

Regulatory Analysis Form		This space for use by IRRC	
(1) Agency		<p>APR 25 10:30</p> <p>IRRC Number: 2300</p>	
Department of Health			
(2) I.D. Number (Governor's Office Use)			
10-170			
(3) Short Title			
Bacterial Monitoring of Public Bathing Beaches			
(4) Pa Code Cite		(5) Agency Contacts & Telephone Numbers	
28 Pa. Code Ch. 18		Primary Contact: Karen Kroh, Office of Policy	
§ 18.28		813 Health and Welfare Bldg	
§ 18.30		Harrisburg, PA 17120	
§ 18.31		717-787-4525	
		Secondary Contact: Dennis Wilson	
		Bureau of Community Health Systems	
		628 Health and Welfare Building	
		P.O. Box 90	
		Harrisburg, PA 17120	
		717-787-4366	
(6) Type of Rulemaking (Check One)		(7) Is a 120-Day Emergency Certification Attached?	
<input checked="" type="checkbox"/>	Proposed Rulemaking	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Final Order Adopting Regulation	<input type="checkbox"/>	Yes: By the Attorney General
<input type="checkbox"/>	Final Order, Proposed Rulemaking Omitted	<input type="checkbox"/>	Yes: By the Governor
(8) Briefly explain the regulation in clear and non-technical language.			
<p>The proposed amendments are intended to provide enhanced public health protection to individuals who bathe and swim at Pennsylvania's public bathing beaches. The proposed amendments would 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 would also be included. The effect of the proposed amendments will be 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), 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.A., §§ 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 proposed 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 proposed amendments is to detect disease-carrying organisms in bathing beach water and to minimize public exposure to such organisms. The proposed 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 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.

(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 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 or bathe at Pennsylvania's 242 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 proposed amendments would apply to 242 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 camps. Specifically those bathing beaches include: 47 state park beaches operated by the Department of Conservation and Natural Resources, 77 beaches operated by private campgrounds and resorts, 50 beaches operated by organized camps, 44 beaches operated by municipalities and 4 Army Corps of Engineer beaches. Of the 242 bathing beaches, the majority is located in the northern part of Pennsylvania with 40% in the northeast, 24% in the northwest and 10% in north central Pennsylvania. Only 26% 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 have been held over the past 18 months 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.

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

(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 proposed amendments would 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 would 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-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 tests. The Department will contact these laboratories, explain the new Pennsylvania requirements and encourage the provision of the new tests. It is fully expected that additional laboratories will offer the E. coli tests once public demand is present.

It is not anticipated that there would 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 proposed amendments would 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 proposed amendments would have no fiscal impact on state government. No additional inspections, oversight or procedures are required to implement and monitor compliance with this proposed regulation.

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(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 proposed regulation.

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

Public Swimming and Bathing Place Program				
Program	FY - 3	FY - 2	FY - 1	Current FY
Planning	\$168,980	\$396,670	\$364,350	\$379,708

(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 proposed 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.

(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 is proposing 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.

(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 proposed regulations are consistent with Federal statute and the United States Environmental Protection Agency standards. They are not more stringent than Federal standards.

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(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.

(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 is coordinating the proposed 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 will meet with individual stakeholder organizations upon request. Departmental staff will be accessible to discuss recommended changes to the proposed regulations.

(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.

There would be no additional paperwork required by the proposed amendments. While the proposed 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 comply with this reporting requirement.

(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 proposed amendments do not include any special provisions. The proposed amendments would provide equal protection to all individuals who swim or bathe 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 proposed amendments would be effective upon publication as final-form rulemaking in the *Pennsylvania Bulletin*. It is anticipated that these regulations would be effective prior to or near the beginning of the 2003 swimming season.

No new permits or approvals would be required relating to this proposed 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.

FACE SHEET
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WITH THE LEGISLATIVE REFERENCE BUREAU

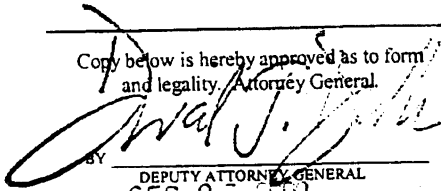
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BY 

DEPUTY ATTORNEY GENERAL

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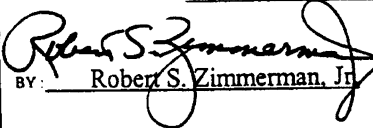
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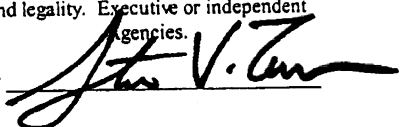
DOCUMENT/FISCAL NOTE NO. 010-170

DATE OF ADOPTION:

BY 
Robert S. Zimmerman, Jr.

TITLE Secretary of Health

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agencies.

