

Regulatory Analysis Form		This space for use by IRRC	
(1) Agency		RECEIVED 2004 APR 30 PM 2:58 IRRC Number: #2300	
Department of Health			
(2) I.D. Number (Governor's Office Use) Reg. No. 10-170			
(3) Short Title Bacterial Monitoring of Public Bathing Beaches			
(4) Pa Code Cite 28 Pa. Code Ch. 18 § 18.1 § 18.28 § 18.30 § 18.31		(5) Agency Contacts & Telephone Numbers Primary Contact: Dennis Wilson Bureau of Community Health Systems 628 Health and Welfare Building P.O. Box 90 Harrisburg, PA 17120 717-787-4366 Secondary Contact: Michael Huff 787-4366 Bureau of Community Health Systems Room 628 Health and Welfare P. O. Box 90 Harrisburg, PA 17108	
(6) Type of Rulemaking (Check One)		(7) Is a 120-Day Emergency Certification Attached?	
	Proposed Rulemaking	<input checked="" type="checkbox"/>	No
X	Final Order Adopting Regulation		Yes: By the Attorney General
	Final Order, Proposed Rulemaking Omitted		Yes: By the Governor
(8) Briefly explain the regulation in clear and non-technical language.			
<p>The amendments provide enhanced public health protection to individuals who bathe and swim at Pennsylvania's public bathing beaches. The amendments specify the requirements for notifying the public when a bathing beach is closed, the type of bacteriological water testing that must be done, the level of disease-carrying organisms in the water that requires a beach to be closed, the procedures for collecting water samples and the laboratory testing procedures and documentation. Additional requirements for beaches located on Lake Erie are also included. The effect of the amendments is improved detection of disease-carrying organisms in bathing beach water and reduced public exposure to such organisms.</p>			

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The Department's authority to promulgate regulations related to public swimming and bathing places is established pursuant to the Public Bathing Law (35 P.S. §§ 672-680(d)), the Local Health Administration Law (16 P.S. § 12001 et seq.) and § 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. On October 10, 2000, the federal Beaches Environmental Assessment and Coastal Health Act (Beach Act) of 2000, Public Law 106-284, was passed and amended the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387 to include significant new beach protections. The Beach Act applies to coastal beaches on the Great Lakes, including those at Presque Isle State Park in Erie County. The Beach Act requires that all states with coastal beaches adopt either the *Escherichia coli* (*E. coli*) or the enterococci testing standard for Great Lakes beaches, as well as public notification of beach closure requirements. The federal statutory deadline for adopting state regulations is April 2004. The new federal law governs only Lake Erie beaches in Pennsylvania, however, the amendments extend the same level of protection to all public bathing beaches in Pennsylvania in order to provide a more effective level of public health protection to all individuals using any of the Commonwealth's public bathing beaches.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The purpose of the amendments is to detect disease-carrying organisms in bathing beach water and to minimize public exposure to such organisms. The amendments are consistent with recommendations of the United States Environmental Protection Agency (EPA) relating to bacteriological testing of water at public bathing beaches. The EPA recommends that water at public bathing beaches be tested each week for *E. coli* in order to detect disease-carrying organisms in the water that may cause human illness such as gastroenteritis, salmonellosis, cholera, respiratory infections, hepatitis, giardiasis, dysentery, cryptosporidiosis, parasitic worms and *listeria*. These illnesses can be mild to very serious or deadly. Ingesting even a small mouthful of contaminated water has the potential of causing any of these illnesses. Young children are especially at risk due to the greater likelihood of swallowing bathing water. Children, the elderly and people with weakened immune systems have a greater chance of getting sick if they come in contact with contaminated water.

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(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

There are health risks associated with not testing public bathing beach water and taking steps to prohibit human contact with contaminated bathing water. Contaminated water can cause a variety of human illnesses from mild to very serious or even deadly including gastroenteritis, salmonellosis, cholera, viruses, respiratory infections, hepatitis, giardiasis, dysentery, cryptosporidiosis, worms and lysteria.

