

**Notice of Final Rulemaking
Department of Environmental Protection
Environmental Quality Board
(25 Pa. Code, Chapter 109 – Safe Drinking Water)
(Lead and Copper Rule Short Term Revisions)**

Order

The Environmental Quality Board (Board) by this Order amends 25 Pa. Code, Chapter 109 (relating to Safe Drinking Water). The amendments incorporate provisions of the federal *Lead and Copper Rule: Short Term Regulatory Revisions* to retain primary enforcement authority (primacy). These amendments will provide for increased protection against, and consumer awareness of, exposure to lead in public water systems. The Lead and Copper Rule Short Term Revisions build upon the existing Lead and Copper Rule and strengthen implementation of the monitoring, public education, customer awareness, and lead service line replacement provisions.

This order 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 Lisa Daniels, Chief, Division of Operations Monitoring and Training, P.O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-4018, 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. 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 Department of Environmental Protection (DEP) website (<http://www.depweb.state.pa.us>).

C. Statutory Authority

This 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. §§ 510-7 and 510-20).

D. Background and Purpose

This final-form rulemaking will amend the existing Lead and Copper Rule (LCR) set forth in 25 Pa. Code §§ 109.1101-109.1107. The LCR was published in the *Pennsylvania Bulletin* as final rulemaking on December 24, 1994. The primary goal of the LCR is to reduce lead and copper levels at consumers' taps, thereby reducing the health risks associated with lead and copper. The pervasiveness of lead contamination in public drinking water systems is well documented. Lead and copper leach into the drinking water from solder, pipes, and fixtures.

The severity of contamination depends on the amount of lead or copper in the distribution system and the consumers' home plumbing, and the corrosiveness of the water. The original LCR established comprehensive monitoring requirements for lead and copper at the consumer's tap and treatment technique requirements for optimal corrosion control, which include public education and lead service line replacement.

These amendments will incorporate the provisions of the Federal *Lead and Copper Rule: Short Term Regulatory Revisions* that was promulgated by the United States Environmental Protection Agency (EPA) on October 10, 2007 (72 FR 57781). This final-form rulemaking will amend the Department's Safe Drinking Water Regulations as follows:

1. Clarify the definition of "tap" for lead and copper sampling to be a tap that provides water for drinking.
2. Rescind the provision that allows water systems to remain on a reduced monitoring frequency if either the lead or copper action level is exceeded. Water systems must meet both water quality parameter ranges and the lead and copper action levels to remain on a reduced monitoring schedule.
3. Require water suppliers to provide a "consumer tap notice" to consumers whose taps are sampled. This notice must include the lead results for the tap that was sampled, an explanation of the health effects of lead, and a list of steps consumers can take to reduce exposure to lead in drinking water.
4. Revise the public education and Consumer Confidence Report (CCR) provisions (with respect to lead) to clarify the mandatory language, expand delivery requirements, and require an informational statement in all CCRs.
5. Require water systems to reevaluate lead service lines (LSL) previously deemed "replaced" through testing if the system resumes a LSL replacement program.

One provision of the expanded delivery requirements for a public education program is that water suppliers are required to contact the local public health agency even if the agency is located outside of the water system's service area. The local public health agency is the local board or department of public health that has jurisdiction over the water system's service area. To assist public water systems in identifying the local public health agencies that they must contact as part of a public education program, included below is a list of the individual County Health Departments and the PA Department of Health District Offices.

County Health Department (CHD) Offices

Allegheny CHD

Public Drinking Water Program
Frank B. Clack Health Center
3901 Penn Avenue, Building 5
Pittsburgh, PA 15224-1318
Phone: 412-578-8047

Chester CHD

Government Services Center
601 Westtown Road, Suite 090
P.O. Box 2747
West Chester, PA 19380-0990
Phone: 610-344-6225

Bucks CHD

1282 Almshouse Road
Doylestown, PA 18901
Phone: 215-345-3318

Erie CHD

606 West 2nd Street
Erie, PA 16507
Phone: 814-451-6700

County Health Department (CHD) Offices (cont.)

