

Date Signed: September 4, 2003

MEMORANDUM

SUBJECT: Eligibility of Routine Compliance Monitoring Costs under the Drinking Water State Revolving Fund Capacity Development Set-aside

TO: Water Division Directors  
Regions I-X

FROM: Cynthia Dougherty, Director  
Office of Ground Water and Drinking Water

The purpose of this memo is to clarify the appropriate use of Drinking Water State Revolving Fund (DWSRF) capacity development set-aside funds for the conduct of routine compliance monitoring for systems by states.

Background

EPA Region 6 requested clarification on whether DWSRF capacity development set-aside funds could be used by states to fund routine monitoring for systems to demonstrate compliance with drinking water regulations. The answer to this question turns on the language of the appropriate Safe Drinking Water Act (SDWA) sections and funding mechanisms and the overall goal of the capacity development program.

The statutory restriction in section 1452(a)(2) of the SDWA on the use of DWSRF funds for monitoring applies to section 1452(g)(2) and therefore compliance monitoring is not an eligible use under the 2%, 4% and 10% set-aside categories. This prohibition on the use of the 1452(g)(2) set-asides for compliance monitoring was reflected in the DWSRF Program Final Guidelines released in February 1997 and in the subsequent DWSRF final regulations at 40 CFR 35.3520(f) and 40 CFR 35.3535(a)(2).

The complementary language in SDWA for the section 1452(k)(1)(B) capacity development set-aside neither specifically authorizes nor prohibits use of funds for routine compliance monitoring. However, it does explicitly state that the assistance must be "...in accordance with section 1420(c)." It is clear that the overriding Congressional purpose in

mandating the capacity development program in the 1996 SDWA Amendments was to foster the long-term independent sustainability of public water systems. This is evidenced by the language in SDWA section 1420(c)(1)(C) indicating that states are to develop and implement “...a strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity” (emphasis added).”

In initial development and implementation of the capacity development program, the Agency sought input from a number of stakeholders. One effort involved seeking recommendations from the statutorily mandated National Drinking Water Advisory Council (NDWAC). The Council’s recommendations recognized and endorsed the core SDWA precept that capacity development should lead to comprehensive system sustainability. NDWAC defined capacity development as “a process through which a system plans for and implements action to ensure the system can meet both its immediate and its long term challenges.”

### Discussion

Statutory language and intent establishes constraints on the use of section 1452(k)(1)(B) set-aside funds for routine operational functions such as compliance monitoring at water systems. The controlling consideration is increasing the number of utilities that are self-sufficient to (1) carry out the complete range of activities necessary to provide full public health protection to their customers, and (2) ensure compliance with all applicable requirements. All statutorily provide tools and authority should be utilized in a fashion to advance that core objective.

To assist systems in implementing the capacity development program, Congress specifically authorized states to use DWSRF funding under section 1452(k)(1)(B). States may utilize these funds for a range of activities that advance capacity development and promote system sustainability such as guidance, training and technical assistance. However, these funds are not intended as routine subsidies for technical, financial and managerial activities that are utility responsibilities. Long-term subsidizing of routine operational activities such as compliance monitoring does not improve the independent capacity of water systems that is the ultimate goal of the capacity development by encouraging system dependency on outside funding. It also diverts limited DWSRF funds from activities that directly support capacity development and system sustainability.

### Conclusion

Conducting routine compliance monitoring for a system does not promote the ability of the system to acquire and maintain independent capacity for the long-term. Such a use of DWSRF funds is inconsistent with the statutory and programmatic goals of the capacity development program. Therefore, section 1452(k)(1)(B) set-aside funds should not be used for long-term, routine compliance monitoring.

Since several states currently allow this practice, it is appropriate to institute a transition period to minimize program disruption. Any state currently using these funds for routine compliance monitoring may continue this practice until no later than January 1, 2005. This transition period will allow a state to continue working with the systems it had identified for assistance and gives the state and systems time to move from using DWSRF funds to an alternative funding source.

If a state believes that it is appropriate for the state to conduct routine compliance monitoring for systems as part of its drinking water program, that effort should be funded from sources other than DWSRF grant funds. For most water systems, the best course is to work to establish adequate rate structures that provide the revenue to pay for monitoring and other essential operational responsibilities.

I hope this memo clarifies the appropriate use of DWSRF capacity development set-aside funds for routine compliance monitoring. If you have any further questions, please feel free to contact me or have your staff contact Charles Job, Infrastructure Branch Chief, at (202) 564-3941 or Kimberley Roy, from the DWSRF program, at (202) 564-4633.

cc: Drinking Water Program Managers, Regions I-X  
 DWSRF Program Managers, Regions I-X  
 DWSRF Program Coordinators, Regions I-X  
 Capacity Development Coordinators, Regions I-X

bcc: Bill Diamond, Director, Drinking Water Protection Division  
 Nanci Gelb, Deputy Director, Office of Ground Water and Drinking Water  
 Peter Shanaghan, Chief of Staff, Office of Ground Water and Drinking Water  
 Chuck Job, Chief, Infrastructure Branch  
 George Ames, Chief, State Revolving Fund Branch  
 Evelyn Washington, Chief, Protection Branch  
 Ken Redden, Office of General Counsel  
 Carrie Wehling, Office of General Counsel  
 Kimberley Roy, Acting DWSRF Team Leader  
 Jenny Bielanski, Utilities Team