

**Notice of Proposed Rulemaking
Department of Environmental Protection
Environmental Quality Board
(25 Pa. Code, Chapter 109)
(Safe Drinking Water Program Fees)**

Preamble

The Environmental Quality Board (Board) proposes to amend 25 *Pa. Code*, Chapter 109 (relating to Safe Drinking Water). The proposed amendments outline new annual fees, revised permit fees and other fees related to the administration of the Safe Drinking Water Program.

The proposal was adopted by the Board at its meeting of _____.

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 Kevin S. McLeary, Chief, Facility Permits Section, Division of Planning and Permits, P.O. Box 8774, Rachel Carson State Office Building, Harrisburg, PA 17105-8774, (717) 787-8184 or William Cumings, 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). This proposal is available electronically through the DEP Web site (<http://www.depweb.state.pa.us>).

C. Statutory Authority

The proposed rulemaking is being made under the authority of Section 4(c) of the Pennsylvania Safe Drinking Water Act (35 P.S. § 721.4(c)), which grants the Board the authority to establish fees for permit applications, laboratory accreditation and other services, and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20) which authorizes the Board to promulgate rules and regulations necessary for the performance of the work of the Department.

D. Background and Purpose

Pennsylvania is ranked fourth in the nation in terms of the number of public water systems, with nearly 9,500 water systems across the Commonwealth. The Department is responsible for regulating all public water systems 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 Drinking Water Program.

The proposed rulemaking is 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 the loss of primacy for the Drinking Water Program and associated funding.

As noted previously, the Board has the authority to establish fees for permit applications, laboratory certification and other services. By law, such fees are to bear a reasonable relationship to the cost of a program element or providing a service. The services or minimum program elements of the Drinking Water Program include, but are not limited to, the following:

- Conducting monitoring activities, such as sanitary surveys and other inspections.
- Collecting and analyzing drinking water samples.
- Determining compliance with the regulations, a permit or order.
- Taking appropriate enforcement actions to compel compliance.
- Reviewing applications, plans, reports, feasibility studies and special studies.
- Issuing permits.
- Conducting evaluations, such as filter plant performance evaluations and other site surveys.
- Tracking, updating and maintaining water supply inventory, sample file, and enforcement data in various data management systems.
- Meeting all state and federal recordkeeping and reporting requirements.
- Conducting training.
- Providing technical assistance.
- Responding to water supply emergencies.

The proposed rulemaking is intended to supplement state costs for administering the Drinking Water Program. The proposed fees will total nearly \$8.4 million annually and will replace approximately 75% of the program funding currently coming from the General Fund. That means \$8.4 million in General Funds will no longer be needed to administer the Drinking Water Program. 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 \$0.50 to \$12 per year, depending on the water system size.

The proposed annual fees apply to all community water systems (CWS) (count = 2,068) and all bottled, vended, retail and bulk (BVRB) water systems (count = 171). The amended permit fees apply to all public water systems (count = 9,429), including CWSs, noncommunity water systems (NCWS) and BVRBs.

Due to the current economic climate and the fact that the majority of NCWSs are small businesses, the Department has opted not to require annual fees for NCWSs at this time. The issue of whether to adopt annual fees for NCWSs will be re-evaluated in three years.

As provided in Section 14 of the Safe Drinking Water Act (35 P.S. § 721.14), all fees will be paid into the State Treasury into a special restricted revenue account in the General Fund known as the Safe Drinking Water Account administered by the Department. The funds may only be used for such purposes as are authorized under the Act.

At least 23 states in the nation charge annual fees to supplement program costs. Three additional states (Kentucky, Maryland and Oregon) anticipate promulgating annual fees within the next few years. Details about other states' annual fees are summarized below.

