

REGULATORY FEE RECOMMENDATION REPORT

Chapter 109 (Safe Drinking Water) Annual and Permit Fees

BACKGROUND:

Pennsylvania is ranked 4th in the nation in terms of the number of PWSs, with nearly 9,000 water systems across the Commonwealth. The Department is responsible for regulating all PWSs and ensuring that safe and potable drinking water is continuously supplied to the 10.7 million customers they serve. In order to carry out these responsibilities, the Department must ensure adequate funding for the Safe Drinking Water Program.

The proposed fees are necessary in order to fulfill the Department’s fiscal responsibility to cover most, if not all, of its state program costs. Program costs are directly tied to the resources needed to meet federal and state mandates for minimum program elements and for the administration of an effective State Drinking Water Program. Failure to meet minimum program elements may result in increased risk to public health as well as the loss of primacy for the Safe Drinking Water Program. Program staffing and performance has steadily declined since 2009.

Number of sanitary survey (full) inspections: The number of sanitary surveys has steadily declined since 2009. The federally mandated inspection frequency is once every 3 years for CWSs and once every 5 years for NCWSs.

| SDW Measure | FY09-10 | FY10-11 | FY11-12 | FY12-13 | FY13-14 | FY14-15 | FY15-16 |
|--------------------|---------|---------|---------|---------|---------|---------|---------|
| # Sanitary Surveys | 3,177 | 2,271 | 2,553 | 2,310 | 2,181 | 2,415 | 1,847 |

(Source: Governor’s Office Performance Measures, data source is eFACTS)

Overdue inspections: The number of overdue inspections has ranged from 448 – 703 in the last 6 years. Failure to conduct routine and timely inspections may mean that serious violations are going unnoticed. In 2015, all regions had overdue inspections. The range of overdue inspections was 2.4 % - 11.5 %. The total number of systems with overdue inspections was 542. The federal PWSS Grant and primacy measure for inspection frequency has not been met.

| SDW Measure | FY10-11 | FY11-12 | FY12-13 | FY13-14 | FY14-15 | FY15-16 |
|-----------------------|---------|---------|---------|---------|---------|---------|
| # Overdue Inspections | 703 | 551 | 458 | 448 | 492 | 542 |

(Source: eFACTS & PADWIS)

The reduction in staffing levels and failure to conduct routine and timely inspections may be contributing to the overall declining trend in PWS compliance rates.

% CWSs meeting health-based standards: For the last four (4) years, the percentage of CWSs that met health-based drinking water standards fell short of the goal of 95%.

| SDW Measure: | FY09-10 | FY10-11 | FY11-12 | FY12-13 | FY13-14 | FY14-15 | FY15-16 |
|---|---------|---------|---------|---------|---------|---------|---------|
| % of CWSs that Meet Health-based Drinking Water Standards | 97% | 97% | 97% | 91% | 92% | 92% | 91% |

(Source: Governor’s Office Performance Measures, data source is PADWIS)

