

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 209 AND 209a]

Coal Mines

The Environmental Quality Board (Board) proposes to rescind Chapter 209 (relating to coal mines) and add Chapter 209a (relating to surface mining) to read as set forth in Annex A. The proposed rulemaking revokes existing, antiquated anthracite and bituminous safety regulations and replaces them with selected Federal safety regulations that will be adopted by reference. In addition, selected Federal safety regulations for industrial mineral mines will be adopted by reference.

This proposed rulemaking was adopted by the Board at its meeting of May 16, 2007.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Joseph G. Pizarchik, Director, Bureau of Mining and Reclamation, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103; or Marc Roda, 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 AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) website: www.dep.state.pa.us.

C. *Statutory Authority*

The amendments are proposed under the authority of:

1. Section 4.2 of the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P. S. § 1396.4b) and section 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (NSMCRA) (52 P. S. § 3311(a)), which authorize the Department to promulgate regulations for the health and safety of those persons engaged in surface mining and for the protection of the general public.

2. Section 2(f) of the General Safety Law (43 P. S. § 25-2(f)), which requires, inter alia, operators of surface industrial mineral mines to adopt measures to protect persons working therein.

3. Sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-17 and 510-20), which authorize the Board to adopt regulations to prevent the occurrence of a nuisance and to promulgate rules and regulations necessary for the proper work of the Department.

D. *Background and Purpose*

The Department's surface mine safety program is implemented through surface mining conservation inspectors. As part of the mine inspection, the inspector identifies unsafe conditions and works with the operator to correct those conditions before an accident occurs. The inspector's ability to identify and correct unsafe condi-

tions is hampered by the inadequacy of the surface mining safety regulations in Chapter 209. Chapter 209, Subchapter A (relating to general safety in bituminous coal strip mines) is antiquated and differs from safety requirements established by the United States Department of Labor, Mine Safety and Health Administration (MSHA). This difference in standards is a source of confusion and jeopardizes safety at bituminous surface mines. Other than for blasting, there are no Department safety regulations for anthracite surface mines. Chapter 209, Subchapter B (relating to explosives in anthracite coal strip mines) is not only out-of-date, but also redundant. The use, storage and handling of explosives at anthracite surface mines is addressed by Chapters 88 and 211 (relating to anthracite coal; and storage, handling and use of explosives). There are no Department regulations specifying safety standards for surface industrial mineral mines.

This proposed rulemaking implements the Rendell Administration's initiative that the Department develop a "world class mine safety program." To implement this initiative, it is proposed to rescind Chapter 209 and add new standards for coal and industrial mineral surface mines in Chapter 209a. For the most part, the proposed rulemaking adopts by reference MSHA safety standards in 30 CFR Parts 56 and 77 (relating to safety and health standards-surface metal and nonmetal mines; and mandatory safety standards, surface coal mines and surface work areas of underground coal mines). By adopting the MSHA standards, the Department's safety standards are modernized and additional costs on operators are minimized. Finally, by eliminating inconsistencies between the Department's standards and the MSHA standards, the possibility for confusion in the field is minimized.

In proposing these amendments, the Department's goal is to provide the most improved safety at surface mines in this Commonwealth in the most cost effective and the least intrusive manner. The provisions of the MSHA regulations adopted by this proposed rulemaking are those that address the most significant risk to surface miners in this Commonwealth.

In 1999, the Pennsylvania State University (PSU) published a report entitled "Safety Conditions in Small Surface Bituminous Coal Mines in Pennsylvania." This report analyzed MSHA safety records for 1991—1996. The report's findings verify that the Department has selected the appropriate areas to emphasize for safety improvement.

Most of the MSHA violations identified by the PSU study fall within the substantive areas to be covered by these regulations. The substantive areas identified by the study are:

- Failure to maintain machinery or equipment in safe operating condition.
- Operation of equipment, which is not in a safe operating condition.
- Neglect in housekeeping.
- Fire hazards and failure to maintain firefighting equipment.

Even though the Department is not adopting all of the MSHA health and safety standards, the Department's inspectors will assist the operators in ensuring compliance with the MSHA regulations. If a Pennsylvania

inspector observes a violation of a MSHA safety regulation that the Commonwealth has not adopted, the Pennsylvania inspector will, as part of the Department's compliance assistance program, point out the condition and explain that it is a violation of a MSHA regulation and needs to be addressed.

On most surface mine sites, the Department conducts inspections more frequently than the MSHA. Effective safety programs rely on the principles of prevention and providing constant reminders of hazards to avoid complacency. With the proposed regulations in place, the higher awareness provided by the Department's inspections will help prevent accidents and result in a safer work environment at surface mines in this Commonwealth.

Interested permittees helped identify the concepts in this proposed rulemaking. In addition, the Department held 13 informational meetings attended by operators/management, consultants and miners. The following concerns and recommendations were discussed at the informational meetings:

1. The potential for the Department's interpretation or enforcement of a health or safety standard being inconsistent with the MSHA's interpretation or enforcement of the same health or safety standard.

2. The Department should not routinely notify the MSHA of violations or vice versa for the purpose of assessing penalties.

3. The Department's inspectors should be adequately trained in the MSHA health and safety standards prior to commencing enforcement.

4. If the surface mining safety regulations are to be upgraded, then adopting by reference the MSHA safety regulations is preferred to the Commonwealth creating regulations.

5. The Department should use proactive compliance assistance with emphasis on preventing accidents and use existing enforcement procedures rather than creating new ones or adopting the MSHA's enforcement procedures.

6. Accidents often result from conditions that may not be present or noticeable during the course of a routine Department inspection. Therefore, the Department should focus on outreach and training in addition to inspection and enforcement. The Department should develop an outreach program that emphasizes hazard recognition and is pertinent to specific jobs performed within a mine, for example, training workers who frequently work near highwalls to recognize signs of highwall instability.

At its meeting of January 25, 2007, the Mining and Reclamation Advisory Board (MRAB) considered this proposed rulemaking, as it applies to surface coal mining. The MRAB unanimously recommended that the Department move forward with the proposed rulemaking.

E. Summary of Regulatory Requirements

This proposed rulemaking rescinds Chapter 209 and adds Chapter 209a, Subchapters A—C (relating to surface coal mines; surface noncoal mines; and miscellaneous provisions).

Subchapter A. Surface Coal Mines

This subchapter specifies the safety standards applicable to surface mining activities as defined in the SMCRA. See § 209a.1 (relating to applicability). Tying this subchapter's applicability to surface mining activities as defined in the SMCRA ensures consistency in the scope of the safety and environmental programs.

§ 209a.2. Definitions.

The definitions of "active workings," "berm" and "roll protection" in 30 CFR 77.2 (relating to definitions) are incorporated by reference. Of the terms defined in 30 CFR 77.2, only these three terms are used in the provisions in 30 CFR Part 77 that are incorporated by reference into Subchapter A.

"Competent person" is not in 30 CFR Part 77. Some of the MSHA regulations adopted by reference address specified duties, for example, preshift inspections, to be performed by a person possessing a certificate of qualification. Rather than creating a certification program, the Department is requiring these duties to be performed by a competent person. See § 209a.13 (relating to competent person).

§ 209a.3. Surface installations.

Nine of the regulations in 30 CFR Part 77, Subpart C (relating to surface installations) are incorporated by reference into Subchapter A. These regulations address the following issues: general requirements; safeguards to protect persons below overhead work areas; protection to prevent persons from falling in openings in surface work areas; the installation and maintenance of travelways in work areas; the installation and maintenance of ladders; illuminating the work area; storing materials at the surface installation; surge and storage piles; and hoisting of materials.

§ 209a.4. Safeguards for mechanical equipment.

Seven of the regulations in 30 CFR Part 77, Subpart E (relating to safeguards for mechanical equipment) are incorporated by reference into Subchapter A. These regulations address the following issues: falling object protective structures on mobile equipment; roll over protective structures on mobile equipment; the incorporation by reference of non-MSHA publications; the operation and maintenance of equipment; safeguards for persons working on or around raised equipment; the operation of shovels, draglines and tractors; and warning devices on mobile equipment.

§ 209a.5. Electrical equipment general.

Two of the regulations in 30 CFR Part 77, Subpart F (relating to electrical equipment general) are incorporated by reference into Subchapter A. These regulations address deenergizing electrical equipment prior to repair and repairing electrical distribution circuits and equipment.

§ 209a.6. Trailing cables.

The requirement that trailing cables are to be protected to prevent damage from mobile equipment in 30 CFR 77.604 (relating to protection of trailing cables) is incorporated by reference into Subchapter A.

§ 209a.7. Surface high-voltage distribution.

Three of the regulations in 30 CFR Part 77, Subpart I (relating to surface high-voltage distribution) are incorporated by reference into Subchapter A. These regulations address the following issues: the clearance above the ground of high-voltage distribution lines; the minimum distance that booms and masts are to be from high-voltage lines; and precautions to be taken when moving equipment in proximity to high-voltage lines.

§ 209a.8. Ground control.

Nine of the regulations in 30 CFR Part 77, Subpart K (relating to ground control) are incorporated by reference into Subchapter A. These regulations address the following issues: the removal of loose material from highwalls;

preventing of spoil material entering the pit; the use of benches to stabilize a highwall; the inspection and maintenance of highwalls, banks, benches and sloping terrain; the removal of loose rock from highwalls; persons working at highwalls; the inspection of drilling equipment; the movement of drilling equipment; and the operation of drilling equipment.

§ 209a.9. Fire protection.

Ten of the regulations in 30 CFR Part 77, Subpart L (relating to fire protection) are incorporated by reference into Subchapter A. These regulations address the following issues: the posting of signs warning against smoking or open flames; the storage of flammable liquids; the accumulation of combustible materials; the fueling of internal combustion engines; the provision of firefighting equipment; the type and capacity of fire fighting equipment; the location of fire fighting equipment; the examination and maintenance of fire fighting equipment; placing fire extinguishers where welding, cutting or soldering is occurring; and the safeguards to be taken when welding, cutting or soldering.

§ 209a.10. Auger mining.

Subsection (a) incorporates by reference into Subchapter A four of the regulations in 30 CFR Part 77, Subpart P (relating to auger mining). These regulations address the following issues: preventing the auger mining from posing a hazard to an adjacent underground mine; inspection of mining operation; safeguards to protect workers from falling rock; and operation of auger equipment.

Subsection (b) establishes minimum requirements for using benches to stabilize the highwall. The Department has the authority, on a case-by-case basis, to require more stringent benching requirements. Also, on a case-by-case basis, operators can request the Department to approve less stringent benching requirements.

The MSHA regulations do not contain specific requirements for using benches to stabilize a highwall. This is because the MSHA regulations apply Nationally to a variety of different geologic conditions. The use of benches to stabilize the highwall is to be described in the ground control plan, required by 30 CFR 77.1000 (relating to highwalls, pits and spoil bank; plans). In this Commonwealth, the geologic conditions in the bituminous coal field are so that strata are near horizontal and the rock types are limited to a few types. Because of this, the geologic conditions are generally predictable making it reasonable to specify minimum benching standards that can be varied on a case-by-case basis, to ensure highwall stability.

Auger mining in the anthracite coal fields is uncommon. Subsection (c) describes the requirements for auger mining in the anthracite coal fields, where the geology is complex.

§ 209a.11. Loading and haulage.

Four of the regulations in 30 CFR Part 77, Subpart Q (relating to loading and haulage) are incorporated by reference into Subchapter A. These regulations address the following issues: general requirements; installation of safeguards on haulage and loading equipment; operation of loading and haulage equipment; and safeguards at dumping facilities.

§ 209a.12. Miscellaneous.

Six of the regulations in 30 CFR Part 77, Subpart R (relating to miscellaneous) are incorporated by reference

into Subchapter A. These regulations address the following issues: communications in work areas; emergency communications; first aid equipment; the use of protective clothing; prohibition against smoking; and daily inspection of surface coal mines.

Subchapter B. Surface Noncoal Mines

This subchapter applies to "surface mines" as defined in the NSMCRA. See § 209a.21 (relating to applicability). Tying this subchapter's applicability to the definition of "surface mine" in the NSMCRA ensures that the safety and environmental programs apply to the same facilities.

§ 209a.22. Definitions.

This section adopts by reference the nine terms defined in 30 CFR 56.2 (relating to definitions) that are used in the MSHA regulations adopted by reference into Subchapter B. These terms are "berm," "competent person," "face or bank," "flammable," "mobile equipment," "multipurpose dry-chemical fire extinguisher," "roll protection," "scaling" and "working place."

§ 209a.23. Ground control.

Seven of the regulations in 30 CFR Part 56, Subpart B (relating to ground control) are incorporated by reference into Subchapter B. These regulations address the following issues: the definition of travelway; the stability of walls, banks and slopes; the perimeter of the pit or quarry wall; the correction of hazardous conditions; the location for performing scaling; the examination of ground stability conditions; and the movement of persons between equipment and highwalls or banks.

§ 209a.24. Fire prevention and control.

Four of the regulations in 30 CFR Part 56, Subpart C (relating to fire prevention and control) and incorporated by reference into Subchapter B. These regulations address the following issues: restrictions on where smoking or the use of open flames can occur; precautions to be taken when fueling internal combustion engines; general requirements for firefighting equipment; and firefighting equipment on self-propelled equipment.

§ 209a.25. Drilling and rotary jet piercing.

Ten of the regulations in 30 CFR Part 56, Subpart F (relating to drilling and rotary jet piercing) are incorporated by reference into Subchapter B. These regulations address the following issues: the maintenance of defective equipment; the inspection of drilling areas; persons working on a drill mast; working around augers and drill stems; moving the drill; supervision of drill helper by drill operator; tending drills in operation; securing loose objects on masts or drill platforms; restrictions on where persons may be positioned while drilling; and restrictions on drilling where there is a possibility of intersecting a hole containing explosives.

§ 209a.26. Loading, hauling and dumping.

Sixteen of the regulations in 30 CFR Part 56, Subpart H (relating to loading, hauling, and dumping) are incorporated by reference into Subchapter B. These regulations address the following issues: traffic control; controlling mobile equipment; loading and hauling large rocks; the design and construction of berms and guardrails; dumpsite restraints; the construction of ramps and dumping facilities; unstable ground at dumpsites; using spotters to direct trucks at dumpsites; devices for warning drivers of mobile equipment of hazards due to restricted clearances; safeguards for persons working around draw holes; the maintenance of roadways; the shaping of stockpiles and muck pile faces to prevent hazards; con-

trolling dust to prevent hazardous conditions due to low visibility; notifying the operator of self-propelled equipment that someone is either getting on or off that equipment; traveling beneath suspended loads; and persons getting on or off moving equipment.

§ 209a.27. Electricity.

Three of the regulations in 30 CFR Part 56, Subpart K (relating to electricity) are incorporated by reference into Subchapter B. These regulations address the following issues: ensuring that power conductors will not be damaged if they are run over by mobile equipment; measures to be taken to ensure that electrical equipment is deenergized and remains deenergized while being worked on; and precautions to be taken while moving equipment near high-voltage power lines.

