



July 29, 2024

U.S. Environmental Protection Agency
EPA Docket Center
Office of Ground Water and Drinking Water Docket
Mail Code: 2822IT
1200 Pennsylvania Avenue NW
Washington, DC 20460

Attention: Docket ID No. EPA-HQ-OW-2022-0678

Dear Administrator Regan:

Thank you for the opportunity to comment on the U.S. Environmental Protection Agency's (EPA's) proposed Water System Restructuring Assessment Rule (WSRAR), published on Thursday, May 30, 2024 at 89 FR 46998.

The Pennsylvania Department of Environmental Protection (DEP) supports the overall intention of this rule to help ensure that communities receive safe, affordable, and reliable drinking water by considering a form of restructuring. However, the proposed WSRAR imposes a significant administrative burden on the state primacy agency, and DEP does not have the staff, the specific legal and financial management capabilities, or the funding to fully implement the requirements of the proposed rule. State responsibilities in the proposed rule include:

- Establishing criteria for when the state can require a water system restructuring assessment.
- Reviewing and approving eligible assessors.
- Performing most mandatory restructuring assessments (as stated in the proposed rule's preamble, C.5. Burden of Assessments, EPA assumes the state would perform nearly all mandatory restructuring assessments).
- Reviewing and approving mandatory assessments.
- Reviewing restructuring plans to determine water system eligibility for enforcement relief or liability protection.
- Holding public meetings for both the Restructuring Assessment Report and the Restructuring Plan.
- Making written assessment summary information available to the public.
- Meeting with assessed systems to discuss alternatives.
- Determining plan eligibility and approval for restructuring incentives.

DEP believes that our current Capability Enhancement Program offers the best mechanism for cooperative assistance to Pennsylvania's public water systems to help them achieve reliably safe

Secretary

Rachel Carson State Office Building | P.O. Box 2063 | Harrisburg, PA 17105-2063 | 717.787.2814 | www.dep.pa.gov

drinking water in the most cost-effective and affordable manner. Restructuring is always an option that may be evaluated in the process of improving a public water system's technical, managerial, and financial capability. Therefore, DEP supports that, in the proposed rule, states are given the ability to determine when a restructuring assessment is mandated. States have the clearest perspective on individual cases, which can be complex and differ with each water system.

EPA should be aware that adopting this regulation in Pennsylvania will require regulatory changes to Pennsylvania's Safe Drinking Water regulations at 25 Pa. Code Chapter 109, which may present unique challenges. DEP's current regulation of public water systems primarily focuses on ensuring that systems are providing safe drinking water, not on the structure or ownership of public water systems in Pennsylvania. In addition, non-publicly owned drinking water utilities in Pennsylvania are also regulated by the Pennsylvania Public Utility Commission (PUC). As such, the development and implementation of regulations for mandatory restructuring assessments of public water systems in Pennsylvania would need to be coordinated among two separate state agencies, DEP and PUC, each with longstanding regulations and processes already in place.

Additionally, incentives identified in the proposed rule do not offer enough benefit for the acquiring system. DEP recommends additional incentives and funding for legal and financial services, specifically for restructuring, which would yield better outcomes for all water systems involved in restructurings, and ultimately benefit the systems' customers.

DEP offers the following specific comments on EPA's proposed WSRAR:

§ 142.91: Definitions:

- Non-responsible water system: DEP strongly disagrees with using the term "non-responsible" for the system seeking liability protection in acquiring or consolidating with an assessed water system. As alternative phrasing, DEP suggests using the term "Responding" water system or "Capable" water system.
- Restructuring plan: Paragraph (2) should be separated into two separate restructuring categories – management consolidation is different than a transfer of ownership.

§ 142.92: Mandatory restructuring assessments:

- 142.92(a): *Mandatory assessment preconditions:*
 - 142.92(a)(1): Regarding repeated violations, the proposed rule does not address the scope, universe, and duration of violations that would trigger a mandatory assessment. Therefore, DEP requests more specific guidance and timeframes to ensure that each state is consistently implementing the regulation as EPA intends.
 - 142.92(a)(2): If a public water system is unable or unwilling to take feasible and affordable actions or has taken actions and failed to achieve compliance, it is unclear how a restructuring assessment will compel, or even increase the probability that the system will take an action such as consolidation or transfer of ownership in order to improve compliance.

