

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

#### [ 25 PA. CODE CH. 109 ]

#### Safe Drinking Water; Public Notification Revisions

The Environmental Quality Board (Board) by this order amends 25 Pa. Code, Chapter 109 (relating to Safe Drinking Water). The final-form rulemaking strengthens the public notice requirements for imminent threat violations and situations (also known as Tier 1). The final-form rulemaking enhances the existing planning requirements of both the Operation and Maintenance Plan and the Emergency Response Plan sections that relate to public notification. The final-form rulemaking revises the delivery requirements of Tier 1 public notices for community water systems. Finally, these revisions provide additional examples of situations that community water suppliers shall report to the Department of Environmental Protection (Department) within 1 hour of discovery.

This order was adopted by the Board at its meeting of December 16, 2008.

#### A. Effective Date

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

#### B. Contact Persons

For further information, contact R. Barry Greenawald, Chief, Division of Operations Monitoring and Training, P. O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-4018, or Marylou Barton, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available electronically through the Department's web site (<http://www.depweb.state.pa.us>).

#### C. Statutory Authority

The final-form rulemaking is being made under the authority of section 4 of the Pennsylvania Safe Drinking Water Act (35 P. S. § 721.4), which grants the Board the authority to adopt rules and regulations governing the provision of drinking water to the public, and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-17 and 510-20).

#### D. Background and Purpose

The purpose of the amendments is to strengthen the public notice requirements for imminent threat violations and situations (also known as Tier 1). The final-form rulemaking will enhance the existing planning requirements of both the Operation and Maintenance Plan and the Emergency Response Plan sections that relate to public notification. The final-form rulemaking will revise the delivery requirements of Tier 1 public notices for community water systems. Finally, this final-form rulemaking provides additional examples of situations that community water suppliers must report to the Department within 1 hour of discovery.

E. *Summary of Comments and Responses on the Proposed Rulemaking and Changes to the Proposed Rulemaking*  
 § 109.407(a)(6) *Violation categories and other situations requiring a public notice.*

The Independent Regulatory Review Commission (IRRC) and commentators were concerned about the word "probable emergency situation" because it was unclear when water systems were required to deliver a public notice. Public notice is required when an emergency situation has occurred. IRRC suggested that the Department limit the term "probable emergency situation" to § 109.707 (relating to emergency response plan) which relates to planning for probable emergencies within a water supplier's Emergency Response Plan. Consequently, the word "probable" was deleted from this paragraph.

§ 109.407(a)(9). *Violation categories and other situations requiring a public notice.*

This paragraph was added to be consistent with Federal requirements.

§ 109.407(b)(1), (2) and (3). *Definition of "public notice tiers."*

These paragraphs were amended to revise "form, manner, and frequency of notice" to "categories, timing and delivery" to be consistent with the rest of Subchapter D.

§ 109.407(c)(4). *Public notice recipients.*

IRRC commented that the Department needed to include paragraph (2) with the § 109.707(a) citation. This paragraph was amended to add the paragraph citation of (2) to § 109.707(a).

§ 109.407(d). *Additional requirements.*

This paragraph was amended as a result of adding new text under § 109.702(a)(3) and renumbering the remaining items.

§ 109.408(a)(7). *General violation categories and other situations requiring a Tier 1 public notice.*

IRRC and commentators were concerned about the word "probable emergency situation" because it was unclear when water systems were required to deliver a Tier 1 public notice. A Tier 1 public notice is required when an emergency situation has occurred. IRRC suggested that the Department limit the term "probable emergency situation" to § 109.707 which relates to planning for probable emergencies within a water supplier's Emergency Response Plan. Consequently, the word "probable" was deleted from this paragraph.

§ 109.408(b)(5). *Timing for a Tier 1 public notice.*

This paragraph was amended to clarify that the water supplier's corrective actions must be completed and approved by the Department before the "problem corrected" public notice is issued. This revision was made as a result of the comments the Department received.

§ 109.408(c). *Delivery of a Tier 1 public notice Set May 10, 2010.*

IRRC and commentators requested that the Department provide a compliance period for the Tier 1 public notice delivery requirements so that water suppliers could research their options, plan and budget accordingly and implement the new requirements. This subsection was modified to retain existing language that allows for an extended compliance period for systems that will be installing automatic telephone dialing systems. All sys-

tems shall comply with the existing language under § 109.408(c) until May 10, 2010.

*§ 109.408(d). Delivery of a Tier 1 public notice beginning May 10, 2010.*

IRRC and commentators requested that the Department provide a compliance period for the Tier 1 public notice delivery requirements so that water suppliers could research their options, plan and budget accordingly and implement the new requirements. This subsection was amended to include the new Tier 1 public notice delivery requirements that become effective May 10, 2010. This revision was made as a result of the comments the Department received.

IRRC and commentators requested that the Department clarify that water suppliers may limit the public notice to contact consumers who are affected by a Tier 1 event instead of notifying all persons served. Consequently, this subsection was amended to reference the existing language that allows delivery of Tier 1 notices to be limited to persons served by the affected area if:

- The supplier has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, and
- The supplier receives permission from the Department.

*§ 109.408(d)(1). Delivery of a Tier 1 public notice.*

Commentators requested that the Department remove the population categories and allow all community water systems the option of any form of direct delivery of a Tier 1 public notice.