§ 209a.28. Machinery and equipment.

Seventeen of the regulations in 30 CFR Part 56, Subpart M (relating to machinery and equipment) are incorporated by reference into Subchapter B. These regulations address the following issues: definitions of terms that are specific to 30 CFR Part 56, Subpart M and that are used in regulations adopted by reference into this section; examining for, correcting and recording safety defects in machinery and equipment; the maintenance of operator's stations, including windows, on self-propelled mobile equipment; procedures to be followed when repairing or maintaining machinery or equipment; falling object protection structures on self-propelled mobile equipment; the use of guards to protect persons from moving machine parts; the construction and maintenance of guards; using roll over protective structures and seat belts on certain types of equipment; seat belts for haulage trucks; horns and backup alarms; sounding an audible warning before starting equipment; the safe lubrication of machinery; the proper use of machinery, equipment and tools; immobilizing the moving parts on mobile equipment; safeguards for unattended parked mobile equipment; restrictions on moving dippers, buckets, loading booms or suspended loads over operator's stations on self-propelled mobile equipment; and securing raised equipment when someone is working near it.

§ 209a.29. Personal protection.

Eight of the regulations in 30 CFR Part 56, Subpart N (relating to personal protection) are incorporated by reference into Subchapter B. These regulations address the following issues: first aid materials; hard hats; protective footwear; eye protection; the use of safety belts and lines; protective equipment and clothing for hazards and irritants; protective equipment or clothing for welding, cutting or working with molten metal; and life jackets and belts.

§ 209a.30. Materials storage and handling.

Three of the regulations in 30 CFR Part 56, Subpart O (relating to materials storage and handling) are incorporated by reference into Subchapter B. These regulations address the following issues: taglines, hitches and slings; keeping persons clear of suspended loads; and clearing the drop area before dropping materials.

§ 209a.31. Illumination.

The requirement to illuminate surface working areas in 30 CFR 56.17001 (relating to illumination of surface working areas) is incorporated by reference into Subchapter B.

§ 209a.32. Safety programs.

Three of the regulations in 30 CFR Part 56, Subpart Q (relating to safety programs) are incorporated by refer-

ence into Subchapter B. These regulations address the following issues: examination of working places; provision of an emergency communication system; and prohibitions on working alone.

§ 209a.33. Miscellaneous provisions.

Two of the regulations in 30 CFR Part 56, Subpart S (relating to miscellaneous) are incorporated by reference into this subchapter. These regulations address house-keeping requirements and the use of barricades and warning signs to protect persons from hazards that are not immediately obvious.

Subchapter C. Miscellaneous Provisions

The regulations in this subchapter apply to both surface coal mining activities as defined in the SMCRA and surface mines as defined in the NSMCRA. (See § 209a.41 (relating to applicability).)

§ 209a.42. Accident reporting.

This section addresses accident reporting requirements. The types of events constituting an accident are defined in subsection (a). These definitions are taken from 30 CFR 50.2 (relating to definitions). Subsection (b) requires the operator to notify the Department within 1 hour of the occurrence of an accident. Finally, subsection (c) requires the operator to submit to the Department a copy of the accident reports submitted to MSHA.

§ 209a.43. Alternative standards.

This section establishes the mechanism by which the Department adopts a mine specific modification of the MSHA standards that have been incorporated by reference into this chapter. For modifications approved when this proposed rulemaking is adopted, the operator must notify the Department of MSHA approval. For modifications requested after the adoption of this proposed rulemaking, the operator shall give the Department a copy of the petition and all supporting materials when they are submitted to MSHA and notify the Department of the MSHA approval.

§ 209a.44. Access to records.

This section gives the Department access to review and copy documents required by MSHA.

F. Benefits, Costs and Compliance

Compliance Costs

This proposed rulemaking will not impose additional compliance costs on the regulated community. Surface mines in this Commonwealth must already comply with these Federal safety regulations. In fact, the implementation of this proposed rulemaking should result in cost savings in that accidents will be prevented.

Compliance Assistance Plan

The Department will explain to each job foreman the changes in the regulations.

Paperwork requirements

This proposed rulemaking establishes two paperwork requirements. First, there is a requirement to submit to the Department copies of the documentation in support of a request to the MSHA for a modification of a health and safety standard that has been incorporated by reference into this proposed rulemaking. Second, there is the requirement to submit to the Department the same accident reports submitted to the MSHA. The only cost to the operator is the cost of copying and mailing these documents to the Department.

G. Pollution Prevention

The proposed rulemaking will not modify the pollution prevention approach by the regulated community and maintains the multimedia pollution prevention approach of existing requirements in 25 Pa. Code (relating to environmental protection).

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 August 16, 2007, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

J. Public Comments

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by October 1, 2007. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by October 1, 2007. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments. Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by October 1, 2007. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

KATHLEEN A. MCGINTY,
Chairperson

Fiscal Note: 7-414. No fiscal impact; (8) recommends adoption.

Annex A

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

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE IV. OCCUPATIONAL HEALTH AND SAFETY

CHAPTER 209. (Reserved)

(Editor's Note: As part of this proposed rulemaking, the Board is proposing to delete the text of Chapter 209, which currently appears in 25 Pa. Code pages 209-1—209-23, serial pages (243435) to (243457).)

§§ 209.1—209.3. (Reserved).
 §§ 209.11—209.13. (Reserved).
 §§ 209.21—209.27. (Reserved).
 §§ 209.31—209.35. (Reserved).
 §§ 209.41—209.47. (Reserved).
 §§ 209.51—209.65. (Reserved).
 §§ 209.71—209.77. (Reserved).
 §§ 209.81—209.87. (Reserved).
 §§ 209.91—209.93. (Reserved).
 §§ 209.101—209.103. (Reserved).
 §§ 209.111—209.115. (Reserved).
 § 209.121. (Reserved).
 § 209.122. (Reserved).
 §§ 209.141—209.145. (Reserved).
 §§ 209.151—209.154. (Reserved).
 §§ 209.161—209.172. (Reserved).
 §§ 209.181—209.187. (Reserved).
 §§ 209.191—209.193. (Reserved).
 §§ 209.201—209.203. (Reserved).

(Editor's Note: The following chapter is new. It has been printed in regular type to enhance readability.)

CHAPTER 209a. SURFACE MINING

Subchap.

A. SURFACE COAL MINES
 B. SURFACE NONCOAL MINES
 C. MISCELLANEOUS PROVISIONS

Subchapter A. SURFACE COAL MINES

Sec.
 209a.1. Applicability.
 209a.2. Definitions.
 209a.3. Surface installations.
 209a.4. Safeguards for mechanical equipment.
 209a.5. Electrical equipment general.
 209a.6. Trailing cables.
 209a.7. Surface high-voltage distribution.
 209a.8. Ground control.
 209a.9. Fire protection.
 209a.10. Auger mining.
 209a.11. Loading and haulage.
 209a.12. Miscellaneous.
 209a.13. Competent person.

§ 209a.1. Applicability.

This subchapter applies to surface mining activities as defined in section 3 of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.3).

§ 209a.2. Definitions.

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

(1) The meanings for the terms "active workings," "berm" and "roll protection" contained in 30 CFR 77.2(a), (d) and (w) (relating to definitions) are incorporated by reference.

(2) *Competent person*—A person having abilities and experience that fully qualify him to perform the duty to which he is assigned.

§ 209a.3. Surface installations.

The following provisions of 30 CFR Part 77, Subpart C (relating to surface installations) are incorporated by reference:

- (1) Section 77.200 (relating to surface installations; general).
- (2) Section 77.203 (relating to use of material or equipment overhead; safeguards).
- (3) Section 77.204 (relating to openings in surface installations; safeguards).
- (4) Section 77.205 (relating to travelways at surface installations).
- (5) Section 77.206 (relating to ladders; construction; installation and maintenance).
- (6) Section 77.207 (relating to illumination).
- (7) Section 77.208 (relating to storage of materials).
- (8) Section 77.209 (relating to surge and storage piles).
- (9) Section 77.210 (relating to hoisting of materials).

§ 209a.4. Safeguards for mechanical equipment.

The following provisions of 30 CFR Part 77, Subpart E (relating to safeguards for mechanical equipment) are incorporated by reference:

- (1) Section 77.403 (relating to mobile equipment; falling object protective structures (FOPS)).
- (2) Section 77.403-1 (relating to mobile equipment; rollover protective structures (ROPS)).
- (3) Section 77.403-2 (relating to incorporation by reference).
- (4) Section 77.404 (relating to machinery and equipment; operation and maintenance).
- (5) Section 77.405 (relating to performing work from a raised position; safeguards).
- (6) Section 77.409 (relating to shovels, draglines, and tractors).
- (7) Section 77.410 (relating to mobile equipment; automatic warning devices).

§ 209a.5. Electrical equipment general.

The following provisions of 30 CFR Part 77, Subpart F (relating to electrical equipment—general) are incorporated by reference:

- (1) Section 77.500 (relating to electric power circuits and electric equipment; deenergization).
- (2) Section 77.501 (relating to electric distribution circuits and equipment; repair).

§ 209a.6. Trailing cables.

30 CFR 77.604 (relating to protection of trailing cables) is incorporated by reference.

§ 209a.7. Surface high-voltage distribution.

The following provisions of 30 CFR Part 77, Subpart I (relating to surface high-voltage distribution) are incorporated by reference:

- (1) Section 77.807-1 (relating to high-voltage powerlines; clearances above ground).

(2) Section 77.807-2 (relating to booms and masts; minimum distance from high-voltage lines).

(3) Section 77.807-3 (relating to movement of equipment; minimum distance from high-voltage lines).

§ 209a.8. Ground control.

The following provisions of 30 CFR Part 77, Subpart K (relating to ground control) are incorporated by reference:

- (1) Section 77.1001 (relating to stripping; loose material).
- (2) Section 77.1002 (relating to box cuts; spoil material placement).
- (3) Section 77.1003 (relating to benches).
- (4) Section 77.1004 (relating to ground control; inspection and maintenance; general).
- (5) Section 77.1005 (relating to scaling highwalls; general).
- (6) Section 77.1006 (relating to highwalls; men working).
- (7) Section 77.1007 (relating to drilling; general).
- (8) Section 77.1008 (relating to relocation of drills; safeguards).
- (9) Section 77.1009 (relating to drill; operation).

§ 209a.9. Fire protection.

The following provisions of 30 CFR Part 77, Subpart L (relating to fire protection) are incorporated by reference:

- (1) Section 77.1102 (relating to warning signs; smoking and open flame).
- (2) Section 77.1103 (relating to flammable liquids; storage).
- (3) Section 77.1104 (relating to accumulations of combustible materials).
- (4) Section 77.1105 (relating to internal combustion engines; fueling).
- (5) Section 77.1108 (relating to firefighting equipment; requirements; general).
- (6) Section 77.1108-1 (relating to type and capacity of firefighting equipment).
- (7) Section 77.1109 (c)—(e) (relating to quantity and location of firefighting equipment).
- (8) Section 77.1110 (relating to examination and maintenance of firefighting equipment).
- (9) Section 77.1111 (relating to welding, cutting, soldering; use of fire extinguisher).
- (10) Section 77.1112(a) (relating to welding, cutting, or soldering with arc or flame; safeguards).

§ 209a.10. Auger mining.

(a) The following provisions of 30 CFR Part 77, Subpart P (relating to auger mining) are incorporated by reference:

- (1) Section 77.1500 (relating to auger mining; planning).
- (2) Section 77.1501 (relating to auger mining; inspections).
- (3) Section 77.1503 (relating to augering equipment; overhead protection).
- (4) Section 77.1504 (relating to auger equipment; operation).

(b) At a minimum, a highwall proposed for auger mining of bituminous coal shall be benched at the base of each overlying coal seam. In addition, if the height of the highwall, either between two coal seams or to the surface if there is no overlying coal seam, exceeds 60 feet, the highwall shall be benched at no more than 50 feet above the bottom coal seam. Additional benches may be required to ensure the stability of the highwall. The Department of Environmental Protection may authorize alternative bench locations if the operator demonstrates that the alternative locations are at least as effective at ensuring the highwall stability as otherwise required by this section. In making this demonstration the operator, at a minimum, shall take into account geologic, seasonal and weather conditions; presence of groundwater and other factors that may affect the stability of the highwall.

(c) For auger mining in the anthracite coal fields, if the height of the overburden above the auger area exceeds 60 feet, the overburden shall be benched at no more than 50 feet above the coal seam being augered. Additional benches may be required to ensure the stability of the overburden above the auger area. The Department may authorize alternative bench locations if the operator demonstrates that the alternative locations are at least as effective at ensuring the stability as otherwise required by this section. In making this demonstration the operator, at a minimum, shall take into account geologic, seasonal and weather conditions; presence of groundwater, and other factors that may affect the stability of the overburden above the coal seam being augered.

§ 209a.11. Loading and haulage.

The following provisions of 30 CFR Part 77, Subpart Q (relating to loading and haulage) are incorporated by reference:

- (1) Section 77.1600 (relating to loading and haulage; general).
- (2) Section 77.1605(a), (b), (d), (k) and (l) (relating to loading and haulage equipment; installations).
- (3) Section 77.1607(a)—(u), (x) and (bb)—(ee) (relating to loading and haulage equipment; operation).
- (4) Section 77.1608 (relating to dumping facilities).

§ 209a.12. Miscellaneous.

The following provisions of 30 CFR Part 77, Subpart R (relating to miscellaneous) are incorporated by reference:

- (1) Section 77.1700 (relating to communications in work areas).
- (2) Section 77.1701 (relating to emergency communications; requirements).
- (3) Section 77.1707 (relating to first aid equipment; location; minimum requirements).
- (4) Section 77.1710 (relating to protective clothing; requirements).
- (5) Section 77.1711 (relating to smoking prohibition).
- (6) Section 77.1713 (relating to daily inspection of surface coal mine; certified person; reports of inspection).

§ 209a.13. Competent person.

Any provision of 30 CFR Part 77 incorporated by reference in this subchapter requiring that a duty be carried out by a certified person is amended to require that duty to be carried out by a competent person.

Subchapter B. SURFACE NONCOAL MINES

- Sec.
- 209a.21. Applicability.
 - 209a.22. Definitions.
 - 209a.23. Ground control.
 - 209a.24. Fire prevention and control.
 - 209a.25. Drilling and rotary jet piercing.
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 - 209a.28. Machinery and equipment.
 - 209a.29. Personal protection.
 - 209a.30. Materials storage and handling.
 - 209a.31. Illumination.
 - 209a.32. Safety programs.
 - 209a.33. Miscellaneous.

§ 209a.21. Applicability.

This subchapter applies to surface mining as defined in section 3 of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § 3303).

§ 209a.22. Definitions.

The following words and terms, when used in this subchapter, have the meaning given to them in 30 CFR 56.2 (relating to definitions), unless the context clearly indicates otherwise:

- (1) Berm.
- (2) Competent person.
- (3) Face or bank.
- (4) Flammable.
- (5) Mobile equipment.
- (6) Multipurpose dry-chemical fire extinguisher.
- (7) Roll protection.
- (8) Scaling.
- (9) Working place.

