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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

April 21, 2006

ANDREW WHEELER, MAJORITY STAFF DIRECTOR
KEN CONNOLLY, MINORITY STAFF DIRECTOR

The Honorable Stephen Johnson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

To begin, I commend the Agency for proposing a rule to address problems with the Agency's current affordability standard. However, the Agency should expand the scope of comments you are requesting for EPA's Small Drinking Water Systems Variances Revisions proposal [Federal Register: March 2, 2006 (Volume 71, Number 41)].

The proposal states correctly that, "as part of the 2002 appropriations process, Congress directed EPA to review and update the national-level affordability methodology." This provision was initiated in Senate Appropriations Committee report mainly to address problems with the impacts of the arsenic rule in small communities. However, the EPA proposal would prohibit any potential relief from applying to the arsenic rule - the main interest of the Congress in crafting the directive in the appropriations bill.

The proposal stipulates that, even though EPA utilized its authority under the Safe Drinking Water Act (SDWA) to establish the arsenic MCL at levels less stringent than the feasible levels, "this authority will not ensure that a drinking water standard is affordable to small systems." Additionally problematic is the fact that (under EPA's proposal) the arsenic rule would still hold that the 2.5% of median household income level would be affordable - and this same level would not be affordable under future rules. This does not seem consistent or explainable.

Also the proposal compares and equates the parity in the Act's two binding statutory economic levels for determining enforceable levels; feasibility and affordability. The preamble to the proposed rule states:

The MCL is set as close to the MCLG as feasible...
'Feasibility' is to be defined relative to "what may reasonably be afforded by large metropolitan or regional public water systems." Thus affordability may be

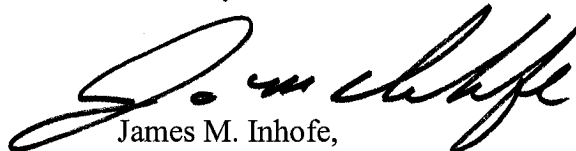
considered in establishing the feasible level, but it is affordability to large water systems. As noted above, costs are generally significantly higher on a per household basis for customers of small systems than for customers of large ones. As a result, what is feasible (taking cost into consideration) for large systems may not be feasible (taking costs into consideration) for small ones. To address this situation, in addition to other tools, SDWA requires EPA to determine if affordable small system compliance technologies are available, and when there are none, SDWA requires EPA to identify small system variance technologies.

Because the EPA proposal: (1) acknowledges that EPA's use of the standard setting provision's cost benefit consideration will not ensure that the arsenic rule is affordable to small systems, (2) correctly equates feasible with affordable, and (3) would retain the 2.5% MHI affordability level for existing rules which EPA acknowledges is inadequate - I urge the agency to expand the scope of commenting under the proposal to include commenting on the following questions.

1. Should EPA expand the proposal to all rules including arsenic and disinfection byproducts stage I?
2. Should EPA calculate the economic level of feasibility in the standard setting section, and adopt that level as the affordable level under the small system variance technology section?
3. Should EPA propose a moratorium on small community enforcement of SDWA rules until the Agency has completed its review?

I appreciate your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "J. M. Inhofe", written in a cursive style.

James M. Inhofe,
Chairman