

**MEMORANDUM**

July 17, 2020

**To:** Senator Tammy Duckworth  
Attention: Radha Adhar

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**Subject:** **Safe Drinking Water Act (SDWA): Draft Amendment Authorizing Voluntary Water Partnerships and Related SDWA Compliance Development Provisions**

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This memorandum responds to your request for a discussion of a draft amendment (MAZ20362) regarding voluntary water partnerships, which you shared with CRS on July 9, 2020. The draft amendment would amend the Safe Drinking Water Act (SDWA) capacity development provisions to authorize certain water systems with a history of significant noncompliance with SDWA requirements to enter into voluntary water partnerships for the purpose of improving compliance.

As requested, this memorandum provides a discussion of the draft amendment and related, existing SDWA provisions that support water system compliance with SDWA. You also requested a brief analysis of the draft amendment in the context of SDWA provisions related to compliance capacity development and partnerships.<sup>1</sup> For context, this memorandum begins with statistics on public water systems that regularly serve at least 25 year-round residents (i.e., community water systems, as defined by SDWA, and the subject of the draft amendment).<sup>2</sup>

## Background on Community Water Systems

SDWA defines a *public water system* as a system that provides water through pipes or other conveyances to at least 15 service connections or that regularly serves at least 25 individuals.<sup>3</sup> The act does not specify ownership of public water systems. SDWA defines a subset of public water systems, *community water systems*, as systems that regularly serve at least 25 individuals year-round.<sup>4</sup> **Table 1** provides statistics on

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<sup>1</sup> This memorandum does not constitute a legal analysis. For assistance with legal questions, please contact the American Law Division of CRS.

<sup>2</sup> Information in this memorandum is of general interest to Congress. As such, all or part of this information may be provided in CRS memoranda or reports for Congress. Your confidentiality as a requester will be preserved in any case.

<sup>3</sup> 42 U.S.C. §300f(4).

<sup>4</sup> 42 U.S.C. §300f(15).

community water systems identified in the U.S. Environmental Protection Agency’s (EPA’s) Safe Drinking Water Information System (SDWIS) database.<sup>5</sup>

As of spring 2020, nearly 50,000 community water systems are operating in the United States. These community water systems vary in characteristics, such as population served, ownership type, and source of water. Approximately 81% of the community water systems are considered *small*—serving fewer than 3,300 individuals. About 54% of these small community water systems are privately owned and generally operated as an ancillary part of another business, such as a mobile home park, or as a part of a homeowners association.<sup>6</sup> Of all privately owned community water systems, 95.7% serve fewer than 3,300 individuals. Most (83.9%) community water systems that serve 3,300 or more individuals are owned by local governments.

**Table I. Community Water System Statistics**

Ownership Type	Population Size Category (number of individuals served)				Total
	Very Small <500	Small >500 to <3,300	Medium >3,300 to <10,000	Large >10,000	
Private	18,745	2,900	512	462	<b>22,619</b>
Public/Private	510	510	126	62	<b>1,208</b>
Federal government	107	105	79	76	<b>367</b>
Local government	6,795	9,564	4,166	3,736	<b>24,261</b>
Native American	399	233	59	17	<b>708</b>
State government	140	187	79	45	<b>451</b>
<b>Total</b>	<b>26,696</b>	<b>13,499</b>	<b>5,021</b>	<b>4,398</b>	<b>49,614</b>

**Source:** Prepared by CRS from EPA’s Safe Drinking Water Information Systems: Water System Summary report.

## Voluntary Water Partnership Amendment

As discussed in more detailed below, the draft amendment (MAZ20362) would amend SDWA capacity development provisions (§1420) to authorize community water systems with a history of significant noncompliance with federal drinking water regulations to enter into voluntary water partnerships as a means to achieve compliance with the act.<sup>7</sup> SDWA Section 1420(b)(1) required states to prepare, periodically update, and submit to EPA a list of community water systems and nontransient noncommunity water systems<sup>8</sup> that have a history of significant noncompliance with SDWA (as defined in