BY 

DATE OF APPROVAL

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

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

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

DEPARTMENT OF HEALTH

Title 28. HEALTH AND SAFETY
PART II. LOCAL HEALTH

[28 Pa. Code Ch. 18]

Public Swimming and Bathing Places

Notice is hereby given that the Department of Health (Department) proposes to amend 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.

A. Purpose of the Proposed Amendments

The proposed amendments are intended to provide enhanced public health protection to individuals who bathe and swim at Pennsylvania's public bathing beaches. The proposed 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 effect of the proposed amendments will be improved detection of disease-carrying organisms in bathing beach water and reduced public exposure to such organisms.

The proposed amendments apply to 242 bathing beaches in Pennsylvania that are permitted by the Department, including those located at state parks, community locations and privately-owned campgrounds, resorts and camps. The scope of the regulations includes 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.

The proposed 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 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 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.

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.A., §§ 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 proposed 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. Consistent with Pennsylvania's commitment to enhance tourism, the regulations support tourism by providing increased public health protections at Pennsylvania's beaches.

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.

Several formal and informal meetings and discussions have been held over the past 18 months 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. To further the effectiveness of these proposed amendments, the Department is coordinating the proposed regulations with the Pennsylvania Department of Environmental Protection to assure compatibility with other Pennsylvania regulations relating to water quality. The Department has also discussed the proposed regulations with the Department of Conservation and Natural Resources in order to coordinate implementation issues relating to the state park beaches.

B. Summary of the Proposed Amendments

The proposed 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 a beach located on Lake Erie are also included. Following is a summary of the specific proposed amendments:

§ 18.1. Definitions.

The Department is proposing to add a new definition of "local health department" to clarify the meaning of this term as used in § 18.30 (h) (relating to water samples).

The definition is based on the Local Health Administration Law (16 P.S. §§ 12001-12028). It tracks the definition of “local health department” found in other Department regulations, for example, the regulations relating to communicable and non-communicable diseases (28 Pa. Code Ch. 27).

§ 18.28. Bathing beach contamination.

Subsection (a) includes proposed amendments relating to the requirements for notifying the public if a beach is closed. The Department is proposing amendments to specify the size and the location of the posted signs. This requirement is consistent with the EPA’s public notice requirement under the federal Beaches Environmental Assessment and Coastal Health Act. In discussions with Pennsylvania’s beach operators, while public notice of beach closure is generally provided, the method of providing notice of closure and the actual signage varies across the Commonwealth. Some beaches post closings on web sites as well as with visual signs at the beach. The Department is proposing to regulate the size and location of the signs to give clear public notice of a beach closing. The sign need only inform the public that the beach is closed and need not specify the reason for the closing.

Paragraph (b) (2) proposes to change the type of water testing from a fecal coliform test to an E. coli test in accordance with recommendations of the EPA. The current regulations require a weekly fecal coliform test. This regulation has been in effect since 1971. The proposed regulations would not change the frequency of testing

that is required, but rather change the type of laboratory test that must be completed. The proposed amendments would not require permittees to collect additional samples of water.

The Department is proposing this change in the type of laboratory test based on current information and data that establishes the E. coli test to be better at identifying disease-carrying organisms that may cause a risk to humans than the currently required fecal coliform test. Both the fecal coliform and the E. coli test are indicators that the water has been contaminated with disease-carrying organisms such as from sewage or human or animal waste. However, the data demonstrates that the E. coli test is a more reliable indicator of the presence of organisms that cause human illness than the fecal coliform test.

E. coli is a type of fecal coliform bacteria that is commonly found in the intestines of animals and humans. Because it lives in the intestines, the presence of E. coli in water is a strong indicator that the water has been contaminated with sewage or human or animal waste. This waste may carry other kinds of disease-causing organisms and may indicate the need for additional testing. Most of the hundreds of strains of E. coli are perfectly harmless and live inside human intestines. Many actually aid in digestion. However, one particular strain, E. coli 0157:H7, can cause an infection that may result in serious diarrhea and abdominal cramps and is potentially fatal in small children. In accordance with the EPA recommendations and research, the fecal coliform test that is

currently required is less effective than the E. coli test at establishing the presence of disease-carrying organisms.

The EPA has conducted studies at marine and freshwater bathing beaches designed to determine if swimming in sewage and waste contaminated water carries a health risk for bathers, and, if so, for what type of illness. The significant swimming-associated rates for gastroenteritis were always observed at the more polluted beaches at each study location. Statistically significant swimming-associated gastroenteritis rates were not observed at any of the relatively unpolluted beaches. The research confirmed that total coliforms and fecal coliforms showed very weak correlations to gastroenteritis. The research showed that testing for either E. coli or enterococci did correlate highly to swimming-associated gastroenteritis in freshwater to indicate that these two tests are equally efficient for monitoring water quality in freshwater. The Department is proposing to use the E. coli test versus the enterococci test because the E. coli test is more available and less costly than the enterococci test; further research has proven that there is no greater level of protection in the enterococci test for freshwater beaches. The EPA research supports the premise that E. coli has a very strong correlation between positive results and incidence of people getting sick. The correlation for fecal coliforms, according to this research, is close to zero.