The Environmental Protection Agency (EPA) requested that the Department reorganize the language regarding the delivery of an abbreviated message to subparagraph (iii) since automatic telephone dialing systems require abbreviated messages. Under subparagraph (iii), IRRC requested that the Department require water suppliers to provide the entire public notice on a dedicated telephone line because not all consumers had access to the Internet. The Department made this revision and presented it to the Department's Small Systems Technical Assistance Center Advisory Board (TAC) during their June 24, 2008, meeting. However, the TAC Board requested the Department to allow water suppliers the choice of posting the entire message on a web site because delivering this notice through a dedicated telephone line would be unrealistic and impractical. In deference to the regulated community, the Department is allowing water suppliers the choice to either post the entire public notice on a web site or record it on a dedicated telephone line.

A commentator requested clarification about whether noncommunity water systems had to use broadcast media under § 109.408(d)(2). This paragraph was revised to address the comments the Department received by:

- Removing the population categories for community water systems. This change will enable community water systems serving any population to use a variety of direct delivery methods, as long as the Tier 1 public notices are delivered within the 24 hour delivery time frame.
- Reorganizing the language regarding the delivery of an abbreviated message to subparagraph (iii) since automatic telephone dialing systems require abbreviated messages. The Department chose to provide water suppliers the options under clauses (A)—(C) of how to provide the entire public notice when an abbreviated notice is used. The language under clauses (A)—(C) is the proposed language.

- Specifying under paragraph (2) that community water systems are the type of public water systems that need to provide notice to appropriate broadcast media such as radio or television.

*§ 109.408(d)(3). Delivery of a Tier 1 public notice.*

This paragraph was revised to add hand delivery and electronic mail as direct delivery options for noncommunity water systems.

*§ 109.409(a)(1). Tier 2 public notice—categories, timing and delivery of notice.*

This paragraph was amended to revise “form, manner, and frequency of notice” to “categories, timing and delivery” to be consistent with the rest of Subchapter D.

*§ 109.409(a)(4). Tier 2 public notice—categories, timing and delivery of notice.*

This paragraph was added to allow the Department to require a Tier 2 public notice for violations or situations associated with chronic health effects or persistent violations.

*§ 109.410(a)(1). Tier 3 public notice—categories, timing and delivery*

This paragraph was amended to revise “form, manner, and frequency of notice” to “categories, timing and delivery” to be consistent with the rest of Subchapter D.

*§ 109.411(b). Abbreviated notice.*

This subsection was amended to provide the new citation (d)(1)(iii) under § 109.408.

*§ 109.412(b). Special notice of the availability of unregulated contaminant monitoring results.*

This subsection was amended to revise “form and manner” to “delivery” and revise “form, manner and frequency of notice” to “categories, timing and delivery” to be consistent with the rest of Subchapter D.

*§ 109.413(a) and (b). Special notice for nitrate exceedances above MCL by noncommunity water system, when granted permission by the Department.*

These subsections were amended to revise “form and manner” to “delivery” and revise “form, manner and frequency of notice” to “categories, timing and delivery” to be consistent with the rest of Subchapter D. The § 109.408 citation was amended to include delivery requirements before and after the compliance period for delivery of Tier 1 public notices.

*§ 109.415(1). Notice by the Department on behalf of the public water system.*

This paragraph was amended to provide the Department flexibility in delivering public notice on behalf of the public water system.

*§ 109.701(a)(3)(iii). One-hour reporting requirements.*

IRRC, commentators and the TAC Board were concerned about the word “probable emergency situation” because it appeared that water systems were to report situations that may become emergencies as well as actual emergencies. Consequently, this subparagraph was revised to delete the phrase “a probable emergency situation” and retain existing language which includes “circumstances exist which may adversely affect the quality or quantity of drinking water.”

*§ 109.701(a)(3)(iii)(F). One-hour reporting requirements.*

IRRC and commentators requested that the Department refine the definition of “chemical overfeed” to target events that pose serious threats and will adversely affect

the quality or quantity of drinking water. To further define a chemical overfeed, this clause was amended to read: "an overfeed of a drinking water treatment chemical that exceeds a published maximum use value, such as the National Sanitation Foundation's maximum use value for that treatment chemical, as applicable."

*§ 109.701(a)(3)(iii)(G). One-hour reporting requirements.*

IRRC and commentators requested that the Department refine the definition of "negative water pressure in any portion of the distribution system" to target events that pose serious threats and will adversely affect the quality or quantity of drinking water. Commentators recommended that the Department add the language "where there is known contamination or a high risk of contamination" to target events that pose serious threats to the public. Consequently, this clause was amended to read: "a situation that causes a loss of positive water pressure in any portion of the distribution system where there is evidence of known contamination or a water supplier suspects a high risk of contamination."

*§ 109.701(a)(3)(iii)(H). One-hour reporting requirements.*

A commentator requested that the Department further define the requirement to report a lack of resources that affect operations. Consequently, this clause was amended to read: "A lack of resources that adversely affect operations, such as staff shortages, notification by the power utility of planned lengthy power outages or imminent depletion of treatment."

*§ 109.702(a)(3). Operation and Maintenance Plan.*

This paragraph was amended to require community water suppliers to add procedures for repairing and replacing water mains that conform to the Department and water industry standards to their operation and maintenance plan. This revision was made as a result of a comment the Department received.

*§ 109.707(a)(2). Emergency Response Plan.*

IRRC recommended that the Department include local emergency coordinators as contact persons in a water supplier's emergency response plan. Consequently, the Department revised this paragraph to add "appropriate" to the list of contact persons. Each water supplier can determine if there is a local emergency coordinator that should be included in the contact list.

