

2023 Triennial Governor’s Report on the Efficacy and Progress of the Capacity Development Strategy for Drinking Water Systems in the State of Louisiana

September 30, 2023

I. INTRODUCTION

The 1996 amendments to the Safe Drinking Water Act (SDWA) added a new dimension to federal/state drinking water legislation. It authorized annual federal grant money to the states for creation of a low interest loan program to public water systems that qualify. It also made provisions for a percentage of that grant money to be set aside to assist water systems in improving their technical, financial, or managerial operations. In accordance with the latter provisions, Louisiana, along with all other states, devised a Capacity Development Program and began implementing it for new water systems in January 1999 and for existing water systems in October 2000.

This report to the Governor of the State of Louisiana is submitted as a statutory requirement of the SDWA Amendments of 1996. As cited in Section 1420(c)(3) of the Act: “REPORT – no later than 2 years after the date on which a State first adopts a Capacity Development Strategy under the subsection, and every 3 years thereafter, the head of the state agency that has primary responsibility to carry out this title in the State shall submit to the Governor a report that shall also be available to the public on the efficacy of the strategy and progress made toward improving the technical, managerial, and financial capacity of public water systems in the State.” It is further stipulated in Section 1420 that failure to submit this report by September 30, 2023, will result in a twenty percent Drinking Water Revolving Fund grant withholding in fiscal year 2024.

Although this report is submitted as a statutory requirement, the intrinsic value of the report is the opportunity to present to the Governor and the public a comprehensive evaluation of the Drinking Water Capacity Development Program in Louisiana. Since all organizational and functional elements of the Louisiana Safe Drinking Water Program are housed in the Department of Health, Office of Public Health, this report is respectfully submitted by that agency to the Governor of Louisiana this September 30, 2023.

II. BACKGROUND

- A. One of the provisions of the Safe Drinking Water Act Amendments of 1996 created a new Section 1420 titled “Capacity Development.” This provision called for the State to obtain legal authority to ensure that all new community water systems and new non-transient, non-community water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity to meet National Primary Drinking Water Regulations. A State will receive only 80% of the federal

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grant allotment that the State is otherwise entitled to receive for the Drinking Water Revolving Loan Fund (DWRLF) unless the State has obtained such legal authority.

- B. Section 1420 further requires the State to develop and implement a Capacity Development Strategy to assist public water systems in acquiring and maintaining technical, financial, and managerial capacity. Failure to develop and implement a strategy will also result in withholding a portion of federal grant money for the DWRLF. Withholding for all Capacity Development purposes is capped at 20% total.

III. LOUISIANA AUTHORITY

- A. In response to the requirement for legal authority stated in II-A above, Act 814 of the 1997 Regular Session of the Louisiana Legislature, R.S. 40:4(a) (8) and 5.8, was enacted. It authorizes the State Health Officer to “prepare and promulgate rules and regulations necessary to develop and implement a Capacity Development Strategy----.“
- B. With the above-cited authority, the Office of Public Health proceeded with rulemaking and the Public Water System Capacity Development Rule (LAC 48:7707-7719) became effective September 20, 1998. This rule enabled the development and implementation of a Capacity Development Strategy which had been stipulated as required (II-B above) and has been approved by EPA.

IV. SIGNIFICANT HISTORY

When Congress included Capacity Development requirements in the SDWA Amendments of 1996, it provided a list of factors to be considered and included as appropriate, but generally allowed wide latitude for the states to develop their individual strategies. Though EPA issued guidance, had meetings, and sponsored workshops on Capacity Development, there was (predictably so) a wide diversity of approaches for the Capacity Development Programs among the states. Some were simple, others more complex; ultimately, many have been revised because of what may be generally summarized as unrealistic approaches or goals.

In Louisiana, the Office of Public Health proceeded to produce a Capacity Development Strategy for new water systems. It was approved by EPA and implementation began in January 1999. The new system strategy ensures that, prior to commencing operations; the system has the technical, managerial, and

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financial capacity to properly operate the water system. The approval process for new systems includes several elements:

1. Review and approval of plans and specifications for the water system by an OPH registered professional engineer
2. Review and approval of a Business Plan compiled according to OPH-issued guidelines
3. System conformance with applicable operator certification requirements
4. System management personnel attendance at state-sponsored management training
5. A financial audit conducted by OPH staff to determine if the system meets financial capacity requirements
6. Technical assistance provided as necessary to assist the system in meeting Capacity Development requirements

Subsequently, OPH developed and adopted a Capacity Development Strategy for existing water systems, including a prioritization rationale for selecting the systems to be assessed. This prioritization rationale is based upon the systems’ past compliance record with regulations. Systems selected for this strategy are required to complete a Capacity Assessment Package (CAP). This package includes a simplified business plan in conjunction with sanitary surveys, mandatory management training, and the provision of technical assistance by staff and contract personnel to provide the essential elements of the existing systems Capacity Development Strategy.

