

**NATIONAL CONSUMER LAW CENTER  
CONSUMER FEDERATION OF AMERICA  
U.S. PUBLIC INTEREST RESEARCH GROUP (U.S. PIRG)  
CONSUMERS UNION**

May 1, 2006

Mr. Ben Grumbles  
Assistant Administrator for Water  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

**Re: Consumer Groups Comments to EPA's Proposed Revisions to the Existing  
National-Level Affordability Methodology for Small Drinking Water Systems Variances,  
Docket ID No. OW-2005-0005**

Dear Mr. Grumbles,

On March 2, 2006 the Federal Register published a notice requesting comment on revisions to the existing national-level small systems affordability methodology.<sup>1</sup> The National Consumer Law Center (NCLC)<sup>2</sup> and the Consumer Federation of America (CFA)<sup>3</sup> participated in the National Drinking Water Advisory Council's (NDWAC) Small Systems Affordability Criteria Working Group that met five times between September 2002 and January 2003 to develop the recommendation upon which the NDWAC National Small Systems Affordability Criteria Recommendation is based. U.S. PIRG<sup>4</sup> and Consumers Union<sup>5</sup> are also consumer organizations that are concerned about the effect of rising water rates on consumers, especially the most vulnerable households, low-income households with young children, consumers with disabilities

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<sup>1</sup> 71 Fed. Reg. 10671-10685 (Mar. 2, 2006).

<sup>2</sup> **The National Consumer Law Center** is a non-profit organization specializing in low-income consumer issues and works with legal services, government and private attorneys, as well as community groups and organizations around the country, in addition to publishing over a dozen legal treatises on consumer law. NCLC was founded more than 30 years ago to advocate for economic justice for low-income households and is committed to advocating for safe and affordable drinking water for low-income consumers.

<sup>3</sup> **Consumer Federation of America** is a non-profit association of more than 300 organizations, that since 1968, has sought to advance the consumer interest through research, education and advocacy.

<sup>4</sup> **U.S. PIRG** is the federal policy office for the State PIRGs, a nationwide network of non-profit, non-partisan public interest advocacy organizations with a 30-year history of working on consumer issues.

<sup>5</sup> **Consumers Union** is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance. Consumers Union's income is solely derived from the sale of Consumer Reports and ConsumerReports.org, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, Consumer Reports and ConsumerReports.org, with approximately 6.5 million combined paid circulation, regularly carry articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions that affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

or chronic illness and seniors on fixed-incomes. These comments are respectfully submitted on behalf of the above mentioned consumer groups (“Consumer Groups”).<sup>6</sup>

Consumer Groups oppose EPA's proposed revisions to the Small Drinking Water Variances Methodology both because these revisions result in a limited and ineffective approach to the real affordability problem and because the proposal sets up a 2-tiered system of water quality – one which would permit the drinking water of low-income communities served by distressed small systems to contain three times or more of a contaminant than would be ruled acceptable in the rest of the country. **Consumer Groups urge the US EPA to withdraw this rulemaking and to proceed with a comprehensive approach to affordability using the NDWAC recommendations as a starting point.**

### **I. Low-Income Household Access to Affordable Utility Services Is Sliding Out of Reach**

The Consumer Groups are very concerned about the effect of the rising cost of essential utility service for low-income services. Even though water (both drinking water and sewer) bills are usually a much lower percentage of a household's income than energy bills, water is an essential service for a habitable dwelling. The link between housing and essential utility services elevates the importance of maintaining utility service for a low income family. When low-income households are disconnected from an essential utility service such as water for a prolonged period of time, they are at risk of eviction and homelessness, the intervention of child welfare agencies, and disruption to family life and to children's schooling. Arrearages due to unaffordable water bills can also result in a lien on the property. Low-income household budgets are already stretched to the breaking point by the continuous dramatic increase in residential energy prices and the movement to submeter rental units, facilitated by recent EPA action<sup>7</sup> is subjecting more low-income households to the rise in water cost.