*§ 109.707(a)(2)(ii). Emergency Response Plan.*

IRRC requested that the Department include listing local public officials as contact persons in a water supplier's emergency response plan. Furthermore, the TAC Board recommended that the Department specify that the local public officials are within a water supplier's service area. Consequently, this subparagraph was amended to include key public officials within a water supplier's service area under the list of contact persons that water suppliers need to contact for each probable emergency situation.

*§ 109.707(a)(2)(iv). Emergency Response Plan.*

The TAC Board recommended that the Department revise the term "sensitive subpopulations" to "facilities within a water supplier's service area." Consequently, this subparagraph was amended to revise the term "sensitive subpopulations" to "facilities within a water supplier's service area." The Department included social service agencies to enlist the aid of other agencies in delivering a public notice to persons that may have special needs.

*§ 109.707(c). Emergency Response Plan.*

A commentator requested that the Department require water suppliers to update their emergency response plan

whenever there are changes to communication procedures or contact information and include a date of last update on the plan. Consequently, this subsection was amended to require water suppliers to update their emergency response plan as necessary to reflect changes to the communication procedures and contact information under subsection (a)(2) and record the date when they update their plan each year.

*F. Benefits, Costs and Compliance*

*Benefits*

The strengthened public notice requirements for imminent threat violations and situations (also known as Tier 1) will provide greater health protection for the public. Specifically, the amendments requiring direct delivery of Tier 1 notices and delivery by broadcast media to transient and nontransient users should improve the delivery rate of public notification during an imminent threat situation. The Commonwealth has a compelling state interest in providing strengthened public notification during imminent threat situations. As a result of this final-form rulemaking, more people will know what actions they need to take to avoid adverse health effects from a Tier 1 violation or situation.

The requirement for water suppliers to keep public notice templates and EPA contaminant fact sheets onsite will assist water suppliers with meeting Tier 1 public notice requirements within the 24 hour time frame. Water suppliers can use the information found on the EPA contaminant fact sheets to provide more information to consumers who call about the Tier 1 event.

The Department is providing more examples of situations that require community water suppliers to report to the Department within 1 hour of discovery. This consultation should provide greater assistance to both the water industry and the public.

*Compliance Costs*

Compliance costs to implement the direct delivery requirements for Tier 1 notices will increase for some of the community water systems. The greatest increase in cost will be incurred by systems that contract for notification services or directly purchase an automatic telephone dialing system. In 2008, the Department gathered new cost data regarding purchasing or contracting for automatic telephone dialing services from five vendors. These costs will vary based on system size, how many calls a system anticipates making during the year, and the service plan features that a water system purchases. The following scenario is provided to provide a cost range for a "Per Call" service plan and an "Unlimited Calls" plan. The scenario will relate to a water system that is required to contact 10,000 households. It reflects the cost for issuing a single Tier 1 public notice and the associated "Problem Corrected" public notice during the first year.

*Scenario:*

A water system is required to send one call to issue a Tier 1 notice to the entire system of 10,000 households during the first year. The call contains a 30-second message. A second call is made as a "Problem Corrected" notice which is also 30 seconds in length.

According to the five vendors surveyed, the estimated cost range for the first year for the scenario above ranged from \$2,980 to \$26,700 for a "Per Call" service plan. The estimated cost range for the first year for the scenario above for an "Unlimited Calls" Plan ranged from \$7,000 to \$10,000. Based on how many households and how many calling events (Tier 1 PN and nonemergency

events) a water supplier anticipates making within a year, every water supplier will need to determine when it becomes cost effective to purchase an "Unlimited calling" plan instead of a "Per call" plan. Water systems may be able to negotiate prices with vendors.

*Compliance Assistance Plan*

The rulemaking addresses additional planning and delivery requirements. The Department will provide educational, technical and compliance assistance through newsletters, guidance documents, training sessions and surveillance activities.

*Paperwork Requirements*

The rulemaking addresses additional planning and delivery requirements. As a result of this final-form rulemaking, the Department will be making modifications to existing forms, reports and other paperwork.

H. *Sunset Review*

The regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 11, 2007, the Department submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 5158, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees (Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 18, 2009, this final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 19, 2009, and approved the final-form rulemaking.

J. *Findings*

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at 37 Pa.B. 5158 (September 22, 2007).
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

K. *Order*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department in 25 Pa. Code Chapter 109, are amended by amending §§ 109.407—109.413, 109.415, 109.701, 109.702 and 109.707 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

JOHN HANGER,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 1770 (April 4, 2009).)*

**Fiscal Note:** Fiscal Note 7-407 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION  
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE II. WATER RESOURCES**

**CHAPTER 109. SAFE DRINKING WATER**

**Subchapter D. PUBLIC NOTIFICATION**

**§ 109.407. General public notification requirements.**

(a) *Violation categories and other situations requiring a public notice.* A public water supplier shall give public notice for the following circumstances:

- (1) Failure to comply with an applicable State primary MCL or MRDL in Subchapter B (relating to MCLs, MRDLs or treatment technique requirements).
- (2) Failure to comply with a prescribed treatment technique requirement in Subchapter B, G or K (relating to MCLs, MRDLs or treatment technique requirements; system management responsibilities; and lead and copper).
- (3) Failure to perform water quality monitoring, as required by Subchapter C (relating to monitoring requirements) or Subchapter K.
- (4) Operation under a variance or an exemption under Subchapter I (relating to variances and exemptions issued by the Department).
- (5) Failure to comply with the requirements of any schedule that has been set under a variance or exemption.