Young children are especially at risk due to the greater likelihood of swallowing bathing water. Children, the elderly and people with weakened immune systems have a greater chance of getting sick if they come in contact with contaminated water.

The most frequent sources of disease-carrying organisms in bathing beach water are sewage overflows, animal waste, polluted storm runoff, sewage treatment plant and septic system malfunctions, boating waste, trash, pesticides and fertilizers. Pollution is also much higher during and following a rainstorm because water draining into the beach may be carrying sewage from overflowing sewage treatment system. By frequent water testing, disease-carrying organisms that may be harmful to humans, can be detected earlier and the source can be located and either corrected or a beach can be closed until the contamination is at a non-harmful level.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

All individuals who swim at Pennsylvania's 328 permitted public beaches will benefit from this public health protection.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No individual, organization or group will be adversely affected by this regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation.
(Approximate the number of people who will be required to comply.)

The amendments apply to 328 public bathing beaches that have a fresh water source or flow, including natural and man-made lakes and ponds and beaches located on rivers and streams, that are permitted by the Department, including those located at state parks, community locations and privately-owned campgrounds, resorts and organized camps. Specifically those bathing beaches include: 56 state park beaches operated by the Department of Conservation and Natural Resources, 153 beaches operated by private campgrounds and resorts, 71 beaches operated by organized camps, 44 beaches operated by municipalities and 4 Army Corps of Engineer beaches. Of the 328 bathing beaches, the majority is located in the northern part of Pennsylvania with 50% in the northeast, 20% in the northwest and 8% in north central Pennsylvania. Only 22% of the bathing beaches are located in the southeast, southwest and south central parts of the Commonwealth.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Several formal and informal meetings and discussions were held prior to and during the drafting of the proposed regulations with consumer protection advocates, campground operators, municipal beach operators, health care professionals and local government agencies to present and discuss the Department's amendments. A public meeting was held in August 2002 to review the amendments, with invitations sent to 26 affected consumer, health care professional, beach operator and municipal organizations.

In June of 2003, the Department sent a mailing to all known laboratories in Pennsylvania performing bacterial testing for public bathing places and informing them of the changes in the regulations. In July of 2003, the Department sent a representative to the Pennsylvania Association of Accredited Environmental Laboratories Conference in State College, Pennsylvania in order to answer any questions regarding the regulations and to receive additional stakeholder feedback.

The Department coordinated the regulations with the Pennsylvania Department of Environmental Protection to assure compatibility with other Pennsylvania regulations relating to water quality. The Department discussed the regulations with the Department of Conservation and Natural Resources in order to address implementation issues relating to the state park beaches.

Regulatory Analysis Form

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures that may be required.

The amendments will have little fiscal effect on the Commonwealth, local government, the private sector or on the general public. The requirement for the frequency of water sampling has not been changed. There will be no cost increase for completing the E. coli test as opposed to the currently required fecal coliform test. The Department conducted a study of laboratory test fees in August 2002. Thirty-five laboratories across Pennsylvania, New Jersey, Maryland, Ohio and Delaware that are used to complete water testing were contacted to compare fees for the new E. coli tests with the current fecal coliform tests. Of the 35 laboratories contacted, 19 charged the same for each test. Three charged slightly less for the E. coli test than the coliform test and three charged slightly more for the E. coli test than the coliform test. Ten of the laboratories do not currently conduct the E. coli test. The Department has contacted these laboratories, explained the new Pennsylvania requirements and encouraged the provision of the new tests. It is fully expected that additional laboratories will offer the E. coli test once public demand is present.

