

**Small and Rural Community
Affordability Consensus Report**

National Rural Water Association

January 27, 2003

Executive Summary

The National Rural Water Association (NRWA), representing over 22,400 rural and small community members, submitted a separate report because small communities believe the NDWAC affordability Work Group's report: (1) recommends a new affordability level that is clearly unaffordable for millions of low-income families and many communities by any reasonable definition of affordable, (2) does not provide a reasonable and workable small systems variance technology program as mandated in the SDWA that allows small and low-income communities to comply with rules without experiencing harmful tradeoffs, and (3) recommends new (or changes to) federal, state, and local programs for public education, viability, full compliance, revised CCR requirements, capacity, rate structures, federal funding programs, SRF review requirements, consolidation, water tax, state policy on SRFs, variances and exemptions, and the USDA programs/authorities. These recommendations are all steps in the wrong direction for assisting small and low-income communities comply with rules because each recommendation shares a common theme of eroding local government authority, control, and protection. Small communities support exploiting all legal options to provide low-income and small/rural communities with compliance options that are affordable and protective of public health. However, the majority's report falls short of this simple goal.

NRWA urges EPA to adopt the safe and affordable variance approach (SAVA) detailed in this small and rural community consensus report. To date, EPA has determined all regulations are affordable for small communities and therefore has not allowed any use of variance technologies. If the Congressionally prescribed solution to the affordability problem is unworkable because EPA cannot determine variance technology policy (i.e., reasonable affordability standards, contaminant concentrations that are "protective of public health," and alternative variance treatment methods) then this should be clearly stated and reported to Congress. Until such time that Congress determines they need to rewrite the Act, we should assume they meant what they passed in 1996.

Small and Rural Community Affordability Consensus Report

National Rural Water Association

January 27, 2003

1.0 Introduction

Included in the National Drinking Water Advisory Council (NDWAC) affordability Work Group's (referred to as "the panel") mission was a review of the Environmental Protection Agency's (EPA) "affordability" policy for small communities. Currently EPA uses a metric of 2.5 percent of median household income (or approximately \$1000 per year) as the indication of an affordable drinking water bill. Review of this EPA administrative policy was the single most important issue for small communities and was our primary reason for participating on the panel. EPA's affordability policy has been found inadequate by their Science Advisory Board, the National Rural Water Association, and, to some limited extent, this NDWAC panel. However, there has been no consensus on exactly how to "fix" or modify EPA's policy.

Many members on the panel supported a policy of increasing water bills by 1 percent of median household income (or \$400) as an alternative to EPA's affordability determination. We are encouraged by the finding that EPA's policy needs to be changed, and appreciate being part of the deliberations. However, small communities have a different perspective and we respectfully dissent from the panel's report. Our report represents the consensus recommendations of small communities. Therefore, we have prepared this separate small community consensus report because the panel's report: (1) recommends a new affordability level that is clearly unaffordable for millions of low-income families and many communities by any reasonable definition of affordable, (2) does not provide a reasonable and workable small systems variance technology program as mandated in the SDWA that allows small and low-income communities to comply with rules without experiencing harmful tradeoffs, and (3) recommends new (or changes to) federal, state, and local programs for public education, viability, full compliance, revised CCR requirements, capacity, rate structures, federal funding programs, SRF review requirements, consolidation, water tax, state policy on SRFs, variances and exemptions, and the USDA programs/authorities. These recommendations are all steps in the wrong direction for assisting small and low-income communities to comply with rules because each recommendation shares a common theme of eroding local government authority, control, and protection. Small communities support exploiting all legal options to provide low-income and small/rural communities with compliance options that are affordable and protective of public health. However, the majority's report falls short of this simple goal.

2.0 Support and Explanation of Small Community Affordability Position

- Scott J. Rubin: Evidence that EPA's and Majority Recommendation Are Unaffordable

Scott Rubin's presentation to the NDWAC panel showed that the lowest 20 percent of households (25 million households in the U.S.) are already paying more in their

NDWAC Affordability Recommendations, July 2003

public health expenditures than their income permits (Scott J. Rubin, *Criteria to Assess Affordability*, NRWA 2002). Therefore, any increase in water rates for these economically “sensitive subpopulations” is unaffordable. What is confounding to small communities is that **Rubin’s studies and evidence are not in dispute by the panel**. Yet, the majority still recommended that these families could afford up to an additional \$400 per year **per rule**.