§ 209a.23. Ground control.

The following provisions of 30 CFR Part 56, Subpart B (relating to ground control) are incorporated by reference:

- (1) Section 56.3000 (relating to definitions) in so far as it defines "travelway."
- (2) Section 56.3130 (relating to wall, bank, and slope stability).
- (3) Section 56.3131 (relating to pit or quarry wall perimeter).
- (4) Section 56.3200 (relating to correction of hazardous conditions).
- (5) Section 56.3201 (relating to location for performing scaling).
- (6) Section 56.3401 (relating to examination of ground conditions).
- (7) Section 56.3430 (relating to activity between machinery or equipment and the highwall or bank).

§ 209a.24. Fire prevention and control.

The following provisions of 30 CFR Part 56, Subpart C (relating to fire prevention and control) are incorporated by reference:

- (1) Section 56.4100 (relating to smoking and use of open flames).
- (2) Section 56.4103 (relating to fueling internal combustion engines).
- (3) Section 56.4200 (relating to general requirements).
- (4) Section 56.4230 (relating to self-propelled equipment).

§ 209a.25. Drilling and rotary jet piercing.

The following provisions of 30 CFR Part 56, Subpart F (relating to drilling and rotary jet piercing) are incorporated by reference:

- (1) Section 56.7002 (relating to equipment defects).
- (2) Section 56.7003 (relating to drill area inspection).
- (3) Section 56.7004 (relating to drill mast).
- (4) Section 56.7005 (relating to augers and drill stems).
- (5) Section 56.7008 (relating to moving the drill).
- (6) Section 56.7009 (relating to drill helpers).
- (7) Section 56.7012 (relating to tending drills in operation).
- (8) Section 56.7051 (relating to loose objects on the mast or drill platform).
- (9) Section 56.7052 (relating to drilling positions).
- (10) Section 56.7055 (relating to intersecting holes).

§ 209a.26. Loading, hauling and dumping.

The following provisions of 30 CFR Part 56, Subpart H (relating to loading, hauling, and dumping) are incorporated by reference:

- (1) Section 56.9100 (relating to traffic control).
- (2) Section 56.9101 (relating to operating speeds and control of equipment).
- (3) Section 56.9202 (relating to loading and hauling large rocks).
- (4) Section 56.9300 (relating to berms or guardrails).
- (5) Section 56.9301 (relating to dump site restraints).
- (6) Section 56.9303 (relating to construction of ramps and dumping facilities).
- (7) Section 56.9304 (relating to unstable ground).
- (8) Section 56.9305 (relating to truck spotters).
- (9) Section 56.9306 (relating to warning devices for restricted clearances).
- (10) Section 56.9312 (relating to working around drawholes).
- (11) Section 56.9313 (relating to roadway maintenance).
- (12) Section 56.9314 (relating to trimming stockpile and muckpile faces).
- (13) Section 56.9315 (relating to dust control).
- (14) Section 56.9316 (relating to notifying the equipment operator).
- (15) Section 56.9317 (relating to suspended loads).
- (16) Section 56.9318 (relating to getting on or off moving equipment).

§ 209a.27. Electricity.

The following provisions of 30 CFR Part 56, Subpart K (relating to electricity) are incorporated by reference:

- (1) Section 56.12005 (relating to protection of power conductors from mobile equipment).
- (2) Section 56.12016 (relating to work on electrically-powered equipment).
- (3) Section 56.12071 (relating to movement or operation of equipment near high-voltage power lines).

§ 209a.28. Machinery and equipment.

The following provisions of 30 CFR Part 56, Subpart M (relating to machinery and equipment) are incorporated by reference.

- (1) Section 56.14000 (relating to definitions).
- (2) Section 56.14100 (relating to safety defects; examination, correction and records).
- (3) Section 56.14103 (relating to operators stations).
- (4) Section 56.14105 (relating to procedures during repairs or maintenance).
- (5) Section 56.14106 (relating to falling object protection).
- (6) Section 56.14107 (relating to moving machine parts).
- (7) Section 56.14112 (relating to construction and maintenance of guards).
- (8) Section 56.14130 (relating to roll-over protective structures (ROPS) and seat belts).
- (9) Section 56.14131 (relating to seat belts for haulage trucks).
- (10) Section 56.14132 (relating to horns and backup alarms).
- (11) Section 56.14200 (relating to warnings prior to starting or moving equipment).
- (12) Section 56.14204 (relating to machinery lubrication).
- (13) Section 56.14205 (relating to machinery, equipment, and tools).
- (14) Section 56.14206 (relating to securing movable parts).
- (15) Section 56.14207 (relating to parking procedures for unattended equipment).
- (16) Section 56.14210 (relating to movement of dippers, buckets, loading booms, or suspended loads).
- (17) Section 56.14211 (relating to blocking equipment in a raised position).

§ 209a.29. Personal protection.

The following provisions of 30 CFR Part 56, Subpart N (relating to personal protection) are incorporated by reference:

- (1) Section 56.15001 (relating to first-aid materials).
- (2) Section 56.15002 (relating to hard hats).
- (3) Section 56.15003 (relating to protective footwear).
- (4) Section 56.15004 (relating to eye protection).
- (5) Section 56.15005 (relating to safety belts and lines).
- (6) Section 56.15006 (relating to protective equipment and clothing for hazards and irritants).
- (7) Section 56.15007 (relating to protective equipment or clothing for welding, cutting, or working with molten metal).
- (8) Section 56.15020 (relating to life jackets and belts).

§ 209a.30. Materials storage and handling.

The following provisions of 30 CFR Part 56, Subpart O (relating to materials storage and handling) are incorporated by reference:

- (1) Section 56.16007 (relating to taglines, hitches, and slings).

(2) Section 56.16009 (relating to suspended loads).

(3) Section 56.16010 (relating to dropping materials from overhead).

§ 209a.31. Illumination.

The provisions of 30 CFR 56.17001 (relating to illumination of surface working areas) are incorporated by reference.

§ 209a.32. Safety programs.

The following provisions of 30 CFR Part 56, Subpart Q (relating to safety programs) are incorporated by reference:

(1) Section 56.18002 (relating to examination of working places).

(2) Section 56.18013 (relating to emergency communications system).

(3) Section 56.18020 (relating to working alone).

§ 209a.33. Miscellaneous.

The following provisions of 30 CFR Part 56, Subpart S (relating to miscellaneous) are incorporated by reference:

(1) Section 56.20003 (relating to housekeeping).

(2) Section 56.20011 (relating to barricades and warning signs).

Subchapter C. MISCELLANEOUS PROVISIONS

Sec.

209a.41. Applicability.

209a.42. Accident reporting.

209a.43. Alternative standards.

209a.44. Access to records.

§ 209a.41. Applicability.

This subchapter applies to surface mining activities as defined in section 3 of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.3) and to surface mining as defined in section 3 of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § 3303).

§ 209a.42. Accident reporting.

(a) Unless the context clearly indicates otherwise, as used in this subchapter, an accident is an incident that results in one or more of the following:

(1) A death of an individual at a mine.

(2) An injury to a miner which occurs at a mine for which medical treatment is administered, or which results in loss of consciousness, inability to perform all job duties on any day after an injury, temporary assignment to other duties or transfer to another job.

(3) An entrapment of an individual for more than 30 minutes.

(4) An unplanned inundation of a mine by a liquid or gas.

(5) An unplanned ignition or explosion of gas or dust.

(6) An unplanned mine fire not extinguished within 30 minutes of discovery.

(7) An unplanned ignition or explosion of a blasting agent or an explosive.

(8) A failure of an impoundment, highwall, low wall, pile or bank or, an unstable condition at an impoundment, highwall, low wall, pile or bank which requires emergency action to prevent failure, or which causes individuals to evacuate an area.

(9) Death or bodily injury to an individual not at the mine.

(b) In the event of an accident occurring at a mine, an operator shall notify the Department no later than within 1 hour of discovery of the accident.

(c) In the event of an accident occurring at a mine, an operator shall send to the Department a copy of the completed Mine Accident, Injury and Illness Report Form 7000-1 required by 30 CFR 50.20 (relating to preparation and submission of MSHA Report Form 7000-1—Mine Accident, Injury, and Illness Report).

§ 209a.43. Alternative standards.

(a) If, as of _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rule-making), the United States Department of Labor, Mine Safety and Health Administration (MSHA) has adopted a mine specific modification of a safety and health standard incorporated by reference in this chapter for a mine in this Commonwealth, that mine specific modified safety and health standard will be adopted by the Department if the operator submits to the Department's District Mining Office with jurisdiction for the mine a copy of MSHA's adoption of the modification.

(b) If, after _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rule-making), MSHA adopts a mine specific modification of a safety and health standard incorporated by reference in this chapter for a mine located in this Commonwealth, that mine specific modified safety and health standard will be adopted by the Department if the operator:

(1) Provides the Department's District Mining Office with jurisdiction for the mine with a copy of the petition and a copy of all supporting materials submitted to MSHA, upon submission to MSHA.

(2) Submits to the Department's District Mining Office with jurisdiction for the mine a copy of the MSHA approval of the modified safety and health standard.

§ 209a.44. Access to records.

The Department shall have access to review and copy all maps, plans, notifications, reports, training records, program descriptions or other materials prepared to comply with 30 CFR Parts 50, 56 and 77 (relating to notification, investigation, reports and records of accidents, injuries, illnesses, employment, and coal production in mines; safety and health standards—surface metal and nonmetal mines; and mandatory safety standards, surface coal mines and surface work areas of underground coal mines).

[Pa.B. Doc. No. 07-1612. Filed for public inspection August 31, 2007, 9:00 a.m.]

[25 PA. CODE CH. 109]

Safe Drinking Water—General Update

The Environmental Quality Board (Board) proposes to amend Chapter 109 (relating to safe drinking water). The proposed rulemaking includes major amendments to the regulation of inorganic chemicals (IOCs), synthetic organic chemicals (SOCs) and volatile synthetic organic chemicals (VOCs); minor amendments to the Filter Backwash Recycling Rule (FBRR), Lead and Copper Rule (LCR) and Radionuclide (RAD) Rule requirements; and

other minor amendments to Chapter 109 to retain primary enforcement authority (primacy) and to clarify existing requirements.

This proposed rulemaking was adopted by the Board at its meeting of June 19, 2007.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Lisa Daniels, Division of Operations Monitoring and Training, P. O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-2189; 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. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). The proposed rulemaking is available electronically through the Department of Environmental Protection (Department) website: www.dep.state.pa.us.

C. *Statutory Authority*

The proposed 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 this proposed rulemaking is to amend the Department's safe drinking water regulations to: (1) incorporate necessary Federal requirements needed to obtain or maintain, or both, primacy for the Phase II/IIB/V, Arsenic, FBRR, LCR and RAD rules; (2) amend several sections to improve data quality; (3) coordinate efforts with several other drinking water regulatory packages, including Operator Certification and Environmental Laboratory Accreditation; and (4) clarify several existing requirements to improve compliance.

1. *Amendments to incorporate Federal requirements*

a. *Major amendments to IOC, SOC and VOC requirements.*

The United States Environmental Protection Agency (EPA) promulgated the Phase II Rule on January 30, 1991, the Phase IIB Rule on July 1, 1991, the Phase V Rule on July 17, 1992, and the Arsenic Rule on January 22, 2001. These rules established the monitoring requirements for IOCs, SOCs and VOCs for community and nontransient noncommunity water systems. The Department's IOC/SOC/VOC monitoring and waiver requirements in § 109.301 (relating to general monitoring requirements) are not consistent with the Federal rules and are amended to obtain primacy for the Phase II/IIB/V and Arsenic Rules. The Department must also obtain EPA approval of its Monitoring Waiver Program guidance.

b. *Minor amendments to FBRR.*

The EPA promulgated the FBRR on June 8, 2001. The FBRR established additional requirements for surface water systems that recycle spent filter backwash. The Department promulgated final regulations at 34 Pa.B. 1758 (April 3, 2004). As a condition of primacy, the

Department must make minor amendments to the public notification requirements to maintain primacy for the FBRR.

c. *Minor amendments to LCR.*

Lead and copper reporting requirements for community and nontransient noncommunity water systems in § 109.1107 (relating to system management responsibilities) are amended to maintain primacy for LCR.

d. *Minor amendments to RAD.*

Monitoring requirements for bottled, vended, retail and bulk water hauling systems (BVRBs) are being clarified (for BVRBs that meet the definition of a "community water system" or "nontransient noncommunity water system") to obtain primacy for the RAD Rule.

2. *Amendments to improve data quality*

- Quality assurance and quality control requirements for continuous monitoring equipment associated with surface water systems are amended to clarify the requirements for calibration.

- Amendments to require mandatory electronic reporting will improve data quality, reduce reporting violations and streamline the reporting process.

Electronic reporting will be accomplished using the Department's existing secure web application, the Drinking Water Electronic Lab Reporting (DWELR) system. DWELR has been available to water suppliers and labs since 2003. Currently, the Department receives about 70% of its data voluntarily through DWELR. Users can upload data or enter data using screen entry forms. The DWELR system includes an error detection program that produces error reports. Errors can be corrected immediately or recalled for correction later. This allows users to correct data entry and other errors, thus preventing erroneous Maximum Contaminant Level (MCL) or monitoring/reporting violations. Water systems can register for access to view the data that's submitted for them by submitting entities. This allows water suppliers to monitor the data, so they can notify their lab if data appears to be incorrect or missing. DWELR works within the Department's Greenport environment. For more information about DWELR, refer to the Department's website at www.depweb.state.pa.us/watersupply/cwp/view.asp?a=1251&q=447842. Information is also available by contacting the Division of Data Systems and Analysis (717) 787-6744.

The Department is requesting comment on the mandatory electronic reporting requirements in § 109.701(j) (relating to reporting and recordkeeping) for public water systems conducting in-house monitoring under § 109.304(c) (relating to analytical requirements) (that is, residual disinfectant concentration, pH and turbidity).

It is estimated that the following number of water systems perform monitoring for one or more of the previously-mentioned parameters and would be required to either: (1) report the data electronically to the Department; or (2) delegate the reporting to an accredited lab.

Water System Type and Size	Number of Water Systems
<i>Community Water Systems</i>	
Serving less than 501 persons	1,281
Serving 501—3,300 persons	505
Serving 3,301—10,000 persons	179
Serving more than 10,000 persons	145

Water System Type and Size	Number of Water Systems
<i>Noncommunity Water Systems</i>	
Serving less than 501 persons	2,088
Serving 501—3,300 persons	299
Serving 3,301—10,000 persons	10
Serving more than 10,000 persons	1

Note: Some of these systems are already reporting electronically to the Department, on a voluntary basis.

3. Amendments to coordinate efforts with several other drinking water regulatory packages

Several associated regulatory packages are in various stages of promulgation. To coordinate efforts, the following revisions will be necessary.

- Operator certification requirements under §§ 109.304, 109.704, 109.1105 and 109.1107.

