



Updated January 5, 2017

Water Infrastructure Improvements for the Nation (WIIN) Act, P.L. 114-322: Drinking Water Provisions

The Water Infrastructure Improvements for the Nation Act (WIIN Act; P.L. 114-322) was enacted on December 16, 2016. Title II of this wide-ranging water resources law is the Water and Waste Act of 2016. Title II, Subtitle A, makes numerous revisions to the Safe Drinking Water Act (SDWA; 42 U.S.C. §§300f-300j-26), administered by the U.S. Environmental Protection Agency (EPA). Subtitle B authorizes infrastructure and other emergency assistance to help an eligible water system address lead in the system.

P.L. 114-322, Title II, broadly parallels many SDWA and emergency assistance provisions in S. 2848, the Senate 2016 Water Resources Development Act (WRDA) bill. The House WRDA bill, H.R. 5303, did not include similar provisions. It would have authorized appropriations for the Army Corps of Engineers to provide assistance for water infrastructure repair and replacement to any identified community in a state subject to a presidential emergency declaration concerning lead or other contaminants in the water system. (See CRS In Focus IF10474, *WRDA 2016: Infrastructure, Lead, and Other Safe Drinking Water Act Provisions in H.R. 5303 and S. 2848*, by Mary Tiemann.)

The WIIN Act also authorizes Corps water resource activities, as is traditional for WRDA legislation, and addresses Indian water rights and the California drought. (For an overview of the WIIN Act, see CRS In Focus IF10536, *Water Infrastructure Improvements for the Nation Act (WIIN)*, by Nicole T. Carter et al.) The following discussion addresses SDWA amendments and other drinking water provisions in P.L. 114-322.

WIIN Amendments to SDWA

DWSRF Program

P.L. 114-322, Title II, Subtitle A, revises the Drinking Water State Revolving Fund (DWSRF) program—the key federal drinking water infrastructure assistance program. (For an overview of this program, see CRS Report R45304, *Drinking Water State Revolving Fund (DWSRF): Overview, Issues, and Legislation*, by Mary Tiemann.) WIIN Section 2102 expressly states that DWSRF funds may be used for planning, design, and related preconstruction work. States may also use funds as security on state bonds issued to provide the required 20% match to the federal capitalization grant. Section 2103 generally increases the amount of DWSRF funds states may use to administer their funds. Further, Section 2101 expresses the “sense of Congress” that robust funding should be provided for state DWSRF grants.

Under Section 2113, funds made available from a state DWSRF during FY2017 may not be used for water system

projects unless all iron and steel products to be used in the project are produced in the United States. Certain waivers of the requirement are specified.

New SDWA Grant Programs

WIIN authorizes grant programs for (1) SDWA compliance assistance to small or disadvantaged public water systems; (2) lead reduction projects, including lead service line replacement; and (3) a voluntary program for testing for lead in drinking water at schools and child care programs.

First, Section 2104 directs EPA to establish a grant program to assist disadvantaged communities and small communities that are unable to finance projects needed to comply with SDWA. Eligible projects include investments needed for SDWA compliance, household water quality testing, and assistance that primarily benefits a community on a per-household basis. EPA must give funding priority to projects and activities that benefit underserved communities (i.e., communities that lack household water or wastewater services or that violate or exceed a SDWA requirement). EPA may make grants to public water systems, tribal water systems, and states on behalf of an underserved community. EPA may waive all or some of the 45% non-federal share of project costs. Section 2104 authorizes to be appropriated \$60 million per year for FY2017-FY2021.

Second, Section 2105 directs EPA to establish a grant program for projects and activities that reduce lead in drinking water, including replacement of lead service lines and corrosion control. Grants may be used to provide assistance to low-income homeowners to replace their portion of a lead service line. Eligible recipients include community water systems, tribal systems, schools, states, and municipalities. EPA must give funding priority to disadvantaged communities for projects that address lead action level exceedances, lead in water at schools and day care facilities, or other EPA priorities. EPA may waive the 20% non-federal cost share requirement. Section 2105 authorizes to be appropriated \$60 million per year for FY2017-FY2021.

Section 2111 amends the SDWA definition of Indian Tribe to specify that Alaska Native Villages are eligible to receive grants under these two new grant programs.

Third, Section 2107 requires EPA to establish a voluntary program for testing for lead in drinking water at schools and child care programs under the jurisdiction of local education agencies (LEAs). States or LEAs may apply to EPA for grants. Appropriations for this grant program are authorized at \$20 million per year for FY2017-FY2021.

