

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

Order

The Environmental Quality Board (Board) by this order amends 25 Pa. Code, Chapter 109 (relating to Safe Drinking Water). The amendments strengthen the public notice requirements for imminent threat violations and situations (also known as Tier 1). The amendments enhance the existing planning requirements of both the Operation and Maintenance Plan and the Emergency Response Plan sections that relate to public notification. The amendments revise the delivery requirements of Tier 1 public notices for community water systems. Finally, these revisions provide additional examples of situations that community water suppliers must report to the Department within 1 hour of discovery.

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 R. Barry Greenawald, Chief, Division of Operations Monitoring and Training, P.O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-4018, 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. 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 final-form rulemaking is available electronically through the DEP Web site (<http://www.depweb.state.pa.us>).

C. Statutory Authority

The 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. §§ 510-17 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 existing 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 of Tier 1 public notices for community water systems. Finally, these revisions provide additional examples of situations that community water suppliers must report to the Department within 1 hour of discovery.

E. Summary of Comments and Responses on the Proposed Rulemaking and Changes to the Proposed Rulemaking

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

The Independent Regulatory Review Commission (IRRC) and commentators were concerned about the word “probable emergency situation” because it was unclear when water systems were required to deliver a public notice. Public notice is required when an emergency situation has occurred. IRRC suggested that the Department limit the term “probable emergency situation” to Section 109.707 which relates to planning for probable emergencies within a water supplier’s Emergency Response Plan. Consequently, the word “probable” was deleted from this paragraph.

§ 109.407(a)(9) *Violation categories and other situations requiring a public notice.*

This paragraph was added to be consistent with Federal requirements.

§ 109.407(b)(1) (2) and (3) *Definition of public notice tiers.*

These paragraphs were amended to revise “form, manner, and frequency of notice” to “categories, timing and delivery” to be consistent with the rest of Subchapter D.

§ 109.407(c)(4) *Public notice recipients.*

IRRC commented that the Department needed to include paragraph (2) with the 109.707(a) citation. This paragraph was amended to add the paragraph citation of (2) to 109.707(a).

§ 109.407(d) *Additional requirements.*

This paragraph was amended as a result of adding new text under 109.702(a)(3) and renumbering the remaining items.

§ 109.408(a)(7) *General violation categories and other situations requiring a Tier 1 public notice.*

IRRC and commentators were concerned about the word “probable emergency situation” because it was unclear when water systems were required to deliver a Tier 1 public notice. A Tier 1 public notice is required when an emergency situation has occurred. IRRC suggested that the Department limit the term “probable emergency situation” to Section 109.707 which relates to planning for probable emergencies within a water supplier’s Emergency Response Plan. Consequently, the word “probable” was deleted from this paragraph.

§ 109.408(b)(2) *Timing for a Tier 1 public notice.*

This paragraph was revised to be consistent with language under 109.701(a)(3).

§ 109.408(b)(5) *Timing for a Tier 1 public notice.*

This paragraph was amended to clarify that the water supplier’s corrective actions must be completed and approved by the Department before the “problem corrected” public notice is issued. This revision was made as a result of the comments the Department received.

§ 109.408(c) *Delivery of a Tier 1 public notice prior to [the date that is 12 months after the effective date of adoption of this final rulemaking package] .*

IRRC and commentators requested that the Department provide a compliance period for the Tier 1 PN delivery requirements so that water suppliers could research their options, plan and budget accordingly and implement the new requirements. This subsection was modified in order to retain existing language that allows for an extended compliance period for systems that will be installing automatic telephone dialing systems. All systems must comply with the existing language under 109.408(c) until 12 months after the effective date of this final rulemaking.

§ 109.408(d) *Delivery of a Tier 1 public notice beginning on [the date that is 12 months after the effective date of adoption of this final rulemaking package] .*

IRRC and commentators requested that the Department provide a compliance period for the Tier 1 PN delivery requirements so that water suppliers could research their options, plan and budget accordingly and implement the new requirements. This subsection was amended to include the new Tier 1 public notice delivery requirements that become effective 12 months after the effective date of adoption of this final rulemaking package. This revision was made as a result of the comments the Department received.

IRRC and commentators requested that the Department clarify that water suppliers may limit the public notice to contact consumers who are affected by a Tier 1

event instead of notifying all persons served. Consequently, this subsection was amended to reference the existing language that allows delivery of Tier 1 notices to be limited to persons served by the affected area if:

- the supplier has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, and
- the supplier receives permission from the Department.

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

Commentators requested that the Department remove the population categories and allow all community water systems the option of any form of direct delivery of a Tier 1 public notice.