(6) Occurrence of a waterborne disease outbreak, as defined in § 109.1 (relating to definitions), or other emergency situation as defined in § 109.701(a)(3)(iii) (relating to reporting and recordkeeping) that adversely affects the quality or quantity of finished water and has a significant potential to have serious adverse effects on human health as a result of short-term exposure.

(7) Availability of unregulated contaminant monitoring data.

(8) Exceedance of the nitrate MCL by noncommunity water systems, when permitted by the Department in writing to exceed the MCL in accordance with 40 CFR 141.11(d) (relating to MCLs for inorganic contaminants).

(9) Other violations or situations determined by the Department to require a public notice under this subchapter.

(b) *Definition of public notice tiers.* Public notice requirements are divided into three tiers, to take into account the seriousness of the violation or situation and any potential adverse health effects that may be involved. The public notice requirements for each violation or situation identified in subsection (a) is determined by the tier to which it is assigned. This subchapter incorporates by reference the tier assignment for each specific violation or situation in the National Primary Drinking Water Regulations, 40 CFR Part 141, Subpart Q, Appendix A (relating to the tier assignment for each specific NPDR violation and other situations requiring public notice), unless other tier assignments are established by regulation or order of the Department.

(1) *Tier 1 public notice.* Required for violations and situations specified in subsection (a) with significant potential to have serious adverse effects on human health as a result of short-term exposure. General violation categories and other situations requiring a Tier 1 public notice are specified in § 109.408(a) (relating to Tier 1 public notice—categories, timing and delivery).

(2) *Tier 2 public notice.* Required for all other violations and situations in subsection (a) with potential to have serious adverse effects on human health. General violation categories and other situations requiring a Tier 2 public notice are specified in § 109.409(a) (relating to Tier 2 public notice—categories, timing and delivery).

(3) *Tier 3 public notice.* Required for all other violations and situations in subsection (a) not included in Tier 1 and Tier 2. General violation categories and other situations requiring a Tier 3 public notice are specified in § 109.410(a) (relating to Tier 3 public notice—categories, timing and delivery).

(c) *Public notice recipients.*

(1) A public water supplier shall provide public notice to persons served by the public water system, in accordance with this subchapter. A public water system that sells or otherwise provides drinking water to another public water system, such as to a consecutive water, bulk water hauling or vended water system, shall give public notice to the owner or operator of the other water system. The other water system is responsible for ensuring that public notice is provided to the persons it serves.

(2) If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the Department may allow the water supplier to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance. Permission for limiting distribution of the notice will be granted in writing by the Department.

(3) If a public water system has a violation involving a point-of-entry (POE) device, the Department may allow the water supplier to limit distribution of the public notice to only persons served by that POE device. Permission for limiting distribution of the notice shall be granted in writing by the Department.

(4) If a community water system has a Tier 1 violation, the water supplier shall also notify additional recipients as designated in the community water system's emergency response plan under § 109.707(a)(2) (relating to emergency response plan).

(5) If a noncommunity water system in which persons 17 years of age or under are cared for or educated, such as a school or day care center, has a Tier 1 violation, the water supplier shall also provide public notice directly to the parent or guardian of those persons.

(6) A water supplier shall provide a copy of the notice to the Department in accordance with § 109.701(a)(4) (relating to reporting and recordkeeping).

(d) *Additional requirements.* Community water systems shall comply with the planning requirements specified under § 109.702(a)(7) (relating to operation and maintenance plan) and § 109.707.

#### **§ 109.408. Tier 1 public notice—categories, timing and delivery of notice.**

(a) *General violation categories and other situations requiring a Tier 1 public notice.* A public water supplier shall provide Tier 1 public notice for the following circumstances:

(1) Violation of the MCL for total coliforms when fecal coliforms or E. coli are present in the water distribution system, as specified in § 109.202(a)(2) (relating to MCLs, MRDLs or treatment technique requirements), or when the water supplier fails to test for fecal coliforms or E. coli when any check sample tests positive for coliforms, as specified in § 109.301(3) (relating to general monitoring requirements).

(2) Violation of the MCL for nitrate, nitrite or total nitrate and nitrite, as defined in § 109.202(a)(2), or when the water supplier fails to take a confirmation sample within 24 hours of the system's receipt of the first sample showing an exceedance of the nitrate or nitrite MCL, as specified in § 109.301(7)(ii)(C)(V).

(3) Exceedance of the nitrate MCL by noncommunity water systems, when permitted by the Department in writing to exceed the MCL in accordance with 40 CFR 141.11(d) (relating to maximum contaminant levels for inorganic chemicals).

(4) Violation of the MRDL for chlorine dioxide, as defined in § 109.202(f)(2), when one or more samples taken in the distribution system the day following an exceedance of the MRDL at the entrance of the distribution system exceed the MRDL, or when the water supplier does not take the required samples in the distribution system, as specified in § 109.301.

(5) Violation of the turbidity MCL of 5 NTU based on an average for 2 consecutive days by a public water system using an unfiltered surface water source, as specified in § 109.202(a)(2).

(6) Violation of a treatment technique requirement for pathogenic bacteria, viruses and protozoan cysts as defined in § 109.202(c), resulting from a single exceedance of the maximum allowable turbidity limit.

(7) Occurrence of a waterborne disease outbreak, as defined in § 109.1 (relating to definitions), or other emergency situation as defined in § 109.701(a)(3)(iii) (relating to reporting and recordkeeping) that adversely affects the quality or quantity of the finished water and

has a significant potential to have serious adverse effects on human health as a result of short-term exposure.

(8) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure, as determined by the Department on a case-by-case basis.