In 2021, the State’s Capacity Development Strategy was *revised* to meet the additional ‘Asset Management’ requirements from America’s Water Infrastructure Act of 2018 (AWIA). The State submitted, and EPA approved, its revised Capacity Development Strategy on December 31, 2021.

V. PERSPECTIVE

The foregoing background and significant history represents what the Office of Public Health has done toward the establishment and implementation of a formal Capacity Development Program in response to the SDWA Amendments of 1996, utilizing specified set-aside monies from the federal grant for the Louisiana Drinking Water Revolving Loan Fund. It is important to note that these Capacity Development activities, however significant, represent only a part of the total Capacity Development efforts which are part of the Office of Public Health’s Safe Drinking Water Program. Therefore, in making this report on the efficacy and progress of the Capacity Development, the following ‘Report’ section presents individual reports on additionally recognized Capacity Development Strategy elements of the Safe Drinking Water Program in Louisiana.

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VI. REPORT

A. Sanitary Surveys

A Sanitary Survey is an onsite review of the water source, facilities, equipment operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.

Current Federal and State regulations require that a Sanitary Survey be performed on every water system at least once every three years and at least once a year for specific types of water systems that are larger and more complex. The Office of Public Health (OPH) has been routinely scheduling and performing these Sanitary Surveys through its regional and district offices. In response to the Louisiana Legislature in 2016, Capacity Development Assessments are also now conducted as part of each Sanitary Survey in order to stress the importance of asset management and strategic financial planning.

Sanitary Surveys are also performed in conjunction with certain enforcement actions as described in Section VI.B “Enforcement” below. Following the Sanitary Survey, a letter summarizing the violations of the Louisiana Sanitary Code (LAC 51:XII) and prescribing required corrective action is sent to the water system. Follow-up on any required corrective actions is performed by OPH’s regional and district offices, as well as the OPH Enforcement division if necessary.

Since the last report (2020), a total of 302 Capacity Development Assessments have been performed. Also since 2020, a total of 1557 Sanitary Surveys have been performed.

B. Enforcement

Although Louisiana has had primary enforcement responsibility for SDWA provisions since 1977, it was not until 1991 that ACT 537 (LSA-R.S. 40:5.8 and 5.9) was passed giving the State Health Officer authority to issue Administrative Orders to public water systems, to provide for penalties for violations of Administrative Orders issued by the State Health Officer, and to provide recourse through civil actions. Rules to implement this authority became final in 1992.

This authority, together with the creation of an enforcement unit at that time, gave the Office of Public Health the long-needed tools to help bring systems with violations into compliance. Since 2020, 102 Administrative Orders and 20 Notices of Imposition of Penalties have been issued. 36 orders have been released. The

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number of administrative orders being issued for chemical contaminants (such as Disinfection Byproducts) has decreased. However, more administrative orders are being issued for failure to correct significant deficiencies (physical issues including declining infrastructure within the water system) identified by LDH staff during onsite inspections. Bacteriological and Disinfection Byproducts (DBP) monitoring violations have significantly decreased since the monitoring is performed by LDH staff for roughly 99 percent of the water systems.

Beginning in May 2017, all PWSs in Louisiana that have a State of Louisiana issued Administrative Order (AOs) are required to participate in the Capacity Development Program as a remedial action in AOs. In March 2022, these AO systems were given priority in the Capacity Development Program. From a backlog at that time, the Capacity Development Program currently conducts assessments as soon as the AOs are issued by the Enforcement Unit. The priority is to get these systems back into compliance as soon as possible. The assessments conducted address one of the requirements of AOs. All appropriate persons including decision makers such as board members, council members, president, mayors, owners, etc. are now required to attend an LDH-approved management training class as per LAC 48.7717.C.

In 2022, the Louisiana Legislature passed the Community Water System Accountability Rule or ‘Water Grade Rule’ in which LDH began publishing annual water system grades based on a scoring evaluation for each water system. The grades are based on annual federal and state violations, infrastructure, capacity development program participation, personnel training, and overall public health risk from drinking water.