EPA requested that the Department reorganize the language regarding the delivery of an abbreviated message to subparagraph (iii) since automatic telephone dialing systems require abbreviated messages. Under subparagraph (iii), IRRC requested that the Department require water suppliers to provide the entire public notice on a dedicated telephone line because not all consumers had access to the Internet. The Department made this revision and presented it to the Department's Small Systems Technical Assistance Center Advisory Board (TAC) during their June 24, 2008 meeting. However, the TAC Board requested the Department to allow water suppliers the choice of posting the entire message on a website because delivering this notice through a dedicated telephone line would be unrealistic and impractical. In deference to the regulated community, the Department is allowing water suppliers the choice to either post the entire public notice on a website or record it on a dedicated telephone line.

A commentator requested clarification about whether noncommunity water systems had to use broadcast media under 109.408(d)(2). This paragraph was revised to address the comments the Department received by:

- Removing the population categories for community water systems. This change will enable community water systems serving any population to use a variety of direct delivery methods, as long as the Tier 1 public notices are delivered within the 24 hour delivery time frame.
- Reorganizing the language regarding the delivery of an abbreviated message to subparagraph (iii) since automatic telephone dialing systems require abbreviated messages. The Department chose to provide water suppliers the options under clauses (A) through (C) of how to provide the entire public notice when an abbreviated notice is used. The language under clauses (A) through (C) is the proposed language.
- Specifying under paragraph (2) that community water systems are the type of public water systems that need to provide notice to appropriate broadcast media such as radio or television.

§ 109.408(d)(3) *Delivery of a Tier 1 public notice.*

This paragraph was revised to add hand delivery and electronic mail as direct delivery options for noncommunity water systems.

§ 109.409(a)(1) *Tier 2 public notice – categories, timing, and delivery of notice.*

This paragraph was amended to revise “form, manner, and frequency of notice” to “categories, timing and delivery” to be consistent with the rest of Subchapter D.

§ 109.409(a)(4) *Tier 2 public notice – categories, timing, and delivery of notice.*

This paragraph was added to allow the Department to require a Tier 2 public notice for violations or situations associated with chronic health effects or persistent violations.

§ 109.410(a)(1) *Tier 3 public notice- categories, timing and delivery*

This paragraph was amended to revise “form, manner, and frequency of notice” to “categories, timing and delivery” to be consistent with the rest of Subchapter D.

§ 109.411(b) *Abbreviated notice.*

This paragraph was amended to provide the new citation (d)(1)(iii) under 109.408.

§ 109.412(b) *Special notice of the availability of unregulated contaminant monitoring results.*

This subsection was amended to revise “form and manner” to “delivery” and revise “form, manner, and frequency of notice” to “categories, timing and delivery” to be consistent with the rest of Subchapter D.

§ 109.413(a) and (b) *Special notice for nitrate exceedances above MCL by noncommunity water system, where granted permission by the Department.*

This subsection was amended to revise “form and manner” to “delivery” and revise “form, manner, and frequency of notice” to “categories, timing and delivery” to be consistent with the rest of Subchapter D. The §109.408 citation was amended to include delivery requirements before and after the compliance period for delivery of Tier 1 public notices.

§ 109.415(1) *Notice by the Department on behalf of the public water system.*

This paragraph was amended to provide the Department flexibility in delivering public notice on behalf of the public water system.

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

IRRC, commentators and the TAC Board were concerned about the word “probable emergency situation” because it appeared that water systems were to report situations that may become emergencies as well as actual emergencies. Consequently, this subparagraph was revised to delete the phrase “a probable emergency situation” and retain existing language which includes “circumstances exist which may adversely affect the quality or quantity of drinking water.”

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

IRRC and commentators requested that the Department refine the definition of chemical overfeed to target events that pose serious threats and will adversely affect the quality or quantity of drinking water. To further define a chemical overfeed, this clause was amended to read: “an overfeed of a drinking water treatment chemical that exceeds a published maximum use value, such as the National Sanitation Foundation’s maximum use value for that treatment chemical, as applicable.”

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

IRRC and commentators requested that the Department refine the definition of “negative water pressure in any portion of the distribution system” to target events that pose serious threats and will adversely affect the quality or quantity of drinking water. Commentators recommended that the Department add the language “where there is known contamination or a high risk of contamination” to target events that pose serious threats to the public. Consequently, this clause was amended to read: “a situation that causes a loss of positive water pressure in any portion of the distribution system where there is evidence of known contamination or a water supplier suspects a high risk of contamination.”

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

A commentator requested that the Department further define the requirement to report a lack of resources that affect operations. Consequently, this clause was amended to read: “A lack of resources that adversely affect operations, such as staff shortages, notification by the power utility of planned lengthy power outages or imminent depletion of treatment.

