

ONE PAGE SUMMARY OF TESTIMONY

Hearing on “The Role of the States in Protecting the Environment Under Current Law”

Subcommittee on Environment and the Economy

Friday, February 15, 2013

Sarah Pillsbury, President; Association of State Drinking Water Administrators

- **Who Are We?** The Association of State Drinking Water Administrators (ASDWA) represents the collective interests of the 50 state drinking water programs, the District of Columbia, the five territories, and the Navajo Nation.
- **State Commitment to the Mission:** State drinking water program personnel are fully committed to their public health protection mission.
- **State Personnel are Trained for the Job, Have Knowledge of Local Conditions, and Provide Needed Assistance:** State personnel also have the necessary background and expertise to administer these programs. State personnel also have the on-the-ground knowledge about how to best tailor Federal programs to state needs and conditions.
- **How do States Administer Their Programs and Ensure Compliance with Drinking Water Regulations?** In brief, this responsibility involves informing water systems of requirements; ensuring that water systems have the capability to implement and comply with those requirements; and providing oversight to ensure that they continue to comply.
- **What is EPA’s Role and How is the State-EPA Partnership Working?** States view this partnership as essential to achieving our collective goals. We believe the partnership should be (and currently is) one of mutual respect that allows each partner to do what they do best.
- **Technical Challenges in Implementing State Drinking Water Programs:** Effective public health protection must involve strategies for both large and small public water systems. States are also challenged by implementing complex regulations.
- **What are ASDWA’s Views of Hydrofracturing?** We await the results of EPA’s Congressionally mandated four year study to help shed light on the relationship between hydraulic fracturing and drinking water resources and whether additional support of states’ efforts is needed.
- **Programmatic Challenges in Implementing State Drinking Water Programs – What Can Congress Do?** States urgently need more resources for administering their programs.
- **What is the Role of State Drinking Water Programs in Ensuring the Security of Drinking Water?** State drinking water programs are critical partners in emergency planning, response, and resiliency at all levels of government.

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*Sarah Pillsbury, Drinking Water Administrator
New Hampshire Department of Environmental Services
and
President, Association of State Drinking Water Administrators*

Who Are We?

The Association of State Drinking Water Administrators (ASDWA) represents the collective interests of the 50 state drinking water programs, the District of Columbia, the five territories, and the Navajo Nation in their efforts to provide safe drinking water to their citizens. State drinking water programs operate “source to tap” programs – implementing all aspects of the Safe Drinking Water Act (SDWA) within their jurisdictions.

State Commitment to the Mission:

State drinking water program personnel are fully committed to their public health protection mission. States recognize that the health and well being of their citizens and communities are dependent on receiving safe and reliable drinking water. It’s important to remember that state drinking water program personnel live and work in the communities served by the programs they administer -- it’s personal for them. They often know, first hand, about the negative consequences of lack of vigilance in ensuring that these protections are in place (e.g., waterborne disease outbreaks, cancer clusters, etc.)

State Personnel are Trained for the Job, Have Knowledge of Local Conditions, and Provide Needed Assistance:

State personnel also have the necessary background and expertise to administer these programs. They're highly qualified professionals who fully understand the multi-faceted nature of the challenges they face and what's needed to *protect* sources of drinking water, *adequately treat* those sources, and *deliver* safe water to the tap. That task is particularly challenging in light of extremely constrained resources for state drinking water programs, as discussed later in this testimony.

State personnel also have the on-the-ground knowledge about how to best *tailor* Federal programs to state needs and conditions. States have developed a detailed understanding of the conditions in their states and how Federal requirements should be adapted to local conditions to achieve Safe Drinking Water Act goals. States essentially "translate" the Federal requirement to local situations. They provide the needed training and technical assistance to public water systems who are on the front lines of delivering safe tap water.

How do States Administer Their Programs and Ensure Compliance with Drinking Water Regulations?

In brief, this responsibility involves informing water systems of requirements; ensuring that water systems have the capability to implement and comply with those requirements; and providing oversight to ensure that they continue to comply. The overarching objective of states, in all of these efforts, is to get and keep public water systems in compliance -- whether a restaurant or large city water utility -- thereby protecting public health. Ideally, this process occurs proactively on the part of water systems; however, if not, states undertake an escalating series of compliance and enforcement actions to return a facility to compliance.

