
REGULATORY UPDATE

SPRING JOINT MEETING
MARCH 16, 2017

PA SECTION SOUTHEAST DISTRICT AND
WWOAP EASTERN SECTION



Presented By: Serena A. DiMagno
WWOAP Legislative and Regulatory Affairs Committee
Chairman

Regulatory Affairs Update

- Revised Total Coliform Rule (RTCR) – Final Rule
Published in the PA Bulletin –September 24, 2016:
 - <http://pa.bulletin.com/secure/data/vol46/46-39/1640.html>
 - Title 25 – Environmental Protection
 - Environmental Quality Board
 - 25 PA.Code Chapter 109
 - Safe Drinking Water, Revised Total Coliform
 - 46 PA B.6005
-

Regulatory Affairs Update

- Revised Total Coliform Rule – Continued:
 - PA DEP will no longer be conducting system assessments; a water system will be required to conduct its own assessment should an assessment be required due to failure to meet the RTCR. If the water system does not have qualified personnel to conduct a Level 2 Assessment, PA DEP is developing a roster of qualified persons to conduct Level 2 Assessments.
-

Regulatory Affairs Update

- Revised Total Coliform Rule – Continued:
 - PA DEP will be seeking persons who are qualified and interested in conducting assessments for water systems that do not have qualified personnel to do so as well as providing Level 2 Assessment Training for those persons.

Regulatory Affairs Update

- Disinfection Requirements Rule:
 - The draft regulatory package will not be submitted until later this year.
 - PA DEP had requested water systems to provide chlorine residual data which some systems have submitted.
 - PA DEP has been collecting samples in selected water systems.
 - PA DEP is currently evaluating the submitted and collected chlorine residual data in order to establish a disinfection limit in the distribution system.
-

Regulatory Affairs Update

- Disinfection Requirements Rule:– Continued
 - PA DEP is reviewing the newly released US EPA 6–year Review data and information prior to the Draft Final Disinfection Rule. The US EPA information is resulting in regulatory language changes.
 - Stay tuned.....
-

Regulatory Affairs Update

- Part 3 Revisions to Chapter 109–General Update and Fee Package:
 - Draft regulatory package was presented at the November 14, 2016 Small Water Systems Technical Advisory Committee (TAC) Meeting.
 - Part 3 Revisions to Chapter 109 were separated from the RTCR and the Disinfection Requirements Rule by the EQB to allow the water industry sufficient time to comment on the Disinfection Requirements Rule as well as the to the proposed changes to Chapter 109 in the Part 3 Revisions.
-

Regulatory Affairs Update

Chapter 109–General Update and Fee Package– Cont’d.

- Prior to the November 14, 2016 TAC Board Meeting, there had been no indication that the General Update Regulatory package would include Fees.
 - To view the Regulatory Package and the materials presented to the TAC Board by PA DEP, go to: <http://www.dep.pa.gov> select **PUBLIC PARTICIPATION** on the top bar, then select the box **ADVISORY COMMITTEES**, then select the box **WATER ADVISORY COMMITTEES**, then select the box **SMALL WATER SYSTEMS TECHNICAL ASSISTANCE CENTER**
-

Regulatory Affairs Update

Chapter 109–General Update and Fee Package– Cont’d.

- On the PA DEP website, view the documents from the November 14, 2016 TAC Board Meeting (includes the Draft Proposed Regulation) and the January 5, 2017 TAC Board Meeting that includes additional information on the proposed fees.
 - At the December 8, 2016 PA Section AWWA Water Utility Council (WUC) Meeting, the Council approved a workgroup to review the Draft Proposed Regulation and develop comments for the TAC Board Meeting on January 5, 2017.
 - The WUC workgroup met on December 16, 2016 and identified issues and developed comments.
-

Regulatory Affairs Update

Chapter 109–General Update and Fee Package– Cont’d.