- *The Affordability Metric*

Rubin’s analysis of data from the 1990 census shows only a weak correlation between MHI and the level of poverty in a community. Rubin found that at the median income of approximately \$30,000 in 1989, the level of poverty ranged from zero to more than 20 percent in U.S. countries. That is, communities with the same median income can have poverty rates, and the presence of low-income households, that vary drastically from one another.

The use of MHI computed as a national aggregate as the sole metric for determining affordability has many problems. NRWA believes that MHI masks the financial hardship that low-income communities and low-income households have in meeting many of the existing regulations. The purpose of the national – level affordability determination is to identify the likelihood that small water systems will be able to afford to comply with a regulation without creating a serious risk of adverse health consequences. The fact that a certain level of expenditure is affordable to the median income household in a community tells us very little about the ability of the low-income households in the community to afford the same level of expenditure.

A more equitable metric can be found for determining affordability for small water systems. Our organization has outlined a policy that maximizes public health protection under the section titled, “Safe and Affordable Variance Approach.” However, if EPA uses MHI as a metric of affordability until a more equitable metric can be found, an adjustment must be made for the differences in rural vs. urban communities. There are fundamental differences between rural and urban communities. Some of these differences are obvious: rural communities are less densely populated and tend to have smaller water systems. Some of the differences are not so readily apparent: there are a large number of small water systems in urban areas, and income levels are substantially higher in urban areas than they are in rural areas. As a result, rural households tend to spend a higher percentage of their income on utilities and other necessities than do urban households. In fact, the typical rural household tends to spend essentially all of its after-tax income, while the typical urban household tends to have a surplus of nearly \$4,000 per year. (Scott R. Rubin, *Economic Characteristics of Small Systems*, NRWA, 2001). We also suggest that EPA develop a matrix of affordability criteria so that any system that has valid affordability concerns will not be precluded from obtaining relief because it did not qualify under a single criterion such as a national MHI target.

NDWAC Affordability Recommendations, July 2003

- Safe and Affordable Variance Approach (SAVA) - A policy option that provides maximum public health protection

Recognizing that any increase in water rates for economically “sensitive subpopulations” is unaffordable and that the variance technology is always “protective of public health,” EPA should list variance technologies for all applicable rules. Authority for implementing the variance technology should be retained at the state and local level. States will decide on a case-by-case basis (based on local conditions) the appropriateness of variance technology. For example, some states use their own affordability test of 1 percent of the specific communities MHI to determine “disadvantaged community” eligibility for SRF funding – which may also be appropriate for variance technology decisions.

Education, source water protection, bottled water and “other means” should be used as a variance technology as authorized in the Safe Drinking Water Act. In some situations, communities are within the range of being protective of public health and meet the affordability criteria but cannot afford installation of expensive treatment technology. This will require EPA to determine what is “protective of public health” and the contaminant level that presents an “unreasonable risk to health” (URTH).

- Tradeoffs

Some have mentioned that low-income families are already paying over 2.5 percent MHI for water. While a fraction of a percent may be paying more than 2.5 percent of MHI, this perspective misses the main point of affordability, which are tradeoffs. Yes, a small fraction of families are paying more than 2.5 percent; however, they are trading off more important expenditures (food, health, doctors, etc.), which they have more discretion over. The fact that low-income families are currently paying over 2.5 percent MHI is proof that the current procedure is flawed. Low-income families will indeed pay more for water; Rubin has shown that families will always pay for rent and water. However, families will be forced to choose between paying for medical care, food, heat, or other necessities that directly impact public health.

