1. **COMMENT:** As of January 7, 2013, the Oklahoma Department of Environmental Quality (DEQ) had received letters in support of the proposed rulemaking from 114 public water supply systems throughout the state.

In those letters: (a) 114 public water supply systems specifically expressed support for DEQ administering the PWS program rather than EPA; (b) 100 public water supply systems specifically expressed support for the annual fee increase of $500,000; and (c) 96 public water supply systems specifically expressed support of $1.5 M in General Revenue appropriation.

The following are excerpts from some of the letters:

- We have always had respect for [DEQ] to direct and oversee our operations in safe drinking water and environmentally safe wastewater discharging. Also, the quality of your field inspectors have always proved, through their reports, to have been strict and thorough in their quarterly inspections and are supportive in any required changes to upgrade our working equipment. — *Mayor of Copan*

- We are in a very small community and have received help from the DEQ on numerous occasions. We feel it would be detrimental not only to our town but to all of Oklahoma to lose the cooperation that we have had with DEQ. The knowledge and funding that we have received from DEQ has helped us tremendously. — *Mayor of Corn*

- City of Erick prefers to be monitored by DEQ as we are more comfortable with their procedures and appreciate the fact that with DEQ we know how and who to contact when there are problems that the City must take care of. City of Erick also appreciates that DEQ is concerned with quality first, but cares more about accomplishments than punitive fines that make it more difficult for small rural communities to comply no matter how hard they are trying. Money is often the basic issue. If EPA takes over, our low interest loans and grants through the Drinking Water State Revolving Loan Fund will cease. — *Erick City Clerk*

- We have had several times during the last few years where our water situation and shortage turned into an emergency. The last instance was just this last November. Our city has at times been without water for over a week. Each issue has been a different problem. The system is approximately 100 years old and needs some
major infrastructure improvements. Without the assistance and support of the knowledgeable staff of DEQ, we might still be without water. No one will have all the answers, but it is nice to be able to discuss the issues to come up with a game plan to try and solve the problems. We really don’t need an agency to just say we have an issue and fix it or we will fine you. We know we have the issues, are trying to fund the solutions and need some assistance to come up with acceptable solutions. —Mayor of Konawa

Operation of a PWS is a 24 hour seven day occurrence. Assistance should be available and provided as needed. This assistance has been adequately and immediately provided by ODEQ whenever a request was submitted. This type of response and service can only be provided by a local agency. —Chairman of the Board, City of Langston

I have been employed by the Red Star Rural Water District #2, Roger Mills County, Ok., since December of 1978. At first I was scared to death of the DEQ afraid they were just out to get us. As time went on, I learned that they were not there just to come down on us, but were trying to help us by teaching us and working with us to make us be in compliance with all of the EPA rules and regulations. That attitude continues today at the DEQ. —Manager, Red Star Rural Water

As a member of the PWS fee committee representing a public water supply system for the past two years and as someone who has taken a leadership role in the committee, I feel that I am in a position to confidently state that the latest funding proposal is more than fair and equitable to the PWS systems throughout the State. The funding proposal represents a significant compromise that would have been much more difficult to attain without the sincere dedication of the Secretary of the Environment, Mr. Gary Sherrer and the extensive hard work that was performed by the DEQ staff in providing valuable information to the committee throughout the process. Although it may have been contentious at times, I for one have gained a great deal of knowledge about how the PWS program is operated and funded and have been able to build relationships with those who are responsible for the administration of the program that will allow me to continue to work with DEQ for the betterment of the program, which will ultimately be for the betterment of the people of the State of Oklahoma. —Director, Stillwater Utilities Authority

AS DEQ understands, rural communities in Oklahoma typically have few workers, and it can take years for these workers to obtain the necessary qualifications to do their jobs. Additionally, these employees have myriad
additional responsibilities and qualifications in other arenas. Complying with the EPA’s typically short upgrade timelines with few employees could easily cause deficiencies in other areas, such as DOT requirements for municipally owned natural gas systems. –Operator, Vici PWA

RESPONSE: DEQ appreciates the letters of support from the regulated community.

2. COMMENT: “The City of Frederick believes it is very much in the best interests of Frederick that State of Oklahoma retains primacy for all Public Water Supply Programs.... The City of Frederick respectfully encourages the DEQ to implement all of the suggestions which have been provided to you by the OK Municipal League and the OK Rural Water Association on behalf of their members. Specifically, the City of Frederick asks the DEQ to: (1) document the cost-of-services bases for all fee adjustments, (2) adopt cost-savings measures and (3) focus on the core requirements of primacy.” –Mayor, City of Frederick

RESPONSE: DEQ appreciates Frederick’s support of the state retaining primacy of the PWS program. Frederick’s three listed suggestions sound similar to suggestions contained in OML’s comment. See the responses to Comments 4 and 5.

3. COMMENT: Broken Arrow’s City Council supports “the Oklahoma Municipal League’s requested rule revisions for public water supply systems, and, specifically, those revisions that provide for the administration by the Oklahoma Department of Environmental Quality (ODEQ) of the three identified federal regulations as addressed by the Safe Drinking Water Act.” The Council also supports “OML’s requested rule revisions providing for the acquisition of objective data to determine the actual cost of complying with the deferral requirements, equitable distribution of fee increases among all public water supply systems, and adoption of cost saving measures to address funding needs. Finally, the Council looks forward to ODEQ’s commitment to improve customer service by allowing regulated entities to avoid delays and expensive costs associated with non-core requirements such as re-engineering of projects and other architectural/engineering plan reviews.” –Mayor, City of Broken Arrow

RESPONSE: See response to Comment 4.

