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Hypothetical State Programs for Ensuring that All New Community Water Systems and Non-Transient Non-Community Water Systems Demonstrate Technical, Managerial and Financial Capacity

This document describes four hypothetical State programs that meet the requirements of §1420(a) of the 1996 Amendments to the Safe Drinking Water Act as outlined in the *Guidance for States on Ensuring that All New Community Water Systems and Nontransient, Noncommunity Water Systems Demonstrate Technical, Managerial, and Financial Capacity*. The approach of each hypothetical State program is uniquely suited to its governmental and legal structures. The purpose of this document is to demonstrate the variety of alternative approaches that States might adopt, emphasizing the significant flexibility inherent in the statutory requirement and EPA's guidance on this subject. Text boxes throughout the hypothetical program descriptions identify key points that reviewers might note regarding each program submission.

Case One

Background

State A¹ has a large number of public water supplies and a large land area. In 1994, our State developed a program to ensure that all new public water supplies demonstrate technical, managerial, and financial capacity. Until 1994, our State had faced a rapidly growing inventory of new, small water systems. Also, we had experienced significant increases in non-compliance with our drinking water regulations, particularly by these new, small systems. As a result, the legislature gave the State Department of Environmental Protection (DEP)—the State’s primacy agency—the authority to prevent the creation of new public water systems that did not have the wherewithal to comply with our regulations.

Synopsis

- *Basis of Authority.* The 1994 Amendments to the State’s statutes on water supply gave DEP the authority to require that all new public water systems demonstrate technical, managerial, and financial viability before being awarded a construction permit or an operating permit.
- *Demonstration of Control Points.* Our program has two control points. The first is a construction permit. No system can be constructed until the system owners have completed an application that demonstrates all three aspects of capacity. Any developer who tries to construct without a permit is subject to legal action by the DEP. The second control point is an operating permit which ensures that systems are built according to the plans and specifications approved for the construction permit.
- *Plan for Implementation and Ongoing Evaluation.* In terms of implementation, we describe our ongoing efforts to hire and train staff for the program, and educate developers of new systems. For the ongoing evaluation, our plan will emphasize verification of program implementation. We also discuss our plan for data collection and analysis that will be used in program evaluation in future years.

Basis of Authority

¹The four hypothetical States in this document will be named using the first four letters of the alphabet: State A, State B, State C, and State D.

The drinking water statutes in our State were amended 4 years ago to address the problem of "non-viable" new public water systems. Traditionally, the State had reviewed only the technical aspects of a proposed new system's infrastructure (its plans and specifications) in conjunction with county commissions (which issued construction permits). There was no review of the managerial or financial aspects of capacity. Also, while the State had authority to issue operating permits to water systems, these permits were very limited in nature. Specifically, there was no provision to ensure that construction was completed in accordance with the approved plans and specifications.

The 1994 legislation, however, broadened the scope of State review of proposed new systems. As codified in Chapter 46, Section 4 of the State's *General Laws*, this new law covered all public water supplies (both community and noncommunity systems) and required the following:

A reviewer should note that since this legislation covers all public water supplies, it exceeds the requirements of the SDWA, which apply only to community and nontransient, noncommunity systems.

No public water supply shall be awarded a construction permit or an operating permit unless such public water supply demonstrates technical, managerial, and financial viability to provide potable water that meets the primary drinking water standards described in (Chapter 46, Section 1 of the General Laws). The Environmental Protection Board shall promulgate amendments to the Administrative Code, Section 247, to incorporate these changes in permitting requirements and take such action as necessary to enforce these requirements.

The regulations issued by the State DEP pursuant to the 1994 legislation required that the following items be part of an application for a **construction permit**:

Technical

- A description of the proposed new system's service area, and a description of the service area(s) of any nearby system(s).
- A description of the proposed source(s) of water for the new system and a description of the treatment processes that will be used to ensure that the water is potable and meets all State standards.
- Plans and specifications for the design and construction of the system.

- An estimate of current and future water demands for the system.

Managerial

- Descriptions of the experience and expertise of all proposed managerial and operational personnel for the system.
- An organizational chart of the system and identification of a responsible party.

A reviewer should note that the State's 1994 statute, plus the regulations implementing that statute, demonstrate the State's authority.

