

### **Water System Restructuring Assessment Rule Proposal ASDWA Summary (5/23/24)**

The U.S. Environmental Protection Agency (EPA) is proposing the Water System Restructuring Assessment Rule (WSRAR), which would provide a regulatory framework for states, public water systems (PWSs), and the communities they serve to identify and assess restructuring options for systems that struggle to provide safe drinking water. The proposed regulation includes three main elements: **a new mandatory assessment authority for states**; requirements for performing mandatory restructuring assessments to help the water system sustainably provide safe, affordable drinking water; and eligibility requirements for three incentives for public water systems to restructure.

#### **Effective Date**

- EPA is proposing that the WSRAR would be effective 60 days from the date of publication in the Federal Register. Primacy agencies would be required to update their programs to incorporate the new primacy requirements within two years from the date of promulgation, with an optional two-year extension as provided under 40 CFR 142.12(b).

#### **Mandatory Restructuring Assessments**

##### *Who Conducts an Assessment?*

Assessments may be conducted by EPA, a state, or a state-approved third party. Alternatively, the assessed water system could conduct a self-assessment if approved by the state. Given the knowledge, expertise, and resources required, the EPA expects that states, or third-party assessors on behalf of states, would perform most mandatory assessments.

- To ensure that an assessor is qualified, as part of its primacy revision each state would be required to establish and implement procedures and qualifications for reviewing and approving eligible assessors.

##### *Assessment Criteria*

- A state may mandate an assessment when:
  - (1) the PWS has repeatedly violated one or more NPDWRs and such violations are likely to adversely affect human health;
  - (2) the PWS is unable or unwilling to take feasible and affordable restructuring actions, or already has attempted such actions without achieving compliance with NPDWRs;
  - (3) restructuring, including a form of consolidation or a transfer of ownership, is feasible; and
  - (4) restructuring of the PWS could result in greater compliance with drinking water standards.
- States have discretion to determine if systems meet the above criteria.
- States are required to provide written notification to the assessed system. This notification would determine the milestones and dates in the required assessment schedule.
- Mandatory assessments must identify restructuring options to assist the water system based on its geographical, managerial, financial, socio-economic, and physical characteristics (size, source, type).
- States are required to meet with assessed water systems to discuss restructuring alternatives.
- The minimum requirements for an assessment:

1. Describe all unresolved violations, their underlying causes (including TMF issues), their enforcement status, and how restructuring would return the system to compliance as soon as practicable.
  2. Identify at least one feasible restructuring alternative for the assessed water system that will return the PWS to compliance as soon as possible, while also improving its TMF capacity.
  3. Describe how the assessor used tailoring criteria to take a holistic approach identifying feasible and affordable alternatives based on a broad range of TMF and socioeconomic factors. The report also must describe how the proposed alternatives ensure that the communities served by the assessed water system sustainably achieve or maintain access to safe, affordable drinking water.
  4. With the establishment of incentives for consolidation or transfer of ownership at struggling water systems, the proposed rule would require the mandatory assessment report to provide an explanation if these alternatives are considered infeasible.
  5. Describe the data, data sources, information, procedures, and techniques used to identify the feasible restructuring alternatives for the assessed water system.
- States determine if above requirements are met.

#### *Assessment Schedule*

- Within 30 days of the state notification date, the water system could request in writing that the state approve either a self-assessment or a third-party assessor retained by the water system. A certification statement must be included in the assessment report by self-assessments or third-party assessors. The state would have 30 days from receipt of the system's request to approve or reject the request.
  - If the state rejected the request, or if the system did not request a self-assessment within 30 days, the state could decide to perform the assessment instead.
    - The system would be required to provide relevant information requested by the state, such as an asset inventory, accounting records to demonstrate financial capacity, or monitoring results, to help the state perform the assessment.
  - If the state approved the request for a self-assessment or third-party assessor, the assessment report would be due on the submittal date established by the state.
    - If the state approved the request for a self-assessment or third-party assessor, the assessment report would be due on the submittal date established by the state.
      - During the assessment, either the assessed system or the state could propose a different submittal date – subject to state approval.
- Within 30 days of assessment approval, the state would be required to make electronic copies of the report publicly available on the state website, and physical copies available in one or more public libraries within, or as near as possible to, the communities served by the assessed water system.

