



# EPA NATIONAL DRINKING WATER ADVISORY COUNCIL

## NDWAC Members

**Gregg Grunenfelder,**  
Chair  
Olympia, WA

June 12, 2009

**Nancy Beardsley**  
Augusta, ME

Ms. Lisa Perez Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington D. C. 20460

**Jeff Cooley**  
Vacaville, CA

**Dennis Diemer**  
Oakland, CA

Dear Administrator Jackson:

**Timothy Kite**  
Decatur, IL

On behalf of the National Drinking Water Advisory Council (NDWAC), I would like to congratulate you on being named as the Administrator of the Environmental Protection Agency. We are excited by the energy you have brought to the Agency in the few months that you have been in your position.

**Olga Morales-Sanchez**  
Dona Ana, NM

**Jennifer Nuzzo**  
Baltimore, MD

While you move to carry out new initiatives to reflect the Administration's priorities, we hope that you will also continue to support some initiatives developed by the Agency in the last several years. Last fall, the Council was briefed on the Office of Water's efforts on sustaining our nation's water infrastructure. We were very impressed with the caliber of work that has been conducted to advance effective utility management, water efficiency through the WaterSense program, and watershed approaches to source water protection as reflected by the Green Infrastructure program.

**Douglas Owen**  
White Plains, NY

**David Saddler**  
Sells, AZ

**Duane Smith**  
Oklahoma City, OK

**Lisa Sparrow**  
Northbrook, IL

**Carl Stephani**  
Unionville, CT

You will be pleased to know that you have a team of EPA staff who are talented and committed to the implementation of this very important initiative. As EPA carries out activities to implement the American Reinvestment and Recovery Act, we hope that the Agency will continue to communicate the value and importance that sustainable infrastructure plays in stabilizing our communities, maintaining a vibrant economy, ensuring our national security, and improving our quality of life.

**Hope Taylor**  
Durham, NC

**Bob Vincent**  
Tallahassee, FL

**Brian Wheeler**  
Kissimmee, FL

During the last week of May, the NDWAC held its spring meeting in Seattle, Washington. At this meeting, the Council was updated on EPA activities related to revisions to the Total Coliform Rule and development of the Airline Drinking Water and Geologic Sequestration Rules. The Council was also briefed on the Office of Water's efforts to improve the resiliency of water utilities to the potential impacts of climate change. The Council approved the formation of a working group to evaluate the concept of "Climate Ready Water Utilities," and assist in the development of an effective program to facilitate broad adoption of climate change adaptation and mitigation strategies by drinking water and wastewater utilities.

The Council spent the first day of the meeting discussing directives in the Fiscal Year 2010 EPA budget related to small systems and sustainability. Specifically, the NDWAC was asked to consider whether EPA's historical policy on assessing affordability for the purposes of allowing variances to national public water regulations should be revised.

In its 2003 NDWAC report on EPA's affordability criteria (*Recommendations of the National Drinking Water Advisory Council to U.S. EPA on Its National Small Systems Affordability Criteria*), the Council noted that "significant practical, logistical, and ethical issues mitigate against the use of variances." The Council also noted that "alternatives to the variance process... are more appropriate means to address the affordability problem. Therefore, if a variance process is deemed necessary to achieve affordability, it should only be pursued after all other alternatives presented in this report are given due consideration."

The 2009 Council continues to agree with the findings of the 2003 report. In its current form, irrespective of the threshold selected, variances based on affordability will result in the establishment of tiered health standards based on a consumer's ability to pay (whether defined nationally, regionally, locally, or the person next door).