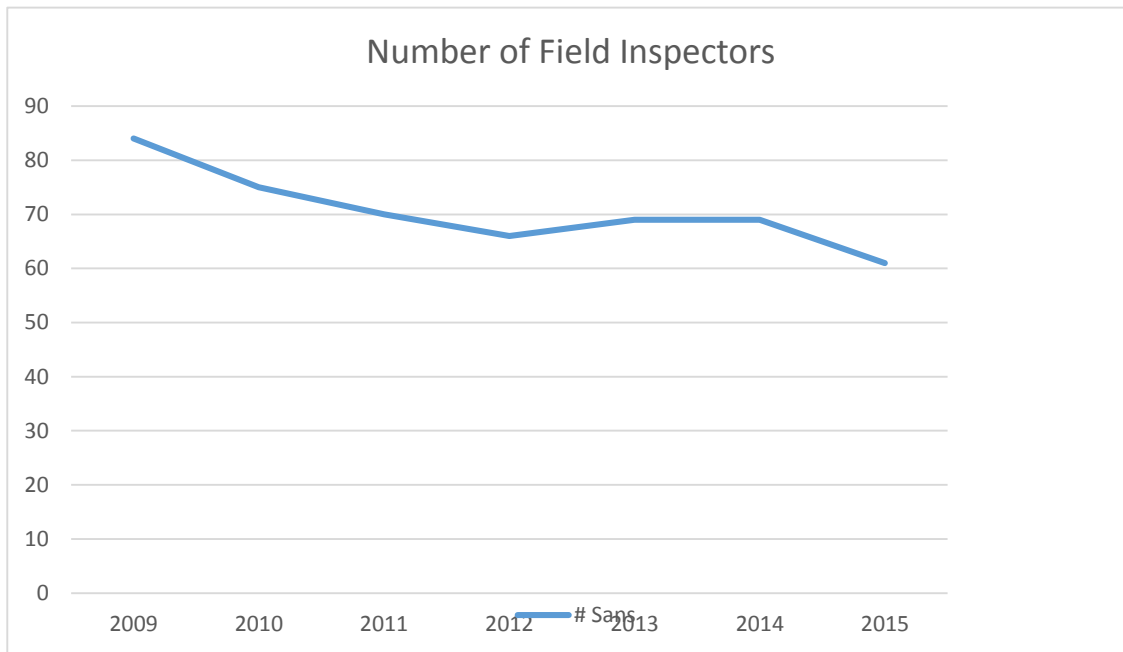
As per PA DEP’s Annual Compliance Report for 2015, PWSs continue to exceed health-based MCLs, MRDLs and TT requirements for arsenic, radionuclides, VOCs, DBPs, nitrate/nitrite and pathogens; and for failure to adequately treat drinking water for contaminants such as lead.

Unaddressed violations: The number of unaddressed violations has also continued to increase. In 2015, 3 of 6 regions had more than 500 unaddressed violations. Unaddressed violations are those violations that have not been returned to compliance within 180 days or addressed through formal enforcement. (Note: Unaddressed violations are tracked over a 5-year period because it generally takes several years to return MCL violations to compliance.)

| SDW Measure: | FY05-10 | FY06-11 | FY07-12 | FY08-13 | FY09-14 | FY10-15 |
|--------------------------|---------|---------|---------|---------|---------|---------|
| # Unaddressed Violations | 4,298 | 4,746 | 5,536 | 6,849 | 6,353 | 7,922 |

(Source: PADWIS)

Performance is directly tied to the mandated workload and available resources for the Safe Drinking Water Program. Overall, staffing levels are down by 25% since 2009.



Sanitarian workload: As of 2015, 5 of 6 regions exceeded the Department’s recommended workload of 100–125 PWSs/sanitarian. The recommended workload has been exceeded in at least 4 of 6 regions for the last 3 years. (Note: As per a workload analysis, the recommended number of PWSs/sanitarian was determined to be 100-125 in order to ensure that all mandated activities could be completed. Mandated activities include inspections, review of self-monitoring data, compliance and enforcement determinations, maintenance of PADWIS and eFACTS, review of monitoring/O&M/ERP plans, assessments, waivers etc.) As per a 2012 ASDWA survey, the national range and average of PWSs/inspector is 45-140 and 67, respectively. All regions exceed the national average.

| Region | # PWSs | | | # Sanitarians | | | Sanitarian Workload (# PWSs/San) | | |
|-----------|--------|-------|-------|---------------|------|------|----------------------------------|------------|------------|
| | 2013 | 2014 | 2015 | 2013 | 2014 | 2015 | 2013 | 2014 | 2015 |
| 1 SERO | 947 | 911 | 911 | 7 | 7 | 6 | 135 | 130 | 152 |
| 2 NERO | 2,632 | 2,555 | 2,559 | 21 | 20 | 19 | 125 | 128 | 135 |
| 3 SCRO | 2,438 | 2,400 | 2,408 | 14 | 14 | 13 | 174 | 171 | 185 |
| 4 NCRO | 997 | 937 | 941 | 7 | 7 | 6 | 142 | 134 | 157 |
| 5 SWRO | 726 | 680 | 694 | 8 | 8 | 6 | 83 | 78 | 105 |
| 6 NWRO | 1,252 | 1,211 | 1,205 | 8 | 9 | 7 | 144 | 117 | 158 |