Financial

- A 5-year financial plan for the system, showing estimated receipts and expenditures, including provision for a fund to cover the cost of repairs and capital replacement.

The regulations implementing the 1994 statute also enhanced the State's authority to use an **operating permit** to ensure the technical capacity of new water systems. The legislative history showed that many of the problems in State A occurred because developers of new systems failed to construct the system in accordance with the approved plans and specifications. Therefore, the State also has the authority to refuse to give an operating permit until the system provides as-built plans and a certification by a professional engineer that the system was completed in accordance with the State-approved plans and specifications. The regulations also require an inspection of the system after construction and prior to issuance of an operating permit.

Our State Attorney General has certified that the State has the necessary authority to meet the requirements of Section 1420(a) of the Safe Drinking Water Act. Her opinion is based on an analysis of both the statutory authority and the implementing regulations described above. Her opinion states, in part: ". . . the state has the statutory authority to require a demonstration of technical, managerial, and financial capacity from all proposed new public water systems in the state. The regulatory basis for implementing this authority resides in Administrative Code, Section 247, . . ."

Demonstration of Control Points in the New System Development Process

There are two key control points where the State can affect the development of proposed new water systems: the construction permit and the operating permit.

The **construction permit is the first control point**. The 1994 legislation fundamentally changed the process for new system development and moved authority from the counties to the State. The State DEP now has the final say on whether to issue a permit to construct. Equally important, its review process requires that the proposed new system demonstrate all aspects of capacity—technical, managerial, and financial—before the permit is issued.

A reviewer should note that the State has two control points: the construction permit and operating permit.

The **second control point is the operating permit**. After the permit to construct is issued, the State reviews the system again before issuing an operating permit. This enables the State to ensure that developers of new systems have constructed those systems in accordance with the approved plans and specifications.

Both control points are implemented by the State DEP. It has staff with adequate qualifications to evaluate all aspects of new system capacity. The most comprehensive analysis takes place during the construction permit process. As shown on the previous page, systems are required to document technical, managerial, and financial capacity with their applications for construction permits. The operating permit review (as applied to new systems) is less comprehensive. Its basic purpose is to ensure that the system was constructed in a manner that is consistent with the designs and plans that were reviewed and accepted by the State during the construction permit process.

Plan for Implementation and Ongoing Evaluation of the New System Capacity Program

Regulations pursuant to the 1994 statute were promulgated during FY97. Therefore, the program is operational. To verify that our program is being implemented, we plan to collect and submit the following data during FY99 and for each future year of program implementation:

- Data on the implementation of our new program. This will include statistics on the number of applications for construction permits, the number of these permits that were denied, and the number of permits that were amended prior to submission in response to DEP comment. It also will include statistics on the issuance of operating permits to new systems.
- Denial of permit applications, or amendment of those applications to ensure that systems had technical, managerial, and financial capacity, is one way to demonstrate that the DEP implemented the regulations.

The State has identified several areas where further implementation will be undertaken during FY99. These include:

- Continuing to hire staff. Initially, we did not have staff with adequate training to evaluate all components of capacity. During FY97 and FY98, we relied on contract personnel with expertise in these areas. During FY98, we received authority to change position descriptions and hire personnel who met our needs. This process is ongoing.
- Training all staff. During FY97, we produced a rudimentary guidance for all staff associated with the new program. In FY99, we plan to revise this guidance document to incorporate lessons learned in the first two years.
- Educate developers. During the first two years of implementation, developers were given our regulations. In FY99, we will issue a guidance document that helps explain the program to them.

A reviewer should note that the plan focuses initially on a verification of program implementation. The State also will propose a longer term plan for evaluation of the effectiveness of the program.

For the longer term, we propose our **plan for evaluating the success of our new system capacity program**. Our primary objective in evaluation is to show that the new statute and regulations accomplished their objective. We intend to show that all new systems that have been given construction and operating permits under the new program meet our requirements for technical, managerial, and financial capacity.