4. COMMENT: On December 21, 2012, OML submitted a comment letter and attachment to DEQ.

[O]n September 28, 2012, a meeting involving Secretary Sherrer, Secretary of State Glenn Coffee, OML Executive Director Carolyn Stager and OML Vice-president and City Manager of Oklahoma City Jim Couch...produced a list of

1 See Attachment “A” (OML’s Proposal)
agreed principles to serve as the basis for an agreement among the parties. As requested, OML submitted a proposed agreement to the Secretaries on October 26, 2012. To date, OML has not received a direct response to its proposal. Therefore, the offered Agreement remains the adopted position of the OML Board of Directors. –Executive Director, OML

RESPONSE: See response to Comment 5 and the attached letter\(^2\) from Secretary Sherrer. Additionally, it is important to note that in a May 8, 2012 letter\(^3\) EPA established a date of September 30, 2012 for Oklahoma to obtain funding and implement the complete PWS program. Additionally, EPA sent a follow up letter\(^4\) dated November 9, 2012 that specified additional tasks related to primacy and implications of DEQ’s failure to fully implement the PWS program. OML’s proposal makes reference to opting out of Plans and Specification review, however, it was determined by the workgroup in the meeting held on September 5, 2012, that this is a required function of primacy based on the EPA document that contained the 18 Points of Primacy\(^5\). OML’s proposal also requests that a new Board modeled after the Municipal Liaison Board to the Oklahoma Tax Commission be created to create “better communication and problem solving” between the DEQ and municipalities. Currently, DEQ has an Office of Business and Community Relations (OBCR) whose manager reports to the Executive Director’s Office. One of the principal functions of the OBCR is to ensure that all divisions of the agency are responsive to questions and concerns and provide timely and effective information and assistance to municipalities and businesses.

Finally, the submittal requests that “EPA would be asked for an extension for the parties to try to reach an agreement.” In the November 9, 2012 letter from EPA, Regional Administrator Ron Curry states, “Extended timeframes for rule adoption have been granted and have expired, and previous commitments by ODEQ to secure necessary resources and proceed with rule adoption have not been fulfilled. Since the EPA is obligated to protect human health, we have diverted resources from other priority work to implement the portion of the program that Oklahoma has failed to adopt. We have no choice but to pursue instances of noncompliance with respect to safe drinking water and will focus on escalating enforcement activity for noncompliance.”

5. COMMENT: The Oklahoma Secretary of Environment, Gary Sherrer, submitted a letter detailing his support for the proposed rulemaking effort.

Beginning in March 2012, I began to work out an agreement to correct the deficiencies in the current program, while also taking the necessary steps to take on the Groundwater rules, the Stage 2 Disinfection By-Products Rule, and the

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\(^2\) See, Attachment “B” (SOE’s Letter of Support)

\(^3\) See, Attachment “C” (EPA’s May 8, 2012 Letter)

\(^4\) See, Attachment “D” (EPA’s November 9, 2012 Letter)

\(^5\) See, Attachment “E” (EPA’s 18 Points of Primacy)
Long Term 2 Enhanced Surface Water Treatment Rule. At the request of Governor Fallin and legislative leadership I agreed to put together the Public Water Supply Working Group consisting of members from my office, the Department of Environmental Quality, the Oklahoma Rural Water Association, and the Oklahoma Municipal League, after a series of meetings over the summer where members were given all of the available information, including all that was requested; the OML members said they would not be able to accept any type of a fee increase. I took this as a sign that their staff was not negotiating in good faith and ended all formal meetings of the working group. Because of the lack of good faith negotiations with the OML staff, I asked Secretary of State Glenn Coffee for assistance on this issue. After meeting with Secretary Coffee, OML Executive Director Carolyn Stager and City Manager Jim Couch of Oklahoma City on September 28, 2012, we developed the attached agreement (attachment 1), which was also sent to the Oklahoma Municipal League for their consideration on October 2, 2012. Based on no response to Secretary Coffee’s proposal, by the announced deadline, he and I asked the DEQ to move forward with the necessary rule making based on the October 2 proposed agreement. On October 26, 2012 I received an email from Jamie Smith with OML (attachment 2) which seemed to be a new offer that contained terms that were contrary to the agreement that Secretary Coffee had reached. I believe that the rule making being considered contains all of the terms that were agreed to in principle during the September 28th meeting…I fully offer my support to the proposed rulemaking and believe that it is vital to the protection of state primacy of the drinking water program.  

–Sec. Sherrer

**RESPONSE:** DEQ appreciates the support of Secretary Sherrr.

6. **COMMENT:** State Representative James Lockhart sent an email to Representative Scott Martin, Chair of Appropriation and Budget Committee for the House of Representatives, with a copy to Steve Thompson, DEQ Executive Director as well as others. The email states support for DEQ administration of the PWS program and requests Rep. Martin’s support of the $500,000 fee proposal and the $1.5 M general revenue increase to adequately fund the program. It also expresses fear of a federal takeover of the PWS program.

**RESPONSE:** DEQ appreciates the support of Rep. Lockhart.

**CREATED:** January 7, 2013
Champions for Effective Municipal Government
Delivered from the Oklahoma Municipal League to Mr. Mark Hildebrand at Oklahoma Department of Environmental Quality on Friday, December 21, 2012, at 1:30 p.m.

Received by: Cara Magoff

RECEIVED
DEC 21 2012
WATER QUALITY DIVISION

ATTACHMENT "A"
December 20, 2012

Mr. Mark Hildebrand
Department of Environmental Quality
Water Quality Division
P.O. Box 1677
Oklahoma City, OK 73101-1677

RE: ODEQ RULE REVISIONS EFFECTING FEE INCREASES FOR PUBLIC WATER SUPPLY SYSTEMS BY AMENDING "252:631-3-21. PUBLIC WATER SUPPLY ANNUAL SERVICE FEES"

Dear Mr. Hildebrand:

Please accept this letter as the comments of the Oklahoma Municipal League on QDEQ’s proposed amendments to Rule 252:631-3-21.

The fee increases provided in the amendments have been the subject of study and discussion between the Oklahoma Department of Environmental Quality (ODEQ) and the Oklahoma Municipal League (OML) for the past two years. Throughout the past summer, they participated with other parties in a series of meetings conducted by Secretary of the Environment Gary Sherrer. This process culminated in a meeting on September 28, 2012, involving Secretary Sherrer, Secretary of State Glenn Coffee, OML Executive Director Carolyn Stager and OML Vice-president and City Manager of Oklahoma City Jim Couch. That meeting produced a list of agreed principles to serve as the basis for an agreement among the parties.

