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pa rural water association

September 18, 2017

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

RE: Comments on Proposed Rulemaking – Chapter 109
Safe Drinking Water; General Update and Fees

The Pennsylvania Rural Water Association (PRWA) is a non-profit, non-government organization representing the collective interests of its 1,115 publicly and privately owned rural water and wastewater utility members before various state and national government agencies. PRWA has established and maintains a reputation for integrity and technical excellence by providing leadership in the operation, maintenance, and management of systems responsible for providing safe drinking water and wastewater management – community, industrial, or commercially operated.

On May 17, 2017, the Environmental Quality Board (EQB) adopted the proposed rulemaking to amend Chapter 109 (relating to safe drinking water). The amendments include three parts:

1. Incorporate the remaining general update provisions that were separated from the proposed Revised Total Coliform Rule (RTCR) as directed by the EQB on April 21, 2015, including revisions to treatment technique requirements for pathogens, clarifications to permitting requirements, and new requirements for alarms, shutdown capabilities, and auxiliary power.
2. Amend existing permit fees and add new annual fees to supplement Commonwealth costs and fill the funding gap ($7.5 million).
3. Add new amendments to establish the regulatory basis for issuing general permits, clarify that noncommunity water systems (NCWS) require a permit or approval from the DEP prior to construction and operation, and address concerns related to gaps in the monitoring, reporting and tracking of back-up sources of supply.

Subchapter B. MCLs, MRDLs or TREATMENT TECHNIQUE REQUIREMENTS
§ 109.202 (State MCLs, MRDLs and treatment technique requirements)

This section provides for filtered water turbidity criteria for "Conventional or direct filtration" and "Membrane filtration." Specifically, the filtered water turbidity for all public water systems shall meet the following criteria:

- Be less than or equal to 0.30 Nephelometric Turbidity Unit (NTU) in at least 95% of the measurements taken each month under § 109.301 (1).
- Be less than or equal to 1.0 NTU at all times, measured under § 109.301 (1).

The federal turbidity requirement is 0.3 NTU, not 0.30. Adding a zero to the maximum contaminant level (MCL) is not based on science – see Standard Methods methodology regarding significant figures. The same issue applies to establishing the turbidity limit of 1.0 NTU, as it should be 1 NTU per the EPA limit for consistency. TAC discussed the "significant figure" issue at length and referenced the formal comment[i] regarding significant figures by Jeanne Van Briesen, Professor, Carnegie Mellon University, which was provided to DEP about the proposed Disinfection Requirements Rule.

However, in the Preamble[ii] [Pg. 16 of the Proposed Rulemaking that was posted on the EQB website on May 17, 2017], "DEP avers that the revisions to the turbidity standard are warranted." "Additionally, DEP asserts that it is appropriate to "add zeros" for some drinking water standards where the level of sensitivity is warranted by the analytical method." [Preamble, Pg. 17]

The PRWA supports the comments made by TAC and Professor Van Briesen, and believes the rulemaking should adhere to the federal standard by not adding a zero to the MCL.

Subchapter C. MONITORING REQUIREMENTS
§ 109.301 (11) (Monitoring requirements for entry points that do not provide water continuously)

Under § 109.301 (11), the proposed rulemaking would, at a minimum, require all entry points (EPs) to provide water to the public on an annual basis to ensure all sources and entry points are included in routine compliance monitoring. This provision is a major area of concern for the PRWA. PRWA believes that the language should state that sources should be represented in all entry point compliance testing, and a sample plan from the PWS would be needed to document that the requirement is being met. Some water utilities cannot collect one entry point sample and have all raw water sources represented.

According to the Preamble [Pg. 20]: "This amendment is intended to address concerns related to gaps in the monitoring, reporting and tracking of back-up water sources and entry points."

- "Currently, sources and entry points that do not provide water continuously are required to be monitored when used. However, monitoring requirements for back-up sources are not currently tracked, which means no verifiable controls are in place to ensure that all sources and entry points meet safe drinking water standards."
- "For community water systems (CWSs), as many as 12% of all sources may not be included in routine compliance monitoring, yet these sources can be used at any time."
- "The use of these sources without proper monitoring and verifiable controls could lead to an increased risk to public health."

Moreover, [Preamble, Pg. 22], "DEP anticipates that select purchased interconnections will be able to retain the "emergency" designation if the following criteria are met:

- Using the last three years of historical water use data, the water supplier can demonstrate that the purchased interconnection has only been used for emergency purposes.

- Emergency use has not occurred more than 14 days per year, excluding use under Commonwealth or Federal emergency declarations.
- The Department has conducted an annual compliance check using reported water use data."