We will begin with the collection of baseline data. The first data element would be an assessment of the capacity of new systems created and approved under the old procedures prior to the 1994 statute. The elements of technical, managerial, and financial capacity will be the same as those evaluated under the new construction permit and operating permit requirements. The next data element would be an assessment of all systems that have received construction and operating permits after the 1994 statute was implemented. Our expectation is that the capacity of new systems has substantially improved as the 1994 statute was implemented, particularly in the managerial and financial areas that were not required for construction permits prior to 1994.

We also intend to collect information that may be helpful to the State as it implements the new program. This evaluation exceeds the scope specified in the Safe Drinking Water Act Amendments, but we believe it will improve our program. We wish to assess, for example, whether the implementing regulations were clear, whether the guidance documents issued to

applicants were helpful, and so forth. This may require a small survey of new system owners. The results of this survey could then be used to amend future versions of regulations or guidance documents.

Case Two

Background

State B has two distinguishing characteristics that affect its new system capacity program. First, our State historically has had large county governments that perform many functions that might have been performed at the municipal level in other States. Authority for approval of all land development has been vested in the counties for over 40 years. Second, our State has adopted state-wide legislation authorizing growth management and regional planning. This legislation has been tied closely to legislation requiring state-wide planning for public water supplies.

Synopsis

- *Basis of Authority.* State B draws its legislative authority from two sources: the Growth Management and Regional Planning Act and the Public Water Supply Planning Act. The Water Supply Planning Regulation ties the two pieces of legislation into one process that uses a water supply plan requirement as a means of assessing capacity.
- *Demonstration of Control Points.* Approval of a water supply plan is the State's control point. A system cannot initiate construction until both the county planning commission and the State Department of Health have approved the water supply plan. The water supply plan provides information on all three aspects of capacity.
- *Plan for Implementation and Ongoing Evaluation.* The program for State B has been in operation for several years. The State has developed a plan for verifying effective implementation. We have also created a process for evaluating the effectiveness of the program in the context of both the state Public Water Supply Planning Act and the SDWA.

A Basis of Authority

Our legislative authority is drawn from the Public Water Supply Planning Act and from the Growth Management and Regional Planning Act. The Growth Management and Regional Planning Act requires counties to submit and enforce Regional Plans for all land use and development within their jurisdiction. The Public Water Supply Planning Act requires the counties to ensure that all proposed public water supplies correspond to the Regional Plan. The Public Water Supply Planning Act also requires the State to ensure that all proposed public water supplies demonstrate adequate capacity. This legislation states:

All community water systems and nontransient, noncommunity water systems shall have an approved water supply plan as defined in Chapter 32, Section 9 of the Annotated Code. All persons proposing to construct a community water system or a nontransient noncommunity shall submit water supply plans as part of their application for a construction permit as required in Chapter 32, Section 6 of the Annotated Code. The Secretary of Health shall prepare regulations implementing this requirement. Such regulations shall be promulgated no later than 24 months after the effective date of this Act.

The regulatory authority promulgated by the State is SBAC 222-333-000. It establishes a process that formalizes the relationship between the State and the counties in implementing both the Growth Management and Regional Planning Act and the Public Water Supply Planning Act. The regulation (SBAC 222-333-000) states:

A proposed community water system or proposed nontransient, noncommunity water system may not initiate construction before completing an approved water supply plan. To ensure consistency with Regional Plans, the water supply plan must be submitted to the appropriate county planning commission. If the water supply plan is found to be inconsistent with the Regional Plan, the county planning commission must reject the water supply plan pending revision. If the water system plan is found to be consistent with the Regional Plan, the county planning commission must forward the water supply plan to the State Department of Health. The State Department of Health must review the water supply plan to ensure that the proposed system demonstrates adequate technical, managerial, and financial capabilities at present and over the long-term. If the water supply plan does not demonstrate adequate capacity, the State Department of Health will return the water supply plan to the water system for further clarification. If supplemental information also proves inadequate, the State Department of Health must reject the water supply plan. Water supply plans that are determined by the county planning commission to be consistent with the Regional Plan and are determined by the State Department of Health to demonstrate adequate capacity will be approved to initiate construction.

The State Attorney General has certified that the legislative and regulatory authority described above provides the State with the necessary authority to implement the State program for ensuring capacity in new community water systems and new nontransient, noncommunity water systems as required under the Safe Drinking Water Act Amendments of 1996. Her opinion states:

A reviewer should note that State B has clear legislative and regulatory authority to implement a program for ensuring capacity in new community and nontransient, noncommunity water systems. The program relies on a well-defined relationship between the county governments and the State Department of Health.