#### *Public Meetings*

- If the mandatory restructuring assessment identified a form of consolidation or transfer of ownership as a feasible alternative for the immediate and long-term needs of the community, the state would be required to notify the community that it will hold a public meeting.
- The state would hold this meeting as soon as practicable after receiving the assessment report from the assessed water system.

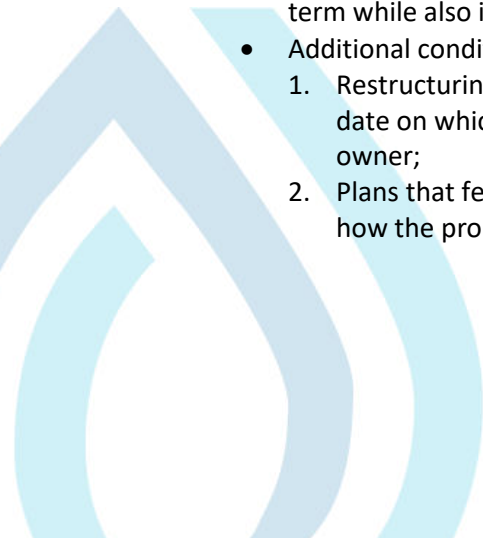
- If the state performed the assessment, it would be required to hold the meeting before approving the mandatory assessment report.
- The public meeting would be required to comply with the EPA's notice, location, and time requirements under 40 CFR 25.6, as well as any state-specific-regulations for public meetings.
- EPA *strongly encourages* states to make publicly available a written summary of its responses to comments received during the public meeting.

### **Restructuring Plans**

- Types of restructuring plans eligible for enforcement relief or liability protection:
  1. physical consolidation between water systems;
  2. management or administrative consolidation;
  3. transfer of ownership to improve drinking water quality; and
  4. contractual agreement for significant management or administrative functions of a water system to correct violations identified in the plan.
- Restructuring plan must identify violations at the restructuring water systems and include an implementation schedule and measures of restructuring progress.
- States determine plan eligibility:
  - State must determine within 60 days whether a submitted plan is an eligible type and notify the submitting water system(s) in writing; and
  - After this initial determination the state would determine within 12 months whether the submitted plan is eligible for enforcement relief, or it would determine within 18 months whether the plan is eligible for liability protection.
- Systems can resubmit revised plans to be reapproved by the state against the same criteria listed above.

### **Enforcement Relief and Liability Protection Under Approved Restructuring Plans**

- After state determines submitted restructuring plan is eligible, state then determines if plan meets enforcement relief requirements:
  1. Identify each violation that the restructuring plan is intended to resolve;
  2. Plan describes how the proposed restructuring activities would return the system to compliance as soon as practicable by addressing the underlying causes of noncompliance;
  3. Plan includes implementation schedule and measures of progress;
  4. Plan describes how restructuring would improve the TMF capacity of the restructuring system;
  5. Plan ensures that all consumers served by the restructuring water system continuously achieve access to safe, affordable drinking water; and
  6. Plan includes a request for enforcement relief for the noncompliant water system(s) subject to the plan.
- Restructuring plan would be required to incorporate state-approved quantitative and qualitative types of information that describe how restructuring would protect public health in the short term while also improving the long-term TMF capacity of the restructuring PWS.
- Additional conditional requirements for enforcement relief:
  1. Restructuring plan that involves a transfer of ownership would be required to describe the date on which ownership is expected to change and to identify the new water system owner;
  2. Plans that featured a new or revised governance structure would be required to describe how the proposed structure would help achieve public health objectives; and