- Chapter 252 (relating to environmental laboratory accreditation) reporting requirements under § 109.810 (relating to reporting and notification requirements).

4. Amendments to clarify several other requirements

- Currently, language that describes how the Department determines compliance with the MCLs has been incorporated by reference. With this proposed rulemaking, the EPA's compliance determination requirements are added to Chapter 109 to better inform the regulated community and improve compliance. Chapter 109 will now be a one-stop-shop in terms of determining whether a water supplier is in compliance with the MCLs.

- Information describing new sources under § 109.503(a)(1)(iii) (relating to public water system construction permits) is amended to clarify the requirements for new source sampling.

- Requirements under § 109.505(2)(ii) (relating to requirements for noncommunity water systems) for noncommunity water systems to file a brief description of the system are amended to clarify that the information shall be filed prior to construction.

In summary, the Board proposes to incorporate these amendments into Chapter 109 to obtain primary enforcement authority under the Federal Safe Drinking Water Act. This proposed rulemaking must be adopted during 2007 per a time schedule submitted to the EPA.

The draft proposed rulemaking was submitted for review to the Small Water Systems Technical Assistance Center Advisory Board (TAC) for review and discussion on November 17, 2005. Comments were received from the TAC on January 3, 2006.

E. Summary of Regulatory Requirements

The proposed rulemaking reflects new Federal requirements and will correct minor deficiencies in Chapter 109 to satisfy outstanding issues with EPA and obtain primary approval for several rules. The amendments also include proposed changes to clarify existing requirements.

§ 109.1. Definitions.

The definition of "MCL—Maximum Contaminant Level" is amended to delete language that incorporates by reference the means of determining compliance with the MCLs. The EPA's compliance determination language is added to §§ 109.301 and 109.1102 (relating to action levels and treatment technique requirements) to improve compliance.

This section is amended to add a definition for "reliably and consistently below the MCL." This amendment reflects the Federal requirements in 40 CFR 141.23(c)(8) and 141.24(f)(11)(ii) and (h)(7)(ii) (relating to inorganic chemical sampling and analytical requirements; and organic chemicals, sampling and analytical requirements).

§ 109.301. General monitoring requirements.

This section is amended to delete the language that incorporates by reference the general monitoring requirements. Monitoring requirements are now specified in Chapter 109.

Performance monitoring for filtration and disinfection

Section 109.301(1)(i)(A) is amended to clarify that filter plants (that do not operate continuously) shall determine and record the turbidity level prior to shutting down the plant.

Section 109.301(1)(i)(B) and (iv)(A) is amended to clarify that calibration of continuous turbidity monitors shall be conducted at least quarterly using an EPA-approved primary standard.

Section 109.301(1)(iv)(B) is amended to clarify that failure of continuous recording devices requires manual recording every 4 hours instead of continuous recording.

Performance monitoring for unfiltered surface water and groundwater under the direct influence of surface water (GUDI)

Section 109.301(2)(i)(B) is amended to clarify that systems (that do not operate continuously) shall determine and record the turbidity level prior to shutting down the plant.

Section 109.301(2)(i)(C) is amended to clarify that calibration of continuous turbidity monitors shall be conducted at least quarterly using an EPA-approved primary standard.

Section 109.301(2)(i)(D) is amended to clarify that failure of continuous recording devices requires manual recording every 4 hours instead of continuous recording.

Section 109.301(3)(iv), regarding monitoring requirements for coliforms—compliance determinations, is added to incorporate the EPA's method of determining compliance. This amendment reflects the Federal requirement in 40 CFR 141.63 (relating to maximum contaminant levels (MCLs) for microbiological contaminants).

Section 109.301(5), regarding monitoring requirements for VOCs, is amended to be consistent with Federal monitoring and compliance determination requirements in 40 CFR 141.24(f).

Section 109.301(6), regarding monitoring requirements for SOCs (pesticides and polychlorinated biphenyls (PCBs)), is amended to be consistent with Federal monitoring and compliance determination requirements in 40 CFR 141.24(h).

Section 109.301(7), regarding monitoring requirements for IOCs, is amended to be consistent with Federal monitoring and compliance determination requirements in 40 CFR 141.23.

Section 109.301(8), regarding monitoring requirements for public water systems that obtain finished water from another public water system, is amended to clarify the monitoring requirements for consecutive water systems.

Section 109.301(14), regarding monitoring requirements for radionuclides, is amended to clarify the monitoring requirements for radionuclides.

§ 109.303. Sampling requirements.

This section is amended to change “certified” laboratory to “accredited” laboratory and to correct a typographical error.

§ 109.304. Analytical requirements.

This section is amended to clarify which persons may perform the monitoring specified under subsection (c).

§ 109.410. Tier 3 public notice—form, manner and frequency of notice.

This section is amended to incorporate the Federal requirement for issuing public notice in response to reporting and recordkeeping violations of the FBRR. This amendment reflects the Federal requirement in 40 CFR Part 141, Subpart Q, Appendix A, I.A.8.

§ 109.503. Public water system construction permits.

This section is amended to clarify the monitoring requirements for new source sampling.

§ 109.504. Public water system operation permits.

This section is amended to clarify that water suppliers shall be in compliance with the operator certification requirements prior to receiving an operation permit.

§ 109.505. Requirements for noncommunity water systems.

This section is amended to clarify that noncommunity water systems shall file a brief description of the system prior to construction.

§ 109.605. Minimum treatment design standards.

This section is amended to be consistent with the EPA and to clarify that for surface water and GUDI sources, the minimum design standard for viruses is 99.99% removal or inactivation, or both. This section also is amended to recognize that some noncommunity water systems may be unable to meet the 99.9% inactivation requirement for Giardia due to physical space limitations.

§ 109.701. Reporting and recordkeeping.

Section 109.701(a)(11), regarding noncompliance report, is added to be consistent with the EPA and to clarify that a water supplier shall report to the Department, within 48 hours, a failure to comply with the monitoring requirements under Subchapter C (relating to monitoring requirements).

Section 109.701(i), regarding accuracy of data, is added to clarify that water suppliers are responsible for the accurate reporting of self-monitoring data to the Department.

Section 109.701(j), regarding electronic reporting, is added to require mandatory electronic reporting by public water systems of self-monitoring data (analyzed under § 109.304(c)) to the Department. This amendment will improve the quality of data submitted to the Department and will streamline the reporting process.

Section 109.701(k), regarding monitoring plan to determine if a source is directly influenced by surface water, is added to clarify that systems required to conduct monitoring (to determine if a source is directly influenced by surface water) shall develop, submit for approval and implement a monitoring plan.

§ 109.703. Facilities operation.

This section is amended to remove the requirement to achieve a 50% reduction in turbidity before putting a backwashed filter back on line when source water turbid-

ity is less than 1.0 NTU. This requirement is redundant with the individual filter requirements under § 109.701(e).

§ 109.704. Operator certification.

This section is amended to be consistent with the Water and Wastewater Systems Operators’ Certification Act (63 P. S. §§ 1001—1015.1), which requires nontransient noncommunity water systems to have personnel certified to operate and maintain their water system.

§ 109.810. Reporting and notification requirements.

Subsection (a) is amended to add mandatory electronic reporting requirements for accredited laboratories. Mandatory electronic reporting will improve the quality of data submitted to the Department and will streamline the reporting process. Electronic reporting will be instead of submitting paper copies to the Department.

Subsection (b) is amended to clarify that notification is required whenever an MCL, Maximum Residual Disinfectant Level or TT is exceeded or a sample result requires the collection of check or confirmation samples.

Subsection (c) is added to clarify when a laboratory can assign the responsibility for reporting and notification to another accredited laboratory.

§ 109.1003. Monitoring requirements.

Subsections (d) and (e) are added to clarify the monitoring requirements for a bulk water hauling or vended water system that is determined to serve at least 25 of the same persons year-round, or at least 25 of the same persons over 6 months per year.

§ 109.1102. Action levels and treatment technique requirements.

This section was added to incorporate the EPA’s method of computing the 90th percentile value for lead and copper.

§ 109.1103. Monitoring requirements.

Subsection (e), regarding reduced monitoring, is amended to be consistent with Federal monitoring requirements in 40 CFR 141.86(c) (relating to monitoring requirements for lead and copper in tap water).

Subsection (g), regarding sample site location plan, is amended to clarify that water suppliers shall submit a sample site location plan to the Department.

§ 109.1105. Permit requirements.

This section is amended to clarify that noncommunity water systems shall file a brief description of the system prior to construction.

§ 109.1107. System management responsibilities.

This section is amended to clarify that water suppliers shall submit a sample site location plan to the Department and include the sample location when submitting results of all lead and copper tap monitoring.

Subsection (c), regarding operator certification, is amended to delete the requirement that suppliers shall complete Department-sponsored training regarding corrosion control treatment prior to initiating operation. This section also is amended to delete the requirement under subsection (c)(2).

F. Benefits, Costs and Compliance

Benefits

The enhanced monitoring and reporting requirements will improve compliance, streamline reporting and pro-

vide greater assurance that contaminant levels will remain below the MCLs. The proposed rulemaking also ensures that the Department, the regulated community and the public are better informed to make decisions affecting public health protection.

Compliance costs

The proposed rulemaking primarily addresses existing monitoring and reporting requirements. As a result, compliance costs are not expected to substantially increase or decrease.

The mandatory electronic reporting requirements may require some water suppliers (conducting monitoring under § 109.304(c)) to either: (1) purchase a computer and internet provider; or (2) pay their accredited lab to report additional data on their behalf.

Compliance Assistance Plan

The proposed rulemaking addresses monitoring and reporting requirements. As a result, financial assistance should not be necessary.

Paperwork requirements

The proposed rulemaking addresses monitoring and reporting requirements. As a result, some changes to forms, reports and other paperwork are expected. Mandatory electronic reporting requirements are expected to streamline the reporting process and take the place of reporting by means of paper.

G. *Pollution Prevention*

Not applicable.

H. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 16, 2007, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

J. *Public Comments*

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by October 1, 2007. Interested persons may also submit a summary of their comments to the Board.

The summary may not exceed one page in length and must also be received by October 1, 2007. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments. Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by October 1, 2007. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

KATHLEEN A. MCGINTY,
Chairperson

Fiscal Note: 7-412. No fiscal impact; (8) recommends adoption.

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 A. GENERAL PROVISIONS

§ 109.1. Definitions.

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

* * * * *

MCL—Maximum Contaminant Level—The maximum permissible level of a contaminant in water which is delivered to a user of a public water system, and includes the primary and secondary MCLs established under the Federal act, and MCLs adopted under the act. **[For MCLs incorporated into this chapter by reference, the term refers to the numerical value and the means of determining compliance with that value and does not refer to the EPA applications to specific types of public water systems or sources.]**

* * * * *

Reliably and consistently below the MCL—For VOCs, SOCs and IOCs (with the exception of nitrate and nitrite), this means that each sample result is less than 80% of the MCL. For nitrate and nitrite, this means that each sample result is less than 50% of the MCL.

* * * * *

Subchapter C. MONITORING REQUIREMENTS

§ 109.301 General monitoring requirements.

[The monitoring requirements established by the EPA under the National Primary Drinking Water Regulations, 40 CFR Part 141 (relating to national primary drinking water regulations), as of December 8, 1984, are incorporated by reference.] Public water suppliers shall monitor for compliance with MCLs **[and]**, MRDLs and treatment technique requirements in accordance with the requirements established **[in]** by the EPA under the National Primary Drinking Water Regulations, 40 CFR Part 141 (relating to national primary drinking water regulations), except as otherwise established by this chapter unless

increased monitoring is required by the Department under § 109.302 (relating to special monitoring requirements). Alternative monitoring requirements may be established by the Department and may be implemented in lieu of monitoring requirements for a particular National Primary Drinking Water Regulation if the alternative monitoring requirements are in conformance with the Federal act and regulations. The monitoring requirements shall be applied as follows:

(1) *Performance monitoring for filtration and disinfection.* A public water supplier providing filtration and disinfection of surface water or GUDI sources shall conduct the performance monitoring requirements established by the EPA under the National Primary Drinking Water Regulations, unless increased monitoring is required by the Department under § 109.302.

(i) Except as provided under subparagraphs (ii) and (iii) a public water supplier:

(A) Shall determine and record the turbidity level of representative samples of the system's filtered water as follows:

(I) For systems that operate continuously, at least once every 4 hours that the system is in operation, except as provided in clause (B).

(II) For systems that do not operate continuously, at start-up, at least once every 4 hours that the system is in operation, and also prior to shutting down the plant, except as provided in clause (B).

(B) May substitute continuous turbidity monitoring and recording for grab sample monitoring and manual recording if it validates the continuous measurement for accuracy on a regular basis using a procedure specified by the manufacturer. **At a minimum, calibration with an EPA approved primary standard shall be conducted at least quarterly.** For systems using slow sand filtration or filtration treatment other than conventional filtration, direct filtration or diatomaceous earth filtration, the Department may reduce the sampling frequency to once per day.

* * * * *

(iv) A public water supplier providing conventional filtration treatment or direct filtration and serving 10,000 or more people and using surface water or GUDI sources shall, beginning January 1, 2002, conduct continuous monitoring of turbidity for each individual filter using an approved method under the EPA regulation in 40 CFR 141.74(a) (relating to analytical and monitoring requirements) and record the results at least every 15 minutes. Beginning January 1, 2005, public water suppliers providing conventional or direct filtration and serving fewer than 10,000 people and using surface water or GUDI sources shall conduct continuous monitoring of turbidity for each individual filter using an approved method under the EPA regulation in 40 CFR 141.74(a) and record the results at least every 15 minutes.

(A) The water supplier shall calibrate turbidimeters using the procedure specified by the manufacturer. **At a minimum, calibration with an EPA-approved primary standard shall be conducted at least quarterly.**

(B) If there is failure in the continuous turbidity monitoring **or recording** equipment, **or both**, the system shall conduct grab sampling **or manual recording, or both**, every 4 hours in lieu of continuous monitoring **or recording**.

* * * * *

(2) *Performance monitoring for unfiltered surface water and GUDI.* A public water supplier using unfiltered surface water or GUDI sources shall conduct the following source water and performance monitoring requirements on an interim basis until filtration is provided, unless increased monitoring is required by the Department under § 109.302:

(i) Except as provided under subparagraphs (ii) and (iii), a public water supplier:

* * * * *

(B) Shall measure the turbidity of a representative grab sample of the source water immediately prior to disinfection **as follows:**

(I) For systems that operate continuously, at least once every 4 hours that the system is in operation, except as provided in clause (C).

(II) For systems that do not operate continuously, at start-up, at least once every 4 hours that the system is in operation, and also prior to shutting down the plant, except as provided in clause (C).