<sup>5</sup> From U.S. Environmental Protection Agency’s (EPA’s) Safe Drinking Water Information Systems: Water System Summary report, July 10, 2020, at <https://ofmpub.epa.gov/apex/sfdw/f?p=108:21:::NO:RP,RIR>. The search parameters were “community water systems” with operating status “active.” EPA reports that the agency is aware of inaccuracies and underreporting in SDWIS. Accordingly, the data generated from the SDWIS database for your request may be subject to similar inaccuracies or underreporting. For more information about SDWIS and data quality, see EPA’s Envirofacts web page at <https://www3.epa.gov/enviro/facts/sdwis/search.html>.

<sup>6</sup> The SDWIS database does not collect information on ownership type (e.g., investor-owned utilities or other types of water systems operated for profit or not for profit).

<sup>7</sup> Section 1420, “Capacity Development” (42 U.S.C. §300g-9(b)(1), was added to the act under the Safe Drinking Water Act Amendments of 1996, P.L. 104-182.

<sup>8</sup> A nontransient noncommunity water system (NTNCWS) regularly supplies water to at least 25 of the same people at least six months per year but not year-round (e.g., schools, factories, office buildings, and hospitals that have their own wells).

EPA guidelines). The draft amendment would require states to annually notify any listed community water system that has not returned to compliance. The amendment would allow such water systems to submit a letter of intent to enter into a partnership with another water system. For up to three years, the amendment would provide limited enforcement relief to systems in the partnership as they correct the significant noncompliance. Among other provisions, the amendment would also direct EPA to establish incentives and provide technical assistance, as necessary, for the partnerships to achieve compliance. It would also direct EPA, in collaboration with states, to offer incentives for states to provide licensing and certification flexibility to facilitate the provision of services by out-of-state professionals, with a focus on rural and disadvantaged communities. The amendment specifies that the decision to undertake a partnership would be voluntary for community water systems.<sup>9</sup> It further specifies that no particular type of partnership agreement would be required.

Among other provisions, the draft amendment would amend Section 1420(g)(2), which directed EPA to establish a national capacity development clearinghouse. It would require EPA to include in the clearinghouse a best-practices database to share examples of practices involving the operational, technical, and financial capacity of community water systems.

## Selected SDWA Provisions

Congress has included a suite of provisions in SDWA over the years to promote the sustainability and compliance capacity of public water systems.<sup>10</sup> Some water systems may lack the technical, managerial, and financial capacity to meet SDWA drinking water regulations, fund drinking water repairs or upgrades, identify or access source water, and manage budgetary constraints and use voluntary partnerships to address these issues. The Safe Drinking Water Act Amendments of 1996 (P.L. 104-182) added multiple provisions to the act to help address challenges facing water systems, especially small public water systems.<sup>11</sup>

In response to the 1996 amendments, many states developed water system partnership programs to enhance the technical, managerial, and financial capacity of water systems. Water system partnerships can range from informal arrangements (e.g., joint bulk purchase of chemicals) to more formal cooperation (e.g., management assistance agreements or physical consolidation).<sup>12</sup> EPA issued and periodically updates guidance on water system partnership programs.<sup>13</sup> This guidance outlines the policies, regulations, and legal authorities in each state used to support partnerships among water systems.<sup>14</sup>

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<sup>9</sup> Applicable to all SDWA provision, SDWA Section 1414(e) provides that, “Nothing in this title shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this title.”

<sup>10</sup> Other provisions of SDWA provide enforcement flexibility to certain public water systems to address the challenges that some systems may have complying with federal drinking water regulation. Among these, Section 1415 allows states to grant public water systems variances. Section 1416 authorizes states to grant public water systems temporary exemptions from standards or treatment techniques if a system cannot comply for other compelling reasons (including costs).