(b) *Timing for a Tier 1 public notice.* A public water supplier shall do the following:

(1) Provide a public notice as soon as possible, but no later than 24 hours after the water supplier learns of the violation or situation under subsection (a).

(2) Report the circumstances to the Department within 1 hour of discovery of the violation or situation in accordance with § 109.701(a)(3).

(3) Initiate consultation with the Department as soon as possible, but no later than 24 hours after the water supplier learns of the violation or situation, to determine initial and any additional public notice requirements.

(4) Comply with initial and any additional public notification requirements that are established as a result of the consultation with the Department. These requirements may include the timing, form, manner, duration, frequency, and content of the initial and any repeat notices, and other actions reasonably designed to reach all persons served. The repeat notice frequency, if applicable, for a Tier 1 public notice shall be established as a result of the consultation, but may be no less often than once every 30 days as long as the violation or situation persists.

(5) Provide a public notice that the Tier 1 violation or situation has been corrected, as soon as possible, but no later than 24 hours after the corrective actions have been completed and the notice is approved by the Department.

(c) *Form and manner of a Tier 1 public notice prior to May 10, 2010.* The form and manner used by a public water supplier shall fit the specific situation and shall be reasonably designed to reach residential, transient and nontransient users of the water system. To reach all persons served, a water supplier shall use, at a minimum, one or more of the following forms of delivery:

(1) Appropriate broadcast media, such as radio or television.

(2) Posting of the notice in conspicuous locations throughout the area served by the water system.

(3) Hand delivery of the notice to persons served by the water system.

(4) Another delivery method approved in writing by the Department.

(d) *Delivery of a Tier 1 public notice beginning on May 10, 2010.* The delivery methods used by a public water supplier shall fit the specific situation and shall be reasonably designed to reach residential, transient and nontransient users of the water system. To reach all persons served in accordance with § 109.407(c) (relating to general public notification requirements), a water supplier shall use, as appropriate to the type of the water system, the following forms of delivery identified under paragraphs (1)–(3).

(1) Community water systems shall provide public notice to each service connection using one or more of the following forms of direct delivery:

(i) Hand delivery.

(ii) Electronic mail.

(iii) Automatic telephone dialing systems or other best available technology. If a public water supplier delivers an abbreviated notice in accordance with § 109.411(b) (relating to content of a public notice), the public water supplier shall also provide the entire public notice under this section in one of the following ways:

(A) Posted on a web site.

(B) Recorded on a dedicated phone line.

(C) Another method approved in writing by the Department.

(iv) Another form of direct delivery approved in writing by the Department.

(2) In addition to providing public notice to each service connection under paragraph (1), community water systems that also serve transient and nontransient service connections shall provide notice using appropriate broadcast media, such as radio and television.

(3) Noncommunity water systems shall provide public notice to transient and nontransient consumers using one or more of the following forms of delivery:

(i) Hand delivery.

(ii) Electronic mail.

(iii) Posting the notice in conspicuous locations throughout the area served by the water system.

(iv) Another form of delivery approved in writing by the Department.

**§ 109.409. Tier 2 public notice—categories, timing and delivery of notice.**

(a) *General violation categories and other situations requiring a Tier 2 public notice.* A public water supplier shall provide Tier 2 public notice for the following circumstances:

(1) All violations of the primary MCL, MRDL and treatment technique requirements in Subchapter B, G or K (relating to MCLs, MRDLs or treatment technique requirements; system management responsibilities; and lead and copper), except when a Tier 1 notice is required under § 109.408 (relating to Tier 1 public notice—categories, timing and delivery of notice) or when the Department determines that a Tier 1 notice is required. The tier assignment for fluoride is not incorporated by reference. Under § 109.202(d) (relating to MCLs, MRDLs or treatment technique requirements), a public water system shall comply with the primary MCL for fluoride of 2 mg/L. As such, a public water supplier shall provide Tier 2 public notice for violation of the primary MCL for fluoride.

(2) Violations of the monitoring requirements in Subchapter C (relating to monitoring requirements) or Subchapter K, when the Department determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation.

(3) Failure to comply with the terms and conditions of any variance or exemption in place under Subchapter I (relating to variances and exemptions issued by the Department).

(4) Other violations or situations determined by the Department to require a Tier 2 public notice, taking into account potential chronic health impacts and persistence of the violation.

(b) *Timing for a Tier 2 public notice.* A public water supplier shall do the following:

(1) Report the circumstances to the Department within 1 hour of discovery of a violation under subsection (a)(1), in accordance with § 109.701(a)(3) (relating to reporting and recordkeeping).

(2) Provide the public notice as soon as possible, but no later than 30 days after the system learns of the violation. If the public notice is posted, the notice shall remain in place for as long as the violation or situation persists, but in no case for less than 7 days, even if the violation or situation is resolved. The Department may, in appropriate circumstances, allow additional time for the initial notice of up to 3 months from the date the system learns of the violation. The Department will not grant an extension across the board or for an unresolved violation. Extensions granted by the Department will be in writing.

(3) Repeat the notice every 3 months as long as the violation or situation persists, unless the Department determines that appropriate circumstances warrant a different repeat notice frequency. In no circumstances may the repeat notice be given less frequently than once per year. The Department will not allow less frequent repeat notices across the board; or for an MCL violation for total coliforms established under § 109.202(a)(2); or for a violation of a treatment technique requirement for pathogenic bacteria, viruses and protozoan cysts as defined in § 109.202(c); or for other ongoing violations. Determinations granted by the Department for less frequent repeat notices will be in writing.

