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UNITED STATES SENATE

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Chairman Boxer, Ranking Member Inhofe, and members of the Committee, thank you for inviting us to testify today about the safety of our nation's drinking water. Administrator Jackson has expressed her commitment that ensuring the safety of our drinking water is a fundamental element of EPA's overall mission. Every single day, Americans drink water from a tap. It happens in our homes, at work, and at our children's schools. Americans must be assured that the water they drink is safe.

EPA affirms the goal of the Safe Drinking Water Act (SDWA) to protect public health by regulating the Nation's drinking water supply. This 1974 law, amended in 1986 and 1996, requires many actions by EPA and the states to protect drinking water and its sources, although it does not regulate private wells serving fewer than 25 people. Under SDWA, EPA and the states regulate more than 150,000 public water systems. The vast majority of Americans served by these systems receive water that is safe to drink. States reported last year that 92% of the people served by *community water systems* – the roughly 50,000 systems that serve the same population

all year - received water meeting all health based drinking water standards. There are also about 100,000 *non-community water systems,* those that serve Americans on a shorter term basis, in their schools, workplaces and when they travel.

Small Systems

We recognize our responsibility to ensure all Americans receive safe drinking water and the continuing work ahead of us. To make any real difference, we know we must assist the small systems, because 96% of all health based violations occur at systems serving less than 10,000 people. The majority of public water systems are very small – more than half of community water systems and nearly all non-community water systems serve fewer than 500 people. Thousands of these small systems need help – in particular those serving communities defined by the states as disadvantaged, including people living or working in federal Indian Country and some rural communities.

Small systems face unique financial and operational challenges in providing safe drinking water. First, many of them are not in business to provide drinking water as a primary duty. For example, more than 10,000 community water systems are owned by homeowners associations and manufactured home communities. Many do not even have full time operators and those that do sometimes cannot afford to keep up to date with changing regulations and technical skills. Additionally, the cost per household to treat drinking water at small systems can be much greater than at larger systems due to economies of scale, yet small systems may have more trouble generating revenue and obtaining financial assistance than larger systems. This lack of effective system management, trained operators and financial resources at some small systems sometimes leads to compliance problems. EPA needs to rely on a suite of SDWA tools it has to help small

systems stay in compliance and maintain their capacity to provide safe drinking water, including providing financial assistance, compliance assistance and enforcement.

SDWA Roles and Responsibilities

To protect public health, SDWA authorizes EPA to set drinking water standards, which are generally implemented by the states, most of which have been delegated "primacy" over their SDWA drinking water programs. EPA's drinking water standards include requirements for monitoring and describe procedures systems must follow upon discovering a violation, including public notice to their customers. Since the majority of states have primary enforcement responsibility (all states except Wyoming and the District of Columbia), the systems report sampling results to the states. States determine when violations have occurred and act to bring systems back into compliance using both assistance and enforcement tools. Under "primacy," the states are expected to act first in most situations, but EPA maintains federal oversight as well as an enforcement role. In addition to overseeing state enforcement actions, EPA takes its own enforcement actions in states without primacy, in federal Indian Country, where states have not been authorized for particular drinking water rules, and where EPA concludes that the states are not in a position to take timely and appropriate enforcement actions. Additionally, EPA takes direct enforcement actions on nationally significant cases, when requested by the states or in an emergency where there is imminent and substantial endangerment to the public.

SDWA provides a suite of tools for EPA to assist public water systems in achieving compliance. One of these is the Drinking Water State Revolving Fund (DWSRF), which offers systems, including small systems, access to financing for infrastructure improvements. DWSRF programs are administered by the states, which have significant latitude to customize the

assistance they offer in light of their own priorities and circumstances. Additionally, two percent of DWSRF appropriations are administered by EPA and go to tribes to fund infrastructure improvement. Tribes often request that these funds go to the Indian Health Service to provide engineering analysis, design, and construction management. Technical assistance is another important tool to help systems achieve compliance. Both EPA and the states provide training and assistance to small systems and have funded technical assistance providers, such as Rural Water Associations and the Rural Community Assistance Partnerships, to provide hands-on assistance to help with operational and compliance issues.

Tools Used in Implementation of the Arsenic Rule

Working to meet the challenge of implementing the arsenic rule has highlighted compliance issues related to new rules and demonstrates some of the funding and technical assistance options EPA has available. About 1,000 systems are currently in violation of the arsenic rule, 75% of them serving fewer than 500 people. To help boost compliance with the arsenic rule, we encouraged states to prioritize DWSRF funding for arsenic projects and also worked with the United States Department of Agriculture (USDA) to make arsenic compliance a priority for Rural Development loans and grants. We also invested more than $30 million in Arsenic Rule Implementation Research to investigate and develop more cost-effective technologies for small systems. This arsenic rule implementation research has provided direct assistance to 50 small water systems in 26 states to install and demonstrate arsenic treatment. EPA has used the lessons learned from this research program and other implementation efforts to provide significant in-person and web-based training to help small systems better understand their treatment options and identify potential vendors. EPA worked to make point-of-use

treatment a viable option for very small water systems. Lastly, recognizing the challenges water systems face in implementing this rule, we have promoted the use of exemptions under SDWA. With an exemption, qualifying systems still have to fully implement the rule but have more time, up to nine additional years, to secure funding or take other necessary steps to develop a sustainable approach.

