

Tribes were represented at the annual conference of the National Tribal Environmental Council. Representatives from 15 Tribes participated at the EPA/Inter-Tribal Council of Arizona meeting. At the first two conferences, an EPA representative conducted workshops on EPA's drinking water program and upcoming regulations, including the Stage 2 DBPR. EPA sent the presentation materials and a meeting summary to over 500 Tribes and Tribal organizations.

Fact sheets describing the requirements of the proposed rule and requesting Tribal input were distributed at an annual EPA Tribal meeting in San Francisco, and at a Native American Water Works Association meeting in Scottsdale, Arizona. EPA also worked through its Regional Indian Coordinators and the National Tribal Operations Committee to raise awareness of the development of the proposed rule. EPA mailed fact sheets on the Stage 2 DBPR to all of the federally recognized Tribes in November 2000, as well as the Tribal Caucus of the National Tribal Operations Committee.

A few Tribes responded by requesting more information and expressing concern about having to implement too many regulations. Some members of the Tribal Caucus noted that the rule would have a benefit. They also expressed a concern about infrastructure costs and the lack of funding attached to the rule. In response to one Tribal representative's comments on the November 2000 mailout, EPA explained the health protection benefit expected to be gained by this proposed rule. EPA also directed those who asked for more information to the Agreement in Principle on the EPA Web site.

EPA also held a teleconference for Tribal representatives on January 24, 2002. Prior to the teleconference, invitations were sent to all of the Federally-recognized Tribes, along with fact sheets explaining the rule. Twelve Tribal representatives and four regional Tribal Program Coordinators attended. The Tribal representatives requested further explanation of the rule and expressed concerns about funding sources. EPA also received calls from Tribes after the teleconference which provided EPA with further feedback. In the spirit of Executive Order 13175, and consistent with EPA policy to promote consultation between EPA and Tribal governments, EPA specifically solicits additional comment on this proposed rule from Tribal officials.

#### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045: "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and; (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, EPA nonetheless has reason to believe that the environmental health or safety risk (*i.e.*, the risk associated with DBPs) addressed by this action may have a disproportionate effect on children. As a matter of EPA policy, we have therefore assessed the environmental health or safety effect of DBPs on children. EPA has consistently and explicitly considered risks to infants and children in all assessments developed for this rulemaking. The results of the assessments are contained in section III of this preamble, *Health Risks to Fetuses, Infants, and Children: A Review* (USEPA 2003a), and in the Economic Analysis (USEPA 2003i). A copy of all documents has been placed in the public docket for this action.

EPA's Office of Water has historically considered risks to sensitive subpopulations (including fetuses, infants, and children) in establishing drinking water assessments, health advisories or other guidance, and standards (USEPA 1989c and USEPA 1991a). Waterborne disease from pathogens in drinking water is a major concern for children and other subgroups (elderly, immune compromised, pregnant women) because of their increased vulnerabilities (Gerba *et al.* 1996). There is a concern for potential reproductive and developmental risks posed by DBPs to children and pregnant women (USEPA 1994b; USEPA 1998c, Reif *et al.* 2000; Tyl, 2000). Specific to this action, human epidemiology and animal toxicology studies on DBPs have shown potential increased risks for spontaneous abortion, still birth, neural tube defects, cardiovascular effects and

low birth weight. This rule is designed to lower those risks. EPA has provided an illustrative calculation of potential fetal losses avoided in section VII.C.1.

Section V.D of this preamble presents the regulatory alternatives that EPA evaluated for the proposed Stage 2 DBPR, and the Economic Analysis (USEPA 2003i) provides a more detailed discussion. The Agency considered four alternatives involving different MCLs and different compliance calculations. The proposed alternative was recommended by the Advisory Committee and selected by EPA as the Preferred Regulatory Alternative because it provides significant public health benefits for an acceptable cost. EPA's analysis of benefits and costs indicates that the proposed alternative is superior among those evaluated with respect to maximizing net benefits, as shown in the Economic Analysis (USEPA 2003i). The result of the Stage 2 DBPR may include a reduction in reproductive and developmental risk to children and pregnant women and a reduction in cancer risk.

It should also be noted that the LT2ESWTR, which will be implemented at the same time as this proposed rule, provides better controls of pathogens and achieves the goal of increasing microbial drinking water protection for children. The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware that assessed results of early life exposure to DBPs.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

The proposed Stage 2 DBPR is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This determination is based on the following analysis.

The first consideration is whether the Stage 2 DBPR would adversely affect the supply of energy. The Stage 2 DBPR does not regulate power generation, either directly or indirectly. The public and private utilities that the Stage 2 DBPR regulates do not, as a rule, generate power. Further, the cost increases borne by customers of water utilities as a result of the Stage 2 DBPR are a low percentage of the total cost of water, except for a very few small systems that might install advanced technologies that must spread that cost over a narrow customer base. Therefore,