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State Source Water Assessment and Protection Programs Final Guidance

Chapter 3

August 1997

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Tools for State Source Water Protection Program Implementation Including Petition Programs and the Drinking Water State Revolving Fund

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I. INTRODUCTION

As described in Chapter 2, the SDWA Amendments of 1996 require states to develop and submit to EPA for approval SWAPs. Upon EPA approval, these programs are to complete assessments for all Public Water Supply Systems within two years after approval if not extended as provided in the Amendments. This chapter addresses the principal potential application of these assessments after they are completed; i.e., development of SWP Programs.

In the 1996 Amendments to the SDWA, Congress included a number of important provisions related to SWP beyond the SWAPs, including: (1) continuation of the WHP program (section 1428) and new authority for states to support their WHP efforts through use of DWSRF funds [section 1452(k)(1)(D)]; (2) a new, optional petition program (section 1454) that states may use to help overcome cross-program coordination barriers and facilitate voluntary, incentive-based SWP efforts based on locally driven partnerships, and authorization to use DWSRF funds to carry out such programs [sections

1454(a)(1)(B)(i) and 1452 (k)(1)(A)(iii)]; (3) authority for states to use DWSRF funds to administer or provide technical assistance through SWP programs, except for enforcement actions [sections 1452(g)(2)(B) and (D)]; (4) new authority to provide localities with DWSRF loans that may be used to purchase land or easements from willing sellers or grantors, if the purpose is to protect source water and ensure drinking water standards compliance [section 1452 (k)(1)(A)(i)], and (5) new authority to provide loans to communities to implement local, voluntary, incentive-based SWP measures [section 1452 (k)(1)(A)(ii)].

While the 1996 Amendments do not confer any new regulatory or enforcement authorities for drinking water source protection upon the states, many of the provisions require EPA to further incorporate SWP into drinking water regulations, particularly as a basis for increased regulatory flexibility. (Chapter 4 describes how these SWP efforts can be coordinated with other drinking water programs to be of mutual benefit.)

These provisions of the SDWA 1996 Amendments are clearly intended to encourage states and localities to go beyond source water assessments and implement efforts to manage identified sources of contamination in a manner that will protect drinking water supplies. This objective is furthered by the requirement that these assessments be made available to the public because, along with other new required consumer awareness activities, such information will motivate citizens and communities to put in place local SWP Programs.

For example, in the report of the House Commerce Committee (whose bill, H.R.3604, contained the SWAP provision as enacted), states that, “the Committee recognizes that SWP can be a cost-effective strategy for ensuring safe drinking water supplies. . .To address SWP, the bill creates a new program in which states with primacy will conduct an assessment, coordinated with existing information and programs, to determine the vulnerability of a source of drinking water within state boundaries. . .A separate provision in the DWSRF section provides that DWSRF funds may be used. . .to administer state SWP programs, except for enforcement actions. . .designed to protect source water from threats identified during the assessment.”

Furthermore, the Senate Environment and Public Works Committee report provides that, “the only options typically available to community water supply systems finding contaminants in their water supply have been treatment or the development of new water supplies. . .To remedy this problem, the bill adds a new section to the SDWA that provides a means other than treatment for CWSs to address problems or emerging problems of contamination,” that is, SWP efforts including the petition program.

A. Local Source Water Protection Programs

In addition to the three steps of a source water assessment (delineation; source inventory; and susceptibility determination), a local SWP effort hinges on three key steps:

Local Teams

Before any meaningful approach to SWP can be developed, a team of responsible individuals needs to be assembled to guide the process in a cohesive, efficient manner. They need to be focussed on the primary objective of protection of drinking water sources, but they must also recognize the constraints from other ongoing activities in the watershed, and the opportunities to support other watershed objectives for conservation and habitat restoration. Ideally, a team will always have at least

one representative who is actually employed by a PWS. Getting local citizens involved in SWP efforts heightens a sense of ownership in protecting the resource. The participation of citizen groups such as retired volunteers has proven very effective in drinking water protection activities in the past.