- **Informing:** Most water systems do not read the *Federal Register* on a routine basis and many do not have full time staffs. Thus, states reach out to water systems to inform them of all applicable requirements. Many states also adapt the Federal regulations into

more user-friendly state-specific regulations and guidance documents. States may also include additional state requirements, beyond the Federal minimums.

- **Training/Technical Assistance:** States (along with technical assistance providers, industry organizations, and EPA) spend considerable time training water facilities to enhance their overall technical, managerial, and financial capacities to comply with all rules as well as providing rule-specific training, where appropriate. Proactive approaches to building water system capacity is by far the best and most effective approach to public health protection. Reactive approaches (after problems occur) tend to be expensive, time-consuming, and less protective of public health.
 - ***Underscoring the Importance of the Drinking Water Industry/Promoting Succession Planning:*** *States recognize that the day to day efforts of providing safe drinking water to customers at their taps is undertaken by dedicated men and women at the local water utility level who share the same overarching public health protection goals as state drinking programs. States employ a variety of strategies to partner with the drinking water industry to provide the support necessary for these “unsung heroes”, including exploring approaches to recruitment and retention of water system operators at a time when a cadre of experienced personnel is retiring.*
- **Compliance/Enforcement Actions:** States routinely conduct on-site inspections and review various water quality reports to ensure public water systems are complying with all drinking water requirements. When a system is not in compliance, a state will employ an escalating series of responses appropriate to the severity of the violation. For instance, minor infrequent violations can often be addressed by a phone call or letter. Ongoing, more serious violations warrant more serious responses – up to and including fines and penalties levied through Administrative Orders or Consent Decrees.

What is EPA's Role and How is the State-EPA Partnership Working?

EPA's Office of Ground Water and Drinking Water, together with the ten EPA Regional offices oversee the activities of the states in their respective regions in connection with implementing states drinking water programs. EPA has been instrumental in providing outreach and training materials to help water systems understand their obligations in connection with particular rules or across-the-board capacity-building approaches. Rule training materials are most useful when they're provided "upfront" (i.e., at the same time or shortly after a new rule is promulgated) and EPA has been very attuned to that need in recent years. For instance, EPA's Simple Tools for Effective Performance (STEP guides) have been very valuable outreach tools in explaining various aspects of the program to small water systems. EPA also provides (through their Office of Research and Development) information about treatment options and analytical methods that water systems may use to help comply with drinking water regulations. States view this partnership as essential to achieving our collective goals. We believe the partnership should be (and currently is) one of mutual respect that allows each partner to do what they do best:

- *For EPA*, this involves establishing overarching national requirements, per the statute, along with needed tools and information. States believe that nationally-established requirements need to be based upon considerable state early involvement, so that the eventual requirements are as "implementable" as possible.
- *For states*, this entails implementing those requirements in a manner consistent with local conditions. We would add here that it's not just the EPA-State partnership that states value. We also appreciate partnerships with training and technical assistance provider organizations, local utilities, other state organizations, and other branches of the Federal government (e.g., USGS, USDA, HHS-CDC).

Early involvement of states (and other stakeholders, as appropriate) in EPA decision-making is an extremely important aspect of the state-EPA partnership – particularly given the fast-paced

and ever evolving nature of the challenges to safe drinking water. A couple of recent examples where this partnership worked particularly well were the promulgation of the final revised **Total Coliform Rule (TCR)** and the Agency's recent decision to allow **Consumer Confidence Reports (CCRs)** to be distributed (by water utilities to customers) electronically. In the former case, a full and comprehensive stakeholder involvement process led to a final TCR rule (the principal Federal rule for controlling microbiological contaminants) that has been widely lauded by stakeholders as being both more practical and protective of public health. The CCR decision was based on effective pilot projects undertaken by selected states and water utilities to demonstrate that electronic dissemination of this "right-to-know" information can indeed be more efficient and effective than the current practice of mailing paper copies to all customers. (Those customers unable to receive the reports electronically will still be provided with paper copies under the new policy.) A final example of the state-EPA partnership is manifest in an initiative currently underway that's designed to more effectively leverage and target the tools of the Clean Water Act to protect sources of drinking water – thereby reducing treatment costs for water utilities and ultimately providing safer drinking water to customers.