As requested, OML submitted a proposed agreement to the Secretaries on October 26, 2012. To date, OML has not received a direct response to its proposal. Therefore, the offered Agreement remains the adopted position of the OML Board of Directors. It is attached along with the explanation of the proposal provided the Secretaries in the transmittal email.

The Oklahoma Municipal League appreciates the opportunity to provide these comments and will be pleased to discuss them further with you.

Sincerely,

Carolyn Stager
Executive Director

201 N.E. 23rd Street, Oklahoma City, OK 73105
405-528-7515 • 1-800-324-6651 • Fax 405-528-7560 • www.cml.org
Good Morning Secretary Coffee:

Following many hours of discussion and meetings, please find attached the recommendation of the OML representatives for an agreement to new PWS fees. Thank you for your interest in helping to resolve this issue. I am hopeful this agreement is reflective of what was discussed during the meeting with you, Jim Couch, Secretary Sherrer and myself on Friday, September 28.

The municipal representatives worked hard to develop a consensus among themselves which at times proved difficult. They kept in mind the fact that this issue, like the binding arbitration issue two years ago could split OML members. Therefore, they were conscientious throughout the process to maintain their fundamental issues while crafting a compromise document that will allow further work with DEQ to address customer service and funding concerns. Also, due to early breakdown of the summer PWS Working Group process, the attached agreement contains several confidence-building measures.

The consensus is that the proposed agreement presents a way to address those fundamental issues:

1. No fee should go into effect until it is justified by objective data showing that fee income is used by DEQ for complying with EPA’s core primacy requirements.
2. DEQ should adopt cost-saving measures to alleviate its funding needs.
3. DEQ should improve its customer service by allowing regulated entities to avoid delays and expensive costs associated with non-core requirements, such as re-engineering of projects and other plans and specs review not necessary for primacy.

The consensus agreement incorporates the following understanding of ideas offered during the meeting with Secretary Glenn Coffee on Friday, September 28, 2012:

- an independent third party company would conduct a cost of service analysis within the next few months (*the proposed agreement suggests this could also be accomplished by the Performance and Efficiency Division in the Office of Management and Enterprise Services*)
- a $500,000 fee increase which would be subject to reduction depending on the cost of service analysis
- a sunset provision providing this increase will not take effect unless justified by the cost of service analysis
- OML can provide conditions that must be satisfied in order to implement the fee increase
- since the fees do not take effect until July 1, 2014, the sunset date would have to be determined
a commitment by DEQ to improve customer relations.
- DEQ would assume primacy over the 3 "new" rules.
- EPA would be asked for an extension for the parties to try to reach an agreement

A SUMMARY OF THE AGREEMENT:

**Term # 1**

1. Rule language is offered to provide a $500,000 PWS fee increase for assuming primacy for 3 new rules.
   
   Item 1 of the Agreement is in the form of a proposed rule in order to save time, to have a mutually agreed upon set of words in the important rule-making process, to clarify how the municipal solution will be implemented and to reduce misunderstanding between the parties. In doing so, the municipal representatives also utilized language from DEQ's proposed rule-making in 2010 and 2011 to increase fees.

2. The increase is in the form of a surcharge on current PWS fees spread evenly as a flat percentage increase across all PWS fee payers. (an even distribution of fees was critical to Secretary Sherrer and Steve. Our idea of utilizing user-paid lab fees increase to provide needed funding to DEQ was rejected as it was not spread evenly across all PWS fee payers.)
   
   This fee amount is in reliance on the DEQ developed July 2012 Financial Report showing the Water Quality Division’s cost to assume the 3 new rules as $500,000.

3. Using Secretary Coffee’s idea, the surcharge would sunset before going into effect if it is not verified by a third party study.
   
   The proposal, if verified, offers DEQ a dollar-for-dollar amount DEQ has indicated would pay for assuming primacy.

4. As suggested at the October 3 OML Board meeting, a third party verification study will be conducted by the Performance and Efficiency Division of the Office of Management and Efficiency Services (formerly the Office of State Finance). Another option that was discussed during the meeting with Secretary Coffee was to utilize an independent third party to conduct the study.

5. As contained by DEQ in its 2011 proposed rule amendment, both state appropriations and federal grants will be used to offset PWS program costs.

**Term # 2**

A fuller study by the independent third party or the Performance and Efficiency Division of the Office of Management and Efficiency Services will look at additional DEQ activities that are not required by EPA which increase costs to both DEQ and our members. Any DEQ cost-savings can be redirected to DEQ primacy activities and assist in off-setting future costs as well as future reduction in federal funds.

**Term # 3**

From DEQ’s proposed agreement dated October 2, 2012, DEQ will not include sanitary survey inspections in excess of EPA requirements in the costs for the core functions of primacy.
Term # 4
Based on Steve Thompson’s previous proposal, DEQ will allow regulated entities to opt out of plans and specs reviews, including activities involving the re-engineering of projects, and will support legislation that may be needed to carry out this purpose.

Term # 5
Although the Ombudsman offer is an appropriate option, the municipal representatives suggest a process modeled on the tried and true and successful Municipal Liaison Board to the Oklahoma Tax Commission to develop better communication and problem solving between municipalities and DEQ.

Thank you for your patience on what has been a most difficult process. Please let me know if you have any questions and I am hopeful this agreement is reflective of our earlier discussions and that our members have crafted an agreement that will be acceptable to all.

Respectfully submitted,

Carolyn Stager
Executive Director
AGREEMENT

The Oklahoma Rural Water Association ("OWRA"), Oklahoma Municipal League ("OML") and Oklahoma Department of Environmental Quality ("DEQ") agree that retaining "State Primacy" for the Safe Drinking Water Act, which is currently being implemented by DEQ's Public Water Supply ("PWS") Program, is in the mutual interest of the parties to this agreement.

This is an agreement in principle between the Secretary of the Environment, DEQ, OML and ORWA to achieve this goal.