3. Plans that involve a temporary alternative source of water would include an implementation schedule and measures of progress that are specific to the provision of a temporary alternative source or supply of water and identify when the temporary source will no longer be needed.
- State would be required to as soon as practicable notify the service community and conduct a public meeting discussing the restructuring plan and enforcement relief/liability protection.
  - No later than 12 months from the date it determines that a restructuring plan is an eligible type, the state would be required to determine whether a plan meets all minimum and applicable conditional eligibility requirements. If the plan meets all rule requirements, and the public meeting has been held, the plan would be considered approved, and the state would be required to notify the supplier of water in writing.
    - If the plan did not meet all requirements, the state could consult with the water system that submitted the plan regarding a time frame for submitting a corrected plan.
  - On the date the state determines that the submitted plan meets all requirements, the plan would be approved and an enforcement relief period of up to two years would begin.
  - During this enforcement relief period, the state could neither initiate, nor continue to take, enforcement action for any of the specific violations of the SDWA that are identified in the plan.
    - However, enforcement relief would apply only to violations identified in a restructuring plan and existing corrective actions or enforcement orders prior to the state's approval of the restructuring plan are still in place.
  - EPA proposes that a water system would not be eligible for additional Federal enforcement relief after the two-year timeframe under an approved revised restructuring plan. Under a revised plan, states could instead provide state-level enforcement relief granted through system-specific enforcement agreements.
  - To obtain liability protection, the non-responsible water system must submit a plan that identifies the violations to be corrected, describes how the activities will improve compliance, proposes a schedule for implementation, and requests liability protection.
    - The non-responsible water system must still comply with other requirements of the SDWA and liability protection is only provided for the specific violations identified in the plan.

#### **Financial Assistance**

- PWS that has completed a mandatory restructuring assessment would be eligible for a DWSRF loan to support restructuring.

#### **Violations**

- Violations would occur given the following:
  1. Failed to submit the assessment report as mandated by the state;
  2. Submitted an assessment report to the state after the submittal date that the supplier of water and the state had established through previous consultation;
  3. Submitted an assessment report to the state that does not address all minimum elements; or
  4. Submitted an assessment that does not include the required certification statement.

#### **Primacy Requirement Revisions**

- The proposed WSRAR would revise the implementing regulations under 40 CFR part 142 subpart B to include a description of the state's procedures for an assessment to be completed with respect to options for consolidation, transfer of ownership, or other restructuring actions in accordance with WSRAR requirements.

- EPA would approve a state primacy application for the WSRAR if the agency were able to determine that the state had adopted and is implementing procedures for conducting or approving mandatory restructuring assessments, and review of restructuring plans, as would be required under 40 CFR part 142 subpart J.
  - To obtain primacy for the WSRAR, an applicant would be required to show that it has adopted and is implementing procedures to, among other activities: find that a PWS has satisfied the SDWA preconditions for a mandatory restructuring assessment; review and approve eligible assessors; ensure assessed water system compliance with the requirements for conducting a mandatory assessment, including public meetings; and, review restructuring plans to determine water system eligibility for enforcement relief or liability protection and the extent of liability protection, as applicable, based on rule requirements.

#### **State Reporting and Recordkeeping Requirements**

- The proposed WSRAR, if finalized, also would establish new reporting and recordkeeping requirements.
- States must report to the EPA annually, using a format and on a schedule that the agency will have established, the name and identification number of each PWS for each of the following notifications or determinations, as applicable:
  - Candidates for a mandatory restructuring assessment;
  - Mandatory assessment notifications;
  - Mandatory assessments completed;
  - Violations of mandatory assessment requirements; and
  - Eligibility for restructuring incentives.
- States must retain records of approved mandatory assessments for five years from the date of approval.
- States must retain records of restructuring plans submitted by PWSs seeking enforcement relief or liability protection and to provide records to EPA upon request, from the date of plan approval until one year from the date on which the state determines that all restructuring activities in the approved plan are complete.
- EPA also proposes that states be required to retain an approved mandatory assessment report if: the approved assessment report served as the basis for a restructuring plan that met regulatory requirements for enforcement relief, or for any restructuring plan that met regulatory requirements for liability protection. In such cases, states would be required to retain a copy of an assessment report until one year following the completion of restructuring under an approved restructuring plan.