Summary of Public Water System Fees Levied by Other States	
State	Fee
Alaska	Type: Fee for Service Examples: Sanitary survey - \$340 +, other inspections - \$55/hour
Arkansas	Type: Annual Fee CWSs and NTNCWSs: Based on # connections \$0.30/connection/month, minimum fee = \$250 TNCWSs: \$125
Colorado	Type: Annual Fee CWSs: Based on population Surface Water: ranges from \$75 - \$21,630 Ground Water: ranges from \$75 - \$4,450 NTNCWSs: ranges from \$75 - \$4,450 TNCWSs: ranges from \$75 - \$3,960
Delaware	Type: Annual Fee CWSs: Based on # service connections, ranges from \$50 - \$3,000 NTNCWSs: \$50 TNCWSs: \$25
Florida	Type: Annual Fee CWSs: Based on permitted design capacity Ranges from \$100 – \$6,000 NTNCWSs: \$100 TNCWSs: \$50
Idaho	Type: Annual Fee CWSs and NTNCWSs: Based on # connections 1-20 \$100 21-184 \$5/connection, max. \$735 185-3,663 \$4/connection, max. \$10,988 >3,664 \$3/connection TNCWSs: \$25
Indiana	Type: Annual Fee CWSs: Based on # connections - < 400 connections \$350 ≥ 400 connections \$0.95/connection NTNCWSs: Based on population – ranges from \$150 - \$300 TNCWSs: Based on source water type – ranges from \$100 - \$200

