

Public Meeting on Variances and Exemptions

EXECUTIVE SUMMARY

Office of Enforcement and Compliance Assurance
Office of Ground Water and Drinking Water
September 16, 1997
Loew's L'Enfant Plaza Hotel
Washington, DC

Under the 1996 Amendments to the Safe Drinking Water Act (SDWA), EPA is required to promulgate regulations with respect to variances and exemptions. To meet this requirement, EPA has established an inter-office team led by the Office of Enforcement and Compliance Assurance (OECA) and assisted by the Office of Ground Water and Drinking Water (OGWDW). A public meeting was held on September 16, 1997 at Loew's L'Enfant Plaza Hotel so that EPA may solicit input from stakeholders to inform its rulemaking effort.

John Lyon of OECA opened the meeting by welcoming the attendees, and stated that the purpose of the meeting is to solicit input from stakeholders that will help inform EPA's rulemaking effort. He then introduced to all attendees the EPA inter-office team currently drafting these regulations. Ian Kline of the Cadmus Group facilitated the meeting.

Peter Shanaghan of OGWDW presented to the attendees an overview of the variance and exemption provisions of the 1996 SDWA amendments. The overview included a discussion of the differences between variances and exemptions, how these provisions have changed under the recent SDWA amendments, and the new role of affordability in implementing these provisions. He then presented the attendees with several key questions regarding the content of EPA regulations on small systems variances and exemptions.

I.

As shown below, EPA posed five major questions to the attendees. Each question included a subset of more specific questions to help focus discussion.

1) **What is a public water system's role in obtaining a Small System Variance?**

- How much information (and with what level of detail) should a public water system be expected to assemble in applying for a variance?
- What type of analysis, if any, should the public water system be expected to supply in its variance application?

2) **What is a State's role in granting a Small System Variance?**

- How should the state use its affordability criteria and the variance application to consider whether alternative treatment techniques, development of alternative sources, or restructuring/consolidation are affordable and practicable for the variance applicant?

3) **What is the Public's role in the proposed granting of a Small System Variance?**

- How, and at what time should the public be notified of a proposed Small System Variance?
- Should the State respond to significant public comment on the proposed variance?
- What types of information should be included in a petition to EPA by consumers of the public water system?

4) **What types of terms and conditions should a Small System Variance contain?**

- To what extent should EPA define "technical and financial capability" and operationalize operating and maintenance requirements under 1415(e)(7)(A)(ii)?
- What types of considerations should compliance schedules and milestones contain?
- How often, and on what basis, should EPA review State programs with respect to the terms and conditions of Small System Variances?

- How should the State make determinations with respect to adequate protection of public health?

5) What types of terms and conditions should exemptions consider?

- How should the State determine that the proposed exemption will not lead to an unreasonable risk to health?
- What type of State review is necessary for an extension of an exemption?

II.

Based on these questions, the attendees provided a large amount of useful information to the EPA inter-office team. Shown below are general responses to the questions from the attendees.

1) Small system variance application:

Attendees provided a wide range of responses, including that the system should have to provide very little information in its small systems variance application. Others stated that the system should provide as much information as is available to the system, and that the State should provide other information where needed in its review of the variance application. Some attendees stated that the information that the system provides should include an assessment of the system's financial status, the condition of its equipment, and who owns and operates the system, as well considering the water system in the context of the community it serves as a whole.

2) State review of variance applications:

Attendees echoed many of their responses to the previous questions, and some also stated that the State should have the flexibility to determine how information for a variance application is gathered and how its affordability criteria is used to make determinations with regard to a small system's compliance options.

3) Public notification of proposed variances:

Responses ranged from an acknowledgment the importance of the consumers role in the small systems variance process to the need for a public hearing, and that a public hearing is sufficient public notice of a proposed variance. Also, some attendees stated that the notice of proposed variance could be directly sent to the consumers by the water system.

4) Terms and conditions of proposed variances:

Responses ranged from a focus on State flexibility to determine terms and conditions of proposed variances, to EPA accountability to ensure that the terms and conditions achieve the intended result. Some attendees stated that milestones should be established and enforced by the State, while others stated that milestones are burdensome to States. Some Attendees stated that EPA health advisories would be useful to the States in determining "unreasonable risk to human health", and while others added that the State should look at the health effects of the variance technology over time.

5) Terms and conditions of proposed exemptions:

Many attendees echoed statements made under terms and conditions of proposed variances with regard to "unreasonable risk to health." Some attendees stated that renewal of exemptions should require another analysis of compliance options, and that states need the flexibility to change the terms and conditions of exemptions. Finally, the issue of environmental justice was raised and addressed.

John Lyon of OECA closed the meeting by thanking everyone for their helpful participation and input. For further information, contact Richard Alonso on (202) 564-6048 or Andrew Hudock on (202) 564-6032.