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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

December 7, 2001

Honorable David E. Hess, Chairman
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101

Re: Regulation #7-368 (IRRC #2214)
Environmental Quality Board
Safe Drinking Water

Dear Chairman Hess:

Enclosed are our Comments. They will soon be available on our website at www.irrc.state.pa.us.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

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Enclosure

cc: Honorable Arthur D. Hershey, Majority Chairman, House Environmental Resources and Energy Committee
Honorable Camille George, Democratic Chairman, House Environmental Resources and Energy Committee
Honorable Mary Jo White, Chairman, Senate Environmental Resources and Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee

Comments of the Independent Regulatory Review Commission

on

Environmental Quality Board Regulation No. 7-368

Safe Drinking Water

December 7, 2001

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Environmental Quality Board (EQB) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by November 7, 2003, the regulation will be deemed withdrawn.

1. Multilingual requirements for Public Notices and Consumer Confidence Reports. - Protection of the public health, safety and welfare; Economic impact; Feasibility; Reasonableness; and Clarity.

The EQB has requested comments from the regulated community on Sections 109.411(c)(2) and 109.416(3)(ii) concerning multilingual requirements imposed by the Environmental Protection Agency (EPA). Specifically, the EQB solicited input on how a large proportion of non-English speaking consumers should be defined, what resources are available to water systems that wish to provide translated copies of these reports, and what resources are available to consumers seeking translation services or assistance in reading the notice. In regard to our criteria, the language of the proposed regulation raises five concerns.

First, the threshold of a “large proportion of non-English speaking consumers” is vague. In addition, the make up of a population is subject to change and so is the fluency of English. What criteria will the EQB use to identify a large proportion of non-English speaking consumers? How would these trends within a population be evaluated and updated?

Second, a Tier 1 notice is required as soon as possible, but no later than 24 hours after the water system learns of the violation or situation. The wording of a public notice is important in these situations. Where can a water system acquire the expertise to provide accurate notices in a language other than English?

Third, Sections 109.411(c)(2)(ii) and 109.416(3)(ii) require water systems to immediately meet the multilingual requirement, “Until the Department determines whether a system serves an area with a large proportion of non-English speaking consumers....” How can a water system implement these requirements? We further question when the Department of Environmental Protection (Department) will make its determination and what recourse a water system will have if it does not agree with the determination?

Fourth, when a water system uses broadcast media such as radio or television to notify the public of a violation, what procedures must be followed to satisfy the multilingual requirement?

Finally, while recognizing the importance of informing the public of unsafe drinking water, do all water systems, and in particular smaller water systems, have the resources to meet the multilingual requirements of the regulation? Does the EQB have an estimate of anticipated costs for small and large water systems?

2. Public Notices - form, manner and frequency of notices. - Protection of the public health, safety and welfare; Reasonableness; and Clarity.

Sections 109.408, 109.409 and 109.410 address the form, manner and frequency of Tier 1, Tier 2, and Tier 3 public notices respectively. The requirements of these sections reflect the federal regulations for safe drinking water established by the EPA. Commentators have raised several issues regarding these notices.

First, the Tier 1 public notice procedure includes a consultation process between the Department and the water system. However, the regulation does not describe the details of the consultation process or how any disagreement would be resolved. Has the EQB considered language that explains how the consultation process works and what the minimum requirements for public notification would be?

Second, numerous commentators believe the timing, form and manner of public notice does not adequately protect the public from potentially contaminated water. They recommend requiring water systems to notify multiple media sources within 24 hours for any violation. The commentators also suggest using multiple methods to notify people and notifying the public every 30 days when violations continue. The commentators' recommendations are more stringent than federal standards. Considering the potential health risks involved with unsafe drinking water, should the EQB adopt regulations that are more stringent than EPA requirements?

3. Section 109.1. Definitions. - Clarity.

The definition of a Consumer Confidence Report (CCR) is, "An annual water quality report that community water systems shall deliver to their customers." This is substantive because the word "shall" is used. Since substantive provisions in a definition are not enforceable, this requirement should be moved to the body of the regulation.

4. Section 109.301. General monitoring requirements. - Clarity.

Subsection (7)(ii)(C)(V) contains a vague requirement to, "...meet other Tier 1 public notification requirements." The EQB should provide a specific reference to those requirements.

5. Section 109.407. General public notification requirements. - Clarity.

Subsection (a)(9) is vague. It is unclear what “other violations and situations” the Department will determine require a public notice. Is the intent to use this provision on a case-by-case basis? What criteria will the Department use to determine the necessity of a public notice?

Subsection (b) includes the phrase “unless other tier assignments are established by regulations or order of the Department.” We have two concerns. First, the only way to change a regulation is by promulgating a new regulation. Therefore, the language regarding regulations is not needed. Second, is the intent to issue orders on a case-by-case basis? If so, under what circumstances would an order be issued?

6. Section 109.411. Content of a public notice and Section 109.416. CCR Requirements. - Clarity.

Sections 109.411(c)(1)(ii) and 109.416(3)(iv) prohibit use of “very small print” and “small font sizes.” Commentators have noted that the requirements regarding acceptable font size are vague. Did the EQB consider specifying a minimum font size?

7. Section 109.416. CCR Requirements. - Protection of the public health; Fiscal impact; and Lesser standards.

We have two questions. First, the regulation requires CCRs to be sent to customers of a public water system. In an apartment complex, the customer is often the owner of the apartment complex, not the individual renters. In this situation, is the health of an individual renter sufficiently protected?

Second, federal law at 42 USCA 300g-3(c)(4)(C) and (D) allows lesser standards for compliance for smaller water systems serving fewer than 10,000 persons and 500 persons respectively. The federal law allows smaller systems to make the report available to the public upon request. Has the EQB considered adopting these lesser standards?

8. Subchapter K. Lead and Copper. - Protection of the public health

In its comments, the EPA asked for additional clarification regarding public access to information. Specifically, the EPA is looking for assurance the public will have access to monitoring results. Has the EQB considered requiring public water systems to make raw data available to the public and how this could be accomplished?