It is not anticipated that there will be additional beach closings due to the new testing that would result in loss to the local economy or beach operator revenue. A study conducted by the Pennsylvania Department of Environmental Protection (DEP) in 2001-2002 of state park beaches comparing the results of fecal coliform and E. coli testing shows that at the majority of beaches, similar numbers of closings would occur under either testing method. The Department does not anticipate a large number of additional closings. In the DEP study, in a few incidences (6% of the total sample of 253), the exceedance level was reached for E. coli but not for fecal coliform. This data may indicate that there may be a few additional beach closures using the E. coli test. However, the public health protection provided by requiring the more reliable E. coli tests outweighs the minimal economic loss of a few potential added beach closures.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures that may be required.

The amendments will have little fiscal impact on the 44 beaches operated by municipalities. See # 17 for explanation of fiscal impact.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulations, including legal and accounting or consulting procedures that may be required.

The amendments will have no fiscal impact on state government. No additional inspections, oversight or procedures are required to implement and monitor compliance with this regulation.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government and state government for the current year and five subsequent years.

	Current FY	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS						
Regulated Community						
Local Government						
State Government						
TOTAL SAVINGS	None	None	None	None	None	None
COSTS						
Regulated Community						
Local Government						
State Government *						
TOTAL COSTS	None	None	None	None	None	None
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	None	None	None	None	None	None

(20a) Explain how the cost estimates listed above were derived.

There are no costs associated with this regulation.

Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

Public Swimming and Bathing Place Program				
Program	1999-2000	2000-2001	2001-2002	2002-2003
Planning	\$168,980	\$396,670	\$364,351	\$415,344

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There are no costs associated with this regulation.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There are no non-regulatory options. The Department of Health is mandated by state law to regulate public bathing beaches to protect the public health. Furthermore, the Federal BEACH Act mandates that the regulations be amended in order to adopt the EPA recommended standards.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

The Department considered requiring the enterococci test instead of the E. coli test. The Department chose to use the E. coli test rather than the enterococci test because the E. coli test is more available, less costly and research shows that there is no greater level of protection in the enterococci test for freshwater beaches. The EPA research supports that E. coli testing and enterococci testing have an equally strong correlation between positive results and incidence of people getting sick from contaminated water in freshwater beaches.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

The regulations are consistent with federal statute and the United States Environmental Protection Agency standards. They are not more stringent than federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

A comparison of requirements and practices of several other states was completed by the Department. States such as Illinois, Ohio and Michigan are already following the EPA standard for E. coli testing. Other states such as New York and Indiana are in the process of changing their state laws and regulations to require the E. coli testing method. Delaware has adopted the federal EPA standard for enterococci testing at their marine beaches. As all states with coastal beaches are mandated under the Federal BEACH Act to adopt the EPA's recommended criteria, this regulation will not put Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The Department coordinated the regulations with the Pennsylvania Department of Environmental Protection to assure compatibility with other Pennsylvania regulations relating to water quality.

(27) Will any public hearings or information meetings be scheduled? Please provide the dates, times, and locations, if available.

The Department is not planning any hearings or information meetings at the present time. The Department conducted a thirty (30) day comment period after the regulations were published as proposed in the Pennsylvania Bulletin.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports that will be required as a result of implementation, if available.

No additional paperwork is required by the amendments. While the amendments would require laboratories to report positive results to the Department, or the local health department in whose jurisdiction the bathing beach is located, most laboratories already voluntarily comply with this reporting request.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The amendments do not include any special provisions. The amendments provide equal protection to all individuals who swim at public bathing beaches.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The amendments will be effective upon publication as final-form rulemaking in the *Pennsylvania Bulletin*. It is anticipated that these regulations will be effective prior to or near the beginning of the 2004 swimming season.

No new permits or approvals are required relating to this amendment.

(31) Provide the schedule for continual review of the regulation.

The Department would monitor the effectiveness of these regulations on an ongoing basis through its annual health and safety inspections of public swimming and bathing places.

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(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION

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Copy below is hereby approved as to form
and legality. Attorney General.