Rubin’s studies document in detail the tradeoffs that low-income families are forced to make in order to pay for higher water rates. For example, a recent study conducted for the State of Iowa Department of Human Rights reached dramatic conclusions about the tradeoffs that low-income households must make in order to pay their utility bills (Mercier, Joyce M., Cletus R. Mercier, and Susan Collins, *Iowa’s Cold Winters: LIHEAP Recipient Perspective* (Iowa Dept. of Human Rights, 2000)). That study concluded that, in order to pay their home-heating bill, low-income households made the following tradeoffs: over 12 percent went without food at some point during the month, more than 20 percent went without

NDWAC Affordability Recommendations, July 2003

necessary medical care (failed to see a doctor when sick, failed to fill prescriptions for medicine, failing to take the full dosage of a prescription so it would last longer), nearly 10 percent were unable to pay their mortgage or rent, risking foreclosure or eviction, and almost 30 percent did not pay other bills or incurred debt to pay the heating bill. A researcher who has studied the problem for the U.S. Census Bureau concluded that one-third of households with incomes below \$10,000 per year were unable to meet at least one basic need (rent, utilities, food, medical care). In a later study, the same researcher concluded, “about 1 person in 5 lived in a household that had difficulty meeting at least basic needs. These included households that didn’t pay utility bills, didn’t pay mortgage or rent, needed to see the doctor or dentist but didn’t go, had telephone or utility service shut off, were evicted, didn’t get enough to eat, or otherwise didn’t meet essential expenses.”

During the proceedings of this panel, PBS, the New York Times, National Public Radio, and 60 Minutes all did exposés on the plight of low-income populations in the U.S. These features covered the reality of the difficulty of these economically sensitive subpopulations to afford housing, food, medical care, and obtaining employment. They also brought to light real people and families in dire economic situations. The documentaries highlighted increasing rates of unemployment in minority populations, housing expenses increasing at uncontrollable rates, and families avoiding medical care to pay for other expenses necessary for survival.

- *The Politics of Variance Technology*

Small low-income communities do not understand why the panel does not recognize the fact that millions of families can’t afford one or more \$400/year increases in their water rates? NRWA is concerned that the panel did not acknowledge a realistic affordability level because it would require EPA to determine a variance technology policy, which incidentally is the Congressionally prescribed solution to unaffordable EPA rules. Some panelists argued that variance technology allows for higher concentrations of contaminants in drinking water, and therefore results in lower safety of drinking water, and that states can’t implement variance technology. We believe these arguments are “red herrings.”

We believe that the granting of variances should be embraced and used as widely as possible, to provide the greatest potential for public protection in low-income and rural households. As Scott Rubin’s research revealed, cost is a function of, and arguably the most critical component of, public health protection for low-income households. Since every variance is de facto: (1) protective of public health; and (2) a cost savings to low-income families, the more variances granted, the greater the over-all public health. Before any variance technology is identified, EPA must conclude that the variance technology is “protective of public health.” Who could credibly argue that 10.1 ppb of arsenic is unsafe, while 10.0 ppb is safe? Even under the most legally liberal federal policy of granting variances, local and state oversight still exists. States may use the EPA authorization of

NDWAC Affordability Recommendations, July 2003

variance technology at their discretion; there is no right to install the EPA-identified variance technology. Also, a state must determine that each variance ensures “adequate protection of human health.” If anything, this bureaucratic hurdle is already too burdensome. More importantly, every community has the choice of whether or not to install the variance technology. Limiting the use of variance technology, through administrative actions, increases the potential for overriding a local population’s own decision on how best to utilize their limited resources. Maximizing public health protection means allocating limited public health resources in the most effective manner.

State agency representatives and others have expressed opposition to utilization of the variance provisions because of the complexity and, in their opinion, the potential for the creation of a two-tiered standard setting program. On the other hand, small communities do not believe EPA nor states can decide which provisions of the SDWA to implement and which to not. Under the SDWA, EPA is required to exploit the small systems’ variance provisions when triggered by mandated EPA determination (i.e., affordability). Congress has already spoken on this issue, and has overwhelmingly agreed that EPA must implement a small system treatment variance program consistent with the Act.

Can EPA identify a drinking water standard above the MCL that is protective of public health (PPH) or an unreasonable risk to health (URTH)? That is what the law requires; however, it has not been adequately implemented. For example, in March, EPA did not find that arsenic concentrations above their standard necessarily present an “unreasonable risk to health (URTH).” Instead of identifying the levels of arsenic that are “protective of public health” as contemplated by the variance technology provision in the Act, EPA creatively chose to identify what these levels are not. “EPA is... determining what does not pose an unreasonable risk to health with respect to arsenic, rather than addressing the much more complex issue of what does constitute an unreasonable risk to health.” Does this make sense? EPA cannot say what “is” a health risk, only what is “not” a health risk. If EPA cannot determine PPH or URTH, we should know that.