The State B Water Supply Planning Act and SBAC 222-333-000 provide State B with the statutory and regulatory authority necessary to ensure technical, managerial, and financial capacity in all new community water systems and all new nontransient, noncommunity water systems.

The implementing regulation cited above (SBAC 222-333-000) has been further clarified with two additional implementing documents: 1) a Memorandum of Understanding between the counties and the State Department of Health outlining a Standard Operating Procedure for coordinating approval of water supply plans; and 2) a Guide to Systems for Preparing Water Supply Plans. These documents are not included in this submission, but can be provided for review upon request.

The State has developed several additional programs that do not directly address the capacity of proposed systems, but do serve to limit the number of new systems that are ultimately developed. As part of the overall growth management program for the State, our legislature has provided counties with financial incentives to reject applications for construction of new stand-alone systems. Specifically, the legislature authorized planning grants for counties that were willing to deter creation of new stand-alone public water systems by extending service from existing water systems, including (if necessary) the county's own water system. Also, in its Intended Use Plan for the Drinking Water State Revolving Fund (DWSRF), the State announced its intention to give high priority to projects that are consistent with this overall approach.

Demonstration of Control Points in the New System Development Process

The control point in State B's program is water supply plan submission and approval. New systems cannot be developed without approved water supply plans. Approval must be granted by both the county and State Department of Health before construction of the water system can be initiated. If a system begins construction prior to approval of its water supply plan, the State will stop construction until the water supply plan is approved. If a new water system completes construction and begins operation prior to completing an approved water supply plan, the county will be required to take over operation of the system until the water supply plan has been approved (using its authority under SBAC 222-333-005).

The elements reviewed by the State Department of Health are outlined in the Guide to Systems for Preparing Water Supply Plans. They include:

Technical

- A description of the service area for the system.

A reviewer should note that in State B, no water system can begin construction until their water supply plan has been approved. The water supply plan provides a consolidated approach for assessing technical, managerial, and financial capacity in proposed systems.

- A description of the water sources, treatment in place, and proposed treatment systems.
- An estimate of total water demand, and a projection of future water demand for the next 10 years. These demand projections must be based on residential, commercial, and agricultural plans for land use in the service area.

Managerial

- A management plan that describes current operating procedures and identifies the personnel responsible for operation and management of the system.

Financial

- A financial plan, linked to the 10-year projection of demand, that shows how the system will meet its projected maintenance and capital investment needs. This financial plan must be based on the most recent audited financial statement prepared by the system and submitted to the State Department of Health (an annual requirement of the Department).

Plan for Implementation and Ongoing Evaluation of the New System Capacity Program

The program in State B is already implemented. The State has 20 years of experience with its Public Water Supply Planning Act. The Growth Management and Regional Planning Act is newer, but has been fully integrated in a comprehensive program for new system capacity. The program is fully staffed, personnel are trained, and all documents necessary for implementation have been published.

Verification of program implementation will be provided by submitting:

- Summary statistics on the implementation of the two Acts during FY99. This will include data on the number of water supply plan submissions and the disposition of these submissions. As we will show in our evaluation plan, these statistics will not only help to verify program implementation, they also will show that our program works. For each future year of program implementation, we will submit the summary statistics.
- A selection of implementation documents including job descriptions for staff implementing the program, guidance documents, and related materials.

We also plan to complete a more thorough, long-term evaluation of the program, which will focus on program outcomes. The scope of this evaluation may exceed the requirements of

the *Guidance*, but the State believes the evaluation will improve program effectiveness. We will design this evaluation to be consistent with the evaluation objectives specified in the Act that initially created the program. The Public Water Supply Planning Act used water supply planning as a method of ensuring that new public water supplies had the wherewithal to meet all of the State's drinking water regulations. Today, particularly after the Growth Management and Regional Planning Act, we have refined our requirements to focus on technical, managerial, and financial capacity. The basic question for our evaluation, therefore, is whether the water supply plans (on file in the Department of Health) meet those requirements. To evaluate the outcomes of our program, we will select a random sample of new systems approved during FY99 and provide a detailed review of the water supply planning process to determine whether all of these systems truly demonstrated technical, managerial, and financial capacity.