BY _____
DEPUTY ATTORNEY GENERAL

DATE OF APPROVAL

Copy below is hereby certified to be a true
and correct copy of a document issued,
prescribed or promulgated by:

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 10-170

DATE OF ADOPTION: _____

BY: Calvin B. Johnson
Calvin B. Johnson, M.D., M.P.H.

TITLE Secretary of Health

☐ Check if applicable. Copy not approved.
Objections attached.

Copy below is hereby approved as to form
and legality. Executive or independent
Agencies.

BY Tanya C. ...

4/22/04
DATE OF APPROVAL

Asst.
(Deputy General Counsel)
(~~Chief Counsel, Independent Agency~~)
(Strike inapplicable title)

☐ Check if applicable. No Attorney
General approval or objection within 30
days after submission.

Final Form

DEPARTMENT OF HEALTH

Title 28. HEALTH AND SAFETY
PART II. LOCAL HEALTH

[28 Pa. Code Ch. 18]

Public Swimming and Bathing Places

The Department of Health (Department) hereby adopts amendments to 28 Pa. Code Chapter 18 (relating to public swimming and bathing places). The amendments include requirements relating to the bacteriological monitoring of water at public bathing beaches in order to protect the public health while swimming and bathing. The amendments are set forth in Annex A.

I. PURPOSE OF THE REGULATIONS

The amendments provide enhanced public health protection to individuals who bathe and swim at Pennsylvania's public bathing beaches. The amendments specify the requirements for notifying the public when a bathing beach is closed, the type of bacteriological water testing that must be done, the level of disease-carrying organisms in the water that requires a beach to be closed, the procedures for collecting water samples and the laboratory testing procedures. Additional requirements for beaches located on Lake Erie are also included. The amendments will improve detection of disease-carrying organisms in bathing beach water and reduce public exposure to those organisms.

The amendments are consistent with recommendations of the United States Environmental Protection Agency (EPA) relating to bacteriological testing of water at public bathing beaches. The EPA recommends that water at public bathing beaches be tested each week for *Escherichia coli* (E. coli) in order to detect disease-carrying organisms in the water that may cause human illness such as gastroenteritis, salmonellosis, cholera, respiratory infections, hepatitis, giardiasis, dysentery,

cryptosporidiosis, parasitic worms and lysteria. These illnesses can be mild to very serious or deadly. Ingesting even a small mouthful of contaminated water has the potential of causing any of these illnesses. Young children are especially at risk due to the greater likelihood of swallowing bathing water. Children, the elderly and people with weakened immune systems have a greater chance of getting sick if they come in contact with contaminated water.

The most frequent sources of disease-carrying organisms in bathing water are sewage overflows, animal waste, polluted storm runoff, sewage treatment plant and septic system malfunctions, boating waste, trash, pesticides and fertilizers. Pollution is also much higher during and following a rainstorm because storm water draining into the beach may be carrying sewage from overflowing sewage treatment systems, runoff from farmland, or animal waste from parks and forests. By frequent water testing, disease-carrying organisms that may be harmful to humans can be detected earlier and the source can be located and either corrected or a beach can be closed until the contamination is at a non-harmful level.

On October 10, 2000, the federal Beaches Environmental Assessment and Coastal Health Act of 2000, Public Law 106-284 (BEACH Act) was passed and amended the federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, to include significant new beach protections. The BEACH Act applies to coastal beaches on the Great Lakes, including those at Presque Isle State Park in Erie County. The BEACH Act requires that all states with coastal beaches adopt either the E. coli or the enterococci testing standard

for Great Lakes beaches, as well as public notification of beach closure requirements. The federal statutory deadline for adopting state regulations is April 2004. The new federal law governs only Lake Erie beaches in Pennsylvania; however, the amendments extend the same level of protection to all public bathing beaches in Pennsylvania in order to provide a more effective and consistent level of public health protection to all individuals using any of the Commonwealth's public bathing beaches.