- On January 5, 2017 the TAC Board prepared comments on the Draft Proposed Regulation and used the WUC Comment document to aid in the discussions.
 - The following are the issues and comments identified by TAC (and WUC) and comprise the substance of the Comment Letter prepared by TAC:
 - The TAC Comment Letter will not be available on the TAC website until the next meeting is posted to the website and the letter has been reviewed by the Environmental Quality Board (EQB).
-

Regulatory Affairs Update

Comments on the DRAFT PROPOSED REGULATION – CHAPTER 109 GENERAL UPDATE AND FEES:

- There was a general concern that PA DEP should be no more stringent than the federal drinking water regulations.
 - **Section 109.1 – Source Water Protection Requirements** – Under this section defining the Definition of Surface Water Intake Protection Area, it was recommended that PA DEP needs to consider Act 156 (2006) and undertake measures to protect the confidentiality of source water and intake locations.
-

Regulatory Affairs Update

- **Section 109.202 (c)(1)(i)(A)(V) – State MCLs, MRDLs, and Treatment Technique Requirements** – the federal turbidity requirement is 0.3 NTU, not 0.30; adding a zero to the MCL is not based on science (see Standard Methods methodology regarding significant figures). The same issue applies to establishing the turbidity limit of 1.0 NTU; it should be 1 NTU per the EPA limit. [It should be noted that Professor Jeanne Van Briesen, Carnegie Mellon University, provided comments addressing the significant figures in response to the proposed disinfection rule].
-

Regulatory Affairs Update

- **Section 109.204 – Disinfection Profiling and Benchmarking** – Requires surface water and GUDI systems to conduct disinfection benchmarking and profiling. Subsection (d) should be revised to reflect the federal regulations related to disinfection benchmarking and profiling. Subsection (c) should be revised to require the submittal of benchmarking and profiling with the permit application.
- **Section 109.301(1)(i)(C) – General Monitoring Requirements** – Requires monitoring turbidity of the combined filter effluent. Many filter plants do not

Regulatory Affairs Update

- have the capability to sample combined filter effluent; therefore, an alternative methodology and locations should be available to meet the requirements of the regulation. PA DEP should allow averaging of the individual filter effluent, or, in some instances, allow the plant effluent to be used.
- **Section 109.301(i)(iv)** – In the event that turbidity monitoring equipment fails, it must be repaired or replaced within 5 working days. It is recommended that the regulation be changed so that if a water supplier cannot repair or replace the monitoring

Regulatory Affairs Update

- equipment within the 5 working days, that no monitoring or reporting violation should be incurred.
- **Section 109.301 (II)(ii)** – At a minimum, all entry points shall provide water to the public on an annual basis to ensure all sources and entry points are included in routine compliance monitoring. PA DEP needs to consider the implementation and details for how this regulatory provision will be applied, and needs to define this in the regulatory package. How will this provision be applied to interconnections? There are instances where water suppliers have regulatory

Regulatory Affairs Update

- agreements with Basin Commissions or other entities that preclude use of a source except under emergency conditions. How will water suppliers be able to comply with these competing regulations? More discussions and thought needs to be occur to address a variety of situations that water suppliers may face. This provision should also have an effective date of one year after the effective date of this proposed rulemaking.

Regulatory Affairs Update

- Section 109.303(a)(4) – Analytical Requirements – Samples for determining compliance with MCLs for organic contaminants listed by the EPA under 40 CFR 141.61 (relating to maximum contaminant levels for organic contaminants) [and], inorganic contaminants listed by the EPA under 40 CFR 141.62 (relating to maximum contaminant levels (MCLs) for inorganic contaminants), radionuclide contaminants listed by the EPA under 40 CFR 141.66 (relating to maximum contaminant levels for radionuclides) and with the

Regulatory Affairs Update

- special monitoring requirements for unregulated contaminants under § 109.302(f) shall be taken at each entry point to the distribution system which is representative of each source after an application of treatment during periods of normal operating conditions. If a system draws water from more than one source and the sources are combined prior to distribution, the system [shall] must sample at the entry point during periods of normal operating conditions [where the] when water is representative of

Regulatory Affairs Update

- **[combined] all sources being used [during normal operating conditions]. If sources are blended at a consistent ratio prior to the entry point, a blended sample may be taken to determine compliance. If sources are not blended at a consistent ratio or if sources are alternated prior to the entry point, more than one sample must be taken to ensure that the samples are representative of all sources. This regulatory provision requires additional clarity and consideration of many real world scenarios. This provision should be addressed in the facility permit.**
-

Regulatory Affairs Update

- **Section 109.304(e) – Analytical Requirements** – A water supplier shall calibrate all turbidimeters used for compliance monitoring using the procedure specified by the manufacturer. At a minimum, calibration with an EPA–approved primary standard shall be conducted at least every 90 days. The calibration schedule should remain at the current quarterly frequency for consistency and ease of enforcement since every 90 days is more difficult to track and is not the same as quarterly.