(C) May substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a **[protocol approved] procedure specified by the [Department] manufacturer. At a minimum, calibration with an EPA-approved primary standard shall be conducted at least quarterly.**

(D) Shall continuously monitor **and record** the residual disinfectant concentration required under § 109.202(c)(1)(iii) (relating to State MCLs, MRDLs and treatment technique requirements) of the water being supplied to the distribution system and record the lowest value for each day. If a public water system's continuous monitoring **or recording** equipment fails, the public water supplier may, upon notification of the Department under § 109.701(a)(3), substitute grab sampling **or manual recording, or both**, every 4 hours in lieu of continuous monitoring. Grab sampling **or manual recording** may not be substituted for continuous monitoring for longer than 5 days after the equipment fails.

* * * * *

(3) *Monitoring requirements for coliforms.* Public water systems shall determine the presence or absence of total coliforms for each routine or check sample; and, the presence or absence of fecal coliforms or E. coli for a total coliform positive sample in accordance with analytical techniques approved by the Department under § 109.304 (relating to analytical requirements). A system may forego fecal coliform or E. coli testing on a total coliform-positive sample if the system assumes that any total coliform-positive sample is also fecal coliform-positive. A system which chooses to forego fecal coliform or E. coli testing shall, under § 109.701(a)(3), notify the Department within 1 hour after the water system learns of the violation or the situation, and shall provide public notice in accordance with § 109.408 (relating to Tier 1 public notice—form, manner and frequency of notice).

* * * * *

(iv) *Compliance determinations.*

(A) The MCL is based on the presence or absence of total coliforms in a sample, rather than coliform density.

(I) For a system which collects at least 40 samples per month, if no more than 5.0% of the samples collected during a month are total coliform-positive, the system is in compliance with the MCL for total coliforms.

(II) For a system which collects fewer than 40 samples per month, if no more than one sample collected during the month is total coliform-positive, the system is in compliance with the MCL for total coliforms.

(B) Any fecal coliform-positive repeat sample or *E. coli*-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or *E. coli*-positive routine sample constitutes a violation of the MCL for total coliforms.

(C) A public water system must determine compliance with the MCL for total coliforms in clauses (A) and (B) for each month in which it is required to monitor for total coliforms.

[(iv)] (v) * * *
* * * * *

(5) *Monitoring requirements for VOCs.* Community water systems and nontransient noncommunity water systems shall monitor for compliance with the MCLs for VOCs established by the EPA under 40 CFR 141.61(a) (relating to MCLs for organic contaminants). The monitoring shall be conducted according to the requirements established by the EPA under 40 CFR 141.24(f) (relating to organic chemicals, sampling and analytical requirements), incorporated herein by reference, except as modified by this chapter. Initial or first year monitoring mentioned in this paragraph refers to VOC monitoring conducted on or after January 1, 1993.

* * * * *

(ii) *Initial monitoring [schedule].* [The initial Initial monitoring shall consist of four consecutive quarterly samples at each entry point in accordance with the following monitoring schedule during the compliance period beginning January 1, 1993, except for systems which are granted reduced initial monitoring in accordance with clauses (E) and (F). A system which monitors during the initial monitoring period, but begins monitoring before its scheduled initial monitoring year specified in this subparagraph, shall begin monitoring every entry point during the first calendar quarter of the year it begins monitoring, except as provided in clause (E).

* * * * *

(G) [Initial monitoring of] Systems with new entry points associated with new sources which are permitted under Subchapter E (relating to permit requirements) to begin operation after December 31, 1992, shall conduct initial monitoring as follows [:].

[(I) Entry] New entry points [at which a VOC is detected during new source monitoring] shall be monitored quarterly, beginning the first full quarter the entry [points begin] point begins serving the public. [Quarterly monitoring shall continue until reduced monitoring is granted in accordance with subparagraph (iii)(D).

(II) Entry points at which no VOC is detected during new source monitoring shall begin initial quarterly monitoring during the first calendar quarter of the year after the entry point begins

serving the public. If no VOC is detected during the first quarter of monitoring, first year monitoring is reduced to one sample at that entry point.]

(iii) *Repeat monitoring for entry points at which a VOC is detected.* For entry points at which a VOC is detected at a level equal to or greater than 0.0005 mg/L, then:

(A) [For entry points at which a VOC is detected at a level equal to or greater than its MCL during the first year of quarterly monitoring, the monitoring] Monitoring shall be repeated quarterly beginning the quarter following the detection [at a level equal to or greater than the MCL], for VOCs for which the EPA has established MCLs under 40 CFR 141.61(a), except for vinyl chloride as provided in subparagraph (i), until reduced monitoring is granted in accordance with [clause (D)] this subparagraph.

(B) [For entry points at which a VOC is detected, and reduced monitoring is granted in accordance with clause (D), and a VOC is thereafter detected at a level greater than the MCL, the monitoring shall be repeated quarterly beginning the quarter following detection at a level for the VOCs for which the EPA has established MCLs under 40 CFR 141.61(a), except for vinyl chloride as provided in subparagraph (i), until reduced monitoring is granted in accordance with clause (D).] The Department may decrease the quarterly monitoring requirement specified in clause (A) provided it has determined that the system is reliably and consistently below the MCL. The Department will not make this determination unless a groundwater or GUDI system takes a minimum of 2 quarterly samples and a surface water system takes a minimum of 4 quarterly samples.

(C) [For entry points at which no VOC is detected during the first year of monitoring but a VOC is detected thereafter, the monitoring shall be repeated quarterly beginning the quarter following detection at a level for the VOCs for which the EPA has established MCLs under 40 CFR 141.61(a), except for vinyl chloride as provided in subparagraph (i), or until reduced monitoring is granted in accordance with clause (D).] If the Department determines that the system is reliably and consistently below the MCL, the Department may allow the system to monitor annually. Systems which monitor annually shall monitor during the quarter that previously yielded the highest analytical result, or as specified by the Department.

[(D) After analyses of four consecutive quarterly samples at an entry point, including initial quarterly samples, demonstrate that the VOC levels in each quarterly sample are less than the MCLs, the required monitoring is reduced to one sample per year at the entry point for the VOCs for which the EPA has established MCLs under 40 CFR 141.61(a), except for vinyl chloride as provided in subparagraph (i).

(E) A confirmation sample shall be collected and analyzed for each VOC listed under 40 CFR 141.61(a) which is detected at a level in excess of its MCL during annual or less frequent compliance monitoring. The confirmation sample shall be collected within 2 weeks of notification by the certi-

fied laboratory performing the analysis that an MCL has been exceeded. The average of the results of the original and the confirmation sample will be used to determine compliance. Monitoring shall be completed by the deadline specified for VOC compliance monitoring.]

(iv) *Repeat monitoring for entry points at which no VOC is detected.*

(A) For entry points at which VOCs are not detected during the first year of quarterly monitoring, or annual monitoring if only one sample was required at an entry point for first year monitoring under subparagraph (ii)(E), or (F) [or (G)(II)], required monitoring is reduced to one sample per entry point per year.

(B) For groundwater or GUDI entry points where VOCs are monitored in accordance with this paragraph, but are not detected during 3 years of quarterly or annual monitoring, or both, required monitoring is reduced to one sample per entry point during each subsequent compliance period. Reduced monitoring shall be conducted at 3-year intervals from the year of required initial monitoring.

(v) *Repeat monitoring for VOCs with MCL exceedances.* For entry points at which a VOC MCL is exceeded, monitoring shall be conducted quarterly, beginning the quarter following the exceedance. Quarterly monitoring shall continue until a minimum of 4 consecutive quarterly samples shows the system is in compliance as specified in subparagraph (x) and the Department determines the system is reliably and consistently below the MCL. If the Department determines that the system is in compliance and is reliably and consistently below the MCL, the Department may allow the system to monitor in accordance with subparagraph (iii)(C).

(vi) *Confirmation samples.* A confirmation sample shall be collected and analyzed for each VOC listed under 40 CFR 141.61(a) which is detected at a level in excess of its MCL during annual or less frequent compliance monitoring. The confirmation sample shall be collected within 2 weeks of notification by the accredited laboratory performing the analysis that an MCL has been exceeded. The average of the results of the original and the confirmation sample will be used to determine compliance. Monitoring shall be completed by the deadline specified for VOC compliance monitoring.

(vii) *Reduced monitoring.* When reduced monitoring is provided under subparagraph (iii) [(D),] or [subparagraph (iv)(A) or (B)] (iv), the system shall monitor the entry point during the calendar year quarter [of] that previously yielded the highest [anticipated VOC levels] analytical result, or as specified by the Department. The reduced monitoring option in subparagraph (iv)(B) does not apply to entry points at which treatment has been installed for VOC removal. Quarterly performance monitoring is required for VOCs for which treatment has been installed.

[(vi)] (viii) *Waivers.* [Waivers under 40 CFR 141.24(f) will not be available for the VOC monitoring requirements in this paragraph.] Systems with entry points which have 3 consecutive years of quarterly or annual samples with no detection of a VOC may apply to the Department for a waiver.

Entry points at which treatment has been installed to remove a VOC are not eligible for a monitoring waiver.

(A) A waiver may be granted to a public water supplier from conducting monitoring under subparagraph (iii)(C), based on documentation provided by the public water supplier and a determination by the Department that the criteria has been met. Waivers may be granted after evaluating the following criteria:

(I) Knowledge of previous use, including transport, storage or disposal, of a substance containing VOCs within the vulnerability assessment area.

(II) If a determination by the Department reveals no previous use, a waiver may be granted.

(B) If a waiver is granted by the Department, required monitoring is reduced to one sample per entry point during each subsequent compliance period. Monitoring shall be conducted at 3-year intervals from the year of required initial monitoring.

(C) A waiver is effective for one compliance period and may be renewed in each subsequent compliance period.

(ix) *Invalidation of VOC samples.*

(A) The Department may invalidate results of obvious sampling errors.

(B) A VOC sample invalidated under this subparagraph does not count towards meeting the minimum monitoring requirements of this paragraph.

(x) *Compliance determinations.* Compliance with the VOC MCLs shall be determined based on the analytical results obtained at each entry point. If one entry point is in violation of an MCL, the system is in violation of the MCL.

(A) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average of all samples taken at each entry point.

(B) If monitoring is conducted annually or less frequently, the system is out of compliance if the level of a contaminant at any entry point is greater than the MCL. If a confirmation sample is collected as specified in subparagraph (vi), compliance is determined using the average of the two sample results.

(C) If any sample result will cause the running annual average to exceed the MCL at any entry point, the system is out of compliance with the MCL immediately.

(D) If a system fails to collect the required number of samples, compliance with the MCL will be based on the total number of samples collected.

(E) If a sample result is less than the detection limit, zero will be used to calculate compliance.

(6) *Monitoring requirements for SOCs (pesticides and PCBs).* Community water systems and nontransient noncommunity water systems shall monitor for compliance with the MCLs for SOCs established by the EPA under 40 CFR 141.61(c). The monitoring shall be conducted according to the requirements established by the EPA under 40 CFR 141.24(h), incorporated herein by reference except as modified by this chapter.

(i) *Initial monitoring [schedule]*. Initial monitoring shall consist of [**four**] 4 consecutive quarterly samples at each entry point beginning during the quarter beginning January 1, 1995, except for systems which are granted an initial monitoring waiver in accordance with subparagraph [(v)] (vii). Systems which monitor during the initial monitoring period but begin monitoring before 1995 shall begin monitoring during the first calendar quarter of the year.

[(A)] New entry points associated with new sources which are vulnerable to SOC contamination, as determined in accordance with subparagraph [(v)] (vii), and which begin operation after March 31, 1995, [**and do not detect an SOC during new source sampling**] shall [**begin initial**] be monitored quarterly [**monitoring during the first calendar year quarter of the year after the entry point begins serving the public**], beginning the first full quarter the entry point begins serving the public.

[(B)] New entry points associated with new sources which are vulnerable to SOC contamination as determined in accordance with subparagraph (v), at which an SOC is detected during new source sampling shall begin initial quarterly monitoring the first quarter the entry point begins serving the public. Quarterly monitoring shall continue until reduced monitoring is granted in accordance with subparagraph (ii)(E)].

(ii) *Repeat monitoring for SOCs that are detected*. [**For entry points which were monitored for SOCs during the initial quarterly monitoring period or during the required quarterly monitoring immediately after being determined vulnerable to contamination by an SOC, repeat monitoring shall be conducted as follows**] If an SOC is detected (as defined by EPA under 40 CFR Part 141.24(h)(18) (relating to organic chemicals, sampling and analytical requirements) or by the Department), then:

(A) [**For entry points at which an SOC is detected at a level equal to or greater than its MCL, the monitoring**] Monitoring for the detected SOC shall be [**continued**] conducted quarterly, beginning the quarter following the detection, until reduced monitoring is granted in accordance with [**clause (E)**] this subparagraph.

(B) [**For entry points at which an SOC is detected during the first year of quarterly monitoring, and reduced monitoring is granted in accordance with clause (E), and the SOC is thereafter detected at a level greater than its MCL, the monitoring for the detected SOC shall be repeated quarterly, until reduced monitoring is granted in accordance with clause (E).**] The Department may decrease the quarterly monitoring requirement specified in clause (A) provided it has determined that the system is reliably and consistently below the MCL. The Department will not make this determination unless a groundwater or GUDI system takes a minimum of 2 quarterly samples and a surface water system takes a minimum of 4 quarterly samples.

(C) [**For entry points at which an SOC is not detected during the first year of quarterly monitor-**

ing, but an SOC is detected initially thereafter at a level less than the MCL, monitoring shall be repeated annually for the detected SOC] If the Department determines that the system is reliably and consistently below the MCL, the Department may allow the system to monitor annually. Systems which monitor annually shall monitor during the quarter that previously yielded the highest analytical result, or as specified by the Department.

(D) [**For entry points at which an SOC is not detected during the first year of quarterly monitoring, but the SOC is detected thereafter at a level equal to or greater than the MCL, monitoring for that SOC shall be repeated quarterly, until reduced monitoring is granted in accordance with clause (E)**] Systems which have 3 consecutive years of quarterly or annual samples with no detection of a contaminant may apply to the Department for a waiver as specified in subparagraph (vii). A waiver is effective for one compliance period and may be renewed in each subsequent compliance period.

(E) [**After analyses of four consecutive quarterly samples at an entry point, including initial quarterly samples, demonstrate that the SOC level in each quarterly sample is less than the MCL, the required monitoring for each SOC detected below the MCL is reduced to one sample per year at the entry point.**

(F)] * * *

[(G)] A confirmation sample shall be collected and analyzed for each SOC listed under 40 CFR 141.61(c) which is detected at a level in excess of its MCL during annual or less frequent compliance monitoring. The confirmation sample shall be collected within 2 weeks of the water supplier receiving notification from the certified laboratory performing the analysis that an MCL has been exceeded. The average of the results of the original and the confirmation samples will be used to determine compliance. Confirmation monitoring shall be completed by the deadline specified for SOC compliance monitoring.]

* * * * *

(iv) *Repeat monitoring for SOCs with MCL exceedances*. For entry points at which an SOC MCL is exceeded, monitoring for the detected SOC shall be conducted quarterly, beginning the quarter following the exceedance. Quarterly monitoring shall continue until a minimum of 4 consecutive quarterly samples shows the system is in compliance as specified in subparagraph (ix) and the Department determines the system is reliably and consistently below the MCL. If the Department determines that the system is in compliance and is reliably and consistently below the MCL, the Department may allow the system to monitor in accordance with subparagraph (ii)(C).