Technical Challenges in Implementing State Drinking Water Programs:

To appreciate the challenge of ensuring compliance with the SDWA, it's important to understand the universe of water systems to which the Act applies. Public water systems in the U.S. can be divided into two principal groups: *community water systems* serving cities, villages, counties and various types of residential facilities (of which there are approximately 53,000) and *non-community water systems* (of which there are approximately 107,000). Non-community water systems can be further subdivided into *non-transient* water systems (e.g. schools and manufacturing facilities) and *transient* water systems (e.g. restaurants and camp grounds). Most of the citizens in the U.S. receive their water from large community water systems, but the overwhelming number of systems are *small* (serving less than 3,300 people). (77% of the nearly 53,000 community water systems in the U.S. serve between 25 and 3,300 customers.) This fact has real implications for the challenges that states, EPA, and water systems themselves face in complying with drinking water regulations. Thus, effective public health protection must

involve strategies for both addressing the greater number of citizens served by larger water systems as well as approaches designed to help medium and small water systems comply with all applicable drinking water requirements. Further, for most of the above-mentioned non-community water systems, provision of drinking water to their customers is typically *not* their principal purpose – which has particular implications for the strategies states employ in support of such systems.

In addition, states are challenged by complex regulations; many of which are risk-based (i.e., tailored) – that’s a good thing generally, but challenging to implement. For example, the recent suite of regulations addressing microbial contaminants and disinfection by-products (known as “LT 2/ Stage 2”) involves states assigning water treatment facilities into one of four “bins”-- based on the microbiological threat posed – and tailoring the regulatory requirements accordingly. States are further challenged by working with their Federal, other state, and local partners to address contaminated sources of drinking water. It’s much more expensive (and sometimes simply not feasible) to remove contaminants at a drinking water treatment plant rather than prevent it from reaching sources of drinking water in the first instance. There is also a host of “emerging contaminants” (e.g., pharmaceuticals and personal care products) -- many of which are currently unregulated and whose risk is not well known.

What are ASDWA’s Views of Hydrofracturing?

Certainly, one of the more multi-faceted technical challenges facing many state drinking water programs is the rapid expansion of oil and gas extraction using the recently enhanced techniques of hydrofracturing and the associated strains on water resources and water infrastructure. We believe there are an array of challenges associated with each stage in the life cycle of these drilling operations – from procuring the make-up water needed for injecting fracking fluids; to proper design and installation of wells; to safe disposal (or reuse) of the flow-back waters. We understand that our colleagues in state oil and gas programs have been conscientiously revamping their regulations as well as enhancing their field presence to provide the needed oversight for these activities. We await the results of EPA’s Congressionally

mandated four year study to help shed light on the relationship between hydraulic fracturing and drinking water resources and whether additional support of states' efforts is needed.

Often overlooked is the strain placed on drinking water systems to meet rapidly increasing demands in areas of oil and gas development. Water is needed directly for drilling, as well as for support industries, midstream processors, and end users. Many local areas have experienced rapid population growth without adequate water infrastructure to support it. State drinking water programs, already strained to meet federal requirements under the Safe Drinking Water Act, are often engaged in providing technical assistance to water systems, assessing potential impacts to water supplies, and addressing water infrastructure needs. We think these efforts need both Federal and state support.

Programmatic Challenges in Implementing State Drinking Water Programs – What Can Congress Do?

States urgently need *more resources* for administering their programs. (We also believe much more is needed for drinking water infrastructure; but in today's hearing, we're talking about funding for *state drinking water personnel and programs*.) While we understand that this Subcommittee has no jurisdiction over appropriations, we believe the input of this Subcommittee (and indeed the full Energy and Commerce Committee) to the House Appropriations Committee can be instrumental in helping address what we believe is a critical problem. State budgets are under extreme pressure and are unable, often times, to bridge the gap between currently inadequate Federal funding and the funding actually needed to administer Federal requirements. (ASDWA estimates at least a \$100 million gap between funding needed and available Federal and State funding for state drinking water programs.) Inadequate funding has direct negative consequences for state drinking water program staffing. Most states are typically very short staffed and are simply not able to administer their programs in the manner they would prefer -- or that's envisioned under the SDWA. For instance, states struggle to perform sanitary surveys at public water systems on the frequency the SDWA calls for. This funding shortfall also makes it extremely difficult to attract and retain qualified staff.