§ 109.702(a)(3) *Operation and Maintenance Plan.*

This paragraph was amended to require community water suppliers to add procedures for repairing and replacing water mains that conform to DEP and water industry standards to their Operation and Maintenance plan. This revision was made as a result of a comment the Department received.

§ 109.707(a)(2) *Emergency Response Plan.*

IRRC recommended that the Department include local emergency coordinators as contact persons in a water supplier's emergency response plan. Consequently, the Department revised this paragraph to add "appropriate" to the list of contact persons. Each water supplier can determine if there is a local emergency coordinator that should be included in the contact list.

§ 109.707(a)(2)(ii) *Emergency Response Plan.*

IRRC requested that the Department include listing local public officials as contact persons in a water supplier's emergency response plan. Furthermore, the TAC Board recommended that the Department specify that the local public officials are within a water supplier's service area. Consequently, this subparagraph was amended to include key public officials within a water supplier's service area under the list of contact persons that water suppliers need to contact for each probable emergency situation.

§ 109.707(a)(2)(iv) *Emergency Response Plan.*

The TAC Board recommended that the Department revise the term "sensitive subpopulations" to "facilities within a water supplier's service area." Consequently, this subparagraph was amended to revise the term "sensitive subpopulations" to "facilities within a water supplier's service area." The Department included social service agencies to enlist the aid of other agencies in delivering a public notice to persons that may have special needs.

§ 109.707(c) *Emergency Response Plan.*

A commentator requested that the Department require water suppliers to update their emergency response plan whenever there are changes to communication procedures or contact information and include a date of last update on the plan. Consequently, this subsection was amended to require water suppliers to update their emergency response plan as necessary to reflect changes to the communication procedures and contact information under (a)(2) and record the date when they update their plan each year.

F. Benefits, Costs and Compliance

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 delivery by broadcast media to transient and nontransient users should improve the delivery rate of public notification during an imminent threat situation. The Commonwealth has a compelling state interest in providing strengthened public notification during imminent threat situations. As a result of this rulemaking, more people will know what actions they need to take to avoid adverse health effects from a Tier 1 violation or situation.

The requirement for water suppliers to keep public notice templates and EPA contaminant fact sheets onsite will assist water suppliers with meeting Tier 1 public notice requirements within the 24 hour timeframe. Water suppliers can use the information found on the EPA contaminant fact sheets to provide more information to consumers who call about the Tier 1 event.

The Department is providing more examples of situations that require community water suppliers to report to the Department within 1 hour of discovery. 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 some of the community water systems. The greatest increase in cost will be incurred by systems that contract for notification services or directly purchase an automatic telephone dialing system. In 2008, the Department gathered new cost data regarding purchasing or contracting for automatic telephone dialing services from five vendors. These costs will vary based on system size, how many calls a system anticipates making during the year, and the service plan features that a water system purchases. The following scenario is provided to provide a cost range for a “Per Call” service plan and an “Unlimited Calls” plan. The scenario will relate to a water system that is required to contact 10,000 households. It reflects the cost for issuing a single Tier 1 public notice and the associated “Problem Corrected” public notice during the first year.

Scenario:

A water system is required to send one call to issue a Tier 1 notice to the entire system of 10,000 households during the first year. The call contains a 30-second message. A second call is made as a “Problem Corrected” notice which is also 30 seconds in length.

According to the five vendors surveyed, the estimated cost range for the first year for the scenario above ranged from \$2,980 to \$26,700 for a “Per Call” service plan. The estimated cost range for the first year for the scenario above for an “Unlimited Calls” Plan ranged from \$7,000 to \$10,000. Based on how many households and how many calling events (Tier 1 PN and non-emergency events) a water supplier anticipates making within a year, every water supplier will need to determine when it becomes cost effective to purchase an “Unlimited calling” plan instead of a “Per call” plan. Water systems may be able to negotiate prices with vendors.

Compliance Assistance Plan

The proposed revisions address additional planning and delivery requirements. The Department will provide educational, technical and compliance assistance through newsletters, guidance documents, training sessions and surveillance activities.

Paperwork Requirements

The proposed revisions address additional planning and delivery requirements. As a result of this final rulemaking, the Department will be making modifications to existing forms, reports and other paperwork.

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 September 11, 2007, the Department submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B.5158, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

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, on (blank) , these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on (blank) and approved the final-form regulations.

J. 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 there under at *1 Pennsylvania Code* §§ 7.1 and 7.2.
- (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 proposal published at 37 *PaB.* 5158 on September 22, 2007.
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

K. 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.
- (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
Acting Chairman
Environmental Quality Board