

# Proposed Water System Restructuring Assessment Rule (WSRAR)

# Why EPA is Proposing the WSRAR

## **AWIA of 2018 amended the SDWA to:**

- Require EPA to issue this rule.
- Provide states with a new authority to mandate restructuring assessments.

## **Under SDWA States may mandate assessments of a water system when:**

- The water system repeatedly violates safe drinking water standards in NPDWRs.
- The water system cannot (or will not) take feasible, affordable actions to comply, or it has failed to successfully restructure on its own.
- The state finds that restructuring is feasible.
- The state finds that restructuring is likely to resolve the water system's compliance challenges.

## **AWIA also amended SDWA (Primary Enforcement Responsibility, or “primacy”) to include a mandatory assessment program.**

- Primacy revisions are mandatory because this SDWA section was amended. States must submit applications to EPA within 2 years of the final rule publication date with possible 2-year extension.

# What is Restructuring?

**Restructuring** is a *change in the management, ownership, operations, or physical infrastructure* of a water system to improve water system capacity to comply.

***Informal and short-term restructuring options*** include:

- Sharing of operators or equipment
- New treatment technology installation

***Longer term and/or permanent restructuring options*** include:

- Debt restructuring
- Interconnection with another water system
- Ownership transfer
- Consolidation with another water system

# Non-Binding Guiding Principles of Water System Restructuring

## Evaluate Restructuring Alternatives Based on Community Needs

- Planning should focus directly on the status and needs of the community served.
- Develop locally driven approaches to restructuring.
- Consider how socio-economic conditions and affordability affect feasibility of options.

## Engage Affected Communities Directly in Restructuring Decision Making

- Provide comprehensive information about governance and ownership types.
- Use trained facilitators and technical assistance providers to clearly communicate the costs and benefits of restructuring options
- Provide background information, access to state data, and mapping and planning tools.

## Ensure Community Capacity to Make Affordable Investments in Safe Drinking Water

- 2021 Bipartisan Infrastructure Law (BIL): \$16.7 billion in added DWSRF funds available the next two years.
- EPA's Small, Underserved and Disadvantaged Community (SUDC) grant program.
- TCTAC (Thriving Communities Technical Assistance Centers) grant program.
- EPA-funded Environmental Finance Centers (EFCs).

# Proposed WSRAR: Three Regulatory Components

## 1. Mandatory Primacy Revisions.

- All states must submit *primacy revisions* for a new mandatory restructuring assessment program.
- New *reporting and recordkeeping* requirements.

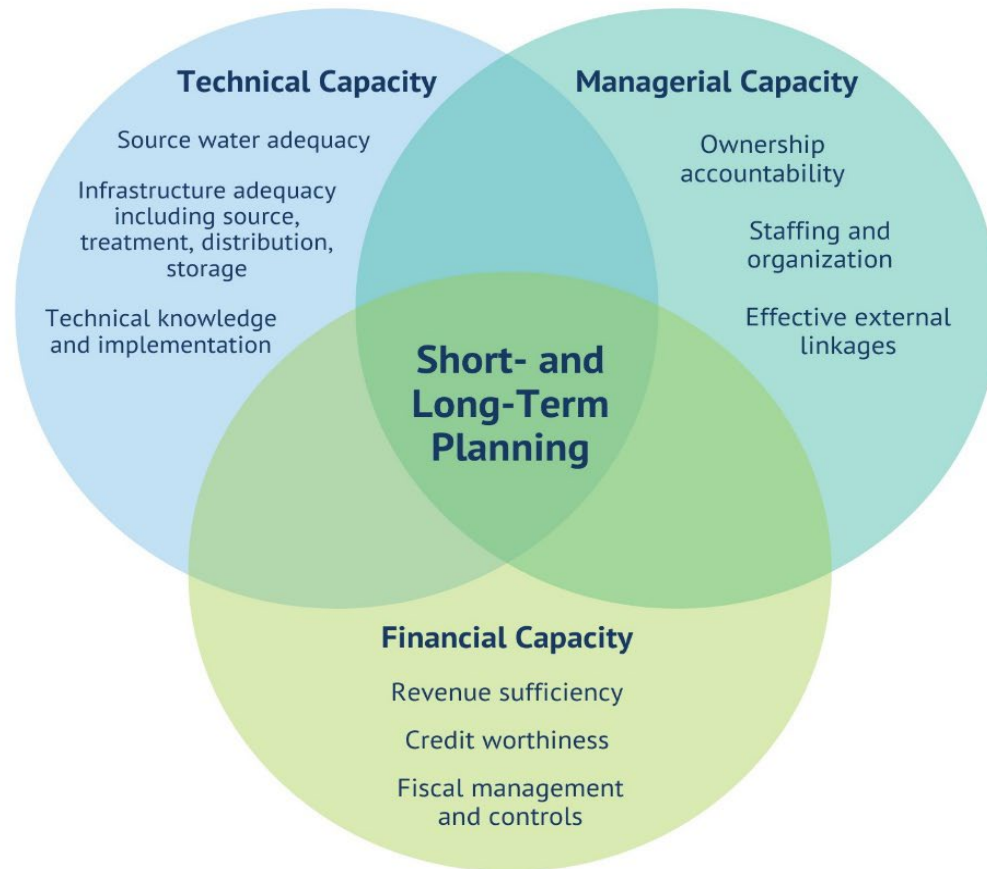
## 2. Mandatory Assessment Requirements.