Recent national surveys of Low Income Home Energy Assistance Program (LIHEAP) recipients document the extraordinary lengths to which low-income households will go to remain connected to utility services. Low income households report going without necessities such as medical care, cutting back on prescriptions and skipping meals due to unaffordable energy bills.<sup>8</sup> We expect the same dire sacrifices are being made when water bills are unaffordable because of the tie between water service and the habitability of the home. Water is different than energy service in a few key respects. Whereas a household may be able to do without heating fuel during the summer and air conditioning in the winter, a household needs access to water service all year round. Also, because water is consumed it must be safe. Older persons, consumers with chronic illness or compromised immune systems and young children, are particularly susceptible to the harmful health consequences of contaminants in drinking water.

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<sup>6</sup> These comments have been prepared by Olivia Wein, staff attorney at the National Consumer Law Center, on behalf of the Consumer Groups.

<sup>7</sup> 68 Fed. Reg. 74233-74255 (Dec. 23, 2003).

<sup>8</sup> National Energy Assistance Directors' Association, *2005 National Energy Assistance Survey, section IV* (September 2005); National Energy Assistance Directors' Association, *National Energy Assistance Survey Report, section II* (April 2004). Both reports are available at [www.neada.org](http://www.neada.org).

Safe drinking water is essential for sound public health. Low-income households are least able to absorb increases in water bills regardless of whether the increase is due to improved treatment of the water or improvements to the system's infrastructure. Consumer Groups are very concerned about the harmful and disruptive consequences of unaffordable water service on low-income households. ***However, the daunting low-income household affordability problem does not condone opening the door to lower quality water for customers of distressed small systems.*** Consumer Groups strongly believe that it is unethical and bad public policy to create two standards for water quality, where poor communities served by distressed small water systems can have three times the contaminants (or more) as those served by larger public water systems.<sup>9</sup>

## **II. The U.S. EPA Proposal Disregards the Comprehensive Package of Strategies Put Forth in the NDWAC Recommendation to the Detriment of Low-Income Consumers**

The Consumer Groups are very disappointed by the EPA's total disregard of the comprehensive small system affordability recommendations by the National Drinking Water Advisory Council (NDWAC).<sup>10</sup> The comprehensive recommendation was based on the work of the Small Systems Affordability Working Group. The Working Group, like NDWAC, was composed of a broad range of stakeholder groups.<sup>11</sup> The NDWAC, and all but one stakeholder group in the Working Group, viewed small system affordability in larger and more comprehensive context. The NDWAC recommendation includes financial support strategies, system level strategies and discusses the role of public education. In stark contrast, the EPA notice only requests comment on the affordability methodology used to grant small system variances. The EPA proposal basically focuses all discussion on how wide open the door to two-tiered water should be. Even more disturbing, the various proposals in the EPA notice open the door far wider than the NDWAC comprehensive recommendation, which was a compromise position very much tied to the other affordability strategies provided in the recommendation.

**The Consumer Groups preface specific comments on the EPA notice with the firm position that small system affordability is a complex problem that requires a comprehensive approach.** Simply opting to make it easier for distressed small systems to obtain a small system variance to provide substandard water, in the name of cheaper water, is offensive to our sense of equality and fairness in the marketplace. While we provide comments in response to issues raised in the notice, this is not meant to be taken as approval of the proposals in the notice. Consumer Groups urge the EPA to step back from solely focusing on how to make it easier to use the small system variance option (i.e., provide lower quality water), and start over with the comprehensive NDWAC recommendations.

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<sup>9</sup> This also demonstrates an abandonment of the environmental justice principles for minority and low-income populations set out in Executive Order 12898 (February 11, 1994) ("Environmental Justice is the fair treatment and meaningful involvement of all people . . . EPA has this goal for all communities and persons across this Nation. It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards . . .").

<sup>10</sup> *Recommendations of the National Drinking Water Advisory Council To U.S. EPA on Its National Small Systems Affordability Criteria* (July 2003). (Herein after "NDWAC Recommendations").

