Summary: Arbitrariness in EPA Drinking Water Standards that have resulted in harm to small and rural communities; precipitous rates increases that are not related to public health protection

One the main problems with EPA’s process for setting and enforcing drinking water standards is the agency will not or can not tell the consumers the most important public health fact; what level of these substances is unsafe in drinking water. The current federal system for identifying enforceable standards is not primarily based on public health, nor health effects science, but primarily on the feasibility of what a large city can afford. For example, the EPA established a standard of 10 parts per billion (ppb) for arsenic in drinking water. It would seem that common sense would dictate that any level above the standard would be a health risk. However, when pressed by Congress to confirm this, EPA didn’t or couldn’t. In 2002¹, EPA did not find that arsenic concentrations above their standard necessarily present an “unreasonable risk to health.” Instead of identifying the levels of arsenic that are “protective of public” or don’t present “an unreasonable risk to health” as named in the Safe Drinking Water Act (SDWA), and that the Agency was requested to name by several Congressmen, 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 address the much more complex issue of what does constitute an unreasonable risk to health.” EPA can’t say what “is” a health risk, only what is not a health risk (which was based on an arbitrary time-delay scheme). Are citizens supposed to be persuaded by EPA that they should triple their water rates on low-income families to treat their water, when EPA can’t say their arsenic level is not protective, or is an unreasonable risk?

Congress should mandate that EPA identify these public health levels that were supposed to be determined as part of the SDWA.

1. In February, the U.S. Small Business Administration (SBA) accepted the petition of the National Rural Water Association (NRWA) to name the Environmental Protection Agency’s (EPA) affordability criteria for small communities as one of their “Top 10 Rules for Review.” SBA said streamlining and updating these regulations would help ease the disproportionate federal regulatory burden placed on small communities. NRWA’s petition² called for increased flexibility in the application of EPA’s “variance” rules under the Safe

¹ http://www.ruralwater.org/arsenicguidance.pdf

² http://www.ruralwater.org/sba%20affordability.pdf
Drinking Water Act. This flexibility is only allowed in cases where innovative technology can reduce compliance cost and ensure protection of public health. EPA has never allowed for the use of variances in small communities. Currently, small communities are prohibited from utilizing economical treatment options (the so-called small system variance technologies), under the EPA rules, because EPA adopted a policy that families can afford annual water rates of 2.5% of median household income (MHI) (or approximately $1,200 per household). EPA’s MHI standard does not consider the quantity, concentration, rural demographics, and financial abilities of low-income families or disadvantaged populations to afford the rule as required by the Agency's Environmental Justice policy [Executive Order 12898]. EPA should adopt a new policy for small community affordability determinations under the variance process similar to S. 2509 (111th Congress). This would enhance public health, especially in low-income communities by allowing for the use of the SDWA’s affordability and variance provisions. The bill mandates that – for standards that are driven by cost (economics) – be no more expensive in rural and small communities, than in large communities.

2. In December, 2008, NRWA requested that the EPA modify their public notification regulations under the SDWA to limit the current rule’s effect of misleading and unnecessarily alarming the public and costing local governments millions of dollars each year in administrative expenditures. EPA denied the NRWA request in 2008. Each year EPA requires small and rural communities to mail out thousands of public notices that are misleading to the public. For example, after the EPA mandated public notice by a small community in Kentucky, the State of Kentucky was compelled to publish a notice to the public to educate the public that the alarming information that the federal EPA required to be publish was misleading.3 The cost of distributing the EPA information has to be paid by the community and can cost thousands of dollars per town.

3 www.ruralwater.org/pnky.pdf