In addition, "on a case-by-case basis, DEP also anticipates that select sources may be able to be retained in the permit, without conducting routine annual compliance monitoring, if documentation is provided that the use of the source is limited by some other entity or permit or approval."

"Select sources that meet these criteria will be covered by a special condition in the permit that requires DEP notification and completion of compliance monitoring prior to use."

EQB is seeking comment on this amendment, the inclusion of the additional information provided above related to retention of the emergency designation of interconnections, and whether deferred implementation is needed. The EQB will consider other options that address these concerns while providing the same level of public health protection.

The PRWA believes that this monitoring and reporting would be onerous for consecutive systems, as the supplying water system(s) has already had to meet all source and EP monitoring and reporting requirements. This assumes that the wholesaler conducts the required monitoring/reporting following SDWA regulations. If it doesn't, public health must be protected in the purchasing system by requiring contaminant monitoring at the interconnect to the utility not in compliance.

Interconnects should not be considered sources or entry points; they should be handled as the separate entity that they are. DEP already has the code of "Purchased" in their tracking database. This designation can remain for interconnect labels and should be adequate to track purchased water connections. Alternative compliance monitoring can be tagged to each purchased designation.

In addition, there are instances when PWSs have regulatory agreements with basin commissions or other entities that preclude use of a source, except under emergency conditions. How will the PWS be able to comply with these competing regulations? There needs to be more thought and discussion to address a variety of situations that water suppliers face.

Finally, this provision should also have an effective date of "1 year after the effective date of adoption of this proposed rulemaking" to be consistent.

§ 109.303 (Sampling requirements)

§ 109.303 (a) (4) clarifies that samples for determining compliance with MCLs (blending and source monitoring) shall also include radionuclide contaminants and shall be taken at each entry point to the distribution system "which is representative of each source" after an application of treatment during periods of normal operating conditions. TAC recommended that DEP provide additional discussion and examples from the DEP to clarify this amendment, as the conditions described are confusing. There may be too many water supplier real world scenarios to be covered by a blanket requirement so we believe that this provision should be addressed in a facility permit.

According to the Preamble [Pg. 23], DEP "avers that the system-specific scenarios will be able to be addressed in the system's comprehensive monitoring plan required under § 109.717. However, the EQB is seeking comment on whether additional regulatory language is needed for clarity."

The PRWA agrees with the TAC comments.

Subchapter E. PERMIT REQUIREMENTS
§ 109.511 (General permits)

Under this provision, the DEP may issue a general permit, in lieu of issuing a construction and operation permit for a specific category of modifications. The EQB is seeking comment on the types of modifications or activities that may be appropriate for a general permit [Preamble, Pg. 25].

The PRWA believes that minor permit amendments are excellent candidates for general permit management. Minor amendments currently are required with tank paintings, equipment upgrades, and minor chemical changes, such as using sodium hydroxide in lieu of lime for pH adjustment. To achieve a full permit for a minor permit change, DEP must visit and inspect the change at the site, then write the permit or amend an existing permit with the additional information. DEP staff cannot see interior tank paintings, for example. Thus, the requirement to visit and inspect under some circumstances does not make any sense. PWS must supply a certificate of completion once the work is done. This is a legal document where the PWS certifies to the DEP that the work was done according to the minor permit amendment submitted. A general permit for some, if not all, minor permits would help PWS obtain their operating permits quicker and would relieve some of the burden of DEP (also with lack of staff in the field) having to do site visits to confirm work done.

Subchapter F. DESIGN AND CONSTRUCTION STANDARDS
§ 109.602 (Acceptable design) (h) and (i) (Alarm and shutdown capabilities)

Under this proposal, a PWS that provides filtration of surface water or Groundwater Under Direct Influence of surface water (GUDI) sources and that is not staffed continuously while the plant is operating must be equipped with alarm and shutdown capabilities within 12 months.

The TAC requested that DEP provide cost estimates for compliance with these provisions and an evaluation of whether the 12 months is adequate time for PWSs to comply given the overall costs associated with this regulatory package, including the addition of new and increased fees.

According to the Preamble [Pg. 54], DEP answered: "Depending on options chosen, systems may incur $8,860 to $11, 980 per treatment plant with annual maintenance costs of $600."

In addition, under (h), the DEP may require a PWS to meet the requirements of subsection (i) (Alarm and shutdown capabilities), where such capabilities must be set at a level no less stringent than the level needed for the facility to continuously maintain compliance with applicable MCLs, MRDLs and treatment technique requirements.