As a nation, we need to move toward solutions that are consistent with supporting long-term sustainability by enhancing access to information/knowledge, promoting use of new technologies, potential restructuring, and appropriate use of financial assistance/subsidy. As EPA works to respond to FY 2010 budget directives that require the Agency to evaluate the equitable consideration of small systems and to develop a sustainability policy, the Council recommends that the Agency take the following into consideration:

- 1) There should be a common standard of public health protection for all people served by public water systems. Access to safe drinking water, as defined by the EPA, is critical for all people, and standards for safety should not be modified based on ability to pay. Therefore, NDWAC believes that although some systems may require additional time to comply with the defined health standard through the use of exemptions or appropriate enforcement actions, variances from any health standard should not be allowed.

- 2) There will always be a varying financial capacity for water systems to meet the standards. Therefore, NDWAC believes that a variety of strategies, including those described in the 2003 report (see enclosure), need to be employed at the federal and state level to provide technical and financial assistance to help those systems that are truly unable to afford compliance with standards.
- 3) Where financial assistance is provided, the most efficient use of money should be pursued. Therefore, the NDWAC believes that cost-effective and/or innovative solutions should be identified to ensure long-term sustainability.
- 4) The ability to comply with any specific requirement may differ regionally. Therefore, NDWAC believes that states must be responsible for assessing affordability using factors that are appropriate for their region and their demographics. NDWAC further believes that states need to consider affordability in providing more robust levels of allowable subsidy through their DWSRF program to target those systems that are most in need of assistance.
- 5) The goal of any assistance to a public water system that is challenged in complying with standards is to provide a hand-up rather than a handout. Therefore, NDWAC believes that systems receiving additional subsidy must demonstrate that they will make appropriate changes to ensure that they are being managed as effectively as possible so that they are more sustainable for the long-term.
- 6) While there are many tools that can be used to help water systems comply, there is inconsistent application of them across states (e.g., DWSRF disadvantaged assistance). NDWAC believes that EPA needs to work with states to ensure that they make more robust use of all tools in their toolbox so that the options available to public water systems are not limited by the state in which they are located.

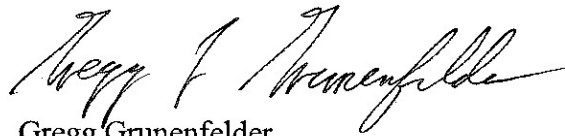
Ultimately, the Council believes that the focus of the drinking water community is on public health protection. If there is agreement on the science associated with the regulatory development process, then the drinking water community needs to ensure that all of the public receives water that meets the public health standards. Where there are disagreements with the science they should be addressed through appropriate channels. However, affordability-challenged communities should not be denied the same level of protection that other communities are provided. To facilitate long-term sustainability, public water systems must be effectively managed; therefore subsidies should be targeted only to those systems that remain financially challenged even after appropriate management and structural changes have been made.

The Council understands that the issue of affordability has been a controversial one for the Agency and its stakeholders. There are strong feelings on all sides of the issue and some stakeholders may argue that our recommendation is counter to the intent

of Congress. In 2003, the Council advised the Administrator to “convey to Congress the NDWAC’s logistical and ethical concerns with variances and the NDWAC’s position that variances in the extent of water treatment, as a means to achieve affordable compliance, be reconsidered.” We continue to support this recommendation and advise you to take appropriate action in this regard.

Thank you for your consideration of our recommendations on issues associated with the equitable treatment of small systems. If you have any questions, please contact Veronica Blette, Designated Federal Officer for the NDWAC, at (202) 564-4094.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregg Grunenfelder". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gregg Grunenfelder

Chair

National Drinking Water Advisory Council

Enclosure

cc:

Michael H. Shapiro, Acting Assistant Administrator for Water

Cynthia C. Dougherty, Director, Office of Ground Water and Drinking Water

## Enclosure

### **Financial, System, and Public Education Strategies Identified by the NDWAC Affordability Working Group and Adopted by the Full NDWAC**

Note: This enclosure excerpts information from the full NDWAC report which is available on line at [http://www.epa.gov/safewater/ndwac/pdfs/report\\_ndwac\\_affordabilitywg\\_final\\_08-08-03.pdf](http://www.epa.gov/safewater/ndwac/pdfs/report_ndwac_affordabilitywg_final_08-08-03.pdf).

