

Paula Wilson

From: Alan <alan@haydenirrigation.com>
Sent: Tuesday, November 15, 2011 3:47 PM
To: Paula Wilson
Subject: comments on draft 1 drinking water rule
Attachments: response-2_11-15-11.pdf

Paula,

Please accept the attached (.pdf) comments on the draft drinking water rules.

Thank you,

Alan Miller, P.E.
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November 15, 2011

RE: Preliminary Draft Rule Comments

Please accept this written comment on the proposed Drinking Water Rule changes. First, thank you for the opportunity to comment. Please bear with me, I will provide specific comments, however I believe a general statement is also warranted.

I bring a unique set of experiences to my review. In the past 30 years I have participated in numerous facets of this industry. As a result of those experiences I am concerned by much of what I read in the rules, both existing and proposed changes. My understanding is only the proposed changes and their reference are open for comment, my specific comments will, generally, stay within those boundaries. However, it must be stated, many of the Departments suggested rule revisions don't appear to fall entirely within the defined boundaries of the announced purpose of the rule revisions, which is concerning.

It is my understanding the Department is expected, by our legislative body, to stay within the Safe Drinking Water Act and its amendments as administered by the US EPA. Based on that understanding those would represent the Departments boundaries. As I read through the rules I find numerous citations where no EPA direction exists. This causes concern; ultimately it is how the rules are interpreted and applied that is much more important than what words are used. I have experienced both sides of interpretation and application, recent experience causes a different view of the rules than I may have previously had. The best analogy may be that of the frog in a pot of water, if the heat is turned up very slowly the frog will not jump from the pot. Eventually the heat will, of course, boil the frog. I don't fault the Department; I believe I understand its views, its frustrations and challenges in administration of those rules. I also understand the purveyors' frustrations and challenges in adapting to the rules. Both points of view are valid, and necessary.

As a purveyor of drinking water to the public, I recognize, and strongly support, the need for public health protection. I also recognize public health is protected by the actions of purveyors in Idaho. There needs to be room between the rules for reasonable and prudent application, put another way; purveyors need to have a method to excel above the rules. If the rules are set at the highest attainable bar, then there will be no room for growth, and those held to the rules will always feel indentured by the rules. The rules *should* define the lowest acceptable or minimum standard. The industry should be the one leading public health protection. My read through the rules indicates this may no longer be the case, and it causes me concern.

My specific comments, and questions, follow. I will provide the page and section for each comment.

1. Section 002.02. a-hh inclusive: In the opinion of the Department are each of these documents adopted as rule? Or are they reference material to provide assistance to a PWS? This is an important distinction and potential for misunderstanding not only exists but may be widely held by some very knowledgeable people in both the Department and the purveyor community. A clarification may be useful.

2. Section 003:
 - a. Pg 5 #17: A Composite Correction Program (CCP) was not designed to be regulatory, but is performed to determine performance limiting factors which *may*, if addressed, improve performance. Performance goals for a Comprehensive Performance Evaluation (CPE) are significantly higher than compliance goals. The opportunity for confusion, by the department or purveyors, is too great and could cause significant effort and expense not warranted by the rules or established by the Safe Drinking Water Act and its Amendments.
 - b. Pg 7 # 37 + xx: RE: Effective Contact time: Recommend deletion of this definition. This represents a significant change from existing rule and I disagree that this falls into any of the rule making items (see announcement dated 8-31-2011). See comment #3 Re: pg 28 below.
 - c. Pg 12 # 83 + xx + xx: RE: Operation and Maintenance Manual and Operations Plan: Recommend deletion of these definitions. This represents a significant change from existing rule, would be applied to all PWS and I disagree that they fall into any of the rule making items (see announcement dated 8-31-2011).
3. Pg 28: Sec 300.04.a: Disinfection
 - a. This represents an increased level of requirement over the EPA requirement. Is this in accordance with the legislative intent that the rules be no more stringent than the EPA requirements?
 - b. The Change from actual contact time to effective contact time is concerning. This change could significantly affect every PWS providing disinfection. At the minimum, strong clarification is necessary: Will this be applied to PWSs' currently providing disinfection retroactively, (IE: during a sanitary survey) or is this specific to only *membrane* design submittals following official adoption (if adopted)? Financial implications could be very significant. If this significant change would affect all PWS providing disinfection, then I disagree that this falls into any of the rule making items (see announcement dated 8-31-2011).
 - c. See typo 'provides' in 300.04.c
4. Pg 32: Sec 303: This section appears to be out of place, sections preceding and following are specific to water treatment and surface water treatment.
5. Pg 33: Sec 304: The statement 'failure to implement the performance improvement factors identified through the CCP constitutes a violation of these rules' causes concern. The CCP process was never intended to be regulatory to this extent, performance limiting factors (actual term) as identified during a CPE are the opinion of the people performing the CPE, and are intended to improve the performance of the facility. The goals of a CCP are significantly more stringent than the required levels. The CCP process should not be used as a regulatory tool (hammer). It should be used, and embraced, by the Department and purveyors as an opportunity for surface water source PWSs' to excel in finished water quality.