1. OAC 252:631-3-21 shall be amended as follows:

252:631-3-21. Public water supply annual service fees

(a) Each PWS system shall be charged an annual fee (see 27A O.S. § 2-6-306).

(b) Beginning July 1, 2008, the annual fee shall be calculated by using the actual costs of services as follows as the sum of the following rates:

(1) Laboratory analysis fees, for parameters analyzed by the State Environmental Laboratory, shall be charged as specified in OAC 252:303, "Laboratory Services";

Inspection service costs equal $36.00 for purchase systems, $72.00 for ground systems or $143.00 for surface systems and groundwater under the direct influence of surface water systems; and

(2) Federal program requirement costs for tracking, reporting, and enforcement and technical assistance costs (applicable to community systems and non-transient non-community systems) equal $266.00 for purchase systems, $1,167.00 for ground systems or $4,980.00 for surface systems and groundwater under the direct influence of surface water systems. State appropriations and federal grants will be allocated and used to offset PWS program costs in the same proportion as those funds are allocated and used in FY2012-13.

(3) Subject to (4) below, beginning July 1, 2013, a total surcharge not to exceed $500,000 calculated and billed as 29.42% of the fee charged in FY2010-11 under (1) and (2) above to each individual PWS system to supplement current funding sources for the cost of the core federal primacy requirements as defined in 40 CFR 142.10 for federal mandated Groundwater Rule, Long-Term 2 Enhanced Surface Water Treatment Rule; and Stage 2 DBP rule.

(4) The surcharge provided in (3) above shall not be put into effect until and unless the amount of the surcharge is first verified as the actual cost of complying with the core federal primacy requirements for the rules listed above as defined in 40 CFR 142.10 using the following procedure:

(A) Development by the Performance and Efficiency Division in the Office of Management and Enterprise Services of an agreed scope of work, which shall contain a cost of service analysis, a consultation process and verification measurements, to conduct a performance and efficiency study to verify the actual cost of the core federal primacy requirements and to identify cost savings. Development of the agreed scope of work shall include separate interviews by the Performance and Efficiency Division with representatives designated respectively by the department, the Oklahoma Rural Water Association and the Oklahoma Municipal League.

(B) Upon the parties' review and agreement of the scope of work, completion of the performance and efficiency study by the Performance and Efficiency Division in the Office of Management and Enterprise Services to review and verify the cost of the core federal primacy requirements and to identify cost savings to reduce the amount of fees provided in (b)(3) above.

(c) Each system shall be charged the actual cost for regulatory services as calculated according to OAC 252:631-3-21(b), except that:
(1) no system shall pay less than a minimum annual fee of $50 for purchase water systems, $75 for ground water systems and $150 for surface water system or less than four cents($0.04) per service connection per month, whichever is greater, and
(2) no system shall pay an annual fee increase of more than thirty cents ($0.30) per service connection per month.

(d) The minimum annual fees listed in OAC 252:631-3-21(e) do not apply to state, federal, tribal, and non-transient non-community systems. These systems shall pay the actual costs of services.
(e) Each system will be notified by mail of the fee due from that system by August 1 of each year. The DEQ shall mail such notice to the most recent name and address provided to the DEQ by the PWS system, however, failure to receive such notice by the system shall not operate to waive any fees due to the DEQ.
(f) To assist in meeting rising costs to the Department of the public water supply program associated with implementation and enforcement of the federal primary drinking water standards, the fees set out in paragraph (b)(1) and (2) above shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the nearest dollar. The Department may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

1. Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.
(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.
(3) For purposes of this subsection, “Consumer Price Index” or “CPI” means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982=1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the “Annual” index figure for that calendar year.

2. DEQ will cooperate in a performance and efficiency review of its water quality division operations by the Performance and Efficiency Division of the Office of Management and Enterprise Services using the same procedure set out in the proposed amendment at OAC 252:631-3-21(b)(3) to
a) identify cost-drivers, such as state laboratory services, sanitary survey inspections in excess of EPA’s core primacy requirements and delegation agreement(s), and re-engineering of projects;
b) develop cost-savings in those operations; and
c) improve customer relations.

3. During the discussions with OML and OWRA, it was determined that EPA only requires DEQ to complete (a) one sanitary survey every three years for community systems, and (b) one sanitary survey every five years for non-community systems. Currently, DEQ practice is to conduct at least one sanitary survey every year for each PWS system regardless of its classification. While DEQ believes that protection of public health requires annual surveys, DEQ agrees that only the surveys
required by EPA will be coded in DEQ's time and leave program under "primacy related functions." The additional surveys will be coded under "non-primacy related functions."

4. In order to remove burdensome delays and expenses for regulated entities, DEQ agrees to allow regulated entities to opt out of plans and specs review and other re-engineering of water and wastewater projects for all water quality division programs unless a regulated entity requests a more extensive review and the entity is charged an amount sufficient to pay for the additional service. DEQ agrees to support legislation that may be needed to carry out this purpose.

5. DEQ and OML will establish a continuing collaborative process modeled on the Municipal Liaison Board to the Oklahoma Tax Commission in order to develop better communication and problem-solving mechanisms between the two parties.
December 31, 2012

Mr. Mark Hildebrand
Water Quality Division
Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677

HAND DELIVERED

Re: Comments from the Office of the Secretary of Environment regarding proposed amendments of 252:631-3-21.

Dear Mr. Hildebrand,

Thank you for the opportunity to comment on this very important matter and consider these official comments from the Office of the Secretary of Environment to the proposed amendments of 252:631-3-21 concerning the Public Water Supply Supervision Program.

Beginning in March 2012, I began to work out an agreement to correct the deficiencies in the current program, while also taking the necessary steps to take on the Groundwater Rules, the Stage 2 Disinfection By-Products Rule, and the Long Term 2 Enhanced Surface Water Treatment Rule. At the request of Governor Fallin and legislative leadership I agreed to put together the Public Water Supply Working Group consisting of members from my office, the Department of Environmental Quality, the Oklahoma Rural Water Association, and the Oklahoma Municipal League. After a series of meetings over the summer where members were given all of the available information, including all that was requested; the OML members said they would not be able to accept any type of a fee increase. I took this as a sign that their staff was not negotiating in good faith and ended all formal meetings of the working group.