#### **Financial Support Strategies for Addressing Affordability Challenges**

*(from Section 6.2.5, pages 94-95 of the 2003 Report)*

- EPA should provide information and examples pertaining to the use of affordability rates for systems to help make water affordable to low-income households.
- A Low Income Water Assistance Program (LIWAP) should be adopted as a means to assist low-income households facing high drinking water costs, funded with a Congressional appropriation similar in structure to (though clearly requiring far less money than) the funding for the LIHEAP.
- DWSRF funding should be increased, with special consideration given to assisting small systems.
- The Work Group proposed that EPA modify the DWSRF allotment formula. The NDWAC believes such an action is premature and instead recommends that EPA determine if, as a result of the current DWSRF allocation formula, small public water systems are being disproportionately denied funding from State DWSRF programs due to inadequate funding being available.
- The Work Group proposed that any disadvantaged system should receive priority for DWSRF funding. With the understanding that not all States currently have disadvantaged programs, the NDWAC changed the recommendation to propose that EPA encourage States, that have not already done so, to establish a disadvantaged community program to address small system affordability issues. Such funding should be consistent with the principles in the DWSRF to encourage restructuring where viable.
- EPA should work with other agencies to help overcome barriers to effective use of existing funding sources to promote small system affordability for safe drinking water. Examples of such assistance include:
  - Increasing outreach efforts to small systems of all classes to provide information on available funding programs.
  - Increasing the technical assistance to small water systems to address needs in the areas of funding applications, accounting and long-range planning, engineering and technical corrections, and record-keeping practices consistent with the needs for funding and SDWA requirements.
  - Improving the opportunities of small systems to acquire funding from all sources, governmental and private. Increase the use of grant funds, zero interest loans, and other means of assistance to low-income water systems in need.
  - Analyzing methods of removing institutional barriers at both the State and federal levels that prevent small systems from obtaining funding and complying with SDWA requirements in an affordable manner.

- Establishing new, and expanding existing, sources of funding to provide assistance to small systems in all areas of achieving and maintaining system capacity.
- Provide additional funding beyond the current DWSRF funding for small systems to adopt cooperative strategies.
- Explore and consider the use of other State and federal agencies, such as the U.S. Army Corps of Engineers and the Bureau of Reclamation, to assist small drinking water-related projects.

### **System-Level Strategies for Addressing Affordability Challenges**

*(from Section 6.3.5, pages 97-98 of the 2003 Report)*

- New and expanded State leadership is essential to promote cooperation among small systems. Cooperative efforts designed for an area or regions are essential if the cost of compliance is to be reduced. These efforts should be funded through new appropriations or through re-allocation of a portion of DWSRF funds that are currently being applied to individual system projects. State-managed cooperative efforts should include:
  - Providing managerial, technical, and planning assistance for small systems, including expanded use of the private sector and large central utilities that can provide these services;
  - Public outreach to small systems to provide support and information on the value of cooperative and consolidation efforts;
  - Conducting focused outreach programs to regional groups directly or in conjunction with others, and allowing cooperation expenditures by these groups to be considered in federal and State financial assistance programs;
  - Continuing and improving methods of recordkeeping and reporting progress on capacity-building programs (consistent with SDWA capacity development provisions) and reporting progress in achieving small system cooperation and consolidation to EPA and the NDWAC. EPA and States should use this information to develop and maintain an effective small system cooperation database that can be used to promote cooperation;
  - Offering meaningful incentives for assessing whether cooperative efforts are feasible and limiting financial and technical support for individual system compliance solutions to small systems that have assessed cooperative options and found them to be infeasible or not cost-effective; and,
  - Assistance to community groups, system operators, and owners in the development of governance, advisory, or other participatory vehicles to ensure a continued role for these stakeholders when cooperative solutions are implemented.
- Consider regulatory changes to allow the use of system-provided bottled water in appropriate cases, either as a variance technology or to achieve compliance (with primacy agency approval) for non-microbial, non-inhalation, and non-dermal compliance situations. The use of bottled water should be considered only when it meets applicable standards, is accompanied by a public education program, and the system guarantees quality assurance.