Summary of Public Water System Fees Levied by Other States																
State	Fee															
Kansas	Type: Annual Fee CWSs: Capped at \$0.002 per 1,000 gallons of water sold															
Louisiana	Type: Annual Fee CWSs: Based on # connections, \$3.20/connection															
Maine	Type: Annual Fee Base Fee (\$50) + ((per capita rate) x (pop)) Cap = \$30,000															
Michigan	Type: Annual Fee CWSs: Based on population, ranges from \$360 - \$122,000 NTNCWSs: \$440 TNCWSs: \$103															
Minnesota	Type: Annual Fee CWSs: Based on # connections, \$6.36/connection															
Mississippi	Type: Annual Fee CWSs: Based on # connections, \$3.00/connection, cap = \$40,000															
Missouri	Type: Annual Fee CWSs only: Based on # connections, whether connections are metered, and the size of the meters. \$1.08 - \$3.24/connection															
Montana	Type: Annual Fee CWSs: Based on # connections – \$2.00/connection, Minimum fee = \$100 NTNCWSs: \$100 TNCWSs: \$50															
New Jersey	Type: Annual Fee CWSs only: Based on population, and whether system has treatment. <table border="0" style="margin-left: 40px;"> <thead> <tr> <th></th> <th>w/o treatment</th> <th>w/t</th> </tr> </thead> <tbody> <tr> <td>25-999</td> <td>\$60</td> <td>\$120</td> </tr> <tr> <td>1,000-9,999</td> <td>\$360</td> <td>\$720</td> </tr> <tr> <td>10,000-49,999</td> <td>\$790</td> <td>\$1,580</td> </tr> <tr> <td>>50,000</td> <td>\$1,640</td> <td>\$3,280</td> </tr> </tbody> </table>		w/o treatment	w/t	25-999	\$60	\$120	1,000-9,999	\$360	\$720	10,000-49,999	\$790	\$1,580	>50,000	\$1,640	\$3,280
	w/o treatment	w/t														
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1,000-9,999	\$360	\$720														
10,000-49,999	\$790	\$1,580														
>50,000	\$1,640	\$3,280														
Ohio	Type: Annual Fee CWSs: Based on sliding scale of # connections, min. \$112 For 100 or more connections, fee ranges from \$0.76 - \$1.92/connection <table border="0" style="margin-left: 40px;"> <thead> <tr> <th># Connections</th> <th></th> </tr> </thead> <tbody> <tr> <td>278 (pop=750)</td> <td>\$534</td> </tr> <tr> <td>1,222 (pop=3,300)</td> <td>\$2,346</td> </tr> <tr> <td>3,704 (pop=10,000)</td> <td>\$5,482</td> </tr> <tr> <td>18,518 (pop=50,000)</td> <td>\$20,370</td> </tr> <tr> <td>92,592 (pop=250,000)</td> <td>\$85,185</td> </tr> </tbody> </table> NTNCWSs: ranges from \$112 - \$16,820 TNCWSs: ranges from \$112 - \$792	# Connections		278 (pop=750)	\$534	1,222 (pop=3,300)	\$2,346	3,704 (pop=10,000)	\$5,482	18,518 (pop=50,000)	\$20,370	92,592 (pop=250,000)	\$85,185			
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Summary of Public Water System Fees Levied by Other States																
State	Fee															
Oklahoma	Type: Annual Fee All PWSs: Flat fee for inspections + Flat fee for SDWA activities + Lab costs <table style="margin-left: 40px;"> <tr> <td>GW</td> <td>\$72</td> <td>+</td> <td>\$1,167</td> <td>+</td> </tr> <tr> <td>SW</td> <td>\$143</td> <td>+</td> <td>\$4,980</td> <td>+</td> </tr> </table>	GW	\$72	+	\$1,167	+	SW	\$143	+	\$4,980	+					
GW	\$72	+	\$1,167	+												
SW	\$143	+	\$4,980	+												
Rhode Island	Type: Annual License Fee CWSs: Based on # connections – \$1.50 per connection, ranges from \$330 - \$32,500 NTNCWSs: \$330 TNCWSs: \$200															
South Carolina	Type: Annual Fee CWSs and NTNCWSs: <table style="margin-left: 40px;"> <thead> <tr> <th># Connections</th> <th>Base amount + rate/tap</th> <th></th> </tr> </thead> <tbody> <tr> <td>278 (pop=750)</td> <td>\$669 + \$3.35/tap</td> <td>\$1,600</td> </tr> <tr> <td>1,222 (pop=3,300)</td> <td>\$3,259 + \$1.70/tap</td> <td>\$5,336</td> </tr> <tr> <td>18,518 (pop=50,000)</td> <td>\$20,309 + \$0.40/tap</td> <td>\$27,716</td> </tr> <tr> <td>92,592 (pop=250,000)</td> <td>\$30,559 + \$0.15/tap</td> <td>\$44,448</td> </tr> </tbody> </table> TNCWSs: \$250	# Connections	Base amount + rate/tap		278 (pop=750)	\$669 + \$3.35/tap	\$1,600	1,222 (pop=3,300)	\$3,259 + \$1.70/tap	\$5,336	18,518 (pop=50,000)	\$20,309 + \$0.40/tap	\$27,716	92,592 (pop=250,000)	\$30,559 + \$0.15/tap	\$44,448
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Texas	Type: Annual Fee CWSs and NTNCWSs: Based on # connections – <table style="margin-left: 40px;"> <tr> <td><25</td> <td>\$75</td> </tr> <tr> <td>25-99</td> <td>\$150</td> </tr> <tr> <td>≥100</td> <td>#C^{0.70} x \$7.40</td> </tr> </table> TNCWSs: \$75	<25	\$75	25-99	\$150	≥100	#C ^{0.70} x \$7.40									
<25	\$75															
25-99	\$150															
≥100	#C ^{0.70} x \$7.40															
Virginia	Type: Annual Fee CWSs: Based on # connections –\$2.05/connection, cap = \$160,000 <table style="margin-left: 40px;"> <thead> <tr> <th># Connections</th> <th></th> </tr> </thead> <tbody> <tr> <td>278 (pop=750)</td> <td>\$570</td> </tr> <tr> <td>1,222 (pop=3,300)</td> <td>\$2,505</td> </tr> <tr> <td>18,518 (pop=50,000)</td> <td>\$37,962</td> </tr> <tr> <td>92,592 (pop=250,000)</td> <td>\$160,000</td> </tr> </tbody> </table> NTNCWSs: \$90	# Connections		278 (pop=750)	\$570	1,222 (pop=3,300)	\$2,505	18,518 (pop=50,000)	\$37,962	92,592 (pop=250,000)	\$160,000					
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92,592 (pop=250,000)	\$160,000															
Washington	Type: Annual Fee Based on # connections – \$0.25/connection															

The proposed rulemaking was presented to the Technical Assistance Center for Small Drinking Water Systems (TAC) on March 9, 2010. The TAC formed a subcommittee to evaluate the impact of the rulemaking. The subcommittee met with the Department on June 2, 2010, to answer questions, and for the Department to present data. The subcommittee presented their recommendations to TAC at their meeting on June 18, 2010. TAC made several recommendations. Some of TAC's recommendations were incorporated into this proposed rulemaking. Other recommendations were incorporated into this preamble as a means to solicit

further public comment. Refer to Section E. for more information about TAC's recommendations.