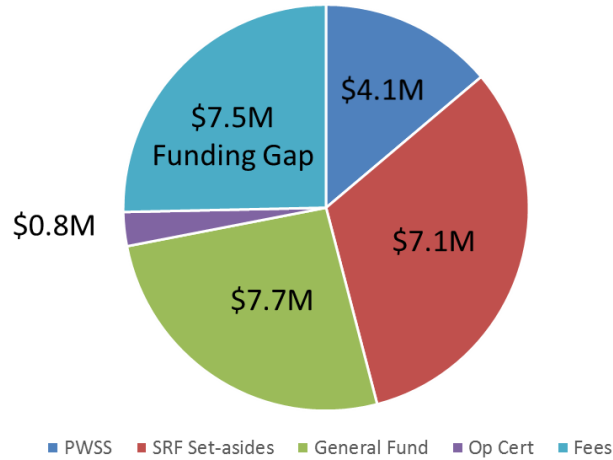
Performance issues have been documented by EPA Region III on two previous occasions:

- US EPA Public Water System Supervision Program, Program Review for the Pennsylvania Department of Environmental Protection Bureau of Water Standards and Facility Regulation (July 2009) identified the impacts of a 2008 hiring freeze that prevented filling vacancies to reach the full additional complement and led to inadequate training of field staff and a lack of adequate oversight of county health departments. These problems continue today.
- US EPA Review of the Bureau of Safe Drinking Water (December 2012) identified that the department was unsuccessful at retaining all allocated drinking water FTEs as of June 2009 due to budget cuts and increasing costs. Further, the report documented that the number of field inspectors was down by 20% since June of 2009. The report also found that as a result of staffing cuts, there was a backlog of required sanitary surveys (full inspections), and a backlog of PADWIS programming modifications and reports.

Program performance is currently under review by EPA Region III. An EPA letter will be forthcoming that further documents Pennsylvania’s poor performance. The state will most likely be directed to develop an action plan to provide the resources necessary to meet minimum program elements. Failure to meet minimum program elements may jeopardize primacy.

TOTAL SAFE DRINKING WATER PROGRAM COSTS AND FUNDING

SDW Program Costs and Funding



Total SDW Program Costs and Funding:

Federal funds (\$11.2):

- PWSS (\$4.1M) – personnel costs (~ 42 FTEs); lab costs; staff training
- SRF Set-asides (\$7.1M) – personnel costs (50 FTEs); capability enhancement programs (training, technical assistance, optimization programs); SWAP; PADWIS; assistance grants/contracts

State funds (\$16M):

- General Fund (~\$7.7M) – personnel costs (78 FTEs)
- Operator Certification Sub-fund (\$0.8M) – Operator Certification costs
- **Funding Gap (\$7.5M)**

Total Costs = Federal (\$11.2) + State (\$16M) = \$27.2M

FEE OBJECTIVE, TITLE AND RATE:

In order to improve program performance, the proposed rulemaking is intended to cover the **funding gap** associated with the state's costs for administering the Safe Drinking Water Program.

The proposed annual fees and increased permit fees apply to all PWSs, including:

- CWSs = 1,969
- NTNCWSs = 1,087
- TNCWSs = 5,493
- Bottled, vended, retail and bulk water systems (BVRB) = 176

