

STATEMENTS OF POLICY

Title 10—BANKS AND BANKING

DEPARTMENT OF BANKING

[10 PA. CODE CH. 48]

Mortgage Bankers and Brokers and Consumer Equity Protection Act—Statement of Policy

The Department of Banking (Department) adds this statement of policy which is published under the Mortgage Bankers and Brokers and Consumer Equity Protection Act (act) (63 P. S. §§ 456.101—456.3101).

Purpose

The act contains provisions that authorize the Department to suspend, revoke or refuse to renew a license if a licensee under the act engages in dishonest, fraudulent or illegal practices or conduct in any business, unfair or unethical practices or conduct in connection with the first mortgage loan business and negligence or incompetence in performing any act for which a licensee is required to hold a license under the act, as contemplated by section 313(a)(5) and (14) of the act (63 P. S. § 456.313(a)(5) and (14)).

Based upon its experience in regulating the mortgage loan industry, the Department believes that the issuance of this statement of policy is necessary to provide adequate guidance to licensees under the act regarding the provisions of section 313(a)(5) and (14) of the act. The Department published this statement of policy along with proposed regulations in an advanced notice of proposed rulemaking at 36 Pa.B. 4010 (July 29, 2006). Through the notice, the Department solicited written comments and scheduled a public hearing to receive testimony. After careful consideration of the written and oral comments received, the Department is issuing this following guidance to its licensees under the act.

Explanation of Regulatory Requirements

This statement of policy provides guidance to licensees under the act as to what the Department will consider when reviewing licensee conduct for dishonest, fraudulent or illegal practices or conduct in any business, unfair or unethical practices or conduct in connection with the first mortgage loan business and negligence or incompetence in performing any act for which a licensee is required to hold a license under the act.

Entities Affected

The statement of policy will affect existing licensees and new licensees under the act as of the date of publication of the statement of policy in the *Pennsylvania Bulletin*.

Costs and Paperwork Requirements

No additional costs will be incurred by the Department or licensees under the act beyond any costs already imposed by the act.

Effectiveness/Sunset Date

The statement of policy is effective upon publication in the *Pennsylvania Bulletin*. There is no sunset date.

Contact Person

Persons with questions regarding the statement of policy should contact the Office of Chief Counsel of the Department of Banking, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101-2290, (717) 787-1471.

VICTORIA A. REIDER,
Acting Secretary

(*Editor's Note:* Title 10 of the *Pennsylvania Code* is amended by adding a statement of policy in §§ 48.1—48.3 to read as set forth in Annex A.)

Fiscal Note: 3-SOP-42. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 10. BANKS AND BANKING

PART IV. BUREAU OF CONSUMER CREDIT AGENCIES

CHAPTER 48. FIRST MORTGAGE LOAN BUSINESS PRACTICES—STATEMENT OF POLICY

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§ 48.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. §§ 456.101—456.3101).

First mortgage loan business—The first mortgage loan business as defined in section 302 of the act (63 P. S. § 456.302).

Licensee—A licensee as defined in section 302 of the act.

§ 48.2. Purpose.

The purpose of this chapter is to provide guidance to licensees under the act regarding what constitutes dishonest, fraudulent or illegal practices or conduct in any business, unfair or unethical practices or conduct in connection with the first mortgage loan business and negligence or incompetence in performing any act for which a licensee is required to hold a license under the act, as contemplated by section 313(a)(5) and (14) of the act (63 P. S. § 456.313(a)(5) and (14)). Conduct or practices that the Department believes to be dishonest, fraudulent, illegal, unfair, unethical, negligent or incompetent under the act may result in an administrative action against the licensee by the Department under section 313(a)(5) and (14) of the act, as applicable. In reviewing licensee conduct and practices, the Department will consider the totality of circumstances in each case, including the actions of licensees, in determining whether licensee conduct and practices are inconsistent with the act.

§ 48.3. Dishonest, fraudulent, illegal, unfair or unethical, or negligent or incompetent practices or conduct in the first mortgage loan business.

The following paragraphs provide guidance as to what the Department will consider when reviewing licensee conduct for dishonest, fraudulent or illegal practices or conduct in any business, unfair or unethical practices or conduct in connection with the first mortgage loan business and negligence or incompetence in performing any act for which a licensee is required to hold a license under the act and examples of these kinds of activities within the context of the first mortgage loan business. The examples listed under each paragraph are for illustrative purposes only and do not limit or otherwise alter the Department's discretion or the applicability of the guidance contained in each paragraph to all licensees.

