

**STATE OF UTAH**  
**Capacity Development Program**

**Third Triennial Report**  
**to the Governor of Utah**

**In Compliance with the Requirements of**  
**the Federal Safe Drinking Water Act**  
**Section 1420(c)(3)**

**Utah Division of Drinking Water**

**Salt Lake City, UT**

**September 30, 2008**



**UTAH DEPARTMENT OF**  
**ENVIRONMENTAL QUALITY**



# **TABLE OF CONTENTS**

- 1 INTRODUCTION**
  - 1.1 Historical Record of Annual Program Reports to EPA**
  - 1.2 Safe Drinking Water Act, State Primacy, and State Capitalization Grants**
  - 1.3 State-Level Capacity Development Programs**
  
- 2 UTAH'S CAPACITY DEVELOPMENT PROGRAM**
  - 2.1 Rule Promulgation**
    - 2.1.1 Authority**
    - 2.1.2 Most Recent Reporting Period**
  - 2.2 Range of Program and Activities**
    - 2.2.1 Allocation of Budget Resources**
    - 2.2.2 Drinking Water State Revolving Fund (DWSRF)**
    - 2.2.3 System Consolidation and Restructuring**
    - 2.2.4 Training Efforts (Operator Certification, etc.) Fiscal Year 2007**
  - 2.3 State Capacity Development Program for New Water Systems**
    - 2.3.1 Background**
    - 2.3.2 Most Recent Reporting Period**
  - 2.4 State Capacity Development Program for Existing Water Systems**
    - 2.4.1 Background**
    - 2.4.2 Most Recent Reporting Period**
  
- 3 STATE APPROACH TO IDENTIFIED NEEDS AND CONCERNS**
  - 3.1 Improvement Priority System (IPS)**
    - 3.1.1 Program Description**
    - 3.1.2 Most Recent Reporting Period**
  - 3.2 Utah Top 25 Significant Noncompliance (SNC) List**
    - 3.2.1 Origin of the List**
    - 3.2.2 Most Recent Reporting Period**
  - 3.3 Utah Rating Change List**
    - 3.3.1 Origin of the List**
    - 3.3.2 Most Recent Reporting Period**
  - 3.4 Review of Implementation of the Program**
  - 3.5 Modifications to the Program Strategy**
  - 3.6 Availability of the Report to the Public**



# **1 INTRODUCTION**

## **1.1 Triennial Program Report to the Governor and Annual Program Report to EPA**

Every three years, EPA requires that the states submit State Capacity Development Program Reports to their Governors. Reports were submitted in 2002 and 2005. The next round of the triennial State Capacity Development Program Reports are required by statute to be submitted by states to their Governors no later than September 30, 2008. The states are also required to make these reports available to the public.

In response to the Office of Inspector General's September 2003 Capacity Development Program Evaluation, EPA's Office of Water made a commitment to establish consistent reporting criteria for the annual reports by the states. Criteria were compiled to guide and assist the states in developing their annual reports. The criteria are also intended to help EPA Regions maintain uniformity when assessing each State's implementation of its approved Capacity Development Program. The criteria also act as an aid to the states as they develop their triennial reports to their Governors.

## **1.2 Safe Drinking Water Act, State Primacy, and State Capitalization Grants**

The Safe Drinking Water Act (SDWA) was established in 1974 with the intention of assuring safe drinking water in public water systems (PWS's) throughout the United States. SDWA authorized the Environmental Protection Agency (EPA) to delegate primary enforcement authority, or primacy, to any individual state deemed sufficiently capable to administer its state program of Public Water System Supervision (PWSS). Utah was granted primacy on February 28, 1980, the 46th entity (states, territories, etc.) to receive such designation by EPA.