Regulatory Affairs Update

- **Section 109.416(4)(ii) – CCR Requirements** – PA DEP should incorporate the EPA allowance for electronic submission of CCRs to PA DEP as an option since it is environmentally prudent and resource conservative.
- **Section 109.511 – General Permits** – The entity submitting the initial General Permit application should not incur all of the cost of submitting the application since the General Permit benefits all future users and conserves PA DEP resources.

Regulatory Affairs Update

- **Section 109.602(i) – Design and Construction Standards – Acceptable Design – Alarm and Shutdown Capabilities** – PA DEP should provide accurate cost estimates for compliance with these requirements as well as an evaluation of whether 12 months is an adequate time period for systems to comply.
- **109.602(i)(2)(iv) – Any other operational parameter determined by the Department as necessary for the system to maintain compliance** may be too far reaching and cost prohibitive

Regulatory Affairs Update

- **Section 109.606(a)(2)(ii) – Chemicals, materials and equipment**– Chemicals [or], materials or equipment which may come in contact with the water or affect the quality of the water may not be used unless the chemicals [or], materials or equipment are acceptable to the Department. (2) Require that a registered mark or seal be placed upon each product certified under ANSI/NSF Standard 60 or 61 or PDWEP, as applicable. TAC noted that water suppliers have encountered product suppliers that do not mark individual product containers. Bulk chemical deliveries typically are provided with certification documents, not markings.
-

Regulatory Affairs Update

- Note: Since the TAC comments were developed, it has been discovered that PA DEP in some Regions are requiring equipment to be NSF certified (or PA DEP approved alternate certification) before the proposed regulations have been approved. The concern is that water industry equipment manufacturers have not been apprised of this requirement. The concerns regarding the availability of certified equipment has also been brought to the WUC for discussion.
-

Regulatory Affairs Update

- **Section 109.612(b) – POE Devices** – POE devices used by a public water supplier shall be tested and certified by the NSF or other certification organization acceptable to the Department. The phrase “or components” should be added, so that the regulation states “ POE devices or components used by a public water supplier shall be tested and certified by ...

Regulatory Affairs Update

- Section 109.701 – Reporting and Recordkeeping –
- 109.701 (a)(2)(i)(A)(VIII) – combined filter effluent turbidity measurements are less than or equal to the following:
 - 0.30 NTU for conventional or direct filtration
 - 1.0 NTU for slow sand or diatomaceous earth
 - 0.15 NTU for membrane technologies

Concerned that combined filter effluent may not be available in certain filter plants; also concerned with the addition of a zero to the required turbidity MCLs.

Regulatory Affairs Update

- **109.701 (a)(2)(ii)(A)(III) – proposes to change the maximum Combined Filter Effluent (CFE) from 1 NTU to 1.0 NTU. This requirement is more stringent than the Federal requirement. Additional concern is the generation of more Boil Water Advisories (BWA). Currently a BWA is required when turbidity exceeds 1 NTU, the new requirement is when turbidity exceeds 1.0 NTU. (Significant figure issue, again).**
- **109.701 (e)(2)(v)–(vi) – Individual Filter Effluent (IFE) turbidity requirements – PA DEP is proposing to lower the IFE turbidity standards which are more stringent**

Regulatory Affairs Update

- than Federal EPA turbidity standards. PA DEP has proposed the following:
 - IFE turbidity in 2 consecutive 15-minute readings at the end of 4 hours of operation or after filter is off-line from 0.5 NTU to 0.3 NTU
 - IFE turbidity maximum in 2 consecutive 15-minute readings from 1.0 NTU to 0.30 NTU

109.701(e)(2)(vii-viii) – PA DEP is proposing to reduce the following:

- IFE turbidity in 2 consecutive 15-minute readings
-

Regulatory Affairs Update

- for 3 consecutive months from 1.0 NTU to 0.30 NTU
 - IFE turbidity in 2 consecutive 15-minute readings for 2 consecutive months from 2.0 NTU to 1.0 NTU
 - The proposed changes are again significant figure issues; ramifications of the changes include additional reporting, self-assessments and comprehensive performance evaluations, as well as possible Public Notifications. PA DEP needs to provide the rationale, science and methodology, cost vs. benefits, public health benefit, etc. and
-

Regulatory Affairs Update

- PA DEP needs to provide the rationale, science and methodology, cost vs. benefits, public health benefit, etc. and data to support the proposed changes.
- **Section 109.703(b)(1) – Facilities Operation** – Water suppliers using conventional or direct filtration shall prior to returning a filter to service, filter-to-waste for one full filter volume and until the filter bed effluent turbidity is less than 0.30 NTU at the normal production rate. One filter volume may be excessive and unnecessarily wasting water. Also, facilities may not be able to hold that volume of filter waste.

