

Testimony

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DRINKING WATER

Spending Constraints
Could Affect States'
Ability to Meet
Increasing Program
Requirements

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Mr. Chairman and Members of the Committee:

We are here today to discuss our report entitled, *Drinking Water: Spending Constraints Could Affect States' Ability to Implement Increasing Program Requirements*, which you are releasing today.¹ Ensuring an adequate supply of safe drinking water requires investing not only in the physical infrastructure, such as water treatment and distribution systems, but also in essential oversight activities performed by the states, such as training water system operators and monitoring water systems' compliance with the drinking water standards promulgated by the Environmental Protection Agency (EPA). Under the Safe Drinking Water Act Amendments of 1996, the states are responsible for implementing a number of new requirements, such as ensuring that the nation's thousands of drinking water systems have the financial, managerial, and technical ability to comply with regulations and assessing the vulnerability of drinking water sources to contamination. In addition, the states must oversee their water systems' compliance with complex new regulations on specific contaminants.

In recognition of the key role that the states play in implementing the requirements of the Safe Drinking Water Act, you asked us to provide information on

- how EPA's budget requests for state program implementation compare to the amounts that are authorized and estimated to be needed;
- how much the states have spent since the passage of the 1996 amendments to implement their drinking water programs and how their expenditures compare with estimated needs;
- what effects federal funding levels have had, and could have in the future, on the states' ability to implement their programs; and

¹See GAO/RCED-00-199, Aug. 31, 2000.

- what existing practices have the potential to help the states implement their drinking water programs more effectively and efficiently.

To understand these issues in context, Mr. Chairman, it is necessary to provide a brief summary of the funding available for implementing the states' drinking water programs. In the 1996 amendments, the Congress substantially increased the amount of funding authorized to help the states meet their responsibilities. First, the amendments authorized an increase in the funding for Public Water System Supervision grants from \$70 million to \$100 million annually through fiscal year 2003. The states use these supervision grants for a variety of activities related to implementing their drinking water programs, such as providing technical assistance to local water systems, conducting inspections, and overseeing the water systems' compliance with requirements for testing and treating water quality. Second, the amendments authorized \$9.6 billion, to be appropriated through 2003, to establish the Drinking Water State Revolving Fund primarily for financing infrastructure improvements at local water systems. In its annual budgets, EPA requests appropriations to capitalize the states' funds and, subsequently, makes specific allotments to each state for that purpose. The states, in turn, loan these funds to their local water systems. As loans are repaid, the states' funds are replenished, and the states can make loans for other eligible drinking water projects. While the state revolving funds are primarily directed at financing local infrastructure, each state, at its option, may reserve or "set aside" up to 31 percent of its annual allotment to supplement the supervision grant and, thus, help the state meet its responsibilities in implementing its program. The states must match a portion of both the supervision grants and the moneys they set aside from their revolving funds.

Despite the significant increases in the amount of funding Congress has authorized to help states implement their programs, representatives of state drinking water programs have expressed concerns about whether they have sufficient resources to fulfill their responsibilities under the Safe Drinking Water Act. Although EPA does not routinely estimate the states' resource needs for implementing the act's requirements, the Association of State Drinking Water Administrators (ASDWA) has periodically developed such estimates with EPA's support and participation. According to ASDWA's most recent estimate, which incorporated the requirements of the 1996 amendments, the states' collective needs range from \$345 million in fiscal year 1999 to \$449 million in fiscal 2005.

In response to the questions you asked, Mr. Chairman, we found the following:

- In its budget requests for fiscal years 1998 through 2000, EPA requested about 94 percent of the \$100 million authorized annually for supervision grants. For the same fiscal years, EPA requested, on average, 80 percent of the amounts authorized to capitalize the states' revolving funds for drinking water. If the states had made maximum use of the set-asides by reserving the full 31 percent available from the revolving fund, EPA's requested appropriations would have provided a total of \$308 million in fiscal year 1999 and \$318 million in fiscal year 2000 to help the states meet their responsibilities in implementing their drinking water programs. These amounts, when combined with required matching funds from the states, would have exceeded ASDWA's estimates of the states' needs.
- Despite the fact that the funds potentially available to the states exceed the estimated needs, actual state spending fell short of what was needed. According to our nationwide survey of state drinking water agencies, for fiscal years 1997 through 1999, the states' actual expenditures for implementing their drinking water programs—including expenditures of both federal and state funds—were \$214 million, \$237 million, and \$276 million, respectively. In fiscal year 1999—the only year for which our data permit such a comparison—total state expenditures fell short of ASDWA's estimate of the amount needed for program implementation by about 20 percent.
- However, according to our nationwide survey, the amounts of federal funding available for fiscal years 1997 through 1999 had less of an impact on the states' ability to implement their drinking water programs than did the effects of state-imposed spending constraints. Over 75 percent of the states reported that their staffing levels in fiscal year 1999 were inadequate to meet the act's requirements in effect through that year. The most frequently cited reasons were (1) the states' authorized staffing and authorized funding levels were too low, (2) hiring freezes prevented the states from filling authorized positions, and (3) inadequate state salaries made it difficult to attract and retain qualified staff. In addition, about 40 percent of these respondents indicated a reluctance to use revolving fund set-asides to address inadequate staffing levels, citing, among other things, concerns about diverting funds from infrastructure projects. Our discussions with drinking water officials from eight states disclosed that they have been