(v) *Confirmation samples*. A confirmation sample shall be collected and analyzed for each SOC listed under 40 CFR 141.61(c) which is detected at a level in excess of its MCL during annual or less frequent compliance monitoring. The confirmation sample shall be collected within 2 weeks of the water supplier receiving notification from the accredited laboratory performing the analysis that an MCL has been exceeded. The average of the results of

the original and the confirmation samples will be used to determine compliance. Confirmation monitoring shall be completed by the deadline specified for SOC compliance monitoring.

(vi) * * *

[(v)] (vii) Waivers. A waiver will be granted to a public water supplier from conducting the initial compliance monitoring or repeat monitoring, or both, for an SOC based on documentation provided by the public water supplier and a determination by the Department that the criteria in clause (B), (C) or (D) has been met. A waiver is effective for one compliance period and may be renewed in each subsequent compliance period. If the Department has not granted **[an areawide]** a use waiver in accordance with clause (B), the public water supplier is responsible for submitting a waiver application and renewal application to the Department for review in accordance with clause (B) or (C) for specific entry points. Waiver applications will be evaluated relative to the vulnerability assessment area described in clause (A) and the criteria in clause (B) or (C). Entry points at which treatment has been installed to remove an SOC are not eligible for a monitoring waiver for the SOCs for which treatment has been installed.

(A) *Vulnerability assessment area for SOCs except dioxin and PCBs.*

(I) For groundwater or **GUDI** entry points, the vulnerability assessment area shall consist of wellhead protection area Zones I and II.

* * * * *

(B) *Use waivers.* **[An areawide]** A use waiver will be granted by the Department for contaminants which the Department has determined have not been used, stored, manufactured or disposed of in this Commonwealth, or portions of this Commonwealth. A use waiver specific to a particular entry point requires that an SOC was not used, stored, manufactured or disposed of in the vulnerability assessment area. If use waiver criteria cannot be met, a public water supplier may apply for a susceptibility waiver.

* * * * *

(viii) Invalidation of SOC samples.

(A) The Department may invalidate results of obvious sampling errors.

(B) An SOC sample invalidated under this subparagraph does not count towards meeting the minimum monitoring requirements of this paragraph.

(ix) Compliance determinations. Compliance with the SOC MCLs shall be determined based on the analytical results obtained at each entry point. If one entry point is in violation of an MCL, the system is in violation of the MCL.

(A) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average of all samples taken at each entry point.

(B) If monitoring is conducted annually or less frequently, the system is out of compliance if the level of a contaminant at any entry point is greater than the MCL. If a confirmation sample is collected as specified in subparagraph (v), compliance is determined using the average of the two sample results.

(C) If any sample result will cause the running annual average to exceed the MCL at any entry point, the system is out of compliance with the MCL immediately.

(D) If a system fails to collect the required number of samples, compliance with the MCL will be based on the total number of samples collected.

(E) If a sample result is less than the detection limit, zero will be used to calculate compliance.

(7) *Monitoring requirements for IOCs.* Community water systems and nontransient noncommunity water systems shall monitor for compliance with the MCLs for IOCs established by the EPA under 40 CFR 141.62 (relating to maximum contaminant levels (MCLs) for inorganic contaminants) **[, and for arsenic established by the EPA under 40 CFR 141.11 (relating to maximum contaminant levels for inorganic contaminants)]**. Transient noncommunity water suppliers shall monitor for compliance with the MCLs for nitrate and nitrite. The monitoring shall be conducted according to the requirements established by the EPA under 40 CFR 141.23 (relating to inorganic chemical sampling and analytical requirements). The requirements are incorporated by reference except as modified by this chapter.

(i) *Monitoring requirements for asbestos.*

* * * * *

(D) *Repeat monitoring for systems that detect asbestos.* If a sample exceeds the MCL for asbestos, the monitoring at that sampling point shall be continued quarterly beginning in the quarter following the MCL violation. After **[four]** 4 consecutive quarterly samples **[less than]** with results reliably and consistently below the MCL at that entry point, the required monitoring is reduced to one sample at that entry point during the first 3-year compliance period of each subsequent 9-year compliance cycle, if treatment has not been installed to remove asbestos from the source water. Compliance monitoring at entry points at which treatment has been installed to remove asbestos from source water shall be conducted at least annually, and performance monitoring shall be conducted quarterly.

(ii) *Monitoring requirements for nitrate and nitrite.*

[The following compliance monitoring for nitrite is not required at entry points receiving water which has been disinfected with free chlorine, chlorine dioxide or ozone:]

(A) *Initial monitoring schedule.* A public water system shall begin **[new]** monitoring for nitrate and nitrite by taking one annual sample at each groundwater or **GUDI** entry point to the **distribution** system beginning during the year beginning January 1, 1993. Community water systems and nontransient noncommunity water systems with surface water sources shall monitor quarterly at each surface water entry point for nitrate and nitrite beginning during the quarter beginning January 1, 1993. Transient noncommunity water systems shall monitor each surface water entry point by taking one annual sample beginning during the year beginning January 1, 1993.

(B) *Monitoring of new entry points.*

(I) New community and nontransient noncommunity surface water entry points **[which begin serving the public after the first calendar quarter of a year and did not detect levels of nitrate or nitrite equal to or**

greater than 50% of the MCL during new source sampling] associated with new sources shall [begin initial monitoring for nitrate and nitrite during the first calendar quarter of the year after] be monitored quarterly, beginning the first full quarter the entry point begins serving the public. Quarterly monitoring shall continue until reduced monitoring is granted in accordance with clause (C)(II) or (D).

(II) New community and nontransient noncommunity groundwater [and surface water] or GUDI entry points [at which nitrate or nitrite is detected at levels equal to or greater than 50% of the MCL during new source sampling shall begin initial quarterly monitoring the first quarter the entry point begins serving the public] and new transient noncommunity entry points associated with new sources shall be monitored annually, beginning within 1 year of serving the public. [New community and nontransient noncommunity groundwater entry points at which nitrate and nitrite are not detected at levels equal to or greater than 50% of the MCL, and all transient noncommunity entry points, shall begin initial annual monitoring during the first new calendar year after the entry point begins serving the public.]

(C) Repeat monitoring for systems with nitrate or nitrite levels equal to or greater than 50% of the [MCL] MCLs.

(I) For entry points at which initial monitoring results or subsequent monitoring indicate nitrate or nitrite levels equal to or greater than 50% of the MCL, [community and nontransient noncommunity] water systems shall begin quarterly monitoring the quarter following detection at that level and continue quarterly monitoring for both nitrate and nitrite, unless reduced monitoring is granted in accordance with subclause (II) or (III).

(II) [For entry points at which initial monitoring results or subsequent monitoring indicate nitrate or nitrite levels greater than the MCL, transient noncommunity systems shall begin quarterly monitoring the quarter following detection at that level and continue quarterly monitoring for both nitrate and nitrite, unless reduced monitoring is granted in accordance with subclause (IV).

(III) After] For surface water entry points, after four consecutive quarterly samples at an entry point for a [community or nontransient noncommunity] water system indicate nitrate and nitrite levels in each sample are less than 50% of the MCLs, the required compliance monitoring is reduced to one sample per year at the entry point. Annual monitoring shall be conducted during the [calendar] quarter [in] which [the consecutive quarterly monitoring indicated that the] previously resulted in the highest [levels of contamination were present] analytical result, unless the Department determines that a different monitoring quarter should be used in accordance with paragraph (10).

(III) For groundwater or GUDI entry points, after four consecutive quarterly samples at an entry point for a water system indicate nitrate and nitrite levels in each sample are reliably and consistently below the MCL, the required compliance monitoring is reduced to one sample per year at the entry point. Annual monitoring shall be conducted during the quarter which previously resulted in the

highest analytical result, unless the Department determines that a different monitoring quarter should be used in accordance with paragraph (10).

[(IV) After four consecutive quarterly samples at an entry point for a transient noncommunity system indicate nitrate and nitrite levels in each sample are less than the MCLs, the required compliance monitoring is reduced to one sample per year at the entry point. Annual monitoring shall be conducted during the calendar quarter in which the consecutive quarterly monitoring indicated that the highest levels of contamination were present, unless the Department determines that a different monitoring quarter should be used in accordance with paragraph (10).

(V)] (IV) For nitrate or nitrite sample results in excess of the MCLs, the water supplier shall take a confirmation sample within 24 hours of having received the original sample result. A water supplier that is unable to comply with the 24-hour sampling requirement shall immediately notify persons served by the public water system in accordance with § 109.408. Systems exercising this option shall take and analyze a confirmation sample within 2 weeks of notification of the analytical results of the first sample.

[(VI)] (V) Noncommunity water systems for which an alternate nitrate level has been approved by the Department in accordance with 40 CFR 141.11(d) are not required to collect a confirmation sample if only the nitrate MCL is exceeded and nitrate is not in excess of the alternate nitrate level. If the alternate nitrate level is exceeded, the water supplier shall collect a confirmation sample within 24 hours after being advised by the certified laboratory performing the analysis that the compliance sample exceeded 20 mg/L for nitrate. Confirmation monitoring shall be completed by the deadline for compliance monitoring.

(VI) Quarterly performance monitoring is required for nitrate and nitrite at entry points where treatment has been installed to remove nitrate or nitrite.

(D) Repeat monitoring for systems with nitrate and nitrite levels less than 50% of the MCLs. For entry points at which initial monitoring results indicate nitrate and nitrite levels in each sample are less than 50% of the MCLs, nitrate and nitrite monitoring shall be repeated annually during the calendar quarter [in] which [the water supplier anticipates the highest levels of contamination] previously resulted in the highest analytical result, unless the Department determines that a different monitoring quarter should be used in accordance with paragraph (10).

(iii) Monitoring requirements for antimony, arsenic, barium, beryllium, cadmium, cyanide, chromium, fluoride, mercury, nickel, selenium and thallium.

(A) Initial monitoring schedule. Community water systems and nontransient noncommunity water systems shall monitor each surface water entry point annually beginning during the year beginning January 1, 1993, and shall monitor each groundwater or GUDI entry point once every 3 years beginning during the year beginning January 1, 1994.

(B) Monitoring of new entry points. New groundwater or GUDI entry points which begin operation after December 31, 1994, shall begin initial monitoring in accordance with the schedule in clause (A)—that is, 1997, and so forth. New surface water entry points shall begin initial annual monitoring during the first new calendar year after the entry point begins serving the public.

(C) Repeat monitoring for entry points at which an IOC MCL is exceeded.

* * * * *

(II) After analyses of four consecutive quarterly samples at an entry point where treatment has not been installed to comply with an IOC MCL indicate that contaminant levels are **[less than] reliably and consistently below** the MCLs, the required monitoring for each IOC less than the MCL is reduced to the frequencies stated in clause (A). This reduced monitoring option does not apply to entry points at which treatment has been installed for IOC removal. Compliance monitoring for IOCs for which treatment has been installed to comply with an MCL shall be conducted at least annually, and performance monitoring shall be conducted quarterly.

(III) A confirmation sample shall be collected and analyzed for each IOC listed under 40 CFR 141.11(b) or 141.62(b) which is detected at a level in excess of its MCL during annual or less frequent compliance monitoring. The confirmation sample shall be collected within 2 weeks of notification by the **[certified] accredited** laboratory performing the analysis that an MCL has been exceeded. The average of the results of the original and the confirmation samples will be used to determine compliance. Confirmation monitoring shall be completed by the deadline specified for IOC compliance monitoring.

(D) *Waivers for [IOC] antimony, arsenic, barium, beryllium, cadmium, chromium, fluoride, mercury, nickel, selenium and thallium monitoring.* Except when treatment has been installed to remove the IOC, after three consecutive rounds of quarterly, annual or triennial monitoring indicate the contaminant level for an IOC is **reliably and consistently** below the MCL in all samples at an entry point, routine monitoring for the remainder of the compliance cycle for that IOC **[is] may be waived** and the required monitoring for the IOC **[is] may be reduced** to one sample per 9-year compliance cycle at that entry point.

(I) **Waivers may be granted based on the following criteria:**

(-a-) **Previous analytical results.**

(-b-) **Other factors which may affect contaminant concentrations such as changes in groundwater pumping rates, changes in the system's configuration, changes in the system's operating procedures or changes in stream flows or characteristics.**

(II) **A decision by the Department to grant a waiver will be made in writing and will set forth the basis for the determination. The determination may be made upon an application by the public water system. The public water system shall specify the basis for its request. The Department will review and, when appropriate, revise its determination of the appropriate monitoring frequency when the system submits new monitoring data or when other data relevant to the system's appropriate monitoring frequency becomes available.**

(III) **Reduced monitoring shall be conducted during the first monitoring period of the next monitoring cycle. A waiver is effective for one compliance cycle and may be renewed in each subsequent compliance cycle.**

(E) *Waivers for cyanide monitoring.* **Waivers may be granted for monitoring of cyanide, provided that the system is not vulnerable due to lack of any industrial source of cyanide.**

(F) *Operational monitoring for fluoride.* **Public water suppliers who fluoridate shall conduct operational monitoring for fluoride daily.**

(iv) **Invalidation of IOC samples.**

(A) **The Department may invalidate results of obvious sampling errors.**

(B) **An IOC sample invalidated under this subparagraph does not count towards meeting the minimum monitoring requirements of this section.**

(v) *Compliance determinations.* **Compliance with the IOC MCLs shall be determined based on the analytical results obtained at each entry point. If one entry point is in violation of an MCL, the system is in violation of the MCL.**

(A) **For systems monitoring more than once per year, compliance with the MCL for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium is determined by a running annual average of all samples taken at each entry point. If the average at any entry point is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately.**

(B) **For systems monitoring annually, or less frequently, the system is out of compliance with the MCL for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is collected as specified in subparagraph (ii)(C)(III), compliance is determined using the average of the two samples.**

(C) **Compliance with the MCLs for nitrate and nitrite is determined based on one sample if the levels of these contaminants are below the MCLs. If the levels of nitrate or nitrite exceed the MCLs in the initial sample, a confirmation sample is required in accordance with subparagraph (ii)(C)(III), and compliance shall be determined based on the average of the initial and confirmation samples.**

(D) **If a system fails to collect the required number of samples, compliance with the MCL will be based on the total number of samples collected.**

(E) **If a sample result is less than the detection limit, zero will be used to calculate compliance.**

(8) *Monitoring requirements for public water systems that obtain finished water from another public water system.*

* * * * *

(ii) **Community consecutive water suppliers shall [:**

(A) **Monitor for compliance with the MCL for TTHMs established under 40 CFR 141.12 (relating to maximum contaminant levels for total trihalomethanes) in accordance with 40 CFR 141.30 (relating to total trihalomethanes sampling, analytical and other requirements) if the system does one of the following:**

(I) **Serves more than 10,000 persons.**

(II) **Obtains finished water from another public water system serving more than 10,000 persons.**

(B) **Monitor] monitor the distribution system for compliance with the MCL for asbestos at the frequency indicated in paragraph (7)(i), when the Department deter-**

mines that the system's distribution system contains asbestos cement pipe and optimum corrosion control measures have not been implemented.

