

**Notice of Proposed Rulemaking
Department of Environmental Protection
Environmental Quality Board
(25 Pa. Code, Chapter 109)
(Safe Drinking Water)
(Chapter 109 – Public Notification Revisions)**

Preamble

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code, Chapter 109 (relating to Safe Drinking Water). The amendments will strengthen the public notice requirements for imminent threat violations and situations (also known as Tier 1). The amendments will enhance the planning requirements of both the Operation and Maintenance Plan and the Emergency Response Plan sections that relate to public notification. The amendments will revise the delivery requirements for community water systems, as appropriate to the type and size of the water system. Finally, these revisions will provide a few more examples of those situations that need to be reported to the Department within 1 hour of discovery.

This proposal 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 Lisa Daniels, Division of Operations Monitoring and Training, P.O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-2189, 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. Information regarding submitting comments on this proposal appears in Section J of this preamble. 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 proposal is available electronically through the DEP Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

The proposed 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 and Purpose

The purpose of the amendments is to strengthen the public notice requirements for imminent threat violations and situations (also known as Tier 1). The amendments will enhance the planning requirements of both the Operation and Maintenance Plan and the Emergency Response Plan sections that relate to public notification. The amendments will revise the delivery requirements for community water systems, as appropriate to the type and size of the water system. Finally, these amendments will provide a few more examples of those situations that need to be reported to the Department within 1 hour of discovery.

Operation and Maintenance Plan:

- The Department will require water suppliers to maintain contaminant fact sheets as a resource to respond to questions from the consumers and media about health effects and available treatment options.

Emergency Response Plan:

- The Department has specified the information that must be included in an emergency response plan.
- The Department has expanded the list of people suppliers need to communicate and coordinate with during an emergency to include: local emergency management agencies, government agencies, and sensitive sub-populations.
- The Department has included a requirement for procedures for providing an approved alternative water source during an emergency situation.

Delivery methods for Tier 1 public notices:

- Currently the public notification regulation allows water suppliers to choose one or more of the following types of delivery for a Tier 1 notice: broadcast media, posting in conspicuous locations throughout the area served, hand delivery to persons served, or another delivery method approved by DEP.
- The amendments will specify the type of delivery method that must be used based on the system's population size and the type of consumers who are being contacted.
 - To contact bill paying customers, DEP will require water suppliers to provide direct delivery of the Tier 1 public notice by hand delivery, e-mail, or automatic telephone dialing systems.
 - To reach those people who are transient and nontransient users, the amendments will also require suppliers to use broadcast media such as radio or TV.

“Problem Corrected” Notice:

- The amendments now require water suppliers to issue a “problem corrected” notice that a Tier 1 violation or situation has been corrected.

Content of abbreviated public notices:

- The Department is now defining the minimum content elements that must be included in any Tier 1 notice that is delivered by automatic telephone dialing systems, TV scrollers, bullhorn announcements, or radio station news flashes.
 - It is impossible to record the entire Tier 1 public notice on an automatic telephone dialer or expect broadcast media to read the entire message.
 - Furthermore, consumers would become quite annoyed at the length of the message.
 - Consequently, the Department is specifying the immediate and essential elements that need to be included and requiring suppliers to provide a telephone number, or a website where consumers can hear or read the entire notice if they wish.

One-Hour Reporting:

- The Department is including a few more examples of situations that require one hour reporting to the Department. These situations include:
 - An overfeed of a drinking water treatment chemical.
 - A situation that causes negative pressure in the distribution system.
 - A lack of resources that affect operations, such as staff shortages, notification by the power utility of planned lengthy power outages, or imminent depletion of treatment chemical inventories.

In summary, the Board proposes to incorporate these amendments into the Pennsylvania Safe Drinking Water Regulations (25 Pa. Code Chapter 109) in order to strengthen the public notice requirements for imminent threat violations and situations (also known as Tier 1).

The draft proposed amendments were submitted for review to the Small Water Systems Technical Assistance Center Advisory Board (TAC) for review and discussion on May 18, 2006, July 12, 2006, and November 16, 2006. Comments were received from the TAC on November 21, 2006.

E. Summary of Regulatory Requirements

The proposed amendments are more stringent than the current federal requirements under 40 CRF Subpart Q (Public Notification of Drinking Water Violations).

§ 109.407(a)(6) *Violation categories and other situations requiring a public notice.*

This paragraph was amended to replace the word “waterborne” with the term “probable emergency situation” to be consistent with the text under 109.408(a)(7), 109.701(a)(3)(iii) and 109.707(a)(2). The waterborne disease outbreak citation of 109.1 was added for clarity.