(c) *Form and manner of a Tier 2 public notice.* A public water supplier shall provide the initial public notice and any repeat notices in a form and manner that is reasonably designed to reach all persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but the public water supplier shall at a minimum meet the following requirements:

(1) Unless directed otherwise by the Department in writing, community water systems shall provide notice using the following forms of delivery:

(i) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system.

(ii) Any other method reasonably designed to reach other persons regularly served by the system, if they would not normally be reached by the notice required in subparagraph (i). Those persons may include those who do not pay water bills or do not have service connection addresses such as house renters, apartment dwellers, university students, nursing home patients or prison inmates. Other methods may include publication in a local newspaper, delivery of multiple copies for distribution by customers that provide their drinking water to others (such as apartment building owners or large private employers), posting in public places served by the system or on the Internet or delivery to community organizations.

(2) Unless directed otherwise by the Department in writing, noncommunity water systems shall provide notice using the following forms of delivery:

(i) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection, when known.

(ii) Any other method reasonably designed to reach other persons served by the system if they would not normally be reached by the notice required in subpara-

graph (i). Those persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include publication in a local newspaper or newsletter distributed to customers, use of e-mail to notify employees or students or delivery of multiple copies in central locations such as community centers.

**§ 109.410. Tier 3 public notice—categories, timing and delivery of notice.**

(a) *General violation categories and other situations requiring a Tier 3 public notice.* A public water supplier shall provide Tier 3 public notice for the following circumstances:

(1) Monitoring violations under Subchapter C or K (relating to monitoring requirements; and lead and copper), except when a Tier 1 notice is required under § 109.408 (relating to Tier 1 public notice—categories, timing and delivery of notice) or where the Department determines that a Tier 2 notice is required.

(2) Operation under a variance or an exemption granted under Subchapter I (relating to variances and exemptions issued by the Department).

(3) Availability of unregulated contaminant monitoring results, as required under 40 CFR 141.40 (relating to monitoring requirements for unregulated contaminants).

(b) *Timing for a Tier 3 public notice.*

(1) A public water supplier shall provide the public notice no later than 1 year after the public water system learns of the violation or situation or begins operating under a variance or exemption. Following the initial notice, the water supplier shall repeat the notice annually for as long as the violation, variance, exemption or other situation persists. If the public notice is posted, the notice shall remain in place for as long as the violation, variance, exemption or other situation persists, but in no case may the initial and annual repeat notice be posted for less than 7 days (even if the violation or situation is resolved).

(2) Instead of individual Tier 3 public notices, a public water supplier may use an annual report detailing all violations and situations that occurred during the previous 12 months, as long as the timing requirements of paragraph (1) are met.

(c) *Delivery of a Tier 3 public notice.* A public water supplier shall provide the initial notice and any repeat notices in a form and manner that is reasonably designed to reach all persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but the public water supplier shall, at a minimum, meet the following requirements:

(1) Unless directed otherwise by the Department in writing, community water systems shall provide notice using the following forms of delivery:

(i) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system.

(ii) Any other method reasonably designed to reach other persons regularly served by the system, if they would not normally be reached by the notice required in subparagraph (i). Those persons may include those who do not pay water bills or do not have service connection addresses such as house renters, apartment dwellers, university students, nursing home patients or prison inmates. Other methods may include publication in a

local newspaper, delivery of multiple copies for distribution by customers that provide their drinking water to others (such as apartment building owners or large private employers), posting in public places or on the Internet or delivery to community organizations.

(2) Unless directed otherwise by the Department in writing, noncommunity water systems shall provide notice using the following forms of delivery:

(i) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection, if known.

(ii) Any other method reasonably designed to reach other persons served by the system, if they would not normally be reached by the notice required in subparagraph (i). Those persons may include those who may not see a posted notice because the notice is not in a location they routinely pass by. Other methods may include publication in a local newspaper or newsletter distributed to customers, use of e-mail to notify employees or students or delivery of multiple copies in central locations such as community centers.

(d) *Use of a CCR to meet the Tier 3 public notice requirements.* For community water systems, the CCR required under § 109.416 (relating to CCR requirements) may be used as a vehicle for the initial Tier 3 public notice and all required repeat notices, as long as the following conditions are met:

(1) The CCR is provided to persons served no later than 12 months after the system learns of the violation or situation as required under subsection (b).

(2) The Tier 3 notice contained in the CCR follows the content requirements under § 109.411 (relating to content of a public notice).

(3) The CCR is distributed following the delivery requirements under subsection (c).

**§ 109.411. Content of a public notice.**

(a) *Elements of a public notice.* When a public water system is required to give public notice under this subchapter, each public notice must include the following elements:

(1) A description of the violation or situation, including the contaminants of concern, and (as applicable) the contaminant levels.

(2) When the violation or situation occurred.

(3) Any potential adverse health effects from the violation or situation, including the standard language under subsection (e)(1) or (2), whichever is applicable.

(4) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water.

(5) Whether alternative water supplies should be used.

(6) What actions consumers should take, including when they should seek medical help, if known.

(7) What the system is doing to correct the violation or situation.

(8) When the water system expects to return to compliance or resolve the situation.

(9) The name, business address and telephone number of the water system owner, operator or designee of the public water system as a source of additional information concerning the notice.

(10) A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language under subsection (e)(3), when applicable.

(b) *Abbreviated notice.* If automatic telephone dialing systems, TV scrollers, bullhorn announcements or radio station news flashes are used to deliver an abbreviated notice in accordance with § 109.408(d)(1)(iii) (relating to Tier 1 public notice—categories, timing and delivery of notice), the abbreviated notice must include, at a minimum, the following elements:

(1) A description of the violation or situation, including the contaminants of concern, and (as applicable) the contaminant levels.