Regulatory Affairs Update

- Many plants do have filter-to-waste capability which is prohibitively expensive to provide. Also, 0.30 NTU is more stringent than Federal EPA regulation, and again, a significant figure issue. PA DEP needs to allow new filter backwash technologies such as sub-fluidization, or resting a filter after backwash before putting the filter back in service. Suggested regulatory language change is filter to waste for one full filter volume or until the filter bed effluent turbidity is less than 0.3 NTU at the normal production flow rate or unless a filter plant can demonstrate that an alternate methodology provides turbidity compliance.
-

Regulatory Affairs Update

- **109.703(b)(5)** – Requires filtration facilities to perform a filter bed evaluation program and submit it with the Annual Water Supply Report demonstrating that filter-to-waste or an alternate approved method is meeting the turbidity requirements. PA DEP should not be requiring best management practices unless a facility is not meeting turbidity requirement or Filter Plant Performance Objectives.
- **109.703(c)(1)** – Requires public water suppliers to test alarm and shutdown capabilities at least quarterly and document the results in the plant's operational log. PA DEP should allow for testing via shutdown simulation.

Regulatory Affairs Update

- **Section 109.706 – System Map** – A public water supplier shall prepare and maintain on file a detailed map of the water system. A copy of the map must be submitted to PA DEP upon request. The map must include:
 - Source and treatment plant locations
 - Size and location of storage facilities
 - Pump station locations
 - Size, location and construction material of pipes
 - Pressure zones

Regulatory Affairs Update

- **Direction of flow**
 - **Interconnections**
 - **Monitoring locations**
 - Medium to large facilities will not be able to capture all of the minimum requirements on one system map. Systems should be able to develop maps or other schematics of their systems as appropriate for that system. Direction of flow is not predictable or known under all circumstances depending on system conditions. Flow may go in different directions dependent on system demands.
-

Regulatory Affairs Update

- PA DEP's request for one system map is overly simplified and not realistic for how systems operate; distribution systems are dynamic and not static; therefore, many systems will not be able to meet this requirement. This information should be protected under Act 156, 2006 and PA Right-to-Know Law requirements.
 - **Section 109.708 – System Service and Auxiliary Power** Requires public water systems to provide auxiliary power and prescribes the acceptable methods. PA DEP may approve alternate provisions to providing auxiliary power. PA DEP should not be prescribing the
-

Regulatory Affairs Update

- the methods a public water supplier uses to obtain auxiliary power; PA DEP has not sufficiently evaluated the cost of providing auxiliary power; secondary power feeds may not be attainable in rural areas or be extremely cost prohibitive; PA DEP has not properly evaluated the **total cost** for implementing generator power. Also, systems may avail themselves of the resources from PA WARN in order to meet auxiliary power demands. This provision should be addressed in the Emergency Response Plans and not in regulation.
-

Regulatory Affairs Update

- **Section 109.713(b) – Source Water Protection Plan – Requires that a public water supplier is responsible for ensuring protection of their sources. The Source Water Protection Program does not provide legal access or the authority for the water supplier to inspect or enforce up-gradient facilities that pose a potential source water contamination.**
-

Regulatory Affairs Update

SUBCHAPTER N. DRINKING WATER FEES

- Section 109.1401 – General – This subchapter establishes fees for each public water system for services provided by the Department to implement the Safe Drinking Water Act, retain primacy and protect the public health and safety PA DEP should evaluate a surcharge rate factor based on gallons produced for each permitted facility to determine the annual fee for community, bottled, vended, retail and bulk hauling water systems.
 - The water supply industry needs adequate time to review and evaluate the Fee Package as proposed.
-