Because of the lack of good faith negotiations with the OML staff, I asked Secretary of State Glenn Coffee for assistance on this issue. After meeting with Secretary Coffee, OML Executive Director Carolyn Stager and City Manager Jim Couch of Oklahoma City on September 28, 2012, we developed the attached agreement (attachment 1) which was also sent to the Oklahoma Municipal League for their consideration on October 2, 2012. Based on no response to Secretary Coffee’s proposal, by the announced deadline, he and I asked the DEQ to move forward with the necessary rule making based on the October 2nd proposed agreement. On October 26, 2012 I received an email from Jamie Smith with OML (attachment 2) which seemed to be a new offer that contained terms that were contrary to the agreement that Secretary Coffee had reached.

ATTACHMENT "B"
I believe that the proposed rule making being considered contains all of the terms that were agreed to in principle during the September 28th meeting and will allow the DEQ to move forward in taking on additional federal mandates as required by the EPA.

I fully offer my support to the proposed rule making and believe that is vital to the protection of state primacy of the drinking water program.

Sincerely,

Gary L. Sherer
Secretary of Environment

Attachments
Carolyn,

Good afternoon! Jim Couch asked me to send you a copy of the latest draft of the PWS agreement, please find it attached.

If you have any problems please let me know.

Thanks!
Tyler

Tyler Powell
Director
Office of the Secretary of Environment
State of Oklahoma
AGREEMENT

The Oklahoma Rural Water Association ("OWRA"), Oklahoma Municipal League ("OML") and Oklahoma Department of Environmental Quality ("DEQ") agree that retaining "State Primacy" for the Safe Drinking Water Act, which is currently being implemented by DEQ's Public Water Supply ("PWS") Program, is in the mutual interest of the parties to this agreement.

This is an agreement in principle between the Secretary of the Environment, DEQ, OML and ORWA to achieve this goal.

ORWA and OML pledge their support, by respective board resolutions, for a $500,000 PWS annual fee increase to pay for those non-laboratory functions that are required by EPA for DEQ to retain primacy.

The $500,000 fee increase will become effective July 1, 2013, but will not be billed until June 2014. During the interim, DEQ agrees to document through its time and leave program all employee and program costs associated with the non-laboratory primacy functions. After these program costs have been determined, if the fee increase should have been less than $500,000, DEQ will issue a prorated rebate for fees collected that were in excess of those needed.

During discussions leading up to this agreement, DEQ became aware of some dissatisfaction by community leaders of the operation of DEQ's PWS Program. In order to address the expressed concerns and to build a closer relationship with the regulated community, DEQ will use non-PWS fee income to fund an ombudsman, who will work directly for the Executive Director's Office to address these concerns.

During the discussions with OML and OWRA, it was determined that EPA only requires DEQ to complete (a) one sanitary survey every three years for community systems, and (b) one sanitary survey every five years for non-community systems. Currently, DEQ practice is to conduct at least one sanitary survey every year for each PWS system regardless of its classification. While DEQ believes that protection of public health requires annual surveys, DEQ agrees that only the surveys required by EPA will be coded in DEQ's time and leave program under "primacy related functions." The additional surveys will be coded under "non-primacy related functions."

To address other concerns expressed by OML, DEQ will cooperate in a third-party operational review of the non-laboratory primacy functions of its PWS Program.
ATTACHMENT 2

RECEIVED

DEC 31 2012
WATER QUALITY DIVISION
Take a look  

Sent from my iPhone

Begin forwarded message:

From: Jamie Smith <JamieS@oml.org>
Date: October 26, 2012 3:40:28 PM CDT
To: "Glenn Coffee (glenn.coffee@sos.ok.gov)" <glenn.coffee@sos.ok.gov>, "Sherrr, Gary" <GLSherrr@environment.ok.gov> 
Cc: "Horner Nicholson (nichohl@poncacityok.gov)" <nichohl@poncacityok.gov>, "Jim.Couch@okc.gov" <Jim.Couch@okc.gov>, "Robert Johnston (citymanager@frederickok.org)" <citymanager@frederickok.org>
Subject: PWS Agreement From Carolyn Stager

Good afternoon, Secretary’s Coffee and Sherrr! 
Carolyn is out of state at a meeting but wanted you to receive this today.
Thank you!
Jamie Smith
Executive Assistant to
Executive Director
Oklahoma Municipal League
301 NE 13th Street
Oklahoma City, OK 73106
405-528-7875
405-528-7560 fax

Good Morning Secretary Coffee:

Following many hours of discussion and meetings, please find attached the recommendation of the OML representatives for an agreement to new PWS fees. Thank you for your interest in helping to resolve this issue. I am hopeful this agreement is reflective of what was discussed during the meeting with you, Jim Couch, Secretary Sherrr and myself on Friday, September 28.

The municipal representatives worked hard to develop a consensus among themselves which at times proved difficult. They kept in mind the fact that this issue, like the binding arbitration issue two years ago could split OML members. Therefore, they were conscientious throughout the process to maintain their fundamental issues while crafting a compromise document that will allow further work with DEQ to address customer service and funding concerns. Also, due to early breakdown of the summer PWS Working Group process, the attached agreement contains several confidence-building measures.
The consensus is that the proposed agreement presents a way to address those fundamental issues:

1. No fee should go into effect until it is justified by objective data showing that fee income is used by DEQ for complying with EPA’s core primacy requirements.
2. DEQ should adopt cost-saving measures to alleviate its funding needs.
3. DEQ should improve its customer service by allowing regulated entities to avoid delays and expensive costs associated with non-core requirements, such as re-engineering of projects and other plans and specs review not necessary for primacy.