Management Measures

Once potential contaminant sources to which a PWS may be susceptible have been identified and inventoried under SWAP assessments as outlined in Chapter 2, options for managing these sources need to be determined. The basic goal is to reduce or eliminate the potential threat to drinking water supplies within source water protection areas either through federal, state, or local regulatory or statutory controls, or by using non-regulatory (voluntary) measures centered around an involved public, while supporting conservation and other benefits from watershed protection and avoiding unnecessary adverse effects on other activities in the watershed. While land-use controls, regulatory and pollutant source management measures, and other methods have traditionally been used for a variety of purposes in controlling impacts of land use and municipal growth, only recently have these tools been employed to protect drinking water supplies on a large scale.

Contingency Planning

Contingency planning is simply the development and implementation of both long and short-term drinking water supply replacement strategies for supplying safe drinking water to the consumer in the event of contamination or physical disruption.

II. OPPORTUNITIES FOR SUPPORT OF STATE AND LOCAL SOURCE WATER PROTECTION EFFORTS UNDER THE SDWA OF 1996

The DWSRF was authorized under section 1452 by Congress to assist PWSs to finance the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements and protect public health. In addition, states may use a portion of their capitalization grants to fund various state and local water systems management programs and projects including SWP activities. States may elect to use up to 31 percent of the funds available to them under section 1452 for eligible set-aside activities.

The following are descriptions of various set-asides directly relevant to SWP. (Please note that the set-asides described in subsections B through F are subject to an overall cap of 15 percent of the DWSRF capitalization grant, and that cap includes capacity development activities as well

SWP activities. Please see EPA's *Drinking Water State Revolving Fund Program Guidelines* [February 1997] for details.)

A. Funding for State Source Water Protection Programs under SDWA Section 1452(g)(2)(B)

A state may use up to 10 percent of its allotment to administer a SWP program (as well as a public water supply supervision program, capacity development program and operator certification program). While this set-aside has additional matching fund requirements, this section provides the state with the greatest flexibility in using the DWSRF to establish SWP programs. State programs could take virtually any form that represents a coherent, articulated basis for the appropriate use of taxpayers' funds for SWP.

Accordingly, the following is intended as a general discussion to suggest some of the wide scope of this flexibility. Each of the categories discussed in the following provide for a stronger focus of local, state or federal programs and activities on drinking water protection. Of course, a state program could use in conjunction parts or concepts from any or each of these categories, or other ideas, according to resources, opportunities or local appropriateness.

While this area of activity is optional, Congress' repeated, strong encouragement to states to translate their source water assessment results into protection indicates the need to consider, and to the extent possible, decide at the assessment stage on undertaking protection efforts. As noted previously, timely decisions on protection approaches can enable the most efficient use of data and analyses generated by assessments, and most fully capitalize on the one-time national investment in assessments. Possible state programs and activities could fall into any of several categories, particularly and most likely the following:

Source Water Protection Through Local Management

Under this approach, the state would focus its protection efforts on educating, equipping and funding local communities and conservation districts to undertake directly local SWP initiatives. Such an approach emphasizes local land use controls, ordinances, and management measures.

State technical assistance could help local entities put together a SWP strategy or specific management measures to carry out a local strategy; many of these local management measures could then be supported by the state using DWSRF set-

asides under section 1452(k)(1)(A) (see headings B through E below).

Even if a state decides to put its SWP focus elsewhere, some elements of this approach are likely to be helpful in any situation. Local leadership, cooperation and coordination are vital components of most successful SWP initiatives, and the SDWA Amendments provide a variety of resources that can be tailored to realize the potential of many local opportunities.

Source Water Protection Through Enhancement or Broader Integration of Existing State Management Programs

Many states currently have active programs to protect water resources from particular sources of contamination (e.g. the UIC Program, the Non-Point Source Program), or to protect waters or lands in a certain region(s) of the state, certain types of lands (e.g., agricultural lands), or land management generally on a statewide basis. The SDWA Amendments offer an opportunity to highlight or better integrate protection of drinking water sources into those states' proven, ongoing programs with a wide range of resource management and water quality protection objectives.

