

October 19, 1998

The Honorable Carol M. Browner
Administrator
United States Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Ms. Browner:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel convened for EPA's rulemaking on the Filter Backwash Recycling rule (FBR). The Agency is required to develop the regulation by Section 1412(b)(14) of the Safe Drinking Water Act, as amended in 1996. The objective of the FBR is to provide additional protection from disease-causing microbial pathogens (particularly disinfection resistant pathogens) for community and non-community public water systems (PWSs) that recycle filter backwash and other flow streams within the treatment process.

To achieve its goals, EPA is considering the following major components for the FBR: 1) recycle to plant headworks; 2) equalization of recycle flows; 3) treatment of recycle flows, and; 4) ban on recycle of smaller waste streams such as sink, floor, and roof drains. Note that these components may be applied to other flows (e.g. sludge, thickener supernatant, dewatering device pressate, etc.) generated by and recycled within the treatment process of public utilities.

On August 25, 1998, EPA's Small Business Advocacy Chair (Thomas E. Kelly) convened this Panel under section 609(b) of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). In addition to its chairperson, the Panel consists of the Director of the Standards and Risk Management Division of the Office of Ground Water and Drinking Water within EPA's Office of Water, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel for Advocacy of the Small Business Administration.

It is important to keep in mind when reviewing the following report that the Panel's findings and discussion are based on the information available at the time this report was drafted. EPA is continuing to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during the remainder of the rule development process and from public comments on the proposed rule. Any options the Panel identifies for reducing the rule's regulatory impact on small entities may require further analysis and/or data collection to ensure that the options are practicable, enforceable, environmentally sound and consistent with the Safe Drinking Water Act.

Background

The Office of Ground Water and Drinking Water (OGWDW) plans to propose the FBR in late Summer 1999 and promulgate a final rule by August of 2000. This rule could potentially affect all public water systems which utilize filtration. The term "public water system" applies not only to water utilities, but also to a wide range of privately owned businesses and entities that provide drinking water (e.g., campgrounds, factories, restaurants, and schools).

Stakeholder Meetings and Small Entity Outreach

To facilitate regulation development, EPA is actively involving stakeholders in the development of the proposed rule. As part of this effort, the Agency held a stakeholder meeting in July, 1998 in Denver, Colorado. The purpose of the meeting was to present possible regulatory approaches and solicit feedback from stakeholders. EPA is planning an additional stakeholder meeting to solicit further input as the regulatory development effort proceeds and options are more fully developed. The next meeting will be held in Washington, D.C.

EPA has also organized a Small Systems Data Needs Working Group. The group is comprised of representatives from the American Water Works Association, Association of State Drinking Water Administrators, National League of Cities, National Resources Defense Council, and the National Rural Water Association. Established in the spring of 1997, the group held six meetings, from March through December, to discuss the availability of water quality and financial data for small systems that is needed to support FBR and other drinking water regulations.

OGWDW believes that input from small entities is particularly important in the rulemaking process because so many systems are small. EPA consulted with trade organizations, EPA regional offices, state drinking water programs, stakeholder meeting attendees, and the Small Business Administration to develop a list of potential Small Entity Representatives (SERs). EPA invited 24 SERs to participate in the SBREFA process, and 16 of those invited agreed to participate. The SERs were provided with background information on the Safe Drinking Water Act and the FBR in preparation for a teleconference on April 28, 1998. The SERs also received *Information for Small Entity Representatives Regarding the Filter Backwash Recycling Rule* that described the possible regulatory components of a FBR rule. Eight SERs provided comments on these materials. The SBAR Panel convened on August 25, 1998. The SERs were provided with additional information on potential costs related to FBR regulatory options during a teleconference on September 25, 1998. Four SERs provided additional comments during the teleconference and three SERs provided additional written comment. A summary of comments from the teleconference and the complete set of written comments received by both OGWDW and the Panel are included with the report. OGWDW will consider these comments along with the Panel's recommendations when developing the proposed rule.

Panel Findings and Discussion

Under the RFA/SBREFA, the Panel is to consider four regulatory flexibility issues related to the potential impact of the rule on small entities: 1) the type and number of small entities to which the rule will apply; 2) record keeping, reporting and other compliance requirements applicable to small entities; 3) the rule's interaction with other Federal rules; and 4) regulatory alternatives that would minimize the impact on small entities consistent with the stated objectives of the statute authorizing the rule. The Panel's most significant findings and discussion with respect to each of these issues are summarized below.