- Recent scientific and technical developments have increased the potential for “umbrella” compliance technologies, such as membranes. EPA should establish a Work Group to review the technical and policy feasibility of allowing a “Super” BAT approach to provide affordable, long-term compliance, including the consideration of appropriate incentives regarding future compliance.
- When examining the cost of regulatory compliance at the national or State level, system flow capacity optimization (achieved through control of water leakage, metering, rate structure, and facility design) should be considered prior to developing the cost of treatment technologies and/or cooperative solutions.

### **Public Education Strategies**

*(from Section 6.4.1, pages 98-99 of the 2003 Report)*

- EPA should determine the scope, feasibility, and cost of implementing a national public education campaign that addresses the health risk and benefits (risk avoidance) of improved drinking water quality and implement such a campaign if feasible.
- EPA should review the CCR content to determine if the CCR can be used as a more effective public education tool.
- EPA should review SDWA variance/exemption processes to ensure that stakeholder education and input are achieved at the earliest possible date.

### **NDWAC Perspective on the Affordability Work Group Recommendations**

*(from Section 6.5, pages 99-100 of the 2003 Report)*

The NDWAC agrees with and adopts the Affordability Work Group’s recommendations with the following clarifications.

The NDWAC fully recognizes the importance of affordable and safe drinking water, especially for small systems. The 1996 Amendments to the SDWA established the principle that variances in water treatment technology could be used to address the issue of affordability. However, significant practical, logistical, and ethical issues mitigate against the use of variances.

For example, the cost of establishing the appropriateness of a variance for a specific small system is significant. The heightened monitoring and regulatory burden that would fall to State and local authorities is unacceptable for many of them. Furthermore, the potential acceptance of lower water quality for disadvantaged communities is ethically troublesome.

The NDWAC believes that alternatives to the variance process identified by the Work Group (such as cooperative strategies, targeted use of funding to disadvantaged water systems, a Low Income Water Assistance Program, etc.) are more appropriate means to address the affordability problem. Therefore, if a variance process is deemed necessary to achieve affordability, it should only be pursued after all other alternatives presented in this report are given due consideration. However, because of the NDWAC has pragmatic and ethical concerns with variances and the associated connotation of a 2-tier approach to protecting public health, the Council makes the following recommendation:

- The NDWAC advises the Administrator to convey to Congress the NDWAC's logistical and ethical concerns with variances and the NDWAC's position that variances in the extent of water treatment, as a means to achieve affordable compliance, be reconsidered.

The NDWAC recognizes that the incremental approach recommended by the Affordability Work Group is designed to avoid "rate shock" and mitigate the excessive costs of any single rule. However, the NDWAC believes that the cumulative cost of drinking water regulations is also an important consideration in affordability determinations. The NDWAC is concerned that the incremental approach alone does not sufficiently address the cumulative costs of several rules and other operating cost burdens (e.g. infrastructure replacement) that collectively may be "unaffordable" for some systems. The Work Group gave careful consideration to this important issue (see Pages 20-23, 86-89, and Appendix 5), and recommended that, where EPA identifies a need for variance technologies at the national level based on an incremental approach, States consider cumulative impacts at the system-level in determining whether to approve individual variance requests.

Cumulative impacts should be considered, for example, in determining eligibility for grants, loans, and funding under the DWSRF. In addition, if variances are to be made available, cumulative impacts should be considered in determining system eligibility for a small system variance. In order to assist states in making affordability determinations for individual systems:

- The NDWAC recommends that EPA augment the incremental approach with reasonable cumulative affordability guidelines that could be used by the states to determine the eligibility for small system variances and/or financial support.