The initial federal monies under SDWA from EPA to the states aided the states in regulation of PWS's with respect to EPA-promulgated maximum contaminant levels (MCL's). Minor amendments to SDWA in 1977, 1979, and 1980, and major amendments in 1986 and 1996 expanded federal focus from the original chemical contaminants of interest to additional concerns with drinking water. The 1986 Amendments focused on disease-causing microbial contaminants in drinking water and established minimum treatment requirements for all surface waters. They also prodded EPA to quicken the pace of MCL promulgation by specific direction to EPA to establish MCL's and MCLG's (maximum contaminant level goals) for 83 specific contaminants including synthetic chemical contaminants of ground water. The 1986 Amendments also addressed

lead and copper contamination in drinking water at the consumer's tap, principally as a result of distribution system and fixture corrosion.

The 1996 Amendments implemented stronger prevention programs, empowered the states with greater flexibility, afforded consumers access to better information ("right to know") in consistent format (Consumer Confidence Reports), and overhauled EPA's regulatory development process including how many and which contaminants are to be selected for regulation. The 1996 Amendments redirect drinking water contamination prevention efforts to new programs of source water protection, capacity development, and operator certification. The 1996 Amendments also establish federal funding for states and their PWS's through the Drinking Water State Revolving Fund (DWSRF). The Drinking Water State Revolving Fund (DWSRF) assists communities in drinking water treatment and protection in much the same way that wastewater treatment and clean water have been promoted through the Clean Water State Revolving Fund (CWSRF).

The 1996 Amendments to SDWA allow the option of designation of portions of a state's grant monies as *set-aside funds* for specific priority activities and other administrative requirements. As much as 10 percent of a state's capitalization grant may be used for implementation of source water protection, capacity development, and operator certification programs, as well as for the state's overall drinking water program [§1452(g)]. Up to 15 percent (no more than 10 percent for any one purpose) can be used for prevention projects in water systems, including source water protection loans, technical and financial assistance to systems as part of a state capacity development strategy, source water assessments, and wellhead protection [§1452(k)].

The 1996 Amendments to SDWA make it incumbent upon the states to adopt program modifications and additions prescribed by EPA. EPA designates these program requirements for the states as either *mandatory* or *voluntary*. Failure of a state to enact a *mandated* program by the allotted deadline can result in state forfeiture of *primacy* for its own Public Water System Supervision (PWSS) program and loss of the entire program capitalization grant. Failure to enact a *voluntary* program calls for loss of only a portion of the program capitalization grant, typically 20 percent.

Utah and the other states regularly reconcile available resources to EPA compliance deadlines for both *mandatory* and *voluntary* programs. The states' PWSS programs in FY08 continued to attend to multiple EPA Rule initiatives including Long-Term 2 Enhanced Surface Water Treatment Rule, Ground Water Rule, and Total Coliform Rule.

### 1.3 State-Level Capacity Development Programs

In the time leading up to the 1996 Amendments to SDWA, EPA became aware of demonstrated success in several states in reliably delivering safe drinking water. These states had each focused on improvements in the technical, managerial, and financial capabilities of their PWS's. The 1996 Amendments represent EPA's efforts to build nationally on this demonstrated success by imposing certain mandates on the states. Namely, in order to receive the full allotment of funds to which they are entitled under the DWSRF, states have had to develop:

1. A program to ensure that all new community and new non-transient, non-community water systems commencing operation after October 1, 1999, demonstrate sufficient technical, managerial, and financial capacity to comply with national primary drinking water regulations (NPDWR's); and,
2. A strategy to assist existing PWS's in acquiring and maintaining technical, managerial, and financial capacity to comply with SDWA requirements.

EPA's intent is that the states use DWSRF set-aside funds for their capacity development program and implementation efforts. As intended by the 1996 SDWA Amendments, capacity encompasses the technical, managerial, and financial capabilities of a water system to achieve, maintain, and plan for compliance with applicable drinking water standards given the available water resources and the characteristics of the population served by the water system.

*Technical capacity* refers to the physical infrastructure of the water system, including but not limited to the adequacy of source water, infrastructure adequacy (source, treatment, storage, and distribution), and the ability of system personnel to implement the requisite technical knowledge. *Managerial capacity* refers to the management matrix of the water system, including but not limited to ownership accountability, staffing and organization, and effective external linkages. *Financial capacity* refers to the financial resources of the water system, including but not limited to the revenue sufficiency, credit worthiness, and fiscal management and controls.

