

ONE HUNDRED ELEVENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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**MEMORANDUM**

**May 17, 2010**

**To: Members of the Subcommittee on Energy and Environment**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Subcommittee Markup of H.R. \_\_\_\_\_, “Assistance, Quality, and Affordability Act of 2010”**

On Wednesday, May 19, 2010, at 9:30 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Energy and Environment will meet in open markup session to consider H.R. \_\_\_\_\_, the “Assistance, Quality, and Affordability Act of 2010”.

The Assistance, Quality, and Affordability Act of 2010 will reauthorize the drinking water state revolving fund (SRF) and amend the Safe Drinking Water Act (SDWA) to increase assistance to states, water systems, and disadvantaged communities, encourage good financial and environmental management of water systems, strengthen Environmental Protection Agency (EPA) enforcement authority, reduce lead in drinking water, and strengthen the Endocrine Disruptor Screening Program (EDSP).

**I. BACKGROUND**

Our nation’s water systems serve more than 272 million people and, according to the most recent needs survey carried out by EPA, are facing infrastructure bills with the potential to climb to \$334 billion over the next 17 years as our existing infrastructure ages. The drinking water SRF provides an important funding source to help meet those needs. Funds from the SRF are allotted to the states based on a needs survey, with no state receiving less than 1% of the fund.<sup>1</sup> Each state then administers its fund according to an approved intended use plan, providing loans to public water systems at below-market interest rates. The priorities for these funds under existing law are addressing the most serious risks to human health, ensuring compliance with SDWA requirements, and assisting systems most in need on a per household basis.

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<sup>1</sup> 42 U.S.C. 300j-12.

The Subcommittee on Energy and Environment held a legislative hearing on H.R. \_\_\_\_, the Assistance, Quality, and Affordability Act of 2010 (“AQUA”) on May 13, 2010. At this hearing, witnesses representing rural and metropolitan water systems, and state administrators, expressed support for the SRF provisions of AQUA. The Subcommittee also received testimony on the Endocrine Disruptor Screening Program provisions from Sarah Janssen, representing the Natural Resources Defense Council, and Terry Quill of Quill Law Group. Cynthia Dougherty, Director of EPA’s Office of Ground Water and Drinking Water, offered testimony on all provisions of the bill, stressing the Administration’s commitment to ensuring safe drinking water and implementing the EDSP.

**A. History of the Drinking Water State Revolving Fund**

The drinking water SRF was created under the Safe Drinking Water Act Amendments of 1996 to finance projects necessary for protection of public health and compliance with drinking water standards.<sup>2</sup> The fund was modeled on the clean water state revolving fund already in existence. In 1997, appropriations for the drinking water SRF were \$1.275 billion, and by 1999, more than 100 projects had been completed using SRF funds. By 2007, more than 3,500 projects had been completed with SRF funds.<sup>3</sup>

The American Recovery and Reinvestment Act of 2009 (ARRA) directed \$2 billion to states through the drinking water SRF, in addition to the 2009 SRF appropriation. Those funds were required to be obligated within one year of passage of ARRA. All states met that deadline and had their portion of the ARRA funds under contract by February 17, 2010, demonstrating the significant need for funds.

ARRA included a requirement that 20% of the funds be used for “green” projects. This introduced environmental sustainability concerns into the SRF for the first time, and directed funds towards water efficiency and energy efficiency measures. ARRA also included a requirement for the provision of extra assistance to systems serving disadvantaged communities. Since its inception, the SRF has provided states with the authority to give extra assistance to disadvantaged communities in the form of extended loan terms, lower interest rates, or principal forgiveness. Until the enactment of ARRA, such assistance was completely discretionary.

Since 1996, prevailing wage requirements have applied to contracts entered into with SRF funds. EPA has interpreted that requirement as applying to all projects, whether funded in whole or in part by SRF funds.

The 1996 amendments to SDWA also created a technical assistance grant program, to assist small systems. That provision does not include priority criteria for the selection of grant applications, and no competitive grants have ever been awarded under that authority.

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<sup>2</sup> P.L. 104-182.

<sup>3</sup> United States Environmental Protection Agency, *Drinking Water State Revolving Fund: 2007 Annual Report* (Mar. 2008).

## **B. “Lead Free” under SDWA**

Since 1986, SDWA has prohibited the installation or repair of plumbing providing water for human consumption that does not meet the statutory definition of “lead free”.<sup>4</sup> The 1996 amendments additionally prohibited the introduction into commerce of any pipe or plumbing fitting or fixture that does not meet the definition. At all times since 1986, the definition of “lead free” under SDWA for pipes and pipe fittings has been 8% lead.<sup>5</sup>

## **C. The Endocrine Disruptor Screening Program**

The Endocrine Disruptor Screening Program (EDSP) was also created in 1996, under provisions in the SDWA amendments and provisions in the Food Quality Protection Act (FQPA).<sup>6</sup> Under the EDSP, EPA is required to test all pesticides that may come into contact with food for their ability to interfere with the body’s hormonal system, but authority to test substances that might be found in drinking water is left to the discretion of EPA.

Upon issuance of a test order by EPA, chemical manufacturers are responsible for screening a chemical to determine its potential to produce effects in humans that mimic or interfere with hormone action in the body. The FQPA authorizes EPA to take appropriate action to protect public health under existing statutory authority if substances are found to have endocrine effects in humans.

The selection of testing protocols and the decision of which chemicals to test first were not finalized until October 2009, 11 years after the program’s official establishment. Between October 2009 and February 2010, EPA issued test orders for 67 pesticide chemicals. EPA has never exercised its discretionary authority to issue test orders for non-pesticide chemicals found in sources of drinking water.

## **II. THE ASSISTANCE, QUALITY, AND AFFORDABILITY ACT OF 2010**

The Assistance, Quality, and Affordability Act of 2010 would reauthorize the SRF and amend the Safe Drinking Water Act to do the following:

- Reauthorize the drinking water SRF.
- Establish that projects designed to improve the sustainability and long term viability of water systems should get priority for funding through the SRF.
- Encourage public water systems to improve their managerial capacity and reduce their environmental impact.

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<sup>4</sup> 42 U.S.C. 300g-6.

<sup>5</sup> 42 U.S.C. 300g-6(d).

<sup>6</sup> P.L. 104-170.

- Ensure that technical assistance funds for small water systems are awarded through a competitive process.
- Establish that the first priority for SRF funds should be water systems serving disadvantaged communities that cannot afford to comply with new drinking water standards.
- Require states to provide additional assistance to water systems serving disadvantaged communities and struggling to comply with existing drinking water standards.
- Strengthen the Endocrine Disruptor Screening Program by requiring testing of chemicals in drinking water and outlining transparent procedures for testing and updating methods.
- Change the legal definition of “lead free” for pipes and fixtures from 8% lead to 0.25% lead in wetted surfaces.
- Strengthen enforcement of the SDWA by clarifying requirements for technical assistance and follow up inspections.