EPA should identify what constitutes PPH and URTH as contemplated by the SDWA for all contaminants or provide a clear definition of principle for determining such levels.

We understand the concern of those who do not wish to go down the road of a variance technology, which requires a wholly new and separate cost benefit analysis using a mixture of URTH, PPH, and affordability. It would be complex and politically risky. Also, it could result in a conundrum. For example, if EPA declared that 10.1 ppb of arsenic presented no unreasonable risk to health and allowed small communities with affordability problems to utilize “other means” that supplied water greater than the MCL it may be politically difficult to argue the 10.0 standard is necessary for larger, more affluent, systems. However, the answer

NDWAC Affordability Recommendations, July 2003

is not to shut the door on variance technology; because, it denies a solution for low-income populations, forces them into harmful tradeoffs, and small system variances are required by law.

- Environmental Justice

Some have argued that variance technology presents an environmental justice issue (poorer communities receiving less public health assistance than richer communities). However, this argument neglects the reality that cost per family is a function of public health. The main environmental justice issue is EPA's overly high 2.5 percent MHI affordability level. Again, if we can conclude anything from Scott Rubin's research, it is that cost is a function of, and, arguably, the most critical component of, public health protection. EPA has stated that the purpose of its affordability determination is to "look across all the households in a given size category of systems and determine what is affordable to the typical, or middle of the road household." [FR 6975-7066] EPA's MHI standard does not adequately consider the quantity, concentration, and financial abilities of low-income families or disadvantaged communities; EPA did not take into consideration the ability of low-income and rural populations to afford the rule as required by the Agency's Environmental Justice policy. [Executive Order 12898].

- Alternative Approaches

The scope or mission of the panel includes the objective to find "alternative approaches to those used to-date by the Agency." The panel lists numerous recommendations under this category including new polices on rate structures, consolidation, funding programs, changes to federal programs, state programs, roles for private systems, etc. It is presumptuous to consider additional federal authorities (that Congress chose not to authorize in their 1996 review of the Act) to address small community affordability problems without an initial determination that the SDWA is incapable of working in small and/or low-income communities. Under the Safe Drinking Water Act, Congress set the nation's drinking water policy, and directed EPA to deal with poor and small communities' affordability problems by implementing cost-benefit, variance technology, affordability determinations, exemptions, funding and other provisions authorized in the Act. We don't see this panel or EPA with the authority to trump, rewrite, or limit implementing what Congress has directed in the Act.

- Consolidation Policy

EPA's authority to form consolidation policy is limited under the SDWA to the provisions in the SRF, enforcement, and variance sections. Policy recommendations outside the limited federal scope should be resisted. NRWA supports consolidation when it will result in the greatest public health protection for the consumers. We believe this is what EPA Assistant Administrator Tracy Mehan envisioned when he coined the term "appropriate consolidation."

NDWAC Affordability Recommendations, July 2003

However, many consolidation polices do not result in the greatest public health protection of consumers, but, rather, result in other objectives such as: (1) decreasing the number of drinking water systems in the country so that the regulatory burden is decreased; or (2) eliminating the universe of systems that are not considered “viable” by some arbitrary standard. The latter objective leaves many of the poorest families with public drinking water that may be better than no access to public water, but not as good as the system considered viable; it limits incremental public health improvements for systems below the “viable” standard by eliminating that public water supply.

Under the small system variance section, a state retains full discretion to determine if a system should be consolidated before it is granted a variance, so there is neither authority nor need for EPA policy. Small communities support a common-sense consolidation policy (i.e., consolidate when doing so would result in the greatest public health protection). In other words, if a system is out of compliance and the rule is determined unaffordable, the system should be allowed to choose the more economical option (either the variance technology or consolidation). Both options ensure equal public health protection because implantation of the most economical solution ensures that the extra funds will be retained for needs necessary for survival (e.g., health care, food, etc).

