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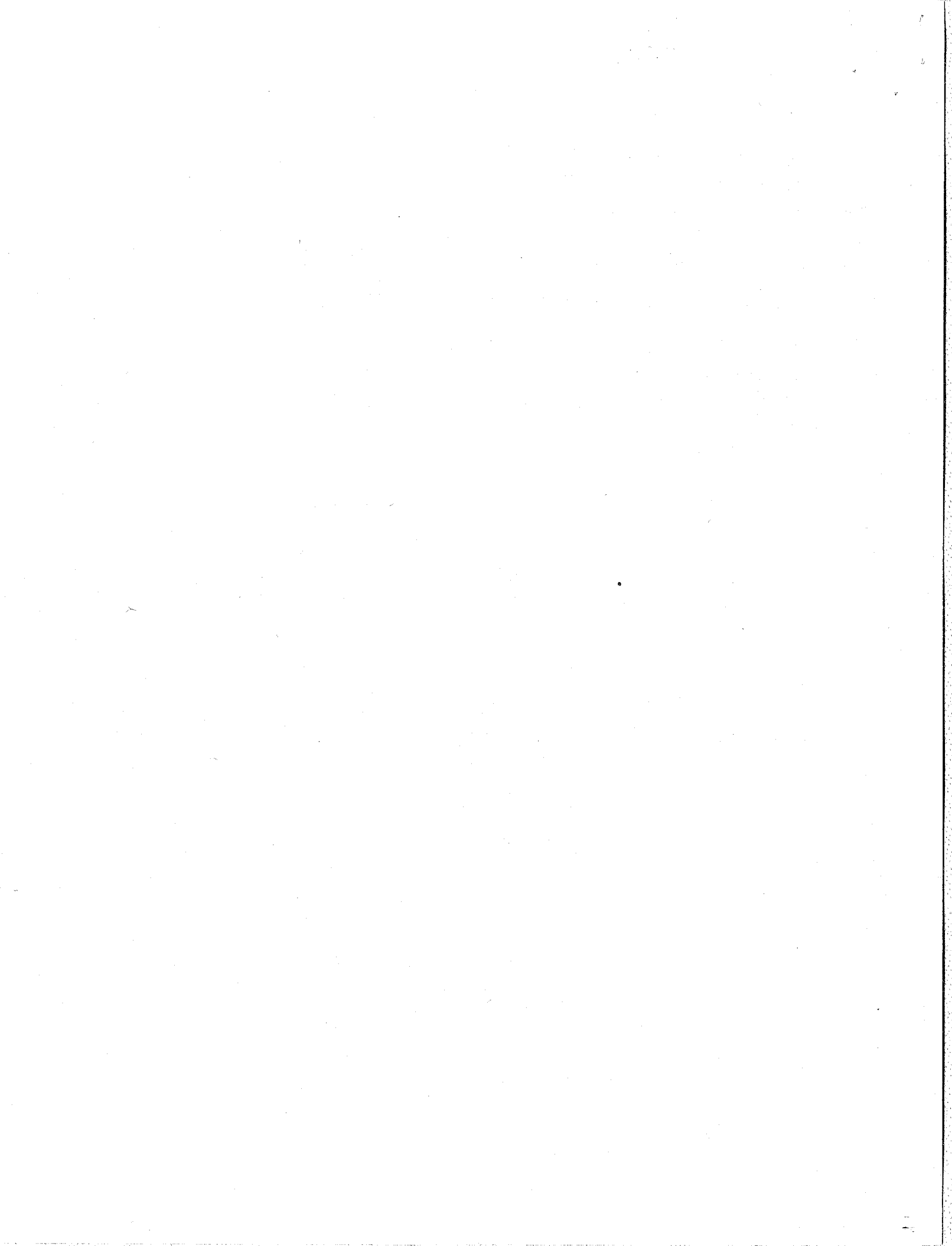
Tate, Michele

From: Luitweiler, Preston [JPLuitweiler@aquaamerica.com]
Sent: Tuesday, November 20, 2007 12:12 PM
To: RegComments@state.pa.us
Cc: Tagert, Steve; Grimm, Melissa A.; Stahl, Roy; O'Reilly, Michael; Medora, Frank; Hertz, Charles
Subject: Comments on Public Notice Proposed Rulemaking, DEP ID: 7-407 (#2637)

The attached comments and cover letter are also being sent by Fed Ex today.