Even with these tools, strong involvement of state staff makes the difference. For example, Maine and New Hampshire have been active in working directly with water systems, conducting site visits and one-on-one meetings to help their small systems find compliance options and work through their treatment and financial issues. Maine reduced systems exceeding the arsenic standard from 102 to 11, and New Hampshire reduced systems exceeding the arsenic standard from 173 to 28. Thanks to these efforts, these two states have been particularly successful in bringing down the number of systems with arsenic violations.

Enforcement Tools

EPA's enforcement authority can also help bring systems back into compliance and we work closely with the states to ensure that timely and effective enforcement actions are taken. EPA regularly meets with states to review systems in significant non-compliance and discusses what has been done to address the violations. In most cases, states address the violations identified, but where appropriate, EPA retains authority to take federal enforcement action to get them back to compliance. When EPA exercises its enforcement authority and takes direct enforcement action in a state that has primacy, EPA provides a notice of violation to the public water system (also to the state) and offers advice and assistance. If the system does not return to compliance, EPA may issue an administrative order to require compliance or may commence a

judicial action. EPA may collect civil penalties for non-compliance with administrative orders or through judicial actions. In general, the number of enforcement actions such as administrative orders and judicial referrals taken against public water systems by states and EPA has trended upward in recent years, rising from 4,478 in 2004 to 5,875 in 2008. In 2008, the vast majority were state enforcement actions. These numbers do not reflect other activities states and EPA take to return systems to compliance such as warning letters, notices of violation and compliance assistance activities. In recognition of the challenges among drinking water systems in federal Indian Country, for the past five years EPA has had a national compliance and enforcement priority focused on addressing noncompliance at these systems.

New Small System Approach

Access to safe drinking water should not be based on ability to pay and we have developed a new Agency small systems approach to ensure equitable consideration of small system customers. There is no single solution to the challenges small systems face and a variety of strategies will need to be employed, but EPA believes that robust use of the tools provided in SDWA can achieve our goal that all Americans have the full public health protection benefits envisioned by the Act. The new approach, developed in consultation with the states, will focus SDWA resources on the specific challenges small systems face, from regulatory compliance to sustainability. The three components of this approach are designed to facilitate use of SDWA tools to reduce difficulties and provide states with active oversight, guidance, and technical assistance. State programs are the key to this approach and we will work to help them link federal infrastructure funding to public health improvements and target technical assistance to strengthen the capacity of individual water systems. EPA recognizes the primary role of the

states in drinking water protection, but understands this does not reduce the Agency's role. However, the Agency must always be a full partner with the states in SDWA implementation through active oversight, guidance, and technical assistance.

As the first part of the small systems approach, we will target Federal dollars to the small systems that need it most. Since 1997, 72% of loans and 38% of funds have gone to systems serving fewer than 10,000 persons, but we believe this percentage should grow. To help water systems that cannot afford a loan, EPA will promote state use of no interest loans and the disadvantaged communities program in the DWSRF, which allows for principal forgiveness. Congress significantly increased DWSRF funding in FY2010. The appropriation added a new requirement that states dedicate at least 30% of their FY2010 funds to subsidize systems which may not be able to afford a loan.

Additionally, states were directed to provide subsidies with at least half of their American Recovery and Reinvestment Act (ARRA) funding, and we have several examples where states have used ARRA funding to help small water systems to address arsenic; we will build on these examples in FY 2010 and beyond. With new information tools put into place through ARRA, we can now track not just how much money is being spent, but also how it is being used, allowing us to more effectively monitor funding to small systems in the future. EPA will work closely with USDA's small system funding program, RUS, and encourage it to target grants and loans to high priority health issues. EPA and RUS already work closely to prioritize funding for arsenic, and over $387 million through 2007 had been obligated for more than 200 projects for arsenic.

Secondly, we will work to strengthen State Capacity Development Programs. SDWA requires each state to have a capacity development program to help water systems acquire and

maintain technical, managerial, and financial capacity to provide safe drinking water. EPA believes that state programs can be more effective by better using resources from optional DWSRF set-asides to provide training and technical assistance. State compliance and operational assistance is critical to the success of small water systems and at the current rate of set-aside usage, states will have over $150 million in FY 2010 to support these activities. EPA will work cooperatively with states to examine, and modify their programs to improve compliance and capacity. This includes making sure that new water systems have what it takes to be sustainable before they start operating.

