

**Safe Drinking Water General Update
(25 Pa Code, Chapter 109)**

Comment and Response Document

The Department of Environmental Protection (DEP) published proposed revisions to Chapter 109 (Safe Drinking Water) in the *Pennsylvania Bulletin* on September 1, 2007. The public comment period closed on October 1, 2007.

DEP received comments from six (6) commentators. This document contains a summary of each comment and corresponding response. The commentators are identified using the numbered list below.

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1. **Comment:** §109.301(7)(iii)(C)(III) does not include asbestos regarding confirmation sample provisions listed in 40 CFR §141.23(f)(1). Therefore, similar provisions need to be added for asbestos under §109.301(7)(i). **(1)**

Response: DEP agrees with the commentator and has added confirmation sample provisions for asbestos under §109.301(7)(i)(E).

2. **Comment:** §109.301(7)(iii)(C)(III) does not include nitrate and nitrite regarding confirmation sample provisions listed in 40 CFR §141.23(f)(3). Therefore, similar provisions need to be added for nitrate and nitrite under §109.301(7)(ii). **(1)**

Response: DEP agrees with the commentator that nitrate and nitrite confirmation sample provisions are not included in §109.301(7)(iii)(C)(III). Subclause (III) relates to the other IOCs, such as arsenic and antimony, and not to nitrate and nitrite. The confirmation sample provisions for nitrate and nitrite are addressed under subclause (IV).

3. **Comment:** §109.301(5)(i) does not specify a “quarterly” monitoring frequency for vinyl chloride. Therefore, similar provisions need to be added to be consistent with 40 CFR. **(1)**

Response: DEP agrees with the commentator and has added the necessary language under §109.301(5)(i).

4. **Comment:** Regarding §109.301(5)(i), PA DEP needs to specify a monitoring requirement for vinyl chloride for surface water systems as per 40 CFR §141.24(f)(11)(v). **(1)**

Response: DEP agrees with the commentator and has added the necessary language under §109.301(5)(i).

5. **Comment:** Regarding §109.301(5)(viii), PA DEP should specify that VOC monitoring waivers based on the initial monitoring results as per 40 CFR §141.24(f)(7) and (10) are not allowed. **(1)**

Response: DEP agrees with the commentator and has added the necessary language under §109.301(5)(viii).

6. **Comment:** Regarding §109.301(5)(viii), PA DEP should specify that VOC “susceptibility” waivers are not allowed. **(1)**

Response: DEP agrees with the commentator and has added the necessary language under §109.301(5)(viii)(D).

7. **Comment:** The language under §109.301(7)(iii)(C)(II) should be revised to incorporate the criteria for reliably and consistently below the MCL. (1)

Response: DEP agrees with the commentator and has revised the language as suggested.

8. **Comment:** To ensure equivalency with 40 CFR, PA DEP should revise the language under §109.1102(a)(4)(iv) to specify that the subparagraph applies to systems “serving fewer than 100 people” that collect 5 samples per monitoring period. (1)

Response: DEP disagrees with the commentator that the subparagraph should be revised. It is incorrect to say that only systems serving fewer than 100 people collect 5 samples. Other population categories also collect 5 samples per monitoring period, either during initial or reduced monitoring. For example, systems serving exactly 100 people collect 5 samples. Systems serving up to 500 people collect 5 samples during reduced monitoring. The intent of this section is to clarify how any system that collects 5 samples should compute the 90th percentile level.

9. **Comment:** According to the 90th percentile lead and copper calculations, systems will report the number of samples taken during the monitoring period multiplied by 0.9. This seems to assume the multiplication comes up with a whole number. However, there may be cases where systems could encounter uncertainties in calculating the 90th percentile. E.g., a system with 63 samples ($0.9 \times 63 = 56.7$) DEP should specify the 90th percentile calculation by including a specific rounding up procedure. (2)

Response: DEP agrees with the commentator and has added the necessary language under §109.1102(a)(4)(v).

10. **Comment:** The DEP is proposing to include sample location in reporting monitoring results. This could jeopardize our effort in customer recruitment and relationships with the customers who volunteered to participate in the LCR sampling program under a privacy assumption. Many of the participating customers wished their addresses not be publicized. PWD has reported to DEP with a sample location code in lieu of their addresses for our LCR reporting. Therefore, PWD recommends that provisions be made to protect the privacy of LCR sampling participants. (2)

Response: DEP must require systems to report the sample location in order to retain primacy. The equivalent federal citation is found in 40 CFR §141.90(a)(1)(i). DEP does not need to make this information confidential. The way in which systems report the sample location is via a 3-digit sample location ID#. In most cases, the public will only see this 3-digit ID# when accessing sample results. However, systems are also required to submit a sample site

location plan to DEP that would spell out the actual sample location associated with each ID#. This plan is not routinely viewed by the public, but could be seen via a file review.

11. **Comment:** We commend the Department for taking action to retain primacy. We support the open and inclusive manner in which the Department worked with the Small Water Systems Technical Advisory Board (TAC) during the development of these regulations. (3)

Response: DEP appreciates the commentator's support.