(1) A dishonest practice or conduct is characterized by a lack of truth, honesty or trustworthiness, or is deceptive or implies a willful perversion of the truth to deceive, cheat, or defraud.

Example A: In the process of obtaining a mortgage loan for a consumer, a mortgage broker discloses to the consumer that the mortgage broker's fee for the transaction will be \$1,000, although the mortgage broker knows that his fee will be much higher. The \$1,000 fee is disclosed in the Good Faith Estimate and there are no material changes to the loan prior to closing. The consumer appears at the loan closing and discovers when reviewing the HUD-1 settlement sheet that the mortgage broker's fee is \$3,000.

Example B: A consumer seeks from a mortgage broker a fixed-rate mortgage loan without a prepayment penalty that has an interest rate within a certain range. The mortgage broker knows that the consumer does not qualify for such a fixed-rate mortgage loan, but does not inform the consumer of that fact. Additionally, in all legally-required disclosures it is indicated that the consumer is getting a fixed-rate loan without a prepayment penalty. However, when the consumer arrives at the loan closing, the mortgage loan that is offered is a variable-rate loan with a prepayment penalty.

Example C: A loan correspondent designs and issues targeted loan solicitations that purposefully appear to come from Federal or State government agencies or consumers' existing lenders.

(2) A fraudulent practice or conduct is characterized by deceit or trickery, an intentional perversion of the truth in order to induce another to part with something of value or to surrender a legal right, or an act of deceiving or misrepresenting. Fraud also includes any other definition of fraud under applicable law.

Example A: A mortgage broker has promised a certain low-rate mortgage loan to a consumer. However, the consumer does not have the minimum debt-to-income ratio set by the mortgage broker's preferred lender to qualify for the lowest-rate mortgage loan offered. Therefore, the mortgage broker changes the W-2 statement of the consumer to reflect a higher income for the consumer without the consumer's knowledge, and then submits the documentation to the lender.

Example B: A mortgage banker contacts a real estate appraiser with a request to perform an appraisal and informs the appraiser that the sale price of the property is \$150,000. The mortgage banker knows that the property will not appraise for that amount,

but promises the appraiser future business if the appraiser "can make the deal work." The mortgage loan is closed based upon the appraisal report showing the value of the property as \$150,000.

Example C: A consumer seeks a particular mortgage loan from a mortgage broker but does not have sufficient income or assets to obtain the specified product offered by one of the mortgage broker's lenders. After the mortgage broker explains the problem to the consumer, the consumer tells the mortgage broker he forgot to mention previously that he makes double his previously-stated income based upon a side business. The consumer later provides documentation to the mortgage broker regarding the additional income. The mortgage broker, although suspicious of the sudden change in the consumer's circumstances, does not question the consumer on the additional income and submits a loan application including the additional income to the lender. The mortgage loan is closed by the lender and the lender later discovers that the purported additional income never existed.

(3) An illegal practice or conduct is characterized as not according to or authorized by law.

Example A: A mortgage broker fails to provide a consumer with a Good Faith Estimate within 3 business days of receiving the consumer's mortgage loan application as required by the Real Estate Settlement Procedures Act in a situation where the lender has not rejected the application within 3 days.

Example B: A loan correspondent fails to implement a plan to safeguard confidential consumer information as required by the Gramm-Leach-Bliley Act and the Federal Trade Commission's Privacy and Safeguards Rules.

Example C: A mortgage banker advertises an interest rate without conspicuously disclosing the Annual Percentage Rate and identifying the qualification terms, as required by the Truth-in-Lending Act.

(4) An unfair practice or conduct is characterized as being marked by injustice, partiality or deception or being inequitable in business dealings. An unethical practice or conduct is characterized as not conforming with the moral norms or standards followed in the first mortgage loan business or profession.

Example A: A consumer seeks a \$30,000 fixed-rate home equity loan from a mortgage broker on a house that the consumer has advised the mortgage broker he intends to remain in permanently. Although the mortgage broker is able to provide the requested loan, the mortgage broker "steers" the consumer to variable-rate products with balloon payment features for which the mortgage broker will receive higher compensation than with a traditional fixed-rate home equity loan.