Often, drinking water protection may already be recognized as an objective of the state program, but perhaps not for both surface and groundwater, or for all

relevant aspects of the program. Source water assessments may generate the information and analyses to meet the criteria or triggers in such programs, or to draw appropriate attention to the potential susceptibility of certain drinking water sources. These susceptible sources, once recognized, can be elevated within the existing program's framework of protection priorities. Finally, the additional resources made available under the DWSRF for source protection can make it possible to address the more vulnerable drinking water sources under the activities or authorities of the existing program, without disrupting the existing program's continuing priorities, or necessarily diverting its resources from those priorities.

Source Water Protection As A "Lens" to Focus Other Federal/State Programs

A wide range of programs at the state and particularly the federal level (see, e.g., Chapters 4 and 5 of this Guidance) offers relevant authorities and resources that can achieve SWP objectives. States may choose to use this approach to create or enhance a function to coordinate whatever programs in this range the state believes will contribute to reaching those objectives.

For example, a network or clearinghouse function could give a focal point and facilitate assistance for local governments,

water systems, and others in communities to gain access to these relevant programs and resources. The state office in which this assistance function was placed could provide a pathway through the complex and time-consuming job of identifying the various types of program help (regulatory and/or non-regulatory) that may be appropriate to a particular local situation, and pursuing them through different application processes and levels of government. After identifying appropriate state and/or federal programs, the state office could if necessary help to formulate and then present the relevant program applications or petitions and documentation to the appropriate agencies, and then work with the communities to advance these applications in the agencies' consideration processes.

States could adjust the level of effort of this function as appropriate to its resources and priorities. For example, a state clearinghouse office for SWP could respond to requests for aid of the type discussed above, or might use the source water assessments to identify high priority areas to work proactively with local communities to see that appropriate programmatic aid and attention was provided. Where communities that had been informed about their situations through the source water assessments sought help, the state clearinghouse could respond to these requests in its discretion

by applying criteria or priorities selected by the state. This function would also help to improve coordination among the relevant agencies on SWP objectives at different levels of government as the applications and supporting information moved in tandem through the respective processes.

Comprehensive Approaches to Source Water Protection

Existing federal laws have tended to focus on specific source, pollutants, or water-related activities, and have not addressed the need for an integrated, multi-disciplinary approach to environmental management. Historically, successes in controlling water pollution have been most widespread in surface water through control of point sources and in ground water by preventing contamination from hazardous waste sites. Use of a watershed approach by states could integrate surface water protection programs with comprehensive ground water protection efforts, in order to focus resources of local, state and federal governments on protecting source water as a whole. States are uniquely positioned and qualified to foster comprehensive SWP because they implement most existing water and natural resource programs.

States desiring to move towards or adopt this approach can use the source water assessments as a starting point, to identify

which data developed by other programs can be used in the assessments. Assessment results that incorporate such data from multiple programs can provide a statewide priority-setting structure, by ensuring that the assessments include data appropriate and applicable to all relevant programs. This could provide a means to advance the coordination discussed in the approaches above, by seeking to coordinate drinking water and pollution control programs with state and federal administration of related programs, such as through the Farm bill, remedial efforts through Superfund, the UST program, RCRA, and management programs for air, toxic substances and pesticides, as well as appropriate state and local programs and initiatives. The more comprehensive the approach, the bigger the “toolbox” of existing management options for SWP.

B. Funding for State Wellhead Protection Programs Under SDWA Section 1452(k)(1)(D)

With few exceptions, most states now have EPA-approved WHP programs in place, which provide the cornerstone or a “head start” in undertaking the source water assessments required under the 1996 SDWA Amendments. State WHP Programs remain a requirement under section 1428 of the SDWA Amendments of 1996. Under section 1452(k)(1)(D), funds from the DWSRF may be used to enhance

the implementation of these existing WHP programs or to develop such programs for submittal to EPA for approval.

