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U.S. EPA Office of Ground Water
and Drinking Water

**National Drinking Water Advisory Council
Affordability Work Group**

Meeting 1:
September 11-12, 2002

Meeting Summary

Prepared by

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National Drinking Water Advisory Council Affordability Work Group, Meeting 1

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Meeting Summary

INTRODUCTION

The Small Systems Affordability Work Group of the National Drinking Water Advisory Council (NDWAC) convened its initial meeting on September 11-12, 2002.¹ The Affordability Work Group was created to develop advice to the NDWAC as the NDWAC, in turn, develops recommendations for the U.S. Environmental Protection Agency (EPA) on national small systems affordability criteria, as required under the Safe Drinking Water Act (SDWA). The NDWAC was established by law to provide practical and independent advice, consultation, and recommendations to EPA on activities, functions, and policies related to SDWA. NDWAC's Affordability Work Group has been asked to make recommendations on:

- EPA's national level affordability criteria, the methodology used to derive the criteria and the approach to applying these criteria to national primary drinking water regulations;
- Alternative approaches to those used to-date by the Agency; and
- The role of alternate strategies – including funding mechanisms and possible legislative actions – that would enable small systems to achieve compliance.

In making these recommendations, the Work Group has been asked to bear in mind the structure of the SDWA and the limitations of readily available data and information sources. Due to the complex and controversial nature of the subject matter that will be discussed by the Work Group, EPA recognizes that consensus is unlikely to be reached on all issues. For areas where consensus can be reached, EPA will carefully consider such consensus recommendations. Where consensus cannot be reached, the Work Group would be expected to present the range of views expressed, along with a discussion of the potential pros and cons associated with various alternative approaches. Neutral planning and facilitation services are being provided to the Work Group by RESOLVE, Inc., which has been retained by EPA to assist in coordinating meaningful and productive Work Group dialogue.

The meeting agenda can be found as Attachment 1. A list of meeting participants and observers is included as Attachment 2. Presentation materials used by the speakers as well as additional materials distributed at the meeting are also included as attachments to this summary.

SUMMARY

A. WELCOME, INTRODUCTION, AND OPENING REMARKS

Purpose of Meeting -- Meeting Facilitator Marci DuPraw opened the meeting, explaining that the purpose of this meeting was to:

¹ The meeting was held at the office of RESOLVE, Inc. (1255 23rd St., NW, Suite 275, Washington, DC 20036) and was facilitated by Marci DuPraw, Senior Mediator with RESOLVE, Inc., with assistance from Jeff Citrin, Facilitator, and Paula Moreno, Senior Program Secretary, both also with RESOLVE.

- Present and discuss the questions about which EPA is seeking advice from the National Small Systems Affordability Criteria Work Group;
- Identify issues and questions that Work Group members would like to explore; and
- Review and discuss the Work Group's draft ground rules / operational protocols, schedule and proposed workplan.

Work Group members offered no changes to the proposed meeting agenda, which is included as Attachment 1. Ms. DuPraw also proposed ground rules for managing Work Group meetings, which were approved (see Attachment 3).

Introduction to Work Group Charge and Link to NDWAC -- Ephraim King, Director of EPA's Standards and Risk Management Division (SRMD) in the Office of Ground Water and Drinking Water (OGWDW), welcomed Work Group members to the meeting and provided an overview of the NDWAC work group process. He introduced his colleagues Jim Taft, (Chief, Targeting and Analysis Branch (TAB)/SRMD/OGWDW/EPA), Jeff Kempic (Affordability Team Leader, TAB/SRMD/OGWDW/EPA), and Amit Kapadia (Designated Federal Official (DFO) to the Work Group and member of EPA's Affordability Team) as the key EPA staff with whom the Work Group will work over the next few months. Overall, EPA is asking the Work Group for advice on how it could implement the SDWA with respect to small system affordability.

Mr. King explained that the Work Group is invited to initiate a conversation on small drinking water systems and their particular challenges to protect public health. The Work Group is also asked to comment on issues related to how EPA provides for variances to requirements under National Primary Drinking Water Regulations (NPDWRs) based on affordability considerations as required by the SDWA Amendments of 1996. Under this legislation, Congress instructed EPA to find whether new rules (i.e., NPDWRs) are affordable on a national level. If a rule is found to be not affordable nationally, then: 1) EPA must define less expensive variance treatment options; and 2) states that have primacy must initiate processes to determine whether the rule is affordable on a system-by-system basis (most often, upon application by individual systems).