Example B: A lender has an agreement with a mortgage broker to provide qualified consumers a certain interest rate. The mortgage broker then tells a consumer who qualifies for the certain interest rate that the interest rate is locked in with the lender; however, the consumer was not asked by the mortgage broker or lender to sign a lock-in agreement with the lender. The lender later informs the mortgage broker that the lender is not going to honor the agreement between the mortgage broker and the lender to provide certain interest rates. Therefore,

the mortgage broker is unable to offer the consumer a mortgage loan with the promised interest rate and the consumer has no written lock-in agreement to enforce against the lender.

Example C: A mortgage banker enters into a lock-in agreement with a consumer. During the lock-in period, interest rates rise. The mortgage banker decides to delay closing until the lock-in agreement with the consumer expires, thus causing the consumer to lose his locked-in interest rate and forcing the consumer to accept a mortgage loan with a higher interest rate.

(5) Negligence in performing any act for which the licensee is required to hold a license under the act is characterized by the definition of negligence as used by the courts of this Commonwealth. Incompetence in performing any act for which the licensee is required to hold a license under the act is characterized as inadequate or unsuitable for a particular purpose, or lacking the qualities needed for effective action.

Example A: An employee of a mortgage banker takes mortgage loan applications from consumers on behalf of the licensee, but then leaves the company. The mortgage banker fails to follow up on the former employee's application files. A consumer assumes that his mortgage loan is being processed by the mortgage banker until he contacts the mortgage banker as the closing date on his home purchase approaches. The mortgage banker realizes the error but is unable to provide the applied-for mortgage loan in time for the closing date.

Example B: A mortgage broker routinely fails to timely forward information received from consumers that was requested by the lenders and which is necessary to meet lenders' underwriting criteria. As closing approaches, the lenders receive the consumers' information and determine that the consumers do not qualify for the loans promised by the mortgage broker, thereby causing the consumers to delay closings and/or obtain different loans.

Example C: A mortgage banker consistently fails to file mortgage satisfaction pieces, thereby repeatedly causing consumers to have to send notices to satisfy to the mortgage banker in order to get the mortgage banker to issue mortgage satisfaction pieces regarding the consumers' paid-off mortgage loan obligations.

[Pa.B. Doc. No. 06-2456. Filed for public inspection December 15, 2006, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[L-00061956]

Unscheduled Water Service Interruptions and Associated Actions

The Pennsylvania Public Utility Commission, on November 9, 2006, adopted a final policy statement order which provides guidance to utilities regarding public notice during unscheduled water service interruptions.

Public Meeting held
November 9, 2006

Commissioners Present: Wendell F. Holland, Chairperson;
James H. Cawley, Vice Chairperson; Kim Pizzingrilli;
Terrance J. Fitzpatrick

Policy Statement Relating to Unscheduled Water Service Interruptions and Associated Actions; Doc. No. M-00061956

Final Policy Statement

By the Commission:

I. Background

By order entered July 3, 2006, at the previously-captioned docket, this Commission issued a proposed policy statement relating to unscheduled water service interruptions and associated actions. The proposed policy statement and the notice requesting comments from interested parties was published July 29, 2006, at 36 Pa.B. 4013. The Commission received comments from the Pennsylvania Office of Consumer Advocate (OCA), the Pennsylvania Office of Small Business Advocate (OSBA), United Water (United), Pennsylvania-American Water Company (PAWC), Aqua Pennsylvania, Inc. (Aqua), and the National Association of Water Companies (NAWC). This order addresses the comments received and sets forth a final policy statement relating to unscheduled water service interruptions and associated actions.

II. Comments

A. Office of Consumer Advocate

The OCA's commented fully supported the proposed policy statement and notes that the Commission seeks to harmonize the regulatory requirements of the Commission and the Pennsylvania Department of Environmental Protection (DEP), consistent with Commonwealth Court decisions in similar situations. The OCA further notes that the proposed Policy Statement's multiple recommended forms of public notice combine traditional and current technologies, without creating an additional and unnecessary layer of substantive requirements that could duplicate the DEP's requirements.

B. Office of Small Business Advocate

The OSBA strongly endorses the proposed § 69.1602(a)(4) requirement that water utilities provide actual notice to restaurants of unscheduled water service interruptions. While restaurants are not specifically listed in proposed § 69.1603(a) (relating to location of alternative water supplies), the OSBA assumes that water utilities will be expected to provide an alternative supply of water that is adequate and not disruptive to the restaurant's business; however, OSBA's comments express concern about the fact that § 69.1603(a) does not explicitly address providing notice to restaurants of the location and time an alternative supply of water will be available. Accordingly, the OSBA requests that this subsection be amended to include actual notice to restaurants of the location and designated time alternative water supplies will be available.