C. Funding for State Petition Programs Under SDWA Section 1452(k)(1)(A)(iii)

Section 1452(k)(1)(A)(iii) of SDWA provides opportunities for loans to CWSs by funding State Source Water Quality Protection Partnership Petition Programs, which are detailed under section 1454 of SDWA. EPA is required under the legislative mandate of the SDWA Amendments of 1996 to issue guidance for this program, which is provided in Part III of this Chapter. There are particular benefits as well as limitations to the SDWA 1452 program that states need to consider before deciding on an approach to drinking water source protection. A state could establish a modified petition program to address those limitations, and such a program could be supported by the 1452(g)(2)(B) set-aside described above as well as 1452(k)(1)(A)(ii) described below.

D. Loans for Voluntary Incentive-Based Source Water Quality Protection Programs

Section 1452(k)(1)(A)(ii) provides for set-asides up to 10 percent of the total amount received in any particular year as part of a capitalization grant to the state for loans to

CWSs for voluntary, incentive-based source water quality protection measures. These funds are earmarked for the protection of source waters within areas delineated in assessments performed under section 1453 (or as performed, in advance of an EPA-approved SWAP, under an approved DWSRF workplan; see Chapter 2); to help achieve compliance with national drinking water regulations under section 1412, or otherwise enhance public drinking water source protection. These funds would be used under any state SWP approach, including those under section 1452(g)(2)(B) or 1454, as long as the activity assisted was voluntary and incentive-based.

Where assessment and delineation activities indicate agriculture is a potential source of contamination, states and local entities should consider applying set-aside funds towards voluntary agricultural resource management planning and implementation programs. These funds, in turn, could be made available to soil and water conservation districts, other local entities, and agricultural producers within a source water watershed to plan and implement improved management practices under an Resource Management Plans (RMPs) designed to protect the source water resource.

E. Land Acquisition and Conservation Easements

Funds for land acquisition and conservation easements are available under section 1452(k)(1)(A)(i) of SDWA 1996. These funds are to be provided as loans to acquire lands from persons willing to sell the land, or in the case of easements, the willing grantors of the easements, when the interest acquired will protect drinking water sources from contamination. Similar to loans for voluntary, incentive-based SWP efforts, loans under this subsection must also be intended to foster compliance with national primary drinking water regulations applicable under section 1412, and to significantly enhance the protection of public health.

III. GUIDANCE FOR STATE SOURCE WATER QUALITY PROTECTION PARTNERSHIP PETITION PROGRAMS

Section 1454 of the SDWA (section 133 of P.L. 104-741) establishes a new authority for a Source Water Petition Program. This state-administered program is voluntary for states, and is intended to support locally-driven efforts designed to address a limited number of contaminants identified in local SWP assessments. Petitions may address: (1) pathogenic organisms which are regulated (or for which regulation is required) by EPA drinking water

standards, or (2) contaminants detected in source water that are not at levels “reliably and consistently” below the MCL in the source water at the intake structure or in any collection, treatment, storage, or distribution facility. Under the state program, an owner or operator of a CWS, or a municipal or local government or political subdivision within the state may submit a source water quality protection partnership petition to the state, requesting assistance in support of a local, voluntary, incentive-based partnership among interested parties to protect their drinking water supply. The central focus of the petition program is to reduce or eliminate contaminants in the water supply by addressing their origin; obtain financial or technical assistance to facilitate efforts to protect source water in order to meet national primary drinking water regulations and standards; and help develop voluntary and incentive-based strategies for the long-term protection of source water supplying a CWS. A state may submit a Petition Program for approval at any time; it is not necessary to wait until source water assessments are completed.

A. State/Local Program Procedures

1. Substance of Petitions and Process for Submission of Petitions To the State

A petition must: facilitate the local development of voluntary, incentive-based partnerships among owners and operators of CWSs, governments, and other persons in source water protection areas; and obtain assistance from the state in identifying resources which are available to implement the recommendations of the partnerships to manage the origins of the contaminants affecting the drinking water supplies of a community.

Contaminants addressed under a petition are limited to pathogenic organisms for which a national primary drinking water regulation has been established (or is required under section 1412), or contaminants for which a regulation under section 1412 has been promulgated or proposed, and that are detected by adequate monitoring methods at the source water intake structure or in collection, treatment, storage, or distribution facilities in the CWS when they occur above the MCL; or are not at levels reliably and consistently below the MCL.