(2) Whether alternative water supplies should be used.

(3) What actions consumers should take, including when they should seek medical help, if known.

(4) A telephone number or web site address, or both, where consumers can obtain the entire notice.

(c) *Elements of a public notice for public water systems operating under a variance or exemption.*

(1) If a public water system has been granted a variance or an exemption under Subchapter I (relating to variances and exemptions issued by the Department), the public notice must contain the following elements:

(i) An explanation of the reason for the variance or exemption.

(ii) The date on which the variance or exemption was issued.

(iii) A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption.

(iv) A notice of any opportunity for public input in the review of the variance or exemption.

(2) If a public water system violates the conditions of a variance or exemption, the public notice must contain the ten elements listed in subsection (a).

(d) *Presentation of a public notice.*

(1) Each public notice required by this section must:

(i) Be displayed in a conspicuous way when printed or posted.

(ii) Not contain overly technical language or print that is smaller than a font size of 10 points.

(iii) Not be formatted in a way that defeats the purpose of the notice.

(iv) Not contain language that nullifies the purpose of the notice.

(2) Each public notice required by this section must comply with multilingual requirements, as follows:

(i) The public notice must contain information in Spanish regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance.

(ii) For each non-English-speaking group other than Spanish-speaking that exceeds 10% of the consumers for systems serving at least 1,000 people or 100 consumers for systems serving less than 1,000 people, and speaks the same language other than English, the public notice must contain information in the appropriate languages



regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language. The Department will make the final determination of which systems need to include this information.

(e) *Standard language for a public notice.* Public water systems shall include the following standard language in their public notice:

(1) *Standard health effects language for primary MCL or MRDL violations, treatment technique violations, and violations of the condition of a variance or exemption.* Public water systems shall include in each public notice appropriate health effects language. This subchapter incorporates by reference the health effects language specified in 40 CFR Part 141, Subpart Q, Appendix B (relating to standard health effects language for public notification), corresponding to each primary MCL, MRDL and treatment technique violation listed in 40 CFR Part 141, Subpart Q, Appendix A (relating to NPDWR violations and other situations requiring public notice), and for each violation of a condition of a variance or exemption, unless other health effects language is established by regulations or order of the Department. The health effects language for fluoride is not incorporated by reference. Public water systems shall include the following health effects language in each Tier 2 public notice for violation of the primary MCL of 2 mg/L for fluoride:

“This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than 2 milligrams per liter (mg/L) of fluoride may develop cosmetic discoloration of their permanent teeth (dental fluorosis). Dental fluorosis, in its moderate or severe forms, may result in a brown staining and or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Drinking water containing more than 4 mg/L of fluoride (the U.S. Environmental Protection Agency’s drinking water standard) can increase your risk of developing bone disease.”

(2) *Standard language for violations of monitoring requirements.* Public water systems shall include the following language in their notice, including the language necessary to fill in the blanks, for all violations of monitoring requirements listed in 40 CFR Part 141, Subpart Q, Appendix A:

“We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During [insert compliance period], we “did not monitor or test” or “did not complete all monitoring or testing” for [insert contaminant(s)] and therefore cannot be sure of the quality of your drinking water during that time.”

(3) *Standard language to encourage the distribution of the public notice to all persons served.* Public water systems shall include in their notice the following language, if applicable:

“Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.”

#### § 109.412. Special notice of the availability of unregulated contaminant monitoring results.

(a) *Timing for a special notice.* A community water system or nontransient, noncommunity water system required to monitor for an unregulated contaminant under 40 CFR 141.40 (relating to monitoring requirements for unregulated contaminants) shall notify persons served by the system of the availability of the results of the sampling no later than 12 months after the monitoring results are known.

(b) *Delivery of a special notice.* The delivery of the public notice shall follow the requirements for a Tier 3 public notice prescribed in § 109.410 (relating to Tier 3 public notice—categories, timing and delivery of notice). A public water system may use an annual report or CCR to notify persons served by the system of the availability of the results of the sampling as long as the requirements under § 109.410(d) are met. The notice must also identify a person and provide the telephone number to contact for information on the monitoring results.

#### § 109.413. Special notice for nitrate exceedances above MCL by noncommunity water systems, when granted permission by the Department.

(a) *Timing for a special notice.* A noncommunity water system granted permission by the Department in writing in accordance with 40 CFR 141.11(d) (relating to maximum contaminant levels for inorganic chemicals) to exceed the nitrate MCL shall provide notice to persons served according to the requirements for a Tier 1 notice under § 109.408(a) and (b) (relating to Tier 1 public notice—categories, timing and delivery of notice).

(b) *Delivery of a special notice.* Noncommunity water systems granted permission by the Department in writing to exceed the nitrate MCL in accordance with 40 CFR 141.11(d) shall provide continuous posting of the fact that nitrate levels exceed 10 mg/L and include the potential health effects of exposure, according to the requirements for a Tier 1 notice delivery under § 109.408(c)(2) and (d)(3) and the content requirements under § 109.411 (relating to content of a public notice).

#### § 109.415. Notice by the Department on behalf of the public water system.

(a) *Failure to give public notice.* If a public water supplier fails to give notice to the public as required by this subchapter, the Department may perform this notification on behalf of the supplier of water and may assess costs of notification on the responsible water supplier.

(b) *System responsibilities when public notice is given by the Department.* If the Department gives public notice, the public water supplier remains responsible for ensuring that the requirements of this subchapter are met.