Several formal and informal meetings and discussions were held prior to, and during, the drafting of the proposed amendments with consumer protection advocates, campground operators, municipal beach operators, health care professionals and local government agencies to present and discuss the Department's proposed amendments. A public meeting was held in August 2002 to review the proposed amendments, with invitations sent to 26 affected consumer, health care professional, beach operator and municipal organizations. In June 2003, the Department sent a mailer to all laboratories known to be performing bacterial testing of beaches informing them of the proposed regulatory change. In July of 2003, the Department sent a representative to the Pennsylvania Association of Accredited Environmental Laboratories Conference in State College, Pennsylvania in order to answer any questions regarding the proposed regulations and to receive additional stakeholder feedback. To further the effectiveness of these amendments, the Department coordinated the amendments with the Pennsylvania Department of Environmental Protection to assure compatibility with other Pennsylvania regulations relating to water quality. The Department also discussed the proposed

amendments with the Department of Conservation and Natural Resources in order to coordinate implementation issues relating to the state park beaches.

The Department published proposed rulemaking in the Pennsylvania Bulletin on October 5, 2002, and provided for a 30-day public comment period. (See 32 Pa. B. 4850 (October 5, 2002)). The Department received no comments during the public comment period. The Department received a recommendation from the Department of Environmental Protection (DEP) after the close of the public comment period. The Department also received comments from the Office of Attorney General (OAG) and the Independent Regulatory Review Commission (IRRC). The Department's responses to these comments appear in the summary of this final rulemaking.

II. SUMMARY

DEP raised a concern about the effectiveness of the proposed language in Section 18.31 requiring laboratories to be registered with DEP. In order to make the regulations more effective, DEP suggested language changes requiring laboratories to be registered with DEP for the testing of drinking water samples and that the laboratory be in compliance with the Laboratory Accreditation Act (27 Pa.C.S. §§ 4101 - 4113) and the regulations promulgated under that Act. These changes were intended to ensure that only qualified laboratories subject to DEP enforcement actions would be performing beach bacterial standards. The Department has accepted these recommendations and incorporated them into the final form regulations.

The OAG requested that the Department provide the method by which the EPA recommended the E. coli standard and asked whether this was federal statute, regulation, guideline or other publication. The BEACH Act requires that all states with coastal beaches adopt the EPA's recommended bacterial monitoring standards for recreational waters by April of 2004. The term "coastal beaches" is defined in the BEACH Act to include beaches on the Great Lakes, including those at Presque Isle State Park on Lake Erie. The EPA's recommendation for bacterial monitoring is published in the guidance document "Ambient Water Quality Criteria for Bacteria" and is available on the web at <http://www.epa.gov/ost/standards/bacteria/>.

The OAG also asked whether the permittee would have to obtain approval from the EPA for whatever method the permittee is using and whether the EPA has published a list of pre-approved methods.

The permittee will not have to obtain approval from the EPA for the method used. The laboratory selected by the permittee will have the option of using the method described in *Standard Methods for the Examination of Water and Wastewater* or by using a method that has been pre-approved by the EPA. At present, the EPA has approved one testing method, the modified mTEC test, for testing for E. coli at beaches. The EPA is developing additional testing methods and is expected to grant approval for their use in the future. When approved for use, the additional test will be published on the EPA's website.

Finally, IRRC requested that the Department revise the proposed amendments to Section 18.30 to require that the Department give written notification to the permittee in the event that additional bacterial samples may be required. The Department has accepted this recommendation and incorporated it into the final form regulations.

III. AFFECTED PERSONS

The regulations apply to 328 public bathing beaches that have a fresh water source or flow, including natural and man-made lakes and ponds and beaches located on rivers and streams, which are permitted by the Department. Bathing beaches located at state parks, community locations and privately owned campgrounds, resorts and organized camps are included. Of the 328 bathing beaches, the majority of them are located in the northern part of Pennsylvania with 50% in the northeast, 20% in the northwest and 8% in north central Pennsylvania. Only 22% of the bathing beaches are located in the southeast, southwest and south central parts of the Commonwealth.