Case Three

Background

State C is relatively small in both land area and population. Traditionally, our Public Water System Supervision (PWSS) program has reviewed all proposals for the creation of new public water systems. County governments have the authority to approve new land development, but they defer to the State on drinking water issues. The Drinking Water Administrator has used his statutory and regulatory authority to implement a program to ensure that all new community water systems (CWSs) and nontransient, noncommunity water systems (NTNCWSs) could comply with the State's primary drinking water regulations.

Synopsis

- *Basis of Authority.* Using a broad legislative mandate to “protect the quality of drinking water,” State C has promulgated an implementing authority in its regulations that requires proposed systems to demonstrate technical, managerial, and financial capacity before a construction permit will be granted.
- *Demonstration of Control Points.* A construction permit is the primary control point. State C requires detailed documentation demonstrating adequacy in all components of capacity at the control point. Systems attempting to proceed without the construction permit will be stopped by the State until adequate demonstration of capacity has been provided.
- *Plan for Implementation and Ongoing Evaluation.* The program for State C is fully implemented. State C has kept records of permit actions for over 20 years. The State will continue to collect information that can be used to track permit approval rates, permit denial rates, and the performance of systems for whom approvals were granted. The State's documented history of its review of applications for construction permits will provide a basis for quantitative evaluation of program implementation and effectiveness.

Basis of Authority

While State C has a broad statutory mandate to “protect the quality of drinking water provided to residents of the State,” the **implementing authority** for the state program for ensuring capacity in new community water systems and new nontransient, noncommunity water systems resides in **regulation** in the state's Administrative Code. State Code R. 555-5555 states:

All proposed community water systems and nontransient, noncommunity water systems must submit an application and supporting documentation when requesting a permit for the construction of a new system. Upon receipt of a complete application and appropriate fees, proposed systems will be evaluated. Proposed systems must demonstrate technical, managerial, and financial capabilities to reliably meet performance requirements on a long term basis and be self-sustaining. If review of the application shows deficiencies, a formal request for clarification will be made to the applicant. Upon failure to receive clarifying information, or if the supplemental information is unsatisfactory, the permit will be denied.

Our State Attorney General has certified that the legislative and regulatory authorities described above provide us with the necessary authority to meet the requirements of the capacity development provisions of the Safe Drinking Water Act Amendments of 1996. His opinion states:

. . .the Public Health Protection Act provides adequate statutory authority to promulgate State Code R. 555-5555. This regulation provides the State with the authority to require of all proposed new community water systems and new nontransient, noncommunity water systems a demonstration of adequate technical, managerial, and financial capacity . . .

For the past 20 years, our Drinking Water Administrators have aggressively used this authority to enforce stringent requirements on those who propose new drinking water systems. Believing that all public water systems should have the wherewithal to provide safe water, and believing that new systems that are poorly designed, constructed, and operated often lead to non-compliance with the State's drinking water regulations, these Administrators have consistently used their authority to deny construction permits to proposed new systems with inadequate capacity.

A reviewer should note that State C possesses a clear implementing authority that allows the State to deny a construction permit for a new system if that system lacks adequate technical, managerial, and financial capacity.

Our implementing authority for ensuring capacity is further strengthened by additional regulations that inhibit the development of new, poorly-planned systems:

- Because most proposed systems in the State rely on ground water sources, we have adopted some of the most stringent well construction standards in the nation. The resulting cost of well construction deters financially unsound proposals.
- No applicant can receive a construction permit if the proposed system is within 1 mile of a distribution main of an existing system. While exemptions can be

granted, the mere existence of this regulation also encourages connection to existing systems.

The State's Public Water System Supervision (PWSS) program is located in the Department of Health. The regulations described above are implemented exclusively by that Department. Given the emphasis that the State Drinking Water Administrator has placed on this issue of new system viability for the past 20 years, he has been successful in creating job descriptions for personnel in the State PWSS program so that these personnel have the training to evaluate technical, managerial, and financial aspects of drinking water systems. Since all expertise is available in-house, and since no responsibilities are delegated to other agencies, there is no need for collaborative arrangements.