<sup>11</sup> P.L. 104-182. Among other provisions to promote water system sustainability and compliance, the 1996 amendments directed EPA to withhold 20% of a state’s annual drinking water state revolving fund (DWSRF) unless the state adopted and implemented an approved operator certification program. SDWA Section 1419 required states to adopt programs for training and certifying operators of community and non-transient non-community systems (e.g., schools and workplaces that have their own wells) as a condition of full DWSRF funding (42 U.S.C. §300g-8).

<sup>12</sup> See, for example, EPA’s “Water System Partnership Case Studies” website at <https://www.epa.gov/dwcapacity/water-system-partnerships-case-studies>.

<sup>13</sup> EPA, *Water System Partnerships: State Programs and Policies Supporting Cooperative Approaches for Drinking Water Systems*, EPA 816-S-17-002, August 2017.

<sup>14</sup> EPA, *Water System Partnerships: State Programs and Policies Supporting Cooperative Approaches for Drinking Water*

Discussed below are three SDWA compliance development provisions relevant to the draft amendment you shared with us.

## Capacity Development

Added in 1996, Section 1420,<sup>15</sup> “Capacity Development,” established requirements for state strategies to improve the technical, managerial, and financial capacity of community water systems and nontransient noncommunity water systems.<sup>16</sup> To avoid a 20% reduction in the annual drinking water state revolving fund (DWSRF) capitalization grant, states were required to (1) obtain legal authority to ensure that new water systems demonstrate the technical, financial, and managerial capacity to comply with SDWA requirements, and (2) develop and implement a strategy to assist existing systems experiencing compliance difficulties. Every state developed a capacity development program in consultation with public water systems; EPA did not withhold DWSRF funds from any state.

As part of the state capacity development strategy, SDWA Section 1420(b)(1) requires states to prepare, periodically update, and submit to EPA a list of community water systems and nontransient noncommunity water systems that have a history of significant noncompliance with SDWA (as defined in EPA guidelines). To the extent practicable, states are to include the reasons for noncompliance. Further, Section 1420(b)(2) requires states to report to EPA on the success of enforcement mechanisms and capacity development efforts in assisting such water systems to improve technical, managerial, and financial capacity.<sup>17</sup>

## Consolidation Incentives

In 1996, Congress amended SDWA enforcement provisions to allow limited and temporary enforcement relief as an incentive for noncompliant public water systems to consolidate with, transfer ownership to, or be managed by another system.<sup>18</sup> SDWA Section 1414(h) allows any public water system to submit to the state or EPA a plan for the physical consolidation or the consolidation of management and administrative functions with another public water system, or the transfer of ownership of a public water system, to correct identified violations.<sup>19</sup> In America’s Water Infrastructure Act of 2018 (AWIA 2018; P.L. 115-270), Congress amended SDWA Section 1414(h) to provide that in addition to the physical or management consolidation or transfer of ownership, a public water system can also submit a plan to execute a contractual agreement with another public water system to manage the noncompliant public water system.<sup>20</sup> If the plan to consolidate or transfer ownership were approved by a state or EPA, enforcement action against that public water system for the specified violation would not be taken for two years.<sup>21</sup> AWIA 2018 further amended SDWA Section 1414(h) to authorize states, under certain circumstances, to require public water systems to assess options for consolidation or transfer of ownership.<sup>22</sup> Any public

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*Systems*, EPA 816-S-17-002, August 2017.

<sup>15</sup> 42 U.S.C. §300g-9.

<sup>16</sup> Nontransient noncommunity water systems, such as schools or factories, have their own water supplies and generally serve the same individuals for more than six months but not year-round. Most drinking water regulations apply to these systems.

<sup>17</sup> 42 U.S.C. §300g-9(b).

<sup>18</sup> 42 U.S.C. §300g-3(h)(2).

<sup>19</sup> Under SDWA Section 1413, states that meet statutory criteria may assume primary enforcement responsibility (primacy) for public water system compliance with SDWA requirements.

<sup>20</sup> America’s Water Infrastructure Act of 2018 (AWIA 2018; P.L. 115-270), Section 2009.

