

America's Water Infrastructure Act: Promoting Water System Compliance and Long-term Capacity via the Water System Restructuring Rule

Purpose

AWIA amends SDWA Subsection 1414(h) - Consolidation Incentive - to require that EPA issue a regulation which authorizes primacy agencies to mandate restructuring assessments for public water systems (PWSs) which frequently violate health-based standards, and which have unsuccessfully attempted, or which are unable to attempt, feasible and affordable actions to comply. The assessments must be tailored to the water system's size, type, and other factors, and cannot be overly burdensome. The regulation also must describe liability protection for a compliant PWS which is consolidating with an assessed PWS. In addition, primacy agencies may provide enforcement relief to PWSs under contractual agreements to correct violations identified in a restructuring plan. AWIA also amended SDWA Section 1413 requirements for primary enforcement responsibility to include the new mandatory assessment authority. As a result, all primacy agencies will need to update their primacy status to meet the new requirement. In response to the AWIA mandate, EPA is developing the Water System Restructuring Rule, which will include both the consolidation incentive provisions under Subsection 1414(h), and the primacy requirements under Section 1413, of the SDWA.

Background

Since the AWIA became law:

- ❖ Primacy agencies also may provide enforcement relief under a contract for managerial or administrative functions.
- ❖ Assessments must be tailored and should not be "overly burdensome"
- ❖ Primacy agencies, EPA, approved third parties, or the PWS under assessment may conduct the assessments
- ❖ Restructuring plans are eligible for DWSRF Funding
- ❖ Primacy agencies may offer liability protection to a "non-responsible system" under an approved restructuring plan
- ❖ EPA must publish a regulation for SDWA 1414(h) by October 2020

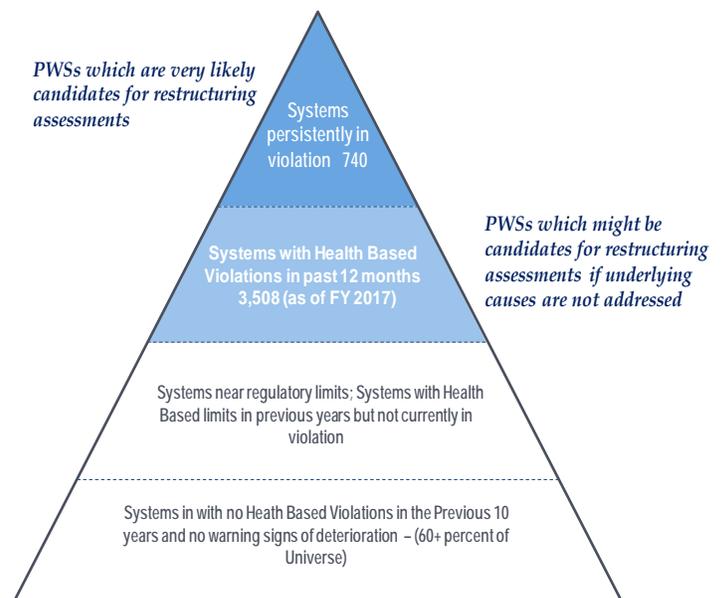
Because AWIA also changed primacy requirements, all state, local and Tribal primacy agencies must revise their primacy status and resubmit applications to the EPA for review and approval.

Key Concepts for the Water System Restructuring Rule

- ❖ Tailoring of a mandatory assessment to the assessed water system's size, type and "other characteristics" to be defined in the rule.
- ❖ Ensuring a mandatory assessment is not "overly burdensome" on the assessed water system, as defined in the rule
- ❖ Protection of the non-responsible system from liability for violations incurred by an assessed water system when the systems consolidate
- ❖ Enforcement relief under a primacy-agency approved restructuring plan
- ❖ Relationship of a mandatory assessment to a restructuring plan

Implementation

As mandated under SDWA 1414(h)(6), the EPA will be developing a Water System Restructuring Rule which governs mandatory restructuring assessments. The Agency will consult with state and Tribal primacy agencies, water system associations, technical service providers, and other stakeholders. The Water System Restructuring Rule also will define valid water system restructuring plans and mandatory restructuring assessments, and clarify when a plan must be based on an assessment. In addition, the rule will clarify when a primacy agency may provide enforcement relief and liability protection for water systems under a restructuring plan, describe how the assessments must be tailored to the water system, and define what it means for an assessment to not be "overly burdensome."