Demonstration of Control Points in the New System Development Process

As shown in citation provided above, the construction permit is our primary control point. We have clear authority to deny a permit to a system that does not demonstrate that it has the necessary technical, managerial, and financial capacity. To implement this authority fully, we require each system to submit information concerning capacity as part of the permit application. We evaluate this information to assess system capacity. The following information is required for submission in the regulations:

Technical

- An engineering report providing a description of the **proposed service area, proposed sources**, a description of **treatment processes to be employed**, and an estimation of **maximum and future water demands**.
- **Plans and specifications** bearing the seal of a licensed professional engineer.

Managerial

- A certification of ownership **signed by the responsible owner or authority**.
- A description of the system's compliance with the state's **operator certification regulations**.
- A **chart of the organizational structure** showing all aspects of water system management and operation, with detailed descriptions of **major responsibilities** for

A reviewer should note that State C has a demonstrated record of using its control point to ensure adequate capacity since the implementation of the authority. The control point allows the State to evaluate all aspects of capacity thoroughly.

each management position shown on the organizational chart and a description of the **water system's legal basis**.

- An **Emergency Management Plan** that includes identification of known and potential natural and human-caused risks to the water system. It must also identify personnel responsible for actions and describe notification procedures and means for implementation.
- A description of the **training and/or experience of new owners/management** in managing a public water system; include description of proposed plans for assuring **on-going training**.

Financial

- A **budget developed prospectively for a 5 year period** that includes revenues, operating expenses, reserves, and capital improvements.
- A description of **budget/expenditure control procedures** and reports to assure adequate budget control.

Any system that attempts construction without a permit will be stopped by the State until the necessary demonstrations are made. Legal action may be taken against the responsible party. We have a demonstrated record of using our authority and control point to stringently review all applications. We have required supplemental information from over 60 percent of our applicants. We ultimately denied construction permits to just under 30 percent of those applicants. The remaining applicants made sufficient changes to warrant approval.

Plan for Implementation and Ongoing Evaluation of the New System Capacity Program

Our program for ensuring capacity in new community and new nontransient, noncommunity water systems is currently functioning effectively. Because our PWSS program has been committed to new system capacity, and because we have documented our experience for 20 years, our plan for ongoing evaluation of our new system capacity assurance plan is comprehensive. We can not only verify that our program has been implemented, but we also can evaluate the program's success and compare each year's performance with those of previous years.

A reviewer should note that the State's documented history of its review of applications for construction permits will provide a basis for quantitative evaluation of program implementation and effectiveness.

Our database enables us to demonstrate, on an annual basis, that:

- We have reviewed all applications for construction permits, and that no system was constructed without the appropriate permit.
- We have denied construction permits, and required changes in other applications, so that **every approved application demonstrates compliance with our new system capacity assurance program.**

We can present this evaluation quantitatively, comparing previous years to demonstrate how our program has improved over time. For example, we have longitudinal data on:

- the number of construction permit applications
- the number denied
 - the reasons for denial
- the number changed before approval
 - the types of changes that were required.

Our past evaluations of these longitudinal data will show that developers of new systems have learned about our requirements. Over time, the rate of denials has slowed as system owners and operators better understand our regulations. Over time, we have better compliance with the financial and managerial components of capacity (which were a difficult subject for systems when they were first introduced). These, and other results from our evaluations assist our program in making improvements in implementation.

Case Four

Background

State D is a predominantly rural state with few large population centers. Historically, towns in the state grew up around industrial centers and mining operations. The State recently has attracted a number of factories and assembly plants for high-tech operations, including computer manufacturing. As a result, the State is experiencing a new influx both of skilled laborers and white collar professionals. New development has been of two types: high-end residential developments and manufactured housing communities. Many of these new developments build their own water systems. Over the past two years, systems serving these communities have made up the vast majority of new community and nontransient, noncommunity water systems in the State.

