

GAO

Report to the Chairman, Subcommittee  
on Oversight and Investigations,  
Committee on Energy and Commerce,  
House of Representatives

June 1993

# DRINKING WATER PROGRAM

## States Face Increased Difficulties in Meeting Basic Requirements



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United States  
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Resources, Community, and  
Economic Development Division

B-252821

June 25, 1993

The Honorable John D. Dingell  
Chairman, Subcommittee on Oversight  
and Investigations  
Committee on Energy and Commerce  
House of Representatives

Dear Mr. Chairman:

Under the Safe Drinking Water Act, the Environmental Protection Agency (EPA) is authorized to grant primary drinking water program enforcement authority, commonly referred to as "primacy," to states that meet certain requirements. Among the key requirements are that states (1) adopt drinking water regulations that are no less stringent than EPA's national primary drinking water regulations and (2) adopt and implement adequate procedures to carry out the program's requirements and enforce the regulations. All states except Wyoming have assumed primacy for the program.

As we reported in July 1992, however, the number and complexity of the requirements that states must adopt have expanded significantly, particularly in light of the 1986 amendments to the act, without a corresponding increase in federal or state resources.<sup>1</sup> As a result, many states have found it increasingly difficult to fulfill their responsibilities in enforcing national primary drinking water regulations. Accordingly, as agreed with your office, we examined (1) whether states are complying with the minimum requirements needed to retain primacy for their drinking water programs; (2) how EPA has responded to the prospect that many states may be unable to meet these requirements, particularly EPA's recent plan to help states deal with resource constraints by setting priorities among their responsibilities under the program; and (3) whether EPA is able to take over state programs itself, as required by the Safe Drinking Water Act, should such action become necessary.

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## Results in Brief

States' compliance with primacy requirements is being increasingly jeopardized by resource constraints. While EPA has not as yet rescinded primacy from any state, it has, for the first time, formally initiated primacy withdrawal from three states. In doing so, EPA determined that the states

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<sup>1</sup>Drinking Water: Widening Gap Between Needs and Available Resources Threatens Vital EPA Program (GAO/RCED-92-184, July 6, 1992).

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have an inadequate level of program resources and/or have failed to adopt key drinking water regulations. Other states are also experiencing difficulties in meeting drinking water program requirements. Iowa, for example, reports that it would need to double existing resources just to implement a "bare bones" program. This problem is expected to worsen as states' responsibilities continue to grow under new regulations required by the 1986 amendments to the Safe Drinking Water Act.

EPA has recently sought to help states deal with their resource problems by setting priorities among the basic activities needed to ensure the implementation of key drinking water regulations. States have been advised to focus on what EPA deems are their most important responsibilities over the next 5 years, while building the capability to meet all requirements thereafter. However, our July 1992 report noted that this guidance (1) does not deal directly with the underlying problem of insufficient resources; (2) downplays or postpones many important responsibilities; and (3) assumes, with little basis, that states will be able to resolve their financial dilemma at the end of the 5-year period.

EPA's limited staffing capabilities would not allow it to administer all key elements of a drinking water program in more than a few small states. Given these constraints, EPA's contingency plan for primacy withdrawal provides that any state program takeover by EPA would be a bare bones effort heavily weighted toward enforcement, with little or no technical assistance. We believe that such an approach, however, could create a potentially unmanageable enforcement work load for EPA, impose greater costs upon water systems, and result in less protection for the public.

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## Background

As a condition of obtaining primacy, states agree to adopt and implement adequate procedures to enforce the drinking water regulations established by EPA and applicable to public water systems. State drinking water programs are required to include (1) statutory and regulatory enforcement authority adequate to compel compliance; (2) a systematic program for conducting comprehensive inspections of public water systems, called sanitary surveys; (3) a program for the certification of laboratories conducting analytical measurements of drinking water contaminants; and (4) other management and oversight authorities.

The Safe Drinking Water Act authorizes EPA to pay up to 75 percent of the costs of administering drinking water programs in states that have

obtained primacy. In recent years, however, the actual EPA contribution has averaged about 35 percent of states' total program costs.