§ 109.407(c)(4) *Additional Recipients*

This paragraph was amended to expand the group of individuals notified of a Tier 1 situation from “key public officials” to “additional recipients.” The additional recipients include a water system’s sensitive sub-populations like hospitals, schools, daycare facilities, nursing homes, industrial and commercial users.

§ 109.407(d) *Additional Requirements.*

This subsection was amended to tell water systems that additional planning requirements are found under the Operation and Maintenance Plan and Emergency Response Plan sections.

§ 109.408 *Tier 1 public notice.*

This title was amended to revise “form, manner, and frequency” to “categories, timing and delivery” to accurately reflect the true content of the subsections. This title change occurs under 109.409 (Tier 2 public notice) and under 109.410 (Tier 3 public notice) to maintain consistency within Chapter 109.

§ 109.408(a)(7) *Probable emergency situation.*

This paragraph was amended to include the one-hour reporting cross-reference of 109.701(a)(3)(iii). A phrase was added to qualify that the “probable emergency situation” also had to have a significant potential to have serious adverse effects on human health as a result of short-term exposure. The examples were deleted because of the reference to 109.701(a)(3)(iii).

§ 109.408(b)(5) *“Problem corrected” notice.*

This paragraph was amended to require water suppliers to issue a “problem corrected” public notification for Tier 1 violations or situations.

§ 109.408(c) *Delivery of a Tier 1 public notice.*

This subsection was amended to:

- Specify the forms of **direct** delivery a water supplier must use for contacting each service connection.
- For community water systems that also serve transient and nontransient service connections, require systems to use appropriate broadcast media such as radio or television.
- For community water systems that deliver an abbreviated notice, require that the entire public notice be posted on a website or recorded on a dedicated telephone line.

The Department is seeking comment about whether the population size of 3,301 and more people is the appropriate population level to eliminate hand delivery as a direct delivery option. Is it physically possible for systems serving more than 3,301 people to hand deliver and e-mail public notices within the twenty-four hour time frame?

§ 109.411(b) *Minimum content elements of an abbreviated notice.*

This subsection was amended to specify the minimum content elements that must be included on an abbreviated public notice that is delivered by automatic dialing systems, TV scrollers, bullhorn announcements, or radio station news flashes.

§ 109.701(a)(3) *Compliance Report*

This title was changed to “One-hour reporting requirements” to be descriptive since the requirements under 109.701(a)(3) are one-hour reporting requirements.

§ 109.701(a)(3)(iii) *One-hour reporting examples.*

This subparagraph was amended to add the phrase “a probable emergency situation ” to cross-reference this requirement to the emergency response section. Additionally, the Department has included three more examples of situations that require one-hour reporting which are:

- An overfeed of a drinking water treatment chemical.
- A situation that causes negative water pressure in any portion of the distribution system.
- A lack of resources that affect operations, such as staff shortages, notification by the power utility of planned lengthy power outages, or imminent depletion of treatment chemical inventories.

The Department will be developing guidance to provide additional information about situations that require one hour reporting.

§ 109.702(a)(6) *Operation and Maintenance Plan public notification elements.*

This paragraph was amended to require water suppliers to store additional elements such as EPA contaminant fact sheets and an explanation of their methods of delivery of public notice within their Operation and Maintenance Plan.

§ 109.702(c) *Operation and Maintenance Plan update and storage*

This subsection was amended to clarify that the water supplier must update their Operation and Maintenance plan, place it in secure location(s) and make it available upon request to the Department.

§ 109.707(a) *Emergency Response Plan.*

This subsection was amended to:

- Specify the information that must be included in an emergency response plan.
- For each probable emergency situation, require water suppliers to list contact person names and phone numbers for local emergency management agencies, government agencies, sensitive sub-populations, media, and equipment and chemical suppliers.
- Require water suppliers to develop procedures for providing an approved alternative water supply during an emergency.

§ 109.707(b) and (c) *Emergency Response Plan implementation and storage.*

These subsections were amended to:

- Require water suppliers to implement their emergency response plan when necessary.
- Store their plan in secure location(s).
- Make it available upon request to the Department.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the proposed regulation.

Benefits

The strengthened public notice requirements for imminent threat violations and situations (also known as Tier 1) will provide greater health protection for the public. Specifically, the amendments requiring direct delivery of Tier 1 notices and requiring

systems that have transient and nontransient users to use broadcast media should improve the delivery notification rate during an imminent threat situation. In other words, more people will know what actions they need to take to avoid adverse health effects.

By requiring water suppliers to keep public notice templates and fact sheets onsite, they will be better prepared to handle an emergency situation when it occurs.

By providing more examples of “probable emergency situations” that require one-hour reporting to the Department, the Department expects to consult more often with water suppliers at the beginning of an emergency situation. This consultation should provide greater assistance to both the water industry and the public.