12. **Comment:** While we understand that the majority of these changes are the result of modifications mandated by federal regulations, we remain concerned about the cumulative impact on the cost of complying with increasingly stringent regulations by small water systems across the state, in particular the more than 3,300 systems that serve fewer than 500 persons. (3)

Response: DEP shares the commentator's concerns about the cumulative cost of compliance. Where EPA allows the states to offer monitoring relief for some contaminants through waivers and other reductions in monitoring, DEP generally adopts those provisions. In fact, with the General Update, DEP is adding a monitoring waiver option for VOCs. DEP would also encourage the commentator to take advantage of the composite sampling options under §109.303(e) (relating to sampling requirements). Additional cost savings may be realized by asking your lab to composite samples, provided the criteria can be met.

13. **Comment:** Regarding the Department's request for comments on the mandatory electronic reporting requirements, we again reiterate the concern that not all areas of the state are served by suitable Internet connection to facilitate such data transfer, especially in the more remote areas where such systems tend to be located. Therefore, we request that some provision be developed and included in the final-form regulations which would allow water systems to voluntarily opt-out of any mandatory electronic reporting requirement. (3)

Response: It is DEP's understanding that Internet connections should be available to anyone who has a telephone line. However, DEP has provided another option for water suppliers to report data to the Department under §109.701(j)(6). Under this section, water suppliers can assign the responsibility for reporting to their accredited lab or another approved party.

14. **Comment:** We support this action to bring the requirements of 25 Pa. Code Ch. 109 in line with federal requirements in 40 CFR Part 141. The proposed addition of language describing monitoring requirements and compliance determinations in lieu of the incorporations by reference will make it easier for water systems to comply with regulatory requirements. Furthermore, the addition of language specifying the requirements for obtaining monitoring waivers is a positive

development given that current Chapter 109 waiver provisions omit important provisions in the federal rule. (4) (5)

Response: DEP appreciates the commentator's support.

15. **Comment:** Section 109.301(5)(viii) (waivers for VOC monitoring) should be amended to make it clear that a public water supplier is responsible for submitting a renewal application to the Department and that the application must include an updated vulnerability assessment. This change would comply with the federal requirement. Waiver renewals should not be automatic, but contingent on DEP approval of the renewal application. (4) (5)

Response: DEP agrees with the commentator and has added the necessary language under §109.301(5)(viii)(E). Similar language has also been added to the waiver requirements for SOCs and IOCs.

16. **Comment:** Section 109.301(7)(iii)(D) should be amended to require the definition of a vulnerability assessment area. Section (D)(I)(b) should be amended to include the presence of industrial or other significant sources of IOCs within the vulnerability assessment area among the criteria the Department must use in making its determination whether to grant a monitoring waiver. (4) (5)

Response: DEP has amended §109.301(7)(iii)(D)(I)(b) to include "other factors as determined by the Department on a case-by-case basis". This additional language will allow DEP to consider other potential sources of contamination, as needed, when issuing IOC monitoring waivers.

17. **Comment:** Regarding §109.301(7)(v)(A), there is an apparent error in this section. The sentence "If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately" should be edited as follows: "If any one sample would cause the running annual average to [be exceeded] exceed the MCL, then the system is out of compliance immediately". (4) (5)

Response: DEP disagrees with the commentator as the existing language is consistent with 40 CFR §141.23(i)(1).

18. **Comment:** 25 Pa. Code 109.301 does not include the federal requirements for repeat IOC monitoring for groundwater systems under 40 CFR 141.23(d)(2). (4) (5)

Response: The federal citation is for repeat nitrate monitoring, and not for repeat IOC monitoring. DEP's repeat IOC monitoring requirements are consistent with the federal requirements.

19. **Comment:** We share the same comments, suggestions and recommendations expressed by EPA III and incorporate them into the Commission’s comments on this proposed regulation. (6)

Response: Please see the response to comments 1 – 8.

20. **Comment:** In developing the final-form regulation, the Board and DEP should thoroughly examine the fiscal impact of the regulations on smaller water systems. (6)

Response: Please see the response to comment #12.

21. **Comment:** The final-form regulation should clarify the procedures and process for renewals of waivers. (6)

Response: Please see the response to comment #15.

22. **Comment:** Regarding mandatory electronic reporting, the Board and DEP should consider other alternate methods for submitting this data such as allowing water systems to submit data electronically recorded on a disk. In some cases, this approach may be more cost effective to a system than hiring a laboratory to submit the reports. The Board and DEP should examine methods for reducing the fiscal impact of this proposed regulation on smaller systems. The Board should also consider amending the final-form regulation to increase reporting flexibility for the smaller systems. (6)

Response: Please see the response to comment #13.

23. **Comment:** Regarding section 109.1107, this section contains a new requirement that water systems report the “sample location” with their reports on lead and copper tap monitoring results. PWD recommends that provisions be made to protect the privacy of sampling participants. The Board and DEP should address this concern in the final-form regulation. (6)

Response: Please see the response to comment #10.