able to meet most requirements in effect through fiscal year 1999, generally by scaling back technical assistance and other oversight activities or doing the minimum amount of work required. According to these officials, if this situation continues, it could eventually lead to more compliance problems, especially among small water systems, which make up the overwhelming majority of water systems. Over 90 percent of the states in our nationwide survey predicted that their staffing levels would be less than adequate in the future as a number of new program requirements and complex contaminant regulations take effect.

- Program officials in the eight states we contacted cited some management practices that could increase the efficiency of program implementation. For example, some states are taking advantage of the expertise in other state and federal agencies or associations. EPA officials pointed to new program requirements that may increase efficiency, including those designed to assess water sources for contamination and improve the financial, technical, and managerial ability of local water systems to comply with drinking water regulations. However, it could take years to realize the benefits of these programs.

Background

The Safe Drinking Water Act of 1974 authorized EPA to give the primary responsibility for enforcing requirements of EPA's safe drinking water program—commonly referred to as “primacy”—to the states that meet certain requirements. Among the key requirements are that the 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 managing their drinking water programs. To assist the states in developing and implementing their own drinking water programs, the 1974 act authorized EPA to award them program supervision grants and provided that the federal funds would comprise not more than 75 percent of the cost of implementing state programs.

In addition to increasing the authorized funding for the supervision grants, the 1996 amendments authorized \$9.6 billion through fiscal year 2003 to establish the Drinking Water State Revolving Fund for infrastructure improvements at local water systems. To give the states more flexibility in operating their drinking water programs, the Congress gave the states the option of setting aside up to 31 percent of their annual revolving fund allotments for certain designated activities, most of which are related to program implementation. For example, the states may set aside funds for: supervision of public water systems; technical assistance through programs designed to protect sources of drinking water; strategies to help ensure the financial, technical, and managerial capacity of water systems to provide safe drinking water; and programs to certify water system operators.

The 1996 amendments also gave the states a number of new responsibilities. For example, the amendments established new programs for assessing the vulnerability of drinking water sources to contamination and ensuring the technical, financial, and managerial viability of water systems. As these new programs are being implemented, states will also be overseeing the water systems' compliance with complex new regulations on such contaminants as arsenic and radon.

The Funds Potentially Available to the States Have Been Sufficient to Cover Their Estimated Needs

For fiscal years 1998 through 2000, on average, EPA requested, as part of the President's budget, about 94 percent of the funding authorized for supervision grants in the Safe Drinking Water Act Amendments of 1996 and 80 percent of the funding authorized for the revolving fund, from which the set-asides are available. During this period, EPA's requests for the supervision grants remained constant at about \$85 million while its requests for the revolving fund allotments increased, making more funds available for set-asides each year, from \$212 million in fiscal year 1998 to \$233 million in fiscal year 2000. (During this period, EPA received the amount it requested for both the supervision grants and the revolving fund, except for fiscal year 2000 when the appropriation for the revolving fund was \$5 million less than the request.)

According to ASDWA, the total estimated needs for implementing the states' programs in fiscal years 1999 and 2000 are \$345 million and \$339 million, respectively. The amounts EPA requested for those years would have been more than enough to meet the states' annual needs as estimated by ASDWA if

- the states took full advantage of the available set-asides—that is, if each state set aside the maximum 31 percent for state implementation activities and provided the required matching funds—and
- the supervision grants and minimum required match were included in the total.

The funds potentially available to the states would have exceeded their estimated needs for fiscal years 1999 and 2000 by about \$27 million and \$44 million, respectively.

The States' Overall Spending Has Fallen Short of Their Estimated Needs

According to the results of our nationwide survey, for fiscal years 1997 through 1999, the states' actual expenditures for implementing their drinking water programs—including expenditures of both federal and state funds—were \$214 million, \$237 million, and \$276 million, respectively. We found that the states are contributing a significant share of the funding for their programs and are contributing more funding than the minimum required to meet the statutory matching provisions. Over the 3-year period, state funds were the source of 53 percent, on average, of the states' total expenditures for implementing their drinking water programs.