Petitions submitted under this program must at a minimum contain the following information: (1) a delineation of the source

water protection area that is the area of consideration of the petition; (2) the identity of the origins to the maximum extent practical of the drinking water contaminants that are to be addressed by the petition that are found within the delineated source water protection area (including descriptions of specific activities to the maximum extent practical contributing to the presence of the contaminants); (3) the identity of information gaps that would hinder the development of recommendations made by the voluntary local partnership for addressing drinking water contaminants that are to be addressed by the petition; (4) documentation of efforts made to establish the voluntary local partnership, including solicitation of private individuals living within the delineated source water protection area who are likely to be affected by decisions made by the partnership and whose participation is essential to the success of the partnership, and members of municipal or other local governments or political subdivisions of the state with jurisdiction over the delineated source water area; (5) a description of how the voluntary local partnership has or will identify, recognize, and take into account any voluntary or other activities already underway under federal or state law in the delineated source water protection area that are aimed at reducing or eliminating the likelihood that contaminants will occur in drinking water at levels of public health

concern, and (6) a description of technical, financial, or other assistance that the voluntary local partnership requests of the state to help develop the partnership, or to implement the recommendations of the participants in the partnership.

2. *Recommended State Procedures for Approval/Disapproval of Petitions Submitted by Local Voluntary Partnerships*

The state may approve a petition if it meets the requirements of section 1454 (a). States must provide a notice and an opportunity for public comment on petitions submitted under section 1454, and states must approve or disapprove the petition in whole or in part within 120 days after submission.

If the state approves a petition, a notice of approval must be provided, giving the following information: (1) an identification of technical, financial, or other assistance the state will provide to help address drinking water contaminants identified in the petition based on public health concerns relative to other water quality needs identified by the state; coordination with any other states' programs implemented or planned under section 1454; and funds available (including DWSRF monies accessed through CWA or SDWA State Revolving Funds), and (2) a description of technical or financial assistance available

from state or federal programs to assist in implementing the recommendations of the local voluntary partnership in the petition. Disapproved petitioners may resubmit at any time if new information becomes available, if conditions affecting the source water that is the subject of the petition change, or if modifications are made in the type of assistance being requested.

3. *Technical and Financial Assistance Available to Localities with Approved Petitions*

Assistance is available to help implement the recommendations made by the partnership in the petition, including any program established under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); programs established under section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA) of 1990 (16 U.S.C. 1455b); agricultural water quality protection program established under Chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3838 et seq.) and the Federal Agriculture Improvement and Reform Act of 1996 (P.L. 104-127); the SSA Program established under section 1427; the Community WHP Program established under section 1428; any pesticide or ground water management plan; any voluntary agricultural resource management plan or voluntary whole farm or whole ranch management plan developed

and implemented under a process established by the Secretary of Agriculture; and any abandoned well closure program.

Full use of available technical and financial assistance will depend upon the extent to which states encourage and assist municipalities, local governments, and CWSs to understand and take advantage of existing programs at the state level that are available to help them address sources of contamination in source water protection areas. These include programs for the management of solid waste, USTs, fertilizer and pesticide use, recycling and reclamation, underground injection disposal wells, state Superfund programs, and others. A large part of the public participation component of any source water quality protection partnership petition program may be focused on making sure that the partnership members know and understand about these existing state programs and their corresponding funding mechanisms and opportunities for integration into a comprehensive SWP partnership. This helps conserve resources, maximizes both regulatory and non-regulatory management mechanisms, and assures equal representation of the various members of the partnership in helping to bring about consensus at various stages of decision making as the partnership matures and begins to implement its recommendations.