Montgomery CHD

Human Services Building
P.O. Box 311
1430 DeKalb St.
Norristown, PA 19404
Phone: 610-278-5117

Philadelphia CHD

1101 Market St.
Philadelphia, PA 19107
Phone: 215-685-5670

PA Department of Health District Offices

Southeast District

Berks, Delaware, Lancaster,
Montgomery, Philadelphia, Schuylkill
442 Reading State Office Building
625 Cherry Street
Reading, PA 19602
Phone: 610-378-4352

Northeast District

Carbon, Lackawanna, Lehigh,
Luzerne, Monroe, Northampton,
Pike, Susquehanna, Wayne, Wyoming
665 Carey Avenue, Suite 5
Wilkes Barre, PA 18706-5485
Phone: 570-826-2062

Southcentral District

Adams, Bedford, Blair, Cumberland,
Dauphin, Franklin, Fulton,
Huntingdon, Juniata, Lebanon Mifflin,
Perry, York
30 Kline Plaza
Harrisburg, PA 17104
Phone: 717-787-8092

Northcentral District

Bradford, Centre, Clinton, Columbia,
Lycoming, Montour, Northumberland,
Potter, Snyder, Sullivan, Tioga,
Union
Water Tower Square, Suite 109
1000 Commerce Park Drive
Williamsport, PA 17701-5475
Phone: 570-327-3400

Southwest District

Armstrong, Beaver, Butler, Cambria,
Fayette, Greene, Indiana, Somerset,
Washington, Westmoreland
514 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Phone: 412-565-5101

Northwest District

Cameron, Clarion, Clearfield,
Crawford, Elk, Forest, Jefferson,
Lawrence, McKean, Mercer,
Venango, Warren
19 McQuiston Drive
Jackson Center, PA 16133
Phone: 724-662-6068

The draft final-form rulemaking was submitted to the Small Water Systems Technical Assistance Center Advisory Board (TAC) for review and discussion on June 18, 2010. TAC's only comment was to support the final-form rulemaking.

E. Summary of Changes to the Proposed Rulemaking

Although no comments were received during the official public comment period, the Independent Regulatory Review Commission (IRRC) did comment on the proposed rulemaking. IRRC requested additional justification for the provision that is more stringent and clarification on the term "local public health agency" and the requirement for water systems to contact organizations outside the water system's service area.

Lead and copper in drinking water is usually the result of corrosion of household plumbing. Treatment options for lead are often different than those for copper. When water suppliers adjust treatment to reduce the levels of one parameter, they may actually increase the levels of the other parameter. Additionally, treatment for other regulated contaminants will often cause simultaneous compliance issues with corrosion control treatment. Therefore, a lead or copper action level exceedance is a good indication that the treatment system is not operating effectively and should be re-evaluated to determine whether the current treatment system is the most appropriate. Additional lead and copper monitoring will ensure that any adjustments made to the treatment system will not adversely affect lead and copper levels in the water.

The public education delivery requirements are consistent with, and no more stringent than, the federal provisions of the *Lead and Copper Rule Short Term Revisions* (LCRSTR). The U.S. Environmental Protection Agency (EPA) believes that the local health agencies play an important role in making sure consumers who are most vulnerable receive the information they need to reduce their exposure to lead in drinking water, so if the local public health agency can identify organizations that potentially serve target populations, then a water system should deliver public education materials to this organization even if it is not within the water system's service area. Additional language has been added to clarify the term "local public health agency" and the county and State Health Department offices have been identified in Section D.

Below is a list of the specific changes that were made to the proposed rulemaking.

§ 109.1103(d)(2) *Water quality parameter performance monitoring.*

This paragraph was amended to correct a cross-reference.

§ 109.1103(d)(3) *Source water monitoring.*

This paragraph was amended to correct a cross-reference.

§ 109.1103(e)(1)(ii)(B)(I)

This subclause was amended to clarify that 3 consecutive years of monitoring is required to qualify for a reduced triennial frequency. This phrase was inadvertently deleted during proposed rulemaking.

§ 109.1103(e)(1)(iii) *Sample site and timing.*

This subparagraph was amended to clarify that the Department will approve an alternate 4-month sampling period in writing for systems on a reduced monitoring frequency that do not operate during the period June 1-September 30.

§ 109.1103(e)(3)(ii)(A)

Subclauses (I) and (II) were amended to be consistent with the Legislative Reference Bureau's language rules.

§ 109.1103(g)(2)(iii) *Site selection for community and nontransient noncommunity water systems that have fewer than five taps.*

This subparagraph was amended for clarity.

§ 109.1103(g)(2)(iv) *Site selection for community and nontransient noncommunity facilities that operate continuously.*

This subparagraph was amended in response to a comment from the Independent Regulatory Review Commission (IRRC) to clarify where non-first-draw samples should be collected and that the Department must approve, in writing, non-first-draw sample sites.

§ 109.1104(a)(2)(i)(B) and (D)

These clauses were amended in response to a comment from IRRC and to clarify the public education delivery requirements to local health departments.

§ 109.1104(a)(2)(i)(J)(III)

This subclause was amended to be consistent with the Legislative Reference Bureau's language rules.

§ 109.1104(b)(1) *Content.*

Subparagraph (v) was added to be consistent with the federal provisions found in 40 CFR § 141.85(d)(3).