To retain primacy, states are required to adopt all new and revised national primary drinking water regulations within 18 months of their promulgation by EPA. Responding to states' concerns that their resources were inadequate to meet the program's needs, EPA revised its primacy regulations in December 1989 to allow extensions of the rule adoption deadline of up to 2 years beyond this 18-month period.

At least annually, EPA is required to review states' compliance with its primacy requirements and the approved state primacy program. When, on the basis of this review, EPA determines that a state no longer meets the requirements and (1) has failed to request or been denied an extension of the rule adoption deadlines or (2) has failed to take other corrective actions required by EPA, EPA must initiate proceedings to withdraw primacy.<sup>2</sup> A state may also relinquish primacy on its own by notifying the EPA Administrator in writing at least 90 days before the effective date of the state's decision.

## States' Compliance With Primacy Requirements Jeopardized by Resource Constraints

Severe resource constraints have made it increasingly difficult for many states to effectively carry out the monitoring, enforcement, and other mandatory elements of EPA's drinking water program—a key condition of retaining primacy. The situation promises to deteriorate further, as the program's requirements continue to expand and states' resources remain constrained.

## EPA Has Wide Latitude in Deciding Whether States Meet Primacy Requirements

EPA has considerable flexibility in determining whether states continue to meet the minimum requirements necessary to retain primacy for the drinking water program. A recent decision by the U.S. Court of Appeals for the District of Columbia Circuit stated that EPA

“... is free to decide that technical, temporary or otherwise unimportant violations of the primacy requirements do not warrant a 'determination' of noncompliance, or that a better approach for meeting the Act's goals is to negotiate with the offending state or to permit more time for the state to come back into compliance.”

<sup>2</sup>Under the Safe Drinking Water Act, EPA may provide grant funds to states as long as they maintain their primacy status. Funding may continue, at EPA's discretion, even after the agency has determined that a state no longer meets the minimum primacy requirements. Once EPA actually rescinds primacy from a state, however, funding must be halted.

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However, the court held that once EPA has made a formal determination that primacy requirements are not being met, the agency must proceed to withdraw the program.<sup>3</sup>

Until recently, EPA had no specific criteria for determining whether states were meeting primacy requirements. However, in June 1992, EPA issued policy guidance that (1) sets priorities among the activities required to implement key drinking water regulations and (2) identifies the base minimum state functions deemed critical to a state's ability to maintain primacy.<sup>4</sup> When EPA issued its contingency plan for primacy withdrawal in January 1993, the agency instructed its regional offices to use the priority guidance to identify states that no longer met primacy conditions. EPA's regional offices also consider whether states' staffing capabilities will allow them to meet the demands of the drinking water program, including the increased work load associated with the 1986 amendments to the act.

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## States Face Increasing Difficulties in Meeting Basic Drinking Water Program Requirements

To some extent, many of the primacy concerns with which EPA is grappling have existed for years. Our June 1990 evaluation of the drinking water program, for example, found that water systems and states were having significant problems in implementing basic program requirements.<sup>5</sup> Water system violations, for instance, were going undetected because of sampling errors by water system operators, and in some cases, the intentional falsification of test data. At the state level, some of the violations that were identified were not being reported to EPA, as required, and some states had adopted policies suspending or restricting certain EPA monitoring requirements. We also found that enforcement by EPA and states was weak, even though the cases we examined were so-called "significant noncompliers," some of which presented serious health risks.

The first tangible sign that some states' problems may have deteriorated to the point where they could no longer support a credible drinking water program came early this year, when EPA took action to initiate primacy withdrawal in the states of Alaska, Maine, and Washington. In Maine, EPA's rationale was that the level of resources devoted to the state's drinking water program was well below the minimum needed to properly implement the regulations and perform other basic program functions.

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<sup>3</sup>National Wildlife Federation v. EPA, 980 F.2d 765, 771 (D.C. Cir. 1992).

<sup>4</sup>See app. I for an expanded discussion of EPA's priority-setting guidance.

<sup>5</sup>Drinking Water: Compliance Problems Undermine EPA Program as New Challenges Emerge (GAO/RCED-90-127, June 8, 1990).