4. EPA/State Procedures for Grants

Procedures and Substance of a Submittal of a State Source Water Quality Protection Partnership Petition Program for EPA and Approval of Such Programs

(a) Substance of a State Program Submittal

The design of the State Source Water Quality Protection Partnership Petition Program may be to “. . .assist in the local development of a voluntary, incentive-based partnership, among the owner, operator, or government and other persons likely to be affected by the recommendations of the partnership. . .” Beyond this statutory definition, the state may consider how well the structure of its Source Water Quality Protection Partnership Petition Program satisfies the following underlying goals: meeting the spirit and intent of the SDWA Amendments of 1996 (e.g., affording locals the opportunity to develop their own drinking water protection program through the use of the petition process); recognizing the diversity of hydrogeologic settings and sources of contamination that may be encountered on the local level; allowing local entities maximum creativity and flexibility in designing and implementing the recommendations of the petitioners; recognizing state and local primacy in matters of land use and water allocation,

and assisting local entities in achieving comprehensive SWP by offering the petition process as a balancing tool in an overall array of state-administered drinking water protection programs such as the state’s WHP, Sole Source Aquifer, and watershed protection programs.

(b) Procedures for Submitting a State Program for Grant Assistance and for EPA Approving a Program

State programs developed for Source Water Quality Protection Partnership Petition Programs may be submitted to EPA at any time. If, after a period of 120 days after the date of submission of the program, unless EPA determines that the program does not meet the statutory requirements as specified under section 1454(a) of SDWA, the program shall be deemed approved. If EPA disapproves a petition program (in whole or in part) during the 120-day period after submission of the program, EPA will immediately notify the state, and will work with the state to assist in the modification or redevelopment of the program to meet the statutory requirements necessary for approval. Once EPA approval has been obtained, states may immediately begin implementing the receipt, review, and approval process for petitions received from local, voluntary, incentive-based partnerships for SWP at the community level.

(c) Adequacy Criteria for EPA Approval of State Program Submittal

EPA approval of State Source Water Quality Protection Partnership Petition Programs will be based upon how adequately the state's program process considers and evaluates the objectives of the local entity filing the petition. These objectives include how well the state's program process facilitates the development of local, voluntary, incentive-based partnerships through coordination of local governments, persons living within source water protection areas affected by the decisions or recommendations of the partnership, and owners and operators of CWSs, and how well the state program process provides for assistance from the state in identifying resources available to the implement the recommendations of the partnership in addressing the origins of drinking water contaminants specified in the petition. (This includes the specific activities to the maximum extent practical contributing to the presence of the contaminants affecting the drinking water supplies of the community). The contaminants for which petitions may be submitted are specified under section 1454 (a) (3).

(d) Grants to States

Grants may be made to each state that establishes an EPA-approved petition

program in an amount not exceeding 50 percent of the cost of administering the program for the year in which the grant is made available. In order to receive this grant assistance, states must have approved programs that meet the criteria and objectives of section 1454, as described in this guidance. **NOTE: No funds were appropriated for grants under section 1454 (c) in Fiscal Year 1997. As of this writing, neither House nor Senate appropriations bills for FY 1998 contain a section 1454(c) grants provision. However, states can use DWSRF funds under section 1452(k)(1)(A)(iii) for loans to implement petitions.**

These grant program procedures and submittal are only required if appropriations are provided for section 1454 of the SDWA and a state chooses to submit and apply for a grant.

5. Additional Funding for Local Source Water Petition Programs

(a) Drinking Water State Revolving Fund

A state may make a loan to assist a CWS implement voluntary, incentive-based SWP measures resulting from the implementation of recommendations specified by a local partnership petition submitted to the state. Only community (not non-community) water systems are

eligible for this assistance, and only pathogenic organisms, and chemicals exceeding MCLs or chemicals not reliably and consistently below established MCLs can be identified as contaminants in the petition. If a state elects to use the DWSRF set-aside, the state must develop a list of systems that will receive loans, giving priority to projects that promote compliance and protect public health, and subsequently seek public review and comment on this list. States are encouraged to review EPA's recently released final guidelines on the DWSRF for use in prioritizing projects eligible for loans under the set-aside.

(b) Sense of the Congress Regarding the CWSRF

Section 606(c)(1) of the CWA provides for a listing of state activities for water pollution control eligible for funding assistance under sections 319 (Non-Point Source Program) and 320 (National Estuary Program) as well as under the state's CWSRF IUP. It is the sense of the Congress that each state in establishing priorities under this section of the CWA may give special consideration to projects that are eligible for funding under that Act, and that have been recommended pursuant to a petition submitted under section 1454 of SDWA (section 133(b) of the SDWA Amendments of 1996).