Further, under § 109.602 (i) (2), alarm and shutdown capabilities must be established for the following parameters, at a minimum:

i. Individual filter effluent turbidity and combined filter effluent turbidity for filter plants treating surface water or GUDI sources.
ii. Entry point disinfectant residual.
iii. Clearwell water levels.
iv. **Any other operational parameter determined by the Department as necessary for the system to maintain compliance.**

However, the PRWA has concerns with (i) (2) (iv) and believes that it may be too far reaching and cost prohibitive.

Subchapter G. SYSTEM MANAGEMENT RESPONSIBILITIES
§ 109.701 (Reporting and recordkeeping)

Under § 109.701(a) (2) (i) (A), the test results for performance monitoring for PWSs providing filtration and disinfection of surface water or GUDI sources is being revised to include "the combined filter effluent" turbidity performance monitoring. However, combined filter effluent may not be available in certain filter plants.

In addition, § 109.701(a) (2) (i) (A) (VIII) and (IX), and (ii) (A) (III) includes the addition of a zero to the required MCLs, which is not a significant figure. This also appears under (e) (2) (v) and (vi) on page 25. The "zero" is not a significant digit, what is the rationale, scientific methodology, peer review or public health benefit vs cost and where is the data to support the previous DEP statement to TAC that public health may be improved by "ratcheting it down."

The PRWA supports the comments made by TAC and believes the rulemaking should adhere to the federal standard by not adding a zero to the MCL.

§ 109.708 (System service and auxiliary power)

Under the proposed rulemaking [Pg. 5 Preamble], "water suppliers will need to provide on-site auxiliary power sources (i.e., generators), or connection to at least two independent power feeds from separate substations; or develop a plan for alternative provisions, such as interconnections with neighboring water systems or finished water storage capacity."

The TAC commented that the DEP should not be prescribing the methods by which a PWS obtains auxiliary power. Moreover, DEP has not sufficiently evaluated the cost of providing auxiliary power. For example, secondary power feeds may not be attainable in rural areas or may be extremely cost prohibitive.

According to the Preamble [Pg. 57], DEP answered: "CWSs that do not have a functional generator or do not have existing capability to meet this requirement via the alternate provision options may need

to purchase a generator. The generator should be adequately sized such that it can supply power to critical treatment components necessary to supply safe and potable water."

"Therefore, the cost of the generator will be proportional to the size of the system (e.g., less expensive for small systems)." "It is difficult to predict system costs because of the various options to comply with the proposed revisions. Estimates for small systems are $3,000 - $4,000 for the installation of a transfer switch, generator and concrete pad." "Costs for medium and large systems could range from $50,000 - $200,000 per treatment plant." "Not all systems will require auxiliary power. Some systems may already meet reliability criteria through storage or interconnections." "An estimated 30% of small systems (< 3,300) or 485 systems may need to install a back-up power supply. **The cumulative cost is estimated to be $1,940,000.**" "The estimate for medium and large systems is that 20% or 65 systems may need to install a back-up power supply at a **cumulative cost of $8,125,000.**"

In addition, DEP has discounted the fact that systems may avail themselves mutual aid networks like PaWARN, of which PRWA is a member, to meet auxiliary power demands.

However, the PRWA continues to believe that the issue of auxiliary power is one that should be addressed in each facility's Emergency Response Plan and up to the PWSs to decide whether such capital investment is worth the cost.

Subchapter N. DRINKING WATER FEES

According to the EPA's recent performance evaluations (2009, 2012, and 2016) of Pennsylvania's Safe Drinking Water Program, and by DEP's own admission, DEP doesn't have enough staff to perform its core functions (i.e., sanitary surveys and unaddressed violations) in a timely manner.

Most recently, DEP received a letter from EPA on 12/30/2016[iii] regarding its performance evaluation of the PA DEP's primacy enforcement responsibilities (i.e., drinking water program primacy).

It's no secret that over the last 14 years the General Fund support for DEP has been dramatically reduced. DEP has been cut by 40 percent and its staff reduced by 25 percent significantly impacting the services that DEP can provide.

With respect to the Safe Drinking Water Program, DEP receives $7.7 million of its funding from the General Fund. According to DEP, the Safe Drinking Water Program is **short $7.5 million**, which it needs for staff to perform inspections etc. to meet minimum program requirements **to maintain primacy**.

DEP responded to the EPA with a letter dated February 24, 2017[iv] stating that it "has been working on a proposed rulemaking to increase permit fees and establish new annual fees to address the **$7.5 million funding gap** and improve program performance."

However, even after these letters from EPA, DEP did not request additional funding at its 2017 budget hearings – opting to stick with this proposed fee package as part of its action.

