

July 29th, 2024

U.S. Environmental Protection Agency
EPA Docket Center
Office of Water Docket
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Re: National Primary Drinking Water Regulations for the Water System Restructuring Assessment Rule (WSRAR) (Docket No. EPA-HQ-OW-2022-0678)

The Washington State Department of Health (WA-DOH) offers the following comments in response to the Environmental Protection Agency's (EPA) proposed rulemaking for the Water System Restructuring Assessment Rule (WSRAR) Proposal, published on May 30, 2024 (Federal Register Document Citation: 89 FR 46998, Document Number: 2024-11687).

WA-DOH supports EPA's efforts to address the need to assess the technical, managerial, and financial (TMF) capabilities of public water systems. Further, WA-DOH supports the goal of rehabilitating or consolidating those systems determined to be struggling or failing to meet their obligations under the Safe Drinking Water Act. The proposed rule aligns with the agency's existing authority and rules established in Washington State.

- WA-DOH can require water systems to submit a water system plan to demonstrate their TMF capacity.
- WA-DOH, through its Drinking Water State Revolving Fund (DWSRF) program, has proactively implemented grant funding for consolidation feasibility studies in areas of need and where larger, established systems indicate willingness to take on smaller, struggling systems.
- The state Legislature has appropriated funding for WA-DOH to work with struggling and failing systems in receivership to establish sustainable governance outcomes to provide safe and reliable drinking water to the citizens of the state.

With the right regulatory authority to assess and establish viable outcomes and the provision of significant additional funding to encourage more established systems to incorporate struggling systems into their existing infrastructure, states would have better tools to complete beneficial consolidation or regionalization. With our experience WA-DOH offers the following comments:

General Comments

The primary purpose of the rule is unclear as to whether the intent is to:

- Require restructuring where needed;
- Allow for compliance relief for violations as restructuring is explored; or
- Enhance existing water system planning requirements.

There should be a clear set of requirements for:

- When assessments must be conducted;
- When consolidations must be required; and
- How compliance actions will take place throughout the assessment/consolidation phases.

Additional resources needed to implement

This rule will require increased staff and contracting resources for DOH to implement the changes proposed in WSRAR. Resources are needed for training, rulemaking, outreach and education, assessment and restructuring plan review, public meetings, and coordination with existing programs and funding opportunities.

Discretionary vs. mandatory requirements

The proposed rule includes three main elements:

1. A new mandatory assessment authority for states;
2. Requirements for performing mandatory restructuring assessments to help the water system sustainably provide safe, affordable drinking water; and
3. Eligibility requirements for three incentives for public water systems to restructure.

While the proposed rule establishes a new mandatory assessment authority for states, it provides discretionary authority to states in conducting the restructuring assessments. The rule also provides discretion to states to incorporate the new primacy requirement. EPA's specific guidance should clearly define what is meant by a "repeated violation," when a system is "unable or unwilling" to take action, and when an action is "feasible or affordable." States should be allowed to be more stringent in the application of the rule if state standards already exist. This approach allows flexibility in achieving restructuring goals of state specific conditions.

The proposed rule creates more planning and assessment considerations while providing compliance relief to impacted systems while working toward restructuring goals. Washington state supports ongoing compliance requirements for utilities, even as they consider consolidation. Any "compliance relief" should be tied to a specific enforceable compliance document. Without those requirements, this rule fails to adequately drive restructuring in a manner that ensures effective and efficient provision of safe and reliable drinking water. Meeting the parameters of the Safe Drinking Water Act must be the goal for utilities and regulatory entities, even during restructuring and consolidation projects.

Additional DOH Rule comments

1. As written, unlimited "enforcement relief" for National Primary Drinking Water Regulations (NPDWRs) violations up to 2-years will clearly and negatively affect public health.
 - a. With no requirement to restructure, utilities could violate a NPDWRs for 2-years and go right back to the starting point.

- b. Acute public health risks will be permitted to persist without clear resolution.
- 2. The proposed rule leaves significant details to the state to independently create metrics and rules. This could cause confusion and inconsistencies among states. WA-DOH recommends EPA publish additional guidance and include clear requirements in rule to ensure the effective implementation of restructuring goals. Suggested improvements to the rule/guidance include:
 - a. Provide a required template for assessments;
 - b. Create a list of qualifications for approving assessors;
 - c. Avoid providing absolute discretion to states in the development of assessment criteria. Establish minimum criteria and allow states to be more restrictive if desired;
 - d. Give TMF metrics to determine “underlying causes” and “quantitative and qualitative types of information that describe how restructuring would protect public health;”
 - e. Establish standardized state reporting formats and schedules; and
 - f. Require restructuring or consolidation if a state determines it is best for public health and provides safe and reliable water supply.
- 3. DOH recommends the removal of references to management contracts, change in utility management, change in operator, or anything else that can be reversed or eliminated by the existing owner(s). Available outcomes should be limited to:
 - a. Physical consolidation between water systems; or
 - b. Transfer of ownership to an entity in good standing.
- 4. A “structure assessment” should be required prior to new system creation or granting of infrastructure funding for an existing system.
 - a. Many small systems owned by HOAs, investors, and small municipalities lack the financial and managerial capacity to effectively operate a utility.
 - b. Requiring new utilities to have the required TMF by integrating with established water systems will result in safer and more reliable long term water systems.
- 5. Allowing the utilities to do their own assessments will be labor intensive for the state and unlikely to result in successful restructuring outcomes. DOH recommends EPA remove it as an option under the rule. With additional resources and funding, the state agency and associated third party contractors will develop the capacity to ensure successful assessment and restructuring oversight.
- 6. This rule must come with money for staff, attorney-general opinions, court cases, and cash for utility incentives.
- 7. The Washington State DWSRF already offers state funding for the rehabilitation and consolidation of struggling and failing systems and DWSRF set asides can be used to provide incentives for consolidation activities. Instead of only providing loans for restructuring activities, EPA should allow up to 50% subsidy for projects that result in the consolidation of struggling and failing systems with systems meeting TMF capabilities.

Thank you for this opportunity to provide comments regarding WSRAR.

Sincerely,



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