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EPA's November 10, 1992, warning letter to Maine's Commissioner of Human Services, for example, termed the state's drinking water staffing "woefully inadequate," noting that comparable state drinking water programs had 20 to 30 full-time employees, compared with approximately 8 full-time employees in Maine's program. As a result, the letter asserted that the state would be unable to implement critical water program activities, including compliance monitoring, enforcement against violators, and maintenance of a sanitary survey program. EPA took action in Alaska and Washington state because they did not adopt new regulations within the required time, even though the deadlines for rule adoption had been extended for 2 years.

EPA headquarters officials are hopeful that each of these states will be able to address its problems—by adopting required regulations and/or committing enough additional resources to implement minimum drinking water program requirements—before it becomes necessary for EPA to take over their programs. However, considerable evidence suggests that staffing and financial resource constraints are seriously affecting other states as well, forcing state drinking water program managers to choose which requirements will be implemented and which will not.

Alabama, for example, has only one staff person to oversee the implementation of the lead/copper rule by the state's 600 small water systems. Because of other drinking water program responsibilities, this individual has had little time to educate water system operators on how to comply with the requirements. Hence, Alabama's program manager anticipates that the large majority of small systems will violate the lead/copper monitoring requirements. Because of staff limitations and other priorities, however, the state plans little or no enforcement action. Additionally, the state of Washington plans to cut back its implementation of the lead/copper rule by requiring only those water systems with 500 or more service connections to comply.<sup>6</sup>

EPA's Phase II and Phase V drinking water regulations, which set standards for over 60 contaminants, including pesticides, volatile organic chemicals, and inorganic chemicals, are presenting severe difficulties for a number of states. The high cost of testing for the contaminants—ranging from \$2,500 to \$10,000 for each set of analyses, according to state estimates—is expected to generate heavy resistance from many water systems. Although states may reduce monitoring requirements by granting waivers for those

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<sup>6</sup>According to the state's drinking water program manager, this equates to systems serving populations of 1,500 or more. Washington state also says it will check lead levels at certain small systems, such as schools and day care centers, where high lead levels could pose a greater risk.

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systems determined not to be vulnerable to contamination, some drinking water program managers told us they did not have the staff to perform the necessary vulnerability assessments or to issue formal waivers.

To deal with these problems, Iowa is allowing small, nonvulnerable systems to take a single water sample per designated sampling point at the end of the initial 3-year compliance period—instead of the quarterly samples mandated in the regulations—with the hope that the requirement for quarterly monitoring will be eliminated. Similarly, Alabama has placed a low priority on enforcing the Phase II and Phase V monitoring requirements. Alabama's program manager told us that state officials will try to "convince" water systems to comply with the requirements. However, if a water system fails to comply, the state will not, in most instances, pursue an enforcement action.

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## States' Difficulties Are Likely to Worsen

In some of these cases, it is unclear whether the states are still meeting the minimum requirements for retaining primacy. As noted earlier, EPA has wide latitude in making such determinations and may well decide that it is in the best interests of all concerned to negotiate improvements with a state or allow more time for a state to come into compliance. However, what is becoming clear is that states' ability to meet these minimum requirements will probably deteriorate significantly over the next few years.

Since the 1986 amendments were enacted, the number of contaminants regulated under the act has expanded from 23 in 1986 to 84 today, and the total is expected to reach 111 by 1995. Not surprisingly, the costs associated with implementing and enforcing these regulations are also growing rapidly. Preliminary results from a new survey by EPA and the Association of State Drinking Water Administrators show that the gap between states' existing resources and their drinking water program needs is \$147 million today and will grow to over \$200 million by 1998.

Regulations now under development, including standards for radionuclides and disinfection by-products, are expected to add to the pressures on already-stressed state budgets. If the radionuclides regulations are issued as currently proposed, for example, EPA estimates that, in total, states will have to spend \$15 million to \$28 million for one-time start-up costs, and an additional \$10 million to \$19 million per year on compliance and enforcement actions in later years. As with most new regulations, states are expected to absorb these increased costs



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themselves. Moreover, many states anticipate numerous violations, adding further to the program's ultimate cost. Connecticut's drinking water program manager, for example, told us that up to 85 percent of his state's water systems would exceed the proposed radon standard, creating a potentially huge enforcement work load.

