

**Notice of Final Rulemaking**  
**Department of Environmental Protection**  
**Environmental Quality Board**  
**Safe Drinking Water General Update**  
**(25 Pa. Code, Chapter 109)**

**Order**

The Environmental Quality Board (Board) by this order amends 25 Pa. Code, Chapter 109 (relating to Safe Drinking Water). The amendments include major revisions to the regulation of inorganic chemicals (IOC), synthetic organic chemicals (SOC) and volatile synthetic organic chemicals (VOC); minor revisions to the Filter Backwash Recycling Rule (FBRR), Lead and Copper Rule (LCR), and Radionuclide (RAD) Rule requirements; and other minor revisions to Chapter 109 to retain primary enforcement authority (primacy) and to clarify existing requirements.

This order was adopted by the Board at its meeting of \_\_\_\_\_ (date)\_\_\_\_\_.

**A. Effective Date**

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

**B. Contact Persons**

For further information, contact R. Barry Greenawald, Chief, Division of Operations Monitoring and Training, P.O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-4018, or Marylou Barton, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). The final-form rulemaking is available electronically through the DEP Web site (<http://www.dep.state.pa.us>).

**C. Statutory Authority**

The final-form rulemaking is being made under the authority of Section 4 of the Pennsylvania Safe Drinking Water Act (35 P.S. § 721.4), which grants the Board the authority to adopt rules and regulations governing the provision of drinking water to the public, and Sections 1917-A and 1920-A of the Administrative Code of 1929 (71 P.S. §§ 510-17 and 510-20).

**D. Background of the Amendments**

The purpose of the amendments is to amend the Department's Safe Drinking Water regulations to: (1) incorporate necessary federal requirements needed to obtain and/or maintain primacy for the Phase II/IIB/V, Arsenic, Filter Backwash Recycling (FBRR), Lead and Copper (LCR), and Radionuclide (RAD) rules; (2) amend several sections to improve data quality; (3) coordinate efforts with several other drinking water regulatory packages, including Operator Certification and Environmental Laboratory Accreditation; and (4) clarify several existing requirements in order to improve compliance.

1. *Revisions to incorporate federal requirements.*

a. *Major revisions to IOC, SOC and VOC requirements.*

EPA promulgated the Phase II Rule on January 30, 1991, the Phase IIB Rule on July 1, 1991, the Phase V Rule on July 17, 1992, and the Arsenic Rule on January 22, 2001. These rules established the monitoring requirements for inorganic chemicals (IOC), synthetic organic chemicals (SOC) and volatile synthetic organic chemicals (VOC) for all community and nontransient noncommunity water systems. The Department's IOC/SOC/VOC monitoring and waiver requirements (109.301) are not consistent with the federal rules and are being amended to obtain primacy for the Phase II/IIB/V and Arsenic Rules. The Department must also obtain EPA-approval of its Monitoring Waiver Program guidance.

b. *Minor revisions to FBRR.*

EPA promulgated the FBRR on June 8, 2001. The FBRR established additional requirements for surface water systems that recycle spent filter backwash. The Department promulgated final regulations on April 3, 2004. As a condition of primacy, the Department must make minor revisions to the public notification requirements in order to maintain primacy for the FBRR.

c. *Minor revisions to LCR.*

Lead and copper reporting requirements for community and nontransient noncommunity water systems (109.1107) are being amended to maintain primacy for the LCR.

d. *Minor revisions to RAD.*

Monitoring requirements for bottled, vended, retail and bulk water hauling systems (BVRBs) are being clarified (for those BVRBs that meet the definition of a community or nontransient noncommunity water system) to obtain primacy for the RAD Rule.

2. *Revisions to improve data quality.*

- Quality assurance and quality control requirements for continuous monitoring equipment associated with surface water systems are being amended to clarify the requirements for calibration.
- Amendments to require mandatory electronic reporting will improve data quality, reduce reporting violations, and streamline the reporting process.