Failure to meet the requirements of the provisions for Capacity Development published by EPA subjects a state to a 20 percent withholding from its DWSRF allotment. In the several years since the 1996 Amendments, most states have identified and prioritized PWS's most in need of assistance in enhancing their technical, managerial, and financial

capacity. And, most states (including Utah) have for a number of years been targeting deficient PWS's for technical and financial assistance.

The 1996 SDWA Amendments directed EPA to provide guidance to the states in establishing their capacity development programs. The following documents were published to meet this requirement.

- *Information for States on Implementing the Capacity Development Provisions of the Safe Drinking Water Act Amendments of 1996.* 1998. U.S. Govt. Pub. EPA 816-R-98-008.
- *Handbook for Capacity Development: Developing Water System Capacity Under the Safe Drinking Water Act as Amended in 1996.* 1999. U.S. Govt. Pub. EPA 816-R-99-012
- *Developing Water System Managerial Capacity: Training Module.* 2002. Drinking Water Academy and Environmental Protection Agency.

Capacity Development is intended to be a commitment by the states on behalf of their PWS's to (i) protect public health by ensuring consistent compliance with drinking water standards, including federal and State regulations and other applicable standards of performance; (ii) enhance performance beyond compliance through measures that bring about efficiency, effectiveness, and service excellence; and (iii) promote continuous improvement through monitoring, assessment, and strategic planning. EPA's policy position is that all water systems, regardless of size or other characteristics, can benefit from a program of ongoing capability development. Capable water systems are better positioned to consistently comply with applicable standards and provide customers with safe and reliable water service. Furthermore, capable systems also are better positioned to meet other standards of performance that are generally accepted in the industry or required by other regulatory agencies – e.g., the aesthetic quality of water (taste, color, and odor), water pressure, water loss minimization, or other measurable aspects of performance.

## **2 UTAH'S CAPACITY DEVELOPMENT PROGRAM**

### **2.1 Rule Promulgation**

#### *2.1.1 Authority*

In Utah, the Drinking Water Board operates under authority granted in 1981 by Section 19-4-104 of the Utah Safe Drinking Water Act. The Utah Drinking Water Board is an 11-person board appointed by the Governor. The Board is empowered to adopt rules governing the design, operation, and maintenance of Utah's public drinking water systems. The Utah Capacity Development Program is codified in Utah Administrative Code *Rule 309-352 Capacity Development Program*.

#### *2.1.2 Most Recent Reporting Period*

There were no substantive changes to *R309-352 Capacity Development Program* during the most recent reporting period (State Fiscal Years 2006 through 2008).

### **2.2 Range of Program and Activities**

#### *2.2.1 Allocation of Budget Resources*

The State of Utah allocates money to a specific Capacity Development set-aside fund in accordance with SDWA program guidelines. The State's fiscal year begins each calendar year on July 1st. The Division of Drinking Water began FY08 with \$67,924 in the Capacity Development set-aside fund (Unit Code 3823). In addition to the \$27,544.80 charged against this fund, \$20,000 was transferred to the Program Augmentation set-aside (Unit Code 3821).

#### *2.2.2 Drinking Water State Revolving Fund (DWSRF)*

The Utah Capacity Development Program's principal activity is in support of the federal and State Drinking Water SRF programs. For Fiscal Year 2008, the State of Utah Drinking Water Board authorized funding for 16 projects through the SRF programs. Total funds authorized for these projects equaled \$20,825,550, of which \$15,472,300 was allocated from the federal SRF program and \$5,353,250 was allocated from the State SRF program.

In addition to these newly authorized projects, Division Staff closed loans to complete the funding process for 11 previously authorized projects totaling \$11,820,090, of which \$7,276,090 was committed from the federal SRF program and \$4,553,000 was committed from the State SRF program.

### *2.2.3 System Consolidation and Restructuring*

Fiscal Year 2008 saw continued efforts in regionalization and consolidation of small water systems in the State of Utah, particularly in Kane County and Iron County. The Kane County Water Conservancy District (KCWCD) assumed control of eleven smaller systems in the Duck Creek Village area of Kane County. In addition, two new developments that would otherwise have formed separate water systems were also annexed by KCWCD. KCWCD has also been involved in regionalization and consolidation efforts in the vicinity of Kanab, Utah.