SEC. 2010. ADDITIONAL CONSIDERATIONS FOR COMPLIANCE

(a) MANDATORY ASSESSMENT—Subsection (h) of section 1414 of the Safe Drinking Water Act (42 U.S.C. 300g–3) is amended by adding at the end the following:

“(3) AUTHORITY FOR MANDATORY ASSESSMENT—

“(A) AUTHORITY—A State with primary enforcement responsibility or the Administrator (if the State does not have primary enforcement responsibility) may require the owner or operator of a public water system to assess options for consolidation, or transfer of ownership of the system, as described in paragraph (1), or other actions expected to achieve compliance with national primary drinking water regulations described in clause (i)(I), if—

“(i) the public water system— “(I) has repeatedly violated one or more national primary drinking water regulations and such repeated violations are likely to adversely affect human health; and “(II)(aa) is unable or unwilling to take feasible and affordable actions, as determined by the State with primary enforcement responsibility or the Administrator (if the State does not have primary enforcement responsibility), that will result in the public water system complying with the national primary drinking water regulations described in subclause (I), including accessing technical assistance and financial assistance through the State loan fund pursuant to section 1452; or “(bb) has already undertaken actions described in item (aa) without achieving compliance; “(ii) such consolidation, transfer, or other action is feasible; and “(iii) such consolidation, transfer, or other action could result in greater compliance with national primary drinking water regulations.

“(B) TAILORING OF ASSESSMENTS—Requirements for any assessment to be conducted pursuant to subparagraph (A) shall be tailored with respect to the size, type, and characteristics, of the public water system to be assessed.

“(C) APPROVED ENTITIES—An assessment conducted pursuant to subparagraph (A) may be conducted by an entity approved by the State requiring such assessment (or the Administrator, if the State does not have primary enforcement responsibility), which may include such State (or the Administrator, as applicable), the public water system, or a third party.

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“(D) BURDEN OF ASSESSMENTS—It is the sense of Congress that any assessment required pursuant to subparagraph (A) should not be overly burdensome on the public water system that is assessed.

“(4) FINANCIAL ASSISTANCE—Notwithstanding section 1452(a)(3), a public water system undertaking consolidation or transfer of ownership or other actions pursuant to an assessment completed under paragraph (3) may receive a loan described in section 1452(a)(2)(A) to carry out such consolidation, transfer, or other action.

“(5) PROTECTION OF NONRESPONSIBLE SYSTEM—

“(A) IDENTIFICATION OF LIABILITIES—

“(i) IN GENERAL.—An owner or operator of a public water system that submits a plan pursuant to paragraph (1) based on an assessment conducted with respect to such public water system under paragraph (3) shall identify as part of such plan—“(I) any potential and existing liability for penalties and damages arising from each specific violation identified in the plan of which the owner or operator is aware; and “(II) any funds or other assets that are available to satisfy such liability, as of the date of submission of such plan, to the public water system that committed such violation.

“(ii) INCLUSION—In carrying out clause (i), the owner or operator shall take reasonable steps to ensure that all potential and existing liabilities for penalties and damages arising from each specific violation identified in the plan are identified.

“(B) RESERVATION OF FUNDS.—A public water system that, consistent with the findings of an assessment conducted pursuant to paragraph (3), has completed the actions under a plan submitted and approved pursuant to this subsection shall not be liable under this title for a violation of this title identified in the plan, except to the extent to which funds or other assets are identified pursuant to subparagraph (A)(i)(II) as available to satisfy such liability.

“(6) REGULATIONS—Not later than 2 years after the date of enactment of America’s Water Infrastructure Act of 2018, the Administrator shall promulgate regulations to implement paragraphs (3), (4), and (5).”

(b) RETENTION OF PRIMARY ENFORCEMENT AUTHORITY—

(1) IN GENERAL—Section 1413(a) of the Safe Drinking Water Act (42 U.S.C. 300g–2(a)) is amended—

(A) in paragraph (5), by striking “; and” and inserting a semicolon;

(B) by redesignating paragraph (6) as paragraph (7); and

(C) by inserting after paragraph (5) the following new paragraph:

“(6) has adopted and is implementing procedures for requiring public water systems to assess options for consolidation or transfer of ownership or other actions in accordance with the regulations issued by the Administrator under section 1414(h)(6); and”.

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(2) CONFORMING AMENDMENT—Section 1413(b)(1) of the Safe Drinking Water Act (42 U.S.C. 300g–2(b)(1)) is amended by striking “of paragraphs (1), (2), (3), and (4)”.

SEC. 2009. CONTRACTUAL AGREEMENTS

(a) IN GENERAL—Section 1414(h)(1) of the Safe Drinking Water Act (42 U.S.C. 300g–3(h)(1)) is amended— (1) in subparagraph (B), by striking “or” after the semicolon; S. 3021—83 (2) in subparagraph (C), by striking the period at the end and inserting “; or”; and (3) by adding at the end the following new subparagraph: “(D) entering into a contractual agreement for significant management or administrative functions of the system to correct violations identified in the plan.”.