E. Summary of Regulatory Requirements

§ 109.5(a). Organization of chapter

This subsection was modified to add the fact that new Subchapter N applies to all public water systems.

§ 109.305. Fees.

This section is being reserved. Data management fees were a one-time fee and are being deleted. Monitoring waiver fees are being relocated to the new Subchapter N.

§ 109.503(c). Permit Fees.

Permit fees for CWSs and NCWSs are being relocated to the new Subchapter N.

§ 109.1005(i). Permit Fees.

Permit fees for BVRBs are being located to the new Subchapter N.

§ 109.1108. Fees.

Fees for activities under the lead and copper rule are being relocated to the new Subchapter N.

§ 109.1401. General.

This section contains the general requirements for fees being collected under the Act.

§ 109.1402. Annual Fees.

Subsection (a) contains the general requirements for annual fees being collected under the Safe Drinking Water Act. The proposed annual fees for CWSs are based on population, and range from \$300 to \$60,000. The per-person costs range from \$0.50 - \$12.00/person/year.

Proposed Community Water System Annual Fees (Based on Population)		
Population Served	Annual Fee	Cost/Person/Year
25 - 100	\$300	\$3.00 - \$12.00
101 – 500	\$500	\$1.00 - \$4.95
501 – 1,000	\$1,500	\$1.50 - \$2.99
1,001 – 2,000	\$3,000	\$1.50 - \$3.00
2,001 – 3,300	\$5,000	\$1.50 - \$2.50
3,301 – 5,000	\$7,500	\$1.50 - \$2.27
5,001 – 10,000	\$10,000	\$1.00 - \$2.00
10,001 – 25,000	\$20,000	\$0.80 - \$2.00
25,001 – 50,000	\$30,000	\$0.60 - \$1.20
50,001 – 75,000	\$40,000	\$0.53 - \$0.80
75,001 – 100,000	\$50,000	\$0.50 - \$0.67
100,001 or more	\$60,000	≤ \$0.60

The annual fees are intended to bear a reasonable relationship to the actual cost of providing services. Based on a workload analysis, the Department estimates the minimum costs for providing services to various sizes of CWSs are as follows:

Estimated Minimum Cost of Providing Services							
Activity	Hours/Activity/Year for CWSs Serving the Following Population						
	<100	125	750	3,300	5,000	50,000	>100,000
Conduct sanitary surveys	5	5	7.5	7.5	7.5	10	37.5
Conduct other inspections	0	4	4	5.5	7.5	10	10
Determine compliance	12	12	12	12	12	15	15
Maintain PADWIS/eFACTS	7.5	7.5	7.5	7.5	7.5	10	10
Review reports/plans	2	2	4	5.5	7.5	7.5	7.5
Provide technical assistance/training	7.5	7.5	7.5	7.5	7.5	7.5	7.5
Conduct FPPE evaluations	0	0	0	0	0	25	25
Total Hours	34	38	42.5	45.5	49.5	85	112.5
@ \$40/hr =	\$1,360	\$1,520	\$1,700	\$1,820	\$1,980	\$3,400	\$4,500

The following table shows the relationship between the proposed annual fees (based on population) and the cost of providing services.

Annual Fees (Based on Population) vs. Cost of Providing Services			
Population Served	Annual Fee	Cost of Services	Percent of Cost of Services
25 - 100	\$300	\$1,360	22 %
101 – 500	\$500	\$1,520	33 %
501 – 1,000	\$1,500	\$1,700	88 %
1,001 – 2,000	\$3,000	\$1,700	176 %
2,001 – 3,300	\$5,000	\$1,820	275 %
3,301 – 5,000	\$7,500	\$1,980	379 %
5,001 – 10,000	\$10,000	\$1,980	505 %
10,001 – 25,000	\$20,000	\$1,980	1,010 %
25,001 – 50,000	\$30,000	\$3,400	882 %
50,001 – 75,000	\$40,000	\$3,400	1,176 %
75,001 – 100,000	\$50,000	\$4,500	1,111 %
100,001 or more	\$60,000	\$4,500	1,333 %

The Percent of Cost of Services column is intended to show where water systems are paying less than the Department’s cost to provide services, and where water systems are over-paying for the Department’s services.