(iii) Consecutive water suppliers **[are] may be** exempt from conducting monitoring for the MCLs for VOCs, SOCs and IOCs and radionuclides if the public water system from which the finished water is obtained complies with paragraphs (5)—(7) and (14) **and is in compliance with the MCLs**, except that asbestos monitoring is required in accordance with subparagraph (ii) **[(B)]**.

* * * * *

(vii) A community water system which is a consecutive water system shall comply with the monitoring requirements for lead and copper as specified in § 109.1101(c) (relating to lead and copper).

* * * * *

(12) *Monitoring requirements for disinfection byproducts and disinfection byproduct precursors.* Community water systems and nontransient noncommunity water systems that use a chemical disinfectant or oxidant shall monitor for disinfection byproducts and disinfection byproduct precursors in accordance with this paragraph. Community water systems and nontransient noncommunity water systems that obtain finished water from another public water system that uses a chemical disinfectant or oxidant to treat the finished water shall monitor for TTHMs and HAA5 in accordance with this paragraph. Systems that use either surface water or GUDI sources and that serve at least 10,000 persons shall begin monitoring by January 1, 2002. Systems that use either surface water or GUDI sources and that serve fewer than 10,000 persons, or systems that use groundwater sources, shall begin monitoring by January 1, 2004. Systems monitoring for disinfection byproducts and disinfection byproduct precursors shall take all samples during normal operating conditions. Systems monitoring for disinfection byproducts and disinfection byproduct precursors shall use only data collected under this chapter to qualify for reduced monitoring. Compliance with the MCLs and monitoring requirements for TTHMs, HAA5, chlorite (where applicable) and bromate (where applicable) shall be determined in accordance with 40 CFR 141.132 and 141.133 (relating to monitoring requirements; and compliance requirements) which are incorporated herein by reference.

(i) *TTHMs and HAA5.*

* * * * *

(B) *Reduced monitoring.* Systems shall monitor for TTHMs and HAA5 for at least 1 year prior to qualifying for reduced monitoring. Systems serving at least 500 persons and that use either surface water or GUDI sources shall monitor source water TOC monthly for at least 1 year prior to qualifying for reduced monitoring. The Department retains the right to require a system that meets the requirements of this clause to resume routine monitoring.

* * * * *

(II) For systems that use only groundwater sources not included under subclause (I), the required monitoring is reduced according to the following:

* * * * *

(-b-) For systems serving fewer than 10,000 persons that have an annual TTHM average that is no greater than 0.040 mg/L and an annual HAA5 average that is no greater than 0.030 mg/L for 2 consecutive years or an

annual TTHM average that is no greater than 0.020 mg/L and an annual HAA5 average that is no greater than 0.015 mg/L for 1 year, the required monitoring is reduced to one sample per 3-year **[cycle] period** per treatment plant. The sample shall be taken at a location that represents a maximum residence time during the month of warmest water temperature. The 3-year **[cycle] period** shall begin on January 1 following the quarter in which the system qualifies for reduced monitoring. If the TTHM average exceeds 0.060 mg/L or the HAA5 average exceeds 0.045 mg/L, the system shall resume routine monitoring as prescribed in clause (A), except that systems that exceed either a TTHM or HAA5 MCL shall increase monitoring to at least one sample per quarter per treatment plant beginning in the quarter immediately following the quarter in which the system exceeds the TTHM or HAA5 MCL.

* * * * *

(14) *Monitoring requirements for radionuclides.* Community water systems shall monitor for compliance with the MCLs for radionuclides established by the EPA under 40 CFR 141.66(b), (c), (d) and (e) (relating to maximum contaminant levels for radionuclides). The monitoring shall be conducted according to the requirements established by the EPA under 40 CFR 141.25 and 141.26 (relating to analytical methods for radioactivity; and monitoring frequency and compliance requirements for radionuclides in community water systems) which are incorporated by reference, except as modified by this chapter. Initial or first-year monitoring mentioned in this paragraph refers to monitoring conducted on or after January 1, 2005.

(i) *Monitoring requirements for gross alpha particle activity, radium-226, radium-228 and uranium.*

(A) *Initial monitoring schedule.* The initial monitoring shall consist of four consecutive quarterly samples for each radionuclide at each entry point in accordance with the following monitoring schedule except for systems that are granted reduced initial monitoring in accordance with subclause (V).

(I) Systems serving more than **[3,301] 3,300** persons shall begin monitoring during the quarter beginning January 1, 2005.

* * * * *

(IV) Systems that add new entry points associated with new sources shall **[begin] conduct** initial quarterly monitoring **[during] beginning** the first **full** quarter the entry point begins serving the public. Quarterly monitoring shall continue until reduced monitoring is granted in accordance with clause (B) or subclause (V).

* * * * *

(VI) For entry points at which the **average of the initial monitoring [result] results** for a radionuclide **[at an entry point]** is above the MCL, the system shall collect and analyze quarterly samples for that radionuclide at that entry point until the system has results from 4 consecutive quarters for that radionuclide at that entry point that are at or below the MCL.

* * * * *

§ 109.303. Sampling requirements.

* * * * *

(c) Public water suppliers shall assure that samples for laboratory analysis are properly collected and preserved,

are collected in proper containers, do not exceed maximum holding times between collection and analysis and are handled in accordance with guidelines governing quality control which may be established by the Department. A public water supplier who utilizes [a certified] an accredited laboratory for sample collection as well as analysis satisfies the requirements of this subsection.

(d) Compliance monitoring samples for the VOCs listed under 40 CFR 141.61(a) shall be collected by a person properly trained by a laboratory [certified] accredited by the Department to conduct VOC or vinyl chloride analysis.

* * * * *

(g) Samples taken to determine compliance with combined radium-226 and radium-228, gross alpha particle activity, or uranium under 40 CFR 141.66(b), (c) and (e) (relating to maximum [containment] contaminant levels for radionuclides) may be composited from a single entry point if the analysis is done within a year of the date of the collection of the first sample. The Department will treat analytical results from the composited sample as the average analytical result to determine compliance with the MCLs and the future monitoring frequency.

* * * * *

§ 109.304. Analytical requirements.

* * * * *

(c) For the purpose of determining compliance with the monitoring and analytical requirements established under this subchapter and Subchapter K (relating to lead and copper), the Department will consider only samples analyzed by a laboratory [certified] accredited by the Department, except that measurements for turbidity, fluoridation operation, residual disinfectant concentration, temperature, pH, alkalinity, orthophosphates, silica, calcium, conductivity, daily chlorite, and magnesium hardness may be performed by a person meeting one of the following requirements:

(1) A person meeting the requirements of § 109.704 (relating to operator certification).

(2) A person using a standard operating procedure as provided under authority of the Water and Wastewater Systems Operators' Certification Act (63 P. S. §§ 1001—1015.1).

(3) An environmental laboratory meeting the requirements of Chapter 252 (relating to environmental laboratory accreditation).

Subchapter D. PUBLIC NOTIFICATION

§ 109.410. Tier 3 public notice—form, manner and frequency 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:

* * * * *

(2) Reporting and record maintenance violations under § 109.701(h) (relating to reporting and recordkeeping).

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

[(3)] (4) * * *

* * * * *

Subchapter E. PERMIT REQUIREMENTS

§ 109.503. Public water system construction permits.

(a) Permit application requirements. An application for a public water system construction permit shall be submitted in writing on forms provided by the Department and shall be accompanied by plans, specifications, engineer's report, water quality analyses and other data, information or documentation reasonably necessary to enable the Department to determine compliance with the act and this chapter. The Department will make available to the applicant the Public Water Supply Manual, available from the Bureau of Water [Supply and Community Health] Standards and Facility Regulation, Post Office Box 8467, Harrisburg, Pennsylvania 17105 which contains acceptable design standards and technical guidance. Water quality analyses shall be conducted by a laboratory [certified] accredited under this chapter.

(1) General requirements. An application [shall] must include:

* * * * *

(iii) Information describing new sources. The Department may accept approval of an out-of-State source by the agency having jurisdiction over drinking water in that state if the supplier submits adequate proof of the approval and the agency's standards are at least as stringent as this chapter. Information describing sources [shall] must include:

* * * * *

(B) An evaluation of the quality of the raw water from each new source. This clause does not apply when the new source is finished water obtained from an existing permitted community water system unless the Department provides written notice that an evaluation is required. The evaluation [shall] must include analysis of the following:

(I) [For groundwater sources,] VOCs for which MCLs have been established by the EPA under the National Primary Drinking Water Regulations in 40 CFR 141.61(a) (relating to maximum contaminant levels for organic contaminants). Vinyl chloride monitoring is required only if one or more of the two-carbon organic compounds specified under § 109.301(5)(i) (relating to general monitoring requirements) are detected. Samples for VOCs shall be collected in accordance with § 109.303(d) (relating to sampling requirements).

* * * * *

(VI) SOCs.

(-a-) [Alachlor, atrazine, chlordane, dibromochloro-propane (DBCP), ethylene dibromide (EDB), heptachlor, heptachlor epoxide, lindane, methoxychlor, toxaphene, endrin, hexachlorobenzene, hexachlorocyclopentadiene, polychlorinated biphenyls (PCBs) and simazine unless the Department determines in writing that monitoring for one or more of the substances specified in this item is not necessary.

(-b-) Other SOCs except for dioxin] Except for SOCs that have been granted a statewide waiver, SOCs for which MCLs have been established by the EPA under the National Primary Drinking Water Regulations

in 40 CFR 141.61(c) [except for those SOCs for which the source is not considered vulnerable based on a vulnerability assessment conducted by the public water supplier and approved by the Department unless the Department determines in writing that monitoring for one or more of the SOCs is not necessary].

[(-c-)] (-b-) * * *

(-c-) Polychlorinated biphenyls (PCBs) where there is a source of PCB contamination within 1,000 feet of a groundwater source or within 1 mile upstream of a surface water source.

* * * * *

(VIII) [For surface water sources, total trihalomethanes.

(IX) Aluminum, chloride, color, foaming agents, iron, manganese, pH, silver, sulfate, total dissolved solids and zinc for which MCLs have been established by the EPA under the National Secondary Drinking Water Regulations in 40 CFR 143.3 (relating to secondary MCLs).

[(X)] (IX) * * *

[(XI)] (X) * * *

[(XII)] (XI) * * *

[(XIII)] (XII) * * *

* * * * *

§ 109.504. Public water system operation permits.

* * * * *

(b) The Department will not issue an operation permit or an amended operation permit, unless the following conditions are satisfied:

* * * * *

(3) The water supplier has demonstrated to the Department that [personnel required under] they are in compliance with § 109.704 (relating to operator certification) [have been retained].

* * * * *

§ 109.505. Requirements for noncommunity water systems.

A noncommunity water system shall obtain a construction permit under § 109.503 (relating to public water system construction permits) and an operation permit under § 109.504 (relating to public water system operation permits), unless the noncommunity water system satisfies paragraph (1) or (2). The Department retains the right to require a noncommunity water system that meets the requirements of paragraph (1) or (2) to obtain a construction and an operation permit, if, in the judgment of the Department, the noncommunity water system cannot be adequately regulated through standardized specifications and conditions. A noncommunity water system which is released from the obligation to obtain a construction and an operation permit shall comply with the other requirements of this chapter, including design, construction and operation requirements described in Subchapters F and G (relating to design and construction standards; and system management responsibilities).

* * * * *

(2) A noncommunity water system not covered under paragraph (1) is not required to obtain a construction and an operation permit if it satisfies the following specifications and conditions:

* * * * *

(ii) The water supplier files a brief description of the system, including raw source quality data, on forms acceptable to the Department. Amendments to the system description shall be filed when a substantial modification is made to the system. Descriptions of new systems or modifications [may] shall be [filed] submitted and approved by the Department prior to construction [if the water supplier desires technical assistance, but shall be filed within 30 days of initiation of operation of the system or modification].

* * * * *

Subchapter F. DESIGN AND CONSTRUCTION STANDARDS

§ 109.605. Minimum treatment design standards.

The level of treatment required for raw water depends upon the characteristics of the raw water, the nature of the public water system and the likelihood of contamination. The following minimum treatment design standards apply to new facilities and major changes to existing facilities:

(1) For surface water and GUDI sources, the minimum treatment design standard for filtration technologies is a 99% removal of Giardia cysts, and a 99% removal of Cryptosporidium oocysts [and a 99% removal of viruses]. The determination of the appropriate filtration technology to be used shall be based on the following:

* * * * *

(2) For surface water and GUDI sources, the minimum treatment design standard for disinfection technologies utilized prior to the first user of the system is a total of 99.9% inactivation of Giardia cysts and a 99.99% inactivation of viruses, except noncommunity water systems may propose, and the Department may approve, an alternative to the Giardia design standard when 99.9% inactivation is not feasible. Total treatment system disinfection capability will be credited toward this design standard. The CT factors and measurement methods established by the EPA are the criteria to be used in determining compliance with this minimum treatment design standard.

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:

* * * * *

(2) Monthly reporting requirements for performance monitoring.

(i) The test results of performance monitoring required under § 109.301(1) (relating to general monitoring requirements) for public water suppliers providing filtration and disinfection of surface water or GUDI sources [shall] must include the following at a minimum:

(A) For turbidity performance monitoring:

* * * * *

(VI) Instead of clause (A)(III) and (IV), beginning January 1, 2005, for public water systems that serve fewer than 10,000 persons and use conventional or direct filtration:

* * * * *

(-b-) The date, time and values of any filtered water turbidity measurements [**exceding**] **exceeding** 1 NTU.

* * * * *

(11) **Noncompliance report.** The water supplier shall report to the Department within 48 hours failure to comply with Subchapter C (relating to monitoring requirements).

* * * * *

(i) **Accuracy of data.** Each water supplier shall be responsible for the accurate reporting of data required under this section to the Department for all test measurements or analyses required by this chapter, including the data submitted by an accredited environmental laboratory on behalf of the water supplier.

(j) **Electronic reporting.** Within 90 days of written notification by the Department, a public water system shall submit electronically all of its monitoring data for the contaminants listed under § 109.304(c) (relating to analytical requirements).

(1) The Department will provide written notification to each public water system to begin submitting data electronically based on the following schedule:

(i) Systems serving more than 10,000 persons will be notified no sooner than _____ (*Editor's Note:* The blank refers to a date 6 months after the effective date of adoption of this proposed rulemaking.).

(ii) Systems serving more than 3,300 but less than 10,001 persons will be notified no sooner than _____ (*Editor's Note:* The blank refers to a date 12 months after the effective date of adoption of this proposed rulemaking.).

(iii) Systems serving more than 500 but less than 3,301 persons will be notified no sooner than _____ (*Editor's Note:* The blank refers to a date 18 months after the effective date of adoption of this proposed rulemaking.).