The Panel discussed the potential that two of the regulatory components developed by EPA may be too costly for small systems to implement. The two alternatives are a complete ban on all recycle flows and the installation of a separate treatment train to treat recycle flows before they are reintroduced to the treatment process.

The Panel also discussed the possibility of a regulatory approach which would establish a procedure systems could use to modify their current practice on a site-specific basis to address risks, rather than specifying a uniform set of requirements that all systems would be required to meet. This alternative approach would identify a subset of high priority or high risk recycling plants and consider an incremental approach for assessing the site-specific elements of a system's operational process that may create risk. This approach would be consistent with the perspective of several SERs who noted the complexity and variability of treatment practices across systems and the difficulty of specifying a uniform set of treatment requirements that would be appropriate for every system. The Panel strongly supports this approach and recommends that EPA give it serious consideration.

The Panel also noted the limited evidence of public health problems resulting from current backwash practices. At the same time, the Panel noted that EPA's general approach is to be precautionary and address potential problems as well as fully documented ones. SERs agreed that improper recycle of backwash could jeopardize system performance and generally supported simple measures such as recycling to the head of the plant and some degree of sedimentation, as good engineering practice. The Panel agrees that such measures are appropriate to address the potential public health threat posed by improper recycle of filter backwash.

Number of Small Entities

No commenters questioned the information provided by EPA on the number and types of small entities which may be impacted by the FBR. Because EPA maintains the national Safe Drinking Water

Information System (SDWIS) database, with information about all public water systems in the country, the Panel believes EPA has good information on the covered number of surface water systems, most of which use filtration and thus will be covered by this rule. EPA's estimate of the number of ground water systems that filter (7,628) is also based on information contained within SDWIS and the 1995 Community Water Survey. Most of these systems are small (i.e., serve <10,000 people).

Record Keeping, Reporting and Other Compliance Requirements

EPA provided descriptions of potential record keeping and reporting requirements the FBR may require. These included monitoring, recording, and reporting the volume of recycle and plant influent flow, indicators of treatment effectiveness, and other parameters yet to be defined. The burden and costs associated with these requirements are in the early stages of development and will be refined as the rule advances.

The Panel noted the concern raised by most SERs that small systems often do not have operators on duty full time and/or their operators often have other duties besides operating the treatment plant. The Panel recommended that EPA keep this limitation in mind as it develops options, and attempt to minimize the burden placed on systems whose operators are already tasked with other time-consuming requirements.

Interaction with Other Federal Rules

No comments were received regarding interaction, overlap or conflict with other federal rules. The Panel notes, however, that the FBR, LT1, and DBP Stage 1 rules will affect small systems simultaneously. EPA should analyze the net impact of all of these rules and consider regulatory options that would minimize impacts on small systems.

Regulatory Alternatives

EPA presented several regulatory alternatives for this rule to SERs and SERs commented on each of these. A description of each alternative, along with Panel recommendations, is provided below.

Ban on Recycle - The Panel notes the concerns of SERs regarding a ban on the recycle of filter backwash water. These concerns included the expense of filter backwash disposal and the economic and operational concerns of western and southwestern drinking water systems which depend on recycled flow to maintain adequate supply. The Panel strongly recommends that EPA explore alternatives to an outright ban on the recycle of filter backwash and other recycle flows.

Recycle to the Head of the Plant - The Panel notes that SERs supported a requirement that all recycled water be reintroduced at the headworks of the plant. This was considered an element of

sound engineering practice. The Panel recommends that EPA consider including such a requirement in the proposed rule. EPA should also investigate whether there are small systems for which such a requirement would present a significant financial and operational burden.

Flow Equalization - The Panel noted that SERs agreed with the appropriateness of flow equalization for filter backwash that is being recycled. The Panel supports the concept of flow equalization as a means to minimize backwash water hydraulic surges and the “slugged” reintroduction of contaminants to the plant. The Panel notes that there are various ways of achieving flow equalization and suggests that specific requirements remain flexible.

Installation of Treatment - The Panel noted the concerns of SERs regarding installation of additional treatment, solely for the purpose of treating filter backwash water and/or recycle streams, which may be costly and potentially prohibitive for small systems. EPA presented preliminary costs of various treatment scenarios to the Panel in an effort to gauge capital improvement costs for small systems under such a possible component.

The Panel believes EPA should carefully consider all comments received during this outreach process on these and other issues of concern to small entities. A full discussion of the comments received and Panel recommendations are included in the final report.

Sincerely,

/S/

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Small Business Advocacy
U.S. Environmental Protection Agency

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Donald R. Arbuckle, Acting Administrator
Office of Information and Regulatory Affairs
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