- *Consolidation and Limiting Local Choice*

Communities will choose to consolidate when it is in their self-interest (when it makes economic sense). Rural Water has assisted and promoted consolidation of hundreds of water systems when it made sense and had local support. We are aware that EPA continues to study and analyze “barriers to consolidation” and other issues. EPA and other organizations continually study this theory, but rarely do they consider the perspective of local citizens or communities when they make their conclusions.

The NDWAC panel report recommends that consolidation is “probably the most effective long-term compliance option for small systems...This approach is being increasingly implemented to achieve cost reduction and greater water management expertise.” This statement leads NRWA to believe that the panel assumes consolidation, as a rule, results in cheaper water service because economies of scale are realized. The report calls for new consolidation initiatives at the state, local, and federal level. The reality of consolidation is that in **certain** instances consolidation results in cheaper water service and in other instances it results in more expensive water service. The report, at best, glosses over and, at worst, omits this very important concept.

Small communities do not resist consolidation when it is in their best interest. Local governments can, and will, act on behalf of their own self-interest; this was not recognized by the panel. For example, the panel finds that, “while Federal and

NDWAC Affordability Recommendations, July 2003

State policies have increasingly emphasized the benefit of consolidation, significant political, geographical and business barriers have prevented widespread consolidation.” This idea has been raised for years without evidence. We continually ask for the list of communities that would be better off if they consolidated but are unwilling. No such empirical evidence is presented in this report nor have we ever seen such evidence.

The private water industry and the environmental community have long supported consolidation incentives. In some cases, consolidation incentives put into law can create unfair legal structures favoring privatization. For example, in the 1996 Act, a system that consolidates may avoid some civil enforcement fines. However, no such avoidance of fines exists if a system chooses to comply through some other means like treatment or new source water. It is unfair to allow only one compliance option when it is not necessarily the most economical.

Small communities support retaining all local government authority over consolidation, cooperation, and restructuring decisions. This assures the best possible decisions for the local citizens. Considering all the complexity of determining local public health policy (cost, benefits, tradeoffs, etc.), there is no better mechanism for determining the best local public health policy than the local citizens’ choice.

- Dual Standards

The NDWAC panel misleadingly reports that variance technologies are not protective of public health. For example the report states that, “variance technology does not result in water quality that meets EPA standards,” and “more water systems will be permitted to operate with water that does not meet the desired EPA MCL national standard and the double standard issue will be exacerbated.” The SDWA does not include a provision for a “desired” MCL - it authorizes regulations that include MCLs and small system variances technology - and does not value one method of compliance over another. Furthermore, under the Act, using variance technology is part of the “national standard.” The report’s so called “dual standard issue” is something contrived. Both the MCL level and the protection of public health level are safe. Variance technology is just an option to comply with the regulations not a separate standard. It makes even more sense considering that the MCL is not based on public health or safety, but based on “feasibility” (or affordability) of large water systems. Similarly, Congress has provided small systems with a method of compliance - small system variance technologies and other means - which is NOT a dual standard. Furthermore, variances provide the most public health protection possible and must be reviewed periodically until affordable technology can be identified.

NDWAC Affordability Recommendations, July 2003

- LIWAP and Federal Funding to Individual Households

NRWA does not support the recommendation for a LIWAP program or a new water tax. Major problems with the suggested approach include difficulty making the program work in very small communities: the need for major legislative reform; significant new monies to fund the program; and the fact that funding for this program would compete with drinking water initiatives and other funding priorities.

A water tax does not solve the problem of keeping EPA's rules affordable and workable. More appropriately, EPA should move in the direction of advocating more consumer choice of water quality and water rates. A water tax removes more discretion and choice from the local level about how to use their limited resources. Local governments (water and wastewater systems) are owned and operated by the local citizens – the people that we are trying to protect. They are the branch of government most responsive to and most representative of the will of the public. By their very nature, they strive to take every possible action to protect consumers -- themselves. However, every small community faces unlimited challenges and needs, with limited financial, administrative, and technical resources. They also need to ensure these resources are most effectively allocated to the most pressing needs.

Further, the law regulates communities, not individuals. Federal funding programs designed to assist with safe drinking water (SDWA) should retain the emphasis on providing funds to the entity they regulate (i.e., community/water systems). This retains the traditional federal/state/local governing structure, which has all sorts of checks and balance mechanisms. This should not be eroded. Local governments initiated their drinking water system without mandates, and are interested in continuing as the primary source for community welfare with regard to drinking water.