C. United Water

United agrees with the overall premise of the proposed policy statement, but raises several concerns. First, United believes the definition of "unscheduled water service interruption" is overly broad and could be interpreted to include myriad instances that could become burdensome to water companies. The proposed definition is "... an interruption of service affecting the quantity or quality of water delivered to its customers." United agrees

with the “quality” aspect of the definition, but believes it should be further defined as an event requiring Tier 1 notification.¹ Furthermore, United believes that the Commission and DEP policies should be consistent and not in conflict with one another.

Second, United has concerns that the proposed policy statement could create an expectation that a customer will or should be notified every time the quality or quantity of their service is affected. United believes there are numerous situations, such as individuals testing private fire systems, which impact service to other customers, but about which United has no knowledge. For instance, routine leak repairs, spot flushing, and distribution system maintenance are all activities that may or may not impact the quantity or quality of other customers’ service, but would be burdensome on a water company to be required to notify customers whenever their water is affected by one of these activities.

United also has concerns with regard to actual implementation of the policy statement. United has instituted a “Rapid Alert System,” which is a reverse-calling system similar to Reverse 911[®]. United would like the policy statement to clarify appropriate times when such calls can be made to avoid calls being inappropriately made during overnight hours. United would also like to obtain clarification as to what effort is expected when the policy statement refers to providing water to elderly or homebound customers in an emergency. Without expounding on this issue, United asserts that this is a “monumental task” that places a heavy burden on company resources, suggesting that the utility can play a part in this service, but should not bear the sole burden.

United believes that the phrase “adequate quantities of bottled water” should be further defined, to avoid any unreasonable interpretations. Finally, when providing alternative supplies of water, United does not agree that it should have to provide containers for individuals who do not have them, as most customers are capable of bringing their own containers. United is concerned that providing containers will discourage customers who are capable of bringing their own containers from doing so.

D. *Aqua Pennsylvania, Inc.*

Aqua agrees with the intent and purpose of the proposed policy statement, but recommends some clarifications that will aid in its practical implementation. Aqua notes that our existing regulation at 52 Pa. Code § 67.1(c) directs utilities to contact the Commission 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 6 or more consecutive hours. Aqua requests that a similar triggering mechanism be put in place in the policy statement; otherwise, it is concerned that every service interruption, no matter how few customers are affected or how short the duration, would require implementation of the notification procedures and associated actions outlined in the proposed policy statement.

Additionally, Aqua takes issue with the proposed policy statement’s requirement that water utilities ensure adequate quantities of alternative water supplies during an unplanned service interruption. Aqua asserts that this may be interpreted to impose an unreasonable requirement and potential liability. Aqua proposes that the policy statement be amended to state that water utilities make

“reasonable efforts” to provide adequate quantities of alternative water supplies for “essential domestic use.”

E. *Pennsylvania-American Water Company*

PAWC stresses the need for harmonization between the Commission policy statement and regulations, and the DEP regulations regarding public notification. PAWC suggests that because the proposed DEP regulations may take 2 or more years to complete, and because the policy statement is on a faster track, the Commission take a wait-and-see approach, and then revisit the policy statement at the end of the DEP’s regulatory review process so that there is one uniform set of public notification requirements. PAWC argues this would allow utilities to apply their resources in a timely and effective manner, and in contrast, a failure to create uniformity may lead to confusion and conflicts between applicable regulations.

PAWC also feels that the policy statement is too broad in scope and potentially covers even the most harmless situations. For example, heavy rainfall could increase turbidity, which would affect the water quality, and trigger the notification procedures of the policy statement, even though the water could still be drinkable by the customer and the increased turbidity could still meet the drinking water standards under the Safe Drinking Water Act. 35 P. S. §§ 721.1 to 721.17.

PAWC also seeks clarification on who is to be notified of certain unscheduled service interruptions. Our existing regulation at 52 Pa. Code § 56.71(3) requires notice to ratepayers and occupants, whereas our proposed policy statement requires notice to “customers,” which is defined in 52 Pa. Code § 65.1 as “a party contracting with a public utility for service.” Furthermore, read narrowly, our proposed policy statement requires notice only to those customers affected by a service interruption; however, PAWC asserts that our policy statement could be read to require notice to all of a utility’s customers regardless of whether they are affected by a particular service issue. In many cases, only a portion of a utility’s customers are impacted by a service interruption, leaving other customers in other parts of the system unaffected. To address both issues, PAWC suggests that the word “affected” should be added and that the term “customers” be changed to “rate payers/occupants.”

