

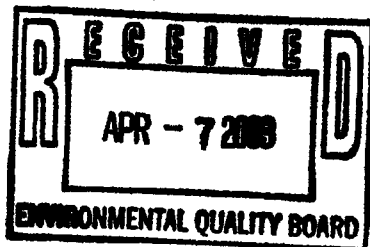


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

ENCLOSURE

REVIEW COMMISSION
April 3, 2003

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477



The following comments are submitted by the U.S. Environmental Protection Agency (EPA) in response to the Board's request for comments on the Proposed amendments to Chapter 109, Safe Drinking Water, as published in the Pennsylvania Bulletin (vol.33, No.10, page 1239) on March 7, 2003. These amendments consist of new and modified requirements for the regulation of radionuclides. Also included with these comments is a one page summary to be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

EPA appreciates the opportunity to comment on these proposed regulations. The Drinking Water Branch and Office of Regional Counsel of EPA, Region III reviewed the proposed rule in comparison to the Federal regulations to insure that the rules to be adopted by Pennsylvania are no less stringent than the Federal regulations in order for the PA Department of Environmental Protection (PADEP) to maintain Primacy for the drinking water program. EPA recognizes the importance of PADEP maintaining primacy for these regulations.

PADEP's rule is similar to the Federal Rule in many ways; however, we find that certain provisions will not be considered to be as stringent as the Federal Rule. These provisions must be amended prior to finalization, if EPA is to be able to approve the Commonwealth's regulations for Primacy purposes. EPA Region III offers the following comments and suggestions for changes.

In Section 109.301(14)(i)(C), PADEP has restated the federal regulation, but has left out the sentence stating that when a community water supply (CWS) substitutes gross alpha for radium-226 or uranium, the gross alpha result will be used to determine the future monitoring frequency for radium-226 or uranium. This omission could leave a reader unclear about how to determine when next to sample for radium-226 or uranium. EPA recommends that the omitted sentence be returned to the paragraph.

EPA does not see any provisions consistent with 40 C.F.R. § 141.66(f), which lists compliance dates. Information supplied by PADEP in their "Crosswalk", which compares the Federal Radionuclides rule with the PADEP regulation, states that this C.F.R. section is incorporated into the PADEP regulation by reference. EPA cannot find such a reference. The PADEP regulations under consideration specifically concern themselves with monitoring requirements (§109.301) and sampling requirements (§109.303). However, since 40 C.F.R. § 141.66(f) contains neither monitoring requirements nor sampling requirements, this section does not appear to be included

in the PADEP regulations. It is strongly recommended that PADEP revise the regulations to include these requirements.

EPA also did not find any provisions in the new regulations consistent with 40 C.F.R. §141.66(g), which lists best available technologies (BAT). The crosswalk received from PADEP confused matters by stating "BATs are not included in Chapter 109". Upon further review, a definition of BAT was found in Section 109.1 (Definitions) which references BAT determinations by the EPA Administrator. However, EPA has determined that, with the exception of the definition in Section 109.1, the phrases "BAT" and "Best available technology" do not appear again Chapter 109 of the PA Code. In Section 109.901, the phrase "best treatment technology" is used in conjunction with requirements for a variance. EPA, at some point in the future, may wish to discuss with PADEP the possibility of a revision to the language of 109.901. For the present, PADEP should review the crosswalk to assure that it is complete and, where it states that the EPA rule is incorporated by reference, list the particular section and subsection of PADEP regulations that make the reference.

EPA believes that it is beneficial to communicate any concerns regarding new PADEP regulations to the Commonwealth during the 30 day comment period. We note that EPA was not notified by PADEP that the regulations had been published, delaying our review until they were found on the PA Bulletin web site. Also, we had to request a copy of the crosswalk from PADEP and did not receive it until the comment period was more than half over. Review of the amended provisions was labor and time intensive without a crosswalk. If the Department would like to discuss this matter in more detail, EPA staff are available to do so.

Finally, PADEP is reminded that final Agency approval and Primacy determinations for this rule will be based on a review of final, adopted regulations and the submission of a Primacy Revision Request document which must include an Attorney General (AG) statement and a crosswalk. Part of the AG's opinion needs to address the enforceability of any guidance documents that the PADEP is using to comply with our regulatory requirements. Crosswalks are an invaluable tool in the Agency's review. The Department is encouraged to compare its final rule with the crosswalk to ensure that each required Federal provision has been adopted. The Primacy Revision Request must also address the Special Primacy requirements of 40 C.F.R. Part 142 associated with this rule.

Thank you for this opportunity to comment. Should you have any questions, my contact information can be found below.

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Submitted by Richard Watman, Radionuclides Rule Lead, Drinking Water Branch, U.S. EPA Region III