More formally, Mr. King explained that EPA's proposed charge for the Work Group is to provide advice to the NDWAC as it develops recommendations for the EPA on national small systems affordability criteria as required under the Safe Drinking Water Act (SDWA). In particular, the Work Group will make recommendations on:

- the Agency's national level affordability criteria, the methodology used to derive the criteria and the approach to applying these criteria to national primary drinking water regulations;
- alternative approaches to those used to-date by the Agency; and
- the role of alternate strategies – including funding mechanisms and possible legislative actions – that would enable small systems to achieve compliance.

In developing these recommendations, Work Group members will need to bear in mind the structure of the Safe Drinking Water Act and the limitations of readily available data and information sources.

Mr. King explained that, since the Affordability Work Group has been established under the auspices of the NDWAC, the NDWAC's ground rules will also apply to this Work Group, in addition to Work Group-specific protocols that this Work Group may adopt. (See Attachment 4 for the NDWAC's ground rules.) In addition, he assured those present that EPA will be listening very carefully to the deliberations and outputs of the Work Group.

Acknowledgment of September 11 -- To acknowledge and honor the significance of the date of the meeting, Mr. King thanked all present for their willingness to participate in the work of democracy – helping to shape public policy through the free exchange of ideas and open discussion of issues.

B. CONTEXT OF THE NATIONAL SMALL SYSTEMS AFFORDABILITY CRITERIA

Jim Taft provided a presentation on the context of the national small systems affordability criteria. (His presentation slides are included as Attachment 5.) He discussed the special circumstances faced by small systems in complying with NPDWRs and introduced the rationale for making available an alternate, variance path when needed. Mr. Taft explained the processes for establishing NPDWRs and current methods of assessing affordability and identifying variance technologies. He noted that EPA's current method of making an affordability determination had been applied prospectively to three rules, but that affordable compliance technologies have been identified for all regulations. Therefore, there has not yet been a need to identify variances technologies. Mr. Taft explained that the need for review of EPA affordability methodology and assumptions had been prompted by requests from the NDWAC Arsenic Cost Work Group (whose final report noted this as a need) and Congress (which in its 2002 appropriation process directed EPA to engage in such a review). He concluded by noting that the Work Group's efforts are linked to those of EPA and the EPA Science Advisory Board (SAB) Environmental Economics Advisory Committee (EEAC). EPA is conducting its own review and has issued a report to Congress. The EPA SAB EEAC is drafting a report to EPA (expected in late October 2002) on the affordability methodology from an economics perspective.

C. OVERVIEW OF EPA WHITE PAPER ON SMALL SYSTEMS AFFORDABILITY

Jeff Kempic provided an overview of the EPA White Paper on Affordability, which had been sent to Work Group members prior to the meeting. (Mr. Kempic's presentation slides are included in Attachment 6.) He highlighted the seven key charge questions that EPA is asking the NDWAC for feedback on, as identified in the white paper. Mr. Kempic laid out the mechanics of the affordability determination process, discussing the potential implications of the affordability criteria and the potential use of variance technologies. He explained the assumptions on which the affordability criteria are based and the data and analyses that lie behind them. Mr. Kempic discussed the current sources of financial assistance to implement treatment technologies and also highlighted the issues related to whether affordability should be determined on a regional rather than national basis. As had the speakers that preceded him, Mr. Kempic noted that EPA is open to recommendations for alternatives to improve even the fundamental elements of the criteria and determination process and invited members' creative thinking and comments.

D. QUESTIONS MEMBERS HAVE ABOUT ISSUES RELATED TO NATIONAL SMALL SYSTEMS AFFORDABILITY CRITERIA

Work Group members engaged in a facilitated discussion to identify the questions and issues of most interest to them, both within the EPA White Paper and beyond it. These questions and issues were either categorized under one of the seven charge questions posed by EPA or placed in a category labeled “overall questions.” Members also identified data concerns in cases where data was thought to be incomplete or otherwise problematic. (See Section E below for related discussion.) Finally, the Work Group identified data requests related to specific charge questions, i.e., for information that the Work Group felt would be useful in their further exploration of these issues. (Data requests are presented in Attachment 7.)

E. ORGANIZATIONAL ISSUES FOR THE WORK GROUP

Review and Discussion of Draft Operating Protocols -- The Work Group discussed the draft operational protocols, which had been provided them for their consideration prior to the meeting. The revised draft operational protocols are attached (see Attachment 8). Members agreed to bring this document back to their organizations for consideration and to seek consensus approval of the protocols on the agenda for the next Work Group meeting.