Although they have contributed more funds than required by the federal matching provisions, according to the data on state expenditures obtained in our survey, the states collectively may be spending less than ASDWA's estimates of the amounts needed nationwide. For example, in fiscal year 1999—the only year for which our data permit a direct comparison—the states' collective expenditures, including funds from both state and federal sources, were about 80 percent of the amount estimated to be needed for program implementation.² If recent trends continue over the next several years—that is, if EPA's

²We collected data on how much the states spent to implement their drinking water programs for fiscal years 1997 through 1999 only; ASDWA estimated the amount of funding states would need to implement their programs for fiscal years 1999 through 2005 only.

appropriations for supervision grants and the state revolving fund remain at about their existing levels relative to the amounts authorized and states collectively continue to make use of only about half of the available set-asides—then the gap between the amounts expended and estimated to be needed could grow larger. ASDWA estimates that by fiscal year 2005 the states will need \$449 million to implement their drinking water programs, an increase of about 30 percent from fiscal year 1999. Table 1 shows the projected resource needs for implementing the states’ oversight programs, by year, from fiscal years 1999 through 2005.

Table 1: Resource Needs for Implementing the States’ Drinking Water Programs, Fiscal Years 1999 Through 2005

Dollars in millions

Fiscal year	Full-time equivalent staff	Funding
1999	4,911	\$345
2000	5,020	339
2001	5,190	362
2002	5,208	374
2003	5,588	414
2004	5,755	439
2005	5,252	\$449

Note: The estimates do not include Wyoming or the District of Columbia. In addition, we adjusted ASDWA’s estimates to exclude Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

Source: GAO’s presentation of data from ASDWA.

Factors Other Than Federal Funding Levels Affect Most States’ Ability to Implement Their Programs

According to our nationwide survey and more detailed discussions with drinking water officials in eight states, for fiscal years 1997 through 1999, factors other than federal funding levels affected the states’ ability to implement their drinking water programs. These factors include both state-imposed spending constraints and concerns about using funds from the revolving fund for program implementation instead of infrastructure projects. Despite these factors, program officials from all eight states we contacted told us they were able to meet most program requirements in effect through fiscal year 1999, largely by scaling back their programs and doing the minimum amount of work required. For example, four states told

us that they have reduced the frequency with which they conduct comprehensive inspections of water systems, called sanitary surveys. Officials from seven of the eight states indicated that over the next 5 years, increasing program responsibilities could exacerbate the effects that the states have experienced thus far.

Factors Contributing to Inadequate Staffing Levels in State Drinking Water Programs

In responding to our nationwide survey, 76 percent of the states reported that their current staffing level is less than adequate or much less than adequate to implement their drinking water programs. Among these states, the most frequently cited reasons for not having an adequate staffing level were inadequate authorized state staffing levels (76 percent), inadequate authorized state funding levels (60 percent), state-imposed hiring freezes that prevent drinking water program offices from filling authorized positions (41 percent), and inadequate state salary structures that make it difficult to attract and retain qualified staff (49 percent).

According to program officials from the eight states we contacted, state legislatures generally authorize the number of staff that state drinking water programs can hire and/or the amount of state funding the programs can receive. This can create situations in which some states have adequate authorized staffing levels to carry out program responsibilities but not enough funding to hire all of the authorized staff. Other states may have adequate funding but cannot hire anyone because they have inadequate authorized staffing levels or because there is a hiring freeze.

Five of the eight states that we looked at in-depth were experiencing problems as a result of these circumstances. For example:

- Program officials from Maine commented that even if they did receive additional federal funds, they would not be able to hire new permanent staff unless the authorized state staffing level is increased.

- A program official from Indiana said that the authorized state funding level is only enough to meet the minimum match required to obtain federal funds and estimated that the state needs to increase its total resource level by at least 50 percent.

Program officials from two of the states that we contacted attributed inadequate staffing levels in their programs in part to an inability to pay staff competitive salaries, which makes it difficult to attract and retain qualified staff. Arkansas' program had several vacancies as a result of this problem.

In addition to state-imposed spending constraints, our nationwide survey found that over 40 percent of the states that reported inadequate staffing levels attributed this situation to factors that can limit the states' use of the revolving fund set-asides to help implement their drinking water programs.³ These factors included concerns about using the revolving fund to implement drinking water programs instead of using the money to fund infrastructure projects (41 percent) and uncertainty about the continued availability of the set-aside money from this fund after its authorization expires (43 percent). In addition, about 30 percent of the states reporting inadequate staffing levels said that an insufficient level of funding for the supervision grants was a contributing factor.

Regarding the adequacy of the funding for the supervision grants, program officials from four of the eight states we contacted said that an increase in this funding might prompt their legislatures to approve additional state funding since a small increase in state funding could be used to match a larger amount of federal dollars. Program officials from both Ohio and Utah commented that increasing the supervision grants would mean that the states would not be forced to make a choice between program implementation and infrastructure construction.