The PRWA strongly believes that core functions of the DEP, like those involving the Safe Drinking Water Program, should be covered by the General Fund. The taxpayers (our customers) are already paying for the program through tax dollars; therefore, fees should never be relied upon to cover the cost of the program directly related to the public's health.

With respect to DEP's workload analysis, PRWA continues to question the $49/hour rate used to calculate the fee. TAC requested that the DEP explain and document the basis for the $49/hour rate and suggested that fees be based only on the direct costs (salary and benefits) of a field inspector. DEP's response [Preamble, pg. 40] that "the hourly rate is provided by the Department's fiscal office and includes salary, benefits, and in-directs (supplies, etc.)" doesn't answer the question. Why is the water industry paying for in-directs? Again, aren't these expenses something that should come out of the DEP's General Fund appropriation?

Moreover, the DEP's workload analysis should be revised in accordance with the Pennsylvania Safe Drinking Water Act (Section 4 (c) of Act 43 of 1984[v]), which mandates that "such fees shall bear a reasonable relationship to the actual cost of providing a service." The proposal put forth for comment does not meet this standard in PRWA's opinion, as it appears that the DEP simply started with the $7.5 million funding shortfall and worked backwards on a fee structure based upon population served.

§ 109.1402 (Annual fees)

This rulemaking's Preamble [Pg. 11] explains that 26 states charge annual fees to augment program costs, ranging from $25 to $160,000. However, the annual fees proposed by DEP for a CWS ranges from $250 to $40,000 based on population served. **What it doesn't explain is that the annual fee applies to each Public Water Supply ID number so it's misleading.** Some systems, particularly the medium and large water systems, have multiple ID numbers which means that they could be required to pay annual fees above and beyond the $40,000 presented in the Preamble.

According to the Table [*Annual Fees (Based on Population) vs. Cost of Providing Select Services*] on page 40 of the Preamble, the annual fee for a system serving a population of 100,000 or more is $40,000, while the cost of services is only $4,778 or **837 percent of cost of services**.

The larger systems are not the only ones to express concern over the proposed annual fees. While the very small systems (serving a population of 3,300 or less) would pay $250 to $4,000, the medium sized systems (serving a population of 3,301 to 50,000) would pay $6,500 to $25,000. This is a significant burden on these systems.

By the DEP's own admission [bottom of Pg. 40 of the Preamble], **"systems serving 2,000 or more people are paying more for the Department's services."**

In addition, under this Fee Package, § 109.1413 (Evaluation of fees), DEP is required to provide EQB with an evaluation of the fees and recommend regulatory changes every 3 years to address any disparity between the program income generated by the fees and the DEP's costs.

The central question is whether this fee structure meets the statutory requirement in the Pennsylvania Safe Drinking Water Act (SDWA) that says: ***"Such fees shall bear a reasonable relationship to the actual cost of providing a service."*** (Section 4 (c) of Act 43 of 1984)

While the EQB must also consider the impacts of the proposed fees on small businesses (68% of the water systems in PA are considered small businesses) as part of the regulatory analysis required under section 5 of the Regulatory Review Act, the SDWA provision is clear with respect the intent of the General Assembly.

The Preamble [Pg. 11] states that: "The fees will most likely be passed on to the 10.7 million customers of these PWSs as a user fee." However, with respect to PRWA members that are regulated by the Public Utility Commission (PUC), they would have to go before the PUC to recover these costs through a general rate case, which is costly and time consuming. If this rulemaking is adopted, small systems that regulated by the PUC will be forced to seek more frequent rate increases to recover these annual fees and increased permit fees or cut back on scheduled maintenance until such time as they can recover these fees through rates.

The Preamble [Pg. 41] also states that "the Board (EQB) is seeking comment on whether the proposed annual fee structure (based on population) is the most appropriate method." Moreover, the Preamble [Pg. 41] does provide two additional options for annual fees:

1. Option #1: Annual fee based on the number of service connections (estimating the number of service connections, using a flat per connection, and no minimum or maximum fees).

    - "Smaller systems are paying considerably less than the Department's cost to provide basic services." [Pg. 42 Preamble]
    - "Larger systems are paying as much as 21,084% more than the Department's costs." [Pg. 42 Preamble]
    - "Note: The Department does not currently have accurate data on the number of service connections. This is not a required field in the Federal or Commonwealth databases. To estimate the number of service connections, the population served was divided by 2.7 persons per household." [Pg. 41 Preamble]

2. Option #2: Annual fee based on the number of service connections (estimating the number of service connections, using a sliding scale rate per connection, and a minimum fee).

However, DEP put together the fee package with the goal to backfill the $7.5 million shortfall, because of cuts to the General Fund. Therefore, no matter what option is chosen, the result will be basically the same.