The Department is seeking comment on whether the proposed annual fee structure (based on population) is the most appropriate method. There are several options available for assessing annual fees. Some states assess fees for services rendered. Other states assess fees based on the number of service connections. Some states set minimum and maximum fees, and others do not. There are advantages and disadvantages with each of these methods. As per the Safe Drinking Water Act, fees must bear a reasonable relationship to the actual cost of providing services. The Department also factored in affordability and equitability issues (i.e., ability to pay, or cost per person or household).

For comparison purposes, TAC requested that the Department provide annual fee estimates using several other options. The Department is providing fee estimates for the following additional options:

1. Annual fee based on the number of service connections (using a flat rate per connection, and no minimum or maximum fees).
2. Annual fee based on the number of service connections (using a sliding scale rate per connection and a minimum fee).

Note: TAC also requested the Department to provide an estimate of fees using equivalent dwelling units (EDU). However, the Department does not have access to information about commercial and industrial users of water systems and therefore cannot provide an estimate using this option.

Option #1: Annual Fees Based on Flat Rate Per Number of Connections

Based on the revenue required and the total number of community water system connections, the estimated fee per connection would be \$1.75.

Option #1: Annual Fees Based on Flat Rate/Connection vs. Cost of Providing Services				
Population Served	# Service Connections	Annual Fee	Cost of Services	% of Cost of Services
25	9	\$15.75	\$1,360	1 %
125	46	\$80.50	\$1,520	5 %
750	278	\$486.50	\$1,700	29 %
3,300	1,222	\$2,138.50	\$1,820	117 %
10,000	3,704	\$6,482.00	\$1,980	327 %
50,000	18,518	\$32,406.50	\$3,400	953 %
100,000	37,037	\$64,814.75	\$4,500	1,440 %
120,000	45,052	\$78,841.00	\$4,500	1,752 %
160,000	59,259	\$103,703.25	\$4,500	2,305 %
250,000	92,592	\$162,036.00	\$4,500	3,601 %
660,000	244,444	\$427,777.00	\$4,500	9,506 %
820,000	303,704	\$531,482.00	\$4,500	11,811 %
1,600,000	592,593	\$1,037,037.75	\$4,500	23,045 %

Regarding Option #1:

- If the fees are passed on to consumers as a user fee, each service connection would pay the same amount = \$1.75.
- Smaller systems are paying considerably less than the Department’s cost to provide basic services.
- Larger systems are paying as much as 23,045 % more than the Department’s costs.
- As a ratio of the percentage of costs to provide services, larger systems would be paying $23,045 / 1.16 = 19,866$ times as much as smaller systems.

Option #2: Annual Fees Based on Sliding Rate Per Number of Connections With a Minimum Fee

Based on the revenue required and the total number of CWS connections, the estimated sliding scale fee per connection would be as follows:

Sliding Scale Fee Per Connection	
Number of Service Connections	Fee Per Connection
≤ 49	\$250 total fee
50 – 99	\$500 total fee
100 – 2,499	\$3.25
2,500 – 4,999	\$3.00
5,000 – 7,499	\$2.75
7,500 – 9,999	\$2.50
10,000 – 14,999	\$2.10
15,000 – 24,999	\$1.75
25,000 – 49,999	\$1.50
50,000 – 99,999	\$1.50
100,000 – 149,999	\$1.25
150,000 – 199,999	\$1.25
200,000 or more	\$1.00

The sliding scale fee per connection would result in the following annual fees:

Option #2: Annual Fees Based on Sliding Scale/Connection vs. Cost of Providing Services				
Population Served	# Service Connections	Annual Fee	Cost of Services	% of Cost of Services
25	9	\$250.00	\$1,360	18 %
140	52	\$500.00	\$1,520	33 %
750	278	\$903.50	\$1,700	54 %
3,300	1,222	\$3,971.50	\$1,820	218 %
10,000	3,704	\$11,112.00	\$1,980	561 %
50,000	18,518	\$32,406.50	\$3,400	953 %
100,000	37,037	\$55,555.50	\$4,500	1,235 %
120,000	45,052	\$67,578.00	\$4,500	1,502 %
160,000	59,259	\$88,888.50	\$4,500	1,975 %
250,000	92,592	\$138,888.00	\$4,500	3,086 %
660,000	244,444	\$244,444.00	\$4,500	5,432 %
820,000	303,704	\$303,704.00	\$4,500	6,749 %
1,600,000	592,593	\$592,593.00	\$4,500	13,169 %

As a ratio of the percentage of costs to provide services, large systems would be paying 13,168 / 18.38 = 716 times as much as small systems.

Below is a table that compares all three methods of calculating fees.

Comparison of Proposed Annual Fees and Options #1 and #2				
Population Served	# Service Connections	Proposed Fees (Per Pop)	Option #1 (Flat Rate per Connection)	Option #2 (Sliding Rate per Connection)
25	9	\$300	\$15.75	\$250.00
125	46	\$500	\$80.50	\$250.00
750	278	\$1,500	\$486.50	\$903.50
3,300	1,222	\$5,000	\$2,138.50	\$3,971.50
10,000	3,704	\$10,000	\$6,482.00	\$11,112.00
50,000	18,518	\$30,000	\$32,406.50	\$32,406.50
100,000	37,037	\$50,000	\$64,814.75	\$55,555.50
120,000	45,052	\$60,000	\$78,841.00	\$67,578.00
160,000	59,259	\$60,000	\$103,703.25	\$88,888.50
250,000	92,592	\$60,000	\$162,036.00	\$138,888.00
660,000	244,444	\$60,000	\$427,777.00	\$244,444.00
820,000	303,704	\$60,000	\$531,482.00	\$303,704.00
1,600,000	592,593	\$60,000	\$1,037,037.75	\$592,593.00

Regarding the other fees in subsection (a), fees for bottled water systems are \$10,000, and fees for vended, retail and bulk water hauling systems are \$500. There are no annual fees for NCWSs.

Subsection (b) specifies that the number of customers served shall be taken from the Pennsylvania Drinking Water Information System at the time of billing for the annual fee.

Subsection (c) contains a schedule of payments for the annual fees. As requested by TAC, the Department will allow quarterly payments for fees of \$10,000 or more.

§109.1403. Monitoring waiver fees.

Subsection (a) contains the fees for waiving the monitoring requirements for volatile organic chemicals (VOC), synthetic organic chemicals (SOC), and inorganic chemicals (IOC) for systems with a single source of drinking water.

Subsection (b) contains the fees for renewing a waiver from monitoring requirements for systems with a single source of drinking water.

Subsection (c) contains the fees for waiving the monitoring requirements for systems with more than one source of drinking water.

§109.1404. Community and noncommunity water system permitting fees.

The proposed permitting fees were determined using a workload analysis. Costs were assigned based on the relative complexity of the permit review.

Subsection (a) contains the fee schedule for applications for construction permits or major construction permit amendments under subsection 109.503 (relating to public water system construction permits), except for an application for BVRB facilities under § 109.1005.

Subsection (b) contains the fee schedule for requests for minor construction permit amendments under subsection 109.503, except for a change in legal status.

Subsection (c) contains the fee for changes in legal status of the permit.

Subsection (d) contains the fee for new or amended operations permits under section 109.504.

Subsection (e) contains the fee for a request for an emergency permit.

§109.1405. Permitting fees for bottled water and vended water systems, retail water facilities, and bulk water hauling systems.

Subsection (a) contains the fees for construction permits or major construction permit amendments under § 109.1005 (relating to permit requirements), except an out-of-state facility or system using finished water as its sole source of water.

Subsection (b) contains fees for a bottled water system, retail water facility or bulk water hauling system purchasing finished water, as its sole source of water.

Subsection (c) contains the fees for an out-of-State bottled water system submitting proof of out-of-State approval under § 109.1005.

