

Environmental and Consumer Stakeholders Meeting

EXECUTIVE SUMMARY

**Safe Drinking Water Act Amendments of 1996
Variances and Exemptions Rulemaking Effort
Office of Enforcement and Compliance Assurance
Office of Ground Water and Drinking Water
Office of General Counsel
October 24, 1997
Washington, D.C.**

Under the 1996 Amendments to the Safe Drinking Water Act (SDWA), EPA is required to promulgate revised regulations with respect to variances and exemptions. To meet this requirement, EPA has established an inter-office team led by the Office of Enforcement and Compliance Assurance (OECA) and assisted by the Office of Ground Water and Drinking Water (OGWDW) and Office of General Counsel (OGC). A stakeholder meeting was held on October 24, 1997 in Washington, D.C. at EPA Headquarters offices. The purpose of this meeting was to solicit input from environmental and consumer groups as EPA proceeds in this rulemaking effort.

John Lyon, OECA, opened the meeting by welcoming the attendees, and stated that the purpose of the meeting was to solicit input from stakeholders as opposed to reaching consensus on issues that were discussed. After introductions, Andy Hanson, OGWDW, presented a brief overview of the variance and exemption provisions of the 1996 SDWA Amendments.

EPA posed the following major questions to the attendees:

I. Public Participation

- A. *When, how, and by whom, should consumers be notified that a variance is being sought by their public water system? Who should be the recipients of such notification?*
- B. *States are required to conduct a public hearing if they intend to grant a variance. By what means and how far in advance of such a hearing should notification occur?*
- C. *How can EPA make the petition process most effective given the 30 day window for the persons served by the system to petition the Administrator?*
- D. *How much information should be in the petition and what form should it take?*

II. Criteria for Granting Small System Variances

- A. *What should the State consider when performing an analysis of compliance options according to the State's affordability criteria?*
- B. *What should the State consider when evaluating whether a variance will provide adequate health protection, or that an exemption will not result in unreasonable risk to health?*
- C. *What should the State consider when determining whether the public water system has the technical and financial ability to effectively install and operate the variance technology?*

III. Other Questions

- A. *How should consecutive systems be addressed? If the primary supplier seeks a variance, should that variance also apply to other consecutive systems?*

Based on the above questions, the attendees provided a large amount of useful information to the EPA team. Shown below are general responses to the questions from the attendees.

A. Public Participation

Stakeholders provided comments on how the regulatory requirements may ensure public involvement in the variance process. Some attendees stated that a system should encourage the public to be involved in the early stages of the variance application process and should notify the public upon applying for a variance. Stakeholders provided a range of comments and suggestions on the form of the notification such news media, direct mailing, posting, and delivery to community organizations. One stakeholder stated that a system or State could obtain the addresses of persons, who may not receive water bills, through lists of postal patrons that are available to the public. Some stakeholders recommended that public hearings held by the State should be scheduled when the majority of the public could attend (outside of working business hours) and conducted at a location easily accessible to persons served by the system.

Stakeholders provided a range of comments regarding the content of required notices. Some stakeholders recommended that EPA should specify that notices should summarize information in non-technical terms, clearly identify the contaminant at issue, including the health effects associated with the contaminant, and contain preliminary information on compliance options considered in the application process. Some stakeholders recommended that notifications include a multilingual requirement that will facilitate translation of the notice to non-English-speaking persons and should be delivered to interested parties at least 30-days in advance of a public meeting. Some stakeholders encouraged EPA to provide guidance to the States and systems on how the notification provisions should be implemented.

In addressing the consumer petition process within the Act, some stakeholders recognized that a consumer objection to a variance should be somewhat specific. However, some attendees stated that the petition process should not be over burdensome on the consumer especially in light of technical information surrounding water treatment. Some stakeholders suggested that notices proposing a variance should contain information on how the reader may receive further information in order to make an informed decision on whether or not to object to the proposed variance.

B. Criteria for Granting Small System Variances

Many attendees echoed concern regarding how EPA will oversee affordability criteria established by the States and how the affordability criteria relates to primary enforcement responsibility requirements. Environmental stakeholders specifically asked EPA to consider how the "no less stringent" primacy requirement relates to a State's affordability criteria. There was also a request for EPA to establish guidance for States in establishing their own affordability criteria.

Some stakeholders recommended to EPA that the regulation "walk through" the affordability analysis for a small system and clearly indicate factors that a system and State must consider in applying for and reviewing a variance or exemption. Some attendees stated that the proposed regulations should specify terms and conditions that protect public health and establish specific dates by which the system must apply for financial assistance and begin capital investments.

Some stakeholders suggested that EPA should address the health standard to be used by a State in granting a variance or exemption. The point was made that national health standards will ensure that variances and exemptions are granted consistently throughout the country and are protective of public health.

Some stakeholders notified the regulatory team of their interpretation of § 1415(e)(6) which addresses the contaminants eligible for a small system variance. The environmental groups stated that it is their understanding that small systems variances are only allowed for those contaminants for which an MCLs was promulgated after January 1, 1986. This interpretation would exclude revisions to existing MCLs and treatment techniques from those contaminants for which a small system variance may be granted.

C. Other Questions

Stakeholders were asked to discuss the issue of how the variance and exemption regulations should apply to consecutive systems. Some stakeholders recognized that variance and exemptions are source water issues applicable to a wholesaler of water but, cautioned EPA in allowing variances or exemptions to automatically apply to downstream systems. Some stakeholders suggested that implementation of the regulations should consider the options available to the downstream system as well as the wholesaler of water. Some attendees further recommended that if a variance or exemption is granted to a wholesaler of water, the public participation provisions should include all persons served by the system, including persons served by a consecutive system.

EPA expressed its gratitude to all the stakeholders for attending and for their participation and comments. EPA invited the attendees to provide further comment.

The following is a list of all attendees:

LIST OF ATTENDEES

Name	Organization	Phone
Erik Olson	National Resources Defense Council	(202) 289-2360
Brian Cohen	Environmental Working Group	(202) 667-6982
Paul Schwartz	Clean Water Action	(202) 895-0420 x105
Diana Neidle	Consumer Federation of America	(202) 667-9280
Michelle M. Harvey	National Environmental Education and Training Foundation	(202) 628-8200 x15
John W. Lyon	EPA - HQ - OECA	(202) 564-4051
Andy Hudock	EPA - HQ - OECA	(202) 564-6032
Joe Theis	EPA - HQ - OECA	(202) 564-4053
Richard Alonso	EPA - HQ - OECA	(202) 564-6048
Carrie Wehling	EPA - HQ - OGC	(202) 260-7710
Ken Harmon	EPA - HQ - OECA	(202) 564-7049
Andy Hanson	EPA - HQ - OGWDW	(202) 260-4320
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