Electronic reporting will be accomplished using the Department's existing secure web application, the Drinking Water Electronic Lab Reporting (DWELR) system. DWELR has been available to water suppliers and labs since 2003. Currently, the Department receives about 80 - 85% of its data voluntarily through DWELR. Users can upload data, or enter data using screen entry forms. The DWELR system includes an error detection program that produces error reports. Errors can be corrected immediately or recalled for correction later. This allows users to correct data entry and other errors, thus preventing erroneous MCL or monitoring/reporting violations. Water systems can register for access to view the data that's submitted for them by submitting entities. This allows water suppliers to monitor the data, so they can notify their lab if data appears to be incorrect or missing. DWELR works within the DEP Greenport environment.

3. *Revisions to coordinate efforts with several other drinking water regulatory packages.*

Several associated regulatory packages are in various stages of promulgation. In order to coordinate efforts, the following revisions will be necessary.

- Operator Certification requirements under 109.304, 109.704, 109.1105 and 109.1107.
- Environmental Laboratory Accreditation (Chapter 252) reporting requirements under 109.810.

4. *Revisions to clarify several other requirements.*

- Currently, language that describes how the Department determines compliance with the MCLs has been incorporated by reference. With these amendments, EPA's compliance determination requirements are being added into the text of Chapter 109 in order to better inform the regulated community and improve compliance. Chapter 109 will now be a one-stop-shop in terms of determining whether a water supplier is in compliance with the MCLs.
- Information describing new sources under § 109.503(a)(1)(iii) is being amended to clarify the requirements for new source sampling.
- Requirements under § 109.505(2)(ii) for noncommunity water systems to file a brief description of the system are being amended to clarify that the information shall be filed prior to construction.

The final-form rulemaking was submitted to the Small Water Systems Technical Assistance Center Advisory Board (TAC) for review and discussion on June 24, 2008.

Comments were received from the TAC on July 15, 2008. TAC's comments were addressed as indicated in Section E., below.

### **E. Summary of Changes to the Proposed Rulemaking**

#### Subchapter C. MONITORING REQUIREMENTS

##### § 109.301(5)(i) *Vinyl chloride.*

This subsection was amended in response to an EPA comment regarding consistency with the federal monitoring requirements found in 40 CFR § 141.24(f). The amended language includes reduced monitoring requirements and incorporates the federal language regarding monitoring requirements for surface water entry points.

##### § 109.301(5)(viii) *VOC Waivers.*

This subsection was amended in response to an EPA comment regarding consistency with the federal monitoring requirements found in 40 CFR § 141.24(f). The amendments clarify that susceptibility waivers are not allowed. This subsection was also amended in response to a comment regarding the process for obtaining waivers and renewals. The amended language clarifies that applications must be submitted to the Department for review and approval.

##### § 109.301(6)(vii) *SOC Waivers.*

This subsection was amended to be consistent with the federal monitoring requirements found in 40 CFR § 141.24(h). This subsection was also amended in response to a comment regarding the process for obtaining waivers and renewals. The amended language clarifies that applications must be submitted to the Department for review and approval.

##### § 109.301(7) *Monitoring requirements for IOCs.*

This paragraph was amended in response to several EPA comments regarding consistency with the federal monitoring and compliance determination requirements found in 40 CFR § 141.23. This paragraph was also amended in response to comments regarding the factors the Department considers when reviewing and approving waiver applications for IOCs. The phrase “other factors as determined by the Department on a case-by-case basis” was added to allow the Department to consider other potential sources of contamination, as needed, when issuing IOC monitoring waivers.

#### Subchapter G. SYSTEM MANAGEMENT RESPONSIBILITIES

##### § 109.701(a)(2)(i)(B)

This clause was amended to recognize that not all treatment plants operate on a 24/7 basis.

§ 109.701(a)(11) *Noncompliance report.*

This paragraph was amended to be consistent with federal reporting requirements under 40 CFR § 141.31(b).