| Title | Current | Proposed |
|--|-----------------|------------------|
| Annual Fees: | | |
| Community Water Systems (CWS) | \$ 0 | \$250 - \$40,000 |
| Nontransient Noncommunity Water Systems (NTNC) | \$ 0 | \$100 - \$ 1,000 |
| Transient Noncommunity Water Systems (TNC) | \$ 0 | \$ 50 - \$ 500 |
| Bottled Water Systems | \$ 0 | \$ 2,500 |
| Vended, Retail & Bulk Water Haulers | \$ 0 | \$ 1,000 |
| Permitting Fees (CWSs and NCWSs): | | |
| Permit/Major Amendment | \$ 750 | \$300 - \$10,000 |
| Minor Amendment | \$ 0 | \$100 - \$ 5,000 |
| Operations Permit | \$ 0 | \$ 50 |
| Emergency Permit | \$ 0 | \$ 100 |
| Change in Legal Status | \$ 0 | \$ 100 |
| Permitting Fees (BVRBs): | | |
| Permit/Major Amendment | \$ 750 | \$500 - \$10,000 |
| Minor Amendment | \$ 0 | \$100 - \$ 1,000 |
| Operations Permit | \$ 0 | \$ 50 |
| Change in Legal Status | \$ 0 | \$ 100 |
| Out-of-State Bottled Water | \$ 100 | \$ 1,000 |
| Emergency Permit | \$ 0 | \$ 100 |
| Noncommunity Water System | | |
| Application for Approval | | \$ 50 |
| 4-log Permit | | \$ 50 |
| Feasibility Study Fees: | | |
| Feasibility Study | \$ 0 | \$300 - \$10,000 |
| Monitoring Waiver Fees/Source: | | |
| VOC Use | \$ 0 | \$ 100 |
| SOC Use | \$100 - \$2,000 | \$ 100 |
| SOC Susceptibility | \$100 - \$2,000 | \$ 300 |
| IOC | \$ 0 | \$ 100 |

FEE COLLECTION:

| | Prior Year | Prior Year | Prior Year | Current Year Projected | Future Year Projected | Future Year Projected | Future Year Projected |
|--------------------------------|-------------------|-------------------|-------------------|-------------------------------|------------------------------|------------------------------|------------------------------|
| | FY 12 | FY 13 | FY 14 | FY 15 | FY 16 | FY 17 | FY 18 |
| Annual Fees | 0 | 0 | 0 | 0 | 0 | 0 | 7,650,750 |
| Permit Fees¹ | 105,050 | 129,535 | 141,750 | 171,724 | 171,724 | 171,724 | 500,000 |
| Total | \$105,050 | \$129,535 | \$141,750 | \$171,724 | \$171,724 | \$171,724 | \$8,150,750 |

¹Includes monitoring waiver fees

FUND FEE IS DEPOSITED INTO:

Safe Drinking Water Account

FEE RELATED ACTIVITIES AND COSTS:

In order to improve program performance, the proposed rulemaking is intended to cover the **funding gap** associated with the state's costs for administering the Safe Drinking Water Program.

The funding gap includes the following:

1. New positions:

Approximately 31 new positions are needed to fill the existing gap in staffing levels to improve program performance, ensure primacy obligations are met, and protect public health. These positions include technical services, operations, regional program management, and program development/administration.

Cost: \$3,100,000

2. Funding to alleviate pressure on Federal SRF Set-asides Grant:

The current rate of Cross Application Time Sheets (CATS) charges coded to the SRF Set-asides are not sustainable. Some of these charges will be shifted to the new annual fees. This will also free up more federal funds for capability enhancement activities (water supplier training and technical assistance) and SRF funding for infrastructure projects.

Cost: \$1,600,000

3. Other state costs:

Due to increased costs, other state costs can no longer be covered under existing General Fund allocations. These costs include lab costs, supplies, IT costs, training/travel, and some data management costs.

Cost: \$2,800,000

The proposed fees will total \$ 7.5 million annually and will address the funding gap by augmenting the funds currently coming from the General Fund (~ \$7.7 million). Note: If General Funds do not keep pace with state costs, the funding gap will continue to grow.

The proposed annual fees will most likely be passed on to the 10.7 million customers of these public water systems as a user fee. Per person costs are expected to range from \$0.35 to \$10 per year, depending on the water system size.

Annual fees were determined based on an approximate level of service and then adjusted, as needed, for affordability (i.e., cost per person). The following examples represent the estimated costs and adjusted fees for several system sizes.