State drinking water programs have two principal sources of Federal revenue to administer their programs: the Public Water Supply and Supervision (PWSS) grant and set-asides from the Drinking Water State Revolving Fund (SRF). The PWSS grant, which is the primary, and in some cases the only federal funding source for states has been “flat-lined” at roughly \$100 million per year for the past several years (on average, a wholly inadequate amount of about \$2 million per state). These funds are supplemented to some extent, in most states, by state General funds and/or state fees for service charged to public water systems. However, these state-based sources of are insufficient to ensure a baseline of effective drinking water protection throughout the country, as called for under the SDWA. There is no realistic expectation for significant increases in state funding in the near future. In light of the above-described shortfall, we strongly recommend that Congress appropriate at least \$200 million annually for the PWSS grant to states.

The PWSS grant, that the sates received to implement the SDWA, is very flexible and has been used by states to effectively address priorities, to the extent funding allows. In addition, since 1996, some states have had access to set-asides from the Drinking Water SRF. While extremely helpful, set-asides have key “strings attached” under the terms of the SDWA and can only be used for certain types of activities. These funds are also “in competition” with use of those funds for critical drinking water infrastructure improvements. The amounts used for set-asides for state program activities (instead of “concrete and pipes” for drinking water treatment infrastructure) is often hotly contested within states. In some states, the Drinking Water SRF is administered by a separate agency and the drinking water Primacy agency has little or no access to set-asides. Boosting the appropriation for the PWSS grant to states would relieve the pressure on Drinking Water SRF funds and free up more for infrastructure uses.

What are ASDWA's Views on Alternative Financing Mechanisms for Drinking Water Infrastructure?

While not the subject of today's hearing, we're aware that there have been a number of discussions between some of our partner organizations in the utility community with both House and Senate Committees whose purview includes water and wastewater infrastructure. In the current budget climate (in which "offsets" from other programs must be identified before any new funding can be appropriated), we think the potential for unintended adverse consequences to the SRFs from creating and funding a new infrastructure program is *high*. We're also concerned about the implications for funding small water system infrastructure needs if a separate, new program -- primarily designed for large water systems -- changes the credit-worthiness of the SRF "portfolios" of loans. This is admittedly a complex discussion with many implications and subtleties which we look forward to discussing with you separately, in the future. It is important, however, to leave you with an understanding that, currently, the only source of capital available for addressing infrastructure needs for small, struggling public water systems is the Drinking Water SRF.

What is the Role of State Drinking Water Programs in Ensuring the Security of Drinking Water?

State drinking water programs are critical partners in emergency planning, response, and resiliency at all levels of government. States provide key resources and critical support regardless of whether the emergency is rooted in terrorism, natural disasters, or cyber intrusions. States continue to expand their efforts to reflect a more resilient "all hazards" approach to water security and to focus their efforts toward smaller water systems. These systems rely heavily on the states to help them meet their needs and identify potential funding sources. After seven years of supporting state security programs through a small grant in EPA's appropriation, *no funds* have been provided for this purpose since FY 09 and none were requested by EPA for FY 13. State drinking water programs need funds to continue to maintain and expand their security activities, particularly for small and medium water systems and to support utility-based mutual aid networks for all drinking water systems.

Summary

States are doing a remarkable job, all things considered, and are carefully setting priorities to help ensure that public health protection remains preeminent. But, without question, if we are going to achieve our mutual goals, states need more funding and Congress could certainly help in this regard. A strong drinking water program supported by the Federal-state partnership and adequately funded by Congress will ensure that the quality of drinking water in this country will not deteriorate and, in fact, will continue to improve – so that the public can be assured that water from the tap is safe to drink, no matter where they find themselves in the this country.