Another of PAWC’s concerns is whether actual notice is required to every customer in each situation, or whether 100% notification is merely a goal sought to be achieved in every situation given a “reasonable” effort on the part of the utility company. PAWC suggests we modify the language of our policy statement to require a reasonable effort to contact all affected customers.

PAWC also is concerned with when the notice must be provided. The proposed policy statement indicates that “timely” notice is necessary to comply with the reasonableness standard of the Public Utility Code. While PAWC believes that customers should be notified in a timely manner, the proposed policy statement does not indicate what time frame would be deemed adequate. PAWC suggests that we adopt a standard similar to that used by the DEP for timely notice, which requires that the public be notified as soon as possible in emergencies or situations with the potential for serious adverse health effects, which is a maximum of 24 hours for Tier 1 situations, and 30 days for Tier 2 situations.² For other situations that do not involve serious adverse health effects, the

¹ See 25 Pa. Code § 109.408(a)(1-8) for situations requiring Tier 1 public notice.

² See 25 Pa. Code § 109.409(a)(1-3) for situations requiring Tier 2 public notice.

public receives notice of these situations in PAWC's annual Customer Confidence Report.³

When notice is given to customers in a timely manner, PAWC is concerned that our proposed policy statement is not sufficiently clear as to the form of public notice to be utilized. While the proposed policy statement provides guidance as to the methods of notification, the content of the public notice will vary depending on the medium used. For example, text messages and automated dialer calls must be much more concise than information posted on a website.

PAWC also comments that because all water utilities will be dealing with very similar contamination issues, it would be better for the Commission to ask the DEP to prepare the templates, rather than having the water companies prepare the public notice templates to cover every situation from water conservation to boil water alerts to contaminants of concern associated health risks. PAWC suggests that the DEP, in collaboration with the Commission, should develop and collect data regarding the acute health affects of the myriad contaminants water companies may encounter, and develop and disseminate such information for use by water suppliers.

With regard to the method or manner of public notification, PAWC comments that the proposed policy statement, while listing a series of methods of public notice, leaves the selection of the method to the discretion of the utility, simply indicating that such methods "should be considered and utilized as appropriate." PAWC goes on to comment that one of the methods listed in the proposed policy statement is Reverse 911[®], which is a copyrighted trade name. PAWC suggests that we substitute "automated dialer system" for Reverse 911[®].

In the event of an unscheduled service interruption, our proposed policy statement provides that "utilities should have a knowledgeable contact person stationed onsite during the emergency, if possible." PAWC suggests that we substitute "if practicable" for "if possible," because there are many situations where it is not practicable or appropriate to have a contact person onsite for each emergency, for example, during main breaks or weather-related turbidity.

Finally, PAWC has concerns about when the Commission should be notified, how the Commission should be notified, and who at the Commission should be notified. First, with regard to when the Commission must be notified, the proposed policy statement requires notice to the Commission "as soon as possible upon a utility becoming aware of an unscheduled service interruption."⁴ Moreover, § 67.1 of the Commission's existing regulations directs utilities to contact the Commission within one hour following a preliminary assessment of conditions.⁵ PAWC notes that our *Proposed Rulemaking for Revision to Chapter 67 of title 52 of the PA Code Pertaining to Service Outages*, at Docket No: L-00060177 will add a definition of "service interruption" that will include "any interruption of service affecting the quantity or quality of water delivered to the customers." However, 52 Pa. Code § 67.1(b) limits the situations requiring notice to the Commission only to those unscheduled service interruptions where 2,500 or 5%, whichever is less, of their total customers are affected in a single incident for 6 or more consecutive hours.⁶ PAWC suggests that we include a similar threshold in our final policy statement.

With regard to how the Commission must be notified, our current regulations require notice by telephone;⁷ however, PAWC suggests that alternative methods of contact be permitted, such as fax, email, or text message, since these methods are appropriate for contacting the media and customers. Lastly, with regard to who at the Commission must be notified, the proposed policy statement obligates each utility to "maintain lists of appropriate Commission contact personnel, including current after-hour contact numbers."⁸ PAWC suggests that in order to facilitate utilities having accurate, current information, the Commission should prominently notify all regulated utilities of any Commission contact changes as well as post this information on its website.