The PUC annually assesses public utilities based on the cost to provide service. Therefore, PRWA recommends that the DEP pursue a similar assessment method to meet the statutory requirement of the SDWA that "fees must bear a reasonable relationship to the actual cost of providing services."

Finally, with respect to the proposed annual fees, PRWA believes that any subsidization should come from the General Fund and not through fees paid by the PWSs and their customers/ratepayers.

§ 109.1404 (Community and noncommunity water system permitting fees)

This section establishes fees, based upon population served, involving the application for a construction permit or a major construction permit amendment. The PRWA **opposes** the proposal to base permit fees on population served. Permit fees should be based on the scope of work (i.e., type of project, scope of the project, project size and complexity) and are independent of the system size. The PRWA believes that the original intent of minor permits was to provide the DEP with a simple notice of the applicant's intent. Since these are minor projects there should be very little need for extensive DEP review. Unfortunately, minor permits have been treated by the DEP nearly the same as major permits and appear to consume the same level of resources for both the PWS and DEP.

In addition, minor permits should not require extensive DEP review so any such permit fees should be substantially less than proposed.

§ 109.1405 (Permitting fees for general permits)

This proposed section explains that fees for general permits will be established in the general permit and will not exceed $500. The fee for each general permit will be based on a workload analysis prepared prior to issuance of a draft of the general permit for public comment. The PRWA supports the use of general permits (see comments under § 109.511) and a fee of $500.

§ 109.1406 (Permitting fees for bottled water and vended water systems, retail water facilities, and bulk water hauling systems

The PRWA believes that the bottled and vended water fees do not seem equitable in relationship to the cost of the product. For example, why isn't the fee for bottled and vended water based upon gallons produced? In addition, the water is being taken out of basin without any penalty.

§ 109.1407 (Feasibility study)

This section establishes a fee, based on population served, for an application for review of a feasibility study or pilot study. The PRWA **opposes** such a fee being based on population served and believes that it should be based on the type of project, scope of the project and complexity of the project in accordance with the SDWA.

Conclusion

The PRWA is opposed to the concept of user fees to pay for the resources that are consumed in regulating PWSs, we believe that funding for the DEP's core functions should first come from the General Fund and any user fees should be structured to bear a reasonable relationship to the actual

cost of providing a service as required by the Pennsylvania Safe Drinking Water Act (Section 4 (c) of Act 43 of 1984).

Moreover, DEP and the EQB need to take into consideration the overall cost that this rulemaking package will have on the water industry – small, medium and large-sized systems – because these fees will likely be increased every 3 years if the DEP's budget continues to get cut or its costs continue to increase.

It should also be noted that the water industry is in the process of trying to comply with the recently adopted Revised Total Coliform Rule (RTCR) and is still waiting for DEP to come back with a Final Rulemaking regarding the Disinfection Requirements Rule.[vi] The cumulative costs associated with compliance with these rulemakings must be taken into consideration.

The PRWA appreciates the opportunity to present these comments on this proposed rulemaking and respectfully requests the EQB's consideration.

Respectfully submitted,

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[i] 4/17/2016 Jeanne M. VanBriesen. Ph.D.. P.E.. Carnegie Mellon University Comments on Proposed Disinfection Requirements Rule
http://www.ahs.dep.pa.gov/eComment/ViewComments.aspx?enc=8YWIeHIdijzUAfiG53EkjT71%2fkEF%2fILQ%2fP4360CNIuE%3d

[ii] Preamble – Proposed Rulemaking. Safe Drinking Water (General Update and Fees). as published on the EQB Website May 17. 2017
http://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/2017/May%2017/7-521_SDW%20General%20and%20Fees_Proposed/02_7-521_SDW%20General%20and%20Fees_Preamble.pdf

[iii] 12/30/2016 EPA Letter to DEP. https://drive.google.com/file/d/0B4Y3VQLxjksObjZ0ZXISVDZxRWc/view

[iv] 2/24/2017 DEP Letter to EPA. https://www.scribd.com/document/340461258/DEP-responds-to-EPA-s-warning-about-safe-drinking-water-program#from_embed

[v] Act 43 of 1984 – Pennsylvania Safe Drinking Water Act
http://www.legis.state.pa.us/CFDOCS/LEGIS/LI/uconsCheck.cfm?txtType=HTM&yr=1984&sessInd=0&smthLwInd=0&act=0043.

[vi] 6/16/2015 & 6/30/2015. Small Water Systems Technical Assistance Center (TAC)
http://www.dep.pa.gov/PublicParticipation/AdvisoryCommittees/WaterAdvisory/TAC/Pages/default.aspx