C. Operator Certification

Water system operator certification requirements have been in effect in Louisiana since 1972, which was prior to the Safe Drinking Water Act of 1974. Since then, federal and state legislation has continuously resulted in much stricter educational and training requirements for water system operators in Louisiana. The result is a significantly increased need for new operators and temporary suspensions of hundreds of current operator certifications for lack of being able to meet the increased educational and training requirements.

The lack of properly trained and certified operators is considered to be a significant contributing factor to compliance problems, particularly with small systems. Consequently, operator certification is always assessed during the capacity development surveys. Additionally, new operator training programs are currently in development.

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To meet the need for operator training, the Louisiana Department of Health has trained approximately 21,894 individuals since the beginning of 2020 at training sessions throughout the State. Approximately 3,971 Certificates of Operator Certification were also issued during that same time frame. This is a decrease from the 2020 report and is attributed to COVID-19.

D. Technical Assistance

Set-aside monies from the Drinking Water Revolving Loan Fund (DWRLF) are utilized to contract with Technical Assistance Providers for several water system Capacity Development purposes. The Office of Public Health has contracts with Louisiana Rural Water Association (LRWA), and Thornton, Musso, and Bellemin (TMB). These contractors provide on-site technical assistance to any water systems in need, including help regarding their technical, financial, and management capacities. Also, training for very small water systems with a population of fewer than 500 continues to be held quarterly throughout the state.

E. Area-Wide Optimization Program (AWOP)

AWOP is a volunteer Environmental Protection Agency (EPA) national program that teaches and provides technical support to the State’s drinking water systems, as well as Safe Drinking Water Program (SDWP) staff. The Office of Public Health continued its supporting contract for professional engineering services with Julie LeBlanc, P.E., who serves as the Technical Assistance Provider for Louisiana’s Area Wide Optimization Program (AWOP). The Louisiana Department of Health - Office of Public Health (LDH-OPH) has actively participated in this program since 1999 when EPA Region 6 AWOP first began. Staff from LDH-OPH participate in quarterly events with other EPA Region 6/Region 7 states, focused on AWOP activities. These quarterly events, as part of the EPA Region 6/7 AWOP, are facilitated by EPA Region 6/7 and EPA Technical Support Center (TSC) out of Cincinnati, OH.

Initially, LA AWOP focused on Surface Water Treatment Plants (SWTPs) and developed an Annual SWTP Ranking System based upon plant performance, operational factors and compliance violations. Since the program’s inception, all of Louisiana’s SWTPs, which serve approximately half the population of Louisiana, have been ranked based upon risk to public health. These rankings were then used to target SWTPs for AWOP activities. Historically, Louisiana has 16 consecutive years of AWOP performance data, but only in regard to its surface water treatment plants. LA AWOP has since shifted its focus to assist ALL drinking water systems (both surface and groundwater) in LA and to also focus on distribution system optimization (DSO), not just treatment.

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Prior to and during the current fiscal year (FY23), and as part of its 25+ year AWOP involvement, forty-four (44) Comprehensive Performance Evaluations (CPEs) and four (4) turbidity-based Performance-Based Training (PBTs) have been conducted in Louisiana since AWOP's inception in Louisiana. Two (2) of the CPEs were regulatory-triggered and the rest were selected based on the SWTP ranking.

Currently, LA AWOP is working on the development of ‘new’ performance ranking criteria that would include both ground water and surface water plants. LA AWOP has also developed a draft Disinfection By-Product (DBP) Technical Assistance Program due to the increased knowledge of the threat of DBPs to public health. A DBP Plant Ranking System has been established for further development and targeting of AWOP activities in the future. LDH continues to utilize AWOP to train systems and staff on optimization concepts, to include in-plant optimization, distribution system optimization, groundwater system optimization, and chloramine treatment optimization. This has included classroom sessions as well as hands-on sessions at water plants.

F. Consolidation

Consolidation of water systems continues to be an objective of the Louisiana Capacity Development Program. In Louisiana, there is no law which mandates consolidation, but stricter Capacity Development requirements for new water systems have been effective in directing the attention of potential new small systems toward the advantages of consolidation with another water system. Also, existing systems having difficulties are encouraged and assisted in merging with other more successful systems.

To ensure safe and affordable drinking water for the citizens of Louisiana, LDH continues to encourage the merging of these systems to share costs and ensure compliance with the Safe Drinking Water Act. In 2019, LDH began a new “Public Health Water Infrastructure Consolidation Initiative Program (CIP)”. This CIP initiative provides 100% principal forgiveness loans for consolidation projects across the state that involve non-compliant systems merging with compliant systems. So far, three (3) CIP loan projects have been constructed and completed successfully, five (5) CIP loan projects are currently in construction, and there are currently two (2) active applications in the program.