Preston Luitweiler
Vice President Water Resources
Aqua Pennsylvania, Inc.
762 Lancaster Avenue
Bryn Mawr, PA 19010

11/20/2007



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AQUA
Pennsylvania

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INDEPENDENT REGULATORY
REVIEW COMMISSION

November 19, 2007

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

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 comments by Aqua Pennsylvania, Inc. on the proposed rulemaking referenced above. We would like both the full comment document and the one-page summary entered into the record.

As outlined in Section J of the notice published in the Pennsylvania Bulletin, we are requesting that a copy of the one-page summary be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Thank you for the opportunity to comment on this important matter.

Sincerely,



Preston Luitweiler
Vice President, Water Resources

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**Summary Comments of Aqua Pennsylvania Inc. on the
Proposed Rulemaking on Public Notification**

The proposed Public Notification Revisions to Title 25, Pa. Code Chapter 109 published in the September 22, 2007 Pennsylvania Bulletin goes beyond what is necessary and prudent to achieve effective communication of *real threats* to public health from contamination of a public water supply in at least one key respect.

Tier 1 public notice. The proposed rule substitutes a reference to §109.701 (3) (iii) in place of specific conditions listed in § 109.408 (Tier 1 public notice). In §109.701 (3) (iii)(G) the proposed rule adds: "A situation that causes a negative water pressure in any portion of the distribution system."

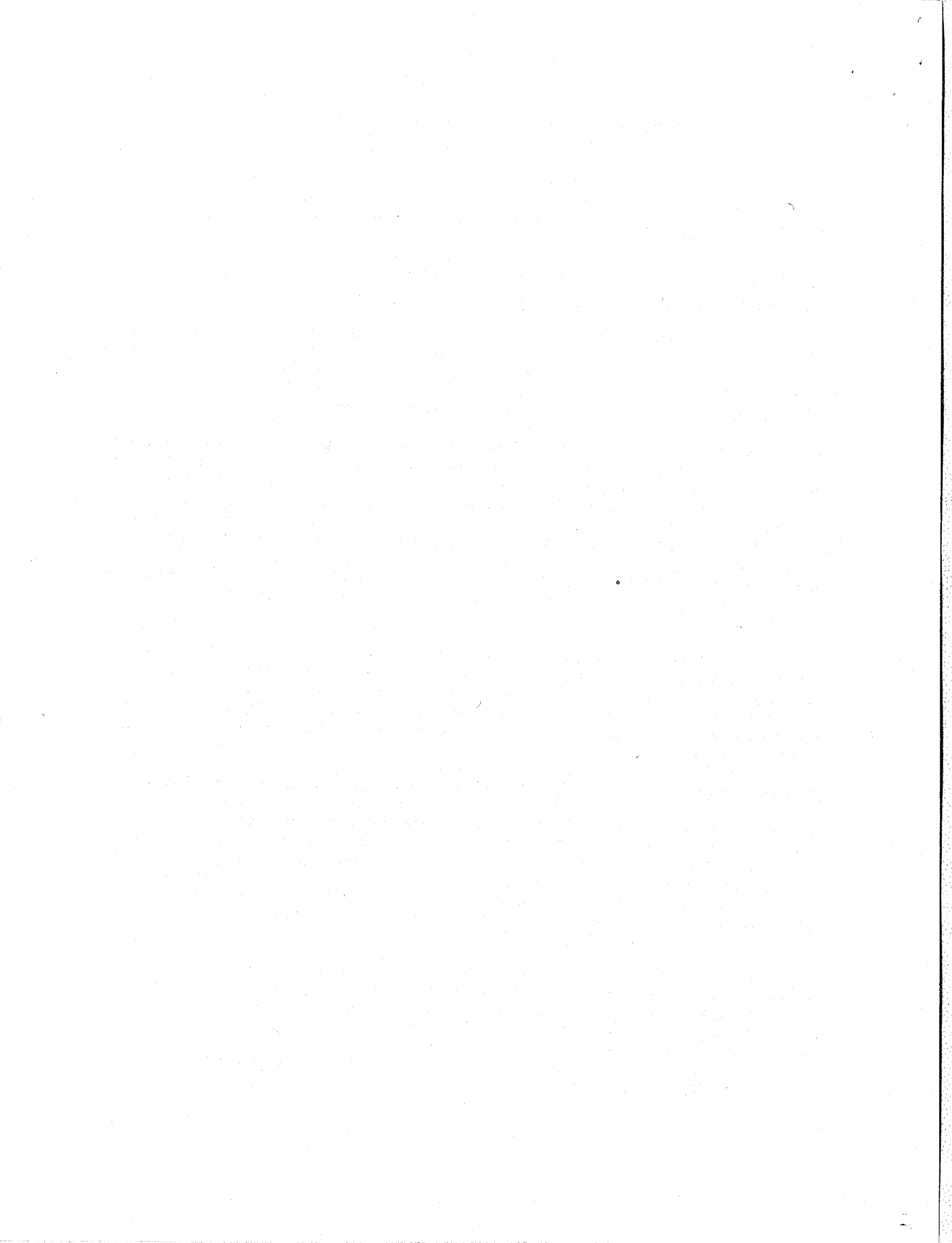
Water suppliers in Pennsylvania probably experience between 10,000 and 20,000 events every year that could fall into the category covered by §109.701 (3) (iii) (G). Under the proposed rule, these would require notification to the Department within one hour of each event. Very few, if any, of these events meet the criteria in §109.408(a)(7) for a Tier 1 event that "adversely affects the quality or quantity of the finished water and has a significant potential to have serious adverse effect on human health as a result of short-term exposure."