### Subchapter G. SYSTEM MANAGEMENT RESPONSIBILITIES

#### § 109.701. Reporting and recordkeeping.

(a) *Reporting requirements for public water systems.* Public water systems shall comply with the following requirements:

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(3) *One-hour reporting requirements.* A public water supplier shall report the circumstances to the Department within 1 hour of discovery for the following violations or situations:

(i) A primary MCL or an MRDL has been exceeded or a treatment technique requirement has been violated under

Subchapter B or K (relating to MCLs, MRDLs or treatment technique requirements; and lead and copper).

(ii) A sample result requires the collection of check samples under § 109.301.

(iii) Circumstances exist which may adversely affect the quality or quantity of drinking water including, but not limited to:

- (A) The occurrence of a waterborne disease outbreak.
- (B) A failure or significant interruption in key water treatment processes.
- (C) A natural disaster that disrupts the water supply or distribution system.
- (D) A chemical spill.
- (E) An unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination.
- (F) An overfeed of a drinking water treatment chemical that exceeds a published maximum use value, such as National Sanitation Foundation's "Maximum Use Value," as applicable.
- (G) A situation that causes a loss of positive water pressure in any portion of the distribution system where there is evidence of contamination or a water supplier suspects a high risk of contamination.

(H) A lack of resources that adversely affect operations, such as staff shortages, notification by the power utility of planned lengthy power outages or imminent depletion of treatment chemical inventories.

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**§ 109.702. Operation and maintenance plan.**

(a) A community water supplier shall develop an operation and maintenance plan for the community water system. The operation and maintenance plan must generally conform to the guidelines contained in the Department's *Public Water Supply Manual* and contain at least the following information:

- (1) A description of the facilities.
- (2) An explanation of startup and normal operation procedures.
- (3) Procedures for repairing and replacing water mains that conform to the Department and water industry standards.
- (4) A routine maintenance program.
- (5) Records and reporting system.
- (6) Sampling and analyses program.
- (7) Public notification elements in accordance with Subchapter D (relating to public notification) that include:
  - (i) Public notice templates.
  - (ii) EPA contaminant fact sheets, when available.
  - (iii) An explanation of appropriate methods of delivery of public notice in accordance with Subchapter D.
- (8) Staffing and training.
- (9) Sanitary survey program including the wellhead protection program for any water system that develops one under § 109.713 (relating to wellhead protection programs).
- (10) Safety program.
- (11) Emergency plan and operating procedures.

- (12) Manufacturer's manuals.
- (13) An interconnect, valve and blowoff exercise and testing program.
- (14) Date of last update.

(b) The community water supplier shall implement the operation and maintenance plan in accordance with accepted practices of the water supply industry.

(c) The community water supplier shall review and update the operation and maintenance plan as necessary to reflect changes in the operation or maintenance of the water system. The plan must be:

- (1) Placed in secure locations which are readily accessible to the water system's personnel.
- (2) Presented upon request to the Department.

(d) Noncommunity water suppliers may be directed by the Department to develop and implement an operation and maintenance plan as provided for in this section when the public health is threatened by inadequate operation and maintenance of the facilities.

**§ 109.707. Emergency response plan.**

(a) A community water supplier shall develop a plan for the provision of safe and adequate drinking water under emergency circumstances. The emergency response plan must generally conform to the guidelines contained in the Department's *Public Water Supply Manual*, as applicable, and contain at least the following:

(1) *Organization table.* An organization table that includes a prioritized list of names and contact numbers of persons in charge of the water system during an emergency.

(2) *Communication procedures and contact information.* For each probable emergency situation, including, but not limited to, those specified in § 109.701(a)(3)(iii) (relating to reporting and recordkeeping), a list of appropriate contact persons and phone numbers for the following groups of people:

- (i) Emergency management agencies within a water system's jurisdiction.
- (ii) Key public officials within a water supplier's service area.
- (iii) Government agencies including, but not limited to, the Department, Public Utility Commission, Department of Health, Department of Public Welfare and Pennsylvania Department of Agriculture.
- (iv) Facilities within a water supplier's service area, including, but not limited to, hospitals, schools, day-care facilities, nursing homes, social service agencies, industrial and commercial users.
- (v) Media.
- (vi) Equipment and chemical suppliers.

(3) *Means of communication.* A list containing the following:

- (i) Types of communication equipment.
- (ii) Types of communication for public notification.

(4) *Summary description of the system.* A list containing the following:

- (i) Location of pertinent operational information.
- (ii) Source information.
- (iii) Treatment information.

(iv) Finished water storage.

(5) *Assessment of available resources.* A list containing the following:

(i) Mutual aid agreements.

(ii) Emergency water supply equipment that includes procedures for providing reserve capacity according to § 109.609 (relating to reserved capacity and finished water storage) or an approved alternative water supply.

(iii) Power supply equipment.

(iv) Repair equipment.

(v) Vehicles and construction equipment.

(vi) Spare equipment.

(6) *Corrective actions for probable emergency situations.* A list containing the following:

(i) Probable emergency situations including, but not limited to, those specified in § 109.701(a)(3)(iii).

(ii) Corrective actions for each probable emergency situation.

(b) The community water supplier shall implement the emergency response plan when necessary.

(c) The community water supplier shall review and update the plan at least annually and as necessary to reflect changes to communication procedures and contact information under subsection (a)(2). The community water supplier shall record the date of update on the plan. The plan must be:

(1) Placed in secure locations which are readily accessible to the water system's personnel.

(2) Presented upon request to the Department.

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