Regulatory Affairs Update

Annual Fees – Community Water Systems

<i><u>Population Served</u></i>	<i><u>Fee</u></i>
25 – 100	\$250
101–500	\$500
501–1,000	\$1,000
1,001–2,000	\$2,000
2,001–3,300	\$4,000
3,301–5,000	\$6,500

Regulatory Affairs Update

Annual Fees

Population Served

Fee

5,001–10,000

\$10,000

10,001–25,000

\$20,000

25,001–50,000

\$25,000

50,001–75,000

\$30,000

75,001–100,000

\$35,000

100,001 or more

\$40,000

NOTE: Fee is per PWSID Number

Regulatory Affairs Update

Annual Fees – Bottled Water or Vended Water Systems, Retail Water Facilities or Bulk Water Hauling

<i>Type</i>	<i>Fee</i>
Bottled – In–state	\$2,500
Bottled – Out–of–state	\$2,500
Vended	\$1,000
Retail	\$1,000
Bulk	\$1,000

Note: See the Proposed Regulation for the proposed Fees for the Non–Transient Non– Community Water Systems and Transient Non Community Water Systems.

Regulatory Affairs Update

- The Fee proposal was never discussed as part of the General Updates to Chapter 109. There needs to be adequate time to allow public input to the proposed fees. PA DEP should be requesting adequate funding from the PA Legislature to maintain the Safe Drinking Water Program and its core functions, including upgraded IT efficiencies before seeking fees. Improved IT systems would greatly increase Department efficiency. The General Fund should subsidize small systems, not the rate payers of the medium and large systems. The bottled and vended water fees do not seem equitable in relationship to the cost of the product. Why isn't the fee based on the gallons produced?
-

Regulatory Affairs Update

- PA DEP stated \$49/hour staff cost was used to calculate the fees. PA DEP needs to explain and document the hourly rate used to calculate the fees. Fees should be based only on the direct costs (salary and benefits) of a field inspector and not include overhead.
 - **PA DEP is attempting to meet a \$7.5 Million budget shortfall with the proposed fees.**
-

Regulatory Affairs Update

- Section 109.1404 – Community and Non-Community Water System Permitting Fees – Construction permit or major construction permit amendment –

<i><u>Population Served</u></i>	<i><u>Fee</u></i>
25–100	\$300
101–500	\$600
<i>501–3,300</i>	<i>\$1,000</i>
<i>3,301–10,000</i>	<i>\$2,500</i>
<i>10,001–50,000</i>	<i>\$5,000</i>
<i>50,001–100,000</i>	<i>\$7,500</i>
<i>100,001 or more</i>	<i>\$10,000</i>

Regulatory Affairs Update

- Section 109.1404 – Community and Non-Community Water System Permitting Fees – Minor Construction permit amendment –

<i><u>Population Served</u></i>	<i><u>Fee</u></i>
25–100	\$100
101–500	\$250
<i>501–3,300</i>	<i>\$500</i>
<i>3,301–10,000</i>	<i>\$750</i>
<i>10,001–50,000</i>	<i>\$1,000</i>
<i>50,001–100,000</i>	<i>\$2,500</i>
<i>100,001 or more</i>	<i>\$5,000</i>

Regulatory Affairs Update

- Permit Fees should not be based on population; should be based on type of project, scope of project, project size and complexity. Minor Permits should not require extensive PA DEP review and be substantially less based on the effort required by PA DEP.
 - **Section 109.1407 – Feasibility Study** – Pilot Study/Feasibility Study should not be based on population but on the type of project, scope of the project, and complexity of the project.
 - **Section 109.1413 – Evaluation of Fees** – Provides at least every three years, PA DEP will provide the EQB with an evaluation of the fees and recommend regulatory changes to address disparity between
-

Regulatory Affairs Update

- **the program income generated from the fees and the cost of administering the program. A three year review is acceptable provided that any changes to the fees or fee structure are approved through the regulatory review process.**
 - **Note: It is anticipated that the Chapter 109 Update and Fee Regulatory Package will be on the May EQB Meeting Agenda.**
-

Speaker Contact Information

SERENA A. DIMAGNO

SPOTTS, STEVENS AND MCCOY (SSM)

WWOAP LEGISLATIVE/REGULATORY CHAIRMAN

SADIMAGNO@AOL.COM

SERENA.DIMAGNO@SSMGROUP.COM

CELL PHONE: 717-379-0084