The consensus agreement incorporates the following understanding of ideas offered during the meeting with Secretary Glenn Coffee on Friday, September 28, 2012:

- an independent third party company would conduct a cost of service analysis within the next few months (the proposed agreement suggests this could also be accomplished by the Performance and Efficiency Division in the Office of Management and Enterprise Services)
- a $500,000 fee increase which would be subject to reduction depending on the cost of service analysis
- a sunset provision providing this increase will not take effect unless justified by the cost of service analysis
- OML can provide conditions that must be satisfied in order to implement the fee increase
- since the fees do not take effect until July 1, 2014, the sunset date would have to be determined
- a commitment by DEQ to improve customer relations
- DEQ would assume primacy over the 3 “new” rules
- EPA would be asked for an extension for the parties to try to reach an agreement

A SUMMARY OF THE AGREEMENT:

Term #1

1. Rule language is offered to provide a $500,000 PWS fee increase for assuming primacy for 3 new rules.
   Item 1 of the Agreement is in the form of a proposed rule in order to save time, to have a mutually agreed upon set of words in the important rule-making process, to clarify how the municipal solution will be implemented and to reduce misunderstanding between the parties. In doing so, the municipal representatives also utilized language from DEQ’s proposed rule-making in 2010 and 2011 to increase fees.

2. The increase is in the form of a surcharge on current PWS fees spread evenly as a flat percentage increase across all PWS fee payers. (an even distribution of fees was critical to Secretary Sherriger and Steve. Our idea of utilizing user-paid lab fees increase to provide needed funding to DEQ was rejected as it was not spread evenly across all PWS fee payers.)
   This fee amount is in reliance on the DEQ developed July 2012 Financial Report showing the Water Quality Division’s cost to assume the 3 new rules as $500,000.

3. Using Secretary Coffee’s idea, the surcharge would sunset before going into effect if it is not verified by a third party study.
   The proposal, if verified, offers DEQ a dollar-for-dollar amount DEQ has indicated would pay for assuming primacy.

4. As suggested at the October 3 OML Board meeting, a third party verification study will be conducted by the Performance and Efficiency Division of the Office of Management and Efficiency Services (formerly the Office of State Finance). Another option that was discussed during the meeting with Secretary Coffee was to utilize an independent third party to conduct the study.
5. As contained by DEQ in its 2011 proposed rule amendment, both state appropriations and federal grants will be used to offset PWS program costs.

**Term # 2**
A fuller study by the independent third party or the Performance and Efficiency Division of the Office of Management and Efficiency Services will look at additional DEQ activities that are not required by EPA which increase costs to both DEQ and our members. Any DEQ cost-savings can be redirected to DEQ primary activities and assist in off-setting future costs as well as future reduction in federal funds.

**Term # 3**
From DEQ’s proposed agreement dated October 2, 2012, DEQ will not include sanitary survey inspections in excess of EPA requirements in the costs for the core functions of primacy.

**Term # 4**
Based on Steve Thompson’s previous proposal, DEQ will allow regulated entities to opt out of plans and specs reviews, including activities involving the re-engineering of projects, and will support legislation that may be needed to carry out this purpose.

**Term # 5**
Although the Ombudsman offer is an appropriate option, the municipal representatives suggest a process modeled on the tried and true and successful Municipal Liaison Board to the Oklahoma Tax Commission to develop better communication and problem solving between municipalities and DEQ.

Thank you for your patience on what has been a most difficult process. Please let me know if you have any questions and I am hopeful this agreement is reflective of our earlier discussions and that our members have crafted an agreement that will be acceptable to all.

Respectfully submitted,

Carolyn Stager  
Executive Director

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RECEIVED  
DEC 31, 2012  
WATER QUALITY DIVISION  

ORIGINAL
The Oklahoma Rural Water Association ("OWRA"), Oklahoma Municipal League ("OML") and Oklahoma Department of Environmental Quality ("DEQ") agree that retaining "State Primacy" for the Safe Drinking Water Act, which is currently being implemented by DEQ’s Public Water Supply ("PWS") Program, is in the mutual interest of the parties to this agreement.

This is an agreement in principle between the Secretary of the Environment, DEQ, OML and ORWA to achieve this goal.

1. OAC 252:631-3-21 shall be amended as follows:
   252:631-3-21. Public water supply annual service fees
   (a) Each PWS system shall be charged an annual fee (see 27A O.S. § 2-6-306).
   (b) Beginning July 1, 2008, the annual fee shall be calculated by using the actual costs of services as follows as the sum of the following rates:
      (1) Laboratory analysis fees, for parameters analyzed by the State Environmental Laboratory, shall be charged as specified in OAC 252:305, "Laboratory Services".
      Inspection service costs equal $36.00 for purchase systems, $72.00 for ground systems or $143.00 for surface systems and groundwater under the direct influence of surface water systems; and
      (2) Federal program requirement costs for tracking, reporting, and enforcement and technical assistance costs (applicable to community systems and non-transient non-community systems) equal $266.00 for purchase systems, $1,167.00 for ground systems or $4,980.00 for surface systems and groundwater under the direct influence of surface water systems. State appropriations and federal grants will be allocated and used to offset PWS program costs in the same proportion as those funds are allocated and used in FY2012-13.
      (3) Subject to (4) below, beginning July 1, 2013, a total surcharge not to exceed $500,000 calculated and billed as 29.42% of the fee charged in FY2010-11 under (1) and (2) above to each individual PWS system to supplement current funding sources for the cost of the core federal primacy requirements as defined in 40 CFR 142.10 for federal mandated Groundwater Rule, Long-Term 2 Enhanced Surface Water Treatment Rule; and Stage 2 DBP rule.
      (4) The surcharge provided in (3) above shall not be put into effect until and unless the amount of the surcharge is first verified as the actual cost of complying with the core federal primacy requirements for the rules listed above as defined in 40 CFR 142.10 using the following procedure:
         (A) development by the Performance and Efficiency Division in the Office of Management and Enterprise Services of an agreed scope of work, which shall contain a cost of service analysis, a consultation process and verification measurements, to conduct a performance and efficiency study to verify the actual cost of the core federal primacy requirements and to identify cost savings. Development of the agreed scope of work shall include separate interviews by the Performance and Efficiency Division with representatives designated respectively by the department, the Oklahoma Rural Water Association and the Oklahoma Municipal League.
         (B) upon the parties’ review and agreement of the scope of work, completion of the performance and efficiency study by the Performance and Efficiency Division in the Office of Management and Enterprise Services to review and verify the cost of the core federal primacy requirements and to identify cost savings to reduce the amount of fees provided in (b)(3) above.
      (c) Each system shall be charged the actual cost for regulatory services as calculated according to OAC 252:631-3-21(b), except that:
(1) no system shall pay less than a minimum annual fee of $50 for purchase water systems, 
$75 for ground water systems and $150 for surface water system or less than four 
cents($0.04) per service connection per month, whichever is greater, and 
(2) no system shall pay an annual fee increase of more than thirty cents ($0.30) per service 
connection per month.