The regulations also apply to all laboratories that perform bacterial testing of water at public bathing places, requiring them to adopt the E. coli testing method for bacterial method and to report all positive bacterial samples. In addition, the regulations require that laboratories performing testing of water samples from public bathing places are properly accredited under the Laboratory Accreditation Act (27 Pa. C.S. §§ 4101 - 4113).

IV. COST AND PAPERWORK ESTIMATES

A. Cost

The amendments will have little fiscal effect on the Commonwealth, local government, the private sector or on the general public. The requirement for the frequency of water sampling has not been changed. There is no cost increase for completing the E. coli test as opposed to the currently required fecal coliform test. The Department conducted a study of laboratory test fees in August 2002. Thirty-eight laboratories across Pennsylvania, New Jersey, Maryland, Ohio and Delaware that are used currently to complete water testing were contacted to compare fees for the new E. coli tests with the current fecal coliform tests. Of the 38 laboratories contacted, 19 charged the same for each test. Three charged slightly less for the E. coli test than the coliform test and three charged slightly more for the E. coli test than the coliform test. Ten of the laboratories do not currently conduct the E. coli test. The Department has contacted these laboratories in order to explain the new Pennsylvania requirements and to encourage the provision of the new test. It is fully expected that additional laboratories will offer the E. coli test once public demand is present.

B. Additional Paperwork

Prior to the amendment to §18.30, the permittee was required to maintain records of bacterial tests onsite for a minimum of two years. While the amendments require laboratories to report positive results to the Department, or the local health department within whose jurisdiction the bathing beach is located, most laboratories were already voluntarily complying with this reporting requirement. The laboratory may report a positive bacterial test result to the Department by phone, fax, or email. Therefore, it is not anticipated that the regulations will cause any significant increase in paperwork.

V. EFFECTIVENESS/SUNSET DATE

The regulations will become effective upon final publication in the Pennsylvania Bulletin. No sunset date has been established. The Department will monitor the effectiveness of these regulations on an ongoing basis through its annual health and safety inspections of public swimming and bathing places.

VI. STATUTORY AUTHORITY

The Department's authority to promulgate regulations related to public swimming and bathing places is established pursuant to the Public Bathing Law (35 P.S. §§ 672-

680(d)), the Local Health Administration Law (16 P.S. § 12001 - 12028) and § 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).

VII. REGULATORY REVIEW

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 25, 2002, the Department submitted a copy of the notice of proposed rulemaking, published at 32 Pa. B. 4850, to IRRC and the Chairpersons of the House Health and Human Services Committee and the Senate Public Health and Welfare Committee for review and comment.

The Department received no comments during the public comment period. In preparing the final-form regulations, the Department has considered all comments received from IRRC, DEP and the OAG.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5(j.2)), on _____, the 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 _____ and approved the final form rulemaking. The Office of Attorney General approved the regulations on _____.

VIII. CONTACT PERSON

Questions regarding these final-form regulations may be submitted to: Dennis C. Wilson, Environmental Health Administrator, Department of Health, Bureau of Community Health Systems, Room 628 Health and Welfare Building, P.O. Box 90, Harrisburg, PA, 17108-0090, (717) 787-4366. Persons with disabilities may submit questions in alternative formats such as audio tape, Braille or by using V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT]. Persons who require an alternative format of this document may contact Mr. Wilson at the above address or telephone numbers so that necessary arrangements may be made.

IX. FINDINGS

The Department, with the approval of the Board, finds that:

- (a) Public notice of the intention to adopt the regulation adopted by this order has been 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 the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (b) A public comment period was provided as required by law and all comments were considered.
- (c) The adoption of the regulation in the manner provided by this order is necessary and appropriate for the administration of the authorizing statutes.