6. Pg. 34: Sec 311.02: There is no section 302 referenced in this section.
7. Pg 43: 501.12 and 12.a-c: The proposed revisions do not appear to fall within the rule making items (see announcement dated 8-31-2011).
8. Pg 43: 501.12.a: The statement 'as determined by the Department' causes concern. Under what criteria will the Department make a determination? Operation and Maintenance manuals are costly and time intensive to create, this may cause significant hardship to a PWS. This change creates new requirements which would affect all PWS providing disinfection; I disagree that this falls into any of the rule making items (see announcement dated 8-31-2011).
9. Pg 43: 501.12.b: What constitutes a 'modified public water system'?
10. Pg 47: 503.03.a-e: The criteria for a preliminary engineering report (PER) appears excessive. Preliminary engineering reports should not be used as a required substitute for a Facility Plan. The described PER would cause significant increase in cost of project, with little to no discernable increased public health protection. Engineers are held to existing standards by the engineering community, there is no need for the DEQ to create additional standards which may provide no direct benefit to the purveyors or their users. The described engineering report could result in costs in excess of thousands to tens of thousands. The proposed changes are not 'reorganization' but represent many new requirements. Does the SDWA and its amendments require a PER? Is this in accordance with the legislative directive that the rules be no more stringent than the EPA requirements?
11. Pg 88: 530.01.b.i: Inclusion of 'effective' causes concern. This change could significantly affect every PWS that provides disinfection. At a minimum; clarification is necessary: Will this be applied to PWSs' currently providing disinfection retroactively, (IE: during a survey) or is this specific to only *membrane* design submittals following official adoption, if adopted? Financial implications could be very significant. No notation is provided for PWS choosing to apply disinfectant as a voluntary barrier, or PWS application of disinfection on a periodic basis. Will those PWS suddenly find themselves required to provide 'effective contact time' when no requirement for contact time previously existed?
12. Pg 121: Sec 552: Why is operating criteria part of the facility and design standards? They would appear to be distinctly separate topics.
13. Pg 122: Sec 552.01.b.ii: I cannot support the proposed additions. It would appear an expectation of public notification within 24 hours exists. In many cases this is neither realistic nor feasible. In some cases, such as planned repairs it is; and as a purveyor we provide greater than 24 hours. If a widespread depressurization occurs, the customers call and are informed then, while we may desire to be able to do better, we are generally busy trying to solve the problem. We are able to use our web site to provide information, but

not all purveyors have that ability. We do provide notification, but it is preferable to have received results from bacteriologic testing and have the ability to include those in the notification.

- a. Additional concerns are with the requirement of:
 - i. Disinfection of the system; in many cases this may not be feasible nor possible.
 - ii. a follow up, or 2nd notification. This requirement may only create additional burden on the PWS financial and human resources. If it does not increase public health protection then it may not be warranted as a requirement.
 - iii. The statement 'after determination by the Department' causes concerns. By what criteria will the Department base its determination? Will the public be denied access to suitable water quality because the Department has not made a determination yet?

If the Department chooses to take on the responsibility of making such determinations, it should first determine the criteria by which a decision would be made, and a time frame within which it would be made. Please recognize my business runs 24 hours a day, 365 days a year, to meet my customers expectations.

14. Pg 122: Sec 552.01.b.iii: This change is confusing, if a PWS and a purveyor are one and the same then why change?
15. Pg 125: Sec 552.06.b: Suggest use of language and proposed language found in section 543.04 found on pg 118, with minor adaptation, for correctness and consistency.
16. Pg 125: Sec 552.06.c: The first sentence is confusing, suggest review for clarification.

I would appreciate clarification to items 1 and 12. Clarification could be provided at the December 1, 2011 phone conference meeting.

In closing, I wish to express my thanks for the opportunity to provide review and comment. If the Department desires to discuss, or has questions, on any of these comments please feel free to contact me.

Sincerely,

Alan Miller, P.E.
Administrator