Public Notification

Section 2106 adds public notification requirements to the SDWA for water system exceedances of the lead action level under EPA's Lead and Copper Rule (or subsequent promulgated lead level). Notification requirements had previously applied to violations of standards and other applicable requirements but not to exceedances. Water systems must now notify the public, the state, and EPA of system lead action level exceedances as prescribed by EPA. Further, for an exceedance that has potential to cause serious adverse health effects from short-term exposure, a water system must notify the public, the state, and EPA within 24 hours. If the state or system owner/operator does not provide the required notice, EPA must now notify the public within 24 hours after the Administrator is notified.

Section 2106 also addresses lead action level exceedances at households. EPA is required to develop a strategic plan for providing targeted outreach, education, and technical assistance to populations affected by lead in the water system. Also, if EPA develops or receives data indicating that a household's water exceeds the lead action level, EPA is required to forward the data and testing information to the water system and the state. The water system is required to provide the data and other specified information to the affected households. Within 24 hours of learning that a water system has failed to do so, EPA is required to consult with the governor and, using the strategic plan, provide the information to the households no later than 24 hours after the end of the consultation period. This section also directs EPA to make information regarding lead in drinking water broadly available to the public.

Water Supply Cost Savings

Section 2108 requires EPA, with U.S. Department of Agriculture consultation, to establish a drinking water technology clearinghouse for information on cost-effective, alternative drinking water delivery systems. In loan or grant applications, systems serving 500 or fewer persons must self-certify that they have considered such alternatives.

Innovative Water Technology

WIIN Section 2109 authorizes EPA to conduct research on innovative water technologies (including those that ensure compliance and those that identify and mitigate sources of lead and other drinking water contamination). Section 2109 also authorizes EPA to provide technical assistance to public water systems to promote use of innovative water technologies and authorizes the appropriation of \$10 million annually for FY2017-FY2021 for this purpose. Within one year of enactment, and then every five years, EPA must report to Congress on the amount of funding used for technical assistance to deploy innovative technologies, barriers to greater use of such technologies, and cost-saving potential to communities from use of innovative technologies.

Technical Assistance

Section 2110 reauthorizes EPA's authority to reserve up to 2% of the DWSRF appropriation to provide small system technical assistance. This set-aside is reauthorized for FY2016-FY2021.

Section 2112 further authorizes EPA to use DWSRF funds allotted for tribes and Alaska Native Villages to make grants to intertribal consortia and tribal organizations. These entities may use grant funds to provide operator certification and training services to Indian tribes to promote public water system compliance with SDWA.

Lead and Drinking Water Emergencies

P.L. 114-322, Title II, Subtitle B, authorizes \$150 million to be appropriated for disaster relief and infrastructure assistance in response to lead contamination in a public water system. (These funds were provided in P.L. 114-254, Continuing and Security Assistance Appropriations Act of 2017.)

Section 2201 authorizes to be appropriated \$100 million for DWSRF grants to states subject to a presidential emergency declaration concerning lead in a public water system. An eligible state may use funds to provide assistance to a water system that is the subject of the declaration to address lead or other drinking water contaminants—including repair and replacement of lead service lines (up to a building inlet) and public water system infrastructure. After a specified time, unobligated funds shall be available to other states.

Under Section 2201(e), the Agency for Toxic Substances and Disease Registry is authorized to conduct voluntary surveillance activities to evaluate any health effects from lead exposure in affected communities. Such consultations are mandatory if requested by a health official in an eligible state.

Section 2203 authorizes to be appropriated \$20 million for the Department of Health and Human Services (HHS) to establish (1) a voluntary lead-exposure registry for a city exposed to lead in the water system, and (2) an advisory committee on lead programs and research. Another \$30 million in funding is authorized to fund HHS childhood lead poisoning prevention and childhood health programs.

Section 2202 includes a sense of Congress supporting an initial appropriation of \$20 million under the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA, P.L. 113-121) to be used for eligible projects including those that address lead in drinking water. (P.L. 114-254 provided \$20 million but did not target lead projects.)

WIFIA Amendments

Section 5008 amends WIFIA to authorize EPA to provide assistance for drought mitigation projects (including projects that enhance the resiliency of drought stricken watersheds) and alternative water supply projects that reduce aquifer depletion. These amendments also allow prior costs incurred and in-kind contributions to be credited to non-federal costs and financing fees to be included in the loan. Section 5008 includes a sense of Congress that WIFIA appropriations should be in addition to robust funding for the DWSRF and Clean Water State Revolving Fund programs.

Mary Tiemann, Specialist in Environmental Policy

IF10577

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