§ 109.1104(b)(3) *Delivery.*

This paragraph was amended to be consistent with the Legislative Reference Bureau's language rules.

§ 109.1107(a)(1)(i)

This subparagraph was edited because it references language that was deleted in a 2002 rulemaking and is no longer necessary.

F. Benefits, Costs and Compliance

Benefits

The intent of this rulemaking is to improve implementation of the lead and copper regulations by clarifying monitoring requirements, improving customer awareness, and modifying lead service line "test-out" procedures. The increase in the administrative activities resulting from these revisions will generate new information which may prompt public water

systems to take measures to further abate lead and copper exposure and thus reduce the associated risk, resulting in additional health benefits to consumers.

Because the precise impact of these revisions on the behavior of individual consumers and public water systems is not known, EPA has not quantified the changes in associated health benefits for these revisions. However, the overall benefits from the LCR will increase as a result of the indirect effects of these revisions on public water systems and individual consumers.

Compliance Costs

Some of the cost increases estimated by EPA will not apply to public water systems in Pennsylvania because this Commonwealth already implements similar provisions under the existing LCR. However, there are four provisions of the LCRSTR included in this rulemaking that are likely to increase costs for public water systems in Pennsylvania:

1. Return to routine monitoring frequency if an action level is exceeded (larger systems will have higher costs because more samples are required than for the smaller systems);
2. Consumer tap notice requirements;
3. Public Education content and delivery requirements;
4. Consumer Confidence Report content requirements.

The number of systems in Pennsylvania affected by this proposed rulemaking is based on the total number of community and nontransient, noncommunity water systems as well as LCR monitoring information from 2007. Not all systems will need to implement each provision each year, so the number of systems likely to be affected by each provision and an average cost per system have been estimated. There is an additional one-time, up-front cost for reviewing, training, and implementing the LCRSTR that will be incurred by all water systems affected by this rulemaking. The cost estimates per system for each of these provisions are based on costs estimated by EPA for public water systems nationwide.

The direct annual costs to implement each of these provisions for Pennsylvania’s public water systems, based on estimates from EPA, are as follows.

| Provision # | No. of Systems Affected | Annual Cost/System | Total Annual Costs |
|--------------------|--------------------------------|---------------------------|---------------------------|
| 1 | 140 | (up to) \$2,930 | \$410,200 |
| 2 | 3,226 | \$20 | \$64,520 |
| 3 | 107 | (average of) \$134.47 | \$14,388 |
| 4 | 2,069 | \$6.79 | \$14,049 |
| Total | | | \$503,157 |

The one-time, up front cost for public water systems is estimated to be \$152.33 for each of the 3,226 public water systems, for a total cost of \$491,417.

For this Commonwealth, there are costs associated with oversight and costs to state-owned public water systems. Of the 3,226 public water systems affected by this rulemaking, 42 (or 1.3%) are state-owned facilities, so 1.3% of the public water system costs detailed above could be incurred by this Commonwealth if all 42 systems implement all of these provisions each year. The details for the Commonwealth costs are as follows:

| | One-Time Cost | Annual Costs | Total |
|--|----------------------|---------------------|--------------|
| Oversight Costs | \$28,948 | \$5,404 | \$34,352 |
| State-Owned Water Systems Costs | \$6,388 | \$6,543 | \$12,931 |
| Total | \$35,336 | \$11,947 | \$47,283 |

Compliance Assistance Plan

The proposed revisions clarify and strengthen existing regulations. As a result, financial assistance should not be necessary.

The Bureau of Water Standards and Facility Regulation has staff dedicated to providing both training and outreach support services to public water system operators. The DEP Internet site contains the *Drinking Water and Wastewater Treatment System Operator Information Center*, which provides a bulletin board of timely, useful information for treatment plant operators. Additionally, DEP staff will provide educational, technical and compliance assistance through newsletters, guidance documents, training sessions and surveillance activities.

Paperwork Requirements

The requirements of the existing Lead and Copper Rule include monitoring, reporting, public education and public notice. The only additional requirement of the *Lead and Copper Rule Short Term Revisions* is for water suppliers to provide a notice of the monitoring results to those consumers whose taps were sampled and a certification to DEP that this notice was delivered.

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 September 9, 2009, 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(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 (71 P.S. 745.5a(j.2)), on _____, 2010, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2010, and approved the final-form rulemaking.

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 thereunder at *1 Pennsylvania Code* §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).
- (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 proposals published at 39 *Pa.B.* 5581 (September 26, 2009).
- (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, with ellipses referring to the existing text of the regulations.
- (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
Chairperson
Environmental Quality Board