Subsection (b) (2) includes a proposed change to the level requiring a necessary beach closing from 1,000 per 100 milliliters for fecal coliform to 235 per 100 milliliters for E. coli in accordance with recommendations of the EPA. The EPA recommends

various levels of protection based on water useage. The level suggested by the EPA for a designated freshwater beach area is 235 per 100 milliliters. The Department is proposing to adopt this standard. The EPA has other protection levels for marine water, infrequent bathing use and for other water uses such as boating or water sports which are not under the authority of the Department of Health's public bathing place program.

Subsection (b) (3) includes a proposed change to the level requiring a necessary beach closing from 200 per 100 milliliters for fecal coliform to a level that exceeds a geographic mean of 126 per 100 milliliters for E. coli for any 30-day period, consistent with the recommendations of the EPA. This requirement for a study of the test results over a 30-day period is not new. It is required so that a comprehensive look at the test results over a one-month period can be studied in addition to the one-day levels. This is necessary to detect and correct any long-term contamination problems at the beach.

§ 18.30. Water samples.

Proposed subsection (b) would be new. It includes a proposed amendment to require a sample be taken each year within one week prior to opening the beach for the season for all beaches. This is important so that any contamination that may have occurred over the fall, winter and spring seasons be detected prior to public use of the beach for the swimming season. The text of current subsection (b) would be redesignated as subsection (c).

Proposed subsection (d) would also be new. It addresses all bathing beaches, including those located on Lake Erie, and specifies the location within the swimming area from which the water sample must be drawn. Proposed subsection (d) would require the sample to be taken from water that is approximately 30 inches in depth and half-way down between the surface and the bottom of the water. This is consistent with current practice. Paragraph (3) of this proposed subsection would clarify the Department's existing authority to require additional analysis and water samples included in current subsection (b) (proposed subsection (c)). Proposed paragraph (3) states that the Department may require additional samples to be taken based on factors such as bather load, weather conditions and bacteriological history.

Proposed subsection (e) would be new. It would apply only to Lake Erie beaches. The proposed requirements are mandated for Lake Erie under the Beach Act. Proposed subsection (e) would address multiple samplings for each Lake Erie beach applying an arithmetic mean and would prohibit sampling during high wave activity. These requirements have already been partially implemented by the Erie County Health Department for the 2002 swimming season. Proposed subsection (e)(4) would also allow the Erie County Health Department to adopt additional standards that are more stringent than these proposed regulations.

Proposed subsection (f) would be new and would clarify that swimming pools are still sampled and monitored in accordance with the current regulations requiring total coliform testing. No changes to the swimming pool requirements are proposed in this

amendment. The total coliform test for swimming pools is considered appropriate for swimming pools because of the different nature of the water. Swimming pool water is chemically treated and disinfected continuously. Bathing beaches must rely on the natural water flow to remove contamination. Therefore, the risk of disease transmission is much lower in a swimming pool than at a beach.

The text of current subsection (c) would be redesignated as subsection (g).

Proposed subsection (h) would be new. It would include a proposed amendment for laboratories to report test results exceeding the limits in this section to the appropriate district office of the Department and to the appropriate local health Department. This is important so the Department, or local health department in whose jurisdiction the bathing beach is located, can monitor compliance with this chapter and address any long-term problems at bathing beaches. Most laboratories currently report in accordance with this requirement.

§ 18.31. Laboratory testing.

Subsection (a) includes a proposed amendment requiring laboratories to perform tests of water samples in accordance with the 20th edition of the Standard Methods for the Examination of Water and Wastewater, as amended, or with another method which is approved by the EPA. This is necessary to stay abreast with current methods of water testing.

The Department proposes to add a new subsection (b) to clarify existing language in current subsection (a) relating to laboratory documentation of the method used to complete the tests of the water samples.

C. 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), and § 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).

D. Who is Affected by the Proposed Amendments

The proposed amendments would apply to 242 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 camps would be included. Specifically those bathing beaches include: 47 state park beaches operated by the Department of Conservation and Natural Resources, 77 beaches operated by private campgrounds and resorts, 50 beaches operated by organized camps, 44 beaches operated by municipalities and 4 Army Corps of Engineer Beaches. Of the 242 bathing beaches, the majority are located in the northern part of Pennsylvania with 40% in the northeast, 24% in the northwest and 10% in north central

Pennsylvania. Only 26% of the bathing beaches are located in the southeast, southwest and south central parts of the Commonwealth.

