

Secretary of the Commission by January 26, 1999. The request should indicate the scope of the participants' planned remarks. This will assist in selecting the members of each panel. A separate notice organizing the conference will be issued at a later date.

Written comments may be filed at any time, but should be filed within 15 days after the conference.

The Capitol Connection will broadcast live the audio from the public conference on its wireless cable system in the Washington, DC area. If there is sufficient interest from those outside the Washington, DC metropolitan area, the Capitol Connection may broadcast the conference live via satellite for a fee. Persons interested in receiving the audio broadcast, or who need more information, should contact Shirley Al-Jarnai or Julia Morelli at the Capitol Connection at (703) 993-3100, no later than February 18, 1999.

In addition, National Narrowcast Network's Hearing-On-The-Line service covers all FERC meetings live by telephone. Call (202) 966-2211 for details. Billing is based on time on-line.

All questions concerning the format of the conference should be directed to:

David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208-1275

John Carlson, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208-0288

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6183-2]

### Drinking Water State Revolving Fund (DWSRF) Program Policy Announcement: Eligibility of Using DWSRF Funds to Create a New Public Water System

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

**ACTION:** Notice.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is issuing a policy decision for the Drinking Water State Revolving Fund (DWSRF) program that will allow States to make loans for projects that are needed to solve public health problems for residents currently

served by individual wells or surface water sources. This policy would expand the universe of eligible loan recipients by allowing loans to an entity that is not currently a public water system, but which will become a public water system upon completion of the project. The Agency published the proposed policy in the **Federal Register** on June 12, 1998 to seek comment. Comments received during a public comment period and in a stakeholder meeting held on July 13, 1998 were considered in developing the final policy.

#### Background

Section 1452(a)(2) of the Safe Drinking Water Act (SDWA) Amendments states that "financial assistance under this section may be used by a public water system only for expenditures . . . which . . . will facilitate compliance with national primary drinking water regulations . . ." The Act defines a public water system (PWS) as a "system . . . (of) pipes or other constructed conveyances" which regularly serves at least 15 service connections or at least 25 individuals.

Several States indicated that a strict interpretation of this provision would prevent them from providing funds to an entity (e.g., homeowners' association, township) that has a public health problem and is not currently a PWS, but which would become a federally regulated PWS upon construction of a piped system. States want the flexibility to provide DWSRF funds to these entities in order to solve public health problems posed by contaminated wells. While the SDWA does allow States to lend funds to an existing PWS to extend lines to solve these types of public health problems, not all of these situations have an existing PWS nearby that is willing or able to help.

EPA believes that the statute permits the DWSRF to be used to create a federally regulated PWS in limited circumstances to solve public health problems intended to be addressed by the statute. However, the Agency proposed several conditions in its June 12, 1998 **Federal Register** proposal which would have to be met before such a project could be funded. They were: (a) upon completion of the project, the entity responsible for the loan must meet the definition of a Federal community public water system; (b) funding is limited to projects on the State's fundable list where an actual public health problem with serious risks exists; (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; and (e) the project must meet the same technical, financial and managerial capacity requirements that the SDWA requires of all DWSRF assistance recipients.

#### Comments

Comments were received from 31 parties by July 27, 1998 (1 week after close of the comment period). Support was divided, with 17 in favor of, and 14 opposed to, the proposal. Commentors in support of the policy came from state health and environmental quality departments, national associations representing water utilities, engineering professionals and town managers. Commentors opposed to the policy were from national associations representing ground water professionals, and representatives of state well driller's associations and associated industries.

Most of the comments in support of the policy only asked for clarification of the language used in the proposal. One commentor asked that the policy be extended to address situations where homeowners receive unsafe drinking water from surface water sources.

There were three main concerns expressed by those opposing the policy. The first was that, in proposing such a policy, EPA is implying that drinking water provided by private wells is unsafe or inferior to that provided by public water systems. Comments indicated that the Agency does not distinguish between contaminated wells and contaminated ground water and that, in the case of the former, there are often solutions that will result in the provision of safe drinking water. The second concern was that, in rushing to build new water systems, communities and states would not sufficiently evaluate all possible alternatives to solving a problem in an effort to identify the most cost-effective solution. The third concern was that homeowners served by private wells would be forced to "hook-on" to a system, would not receive sufficient notice when a PWS was proposed, or would not receive balanced information about alternatives to construction of a new PWS. A concern raised by environmental organizations at a stakeholder meeting held to discuss the proposal was that the policy could result in growth or urban sprawl. Although EPA limits projects to encompass "reasonable growth", it provides no definition of what is reasonable.

### 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