Establishment of Committees -- Work group members formed three committees:

- Affordability Criteria Committee (ACC) – Merl Hackbart, Chair;
- Committee on Financial Support Strategies (CFSS) – David Monie, Chair; and
- Committee on System-Level Strategies (CSLS) – John Young, Chair.

This initial charge for each committee is described in Attachment 9, Proposed Structure for Work Group Discussions: Committee Structure. Members assigned each question, issue, or data concern identified above in section D, to a particular committee or to the plenary Work Group. Attachments 10 through 13 contain the questions for discussion and related data concerns for the ACC, CFSS, CSLS, and overall questions to be addressed in the plenary.

Committee membership is open to Work Group members. Non-Work Group members (called “guest members”) may be asked to join committees if necessary to achieve the committee's purpose at the discretion of the “decision-making” committee members (those that are also Work Group members). Only committee members who are also Work Group members will participate in committee decision-making. The membership of the committees is captured in Attachment 15.

Committees will meet primarily via conference call, and will also use e-mail discussions between Work Group meetings. Committee meetings may also be scheduled in conjunction with or as part of scheduled Work Group meetings. Committees will report back to the Work Group at its meetings on progress made to-date.

The committees met briefly to choose their chairpersons and to discuss the issues and questions that had been assigned to them by the Work Group. They also established priorities for their deliberations. (See Attachment 15.)

Refinements to Work Group Charge -- Work Group members discussed the proposed draft Work Group charge in light of the list of questions and issues generated above. (The charge is contained in the operational protocols – see Attachment 8.) Members agreed on several modifications to make explicit that the Work Group's scope: (a) can encompass an exploration of the opportunities and barriers to small system compliance with drinking water regulations; and (b) includes the efforts undertaken by systems not just to achieve compliance, but to maintain it into the future.

Time line for and Organization of Work Group Discussions -- The dates and content guidelines for future Work Group meetings are provided in Attachment 16. (There was a change to the December Work Group date made in consultation with Work Group members subsequent to the September Work Group meeting. Attachment 16 reflects the revised date – December 18-19.)

Electronic Communication Mechanisms -- The groups to which various Work Group-related materials will be distributed as well as the distribution means are summarized in Attachment 17.

F. “BIG PICTURE DISCUSSION”

Toward the end of the second meeting day, at the request of Work Group members, Ms. DuPraw facilitated a Work Group discussion of concepts and assumptions underlying the Work Group's charge. Participants explored what may be affordable to particular systems in comparison with national level affordability findings, the role of affordability criteria, and the role of various tools and sources of financing to address affordability concerns. They also discussed possible legislative changes that would help make SDWA compliance affordable for small water systems (e.g., allowing the use of bottled water; improving the USDA / RUS program, etc). There was particular interest in knowing whether the group at its outset was clearly pursuing a "one-tier" vs. "two-tier" approach to addressing the affordability issue. Key points made by various Work Group members during this discussion included:

- Currently, there are three different realities for water systems – compliance, non-compliance, and no treatment at all. Out of a sense of realism, the Work Group should go beyond a call for more funding. It should look at more effective use of current funds, and how to ensure that if a community or household is disadvantaged, it is given priority for receiving assistance.
- There was a general interest among Work Group members in looking for alternatives to a two-tier approach to public health protection levels when compliance with the SDWA is not affordable.
- State representatives seem to be saying that they do not want to implement the variance technology process in its current form, so perhaps the Work Group should not spend much time discussing it. Instead, maybe the Work Group should ask its Affordability Criteria Committee to focus on alternative approaches to addressing affordability. (EPA staff indicated that it is possible to discuss alternative approaches and legislative changes, but also pointed out that there is a Congressional mandate to look at the national level affordability criteria. It was also noted that the Work Group does not know how prevalent the above-referenced state perspective is.)

- Communities are more likely to be able to afford a solution if they can choose from an array of ways to solve the problem.
- A key question is whether a "low trip switch" for affordability assistance is desired or a "high trip switch." If a low trip switch is desired, focus on providing a funding mechanism for systems with an affordability problem. If a high trip switch is desired, focus on providing states with the option to ask for a variance. If there is no funding source available, the latter may be the default option to pursue.

Ms. DuPraw concluded by summarizing that the group did not seem to be at a state of consensus on whether the approach to addressing the affordability issue should be one-tier or two-tier; this is a key question on which EPA seeks NDWAC guidance. It does not appear to be a "yes / no" question; rather, the Work Group is being asked to develop advice that does justice to the complexity of the issues involved.