Despite vastly increased oversight responsibilities, states have received relatively modest increases in their federal drinking water program grants since the 1986 amendments were enacted. Specifically, total grants to the states increased from \$33.5 million in fiscal year 1987 to \$58.9 million in fiscal year 1993, despite projected drinking water program cost increases on the order of hundreds of millions of dollars per year. According to the outgoing president of the Association of State Drinking Water Administrators, within the next 2 or 3 years, the impact of the new regulations will really "hit home" and all states will face serious financial difficulties.

Drinking water program managers in several states expressed concerns about their ability to implement future regulations, given their current budgetary and implementation problems. In both Iowa and Washington, for example, drinking water program managers estimate that they would have to more than double current staffing levels just to implement a bare bones program. According to Iowa's drinking water program manager, the state has had difficulty in coming up with enough matching funds this year to get the full amount of its federal program grant, and the future appears equally bleak. Having received no increases over the past several years, the Iowa manager has little hope of obtaining additional state general funds.

Similarly, North Dakota's program manager told us that his state's drinking water program is "barely keeping its head above water." He said it is progressively more difficult to get sufficient resources each time the state has to implement a new requirement. He also said that obtaining sufficient revenues through user fees is not a viable option in North Dakota because there are only 360 water systems in the state and all but 20 serve fewer than 3,300 people. In Illinois, the problem is that a fee system proposed this year to support the state's drinking water program must compete with similar proposals for other programs both within and outside the Illinois Environmental Protection Agency.

## EPA's Priority-Setting Guidance Does Not Deal Directly With the Program's Underlying Resource Problems

For some time, EPA has been working with states to help them retain primacy amid growing evidence that their resource constraints have been worsening and that they were having increased difficulties in implementing basic elements of their drinking water programs. Among other things, EPA has developed measures to evaluate the quality of states' programs and has undertaken a "state capacity initiative" to help states garner additional resources to support the drinking water program's implementation.

EPA's June 1992 priority guidance, discussed on page 4, is the agency's most systematic effort to help states meet primacy requirements by reducing their short-term work load. According to EPA, the priority-setting guidance is intended to give states time to acquire adequate drinking water program funding while they focus existing resources on the activities most vital to protect public health. The guidance emphasizes that efforts to increase states' funding capacity will be required of each state unable to implement a full program, noting that "It is essential that the resource gap be narrowed, if not closed, by the end of the five-year period." To retain primacy during this period, states must perform specified high-priority activities to implement contaminant rules and certain mandatory program functions.

Some have questioned the legality of EPA's guidance, noting that EPA cannot delay implementation of the requirements included in its regulations. EPA maintains that its guidance is designed merely to make the most efficient and effective use of states' limited resources to oversee the program. EPA adds that while its guidance sets drinking water program priorities for EPA and state regulators, public water systems are not exempt from any statutory or regulatory requirements.

On its face, EPA's priority-setting guidance is legally consistent with the act. The guidance emphasizes, for example, that water systems "must continue to fully implement the regulations as each of the regulations requires with no delays." Furthermore, EPA maintains that the guidance does not change or defer statutory or regulatory requirements for either EPA or the states. However, EPA's guidance raises at least two issues of concern:

- First, the provisions of the guidance are, in some respects, inconsistent with the regulatory requirements. For example, under EPA's guidance, implementing the lead/copper rule at small water systems is considered a "priority 2" activity which, by definition, states may delay until 1998. However, the regulations require states to designate or approve optimal

corrosion control treatment for those small systems with elevated lead levels, as detected in initial sampling, by December 1996 at the latest. Officials within EPA's Office of General Counsel and EPA's Office of Drinking Water explained that, in such situations, the regulations prevail.

- Second, as EPA acknowledged to us, the guidance is, at best, only a partial solution to the underlying financial crisis affecting the program. As we observed in our July 1992 report on the guidance, (1) some states will be unable to accomplish even their highest priority items under the guidance and (2) the guidance assumes, with little basis, that the states will be able to resolve their financial dilemma at the end of the 5-year period.

Our report concluded that the guidance, while understandable under the circumstances, does not deal directly with the fundamental problem facing the drinking water program. Specifically, the report noted that a de-emphasis of key program requirements in the near term, coupled with the hope that states will eventually "build capacity," will not alleviate the underlying problem of insufficient resources. We indicated that EPA and the Congress should reexamine the funding priority of the program rather than compromise its vital elements and its overall integrity.