Finally, EPA recognizes that in some situations the most effective way to provide safe water is to help a small water system choose one of several restructuring options, ranging from informal cooperation with other systems to full ownership transfer. Some states, such as Ohio, have used ARRA funds to provide grants to struggling water systems to hook up to a larger water system. State drinking water programs can use both the loan fund and the set-asides to help water systems implement restructuring options and ensure a sustainable, safe water supply for the community.

New Enforcement Response Policy

To complement this new focus on helping small systems, EPA has developed, in consultation with the states, an approach for enforcement targeting and response at all public water systems. Its goal is to increase the effectiveness of state and federal enforcement, streamline the identification of systems with violations, and then focus enforcement resources on those with the greatest impact on public health. The new Enforcement Response Policy, which includes a targeting tool, calls for the identification of the most significant threats to public

health by targeting public water systems with widespread violations and/or violations of health based rules. A targeting tool prioritizes the systems that the EPA and the states will address. An escalating enforcement model guides what types of enforcement actions the EPA and states will take action to return the systems to compliance in a timely manner. The new Enforcement Response Policy and targeting tool will push EPA and the states to address underlying compliance problems for entire drinking water systems. This contrasts with the current focus on addressing significant non-compliance for each drinking water rule. EPA will start to implement the policy at the beginning of calendar year 2010.

Commitment to Transparency

Strong EPA and State program oversight depends on good data and EPA is committed to improving the accuracy and availability of information on drinking water compliance. Most Agency data on compliance comes from primacy states which determine when violations have occurred and report them to EPA. The state data is used by the Agency to evaluate system compliance and oversee state drinking water programs. We have invested in the modernization of the SDWIS database and web-enabled it to reduce burden on the states. As a result, we expect to see fewer quality problems from data entry to data transmission. We will continue to work with our state partners to identify and resolve problems that may have produced data discrepancies in the past and to ensure that complete and accurate documentation is available to help assess the safety of the nation's drinking water.

Protecting Children's Health

Administrator Jackson has made protecting children's health a priority. One category of

small water systems that merits particular attention is schools. Fewer than 10 percent are regulated as *non-transient non-community water systems* – those regularly serving at least 25 people for over six months per year - and are subject to all the monitoring and reporting requirements that apply to other small non-community systems. States and EPA work with these small systems to improve compliance using tools including: funding, technical assistance, and enforcement. While general compliance rates at schools are similar to those in the larger universe of non-community water systems, the vulnerable population they serve deserves special vigilance. Fortunately, records of enforcement actions indicate that states place a priority on addressing violations in schools but it is critical that EPA and the states do everything possible to get and keep school water systems in full compliance. For the 90% of schools and child care centers served by their community water systems, lead in drinking water presents unique issues because by and large, it can occur at the tap as a result of corrosion in service lines and plumbing. This is of special concern in schools and child care centers because of its potential health effects on young children. Because most schools are connected to community water systems and not regulated directly under SDWA, outreach and public education are important tools for addressing lead concerns and EPA has worked actively to raise awareness among school officials and child care providers and to encourage them to take steps that can reduce lead contamination in drinking water at their facilities. EPA also tries to minimize the potential for lead contamination through its work with the systems to control corrosion.

To reach out most effectively to a broad range of groups, EPA has partnered with education and public health groups as well as water associations. Working with the Department of Education and the Centers for Disease Control and Prevention, EPA has crafted messages and disseminated information, and we've reached out to local public health organizations and the

National Head Start Association. As a core part of our work, we developed a comprehensive suite of materials to help schools and child care centers implement a voluntary Training, Testing, and Telling strategy. The 3Ts explains how to test for lead in drinking water; how to report results to parents, students, staff, and other interested parties; and how to take action to correct problems. As an example of the success of these programs in raising awareness, Hawaii has now implemented testing using the 3Ts in all childcare facilities. EPA has also provided direct technical assistance in various ways to help monitor and analyze samples and to remediate the problems. EPA has also obtained commitments to perform supplemental environmental projects as part of Consent Decrees in other enforcement actions, in which a defendant agrees to perform beneficial environmental projects as part of the settlement of the enforcement action. For example, EPA has negotiated supplemental environmental projects to sample and analyze for lead at schools and day cares and to remedy the problems found.

Madam Chairman, Administrator Jackson has noted that "clean and safe water is the lifeblood of healthy communities and healthy economies." EPA is committed to using tools ranging from technical and financial assistance to enforcement, and to working with our state partners to provide Americans with clean and safe drinking water, every day.

Thank you again, Chairman Boxer, Ranking Member Inhofe, and Members of the Committee, for this opportunity to speak with you today, we welcome any questions you may have.