The Central Iron County Water Conservancy District (CICWCD) has assumed control of seven smaller systems as well as providing culinary water to several new developments that otherwise would have become separate water systems. The Drinking Water Board has allocated approximately \$7,000,000 towards regionalization efforts with CICWCD over the past two years.

Projects funded by the federal DWSRF to consolidate water systems in these two counties have improved infrastructure and resolved existing compliance issues thereby facilitating removing systems with long histories of significant non-compliance from the Utah Top 25 Worst Systems list and EPA SNC list. In addition, the overall benefits to the customers of these smaller systems, including better service and healthier culinary water, have greatly improved through the consolidation and regionalization efforts.

### *2.2.4 Training Efforts Fiscal Year 2008*

A portion of Utah's Capacity Development Program fund is allocated to drinking water system operator education and certification. SDWIS records for the State of Utah report 458 community water systems and 69 non-transient non-community water systems during FY08. Of these systems, 34 community and 9 non-transient non-community systems are reportedly lacking a certified operator. Collaboration between State Division of Drinking Water staff with the Intermountain Section of the American Water Works Association and the Rural

Water Association of Utah to provide operator training resources, including pre-certification training, is an ongoing effort to assure that all water systems in the state of Utah have access to certified personnel.

Utah had 2034 certified operators in FY08. Operator Certification records show that 396 written examinations were administered in Utah for Grades I-IV distribution and treatment operators during FY08. Water distribution is the more popular examination and accounts for approximately 80 percent of the total number of administered examinations.

In addition to water system operator training and certification, the Division of Drinking Water also provides funding (through DWSRF set-aside funds) for training and certification for backflow technicians. Division records indicate there are 714 certified backflow technicians in the State of Utah and that 259 written examinations were administered during FY08.

## **2.3 State Capacity Development Program for New Water Systems**

### *2.3.1 Background*

The State of Utah's present day efforts in capacity development have their roots in the area of system viability, namely ***Rule 309-500-11 Financial Viability***, which became effective in 1998 and encouraged system owners and managers to develop strategies to recoup the costs of constructing, operating and maintaining their systems. The rule suggested that capital and operating cost data and/or estimates be submitted to the Division of Drinking Water for review at the same time that engineering plans and specifications are submitted for approval.

The Rule was well-intentioned but lacked a regulatory framework for adequate enforcement. Congress recognized this same circumstance on a national scale and the 1996 SDWA Amendments enacted a provision to move the states to action, namely that the states must have the legal authority to ensure the technical, managerial, and financial capabilities of new water systems or risk losing up to 20 percent of their annual DWSRF capitalization grant.

At the state level, Utah Code 19-4-104(1)(a)(v) was promulgated and specifically grants authority to the Drinking Water Board to make rules regarding the Capacity Development Program and it references SDWA Section 1420. Utah's resulting Capacity Development Program Rule requires that new water systems

demonstrate they have adequate technical, managerial, and financial capacity before they may be approved as a public water system (PWS). With its adoption, and established effective date of September 15, 1999, *Rule R309-352 Capacity Development Program* requires both new community and new non-transient non-community water systems to submit a Capacity Assessment Review, which is to include a Project Notification Form and a Business Plan (which is to consist of a Facility Plan, a Management Plan, and a Financial Plan).

The Facility Plan is intended to provide a description of the scope of the water services that will be provided by the proposed community or non-transient non-community water system and must include:

1. A description of the nature and extent of the area to be served and provisions for extending the water supply system to meet growth;
2. An assessment of current and expected drinking water compliance based on monitoring data from the proposed water source;
3. A description of the alternatives considered, including interconnections with other existing water systems, and the technical, managerial, financial, and operational reasons for the approach selected; and,
4. An engineering description of the facilities to be constructed, including the construction phases and future phases as well as future plans for expansion and an estimate of the full cost of any required construction, operation, and maintenance.