Aqua only recently saw the draft "Policy for Issuing and Removing Water Supply Warnings." To the extent that this document reflects how the proposed rule might be implemented, the proposed rule and the policy document should travel together through the public review and comment process. In theory, events covered by §109.701 (3) (iii) of the proposed rule would be evaluated by the water utility in consultation with the DEP regional office in accordance with the policy document, and a decision would be made as to whether each case constituted a Tier 1 event and what notification might be appropriate. The section of the 9/27/07 draft policy document on "negative pressure situations" suggests that the drafters might not have fully appreciated the implications of the proposed rule change in §109.408 and §109.701 (3) (iii)(G) and issues like the impracticality of isolating every service line during an outage or the conundrum of a 1-hour notification decision resting on test results that require 48 hours to obtain.

It is important that any public notification message be calibrated to the potential risk. As drafted, the rule and implementing policy are likely to result in Tier 1 designation and public notice requirements (heretofore reserved for *real threats* to public health) being applied inappropriately to circumstances that present little to no risk. Repeated notices to boil water or avoid use, subsequently followed in a day or two by "all clear" notices, will create both an unwarranted level of concern about the safety of the public water supply and an unjustified complacency about future warnings.

One-hour notification. The Pennsylvania Public Utility Commission's (PUC) 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..." The same regulation also provides a threshold for these notifications where there is an unscheduled service interruption affecting 2,500 customers or 5 percent of a utility's total customers, whichever is less, in a single incident of six or more projected consecutive hours. We would like to see some latitude in the notification requirement in the proposed rule or the implementing policy document to recognize that an unconfirmed report or automated alarm signal might not constitute awareness of a potential Tier 1 event, and a utility's response should be reasonably calibrated to the potential severity of any event.

Delivery of a Tier 1 Public Notice. No method of public notification is perfect. Available technologies are evolving, as are public expectations. We suggest that in §109.408 (c) (1) of the proposed rule instead of two separate lists [(i) and (ii) depending on system size] the lists should be combined and the requirement should be that a utility, in consultation with the Department, employ a method of direct delivery of notification appropriate for the affected area and the circumstances, including one or more of the listed delivery methods or another form of direct delivery approved by the Department. This flexibility would foster commitment by utilities and regulators alike to continuously improve public notification procedures.