III. Discussion

In reviewing the various comments to the proposed policy statement, there are several we will incorporate into the final version. First, we will revise § 69.1603(a) of the policy statement so that it is more consistent with the suggestion made by the OSBA to provide for actual and timely notice of the location and time of alternative water supplies. However, in response to the recommendation of the OSBA, we will delineate that the notice includes all ratepayers/occupants affected by the water service interruptions, including restaurants. Furthermore, we will amend proposed § 69.1602(a)(6) to clarify its meaning.

Additionally, PAWC raises a valid concern with regard to the use of the word "customers" throughout the proposed policy statement. PAWC points out that our existing regulation at 52 Pa. Code § 65.1 defines "customer" as "a party contracting with a public utility for service." However, in 52 Pa. Code § 56.71, the Commission requires notification to "affected ratepayers and occupants." PAWC suggests we amend the policy statement to require notice to affected ratepayers and occupants, rather than customers. We agree with PAWC that this could help eliminate confusion among a water utility's obligations, and will amend the policy statement accordingly.

All three water utilities voiced concerns that the policy statement needs to be revised to limit the situations that require notice to the public. They point to our existing regulation at 52 Pa. Code § 67.1(c) that directs utilities to contact the Commission 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 6 or more consecutive hours. Additionally, United suggests that we drop the term "quantity" from our definition of "service interruption."

We agree that the policy statement should be amended to clarify when public notice should be provided, but we believe different standards are necessary depending on whether the service interruption affects the quantity or quality of the water supply. We believe a policy in which a utility must notify customers if the unscheduled service interruption exceeds 2,500 or 5% of its customers, whichever is less, would work well for quantity-related service interruptions, but would not work as well for quality-related service interruptions. Therefore, we will amend the proposed policy statement to reflect that ratepayers/occupants must be notified of unscheduled service interruptions involving a reduction in quantity of water which affects 2,500 or 5%, whichever is less, of a utility's total customers in a single incident of 6 or more consecutive hours. For unscheduled service interruptions involving

³ See 25 Pa. Code § 109.410(d).

⁴ Proposed Policy Statement, at § 69.1603(b).

⁵ 52 Pa. Code § 67.1(c).

⁶ 52 Pa. Code § 67.1(b).

⁷ See, supra, note 2.

⁸ Proposed Policy Statement, at § 69.1602(b).

the quality of water, we will amend our proposed policy statement to be consistent with the DEP regulations regarding Tier 1 and Tier 2 notification requirements. In addition, we are providing further guidance, consistent with the scope of our jurisdiction relating to the provision of water at the tap being suitable for all household purposes and section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501.

Along these same lines, PAWC expresses concern about this policy statement's implicit directive that 100% of the affected ratepayers/occupants be notified in the event of an unscheduled water service interruption. While 100% notification is certainly a goal, we do not expect that a utility will be able to provide actual notice to each and every one of its affected ratepayers/occupants. Innumerable reasons exist as for a utility's failure to notify certain affected ratepayers/occupants, but this does not absolve a utility of its obligation to utilize the methods outlined in this policy statement in a reasonable attempt to notify all affected ratepayers/occupants. In other words, 100% affected customer notification is a goal based on reasonable and diligent efforts to contact all affected ratepayers/occupants, not an absolute mandate. Utilities should utilize the resources and more modernized methods of communication at their disposal to reasonably attempt to notify all of their affected ratepayers/occupants.

Similarly, when utilizing the recommended methods of notification, such as email, reverse-dialer, or text messages, water utilities should adopt notice formats appropriate for the particular method used. Obviously, a text message is more limited in length than an email, and therefore must contain a more succinct message. Notifying an individual of a contaminant in the water and all the possible health risks associated with the contaminant, a timeline for the duration of the outage, locations of alternative water supplies, and courses of action to avoid health risks certainly will not be possible in a single text message. However, a text message could be sent briefly indicating the nature of the emergency, and further directing the customer to the utility's website for more details.