The Management Plan is intended to describe how the proposed community or non-transient non-community water system will provide effective system management and operation. It must include:

1. Documentation that the applicant has water rights, and the legal right and authority to construct, operate, and maintain the system;
2. An Operating Plan that describes the tasks to be performed in managing and operating the system including administrative and management organization charts, plans for staffing the system with certified operators, and provisions for an operations and maintenance manual; and,
3. Documentation of management credentials of operations personnel and documentation of cooperative agreements or service contracts

including demonstration of compliance with the water system operator certification rule.

The Financial Plan is intended to describe the proposed community or nontransient noncommunity water system's revenues, cash flow, income, and debt (issuing and repayment) for meeting the costs of construction as well as the costs of operation and maintenance for five years from the date the applicant expects to begin system operation.

After the Division deems that the information submitted by the applicant is complete, the Division conducts a Capacity Assessment Review. The applicant is notified in writing whether or not the proposed new system has met the Rule requirements for technical, managerial, and financial capacity. *R309-352 Capacity Development Program* stipulates that no new community water system, nor non-transient non-community water system, shall be approved in the absence of demonstrated adequate capacity.

### *2.3.2 Most Recent Reporting Period*

In any given fiscal year, the Division of Drinking Water receives 20-30 inquiries from developers, landowners, and other entities about creation of new public water systems. In most such inquiries, the Division consciously promotes alternatives such as consolidation with, or annexation by, existing public water systems. *R309-352 Capacity Development Program* is written in straightforward language and the Division refers potential water system operators to this Rule to acquaint them with the tasks involved in creating a new water system.

On average in each year 5-10 new Utah PWS's are proposed. About half of these are new community water systems or new non-transient non-community water systems that are subject to the requirements of *R309-352 Capacity Development Program*. Although it can take up to two years from initial application to final construction and issuing an Operating Permit, staff typically responds to the initial inquiry and capacity assessment within 30 days.

During the most recent reporting period (State Fiscal Years 2006 through 2008), staff prepared Capacity Assessments for the following proposed new water systems:

The Ranches at Elk Meadows  
Hiawatha Water System  
The Ranches at Monte Cristo  
Last Chance Lakes

Kolob Recreation Association  
Kolob Mountain Ranch  
North Fork Water Company

Each of these applicants received preliminary letters from the Division that stated that its Business Plan required under *R309-352 Capacity Development Program* was on track and that its completion would be expected by the time of infrastructure completion and Operating Permit request. Since the inception of *R309-352 Capacity Development Program*, no submittals to the Division on behalf of prospective water system operators have been denied approval after earlier preliminary concurrence.

Probably another 10-20 different entities every year, make preliminary inquiries to the Division about creation of a PWS but never actually submit a proposal. In these cases, *R309-352 Capacity Development Program* can be credited for discouraging application follow-through by would-be water system operators with suspect business plans. Namely, the requirements of the Rule dissuade nonviable new water system entities from underwriting efforts to actually pursue new water system creation. In many cases, the projects move forward but the developers opt to consolidate with, or annex into, existing water systems.

## **2.4 State Capacity Development Program for Existing Water Systems**

### *2.4.1 Background*

Congress, in the 1996 SDWA Amendments, worked from the premise that enhancing and ensuring the technical, managerial, and financial capabilities of small water systems is the best strategy for correcting and preventing noncompliance with public drinking water system requirements. To this end, penalties for not implementing strategies “to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity” (SDWA Sec. 1420(c)) were included in the legislation to prompt states to adhere to this philosophy.

Utah implemented the wishes of Congress on several regulatory fronts. The *State of Utah Administrative Rules for Public Drinking Water Systems Rule 309-705, Financial Assistance: Federal Drinking Water Project Revolving Loan Program*,

has several components that interface with issues of system capacity and systems with histories of significant noncompliance. The purpose of *Rule 309-705, Financial Assistance: Federal Drinking Water Project Revolving Loan Program* is to establish criteria for financial assistance to public drinking water systems in accordance with a federal grant established under 42 U.S.C. 300j *et seq.*, federal Safe Drinking Water Act. The Rule defines an *eligible water system* as any community drinking water system, either privately or publicly owned, and nonprofit noncommunity water systems.