E. Cost and Paperwork Estimates

The proposed 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-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 tests. The Department will contact these laboratories, explain the new Pennsylvania requirements and encourage the provision of the new tests. It is fully expected that additional laboratories will offer the E. coli tests 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.

There is no additional paperwork required by the proposed amendments. While the proposed amendments would require laboratories to report positive results to the Department, or the local health department within whose jurisdiction the bathing beach is located, most laboratories already comply with this reporting requirement.

F. Effective/Sunset Dates

The proposed regulations would be effective upon publication of final-form regulations 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.

G. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (“Act”), (71 P.S. §745.5(a)), on September 25, 2002, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Health and Human Services Committee and the Senate Public Health and Welfare Committee. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1991-1, “Regulatory Review and Promulgation.” A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees’ review period. The notification shall specify the regulatory review criteria that have not been met by that portion of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations by the Department, the General Assembly and the Governor.

H. Contact Person.

Interested persons are invited to submit written comments, suggestions or objections relating to the proposed regulations to Dennis C. Wilson, Environmental

Interested persons are invited to submit written comments, suggestions or objections relating to the proposed regulations 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, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Persons with a disability may submit comments, suggestions or objections to Mr. Wilson in alternative formats, such as by audiotape or Braille or by using V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at 1-800-654-5984 [TT] for persons with speech or language impairments.

Persons with a disability who would like to obtain this document in an alternative format should contact Mr. Wilson so that necessary arrangements may be made.

ANNEX A

Title 28. HEALTH AND SAFETY PART II. LOCAL HEALTH Chapter 18. Public Swimming and Bathing Places

§ 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 § 25 of the Local Health Administration Law (16 P.S. § 12025).

§ 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:

(1) The Department determines that a substance is being discharged or may be discharged into the water and is or may be hazardous to the health of persons using the bathing beach.

(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.

(a) The permittee shall be responsible for the collection and examination of samples for the purity of the water used for swimming and bathing. The samples shall be examined by a laboratory which complies with § 18.31 (relating to laboratory testing).

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

~~[(b)]~~ (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. Additional analyses of samples shall be furnished by the permittee upon 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) Copies of the reports of analyses shall be maintained by the permittee for at least two years and made available to the Department upon request.

(h) The laboratory conducting the bacteriological testing shall report test results exceeding the criteria specified in § 18. 27 (relating to swimming pool contamination) and § 18.28 (relating to 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 of water samples shall be performed by competent personnel at an environmental laboratory that is registered by the Pennsylvania Department of Environmental Protection 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 method approved by the United States Environmental Protection Agency for the testing of water samples.

(b) [Conformity to these standards shall be evidenced by a statement from the laboratory to such effect.] 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

ROBERT S. ZIMMERMAN, JR., MPH
SECRETARY OF HEALTH

September 25, 2002

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

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

Dear Mr. Nyce:

Enclosed are proposed regulations for review by the Commission in accordance with the Regulatory Review Act (71 P.S. §§745.1-745.15). These proposed regulations amend the Department's regulations at 28 Pa. Code Chapter 18 (relating to public swimming and bathing places) concerning bacterial monitoring of public bathing beaches.


Section 5(g) of the Regulatory Review Act, 71 P.S. §745.5(g), provides that the Commission shall, within 10 days after the expiration of the Standing Committee review period, notify the proposing agency of any objections to the proposed regulations. The Department expects the regulations to be published on October 5, 2002. A 30-day comment period is provided.

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, the agency shall submit to the Commission a copy of the agency's response to the 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 will provide the Commission within 5 days of receipt, a copy of any comment received pertaining to the proposed regulations. The Department will also provide the

Commission with any assistance it requires to facilitate a thorough review of the proposed regulations. If you have any questions, please contact Deborah Griffiths, Director of the Office of Legislative Affairs, at (717) 783-3985.

Sincerely,

A handwritten signature in black ink, reading "Robert S. Zimmerman, Jr." in a cursive style.

Robert S. Zimmerman, Jr.
Secretary of Health

Enclosures


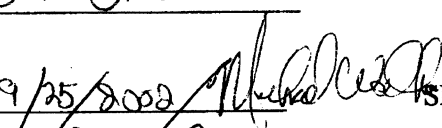
**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 10-170
SUBJECT: Public Swimming and Bathing Places
AGENCY: Department of Health

TYPE OF REGULATION

X Proposed Regulation
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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/25/02		HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES
9/25/02	Jd. Chan	
9/25/02		SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
9/25/02	Debbie Eaton	
9/25/02	E. Pagan	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
9/25/02	C. Lee Brown	LEGISLATIVE REFERENCE BUREAU

September 25, 2002