Subsection (d) contains the fees for minor construction permit amendments under § 109.1005, except for a change in legal status.

Subsection (e) contains the fees for a change in legal status, such as a transfer of ownership, incorporation or merger,

Subsection (f) contains the fees for a new or amended operations permit.

Subsection (g) contains the fees for an emergency permit.

§109.1406. Feasibility Study.

This section contains the fees for feasibility study and pilot study review services from the Department.

§109.1407. Noncommunity Water System Application for Approval.

This section contains the fees for an Application for Approval for a NCWS that is released from the obligation to obtain a construction and an operation permit under § 109.505 (relating to requirements for noncommunity water systems).

§109.1408. Noncommunity Water System 4-Log Permit.

This section contains the fees for NCWS demonstrating 4-log treatment of viruses under subchapter M (relating to Additional requirements for groundwater sources).

§109.1409. Payment of fees.

This section contains requirements for paying the fees required by subchapter N.

§109.1410. Disposition of funds.

As per the Safe Drinking Water Act, this section requires that all fees be paid into the State Treasury into a special restricted revenue account in the General Fund known as the Safe Drinking Water Account, which is to be administered by the Department for use in protecting the public from the hazards of unsafe drinking water.

§109.1411. Failure to remit fees.

As requested by TAC, this section contains provisions for the addition of 6% interest for systems which do not pay their annual fees in a timely manner.

This section also allows the Department to suspend technical services, such as issuing monitoring waivers, plan approvals or permits, for water systems with delinquent fees in excess of 180 days.

§109.1412 Evaluation of fees.

This section requires the Department to provide the Board with an evaluation of the fees in the Chapter and recommend regulatory changes to the Board to address any disparity between the program income generated by the fees and the Department's cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.

F. Benefits, Costs and Compliance

Benefits

This proposed rulemaking will allow the Department to cover the costs of administering the Safe Drinking Water Program without relying on the General Fund and taxpayers to fund the program. The proposed rulemaking will shift the cost of program administration to users of the program, rather than taxpayers across the entire state. Program costs are directly tied to the resources needed to meet federal and state mandates for minimum program elements. Failure to meet minimum program elements may put the public in harm's way and may result in the loss of primacy.

Compliance Costs

The costs to comply with this proposed rulemaking depend on the size of the public water system, and are stated directly in the proposed rulemaking.

Compliance Assistance Plan

No compliance assistance plan is necessary.

Paperwork Requirements

The only additional paperwork necessary for compliance with this proposed rulemaking is that associated with the payment of the annual fee.

G. Sunset Review

The Department will review the adequacy of the regulation every three years. The Department will consider the costs to adequately implement the Safe Drinking Water program, and compare these costs with the fees collected under this regulation. If the fees collected under this regulation are inadequate to cover the costs to adequately implement the Safe Drinking Water program, the fees will be changed through the regulatory process.

H. Regulatory Review

Under section 5(a) (and (f) of the Regulatory Review Act (71 P.S. §745.5(a) and (f)), on _____ 2010, the Department submitted a copy of the proposed rulemaking to the Legislative Reference Bureau for publication of notice of proposed rulemaking to the *Pennsylvania Bulletin*, and to the Independent Review Commission (IRRC). In accordance with section 5(f) of the act (71 P.S. § 745(f) the Department will submit the proposed regulations and the required material to the Chairpersons of the Senate and House Environmental Resources and Energy Committees no later than the second Monday after the date by which both Committees' designations have been published in the *Pennsylvania Bulletin*. In addition to submitting the proposed amendments, the Department provided IRRC and will provide the Committees with a copy of a 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 Regulatory Review 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.

I. Public Comments

The Department is particularly interested in comments regarding economic impacts and treatment technologies, including levels of treatment and associated costs, from industries covered by this proposed rulemaking. Comments on this and other aspects of the draft regulation can be submitted in hard or electronic copy as explained below.

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 17105-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions, or objections must be received by the Board by (within 30 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 30 days of 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 _____ (within 30 days of publication in the *Pennsylvania Bulletin*). A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within two working days, the comments should be retransmitted to ensure receipt.

BY:

John Hanger
Chairman
Environmental Quality Board