Principally, taxpayer subsidies should be prohibited from large profit generating companies or companies paying profits for shareholders/investors. Such subsidies should be reserved for identified social and welfare objectives. We believe that the distinction in mission between public and private (maximizing profit vs. providing for public welfare) is the core principal that should be recognized in funding programs designed to assist communities with drinking water safety. While maximizing profit is a noble virtue and as “American” as safe water, we do not think that taxpayers should help the cause of large privately owned systems.

- Changing or Re-prioritizing Local, State and Federal Programs

Small communities are not convinced that local and state government are administering ineffective programs and need new oversight or redirection of their policies. The report concludes “new and expanded State leadership is essential to promote cooperation among small systems.” How can the panel make this

NDWAC Affordability Recommendations, July 2003

conclusion without first identifying a state that is not fully taking an adequate leadership role over its communities? No states have been identified in the report.

The panel has supported major policy initiatives based on vague evidence of the need for such changes. For example the report recommends “all options that achieve full regulatory compliance need to be considered prior to and during the small system variance process.” We assume this is a recommendation that something new is needed, however, we are not sure just what is needed and by whom. Further, it is not clear what “full” regulatory compliance means versus “compliance.”

The panel report also concludes that, “since cooperative efforts are very effective in helping small system affordability problems, a larger share of loan and grant (principal and interest forgiveness) portions of the DWSRF should go toward supporting these cooperative efforts.” We have not seen the evidence that cooperative efforts are “very effective” to the point that the state government’s current use of the SRF funding needs to be changed. Also, this recommendation allows for “cooperative effort” to trump public health in awarding funding. We strongly believe that public health should be the priority of SRF funding and not be second to cooperative efforts. If cooperative efforts result in the most public health improvement, they should qualify, but priorities in distributing money should be clear and based on public health merit. This is presently the policy in all 50 states, and does not need to be changed.

While we agreed to the importance of existing education principle requirements, we are concerned about the vagaries of words like “meaningful.”

- *Meaningful local public education and local public participation effort*
- *Meaningful review for the system applying for a variance*
- *Meaningful incentives for assessing whether cooperative efforts are feasible*

We do not support more or new federal oversight but rather support retaining all current state and local authority.

The panel recommends the “expanded use of the private sector and large central utilities” to assist in the solution to affordability. However what is “expanded use.”

Much of the terminology used in the panel’s report is largely subjective and will likely have widely varying meanings in the future. We see no agreement on the meaning of these terms and see them as problematic, especially if they are interpreted to have some recommendation for legal policy.

The Work Group recommends that the “USDA’s water program and 7 U.S.C. 1926 (b) should not be modified to be similar to EPA’s programs.” This would be a

NDWAC Affordability Recommendations, July 2003

disservice to low-income rural populations trying to improve drinking water quality. We have not seen any problematic conflict between the mission of EPA and USDA. If anything, USDA has a more effective program in advancing public health because their mission is more focused on “assisting” rural low-income populations and basic public health, versus EPA’s focus on “enforcing” compliance with the regulatory requirements.

- Consideration of Dual Standards

The Work Group should have given more consideration to the use and EPA application of dual standards. EPA has routinely excluded certain categories of public water systems from having to comply with NPDWRs. These examples, while resulting in different outcomes all serve to illustrate examples of dual standards. Some cases result in outright exclusion from regulation; in others, differentially applying the regulation or imposing different regulatory requirements clearly documents that today’s implementation of the SDWA involves a system of dual standards. Existing cases of dual standards include:

- **Trihalomethanes** - EPA concluded that small system resources would best be spent on maintaining and improving microbiological quality and safety rather than imposing regulatory requirements to reduce TTHM levels. EPA established two different standards based solely on system size, for a substance that was considered to present a carcinogenic risk.
- **The 1998 Revised TTHM Standard as Part of the DBP Rule** - The revised TTHM standard was promulgated in 1998 as part of the Disinfection By-Products Rule (DBP) which lowered the TTHM MCL to 0.08 mg/L and applied to both community and non-community water systems of all sizes. [63 Fed. Reg. 69390, 69465; December 16, 1998] However, systems serving more than 10,000 people had a compliance deadline of December 31, 2001; for those serving fewer than 10,000 people, the compliance deadline is no later than December 31, 2003. [40 CFR 141.64(b)] Thus, a dual standard for TTHM remains in effect until the end of 2003.
- **Synthetic Organic Chemicals Rules** - In the final SOC rule, EPA decided to impose the SOC regulatory requirements to a subset of the previously excluded class of non-community water systems, but to continue to exclude non-community systems, that served transient populations such as campgrounds, parks and gas stations.
- **Lead and Copper** - The lead and copper rule represents another instance where EPA elected to exclude coverage from transient non-community systems.
- **Radon** - In 1999, EPA proposed the NPDWR for radon and to apply this new contaminant standard only to CWSs. [64 Fed. Reg. 59246, 59255; November

NDWAC Affordability Recommendations, July 2003

2, 1999] As already noted, EPA justified its decision to exclude these systems by relying on Congress' objective in passing the 1996 Amendments – “to focus regulations on the most significant problem.” EPA decided to exclude the TNCWS

- **Radionuclides** - EPA expressed a desire to rely on §1412(b)(6)(A) to exclude from the radionuclides rule, NTNCWSs because of the disparity between their specific costs and benefits. EPA estimated that the cost per cancer case avoided by regulating NCNTWSs would greatly exceed one hundred million dollars, well above the Agency's historical cost cut-offs for regulation, therefore, EPA elected not to regulate NTNCWSs.
- **Arsenic** - EPA's arsenic standard undertook a risk analysis very similar to the one performed on radionuclides but in this case came to a different conclusion. In its June 22, 2000 proposal, EPA proposed not to extend coverage to NTNCWSs and concluded, based on its analysis of the quantified benefits of bladder cancer reduction from lowered exposure to arsenic in drinking water, that “regulation of arsenic in NTNCWSs provides only very limited opportunity for national risk reduction.” By the time it promulgated the final arsenic rule in January 2001, EPA had changed its mind.

Given the overall thrust of the 1996 Amendments to provide EPA with greater latitude in prioritizing regulation and in fashioning individual rules to maximize health benefits while being sensitive to costs, it is understandable that EPA has continued its past practice of chiseling out categories of water systems where it is able to make a considered judgment that regulation will not provide cost-effective benefits. It follows that if EPA has the authority to apply only certain portions of a regulation to a category of water systems, or more significantly outright exclude a category of water systems from coverage, then issuing variances for unaffordable regulations is in the Agencies best interest to promote the most effective increase in public health protection.

3.0 Conclusion

When valuing the merits of this report and its recommendations, it is important to remember that NRWA is the only member of the panel that represents small communities and their customers (or citizens) democratic voice. We represent over 22,000 communities and their local governing structure. No other organization on the NDWAC affordability panel is directly accountable to small communities or their customers. Private water systems that “sell” water to people for a profit do not represent local communities, no more than any other community business. The broad range of interests that have participated on the panel have offered some helpful advice in their subject matter areas of expertise, but do not necessarily always represent the needs of the local community. This must be remembered when considering terminology of “minority” and “majority” positions in the final NDWAC report, and issues of paternalism. This report represents a consensus among the highest percentage of small communities (over 50 percent of small communities across the U.S.).

NDWAC Affordability Recommendations, July 2003

In 1996, Congress envisioned a new law with provisions to assist small communities as described by Senator Baucus on the Senate Floor, *“The bill provides special help to small systems that cannot afford to comply with the drinking water regulations and can benefit from technologies geared specifically to the needs of small systems. Here is how it would work. Any system serving 10,000 people or fewer may request a variance to install special small system technology identified by EPA. What this means is that if a small system cannot afford to comply with current regulations through conventional treatment, the system can comply with the act by installing affordable small system technology”* There are thousands of such communities in the U.S.; to date, EPA has not allowed any one of them the opportunity to use variance technology. If Congress’ prescribed solution to the affordability problem is unworkable because EPA can’t determine variance technology policy (“reasonable” affordability standards, contaminant concentrations that are protective of public health, and alternative variance treatment methods) then this should be clearly stated and reported to Congress. Until such time that Congress determines they need to rewrite the Act, we should assume they meant what they passed in 1996.