

#### A. Stanley Meiburg,

*Acting Regional Administrator, Region IV.*

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