§ 109.701(i) *Accuracy of data.*

This subsection was amended in response to comments from the Department's advisory committee. In most cases, the task of reporting accurate data to the Department is a shared responsibility. These amendments are intended to clarify the responsibilities of water suppliers vs. their accredited laboratories. Essentially, water suppliers must provide their lab with enough information (i.e., required monitoring period and location, sample type, etc.) to ensure that sample results are properly reported to the Department. A similar provision was added to the lab accreditation section under § 109.810(d).

§ 109.701(j) *Electronic reporting.*

This subsection was amended in response to comments from the Department's advisory committee to clarify that water suppliers may assign the responsibility for reporting their data to an accredited lab or another approved party. These amendments provide other options for reporting data to the Department.

Subchapter H. ENVIRONMENTAL LABORATORY ACCREDITATION

§ 109.810(b) *Reporting and notification requirements.*

This subsection was amended in response to comments from the Department's advisory committee to clarify that laboratories must notify their water supply clients and the Department whenever an MCL, MRDL, TT or AL is exceeded, or a sample result requires the collection of check or confirmation samples. These amendments ensure that water suppliers and the Department are contacted at the earliest indication of a water quality problem.

§ 109.810(d) *Reporting and notification requirements.*

This subsection was added to clarify that accredited laboratories are responsible for the accuracy of the data that is submitted to the Department. If data entry or other errors occur, the lab is responsible for correcting the data.

Subchapter K. LEAD AND COPPER

§ 109.1102 *Action levels and treatment technique requirements.*

This section was amended in response to a comment to incorporate EPA's method of computing the 90<sup>th</sup> percentile value for lead and copper using interpolation.

## **F. Benefits, Costs and Compliance**

### **Benefits**

The enhanced monitoring and reporting requirements will improve compliance, streamline reporting, and provide greater assurance that contaminant levels will remain below the MCLs. The revisions also ensure that the Department, the regulated community and the public are better informed to make decisions affecting public health protection.

### **Compliance Costs**

The amendments primarily address existing monitoring and reporting requirements. As a result, compliance costs are not expected to substantially increase or decrease. For example, a system that exceeds an MCL for a particular contaminant may need to remain on quarterly monitoring for a few more quarters to ensure that the levels stay below the MCL. However, this increased cost may be off-set by new opportunities for VOC waivers.

Amendments to require mandatory electronic reporting will improve data quality, reduce reporting violations, and streamline the reporting process. Electronic reporting will be accomplished using the Department's existing secure web application, the Drinking Water Electronic Lab Reporting (DWELR) system. DWELR has been available to water suppliers and labs since 2003. Currently, the Department receives about 80 - 85% of its data voluntarily through DWELR. The amendments will enable the Department to collect the remaining 15 – 20% of the data electronically. To collect the remaining data, some water suppliers (conducting monitoring under 109.304(c)) may need to either: (1) purchase a computer and internet provider, or (2) pay their accredited lab or another approved party to report additional data on their behalf.

### **Compliance Assistance Plan**

The amendments address existing monitoring and reporting requirements. As a result, financial assistance should not be necessary.

### **Paperwork Requirements**

The amendments address existing monitoring and reporting requirements. As a result, some changes to forms, reports and other paperwork are expected. Mandatory electronic reporting requirements are expected to streamline the reporting process and take the place of reporting via paper.

## **G. Sunset Review**

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

## **H. Regulatory Review**

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on August 16, 2007, the Department submitted a copy of the notice of proposed rulemaking, published at 37 *Pa.B.* 4762, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees.

Under Section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Department has considered all comments from IRRC, the Committees and the Public.

Under Section 5.1(j.2) of the Regulatory Review Act, on \_\_\_\_\_, these final-form regulations were deemed approved by the House and Senate Committees. Under Section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_ and approved the final-form regulations.

## **I. Findings of the Board**

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated there under at *Pennsylvania Code* §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at Vol. 37, No. 35, *Pennsylvania Bulletin*, p. 4762 (September 1, 2007).
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

## **J. Order of the Board**

The Board, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department of Environmental Protection, 25 *Pennsylvania Code*, Chapter 109, are amended to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

BY:

JOHN HANGER  
Acting Chairperson  
Environmental Quality Board