

NATIONAL ASSOCIATION OF WATER COMPANIES PENNSYLVANIA CHAPTER

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November 9, 2007

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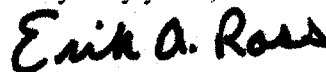
RE: Proposed Rulemaking: Public Notice on Drinking
Water Systems (Public Notification Revisions to Title
25, Pa. Code Chapter 109. Safe Drinking Water)
DEP ID: 7-407 (#2637)

Dear Environmental Quality Board:

Enclosed for filing please find the National Association of Water
Companies, Pennsylvania Chapter's comments and one-page summary
in the matter referenced above.

The National Association of Water Companies (NAWC) is a
non-profit trade association that exclusively represents private or
investor-owned drinking water utilities. The Pennsylvania Chapter
consists of 12 member companies that provide reliable drinking water to
more than 3.5 million Pennsylvanians everyday in 43 of the
Commonwealth's 67 counties. In addition, two of our member
companies own and operate several wastewater systems.

Very truly yours,



ERIK A. ROSS
Manager of Governmental
Relations

CC: Independent Regulatory Review Commission
Arthur Coccodrilli, Chairman

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INDEPENDENT REGULATORY
REVIEW COMMISSION

NATIONAL ASSOCIATION OF WATER COMPANIES PENNSYLVANIA CHAPTER

Summary of Comments on Public Notice Proposed Rulemaking, DEP ID: 7-407 (#2637)

NAWC supports the proposed rulemaking and recognizes the need to revise our public notification methods and practices in this post-9/11 environment. The following is a summary of our comments:

Subchapter D. Public Notification

While the NAWC shares the concerns expressed by the TAC regarding the costs associated with implementing an automatic telephone dialing system, we believe that its inclusion is an acceptable compromise to more costly proposals. However, it is important to note that even an automatic telephone dialing system cannot guarantee 100 percent notification. The use of automatic telephone dialing systems, hand delivery, broadcast media and websites should be considered a reasonable effort to notify residents of a Tier 1 situation.

Subchapter G. System Management Responsibilities

Questions have arisen among system operators regarding the one-hour reporting requirements, under § 109.701 (3) of the proposed rulemaking, as to when the clock officially starts. The Pennsylvania Public Utility Commission's (Commission) regulations, under 52 Pa. Code § 67.1, provide that a utility shall notify the Commission by telephone within one hour after a preliminary assessment of conditions reasonably indicates that there is an unscheduled service interruption... Therefore, NAWC recommends that § 109.701 (3) be revised as follow:

"(3) [Compliance report] **One-hour reporting requirements.** A public water supplier shall report the circumstances to the Department within 1 hour of discovery, **AFTER A PRELIMINARY ASSESSMENT OF CONDITIONS,** for the following violations or situations:"

Proposed Guidance/Main Breaks

The NAWC and TAC have expressed concern over how the Department intends to handle main breaks, with respect to situations requiring one-hour reporting to the Department, and the issuance of a BWA (boil water advisory) to the public. The water industry's experience, through sampling, has shown that most main breaks do not "allow contamination to enter the distribution system through back-flow by back-pressure or back-siphonage" and are not a health concern. Tier 1 notice should be limited to situations where there is known contamination or a high risk of contamination. Requiring notice of every main break is not necessary and the NAWC doesn't want an influx of notices involving "less serious" situations to drown out those notices that are potentially serious or adverse situations. We are also concerned that the issuance of precautionary boil water advisories for every main break; particularly those where no back-siphoning into the main occurred, will diminish customer confidence or desensitize the public to such notices.

Creation of a Unified Standard

The PA Safe Drinking Water Act gives the Department primary, but not exclusive, jurisdiction to regulate the quality of water supplied to the public. The Commission also regulates the quality of water provided by a utility to its ratepayers because it is part of the "service and facilities" of a public utility. This proposed rulemaking presents an opportunity for harmonization between the Department and Commission with respect to public notification procedures. The NAWC strongly recommends that both agencies work together to create one unified standard to reduce confusion among public water suppliers and their customers.

**Before the
Environmental Quality Board (EQB)**

In Re: Proposed Rulemaking: Public Notice
on Drinking Water Systems (Public
Notification Revisions to Title 25, Pa. Code
Chapter 109. Safe Drinking Water)

DEP ID: 7-407 (#2637)

**Comments of
National Association of Water Companies
Pennsylvania Chapter**

The National Association of Water Companies, Pennsylvania Chapter (NAWC) represents all aspects of the private water service industry including ownership of regulated drinking water and wastewater utilities and the many forms of public-private partnerships and management contract arrangements. The Pennsylvania Chapter consists of 12 member companies that provide reliable drinking water to more than 3.5 million Pennsylvanians everyday in 43 of the Commonwealth's 67 counties. In addition, two of our member companies own and operate several wastewater systems.

