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PHILADELPHIA WATER DEPARTMENT

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

Re: Philadelphia Water Department's (PWD) Comments to the Proposed Safe Drinking Water General Update Regulation

Dear Board Members:

PWD hereby submits its comments to the proposed rulemaking and proposed changes to the *Pennsylvania Safe Drinking Water Act,* 25 Pa. Code, Chapter 109 relating to the Safe Drinking Water General Update Regulation.

As stewards of the water community, PWD is dedicated to providing safe drinking water to the City of Philadelphia and in supporting the Pennsylvania Department of Environmental Protection (PADEP) with these initiatives. We respectfully submit the serious concerns we have with the proposed changes in the Safe Drinking Water General Update Regulation. Most of the proposed changes were originally split apart from the PA Revised Total Coliform Rule (RTCR), which was later finalized in 2016. PWD is sincerely grateful for this separation because it has allowed more time to continue to discuss significant impacts of the proposed changes to non-RTCR related topics, like the Disinfection Requirements Rule. Since the separation, in addition to the Disinfection Requirements Rule, the Safe Drinking Water Program has developed the general update and the newly proposed and amended fees package (introduced in Nov. 2016) as a standalone rulemaking package. This package was adopted by the EQB as a proposed rulemaking in May 2017. However, some of these proposed changes were not discussed in the original general update and have not been allotted ample and clear discussion utilizing all information that is available. If implemented into a final rulemaking, these changes will have significant impacts on all water systems and citizens throughout Pennsylvania.

Per the Safe Drinking Water Program, "This rulemaking [the Safe Drinking Water General Update Regulation] proposes to strengthen turbidity standards for surface water filtration plants, update and clarify permitting requirements for new sources, and clarify source water protection requirements and other sections of Chapter 109. This rulemaking also proposes to establish new annual fees and increase permit fees to supplement state costs for administering the Safe Drinking Water Program."

This letter highlights serious concerns which warrant further discussion prior to establishing a final rulemaking:

- **Need for additional analysis and stakeholder discussions in determining equitable fee structures that bear a relationship to the actual cost of providing a service**

  PWD understands the Safe Drinking Water Program's costs to PADEP and recognizes the program's current funding status. However, per PA Safe Drinking Water Act, 35 P.S. § 721.4(c)), whenever fees are to be established it is the ***EQB's duty, by law, to ensure that such fees shall bear a reasonable relationship to the actual cost of providing a service***. Under PADEP's proposed annual fee structures, medium and large water systems will be paying ***substantially*** more for PADEP services. Medium and large water systems, as determined by previous PADEP's estimates, could be paying anywhere from 162 – 837 % more than the actual cost of service provided. This specific "percent of cost of services" statistic was documented in PADEP's Draft Proposed Annual Fees Additional Background Information document developed in December 2016, but *was not included* in the Regulatory Analysis Form (RAF) that was submitted as part of the proposed rulemaking package to the Independent Regulatory Review Commission (IRRC).

PADEP has stated "affordability and equitability issues" have been factored into the newly proposed annual fee structure (that is currently based on population). How was this done? Though PADEP has included annual fees from other states in the RAF that was submitted to the IRRC, PADEP did not include how other states address fees for water systems serving disadvantaged communities. For example, the state of California allows a reduction of fees for public water systems serving a disadvantaged community. To qualify for the fee reduction in California, the disadvantaged community's median annual household income (MHI) must be less than eighty percent (80%) of the California statewide median annual household income. The MHI in Philadelphia for 2015 was $41,233 compared to Pennsylvania's 2015 MHI of $55,702 (74% of the statewide MHI). Additionally, according to the PEW Charitable Trusts - a non-profit organization which applies a rigorous, analytical approach to improve public policy, inform the public, and invigorate civic life - of the nation's 10 largest cities, Philadelphia has one of the highest poverty rates (~26%).

State of California fee reduction for public water systems serving a disadvantaged community:
http://www.waterboards.ca.gov/resources/fees/drinking_water/docs/disadvantaged_system_fee_notice.pdf

Philadelphia 2017, State of the City, PEW Charitable Trusts Report
http://www.pewtrusts.org/en/research-and-analysis/reports/2017/04/philadelphia-2017

In addition to the newly proposed annual fees, there are significant increases in permit fees. For example, for large systems like PWD, an application for PADEP's review of a feasibility or pilot study, will cost $10,000. Currently, there is no fee for applying for studies like these, which are intended to improve operations and promote optimization. Allowing the implementation of such fees may financially prohibit public water systems from further investigating improvements in operations and optimization via feasibility or pilot studies.

The new annual fees and amended permit fees package, proposed in late 2016, have not had the opportunity for clear, ample discussions and complete analysis of all factors has not been communicated to all stakeholders. A more equitable and reasonable fee structure that is in accordance with the PA Safe Drinking Water Act, as well as determining an appropriate phase in period and review of fee structures, needs to be better coordinated among PADEP and stakeholders throughout Pennsylvania.