- Assessment must identify at least one restructuring option to build long-term capacity.
- “Tailoring” of assessments by identifying options based on the assessed water system’s characteristics:
  - Population served, sources of drinking water, capacity to comply
  - Underserved or disadvantaged status of the service community
  - Geography and hydrogeology

## 3. Eligibility criteria and schedule requirements for restructuring plan incentives.

- Enforcement relief for struggling water systems.
- Liability protection for compliant water systems that partner with assessed water systems.

# Long-Term Goal is Technical, Managerial and Financial Capacity to Sustainably Provide Safe, Affordable Drinking Water



## Expected Benefits:

- ***Increased likelihood that assessed water systems will sustainably restructure*** to provide safe, affordable drinking water.
- ***Reduced state and EPA administrative costs*** of enforcement against persistently noncompliant water systems.

# WSRAR Restructuring Assessment Requirements

- When a state may mandate an assessment – 4 criteria.
- Which entities may perform an assessment.
- Assessment report content and “tailoring” requirements, including ensuring that any option will provide access to safe, affordable drinking water.
- Schedule requirements.
- Public engagement:
  - Public meetings for assessments that identify consolidation or ownership transfer.
  - Sharing electronic and paper copies of assessments with the community.
  - State consultation with assessed water systems about next steps.

# Restructuring Plan Incentives and Eligibility

Rule includes *three* SDWA incentives to encourage voluntary water system restructuring:

- DWSRF funding is available for identified restructuring activities.
- Enforcement relief for up to 2 years.
- Liability protection for a compliant water system partnering with a struggling water system.

***Four* restructuring plan types are eligible<sup>\*</sup> for enforcement relief or liability protection:**

- Physical consolidation.
- Administrative/managerial consolidation.
- Transfer of ownership.
- Contracts for administrative or managerial functions of a water system to resolve violations identified in the plan.

<sup>\*</sup>A water system may develop a plan for other types of restructuring, such as upgrades to treatment technologies or interconnection with another water system, but these plans are not eligible for enforcement relief or liability protection under SDWA.



# Restructuring Plan Incentives - Time Frames\*

After a Restructuring Plan is Submitted to the State...

## Enforcement Relief

- State Determines Plan is Eligible Type (**60 days**)
- State Approves Plan Eligible for Relief (within **12 months**)
- Up to 2 years of Enforcement Relief Begins on Approval Date, **Before Restructuring has Started.**
  - Relief only applies to violations identified in the approved plan.

## Liability Protection

- State Determines Plan is Eligible Type (**60 days**)
- State Approves Plan Eligible for Protection (within **18 months**)
- Liability Protection Begins **After State Determines Restructuring is Complete**
  - Protection only applies to violations identified in the approved plan.

\*Proposed time frames assume states could make multiple concurrent plan type and eligibility determinations.

# Example: Persistently Noncompliant Water System under WSRAR

**Step 1. State uses SDWA criteria to identify the water system to be assessed. State notifies the **assessed water system**.**

- Assessed water system has 30 days to request state approval of: (a) self-assessment or (b) intent to hire a third-party assessor.
- State performs the assessment if it does not approve or if the water system does not respond within 30 days.