G. Management Training

Management Training sessions are tailored specifically for water system management personnel and are available to any water system in need. Since 2020, a total of 720 attendees were added to the management training attendee database. These attendees were trained by Technical Assistance Providers approved by the

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State. Please note that attendance can only be required through the issuance of an Administrative Order.

H. Rate Reviews

The 2016 State Legislature adopted Act 444 (HB 729). This act requires LDH to review and/or approve any rate changes requested from non-profit water systems which have existing debt with the Drinking Water Revolving Loan Fund. This activity is approved by EPA as an eligible activity within the Financial Capacity portion of the existing systems strategy. Assisting water systems with maintaining capacity, so that long-term sustainability is achieved, continues to be the LDH objective for this work.

I. Asset Management

America’s Water Infrastructure Act of 2018 (AWIA 2018) required States to amend their state capacity development strategies to include a description of how the state will encourage the development of asset management plans that include best practices, training, technical assistance and other activities to help with implementation of those plans. States also must include an update of these activities to encourage asset management practices in the Governor's report by September 30, 2023.

‘Existing’ systems selected to participate in a Capacity Development Assessment that could benefit or express interest in “Asset Management” are provided Asset Management Packets. These packets include information on the benefits of developing an asset management plan, instructions, example templates, checklists, and contact information for LDH staff and Contractors that can provide additional assistance when putting together an Asset Management Plan. This packet is also available online. Once a system completes its Asset Management Plan, they have the option of sharing it with the State.

Additionally, existing systems that are seeking financial assistance through LDH’s DWRLF are encouraged during the initial System Improvement Plan (SIP) phase to use the information from the SIP and the available loan funds to engage the Engineer to also develop an Asset Management Plan for the system in accordance with EPA’s ‘Five Core Questions’. Both the system and Engineer would also be able to attend any of the latter-mentioned asset management presentations/training sessions/workshops.

‘New’ systems are required to go through the Louisiana Capacity Development Program and are encouraged to develop an Asset Management Plan using EPA’s ”Asset Management Best Practices Guide”.

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An “Asset Management” training section was also added to LRWA’s (Louisiana Rural water Association) ‘Management Training’ course that incorporates EPA’s “Five Core Questions” for developing an Asset Management Plan. This course is offered free of charge at various locations throughout the year to any interested public water systems. The number of attendees has increased by a significant amount year over year.

Lastly, all water systems selected to participate in a capacity development assessment will be offered an opportunity to attend a presentation/training session/workshop on asset management that incorporates EPA’s “Five Core Questions”. This training will be set up once enough participants are lined up and presentations will be provided by our staff, existing Contractors like LRWA, and/or other State-approved contractors (i.e. Southwest Environmental Finance Center).

As a result of the revised Capacity Development Strategy, the Louisiana Capacity Development Program was able to enhance the efficacy of its water system capacity assessment capabilities to address the need for all systems to develop and maintain Asset Management Plans. Additionally, LDH was able to re-emphasize the importance of Asset Management Plans in the newly developed and adopted “Community Water System Accountability Rule” (*see Item J.*), which allows systems to improve their grades by producing Asset Management Plans. Lastly, utilizing its ‘Simplified Business Plan’, systems are brought through the process of collecting basic information in a format and method that is easy to understand relative to the technical, managerial, and financial capacity of the system.

J. Community Water System Accountability Rule

The 2021 State Legislature adopted Act 98 (SB129) establishing the Community Drinking Water Infrastructure Sustainability Act which required LDH to promulgate a rule that would establish letter grades for community water systems. The intent was to provide an accountability process to support drinking water sustainability for the residents of Louisiana. Starting July 2023, the Louisiana Capacity Development Program began focusing its efforts on existing systems with D or F grades in order to improve their grades by participating in a Capacity Development Assessment. Additionally, water systems can further improve their grades by developing an Asset Management Plan. In the near future, LDH anticipates seeing an overall improvement in water system grades statewide. Additionally, water systems are strongly encouraged to develop an Asset Management Plan.

VII. REPORT AVAILABILITY

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This report is available online at:

<http://www.dhh.louisiana.gov/index.cfm/page/433>

It is also available for copying and public viewing at the Office of Public Health, which is located in the Bienville building at 628 N. 4th St., Baton Rouge, LA 70802.