In creating the templates for notification to the public in the event of contaminated water, PAWC suggests that the Commission should ask the DEP to prepare the templates, especially regarding the possible associated health risks. While it is true that listing all possible contaminants would clearly be impractical, we certainly do not expect water utilities to have a template for every conceivable contaminant. In fact, the United States Environmental Protection Agency (EPA) already has a list of over 90 regulated primary contaminants and their respective associated health risks.⁹ Additionally, the EPA has listed an additional 15 secondary contaminants.¹⁰ The Commission does not expect all utilities to bear the burden of identifying and testing all known contaminants for possible health affects, but in a collaborative effort between water utilities and the DEP, the EPA, the Pennsylvania Chapter of the American Water Works Association, and the Pennsylvania Chapter of the NAWC, the resources exist for even the smallest water companies to compile a fairly comprehensive set of public notice templates.

⁹ <http://www.epa.gov/safewater/mcl.html#sec>.

¹⁰ *Id.*

In regard to PAWC's suggestion that we substitute "automated dialer system" for "Reverse 911®" in proposed § 69.1602(3), a copyrighted trademark, we agree that this change is advisable. We do not want to inadvertently limit water companies from seeking alternative automated dialer systems. We strongly encourage all water utilities to utilize some form of reverse-dial automated dialer system as a means of notifying affected customers of an unscheduled service interruption.¹¹

Additionally, Aqua, United and PAWC raise concerns regarding the provision of alternative water supplies, bottled water, or containers for those customers who do not bring them. United raises a concern with regard to what quantity constitutes an adequate alternative supply. Along these same lines, Aqua suggests that we amend the language to require utilities to make "reasonable efforts" to provide adequate quantities of alternative water for "essential domestic use." Aqua and United essentially express the same concern that providing alternative water supplies for all affected customers for all possible uses of water for extended durations is not feasible. We agree that such an amendment requiring reasonable efforts, and further limiting the requirement to essential domestic use is necessary, and we will amend the policy statement accordingly.

United suggests that we remove the requirement that utilities provide containers for affected customers who may not have brought one to a location providing alternative water. United argues that such a requirement may have a potential to discourage customers from bringing their own containers. While we believe the container language provided a benefit to consumers, we are satisfied in removing the language at this time in response to the concerns raised by United and the fact that bottled water in most cases will also be available at these sites.

Finally, PAWC submitted comments with regard to notice to the Commission and the need to wait on finalizing the policy statement in order to harmonize it with DEP's proposed regulations. Specifically, PAWC asks when the Commission must be notified; how the Commission must be notified; and who at the Commission must be notified. These comments are beyond the scope of the policy statement, which is designed to cover notice to the public. Furthermore, our existing regulation at 52 Pa. Code § 67.1 already addresses each of these issues. As for harmonizing with DEP's regulations, the proposed policy statement already contains language at § 69.1601(b) that contemplates such harmonization and so waiting to finalize this policy statement is not necessary.

Based upon the foregoing discussion of the comments received and our consideration of the issues raised, we adopt this final policy statement as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. Title 52 of the Pa. Code Chapter 69, is amended consistent with the discussion contained in the body of this order by adding §§ 69.1601—69.1603 to read as set forth in Annex A.

¹¹ Another raised concern with regard to the automated dialer systems is that they may disturb customers at very late hours. We cannot possibly address every potential instance in which an emergency situation might occur. If it is a very serious situation with possible life-threatening consequences, then immediate notification at the time of the event would be worth the intrusion for most customers. In contrast, however, a water main break affecting water quantity only would not. Utilities must exercise sound, reasonable judgment in determining whether the situation warrants a particular level of intrusion into their customers' lives.

2. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. A copy of this order shall be posted on the Commission's website and served on the Office of Consumer Advocate, the Office of Small Business Advocate, the central and regional offices of the Pennsylvania Department of Environmental Protection, the Pennsylvania Chapter of the National Association of Water Companies, and all jurisdictional water and wastewater utilities.

5. This policy statement shall become effective upon publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

Fiscal Note: Fiscal Note 57-250 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

UNSCHEDULED WATER SERVICE INTERRUPTIONS AND ASSOCIATED ACTIONS

§ 69.1601. General.

(a) The purpose of this statement of policy is to provide guidance to the water industry relating to unscheduled water service interruptions, particularly regarding the types of public notice and associated actions that will be deemed acceptable and appropriate for meeting the safe, reasonable and adequate standard in 66 Pa.C.S. § 1501 (relating to character of service and facilities) and for complying with the Commission's regulation in § 56.71 (relating to interruption of service). It is imperative that affected ratepayers/occupants receive actual, timely and sufficient notice of unscheduled service interruptions whenever a situation affects water quality or quantity and particularly when the water is unsafe to drink.