I. Introduction

The purpose of the proposed rulemaking is to amend the Department of Environmental Protection's Safe Drinking Water regulations to strengthen the public notice requirements for imminent threat violations and situations (also known as Tier 1). The amendments will enhance the planning requirements of both the Operation and Maintenance Plan and the Emergency Response Plan sections that relate to public notification. In addition, the proposed rulemaking will revise the delivery requirements for community water systems, as appropriate to the type

and size of the water system. Finally, the proposed revisions will provide a few more examples of those situations that need to be reported to the Department within 1 hour of discovery.

II. General Comments

Following significant flooding events and an accidental release of fluoride affecting public drinking water in 2005, Governor Rendell directed the Department to strengthen the public notification procedures that public water suppliers must follow to alert residents when there is an imminent threat to drinking water supplies. "We need to update our public notification system so that timely, reliable information never leaves room for fear and confusion," Secretary McGinty said. "Recent experience has shown that the public is not always getting the safety information it needs soon enough."¹ Specifically, the Department indicated that consumers were dissatisfied with media notices for the following reasons:

- Some notices were delivered too infrequently.
- Consumers had to be watching television or listening to the radio to receive the notice.²

The NAWC supports the proposed rulemaking and recognizes the need to revise our public notification methods and practices in this post-9/11 environment. In addition, the NAWC recognizes and appreciates the effort put forth by the Department in working with the water industry and the Technical Assistance Center Advisory Board (TAC) on this proposed rulemaking. Specifically, the NAWC supports the inclusion of the following recommendations from the TAC:

1. Increasing the population for hand delivery of a Tier 1 public notice to systems serving 3,300 or fewer persons and providing systems serving 3,301 or greater the option to seek

¹ DEP Press Release, "Governor Rendell Directs Improvements to Public Notices in Water Supply Emergencies," 2/16/06

² IBID

Department approval in writing for hand delivery of a Tier 1 public notice instead of using an automated telephone dialing system.

2. Clarifying that Tier 1 public notice shall be provided to each "service connection" since it is more inclusive.
3. Revised § 109.702 (Operation and maintenance plan) to remove the requirement to provide information to consumers about available treatment options. Also, specifies that systems must maintain EPA Technical Fact sheets. Systems only have to maintain fact sheets that EPA has developed.
4. Revised § 109.707 (Emergency response plan) to require an annual review and update instead of annual drills and testing.
5. Allowing a public water supplier to use an abbreviated notice in accordance with § 109.411(b) (relating to content of a public notice). However, if systems use an abbreviated notice, they also have to post the entire public notice on a website or record the notice on a dedicated telephone line.

Finally, the NAWC appreciates the Department's decision to develop guidance to provide additional information about situations that require one-hour reporting. The content of this guidance is of great interest to our members and will likely draw the most comments, particularly as it relates to situations causing a "negative water pressure" or main breaks.

III. Specific Comments

1. Subchapter D. Public Notification.

The TAC referred delivery issues to a workgroup that met on August 29, 2006 and September 15, 2006 and the final report of the workgroup was unanimously approved at the

November 16, 2006 meeting of the full TAC Board. With respect to costs and funding for automatic delivery systems, TAC recommended the following:

"The obligation imposed upon systems serving <100,000 population to implement an auto-dialer communications system is an unwarranted economic burden to those systems which may preclude those systems from implementing essential capital improvements to their systems. We believe there are alternative delivery methods for Tier 1 public health notifications available that do not require similar levels of financial burden. For example, a paid media release of a one time cost or an electronic media warning program."

While the NAWC shares the concerns expressed by the TAC regarding the costs associated with implementing an automatic telephone dialing system, particularly for medium sized systems (serving populations 3,301 to 100,000), we believe that its inclusion is an acceptable compromise to more costly proposals which would have required "an opt-in system so individuals can request to be contacted by e-mail, text message, beeper, cell phone or other personal electronic devices in the event of an imminent threat situation."³.

Moreover, Pennsylvania American Water, United Water Pennsylvania and The York Water Company have successfully implemented or utilized automatic telephone dialing systems in 2007 to notify customers, including sensitive sub-populations like hospitals, schools, daycare facilities, nursing homes, industrial and commercial users, of boil water advisories and "problem corrected" notices.

In addition, we believe that an opportunity exists for small and medium sized systems to cooperate on a regional basis through shared-service agreements. The NAWC recommends that the Department encourage systems to pursue and vendors to accommodate shared-service

³ IBID

agreements for automatic telephone dialing systems to reduce the costs associated with compliance of this direct delivery method.