Before the Pennsylvania Department of Environmental Protection

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 Aqua Pennsylvania

Aqua Pennsylvania, Inc. (Aqua) began as Springfield Water Company, founded in 1886 by Swarthmore College professors to provide quality water to residents in Swarthmore Borough and neighboring communities. Today, Aqua supplies water to over one million people in 95 water systems across Pennsylvania.

Aqua applauds the efforts of the Department of Environmental Protection to improve the mechanisms for alerting residents *of real threats to drinking water supplies*. However, the Proposed Rulemaking: Public Notice on Drinking Water Systems (Public Notification Revisions to Title 25, Pa. Code Chapter 109) as published in the September 22, 2007 Pennsylvania Bulletin goes beyond what is necessary and prudent to achieve prompt and effective communication of *real threats* to public health from contamination of a public water supply.

1. Tier 1 Public Notice.

The proposed rule substitutes a reference to §109.701 (3) (iii) for specific conditions currently listed in §109.408 for designating circumstances requiring Tier 1 public notices. The referenced §109.701 (3) (iii) lists events requiring notification to the Department within one hour. The reference to this list is modified in §109.408(a)(7) in the proposed rule with the condition that a Tier 1 event “adversely affects the quality or quantity of the finished water and has a significant potential to have serious adverse effect on human health as a result of short-term

exposure.” By implication in listing in §109.701 (3) (iii), and by default in decision-making at the local level, events that are not Tier 1 events are likely to be so categorized. This is particularly troublesome for the category of events covered by proposed new item (G) in §109.701 (3) (iii):

“A situation that causes a negative water pressure in any portion of the distribution system.”

Water suppliers in Pennsylvania probably experience between 10,000 and 20,000 events every year that could fall into the category covered by §109.701 (3) (iii) (G). Under the proposed rule, these would require notification to the Department within one hour of each event. Very few, if any, of these events meet the additional criteria for a Tier 1 event in §109.408(a)(7). Aqua does not believe there is any public health justification for treating every line break or “negative pressure” event as a potential Tier 1 violation. We have seen no evidence correlating an increased incidence of positive coliform samples with water main breaks or scheduled shut-downs. In cases where follow-up samples have been collected after precautionary Boil Water Advisories (BWAs) have been issued, and where chlorine residual has been maintained or restored, it has been extremely rare that a positive bacteria sample has occurred. We cannot recall any instance of a positive *E. coli* sample or a documented case of a waterborne illness arising from these circumstances.

The Department’s draft “Policy for Issuing and Removing Water Supply Warnings” dated September 27, 2007 presumably reflects how the proposed rule might be implemented. The proposed rule and the policy document should travel together through the public review and comment process.

In theory, events covered by §109.701 (3) (iii) of the proposed rule would be evaluated by the water utility in consultation with the DEP regional office in accordance with the policy

document, and a decision would be made as to whether each case constituted a Tier 1 event and what notification might be appropriate. In practice, the Department policy will be implemented by regional Department staff, including on-call emergency personnel in programs other than drinking water, and in some counties by county health department staff.

The section of the draft policy document on “negative pressure situations” is unworkable in its present form. The suggestion that every service line should, or could, be isolated during an outage is impractical. A decision on 1-hour notification to the Department cannot rest on test results that require a minimum of 48 hours to obtain.

If coliform testing is to be used in any way to determine response to outages, the standard for requiring a Tier 1 notice should be consistent with the Total Coliform Rule and require at least one positive *E. coli* or fecal coliform test result. The standard can be lower for issuing a precautionary Boil Water Advisory (BWA), but a BWA is not a Tier 1 violation and should not be in the format of a Tier 1 violation notice.

It is important that any public notification message be calibrated to the potential risk. As drafted, the rule and implementing policy are likely to result in Tier 1 designation and public notice requirements (heretofore reserved for *real threats* to public health) being applied inappropriately to circumstances that present little to no risk. This will create both an unwarranted level of concern about the safety of the public water supply and an unjustified complacency about future warnings.