X. ORDER

The Department, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department, 28 Pa. Code, Chapter 18 (relating to public swimming and bathing places) are amended by amending §§ 18.1, 18.28, 18.30 and 18.31 as set forth in Annex A.
- (b) The Secretary shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as required by law.
- (c) The Secretary shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for their review and action as required by law.
- (d) The Secretary of Health 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 upon publication in the Pennsylvania Bulletin.

ANNEX A

Title 28. HEALTH AND SAFETY PART II. LOCAL HEALTH Chapter 18. PUBLIC SWIMMING AND BATHING PLACES GENERAL PROVISIONS

§ 18.1. Definitions.

The following word and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Local health department—Each county department of health under the Local Health Administration Law (16 P.S. §§ 12001-12028), and each department of health in a municipality approved for a Commonwealth grant to provide local health services under section 25 of the Local Health Administration Law (16 P.S. § 12025).

WATER SUPPLY

§ 18.28. Bathing beach contamination.

(a) Use of a bathing beach found to be contaminated shall be discontinued until written approval to reopen the bathing beach for swimming or bathing is obtained from the Department. The permittee shall prominently post legible signs measuring at least 8" by 11" at all entrances to the bathing beach area informing the public that the bathing beach is closed and that swimming or bathing is prohibited. The approval will be given by the

Department when the Department finds that the waters of the bathing beach are no longer contaminated.

(b) The water in bathing beaches will be considered contaminated for bathing purposes when one of the following conditions exists:

(2) [The fecal coliform density of a sample collected at a bathing beach exceeds 1,000 per 100 milliliters.] The *E. coli* density of a water sample taken from the bathing beach exceeds 235 per 100 milliliters.

(3) [The fecal coliform density in at least five consecutive samples of the water taken over not more than a 30-day period exceeds a geometric mean of 200 per 100 milliliters.] The *E. coli* density in all water samples taken from the bathing beach, in any 30-day period during the bathing beach's operating season, exceeds a geometric mean of 126 per 100 milliliters.

§ 18.30. Water samples.

(b) A sample shall be taken within one week prior to the opening of the bathing beach for the season.

(c) The permittee shall have a bacteriological analysis made at least once each week of a sample collected during the period of maximum use of the public bathing place. THE PERMITTEE SHALL FURNISH ADDITIONAL ~~Additional~~ analyses of samples AS

DESCRIBED UNDER SUBSECTION (D)(3) OF THIS SECTION ~~shall be furnished by the permittee~~ upon WRITTEN notification by the Department.

(d) Bathing water shall be sampled in accordance with the following requirements:

(1) Each sample shall be taken from water that is approximately 30 inches deep and at a midpoint between the bottom and the surface of the water.

(2) Each sample shall be tested individually for *E. coli* in accordance with § 18.31 (relating to laboratory testing).

(3) The Department may require additional samples be taken based upon the size of the bathing area, bather loads, weather conditions, the bacteriological history of the water, as well as other factors that may influence the quality of the water.

(e) For a bathing beach located on Lake Erie, the bathing water shall be sampled in accordance with subsections (a), (b) and (d) and the following additional requirements:

(1) At least three samples of water shall be taken from each beach at least once a week. One sample shall be taken from approximately 50 feet from each end of the beach and the third sample shall be taken from the center of the beach.

(2) The arithmetic mean of the three samples from each beach shall be used to determine if the beach water is contaminated using the standards described in § 18.28 (relating to bathing beach contamination).

(3) A sample shall not be taken when the beach is closed due to high wave activity, but shall be taken the day the beach is reopened for swimming and bathing.

(4) The Erie County Department of Health may impose additional requirements that are equal to or more stringent than the requirements of this section.

(f) For a swimming pool, specialty pool, spa and hot tub the bathing water shall be sampled at least once a week from the area of average depth, in accordance with § 18.27 (relating to swimming pool contamination).