- **Need for outlining the specific public health risk(s) driving the proposed changes to filter turbidity measurements, that are not currently supported by the EPA, but that have the potential to place restrictions on water suppliers**

Since at least 2008, and as specified in the most current Annual Compliance Report for Pennsylvania Public Water System Compliance, PADEP has stated that the trend in compliance rates indicate a *consistently high compliance rate for health-based standards*. The current proposed changes include filter turbidity measurement requirements that are overreaching the goal of performance and monitoring requirements and have the tendency to dictate how water suppliers should operate their systems. The proposed changes require that filtered water turbidity be reported to two significant digits. What studies support the reliability in measuring to two significant digits? EPA does not require this measurement, as they define filter turbidity measurements to be at or less than 0.3 NTU in 95% of monthly measurements, and to be at or below 1 NTU at all times. There is currently no scientific evidence to support the reliability of measurements to two significant digits, therefore PADEP should follow the EPA requirements.

- **Need for additional discussions regarding the actual costs, benefits, complexities and time required to implement the draft proposed changes**

  The proposed changes include requirements that will be significantly costly to implement. The complexities of implementing these requirements have not been adequately considered in this proposal, nor discussed sufficiently with stakeholders.

  For example, auxiliary power costs have not been sufficiently evaluated by PADEP, particularly the costs for providing secondary power feeds, which may not always be attainable, and generator power, which can have a substantial range of costs for implementation.

  PWD has been investing in the design and installation of emergency generators for both water treatment plants and raw and finished water pumping stations for over a decade. The generators installed range in capacity from 600 KW to 1 MW. The average time required from design to installation is 42 months. The actual costs and complexity in sizing, installing and operating generators needs to be taken into consideration, as part of a cost benefit analysis, to determine the impact of changes to section 109.708. O&M costs of emergency generators need to be considered as well as administrative costs for local permit compliance/monitoring. PWD diesel generators, for instance, require air monitoring permits from the Philadelphia Health Department AMS Unit.

  If an existing electrical switchgear or panel does not contain a spare breaker available for connection to the emergency generator feed, new switchgear or a secondary panel must be provided. A qualified electrician should size and install the emergency generator. An incorrectly installed, connected or operated generator could damage the existing electrical system and "do more harm than good".

  Over half of the PWD generator installations required new switchgear to accommodate a new breaker connection or a new transformer. All PWD generators are designed with sound attenuation and enclosed in a secure area as most of our facilities are located in residential areas. These auxiliary improvements substantially increase the cost of providing emergency power. The replacement switchgear and auxiliary equipment necessary to install and operate an emergency generator has resulted in an average project cost that is 6 times the cost of the emergency generator itself. PWD costs for generators alone range from $337,000 - $2,500,000.

- **Need for further clarification on vague language contained within the proposed changes**

  The language of various draft proposed changes in the Safe Drinking Water General Update Regulation is often vague and does not explain how water systems should address the various situations they may face.

  For example, the definition of "equipment" in section 109.606 (related to *Chemicals, Materials, and* Equipment) is unclear as is the language expanding the NSF certification requirements. More information is required to determine what qualifies as "equipment". Would a small pump used to sample raw water need to be NSF certified? What about pumps used to dose chemicals? With the broad language included in the proposed regulation both pumps as "equipment" may "come in contact with or affect the quality of water" and require NSF certification. Requiring every pump or piece of equipment on a treatment facility to be NSF certified will be very costly and it is uncertain what public health risk this proposed change is designed to address.

If a final rulemaking is approved by the EQB, without further stakeholder discussions, water systems are likely to be subjected to issuing more Public Notifications for instances that have not been proven to be a public health risk. This will likely decrease public confidence in the quality of their drinking water.

According to EPA's Enforcement and Compliance History Online database (ECHO), at the time of analysis, Pennsylvania ranked 3rd in the country for the number of public notifications issued. Additionally, Pennsylvania ranked 3rd in the country for the number of "non-serious violators" (i.e., the number of water systems with non-serious violations). Out of those Pennsylvania community water systems classified as serious violators, more than 80% were small systems with the remaining serious violators classified as medium systems.

PADEP was issued a letter in late 2016 from the EPA warning PADEP that the *lack of resources to enforce minimum federal requirements* could be grounds for taking primacy away from Pennsylvania. Before instituting state requirements that are more stringent than the federal requirements, PWD suggests that PADEP collaborate with water systems to bridge the lack of resources that PADEP faces and address EPA's concerns in enforcing minimum federal requirements. Perhaps this can be achieved by focusing on a separate rulemaking that is dedicated to establishing reasonable fees before imposing more stringent regulations on the water community that are likely unable to be enforced because of PADEP's lack of resources. We are available as resources to help PADEP but we need stronger, more inclusive dialogue and ample stakeholder discussions to be able to better help PADEP.

Thank you very much for the opportunity to comment.

Sincerely,

Dennis M. O'Connor

Dennis M. O'Connor
Water Quality Supervisor
Philadelphia Water Department