- 142.92(a)(3): EPA should be aware that restructuring alternatives may not exist for struggling systems in Pennsylvania. Without significant incentives, a well-managed community water system will likely be reluctant to work with a perpetually poorly managed community water system that has failed to adjust rates over time to address asset management in their cost-to-produce water and rate structures.
- 142.92(c)(5): The preamble explanation of this subsection indicates the restructuring feasibility can be dependent on the socioeconomic factor in terms of affordability and impacts on the community. The explanation for this consideration should be more clearly defined and provide more detail.
- 142.92(d): *Minimum assessment report content requirements*: DEP requests EPA consider including additional language in this section that gives states the ability to establish additional minimum report elements based on system-specific criteria.
- 142.92(e): *Eligible assessors*:
 - DEP strongly recommends that the water system self-assessment option be removed. A water system that is experiencing chronic compliance, managerial, and financial issues will not have the capacity to successfully complete a timely self-assessment, nor will they have the capability to accurately self-assess.
 - As stated in the preamble ((IV)(C)(6)(Eligible Assessors)), the state would be responsible for establishing procedures and qualifications for approving eligible assessors. Determining viable restructuring alternatives can require specialized legal and financial expertise. DEP suggests that EPA establishes these procedures and qualifications in regulation and/or guidance.
 - As stated in the preamble ((IV)(C)(5)(Burden of Assessments)), EPA anticipates that states would perform nearly all mandatory restructuring assessments. DEP lacks the expertise and staff to conduct restructuring assessments, which may involve engineering, legal, and financial analysis. DEP suggests that EPA make additional funds available for states to contract with a qualified and capable third-party assessor to conduct assessments on behalf of the state.
- 142.92(f)(4)(i) and (ii): The requirement for the states to hold mandatory public meetings and public notice is a burden to the states and can put state staff in harm's way, especially in a community that may be opposed to non-local government intervention. For public meetings to be successful for information sharing, DEP suggests that the mandatory meeting would be best facilitated by the assessed water system. The assessed water system could explain the options identified in the assessment and why the system chose a particular alternative.
- 142.92(f)(5): DEP Safe Drinking Water Program staff do not have the expertise to determine if an assessment report contains feasible restructuring alternatives based on the data and techniques used by the assessor. DEP recommends that EPA identifies what makes an alternative "feasible" and how to proceed if there are no feasible options. For example, EPA should consider that a well-managed community water system may be

reluctant to work with a perpetually poorly managed community water system that has failed to adjust rates over time to address asset management in their cost-to-produce water and rate structures.

- 142.92(f)(6): EPA should be aware that restructuring plans may contain sensitive and/or confidential information that should not be made available to the public. DEP suggests that the regulation identifies the specific sections of the report that should be made available to the public.

§ 142.93: Restructuring plans:

- No timeline has been established for submitting a restructuring plan after the mandatory restructuring assessment has been approved or for plan resubmittal after the initial restructuring plan is deemed ineligible. DEP suggests EPA establish such a timeline as the relevancy of the data used to create the assessment and subsequently support the restructuring plan may change over time.
- DEP requests clarification on which “supplier of water” is expected to submit the restructuring plan – the assessed system or the “responding” or “capable” system. DEP recommends that the plan be submitted by the responding or capable system.
- The review of a restructuring plan would require the expertise of legal personnel well-versed in municipal law to ensure the proposed restructuring plan complies with all applicable laws. DEP Safe Drinking Water Program staff do not have this expertise. Overall, the 60-day review time may not be feasible.

§ 142.94: Enforcement relief under approved restructuring plans:

- 142.94(a)(1): The proposed rule refers to violations, but does not categorize types of violations that are eligible for enforcement relief. It is not clear if the violations referenced in the proposed rule are monitoring violations, reporting violations, or health-based violations. DEP recommends EPA add clarifying language on this point.
- 142.94(d): DEP does not agree that the state should be responsible for holding a public meeting regarding the proposed restructuring plan. To be successful for information sharing, DEP believes these meetings would be best facilitated by the assessed water system. DEP also requests that EPA clarifies if the intention of this meeting is to receive input from the assessed system community or to simply inform the customers of the restructuring plan.
- 142.94(f): Physical copies of all plans should be the responsibility of the assessed water system and should be made available, upon request, at the assessed water system’s office.
- DEP supports EPA’s plans, as stated in the preamble, to provide implementation training material and case studies that describe examples of the temporary provision of an alternative source water or supply of water for use during a lengthy restructuring scenario ((IV)(E)(2)(Conditional Eligibility Requirements for Enforcement Relief)).

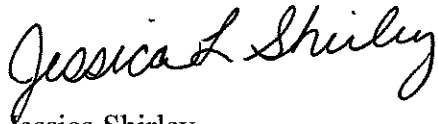
§ 142.96: DWSRF eligibility of restructuring activities:

- This section indicates restructuring activities “may receive a loan described in...” This section seems unnecessary as it implies the activities could be funded only by a loan through the Drinking Water State Revolving Fund (DWSRF). EPA should work to identify additional funding pots, ideally grant funding, which states can use to further incentivize restructuring activities. EPA should allow state SRF agencies to apply existing funding evaluation criteria and ranking to each situation.

More broadly, DEP recommends that EPA consider including language that allows states to refer systems to EPA for forced receivership, consolidation, and/or regionalization. This option would be used infrequently but may be necessary when dealing with water systems that do not comply with the mandatory restructuring assessment rule requirements. There should be language in the rule that enables EPA to establish milestones for forced receivership, consolidation, and/or regionalization upon written notification/referral of a specific water system from the state. If infrastructure improvements are needed to implement forced receivership, consolidation, and/or regionalization, a dedicated pot of federal grant funds would be critical.

DEP would like to again thank you for the opportunity to comment on EPA’s proposed WSRAR. If you have any questions about these comments, please contact Bill McNamara, Manager of the Training, Technical, and Financial Services Division in DEP’s Bureau of Safe Drinking Water, at wmcnamara@pa.gov or 717-705-6350.

Sincerely,



Jessica Shirley
Acting Secretary