<sup>21</sup> 42 U.S.C. §300g-3(h)(2).

<sup>22</sup> SDWA Section 1414(h) outlines the specific circumstances under which EPA or a state can require a consolidation assessment. Specifically, EPA or states may require an assessment if a public water system (1) has repeatedly violated one or more primary

water systems undertaking such actions pursuant to a mandatory assessment may receive a Drinking Water State Revolving Fund (DWSRF) loan to carry out the consolidation, transfer, or other action.<sup>23</sup> Generally, to be eligible for financial assistance from the DWSRF, water systems are required to be in compliance with drinking water regulations and to have the technical, managerial, and financial capacity to maintain compliance with the act.<sup>24</sup>

SDWA Section 1414(h)(5) provides limited liability protection for the water system owner or operator who has a state-approved consolidation plan. In the consolidation plan, the owner or operator of the public water system must identify any potential or existing liabilities from specific violations and their available assets. This provision also limits the liability of a consolidating system to the amount of its assets and to the liabilities identified in the plan.<sup>25</sup>

## Technical Assistance to Small Public Water Systems

In addition to the above compliance assistance programs, several SDWA provisions allow EPA and states to provide technical assistance to public water systems and particularly to small systems (serving from 25 to 10,000 customers). SDWA Section 1442(e) allows EPA to provide technical assistance to small water systems through grants to nonprofit organizations or other means. Section 1442(d) authorized the appropriation of \$15 million annually for FY2015 through FY2020 for this technical assistance.<sup>26</sup> The technical assistance is intended to enable small systems to achieve and maintain compliance with drinking water regulations. It may include circuit-rider and multistate regional technical assistance programs, training, and assistance in implementing regulations, source water protection plans, monitoring plans, water security enhancements, and other types of assistance.

## Draft Amendment and Existing SDWA Authorities

The draft amendment (MAZ20362) would expand SDWA Section 1420 to allow community water systems with a history of significant noncompliance to enter into voluntary partnerships as a means to achieve SDWA compliance. As defined by the draft amendment, such partnerships could include contractual agreements or nonbinding arrangements between or among community water systems, similar to those partnership arrangements authorized for public water systems by SDWA Section 1414(h). The draft amendment would not require states to approve partnerships between or among community water systems.

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drinking water regulations, and is unable or unwilling to take feasible and affordable actions to address compliance with SDWA or has undertaken actions to address compliance, but has not achieved compliance; (2) when a consolidation, transfer, or other action is feasible; and (3) when a consolidation will result in greater compliance with SDWA. 42 U.S.C. §300g-3(h)(3).

<sup>23</sup> SDWA §1414(h)(4); 42 U.S.C. §300g-3(h)(4).

<sup>24</sup> SDWA §1452(a)(3)(A); 42 U.S.C. §300j-12(a)(3)(A). SDWA Section 1452(a)(3)(B) allows states to provide DWSRF financial assistance to noncompliant public water systems if such assistance would ensure compliance with the act and “the owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures) if the State determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with the requirements of this title over the long term.”

<sup>25</sup> AWIA 2018 Section 2010 requires EPA to promulgate regulations by October 23, 2020, to implement SDWA Section 1414(h)(3), Authority for Mandatory Assessment; Section 1414(h)(4), Financial Assistance; Section 1414(h)(5), Protection of Nonresponsible System. According to the *Spring 2020 Unified Agenda of Regulatory and Deregulatory Actions*, EPA expects to issue regulations by January 2021; see <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=2040-AF96>.

<sup>26</sup> P.L. 116-94 provided \$15 million for this program.

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Regarding the state role, the amendment would require states to annually notify community water systems listed under SDWA Section 1420(b)(1) that have not returned to noncompliance.<sup>27</sup> Under the proposal, such systems could submit a letter of intent to the state that the system intends to enter into a partnership with another water system.