B. Benefits and Limitations of the Petition Program

The petition program can support efforts to focus other relevant state and federal programs towards SWP activities. It is intended to provide a process by which states may encourage and facilitate voluntary, incentive-based local partnerships as another tool in the drinking water compliance toolbox to address existing and emerging problems at the local level. The process is also intended to gain access to various forms of financial and technical assistance critical to successful local SWP partnerships. For local entities, the formation of a local partnership will be the crucial part of the petition process; for the state, a designated liaison person could screen applications, and if the petition is deemed valid, serve as the "lens" to focus various forms of technical and financial assistance available under both the drinking water and other state and federal programs. It would then be up to the respective program administrators to decide whether to provide assistance to the community and selected source water entities.

A short public comment period is provided in the process to ensure that both drinking water and source water stakeholders are made aware of the request and have an opportunity to provide input.

A great majority of resources that could be brought to bear in supporting the petition process fall under the jurisdiction of programs beyond the scope of SDWA or the drinking water community (e.g., CWA, the Federal Agriculture Improvement and Reform Act of 1996). The petition program attempts to focus these scarce resources on drinking water protection by encouraging the formation of local partnerships and by seeking the presentation of basic information such as the nature of the problem to be addressed; identification of information gaps; efforts to establish a local partnership; recognition of ongoing efforts; and the type of assistance required. The intent of such a petition is to provide a strong link between the requested assistance and achieving public health protection. Without establishing this link, it may be difficult to obtain resources from federal/state programs that are important to SWP at the local level, but not part of the SDWA.

While the petition program may provide a valuable adjunct to total SWP, it does have some key limitations. Although local petitions can be developed to prevent microbial contamination, such petitions can only be developed after chemical contamination has already occurred, thus not a preventive approach. Thus, the program is not totally a prevention program approach in the traditional sense. Specifically, under section 1454, local

systems may only use the petition program if they have a contaminant exceeding the MCL (e.g., a violation of the MCL), or for contaminants which do not appear consistently and reliably at or under the MCL at the system intake structure. States may want to instead have a more prevention-oriented program approach than that afforded by the petition program. For example, the state may want to consider establishing detection levels for some contaminants in the source water upstream of the intake structure as the basis for a petition, or a petition could be in regard to potential sources that may not yet have released pollutants to the environment (e.g., USTs).

The procedures and prerequisites required of local and state government by the 1454 program may delay the resolution of violations or near-violations of MCLs or the prevention of near violations of MCLs by a PWS. Also, limiting a state to voluntary, incentive-based programs could result in a fragmentation of regulatory from non-regulatory programs, whereas a more integrated program could be more efficient.

For these reasons, states and local communities need to consider the net benefit of the section 1454 petition program in comparison to other approaches—including a modified petition approach, or a more comprehensive SWP program (e.g., WHP or watershed

protection) in terms of cost and efficacy in protecting the public health. The state should evaluate the advantages and trade-offs inherent in those programs before deciding what is right for them.

If a state chooses to establish a 1454 petition program or a modified version of the program tailored to meet the state's needs, both are eligible for DWSRF support under section 1452(g)(2)(B). In addition, a 1454 petition program or some other voluntary program could be the basis for providing DWSRF loans to CWSs under subsection (ii) of section 1452(k)(1)(A), though loans under subsection (iii) may only be made within a section 1454 program.

EPA is required to issue this guidance on the petition program, but a state program is subject to approval by EPA under section 1454 only if the state is to receive funds to administer the program from funds specifically authorized under section 1454(e). To date, EPA has not requested such funds, and no funds have been appropriated. Nevertheless, a state may find guidance on the petition program to be helpful in evaluating the usefulness of the petition program option and various alternatives. This evaluation can lead to a state's tailoring a workable vehicle for encouraging local partnerships and facilitating coordination across federal and state programs necessary for successful source water protection.