(b) Affected ratepayers/occupants should be notified when 2,500 or 5%, whichever is less, of a utility's total ratepayers/occupants have an unscheduled service interruption involving any reduction in the quantity of water in a single incident of 6 or more consecutive hours. Timely notification of fewer customers, however, is recommended when practicable. When there is an unscheduled service interruption involving the quality of water, water utilities should follow the applicable Department of Environmental Protection regulations regarding the public notification requirements for events requiring Tier 1 notification under 25 Pa. Code § 109.408(b) (relating to Tier 1 public notice—form, manner and frequency of notice), or Tier 2 notification under 25 Pa. Code § 109.409(b). Timely notification of customers in other incidents affecting the quantity or quality of water, such as water in short supply, discolored or sediment-laden, however, is recommended when practicable. It is also recommended that utilities set as a goal the Tier 1 time frame of "as soon as possible" rather than "no later than 24 hours" and the Tier 2 time frame of "as soon as possible" rather than "but no later than 30 days."

(c) This statement of policy should not be considered to modify or replace in any way the public notice requirements of the Department of Environmental Protection found in 25 Pa. Code §§ 109.407—109.416 (relating to public notification).

§ 69.1602. Public notification guidelines.

(a) In the event of an unscheduled water service interruption, the following acceptable methods of public notification should be considered and utilized as appropriate:

(1) Fax/e-mail notification to local radio and television stations, cable systems, newspapers and other print and news media as soon as possible after the event occurs. The notification must provide relevant information about the event, such as the affected location, its potential impact including possible adverse health effects and the population or subpopulation particularly at risk, and a description of actions affected ratepayers/occupants should take to ensure their safety, with updates as often as needed.

(2) Use of the utility's own Internet website and 24/7 emergency phone line and integrated voice response system to provide relevant information about the event, such as the affected location, its potential impact including possible adverse health effects and the population or subpopulation particularly at risk, and a description of actions affected ratepayers/occupants should take to ensure their safety, with updates as often as needed.

(3) Automated dialer system (outbound dialing) notification to affected ratepayers/occupants' landline or wireless phones.

(4) Actual notice to affected health care and child care facilities and other facilities, for example, schools and restaurants, as determined by consultation with the Department of Environmental Protection, the Department of Agriculture, the Department of Health, the Department of Aging and other State agencies as necessary.

(5) Other types of direct or actual notice, such as doorknob flyers distributed to affected ratepayers/occupants, when feasible.

(6) E-mail and text message notification to affected customers who have opted to receive notice through use of these methods.

(7) Coordination with State and local emergency management agencies as needed to use the emergency alert system for qualifying situations.

(b) Utilities should have public notice templates prepared in advance to be available when needed to avoid wasting critical time developing materials when confronted with an unscheduled service interruption. The notices should cover all possible scenarios from water conservation to boil water alerts to contaminants of concern and associated health effects. Smaller utilities can look to resources that are available on the websites of the Department of Environmental Protection, the United States Environmental Protection Agency, the Pennsylvania Section of the American Water Works Association and the Pennsylvania Chapter of the National Association of Water Companies for assistance in developing public notice templates.

(c) To ensure that the public is informed, utilities should have a knowledgeable contact person stationed onsite during the emergency, if possible, to communicate to the public and media on behalf of the company.

§ 69.1603. Other associated actions.

(a) Water utilities need to make reasonable efforts to ensure that adequate quantities of alternative supplies of water essential for domestic use are made available in a sufficient number of conspicuous and predetermined locations relative to the number of ratepayers/occupants affected by the incident. This includes the use of water tankers or free bottled water, or both. Utilities should ensure that ratepayers/occupants are adequately notified of the times available and locations of alternative water supplies. When bottled water is used, utilities should have plans in place, based on prior coordination with local vendors, to have adequate supplies to last for the duration of the outage. The Commission encourages utilities to work proactively with community-based organizations

that would have readily available information on the location and special needs of affected elderly or homebound ratepayers/occupants in the area.

(b) Notice should be made to Commission personnel as soon as possible upon a utility becoming aware of an unscheduled service interruption. It should be noted that § 67.1(c) (relating to general provisions) already directs utilities to contact the Commission within 1 hour following preliminary assessment of conditions. Furthermore, jurisdictional utilities should maintain lists of appropriate Commission contact personnel, including current after-hour contact numbers.

[Pa.B. Doc. No. 06-2457. Filed for public inspection December 15, 2006, 9:00 a.m.]