Compliance Costs

Compliance costs to implement the direct delivery requirements for Tier 1 notices will increase for many of the community water systems, except those very small systems who are currently hand delivering their Tier 1 public notices. The greatest increase in cost will be incurred by systems serving more than 3,300 people and will be associated with costs for contracting services for or purchasing an automatic telephone dialing system. These costs will vary based on system size and the number of telephone lines the system has available.

The costs for community water systems serving less than 3,300 people will be based on the number of hours it takes to pay employees their hourly wage to hand deliver public notices to each service connection. For some very small community water systems (serving less than 500 people), the cost to implement the new delivery requirements may be negligible because these systems are currently delivering Tier 1 notices by hand. However, for a community system serving 3,300 people, the cost to deliver a Tier 1 public notice by hand delivery was estimated to be approximately \$1,100.00 for a single Tier 1 event.

The cost estimates below are based on the following assumptions:

Hand delivery using employees

For community water systems serving 3,300 or fewer people, the cost to deliver a Tier 1 public notice by hand delivery was calculated based on the following estimates made by the program:

- Deliver 1 notice to each service connection
- 3,300 people = 1,650 service connections (2 people/connection)
- 1 person can deliver 1 notice every 2 minutes so 30 notices can be delivered each hour
- Average employee wage = \$10/hour

- Delivery time for 1,650 connections = 55 hours (1,650 connections/30 notices per hour)
- Delivery cost = \$550.00 per public notice delivery event (55 hours x \$10/hr)
- Total cost to deliver initial notice and “problem corrected” notices = \$1,100.00

To gather cost estimates for purchasing automatic dialing systems or service contracts with automatic dialing system providers, the Department surveyed 11 vendors and the cost ranges reported below represent the survey results that the Department received from 7 of the vendors.

The cost estimates below for purchasing or contracting an automatic dialing system are based on the following assumptions:

- Costs are based on one 60-second call (Tier 1 notice) and one 30-second call (“problem corrected”) per year.
- Costs do not include employee time to learn, maintain and administer the system or costs for additional phone lines.
- Water suppliers can negotiate different rates with individual vendors.

Purchasing an automatic dialing system (on-site system) – 2 vendor quotes

Water System Population Size	1st Year Costs (Purchase, installation and training)	Annual Costs (Maintenance)
3,301 – 10,000	\$18,500 – 32,500	\$3,700 – 4,350
More than 10,000 population	Not feasible to meet the 24-hour delivery timeframe if using only one phone line.	

The first year cost estimate range was \$18,500 - \$32,500 with an annual cost range of \$3,00 – 4,350 for systems serving between 3,300 and 10,000 people. In order to meet the 24-hour delivery timeframe, water systems may have to install additional phone lines.

Water systems serving more than 10,000 people could not purchase and use an on-site automatic dialing system because they could not meet the 24-hour delivery timeframe for such a large population. For example, a system serving 20,000 people (10,000 service connections) would need 10,000 minutes to notify each service connection if using only one telephone line. Assuming that calls aren’t placed between the hours of midnight and 6 AM, the water supplier really only has 18 hours of time (1,080 minutes) to place the calls. In this example only 1,080 calls could be made of the 10,000 calls that are needed unless multiple phones lines are used.

Contracted service with an automatic dialing system provider – 5 vendor quotes

Water System Population Size	1st Year Costs (Purchase, installation and training)	Annual Costs (Maintenance, per call cost, database administration)
3,301 – 10,000	\$4,000 – 29,000	\$2,300 – 16,500
10,001 – 30,000	\$4,000 – 29,000	\$4,500 – 20,000
30,001 – 50,000	\$4,000 – 29,000	\$6,500 – 25,000
50,001 – 100,000	\$4,000 – 29,000	\$13,250 – 37,500
More than 100,000	\$4,000 – 29,000	\$26,000 – 187, 500+

The cost range for all population sizes for the first year cost of using a contracted service provider was \$4,000 - \$29,000. The annual costs varied based on population size.

Compliance Assistance Plan

The proposed revisions address additional planning and delivery requirements. As a result, financial assistance should not be necessary.

Paperwork Requirements

The proposed revisions address additional planning and delivery requirements. As a result, some changes to forms, reports and other paperwork are expected.

G. Pollution Prevention

Not applicable.

H. 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.

I. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on _____, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with

a copy of the detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. Public Comments

Written Comments – Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by _____ (within 60 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by _____ (within 60 days following publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments – Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by _____. A subject heading of the proposal and a return name and address must be included in each transmission.

K. Public Hearings

It is not anticipated that public meetings or hearings will be required.

BY:

KATHLEEN A. MCGINTY
Chairperson
Environmental Quality Board