Synopsis

- *Basis of Authority.* The State legislature has recently enacted legislation giving the Department of Environmental Protection statutory authority to implement a capacity assurance program for new systems. The Department is currently developing draft regulations to implement the program.
- *Demonstration of Control Points.* The final program, when fully implemented, will employ an operating permit as its control point. Each system will be required to submit for approval a Capacity Development Assessment Package as part of the application for the operating permit.
- *Plan for Implementation and Ongoing Evaluation.* The State will verify program implementation by tracking key implementation statistics, including number of permit applications, number of permits denied, and number of permits modified as a result of Department comment. The State will evaluate program success by comparing initial assessments of capacity against assessments of capacity after two years of operation.

Basis of Authority

The State legislature recently enacted legislation giving the State Department of Environmental Protection **statutory authority** to implement a program to ensure capacity in new community water systems and new nontransient, noncommunity water systems. In part, the statute reads:

The State Department of Environmental Protection has the authority to promulgate all regulations necessary to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations.

The State Attorney General certifies that: “State D possesses the statutory authority to ensure that all new community water systems and new nontransient, noncommunity water systems . . . demonstrate technical, managerial, and financial capacity . . .”

Because this statutory authority was not enacted until July 1998, the Department of Environmental Protection has not yet promulgated regulations implementing the program. Currently, the Department is drafting language to amend existing regulations that require all new community water systems to receive an operating permit prior to commencing operations. At present, the operating permit functions essentially as a fee program and requires systems to submit nothing more than a simple application identifying the name of and contact information for the system owner and/or manager. The amended regulation will extend the requirement to all new nontransient, noncommunity water systems and will require the submission of a Capacity Development Assessment Package as a supplement to the existing application. The exact contents of the Assessment Package will be included in the amended regulation. It will cover all aspects of capacity and will include:

A reviewer should note that State D possesses the statutory authority to implement a program to ensure capacity in new community and nontransient, noncommunity water systems. Although the State has not yet promulgated regulations implementing the program, regulations are being developed and are scheduled for promulgation in February, 1999. The State’s schedule is realistic based on their past performance.

Technical

- a complete system description;
- as-built plans and a certification by a professional engineer that the system was completed in accordance with the State-approved plans and specifications;
- an infrastructure replacement plan
- an operations plan;

Managerial

- certification of ownership;

- an organizational chart that includes an explanation of responsibilities for all personnel;

Financial

- a budget developed prospectively for a 7-year period; and
- a plan for developing an emergency reserve fund.

Because the language of the draft amended regulation has not yet been reviewed by the Department's internal review committee, it can not be provided in this program description. The amended regulation will be provided for USEPA review as soon as it has been promulgated by the Department. **The schedule** is as follows:

- September 1, 1998--complete draft regulation amendment language
- October 1, 1998--complete review by internal review committee and complete all revisions required by the committee
- October 15, 1998 to January 15, 1999--public comment period
- February 15, 1999--promulgate amended regulation

This schedule provides more than ample time to respond to any unforeseen delays and fully implement the regulatory program prior to October 1, 1999. This schedule is realistic based upon our State's past performance. Two (2) years ago the legislature mandated changes in our sanitary survey regulations. We developed and promulgated those revised regulations in six (6) months. That sanitary survey regulation was at least as complex as this new systems capacity regulation.

Demonstration of Control Points in the New System Development Process

The primary control point exercised by State D will be the operating permit requirement. It will be implemented as discussed above.

Plan for Implementation and Ongoing Evaluation of the New System Capacity Program

The first step in our program evaluation process will be to verify program implementation. To do this, State D will collect and track the following information:

- Copies of all submitted Capacity Development Assessment Packages and the Department's written evaluation of each submission.

A reviewer should note that State D has a plan for verifying implementation and for evaluating the success of the program. The State plans to use the evaluation of program success to make adjustments to its program.

- Implementation data, including statistics on the number of applications for operating permits, the number of these permits that were denied, and the number of applications/Assessment Packages that were amended prior to re-submission in response to Department comment on the original Capacity Development Assessment Package submission. The State is currently developing a database that will allow the Department to use and analyze this data.

The second step is to evaluate the effectiveness of the State program for ensuring capacity in new community water systems and new nontransient, noncommunity water systems. This will be accomplished by specifically evaluating compliance and sanitary survey results for newly created systems. If consistent weaknesses or inaccuracies are identified, the Department will make appropriate changes to its new system program.