Current and Future Impact of Inadequate Staffing on the States' Ability to Implement Their Programs

³During fiscal years 1997 and 1998, the only years for which complete set-aside information is available, only 11 and 8 states, respectively, used the full 31 percent set-aside allowed by law. Collectively, the states reserved about two-thirds of the available set-asides in fiscal year 1997 and took less than half of the amounts available in fiscal year 1998.

Although program officials in all of the eight states we contacted maintain that they have been able to meet most of the program requirements in effect through fiscal year 1999, they have done so by (1) scaling back their programs, (2) doing the minimum amount of work required, and (3) setting formal or informal priorities among their responsibilities. For example, six of the eight states said they have had to scale back their programs by providing less technical assistance to water systems, particularly small water systems, which make up the overwhelming majority of all public water systems. In addition, six of the eight states currently engage in some form of priority setting using such criteria as the size of the water system, the size of the population at risk, the potential health effects of a violation, and whether or not the state could lose federal funding if it did not perform an activity.

Ninety-four percent of the states in our nationwide survey predicted that their staffing levels would be less than adequate or much less than adequate as new program requirements and complex contaminant regulations take effect over the next 5 years. Similarly, officials from seven of the eight states we contacted indicated that the state-imposed constraints that currently affect their ability to implement their programs—such as inadequate state staffing and funding levels, hiring freezes, and inadequate state salary levels—will continue to compromise their programs if not addressed. In light of ASDWA's estimate that the states' resource needs will increase by about 30 percent between fiscal years 1999 and 2005, the effects experienced thus far could be exacerbated in the future.

The extent to which future spending constraints will affect the states' drinking water programs is unclear because the details of certain regulations, and hence the resulting workload on their programs, are unclear. For example, an Ohio official pointed out that the cost of implementing the arsenic regulation depends on where EPA sets the standard for this contaminant. This official said that 225 public water systems in Ohio would be affected by this regulation if the arsenic standard were set at 10 milligrams per liter while 500 systems would be affected if the standard were set at 5 milligrams per liter.

Management Practices and New Requirements Could Enhance the Effectiveness and the Efficiency of the States' Drinking Water Programs

Beyond adding more funding, one potential solution to the states' increasing responsibilities under the Safe Drinking Water Act is the adoption of management practices that improve efficiency or otherwise enhance the states' ability to implement their programs. Officials in the eight states we contacted cited efforts to improve program efficiency by adopting such new management practices as taking advantage of the expertise in other state and federal agencies or associations through contracts, interagency agreements, and partnerships. Also, the EPA officials we interviewed emphasized that new requirements to assess drinking water sources and improve water systems' ability to comply with drinking water regulations, mandated in the 1996 amendments, would likely increase the efficiency of state programs over the long term. Although these new requirements would necessitate substantial resource investments in the short term, according to EPA officials, they will eventually improve both the efficiency and effectiveness of the states' programs.

Agency Comments on Our Report

We provided EPA with a draft of our report for its review and comment. EPA officials generally agreed with the information presented in the draft report; however, they expressed concerns in two areas. First, the officials said that the draft report did not sufficiently emphasize the impact of the increasing program requirements on the states' future resource needs. We made several changes to highlight material already in the report concerning the impact of potential state resource shortfalls on their future program implementation. Second, the EPA officials noted that our comparison of the funds potentially available to the states with the needs estimated by ASDWA could be misleading because, as our draft report indicated, most states (1) do not take the maximum amount allowed for the revolving fund set-asides and (2) actually have contributed much more than the minimum amounts required for matching the EPA-provided funds. We clarified our presentation of this comparison.

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In summary, Mr. Chairman, the amounts of federal funds potentially available to the states during the last few years appears to have been adequate for meeting their estimated collective needs to date. However, a number of factors may impair the future ability of the states to meet the requirements of the Safe Drinking Water Amendments of 1996. Most

important among these are the spending constraints at the state level, resulting in staffing shortfalls, and an understandable reluctance to divert revolving fund resources from needed infrastructure improvements at local water systems. While the eight states we contacted have been able to meet statutory program requirements in effect through fiscal year 1999, they have done so only by scaling back their programs and doing the minimum amount of work necessary. As the states' resource needs increase along with the growth in their responsibilities, it will become imperative to address the factors that have thus far affected the states' ability to implement their programs.

This concludes my prepared statement. I would be pleased to answer any questions you or Members of the Committee may have.

Contact and Acknowledgement

For future contacts regarding this testimony, please contact Peter F. Guerrero at (202) 512-6111. Individuals making key contributions to this testimony included Ellen Crocker, Terri Dee, Carolyn Hall, and Lisa Pittelkau.

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