## **EPA's Ability to Take Over State Programs Is Extremely Limited**

Faced with increasingly deficient state programs and resistance from states to pay the program's high costs, EPA has recently decided to begin primacy withdrawal proceedings. However, (1) EPA does not have the capacity to implement a comprehensive drinking water program in more than a handful of small states and (2) an EPA-operated state program will probably be less effective in protecting the public.

## **EPA's Resources Are Sufficient to Run a Limited Program in a Few States**

EPA readily acknowledges that it could not administer all key elements of a drinking water program in more than a few small states. In fact, given EPA's own staffing problems, rescission of primacy from only one or two small state programs would severely tax the agency's resources. For example, EPA drinking water officials estimate that to retain primacy, Maine would need 24 full-time equivalent employees (FTE) for its drinking water program office today and 45 to 50 FTEs by fiscal year 1998. The officials say that if EPA does in fact take over Maine's program, the agency plans to devote the 24 FTEs that would be required of the state. However, the entire drinking water staff of EPA's Boston region (Region I) consists of only 19 FTEs, who must monitor the program's implementation in all six New England states. Boston region officials say that the region would probably hire contractor staff by using the federal program grant funds that would

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have gone to Maine, and would use transfers and temporary assignments from within the Boston region, other regions, and EPA headquarters.

EPA officials acknowledge that this difficult problem becomes far more challenging with a larger state. For example, the agency estimates that Washington state (currently with 44 drinking water staff) needs 100 FTES just to implement the base minimum program (an estimate that is close to the state's own estimated need of 90 FTES). However, EPA's Seattle regional office has only 22 FTES to oversee the program in all four states within its jurisdiction (Region X).

Such concerns led EPA to identify the primacy issue as a "material weakness" under the Federal Managers' Financial Integrity Act. In its report to the Congress for fiscal year 1992, EPA noted that "Unless EPA builds its capacity and expertise to directly implement programs withdrawn or returned from States, EPA will not be able to effectively implement the new regulations [required by the 1986 amendments] . . . ." EPA further stated that "given the amount of training and technical assistance States need, the size of the resource gap for State programs, and EPA's limited ability to directly run additional State drinking water programs, EPA believes that . . . primacy is an issue needing immediate and high level attention."

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### An EPA-Operated State Program Would Probably Be Less Effective in Protecting the Public

Given EPA's limited capacity to take over and operate state programs, it is not surprising that the agency's contingency plan for primacy withdrawal calls for a bare bones program in any state from which primacy is withdrawn. Unfortunately, if EPA is forced to assume responsibility for multiple state programs, such an approach would be significantly less effective in protecting the public than an adequate state program and would impose substantially greater costs upon water systems. EPA's contingency plan essentially eliminates technical assistance, and other constructive ways of helping water systems achieve compliance, in favor of strict enforcement.

EPA's November 1992 warning letter to Maine provides an indication of how the agency would approach such a takeover:

"Because resources available to run a Regional primacy program will be limited, much of the flexibility displayed by the State program would be lost. Surface Water Treatment Rule filtration waivers would have to be reviewed and possibly eliminated, monitoring waivers under the Phase II and V rules would not be issued, very little direct assistance to the water

systems (technical or administrative) would be possible, and consequently compliance with the regulations would be achieved primarily through enforcement actions rather than the preventive assistance currently provided by the State program. [Emphasis added.] Additional costs could include construction of additional treatment facilities, increased monitoring requirements (with expensive analytical methodologies), responses to federal enforcement actions, and the necessity to obtain technical and administrative assistance through consultants and contractors rather than the primacy agency. At this point, costs cannot be accurately quantified, but a reasonable estimate would probably place the total additional costs in the tens of millions of dollars, and possibly much higher.”

While EPA contends that such a heavy-handed program may be its only option, this approach could create a potentially unmanageable enforcement work load. Several state program managers we interviewed raised the prospect of significantly increased violations under an EPA takeover because water system operators would have greatly reduced access to technical assistance. EPA’s contingency plan places the full burden on water systems to understand and comply with all requirements and provides for “minimal” training of water system operators. In addition, the reduction or elimination of quality assurance activities, such as field inspections and assessments of water systems’ vulnerability to contamination, will likely further expand EPA’s enforcement work load. Quality assurance activities not only help ensure that water systems are capable of providing safe drinking water but also minimize water systems’ compliance burden by qualifying them for reduced monitoring or treatment waivers.