## Enforcement Relief

Both the draft amendment and SDWA Section 1414(h) provide temporary and qualified enforcement relief as incentives for certain water systems to enter into partnerships. For community water systems notified by the state,<sup>28</sup> the draft amendment would provide limited enforcement relief for a period of 180 days beginning on the date that the water system submits a letter of intent, “so long as the community water system is actively and in good faith pursuing negotiations to enter into a partnership...” as determined by the state or EPA. The draft amendment would not interfere with existing EPA and state authorities to take enforcement actions to address imminent and substantial public health risks and to address monitoring or public notification violations. The draft amendment would not interfere with EPA authority to issue emergency orders under SDWA Section 1431 and would not affect citizen suits under SDWA Section 1449.<sup>29</sup>

For partnerships, the draft amendment would provide similar limited enforcement relief, for up to three years, as the partnership worked to correct the significant noncompliance. During that period, the partnership would be required to come into compliance and correct the significant noncompliance as outlined in a state-approved enforceable plan. In contrast, under SDWA Section 1414(h), public water systems are required to have a state-approved plan for a partnership arrangement (e.g., a contractual agreement or physical or managerial consolidation) prior to being eligible for a maximum of two years of qualified enforcement relief. Under SDWA Section 1414(h), enforcement relief extends only to violations identified in the state-approved plan and does not affect other SDWA enforcement authorities.

## Incentives

As discussed above, after 1996, many states developed water system partnership programs as an element of their state’s capacity development plan.<sup>30</sup> The draft amendment would require EPA to establish new incentives for “distressed” community water systems to form partnerships. Among them, the amendment would direct EPA to provide small system technical assistance grants to nonprofit organizations to assess partnership options for noncompliant community water systems and engage in peer-to-peer assistance.<sup>31</sup> In addition, the draft amendment would require EPA to allow states to provide DWSRF assistance (e.g., low-interest rate loans, principal forgiveness, or negative interest rate loans) to the noncompliant community water system for such partnership activities. Currently, SDWA Section 1414(h)(3) authorizes states to provide DWSRF loans to public water systems undertaking (1) physical or managerial

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<sup>27</sup> SDWA Section 1420(b)(1) requires states to prepare, periodically update, and submit to EPA a list of community water systems and nontransient noncommunity water systems that have a history of significant noncompliance with SDWA (as defined in EPA guidelines). The draft amendment would require states to provide notice each year to community water systems listed under Section 1420(b)(1) that have not returned to compliance.

<sup>28</sup> SDWA Section 1414(h), Consolidation Incentives, allows any public water system to submit a plan for physical or managerial consolidation, transfer of ownership, or contractual agreement for managerial or administrative functions.

<sup>29</sup> SDWA Section 1414(e) states that “Nothing in this title shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this title.”

<sup>30</sup> For information on state capacity development plans, see EPA, *Water System Partnerships: State Programs and Policies Supporting Cooperative Approaches for Drinking Water Systems*, EPA 816-S-17-002, August 2017.

<sup>31</sup> SDWA Section 1442(e)(5) authorizes appropriations for small system technical assistance grants.

consolidation, (2) transfer of ownership, (3) contractual agreement, or (4) other actions, as a result of a mandatory assessment. As another incentive, the draft amendment would require EPA to pay for and provide other technical assistance necessary for partnerships to achieve SDWA compliance.<sup>32</sup>

Consistent with SDWA, the amendment makes no reference to community water system ownership. Public water systems, whether privately or publicly owned, can enter into partnerships with other public water systems.<sup>33</sup> The draft amendment allows community water systems, regardless of ownership, to enter into a voluntary water partnership. Under SDWA Section 1414(h), any public water system, regardless of ownership, can submit a plan for physical or managerial consolidation, transfer of ownership, or contractual agreement for managerial or administrative functions.

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<sup>32</sup> The draft amendment does not include an authorization of appropriations for this purpose.

<sup>33</sup> For descriptions of partnership arrangements between public water systems, see EPA's "Water System Partnerships Case Studies" website at <https://www.epa.gov/dwcapacity/water-system-partnerships-case-studies>.

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