G. WORK GROUP CLOSING COMMENTS

Each Work Group member was invited to make a closing comment to let the group know if there was some aspect of the Work Group's charge that he or she felt particularly strongly about. (See Attachment 18.)

H. PUBLIC COMMENT

Two individuals asked to make comments during the time set aside for public comment. The first, Jim Laity of the federal Office of Management and Budget (OMB), made several points, as follows:

- Speaking as a citizen rather than an OMB representative, Mr. Laity urged the Work Group to bear in mind the context of the SDWA and limitations of currently available data.
- While the federal government is open to recommendations for legislative change, EPA must make some decisions within the current legislative framework, and it would be most helpful if the Work Group provided advice about how best to use the funds that Congress has already provided to help water systems pay for SDWA compliance.
- Mr. Laity urged the Work Group to give consideration to how to make the variance process work effectively.
- While a two-tiered system may be unappealing, government entities around the country have to make decisions about how to spend limited funds on a variety of functions, from firefighting to dogcatchers, many of which have bearing on public health. EPA managers face the same challenge with water.

John Scheltens, a member of the NDWAC and of the earlier Arsenic Cost Work Group, indicated that affordability had been an issue of extreme interest to the Arsenic Cost Work Group and that he is pleased that a work group has been convened to focus on this issue. He believes that once the government has decided to regulate a contaminant, it is incumbent upon the government to determine how to make it affordable to do so. He urged the Affordability Work Group to: (a) consider grants and loans for capitalization, as well as operations and maintenance

costs; (b) avoid policies that place communities on “permanent welfare”; and ©) explore the tools that could be provided to a community to make compliance sustainable on an ongoing basis.

I. NEXT STEPS

Members defined next steps to be taken to advance the Work Group's charge. Each committee chair was asked to give his preliminary thoughts about what topics that committee would be interested in seeing on the October Work Group meeting agenda. Suggestions were as follows:

Affordability Criteria Committee (ACC) Suggestions for the October Work Group Agenda:

1. Compliance cost differences by region
2. SAB report
3. Affordability thresholds used by other programs (how are they determined; cost calculations)

Committee on Financial Support Strategies (CFSS) Suggestions for the October Work Group Agenda:

1. Sources of funding
2. Initial discussion re: feasibility of establishing new funding sources (e.g., Work Group input regarding sources and who would be eligible)
3. Presentations by experts who can provide details about how SRF, RUS, and HUD block grant programs work
4. State funding mechanisms

Committee on State-Level Strategies (CSLS) Suggestions for the October Work Group Agenda:

1. Information on different programs (e.g., things that have been done at the system level)
2. Regionalism/ consolidation/ cooperation among small systems
3. POU/POE
4. EPA Environmental Technology Verification (ETV) Program
5. Barriers to small system initiatives and options for overcoming those barriers

Additional ideas for the October Work Group agenda that emerged from the previously mentioned 'big picture' discussion included a request for presentations on:

- Exemptions;
- Options for one- and two-tier approaches; and
- How the 2.5% value for the maximum household income (MHI) metric was derived.

The Work Group also scheduled the first conference call for each committee for the following week. Each committee was asked to discuss the following topics on their initial conference calls:

- Refine priorities/ agree on "scope" or "mission" statement for the committee;
- Plan strategy for surfacing options to address scope;
- Identify how to use technical support;
- Refine Committee's request for use of agenda time at October Work Group meeting; and
- Set date for committee's subsequent conference call.

Other next steps that RESOLVE will undertake to support the Work Group's progress include:

- Revising operational protocols;
- Producing and distributing the Work Group meeting summary, including the list of data requests; and
- Planning for the October Work Group meeting.

ATTACHMENTS

1. Agenda (get final version from Paula)
2. Meeting Participant List
3. Meeting Ground Rules
4. NDWAC Working Group Ground Rules (attached)
5. Jim Taft's Presentation Slides
6. Jeff Kempic's Presentation Slides
7. Work Group Data Requests
8. Operational Protocols for the Work Group (final draft, incorporating 9/11-12 input)
9. Proposed Structure for Work Group Discussions: Committee Structure
10. Issues Assigned to the Affordability Criteria Committee
11. Issues Assigned to the Committee on Financial Support Strategies
12. Issues Assigned to the Committee on System-Level Strategies
13. Issues Assigned to the Plenary Work Group
14. Committee Membership
15. Committee Priorities
16. Proposed Structure for Work Group Discussions
17. Materials Distribution Methods
18. Work Group Members' Closing Comments