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## How to Resolve the Primacy Issue: Bring the Program’s Costs in Line With Resources

EPA’s determination about whether states should retain primacy is crucial to the agency’s efforts to protect public drinking water supplies. There are many reasons to believe that the drinking water program can be carried out far more effectively by states than by EPA. However, states’ capabilities to carry out their programs have deteriorated significantly and are continuing to do so.

Given EPA’s own resource constraints, the agency’s future options appear limited. On the one hand, it could leave deficient drinking water programs under state control, hoping that these states eventually succeed in their efforts to “build capacity.” If the past serves as any indication, however, such programs may well be characterized by continually expanding responsibilities, constrained resources, and chronic program deficiencies. On the other hand, EPA could, theoretically, attempt to take back a large number of programs as the states’ financial situation worsens. However, as

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the agency acknowledges, its capability to administer these programs in a manner that adequately protects the public is limited.

States' options are also restricted, given the limited success of their past efforts to raise sufficient resources. States no longer able to sufficiently fund their drinking water programs can either "call EPA's hand" on the agency's threat to rescind primacy, or they can simply relinquish primacy—as some have warned—deciding that the cost and frustrations associated with the drinking water program now outweigh the benefits of retaining primacy.

Under any of these scenarios, the clear loser will be the public. Accordingly, we continue to believe, as we suggested in our July 1992 report, that a more desirable alternative would be to deal squarely with the drinking water program's underlying problem—the increasing gap between the program's needs and the resources available to meet them. EPA's priority-setting guidance ostensibly deals with this gap by de-emphasizing certain requirements in the short term and by encouraging states to build their financial capacity to implement a more complete program in the long term. However, as our July 1992 report pointed out, the guidance is, at best, only a partial solution to the resource gap, will leave key activities of the program unaddressed, and may not be sufficient to avert the loss of primacy among a number of states. Indeed, EPA's designation of drinking water primacy as a material weakness under the Federal Managers' Financial Integrity Act essentially acknowledges that other solutions are needed.

To deal with the program's financial crisis in a realistic fashion, we believe that EPA needs to supplement its encouragement of states' funding efforts by engaging in an open and frank discussion with the Congress on the minimum funding levels needed to maintain the integrity of the program. This course of action is consistent with the views of EPA's own Science Advisory Board and numerous other experts that have identified the agency's stewardship of the nation's drinking water supplies as a high-risk area meriting higher budgetary priority.

We recognize, however, that while elevating the program's managerial and budgetary priority is essential, this remedy alone will not completely solve the states' funding problems—much less the enormous problems that water systems face in meeting their own resource shortfalls. Accordingly, we believe that EPA needs to help both states and water systems find more innovative and cost-effective alternatives to achieve compliance

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(especially among small water systems). We plan to report later this year on what promising alternatives are available, what barriers may be impeding their wider use, and how these alternatives can be used more effectively to achieve the goals of the drinking water program at lower cost.

Finally, we believe that the Safe Drinking Water Act's upcoming reauthorization offers an opportunity for the Congress and the executive branch to work together in bringing the program's spiraling regulatory costs under control, while at the same time ensuring that public drinking water supplies are protected. Reauthorization will allow the Congress and the executive branch to examine, for example, whether all of the act's requirements should necessarily apply equally to all water systems, large and small. While such an analysis was outside the scope of this report, our long-standing involvement with this program suggests that it is an essential ingredient of any serious effort to bring the drinking water program's costs in line with available resources.

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## Recommendation

We recommend that as part of EPA's strategy to deal with the drinking water program's funding crisis, the Administrator, EPA, work with the cognizant committees of the Congress to identify a funding level for the program that (1) will maintain the integrity of the program and (2) better reflects the program's importance in protecting human health. This remedy should be part of an integrated strategy that also considers the need to (1) find innovative and cost-effective alternatives to achieve compliance and (2) bring the program's spiraling regulatory costs under control.