2. One-hour Reporting Requirements.

Ideally, the proposed regulation will encourage open dialog and communication between water suppliers and public health officials (including drinking water program regulators). In situations that could trigger actions like shutting down a food processing plant or a restaurant,

issuing bagged ice/bottled water orders, issuing blanket precautionary boil water advisories, or trucking in emergency water supplies, it is important to assess potential risk and define the affected area quickly and accurately. The commitment to communicate promptly, openly and freely about potential risks could be undermined if the Department and/or local public health officials are not willing to carefully weigh the consequences of hasty precautionary actions.

Setting forth an expectation of prompt notification to the Department and local health officials from water suppliers is reasonable. However, the mandate in § 109.701 (3) that "A public water supplier shall report the circumstances to the Department within 1 hour of discovery for the following violations or situation..." might be unreasonable and unproductive if "discovery" could be interpreted as an initial autodialer or SCADA alarm or a call from a customer or passerby. The Pennsylvania Public Utility Commission's (PUC) 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..."

The PUC regulations at 52 Pa. Code § 67.1 also provide a customer threshold where 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 affecting 2,500 or 5%, whichever is less, of a utility's total customers in a single incident of six or more projected consecutive hours.

3. Methods of Public Notification of Emergencies.

No method of public notification can ensure that every user will receive timely notification of every potential water supply contamination event. Consumers are unlikely to see a notice posted on their door at 2 a.m. until they leave their house in the morning. Consumers who

do not wake up to an "all news" radio station might learn of a radio broadcast warning on the way to work, or from a colleague or neighbor hours after a broadcast. Even a "blasted" automated phone message sent to thousands of households and businesses in minutes will not reach people who are not home and don't have answering machines, who are on the phone, or who might be on-line with a dial-up internet connection, or people with unlisted phone numbers, people with no phone, or who rely solely on cell phones.

At the same time, repeated notices to boil water, avoid consumption, or avoid all use of tap water, followed in a day or two by "all clear" notices, will create both an unwarranted level of concern about the safety of the public water supply and an unjustified complacency about future warnings. Just when the public is beginning to see the economic and environmental costs of bottled water compared to tap water, the unintended consequence of undermining consumer confidence in public water supplies would be a step backward.

Aqua has employed radio and TV announcements, door hangers, "blasted" automated phone messages, and hand delivery and hand posting of Tier I public notice and Boil Water Advisories. Aqua uses a dedicated phone number reserved to provide detailed messages in the event of water emergencies. Aqua also uses its web site to post detailed information and updates on water emergencies. Aqua also maintains lists of hospitals, schools, dialysis centers and home dialysis patients, and other critical customers who can be notified in person by phone in the event of a water quality emergency. The technological opportunities for effective public notification of emergencies are evolving, as are public expectations. We suggest that §109.408 (c) (1) provide one list of options instead of two separate lists for different size systems. The requirement in §109.408 (c) should be that a utility, in consultation with the Department, employ a method of direct delivery of notification appropriate for the affected area and the circumstances, including one or more of the listed delivery methods or another form of direct delivery approved by the


Department. This flexibility would foster commitment by utilities and regulators alike to continuously improving public notification procedures.

Conclusion

This proposed rulemaking presents an opportunity for the Department to work with water suppliers, public health professionals, and the PUC to improve public notification in water supply emergencies that present *real potential threats to public health*. Calibrating public notification messages to the potential risk of a given event, and doing this quickly and effectively, is a challenge in which water suppliers must be an active and respected partner with the Department. Before final promulgation, Aqua requests that the implementing policy document be revised and fully vetted with water suppliers and their professional organizations. Aqua also requests that the proposed rule be revised to address 1) the distinction between Tier 1 events and routine main breaks and outages, 2) the logistics of timely notification to the Department for different categories of events, and 3) flexibility in selecting appropriate methods and messages for notifying the public of water emergencies.

Aqua appreciates the opportunity to present comments on this proposed rulemaking and asks that the Department consider these comments before making the proposed rule final.

Respectfully submitted,



Preston Luitweiler
Vice President, Water Resources