**Step 2. State or state-approved third party performs mandatory assessment using tailoring criteria.**

- Feasibility of options is based on physical, technical and socio-economic factors.

**Step 3. State-approved assessor completes mandatory assessment report.**

- How violations at the assessed water system will be resolved.
- How violation causes will be addressed and how long-term TMF capacity will be enhanced.
- How tailoring criteria were used to identify feasible options.
- How identified options will ensure access to safe, affordable drinking water.
- Whether consolidation or ownership transfer is feasible for the assessed water system and if not, why not.
- Documentation supporting the analysis.

**Step 4. State holds public meeting\* and consults with the assessed water system. Electronic and paper copies of the state-approved assessment report are shared with the the public.**

\*Public meeting only required if the assessment identifies consolidation or ownership transfer as feasible options

## Example: Partnering Compliant Water System under WSRAR

- WSRAR includes **liability protection incentive** for a **compliant** (non-responsible) water system to consolidate with or acquire an assessed water system.
- If the State approves a restructuring plan and determines that all restructuring is complete, the compliant system is not liable for assessed water system violations.
- The compliant water system must use acquired assets of the assessed water system (to the maximum extent available) to compensate the state.
  - **Example:** \$100,000 in fines and penalties; \$75,000 paid with assessed water system assets, remaining \$25,000 waived.
  - *Compliant partnering water system is never liable for the identified violations and does not use its own funds or assets to pay penalties or fines.*

# Public Engagement Requirements for Restructuring Plans

## Public Meetings

- State holds a public meeting as soon as practicable after determining a plan is an eligible type. Eligibility must be determined **within 60 days** of receiving a restructuring plan.
- The public meeting must satisfy **EPA notice, location and time** requirements.
- The meeting should inform the community, describe possible impacts on access to safe, affordable drinking water, and allow the community to provide input.

## Availability of Restructuring Plans

- **Within 30 days** of determining that a plan is eligible for either enforcement relief or liability protection, the state must:
  - Post the plan on the state's website for the fastest possible access.
  - Make hard copies available for residents without internet services in one or more public libraries as near as possible to the local community.

# Key Messages about the Scope of the Proposed Rule

**Community engagement is required for assessments and plans.**

- States must hold public meetings. Assessment reports and restructuring plans must be publicly available.

**Assessments of restructuring options must be “tailored” to the water system and the community.**

- Physical, technical *and* socio-economic factors must be considered.

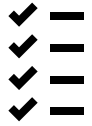
**Water system restructuring under the proposed WSRAR is voluntary.**

- States and EPA may not mandate restructuring, only an assessment.

**States have flexibility when using their new assessment authority.**

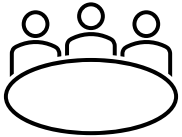
- There is no SDWA or regulatory “trigger”.
- States “may mandate” assessments- not “shall mandate” - even for struggling water systems.

# Request for Public Comment – Key Topics



## Tailoring criteria

- What other water system characteristics should EPA consider for tailoring mandatory assessments?



## Expanded community engagement

- Should a Citizen’s Advisory Committee (CAC) or existing advisory body directly participate in assessments? How should states and water systems engage the broader community?



## Liability protection

- What are best practices in identifying existing and potential liabilities and assets of struggling water systems?



## Restructuring plans

- Are the time frames for states to determine eligibility for incentives adequate?
- Are the enforcement relief and liability protection requirements and limitations clear?

# Remaining Milestones for Final Rule Publication

- EPA is accepting comments on the proposal through **July 29, 2024**.
- The public may review and comment on the proposed rule and supporting documents via the public docket at: [www.regulations.gov](http://www.regulations.gov) under Docket ID: EPA-HQ-OW-2022-0678.
- For more information about submitting information on EPA dockets, go to: <https://www.epa.gov/dockets/commenting-epa-dockets>
- EPA intends to sign the final WSRAR **in 2024**.



**For more information visit:**

<https://www.epa.gov/dwcapacity/water-system-restructuring-assessment-rule>



# Please Provide Your Comments!

**EPA has specified four topics of particular interest:**

1. Tailoring criteria – other water system characteristics.
2. Expanded community engagement approaches.
3. Liability protection – best practices
4. Restructuring plans – requirements and limitations.

*EPA encourages your feedback on these or other aspects of the proposed WSRAR.*