Historically, State financial assistance through *Rule 309-705* has been sought by water systems across the entire compliance spectrum from those systems with significant compliance issues to those with few if any compliance issues. An important stipulation of *Rule 309-705-4(3)(a)* is that no financial assistance is authorized for any project for a water system in significant noncompliance, as measured by a *not approved* rating, unless the project will resolve all outstanding issues causing the noncompliance. *Rule 309-705-5(3)* further requires that as part of the application and project initiation procedures, Division staff will prepare a capacity development analysis (i.e., capacity assessment) of the applicant water system. Thus, the elements of the State's Capacity Development Program for new community water systems and nontransient noncommunity (NTNC) water systems (see Section 2.3, State Capacity Development Program for New Systems) can be used in the analysis of existing water systems.

#### 2.4.2 Most Recent Reporting Period

During the most recent reporting period, staff prepared Capacity Assessments for the following DWSRF applicants:

Central Iron County	Kane County Water Conservancy
Water Conservancy District	District – Duck Creek Village
Pine Meadows	Portage Town
Woods Cross City	Saratoga Springs City
Whispering Pines Water Company	Erda Acres Water Company
Mountain Valley Water Company	Midvale City
Kane County WCD – Long Valley Estates	Mountain Regional Water SSD

Capacity assessments for these applicants were conducted according to the procedures outlined in *R309-352 Capacity Development Program*. A capacity assessment report was prepared and submitted to the water system and a copy was placed in each applicants SRF project folder.

### **3 STATE APPROACH TO IDENTIFIED NEEDS AND CONCERNS**

#### **3.1 Improvement Priority System (IPS)**

##### *3.1.1 Program Description*

The State of Utah employs a system for assessing deficiency points against public water systems on the basis not only of the monitoring and reporting shortcomings addressed in the *EPA Significant Noncompliance (SNC) List* but also a spectrum of other public health concerns. These Utah public drinking water systems are subject to more intense surveillance and encouragement of compliance than those on the *EPA SNC List* alone. The program is authorized under *State of Utah Administrative Rules for Public Drinking Water Systems Rule 309-150, Improvement Priority System Rule*, which enumerates IPS [Improvement Priority System] deficiency points for administrative violations, infrastructure construction irregularities, unauthorized water source or other infrastructure use, and other practices that are inconsistent with delivery of safe drinking water to public drinking water system users.

IPS points are typically assigned as a result of water system inspections (i.e., sanitary surveys). IPS deficiency points for failure to comply with monitoring and reporting requirements are another major category and are typically assigned as soon as the deviations from these requirements are noted in the State's data base. *Rule 309-150* requires that a community water system that is assessed more than 150 deficiency points must be classified by the Utah Division of Drinking Water as *not approved*.

##### *3.1.2 Most Recent Reporting Period*

The Division of Drinking Water initiated a project in fiscal year 2004 to adapt sanitary surveys to PDA's for surveyor convenience and accuracy. During fiscal year 2005, a preliminary version of a PDA-based sanitary survey was distributed to local health department personnel as well as Division staff involved in sanitary

surveys. A good number of PDA-based sanitary surveys were completed in fiscal year 2005. Complete migration of the sanitary survey program to PDA-based surveys and survey reports by Division staff was accomplished in FY06.

## **3.2 Utah Top 25 Significant Noncompliance (SNC) List**

### *3.2.1 Origin of the List*

In 1997 and 2000, EPA and the states developed lists of systems with a history of significant noncompliance (SNC) in the area of monitoring and reporting in anticipation of using these lists as compliance tools. Four times per year, the State develops a *Utah Top [Worst] 25 Significant Noncompliance (SNC) List*, which is generated before regularly scheduled, quarterly meetings, and is a tabulation of the worst 25 scores of all public water system *IPS* scores (i.e., highest points). This list supplements the *EPA Significant Noncompliance (SNC) List*. It is not unusual for Utah water systems with severe technical, managerial, and financial challenges to repeatedly appear on this list quarter after quarter. In contrast, water systems with historical records of sufficient technical, managerial, and financial capabilities rarely appear on the list for more than one quarter. An isolated incident, such as failure to complete the design approval process correctly for new water system infrastructure, or failure to take scheduled water samples, occasionally occurs among even the most capable water systems but is generally remedied as soon as the problem is brought to the attention of a technically, managerially, and financially capable public water system.