- Average DEP salary for sanitarians = \$49.00/hour (includes benefits & operating costs)

- Estimated cost for **small CWS** (pop = 100):

| | |
|--------------------------------------|------------------------------|
| ▪ Prepare/conduct full inspections: | 22.5 hrs/3 yrs = 7.5 hrs |
| ▪ Prepare/conduct other inspections: | 7.5/3 yrs = 2.5 hrs |
| ▪ Determine compliance: | 12 hrs |
| ▪ Maintain PADWIS/eFACTS: | 7.5 hrs |
| ▪ Review plans/assessments/waivers: | 7.5 hrs |
| ▪ Provide technical assist/training: | <u>7.5 hrs</u> |
| | 44.5 hrs @ \$49/hr = \$2,180 |
| | Adjusted fee = \$250 |

- Estimated cost for **medium CWS** (pop = 5,000):

| | |
|--------------------------------------|-------------------------------|
| ▪ Prepare/conduct full inspections: | 30 hrs/3 yrs = 10 hrs |
| ▪ Prepare/conduct other inspections: | 10 hrs/3 yrs = 3.3 hrs |
| ▪ Determine compliance: | 12 hrs |
| ▪ Maintain PADWIS/eFACTS: | 7.5 hrs |
| ▪ Review plans/assessments/waivers: | 10 hrs |
| ▪ Provide technical assist/training | <u>7.5 hrs</u> |
| | 50.3 hrs @ \$49/hr = \$2,465 |
| | Adjusted fee = \$6,500 |

- Estimated cost for **large CWS** (pop = 50,000):

| | |
|--------------------------------------|--------------------------------|
| ▪ Prepare/conduct full inspections: | 75 hrs/3 yrs = 25 hrs |
| ▪ Prepare/conduct other inspections: | 15 hrs/3 yrs = 5 hrs |
| ▪ Determine compliance: | 15 hrs |
| ▪ Maintain PADWIS/eFACTS: | 10 hrs |
| ▪ Review plans/assessments/waivers: | 15 hrs |
| ▪ Provide technical assist/training | <u>10 hrs</u> |
| | 80 hrs @ \$49/hr = \$3,920 |
| | Adjusted fee = \$25,000 |

Permitting fees were determined as follows:

- The number of permits issued over the past three years was obtained from eFACTS. The number of hours per permit type was obtained from a workload analyses.
- A figure of \$64.00 per hour was used for technical staff time.

- Costs were assigned based on relative complexity of permit review.
- Permit fees have not been increased since originally adopted in 1984.

ADDITIONAL INFORMATION:

At least 25 states charge annual fees to augment the cost of their Drinking Water Program. Some of these states charge a flat fee based on the PWS type and size. Other states charge a fee based on population served or the number of service connections. Annual fees for these 25 states range from \$30 - \$160,000.

The following table includes some details about the annual fees for nearby states.

| Examples of Annual Fees for Nearby States | | | | | | | | | | | | | |
|--|---|---------------|---------|---------------|-----|---------|--------|------|-------|----------|---------|---------|---------|
| Delaware | <p>Type: Annual Fee</p> <p>CWSs: Based on \$1.50/connection – Fees range from \$330 - \$32,500</p> <p>NTNCWSs: \$330</p> <p>TNCWSs: \$200</p> | | | | | | | | | | | | |
| New Jersey | <p>Type: Annual Fee</p> <p>CWSs only: Based on population, and whether system has treatment.</p> <table style="margin-left: 40px;"> <thead> <tr> <th></th> <th></th> <th style="text-align: center;">w/o treatment</th> <th style="text-align: center;">w/t</th> </tr> </thead> <tbody> <tr> <td>Low pop</td> <td>25-999</td> <td style="text-align: center;">\$60</td> <td style="text-align: center;">\$120</td> </tr> <tr> <td>High pop</td> <td>>50,000</td> <td style="text-align: center;">\$1,640</td> <td style="text-align: center;">\$3,280</td> </tr> </tbody> </table> | | | w/o treatment | w/t | Low pop | 25-999 | \$60 | \$120 | High pop | >50,000 | \$1,640 | \$3,280 |
| | | w/o treatment | w/t | | | | | | | | | | |
| Low pop | 25-999 | \$60 | \$120 | | | | | | | | | | |
| High pop | >50,000 | \$1,640 | \$3,280 | | | | | | | | | | |
| Virginia | <p>Type: Annual Fee</p> <p>CWSs: Based on \$2.05/connection – Maximum fee is \$160,000</p> <p>NTNCWSs: \$90</p> | | | | | | | | | | | | |

RECOMMENDATION:

The proposed rulemaking provides for a review of the fee structure every three years to ensure that the fees continue to cover the cost of maintaining the program.