<sup>11</sup> The Small System Affordability Working Group was made up of 18 members representing small and large water utilities, small system advocacy and technical assistance organizations, academics, industry consultants, government and agency organizations, tribes, environmental and consumer organizations.

1. Consumer Groups Support NDWAC's approach to the small system variance process.

Consumer Groups support NDWAC's comprehensive approach to small system affordability. NDWAC noted that:

The efforts of the Affordability Work Group were predicated on the fact that the [Safe Drinking Water Act] includes variances as a regulatory construct. However, significant practical, logistical, and ethical issues mitigate against the use of variances.

For example, the cost of establishing the appropriateness of a variance for a specific small system is significant. The heightened monitoring and regulatory burden that would fall to State and local authorities is unacceptable for many of them.<sup>12</sup> Furthermore, the potential acceptance of lower water quality for disadvantaged communities is ethically troublesome.

The NDWAC believes that alternatives to the variance process identified by the Work Group in this report (such as cooperative strategies, targeted use of funding to disadvantaged water systems, a [Low Income Water Affordability Program], etc.) are more appropriate means to address the affordability problem. *Therefore, if a variance process is deemed necessary to achieve affordability, it should only be pursued after all other alternatives presented in this report are given due consideration.*<sup>13</sup> (emphasis added.)

The NDWAC recommendation treats the small system variance as an option of last resort. The Consumer Groups agree with this approach.

2. Elements of the Comprehensive Approach to Small System Affordability Not Included in the EPA Proposal

The following are elements of a comprehensive approach to small system affordability advanced by NDWAC and supported by the Consumer Groups. We urge the EPA to include these strategies when addressing small system affordability. We also urge the EPA to limit the use of the small system variance to situations where all other alternatives presented in the NDWAC recommendations are given due consideration.

### The Role of the States

The NDWAC recommendations highlight the important role of the states, as primacy agencies, in reducing the cost of water and implementing the Safe Drinking Water Act.<sup>14</sup> The recommendations include, among other things, encouraging States to take leadership in

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<sup>12</sup> See NDWAC Recommendations at § 1.6.5 (States, on average, have only 60 percent of the funds needed to implement the Safe Drinking Water Act).

<sup>13</sup> NDWAC Recommendations at pp. x and 99.

<sup>14</sup> NDWAC Recommendations at Section 1.6.

promoting system efficiency and sustainability through cooperative strategies (through physical restructuring, managerial and shared resources of non-viable systems); providing technical assistance to non-viable systems; targeting State Revolving Funds (SRF) to help small water systems come into compliance with the Safe Drinking Water Act; implement the capacity development provisions of the Safe Drinking Water Act to help non-viable systems come into compliance; enable lifeline water rates and facilitate conservation in low-income homes, and provide leadership in public education on matters concerning safe drinking water.

### *Financial Support Strategies Targeted to the Low-Income Ratepayer*

The NDWAC recommendations include several financial support strategies to both the systems and low-income consumers to help achieve affordable rates for low-income consumers. The recommendations include having the EPA provide systems with information and examples of affordability rates, which tailor discounted water rates to low-income households.<sup>15</sup> The advantages to tailored discounted rates are that the discounted rates (referred to in the recommendations as “Lifeline” rates) do not require an outside source of funding; depending on how they are structured, they can promote conservation, and they can be very effective in promoting low-income access to water service if the system has a relatively low proportion of low-income households. There will of course be small systems with a large number of low-income households where rate design alone, will not be effective in addressing the system’s household affordability problem.