(d) The minimum annual fees listed in OAC 252:631-3-21(6) do not apply to state, federal, tribal, and 
non-transient non-community systems. These systems shall pay the actual costs of services.
(e) Each system will be notified by mail of the fee due from that system by August 1 of each year. 
The DEQ shall mail such notice to the most recent name and address provided to the DEQ by the 
PWS system, however, failure to receive such notice by the system shall not operate to waive any fees 
due to the DEQ.
(f) To assist in meeting rising costs to the Department of the public water supply program associated 
with implementation and enforcement of the federal primary drinking water standards, the fees set out 
in paragraph (b)(1) and (2) above shall be automatically adjusted on July 1st every year to correspond 
to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year 
exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the 
nearest dollar. The Department may waive collection of an automatic increase in a given year if it 
determines other revenues, including appropriated state general revenue funds, have increased 
sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A 
waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or 
the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma 
Administrative Procedures Act. The rulemaking process may be initiated in any manner 
provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 
252:4-5-3 by any person affected by the automatic fee adjustment.
(2) If the United States Department of Labor ceases to publish the CPI or revises the 
methodology or base years, no further automatic fee adjustments shall occur until a new 
automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative 
Procedures Act.
(3) For purposes of this subsection, “Consumer Price Index” or “CPI” means the Consumer 
Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, 
CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar 
year is the figure denoted by the Department of Labor as the “Annual” index figure for that 
calendar year.

2. DEQ will cooperate in a performance and efficiency review of its water quality division operations by 
the Performance and Efficiency Division of the Office of Management and Enterprise Services using 
the same procedure set out in the proposed amendment at OAC 252:631-3-21(b)(3) to
   a) identify cost-drivers, such as state laboratory services, sanitary survey inspections in excess 
of EPA's core primacy requirements and delegation agreement(s), and re-engineering of 
projects;
   b) develop cost-savings in those operations; and
   c) improve customer relations.

3. During the discussions with OML and OWRA, it was determined that EPA only requires DEQ to 
complete (a) one sanitary survey every three years for community systems, and (b) one sanitary 
survey every five years for non-community systems. Currently, DEQ practice is to conduct at least 
one sanitary survey every year for each PWS system regardless of its classification. While DEQ 
believes that protection of public health requires annual surveys, DEQ agrees that only the surveys
required by EPA will be coded in DEQ's time and leave program under "primacy related functions." The additional surveys will be coded under "non-primacy related functions."

4. In order to remove burdensome delays and expenses for regulated entities, DEQ agrees to allow regulated entities to opt out of plans and specs review and other re-engineering of water and wastewater projects for all water quality division programs unless a regulated entity requests a more extensive review and the entity is charged an amount sufficient to pay for the additional service. DEQ agrees to support legislation that may be needed to carry out this purpose.

5. DEQ and OML will establish a continuing collaborative process modeled on the Municipal Liaison Board to the Oklahoma Tax Commission in order to develop better communication and problem-solving mechanisms between the two parties.
Mr. Gary L. Sherrer  
Secretary of the Environment  
Oklahoma Secretary of the Environment  
3800 North Classen Boulevard  
Oklahoma City, Oklahoma 73118

Dear Secretary Sherrer:

As a follow up to our recent discussions, I appreciate the commitment made by you and the Oklahoma Legislature to return the State’s Public Water System Supervision (PWSS) Program to its exemplary implementation status of a decade ago. I am also pleased to hear about the near-term funding discussed with the Oklahoma Legislature, and your long-term objective to fully fund the Oklahoma Drinking Water Program. The anticipated $200,000 supplemental appropriation from the Oklahoma Legislature for the current year is a clear sign of support for ensuring that all Oklahomans have confidence in their drinking water.

As we jointly move forward, EPA needs a defined path by the State of Oklahoma to support your objective to fully fund and operate the PWSS program. To accomplish this, I ask that, by September 30, you submit a plan with funding details for implementation of the entire PWSS Program. I believe full program funding should be in place by no later than June 1, 2013, with complete implementation of the PWSS Program no later than July 2013. This schedule will allow the Oklahoma Legislature time to consider the long-term funding and appropriations needed for comprehensive implementation of all of the PWSS Program. This should also allow the Oklahoma Department of Environmental Quality (ODEQ) the opportunity to adopt all necessary rules and regulations to support full implementation of the PWSS program. If possible, I also request that you present letters of support from the entities committed to the plan. In light of this collaborative approach, the EPA has no plans to withdraw primacy for the Oklahoma PWSS program at this time; however, if full funding and implementation cannot be accomplished by this schedule, EPA will have to reevaluate this position.

As we discussed last week, ODEQ and the EPA have dual enforcement authorities and responsibilities under the Safe Drinking Water Act (SDWA) for providing safe drinking water to the citizens of Oklahoma. EPA is committed to continuing our existing practice of coordinating and consulting with ODEQ on all SDWA inspections and enforcement actions consistent with the June 4, 2007, letter from John Blevins to Steve Thompson (see Enclosure 1).
In addition, in the short term (now until June 1, 2013), EPA is willing to work share with ODEQ in gathering data (inspections and information requests) to help you focus your enforcement actions until sufficient resources are committed to the PWSS program. For those portions of the program delegated to the State, EPA expects ODEQ to take the administrative enforcement necessary to resolve issues of non-compliance. However, if the ODEQ is unable to initiate an appropriate and timely enforcement action, EPA will undertake enforcement in order to protect public health and maintain the public’s confidence and ensure the delivery of safe drinking water.