[(c)] (g) ***

(h) The laboratory conducting the bacteriological testing shall report test results exceeding the criteria specified in §§ 18.27 and 18.28 (relating to swimming pool contamination; and bathing beach contamination) to the appropriate district office of the Department or the local health department within 24 hours of the availability of the laboratory result.

§ 18.31. Laboratory testing.

(a) Laboratory tests TESTING AND ANALYSIS of water samples shall be performed by competent personnel at an A DRINKING WATER environmental laboratory that is REQUIRED TO ~~registered~~ REGISTER by WITH the Pennsylvania Department of Environmental Protection AND IS IN COMPLIANCE WITH THE ENVIRONMENTAL LABORATORY ACCREDITATION ACT (27 PA.C.S. §§ 4101 - 4113) AND THE REGULATIONS PROMULGATED THEREUNDER. TESTING OF THE WATER SAMPLES SHALL BE PERFORMED in accordance with the procedure provided in the [12th edition of] *Standard Methods for the Examination of Water and Wastewater*, 20th edition, published jointly by the American Public Health Association and the American

Water Works Association, as amended, or in accordance with a ANY OTHER method approved by the United States Environmental Protection Agency for the testing of E. COLI IN water samples TAKEN FROM WATERS DESIGNATED FOR PRIMARY CONTACT RECREATION. [Conformity to these standards shall be evidenced by a statement from the laboratory to such effect.]

(b) The laboratory shall document the method used to complete the tests of the water samples and make the documentation available to the Department upon request.

Commonwealth of Pennsylvania



DEPARTMENT OF HEALTH

HARRISBURG

THE SECRETARY

April 30, 2004

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, 333 Market Street
Harrisburg, PA 17101

Re: Department of Health – Final Regulations No. 10-170
Bacterial Monitoring of Public Bathing Beaches

Dear Mr. Nyce:

Enclosed are final-form regulations for review by the Independent Regulatory Review Commission (Commission) accordance with the Regulatory Review Act (71 P.S. §§745.1-745.15). The amendments include requirements relating to the bacteriological monitoring of water at public bathing beaches in order to protect the public health while swimming and bathing.

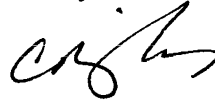
Section 5.1(a) of the Regulatory Review Act, 71 P.S. §745.5a(a), provides that upon completion of the agency's review of comments following proposed rulemaking, the agency is to submit to the Commission a copy of the agency's response to comments received, the names and addresses of the commentators who have requested additional information relating to the final-form regulations, and the text of the final-form regulations which the agency intends to adopt.

The Department of Health did not receive any comments during the public comment period.

Section 5.1(e) of the Regulatory Review Act, 71 P.S. §745.5a(e), provides that the Commission may have until its next scheduled meeting which occurs no less than 30 days after receipt of these regulations, to approve or disapprove the final-form regulations.

The Department will provide the Commission with any assistance it requires to facilitate a thorough review of the regulations. If you have any questions, please contact Michael Yantis, Director of the Office of Legislative Affairs, at (717) 783-3985.

Sincerely,

A handwritten signature in black ink, appearing to read "C.B. Johnson", written in a cursive style.

Calvin B. Johnson, M.D., M.P.H.
Secretary

Enclosures

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 10-170

SUBJECT: Public Swimming and Bathing Places

AGENCY: Department of Health

2300

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions

b.

Without Revisions

RECEIVED
2004 APR 30 PM 2:59
REGULATORY REVIEW COMMISSION

CA

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

4/30/04 David M. Chan

HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES

4/30/04 Karen Shaffer
4/30/04 Ernst R. Ruppel
4/30/04 M. Wagner

SENATE COMMITTEE ON PUBLIC HEALTH &
WELFARE

4/30/04 Stephen F. Hoff

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

April 27, 2004