The NDWAC recommendations also includes support for direct assistance to low income households through a Low Income Water Assistance Program (“LIWAP”) similarly designed to the federal Low Income Home Energy Assistance Program (LIHEAP).<sup>16</sup> Targeted assistance to low-income households, especially where affordability rate design is not feasible, would help those households remain connected to water service where rates increase due to compliance technologies. There are well established federal low income utility programs that provide assistance directly to the low income households to help cover the cost of home energy (LIHEAP)<sup>17</sup> and telephone service (Universal Services Lifeline and Link-Up).<sup>18</sup> The funding mechanism for LIHEAP is an annual appropriation from Congress that is distributed to the states as a block grant. The funding mechanism for the Universal Service Lifeline and Link-Up program (which is a component of the larger Universal Services Programs) was more controversial. The telecommunications Universal Services Fund appears as a line item charge on phone bills. Both programs use income eligibility as well as program eligibility (where participation in another means tested program will automatically qualify a person for the utility assistance program). LIHEAP also has a conservation component where states can use 15 percent (or up to 25 percent) of their block grant for low-income energy efficiency measures.<sup>19</sup> Similarly, a LIWAP program could also include a conservation component where a state could dedicate a percentage of the block grant for low-income leak detection and repair and water conservation measures. While a LIWAP program would be targeted to help low-income

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<sup>15</sup> See American Water Works, *Principles of Water Rates, Fees, and Charges M1 Manual*, 5<sup>th</sup> ed., ch. 16 (2000) as referred to in the NDWAC Recommendations at §3.2.1.

<sup>16</sup> NDWAC Recommendations at §3.2.2.

<sup>17</sup> 42 U.S.C. §8621 *et seq.*

<sup>18</sup> 47 U.S.C. § 254.

<sup>19</sup> 42 U.S.C. §8624(k).

households pay their water bill, it would also help preserve and enhance the revenue streams for utilities.<sup>20</sup>

### Financial Strategies Targeted to the Systems

Small systems face many challenges in accessing already existing sources of federal and state funds. The NDWAC comprehensive recommendations include an examination by EPA of the use of the Drinking Water State Revolving Fund to see if small water systems are being disproportionately denied funding. The EPA should also encourage states that have not established a disadvantaged community program to do so. Coordination by the funding agencies would also help small systems put together a funding application and simplify the review process, saving time and expense at the federal, state and local levels. NDWAC also recommends coordinated outreach efforts to small systems on the available funding, increased technical assistance to small systems (e.g., in the areas of funding applications, accounting, long-range planning, engineering and technical assistance, and record-keeping practices); increased use of affordable financing for distressed systems and finding new and expanded sources of funding.<sup>21</sup>

### System-Level Strategies

The NDWAC recommendations also included system-level strategies to address affordability which include cooperation (already mentioned in the state strategies section) and further investigation into “umbrella” compliance technologies” to deal with more than one contaminant at a time.<sup>22</sup>

### The Role of Public Education

The NDWAC report contains recommendations on the critical role of public education, both on a national level and especially for communities that face a small system variance option.

### In Summary

The Consumer Groups support the comprehensive NDWAC Small Systems Affordability Recommendations regarding the National Affordability Criteria. The NDWAC recommendations place the use of the small system variance within the larger context of small system affordability strategies and clearly indicate that it is an option of last resort.<sup>23</sup>

## **III. Conclusion: The Proposal Puts the Health of Low-Income Families at Risk**

The Consumer Groups strongly urge the EPA to withdraw this rulemaking and to proceed with a comprehensive approach to affordability using the NDWAC recommendations as a

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<sup>20</sup> Oftentimes the LIHEAP benefit either is paid to the utility directly on behalf of the low-income consumer or is written out as a two-party check to the consumer and the utility.

<sup>21</sup> NDWAC Recommendations at §3.2.3. The report also notes that no state has used the full 30 percent of its capitalization grants for disadvantaged assistance. See NDWAC Recommendations at §3.2.3 *Underutilization of DWSRF Funds for Disadvantaged Communities*.

<sup>22</sup> NDWAC Recommendations at §4.0.

<sup>23</sup> NDWAC Recommendations at §2.0.

starting point. It is unethical to address the very serious problem of small system water affordability, which is essentially the problem of low-income water affordability, by allowing for an increased concentration of contaminants in the drinking water. This increases the health risks to low income consumers, especially the elderly, the sick and the very young. As was discussed in the NDWAC report, there are a range affordability strategies that must be considered first to address affordability.

Sincerely,

/s/ Olivia Wein

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The Honorable Stephen L. Johnson, Administrator