### *3.2.2 Most Recent Reporting Period*

For fiscal year 2008, Utah Compliance Assurance Program (CAP) quarterly meetings were held August 15, 2007, November 14, 2007, February 13, 2008, and May 14, 2008.

## **3.3 Utah Rating Change List**

### *3.3.1 Origin of the List*

The utility of the *Utah Top [Worst] 25 SNC List* has been supplemented by the State's generation of an additional quarterly list entitled the *Utah [Water System] Rating Change List*. This list identifies water systems whose *IPS* scores have fallen below (a good development) or exceeded (a bad development) the critical

150 IPS point threshold between *approved* and *not approved* status. This list thus serves as a convenient method to identify on a quarterly basis those systems that either merit a return to *approved* status or warrant a change to *not approved* status relative to their previous quarter's status.

### 3.3.2 *Most Recent Reporting Period*

In any given fiscal year, the four Utah quarterly CAP meetings have the primary purpose of addressing the *EPA Significant Noncompliance (SNC) List* and the *Utah Top [Worst] 25 Significant Noncompliance (SNC) List*. A secondary function of the quarterly meetings is serving as a forum for discussion of public water systems whose ratings warranted change from *approved* or *not approved*. In each case, the meeting's findings are officially sent to the affected water systems.

## **3.4 Review of Implementation of the Program**

The Division of Drinking Water does not conduct regularly scheduled reviews of the implementation of its Capacity Development Program. There is a great deal of flexibility in program administration under *Rule R309-352 Capacity Development Program* and implementation merely evolves in response to water system applicant (new systems) and operator (existing systems) feedback. Non-substantive changes that have seemingly improved program implementation include the development of staff checklists for use in the review of new water system applicant business plans. The checklists are keyed to the required items enumerated in the Rule. Full migration in FY06 of the State's sanitary survey efforts to PDA's has also benefitted the State's Capacity Development Program inasmuch as water system information is much more readily available for capacity assessment efforts.

## **3.5 Modifications to the Program Strategy**

The Division of Drinking Water has adopted one significant change in its administration of *Rule R309-352 Capacity Development Program*. Experience has proved that a significant number of the elements of the statutorily-required business plan, which includes a facilities plan, management plan, and financial plan, cannot reasonably be required of new water system applicants at the preliminary planning stage for any but the smallest projects. Examples of elements for which the Rule may, as presently

constituted, have unreasonably early deadlines are manager and operator identities, O&M manual submittals for treatment processes that may not have even been finalized, and detailed site plans. For large projects in particular, it is unlikely that new water system applicants would have this information at the feasibility study stage.

In recognition of this circumstance, the Division in FY05 commenced reviewing business plans from new water system applicants with less strictness and more accommodation than in the past. The policy has continued through FY08. The initial review is deemed preliminary and applicants receive a courtesy notification of what information is missing or deficient in accordance with *Rule R309-352 Capacity Development Program*. If the missing or deficient information does not reflect severely on the viability of the applicant's proposed water system, the Division does not disapprove the business plan at that juncture and defers a final decision to a later time when construction is complete, request for an Operating Permit is imminent, and the water system operator can reasonably be expected to have all the resources necessary to complete an approvable business plan.

Thus, the applicant is afforded an additional window of time (from engineering design through construction) to gather and submit the remaining information that the State requires. All risk is borne by the applicant because the State would not issue the infrastructure Operating Permit if the business plan were not completed to the satisfaction of the Capacity Development Program staff.

### **3.6 Availability of the Report to the Public**

The Division of Drinking Water posts its annual Capacity Development Program Report to EPA and its triennial Capacity Development Report to the Governor on its web site at:

<http://www.drinkingwater.utah.gov/>