I believe that we have formed an extremely effective partnership with ODEQ on enforcement for all programs and expect this to continue in the SDWA arena. It is important to note, as discussed in our April 6 letter to Steve Thompson (Enclosure 2), limited State resources will result in an increased Federal presence as defined above. We will maintain this work sharing agreement through June 1, 2013. If at that time, ODEQ has not committed sufficient resources, and is not committed to fully and adequately implementing all PWSS programs, EPA will abandon its work sharing posture and move forward with aggressive EPA lead enforcement.

Let me say again that I appreciate you opening a dialogue with the Oklahoma Legislature on fully funding the drinking water program. I look forward to providing support or information, as needed, for Oklahoma to enjoy a fully resourced and exceptional program. Let me know if I can help in any way.

Sincerely yours,

[Signature]

Samuel Coleman, P.E.
Acting Regional Administrator

Enclosures
November 9, 2012

Mr. Gary L. Sherrer
Oklahoma Secretary of the Environment
3800 North Classen Boulevard
Oklahoma City, Oklahoma 73118

Dear Secretary Sherrer:

Thank you for your letter of September 28, 2012, to the U.S. Environmental Protection Agency and for meeting with my staff in Dallas on October 25, 2012, regarding Oklahoma’s Public Water Supply Supervision program. I understand you spoke with Deputy Regional Administrator Samuel Coleman about your September 28, 2012, letter to him, and your activities over the summer to address the concerns outlined in his May 8, 2012, letter to you about the PWSS program. I appreciate that you are coming to a resolution with the Oklahoma Municipal League and the Oklahoma Rural Water Association on fees to support the PWSS program. It is also good to hear of Governor Fallin’s strong support for Oklahoma maintaining its drinking water primacy. While I am encouraged by your efforts to obtain stakeholder agreement, financial support and legislative rulemaking, I must reaffirm that the EPA expects the Oklahoma Department of Environmental Quality to have full program funding in place by no later than June 1, 2013, and to have complete implementation of the PWSS program by no later than July 2013.

Extended timeframes for rule adoption have been granted and have expired, and previous commitments by the ODEQ to secure necessary resources and proceed with rule adoption have not been fulfilled. Since the EPA is obligated to protect human health, we have diverted resources from other priority work to implement the portion of the program that Oklahoma has failed to adopt. We have no choice but to pursue instances of noncompliance with respect to safe drinking water and will focus on escalating enforcement activity for noncompliance. While this will have direct impact on Oklahoma public water systems, an even greater impact would be realized should the EPA assume primary enforcement authority, or primacy, for all drinking water regulations in Oklahoma. Such a primacy shift would result not only in decreased technical assistance and increased federal enforcement for Oklahoma public water systems, but would also result in a loss of many millions of dollars available annually for the Drinking Water State Revolving Loan Fund and for implementation of the Public Water System Supervision program in Oklahoma. I ask again that you submit a plan with specific tasks and milestones required to achieve full funding and implementation of the entire PWSS program by the dates noted above.

During the October 25 meeting, Mr. Coleman discussed several interim activities and milestones needed in your plan to demonstrate progress. Critical plan details, for example, will include dates associated with filing the new rules, completing the fee agreement, submitting the Governor’s budget to the legislature, providing a draft and final amended primary package to the EPA, and legislative action on the ODEQ’s budget and new rules. Since I expect there will be concurrent activities included in your plan, my staff is available to assist the ODEQ with the coordination and drafting of necessary rule adoption primacy packages. Until such time that the ODEQ commences to implement the full PWSS program, the EPA will continue to actively enforce all non-delegated rules.
I look forward to working with you to continue to protect the health of Oklahoma citizens. If you have any questions, please contact me at (214) 665-2100, or your staff may contact Mr. Blake Atkins, Drinking Water Section Chief, at (214) 665-2297.

Sincerely,

Ron Curry
Regional Administrator

cc: Mr. Steve Thompson, Executive Director
    Oklahoma Department of Environmental Quality
ATTACHMENT A – 40 CFR 142.10 Primacy Requirements

Regulations specified in 40 CFR 142.10 require states that have been delegated primary enforcement authority (primacy) for the Safe Drinking Water Act to meet the following requirements:

1. Adopt drinking water regulations which are no less stringent than the national primary drinking water regulations (NPDWRs);
2. Adopt and implement adequate procedures for enforcement of such State regulations;
3. Maintain an inventory of public water systems;
4. Develop a systematic program for conducting sanitary surveys of public water systems in the State;
5. Establish and maintain a State program for the certification of laboratories conducting analytical measurements of drinking water contaminants;
6. Assure the availability to the State of laboratory facilities certified by the Administrator and capable of performing analytical measurements of all contaminants specified in the State primary drinking water regulations;
7. Establish and maintain an activity to assure that the design and construction of new or substantially modified public water system facilities will be capable of compliance with the State primary drinking water regulations;
8. Have authority to apply State primary drinking water regulations to all public water systems in the State;
9. Have authority to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of the State primary drinking water regulations;
10. Have right of entry and inspection of public water systems;
11. Have authority to require suppliers of water to keep appropriate records and make appropriate reports to the State;
12. Have authority to require public water systems to give public notice that is no less stringent than EPA requirements in 40 CFR 142.32 and 142.16(a);
13. Have authority to assess civil or criminal penalties for violation of the State’s primary drinking water regulations and public notice requirements;
14. Have authority to require community water systems to provide consumer confidence reports as required under 40 CFR part 141, subpart O;
15. Establish and maintain record keeping and reporting of its activities, including quarterly reports to the Administrator (Safe Drinking Water Information System) of violations, enforcement actions, notification of any variances and exemptions, and water system inventory information from the previous quarter;
16. If the State permits variances or exemptions, or both, from the requirements of the State primary drinking water regulations, the State shall do so under conditions and in a manner no less stringent than federal requirements;
17. Adopt and implement an adequate plan for the provision of safe drinking water under emergency circumstances;
18. Have authority for assessing administrative penalties.