However, it is important to note that even an automatic telephone dialing system cannot guarantee 100 percent notification. The use of automatic telephone dialing systems, hand delivery, broadcast media and websites should be considered a reasonable effort to notify residents of a Tier 1 situation.

2. Subchapter G. System Management Responsibilities.

Questions have arisen among system operators regarding the one-hour reporting requirements, under § 109.701 (3) of the proposed rulemaking, as to when the clock officially starts. Specifically, § 109.701 (3) says "A public water supplier shall report the circumstances to the Department within 1 hour of discovery for the following violations or situation..." For example, if an operator gets an alarm via pager or auto dialer indicating low chlorine at an unmanned facility, does the one-hour reporting begin upon receiving the alarm or when the operator reaches the plant and does an assessment to determine if the alarm is valid? The operators should be provided an opportunity to assess the situation to determine if there is in fact a violation or situation requiring that the Department be notified. The Pennsylvania Public Utility Commission's (Commission) regulations, under 52 Pa. Code § 67.1, provide that a utility shall notify the Commission by telephone within one hour after a preliminary assessment of conditions reasonably indicates that there is an unscheduled service interruption...⁴ The NAWC recommends that § 109.701 (3) be revised as follow:

"(3) [Compliance report] **One-hour reporting requirements.** A public water supplier shall report the circumstances to the Department within 1 hour of discovery, **AFTER A**

⁴ 52 Pa. Code § 67.1 (c)

PRELIMINARY ASSESSMENT OF CONDITIONS, for the following violations or situations:"

3. Proposed Guidance/Main Breaks.

The NAWC and TAC have expressed concern over how the Department intends to handle main breaks, with respect to situations requiring one-hour reporting to the Department, and the issuance of a BWA (boil water advisory) to the public. Specifically, the NAWC is concerned that the Department's "Instructions for BWA Due to Line Breaks/Loss of Pressure"⁵ unnecessarily treats every main break as a Tier 1 violation. The NAWC believes that this provision will require a one-hour notification to the Department when even a minor main break occurs; thus generating thousands of calls to the Department annually (Based on the Water Industry Data Base for all types of piping, there are 0.27 water main breaks per mile of pipe per year, which would equate to 237,600 water main breaks in the United States annually (Kirmeyer et al, 1994)).⁶ The water industry's experience, through sampling, has shown that most main breaks do not "allow contamination to enter the distribution system through back-flow by back-pressure or back-siphonage"⁷ and are not a health concern. Tier 1 notice should be limited to situations where there is known contamination or a high risk of contamination.

The NAWC believes that this is another area where the Department and Commission should work together to provide a uniform standard. Requiring notice of every main break is not necessary and the NAWC doesn't want an influx of notices involving "less serious" situations to drown out those notices that are potentially serious or adverse situations. We are also concerned

⁵ DEP's website, "Instructions for BWA Due to Line Breaks/Loss of Pressure"
<http://164.156.71.80/VWRQ.asp?docid=cb7cd840f80b00000000b8000000b80&context=2&backlink=WXOD.aspx%3ffs%3dcb7cd840f80b00000000014d0000014d%26ff%3d1>

⁶ Kirmeyer, G., W. Richards, and C.D. Smith. 1994. An Assessment of Water Distribution Systems and Associated Research Needs. Denver, CO: AWWARF.

⁷ IBID

that the issuance of precautionary boil water advisories for every main break; particularly those where no back-siphoning into the main occurred, will diminish customer confidence or desensitize the public to such notices.

The NAWC looks forward to reviewing the Department's proposed guidance and stands ready to cooperate in the drafting of a uniform statewide standard on the handling of main breaks and the issuance of boil water advisories.

IV. Conclusion

The Pennsylvania Safe Drinking Water Act⁸ (the "SDWA") gives the Department primary, but not exclusive, jurisdiction to regulate the quality of water supplied to the public in Pennsylvania.

The Commission also regulates the quality of water provided by a utility to its ratepayers because the "water" supplied to the ratepayers is part of the "service and facilities" of a public utility.⁹

This proposed rulemaking presents an opportunity for harmonization between the Department and Commission with respect to public notification procedures. The NAWC strongly recommends that both agencies work together to create one unified standard to reduce confusion among public water suppliers and their customers.

The NAWC appreciates the opportunity to present comments on this Proposed Rulemaking: Public Notice on Drinking Water Systems and requests that the EQB and Independent Regulatory Review Commission (IRRC) consider its comments on these issues.

Respectfully submitted,

Erich A. Rors

⁸ 35 Pa. Stat. §§ 721.1 to 721.17.

⁹ See 66 Pa. C.S. § 102.

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