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## Agency Comments

We discussed our findings with officials in EPA's Office of Ground Water and Drinking Water, who generally agreed with the information presented. They asked that we reflect several EPA initiatives to deal with the problems we cite in our report. We made note of these efforts and made other changes as appropriate. However, as requested, we did not obtain formal written comments from EPA.

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## Scope and Methodology

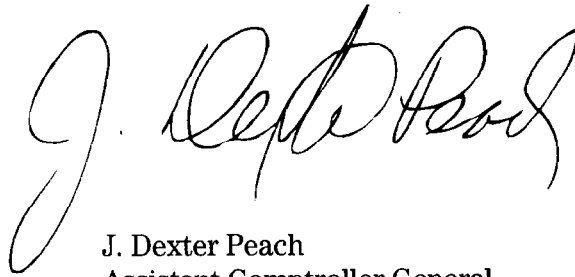
To accomplish our objectives, we interviewed officials in EPA's Office of Ground Water and Drinking Water and Office of General Counsel, drinking water branch chiefs in several EPA regional offices, and drinking water program managers in 10 states. In addition, we interviewed officials of the

Association of State Drinking Water Administrators and attended the Association's annual conference, at which EPA and state officials discussed the status of states' primacy and program implementation costs. We also reviewed EPA's guidance for setting drinking water program priorities and its contingency plan for taking over states' programs; EPA's resource model, which is being used to determine states' resource needs; and other relevant documents. We performed our work in accordance with generally accepted government auditing standards between October 1992 and April 1993.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies to the Administrator, EPA; the Director, Office of Management and Budget; and other interested parties. We will make copies available to others on request.

This work was conducted under the direction of Richard L. Hembra, Director, Environmental Protection Issues, who can be reached at (202) 512-6111 if you or your staff have any questions. Major contributors to this report are listed in appendix II.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. Dexter Peach". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

J. Dexter Peach  
Assistant Comptroller General





# Summary of EPA's Priority-Setting Guidance

The Environmental Protection Agency's (EPA) June 1992 priority-setting guidance sets short-term priorities for the drinking water program so that both EPA and the states can focus limited resources on the highest priorities first, while allowing states time to build resources in order to fully implement the program after a period of up to 5 years.

According to EPA, the priority-setting guidance is intended to give states time to develop adequate funding capacity for their program while they focus existing resources on those activities that would maximize public health protection. The guidance emphasizes that efforts to increase states' capacity will be required of each state that is unable to implement a full program. It further notes that "It is essential that the resource gap be narrowed, if not closed, by the end of the five-year period." The guidance also postulates that, while it sets drinking water program priorities for EPA and state regulators, public water systems are not exempt from any statutory or regulatory requirements and must still "fully implement the regulations as each of the regulations require with no delays."

EPA's guidance categorizes priorities into three parts:

- Base minimum mandatory state functions. These activities are deemed essential to carry out a state's drinking water program and are considered critical to a state's ability to maintain primacy. They include maintaining a data base management system, ensuring that adequate laboratory capacity is available to conduct required analyses of drinking water contaminants, adopting all EPA rules, and notifying all water systems of regulatory requirements.
- EPA priorities. These are the functions to which EPA's Office of Ground Water and Drinking Water and the agency's regional counterparts are to devote their drinking water program resources, such as promulgating new rules, maintaining the national data base management system, supporting state capacity efforts, and promoting technology development for small water systems.
- State oversight priorities. This category outlines and prioritizes the basic activities needed for the states to ensure the implementation of each EPA rule, including the enforcement of filtration and disinfection requirements for surface water systems and monitoring requirements for bacteria, volatile organic chemicals, pesticides, and other contaminants. Priority 1 oversight activities target areas of greatest risk. Thus, for example, one Priority 1 oversight activity for the states is to monitor compliance with the Surface Water Treatment Rule by water systems with unfiltered and/or undisinfecting water, whereas monitoring compliance with the rule by

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filtered systems is a Priority 2 activity. It is the Priority 1 activities—in conjunction with the base minimum mandatory state functions—that EPA will expect the states to focus on first. According to EPA's guidance, when Priority 1 activities are "completed," states are to focus on Priority 2 and 3 activities.

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