(iv) Systems serving less than 501 persons will be notified no sooner than _____ (*Editor's Note:* The blank refers to a date 24 months after the effective date of adoption of this proposed rulemaking.).

(v) New systems will be notified of the electronic reporting requirements at the time of issuance of the operation permit under § 109.504 (relating to public water system operation permits).

(2) The water supplier shall electronically submit all of its data using a secure computer application provided by the Department.

(3) The water supplier shall submit the required data electronically in accordance with the submission deadlines established in this section.

(4) In the event of a Department computer application failure, the Department will notify the water supplier of an alternate reporting method.

(5) In the event that a water supplier is unable to submit data electronically, due to circumstances beyond its control, the water supplier shall notify the Department prior to the applicable reporting deadline. If the Department determines that the circumstances were beyond the control of the water supplier, the Department will specify a temporary, alternate reporting method the water supplier shall use to meet the reporting deadline.

(6) A water supplier shall meet the requirements under this subsection, unless the water supplier assigns in writing the responsibility for reporting to an accredited laboratory.

(k) **Monitoring plan to determine if a source is directly influenced by surface water.** Systems required to monitor under § 109.302(f) (relating to special monitoring requirements) shall develop and implement a monitoring plan. The system shall submit a copy of the monitoring plan to the Department for review and approval prior to the applicable compliance date. The plan must address the requirements under § 109.302(f).

§ 109.703. Facilities operation.

* * * * *

(b) For surface water or GUDI sources, a public water supplier using filtration shall comply with the following requirements:

(1) By July 1, 1990, suppliers using conventional or direct filtration shall, after filter backwash, and before putting the backwashed filter back on line, filter-to-waste until [**one of the following occurs:**

(i) **The]** the filter bed effluent turbidity is less than .5 NTU at the normal production flow rate.

[**(ii) When source water turbidity is less than 1.0 NTU, a 50% reduction in turbidity is achieved.]**

* * * * *

§ 109.704. Operator certification.

(a) Community and nontransient noncommunity water systems shall have personnel certified under the [**Sewage Treatment Plant and Waterworks] Water and Wastewater Systems Operators' Certification Act (63 P. S. §§ 1001—[1015] 1015.1) [and qualified by experience and education]** to operate and maintain a public water system.

(b) [**Noncommunity] Transient noncommunity** water systems shall have competent personnel qualified to operate and maintain the system's facilities.

[**(c) Beginning July 21, 2004, nontransient noncommunity water systems that provide water that contains a chemical disinfectant shall be operated by qualified personnel certified under the Sewage Treatment Plant and Waterworks Operators' Certification Act (63 P. S. §§ 1001—1015). The minimum certification to operate these facilities shall be a certificate to operate plants with disinfection only, under § 303.2 (relating to waterworks operators certificates).]**

Subchapter H. ENVIRONMENTAL LABORATORY [**CERTIFICATION] ACCREDITATION**

§ 109.810. Reporting and notification requirements.

(a) [**A]** Beginning _____ (*Editor's Note:* The blank refers to a date 6 months after the effective

date of adoption of this proposed rulemaking.), a laboratory accredited under Chapter 252 (relating to environmental laboratory accreditation) shall [submit] electronically report to the Department [, on forms provided by the Department,] on behalf of the public water supplier and in accordance with the reporting requirements under § 109.701(a) (relating to reporting and recordkeeping), the results of test measurements or analyses performed by the laboratory under this chapter using a secure computer application provided by the Department. In the event of a Department computer application failure, the Department will notify the laboratory of an alternate reporting method. In the event that a laboratory is unable to submit data electronically, due to circumstances beyond its control, the laboratory shall notify the Department prior to the applicable reporting deadline. If the Department determines that the circumstances were beyond the control of the laboratory, the Department will specify a temporary, alternate reporting method the laboratory shall use to meet the reporting deadline.

(1) Unless a different reporting period is specified in this chapter, these results shall be reported within either the first 10 days following the month in which the result is determined or the first 10 days following the end of the required monitoring period as stipulated by the Department, whichever is shorter.

(2) **Beginning _____** (*Editor's Note: The blank refers to a date 6 months after the effective date of adoption of this proposed rulemaking.*), an accredited laboratory and the public water supplier shall be given until the 10th of the following month to review and update submitted data using a secure computer application provided by the Department. Omissions and data errors remaining after the review period shall be considered reporting violations of the public water supplier.

(b) A laboratory accredited under Chapter 252 shall whenever the results of test measurements or analyses performed by the laboratory under this chapter indicate an MCL, MRDL or a treatment technique performance requirement under § 109.202 (relating to State MCLs, MRDLs and treatment technique requirements) is [violated] exceeded, or a sample result requires the collection of check or confirmation samples under § 109.301 (relating to general monitoring requirements):

(1) Notify the public water supplier by telephone within 1 hour of the laboratory's determination. If the supplier cannot be reached within that time, notify the Department by telephone within 2 hours of the determination. If it is necessary for the laboratory to contact the Department after the Department's routine business hours, the laboratory shall contact the appropriate Department regional office's after-hours emergency response telephone number and provide information regarding the occurrence, the name of a contact person and the telephone number where that individual may be reached in the event further information is needed. If the Department's appropriate emergency number cannot be reached, the laboratory shall notify the appropriate Department regional office by telephone within 1 hour of the beginning of the next business day. Each [certified] accredited laboratory shall be responsible for the following:

* * * * *

(c) A laboratory accredited under Chapter 252 shall meet the requirements under subsection (a) and (b), regarding the results of test measurements or analyses performed by the laboratory under this chapter, unless the laboratory assigns in writing the responsibility for reporting and notification to another accredited laboratory.

Subchapter J. BOTTLED WATER AND VENDED WATER SYSTEMS, RETAIL WATER FACILITIES AND BULK WATER HAULING SYSTEMS

§ 109.1003. Monitoring requirements.

* * * * *

(d) A bulk water hauling system that is determined by the Department to serve at least 25 of the same persons year-round shall comply with the monitoring requirements for community water systems in accordance with § 109.301

(e) A bulk water hauling or vended water system that is determined by the Department to serve at least 25 of the same persons over 6 months per year shall comply with the monitoring requirements for nontransient noncommunity water systems in accordance with § 109.301.

Subchapter K. LEAD AND COPPER

§ 109.1102. Action levels and treatment technique requirements.

(a) *Action levels for lead and copper.*

* * * * *

(4) The 90th percentile lead and copper levels shall be computed as follows:

(i) The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken.

(ii) The number of samples taken during the monitoring period shall be multiplied by 0.9.

(iii) The contaminant concentration in the numbered sample yielded by the calculation in subparagraph (ii) is the 90th percentile contaminant level.

(iv) For water systems that collect 5 samples per monitoring period, the 90th percentile is computed by taking the average of the highest and second highest concentrations.

* * * * *

§ 109.1103. Monitoring requirements.

* * * * *

(e) *Reduced monitoring.*

(1) *Reduced lead and copper tap monitoring.* A [community water] system conducting reduced lead and copper tap monitoring shall collect one sample from the number of sample sites listed in the following column. [A nontransient noncommunity water system may reduce the number of sample sites to five, regardless of population served.]

* * * * *

(g) *Sample site location plan.* The water supplier shall complete a sample site location plan which includes a materials evaluation of the distribution system, lead and copper tap sample site locations, water quality parameter sample site locations, and certification that proper sampling procedures are used. The water supplier shall complete the steps in paragraphs (1)—(3) by the applicable date for commencement of lead and copper tap monitoring under subsection (a)(1) and the step in paragraph (4) following completion of the monitoring. The water supplier shall keep the sample site location plan on record **and submit the plan to the Department** in accordance with § 109.1107(a)(1). **[If the system is required to prepare a corrosion control treatment feasibility study in accordance with § 109.1102(b)(3)(i), the system shall include the sample site location plan as part of the study.]**

* * * * *

§ 109.1105. Permit requirements.

* * * * *

(b) *Construction permits and permit amendments.* The water supplier shall submit an application for a public water system construction permit for a newly-created system or an amended construction permit for a currently-permitted system for corrosion control treatment facilities by the applicable deadline established in § 109.1102(b)(2) (relating to action levels and treatment technique requirements), unless the system complies with paragraph (1) or (2) or otherwise qualifies for a minor permit amendment under § 109.503(b) (relating to public water system construction permits). The permit application **[shall] must** comply with § 109.503 and contain the applicable information specified therein. The application **[shall] must** include recommended water quality parameter performance requirements for optimal corrosion control treatment as specified in § 109.1102(b)(5) and other data, information or documentation necessary to enable the Department to consider the application for a permit for construction of the facilities.

* * * * *

(2) *Nontransient noncommunity water system permits.* The nontransient noncommunity water supplier is not required to obtain a construction permit or permit amendment under subsection (b) if the system satisfies the following specifications and conditions:

* * * * *

(v) The water supplier files a brief description of the proposed treatment, including recommended water quality parameter performance requirements for optimal corrosion control treatment as specified in § 109.1102(b)(5), on forms acceptable to the Department. Descriptions of modifications **[may] shall be [filed] submitted and approved by the Department** prior to construction **[if the water supplier desires technical assistance, but shall be filed within 30 days of initiation of operation of the modification]**.

(c) *Operation permits.* Except for nontransient noncommunity water systems complying with subsection (b)(2), the water supplier shall obtain an operation permit or amended operation permit following completion of construction and prior to initiation of operation of corrosion control treatment facilities. The permit will be issued in accordance with § 109.504 (relating to public water system operation permits). The Department will not issue an operation permit under this subchapter unless the water

system complies with the operation and maintenance plan requirements under § 109.1107(b) (relating to system management responsibilities) and the operator certification **[and training]** requirements under § 109.1107(c). The water supplier for a community water system or nontransient noncommunity water system shall submit a request for Department designation of optimal corrosion control treatment performance requirements in accordance with § 109.1102(b)(2) and the Department will issue an amended operation permit designating the performance requirements as specified in § 109.1102(b)(5).

§ 109.1107. System management responsibilities.

(a) *Reporting and recordkeeping.* Systems shall comply with the following requirements and otherwise comply with § 109.701 (relating to reporting and recordkeeping):

(1) *Sample site location plan.* The system shall prepare a sample site location plan in accordance with § 109.1103(g) (relating to monitoring requirements), maintain the plan on record and **[present or]** submit the plan **[upon request]** to the Department **prior to conducting initial lead and copper tap monitoring or upon request.** The water supplier shall update the following information in the plan within the first 10 days following the end of each applicable monitoring period:

* * * * *

(2) *Reporting of monitoring results.* The water supplier shall assure that the results of analyses conducted in accordance with § 109.1103 are reported to the Department within the first 10 days following the end of each applicable monitoring period as stipulated by § 109.1103. Additional monitoring results beyond that required under § 109.1103 shall be kept on record by the water supplier and presented or submitted to the Department upon request.

(i) *Lead and copper tap monitoring results.* The following minimum information is required when reporting lead and copper tap monitoring results to the Department.

* * * * *

(I) **The sample location.**

(J) The 90th percentile result.

[(J)] (K) * * *

[(K)] (L) * * *

(ii) *Water quality parameter monitoring results.* The following minimum information is required when reporting water quality parameter results to the Department:

* * * * *

(I) **The sample location.**

(J) Whether an excursion has occurred on more than any 9 days during a 6-month monitoring period for any Department specified water quality parameter.

(iii) *Source water monitoring results.* The following minimum information is required when reporting source water monitoring results to the Department:

* * * * *

(I) **The sample location.**

(J) The name, address and identification number of the certified laboratory performing the analysis.

* * * * *

(c) *Operator certification [and training].* Community water systems and nontransient noncommunity water

systems which are required to construct or modify corrosion control treatment facilities in compliance with this subchapter shall comply with the [**following**] requirements[:] **under § 109.704 (relating to operator certification).**

[(1) Prior to initiation of operation of the corrosion control treatment facilities, have personnel who have successfully completed Department-sponsored training relating to corrosion control treatment for lead and copper. The Department will expressly designate which training courses meet the requirements of this subsection.

(2) Within 3 years of initiation of operation of the corrosion control treatment facilities, have personnel certified under the Sewage Treatment Plant and Waterworks Operators' Certification Act (63 P.S. §§ 1001—1015). The minimum certification to operate corrosion control treatment facilities shall be a certificate to operate plants not utilizing filtration, but with chemical treatment, according to § 303.2 (relating to waterworks operators certificates).]

[Pa.B. Doc. No. 07-1613. Filed for public inspection August 31, 2007, 9:00 a.m.]

STATE CONSERVATION COMMISSION

[25 PA. CODE CH. 83] Facility Odor Management

The State Conservation Commission (Commission) proposes to add Chapter 83, Subchapter G (relating to facility odor management) to govern odor management at certain facilities and agricultural operations. This proposed rulemaking is authorized by the act of July 6, 2005 (P.L. 112, No. 38) (Act 38) (3 Pa.C.S. §§ 501—522 (relating to nutrient management and odor management)).

This proposed rulemaking was adopted at the Commission's meeting of March 14, 2007.

A. *Effective Date*

This proposed rulemaking will go into effect 90 days after final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information, contact Karl G. Brown, Executive Secretary, State Conservation Commission, Suite 407, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110, (717) 787-8821. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Commission's website: www.agriculture.state.pa.us/scc.

C. *Statutory Authority*

This rulemaking is proposed under 3 Pa.C.S. § 504(1.1) (relating to powers and duties of commission), which authorizes the Commission to promulgate regulations establish practices, technologies, standards, strategies and other requirements for odor management plans (OMP); section 4 of the Conservation District Law (3 P.S. § 852), which authorizes the Commission to promulgate

rules and regulations necessary to carry out its functions; and section 503(d) of the Conservation and Natural Resources Act (71 P.S. § 1340.503(d)), which amended the authority and responsibilities of the Commission, the Department of Environmental Protection (DEP) and the Department of Agriculture.

D. *Background and Introduction*

Act 38 was signed by Governor Rendell on July 6, 2005, and constituted an important part of his initiative to protect Agriculture, Communities and the Rural Environment (ACRE). As part of that initiative, the DEP and the Commission promulgated other regulations implementing Act 38 provisions addressing water quality issues in 2005 and 2006. At the same time, various funding, technical assistance and policy development programs aimed at supporting agriculture in this Commonwealth were started and expanded during that same time frame. Examples include the Commission's enhanced Plan Development Incentives Program (PDIP) to support phosphorus based nutrient management plan writing, grants for alternative manure utilization and technologies projects, expanded agricultural compliance technical assistance and expanded regulatory oversight over the farm community.

This proposed rulemaking addresses the concerns of communities about odors generated at new and expanding agricultural operations. The proposed rulemaking requires OMPs for manure storage facilities and animal housing facilities at the operations most likely to elicit public concerns from neighbors—concentrated animal operations (CAOs) and concentrated animal feeding operations (CAFOs).

CAOs and CAFOs fall under a very comprehensive set of water quality regulations which were recently amended to address current environmental issues. CAOs shall meet various requirements under Chapter 83, administered by the Commission and delegated county conservation districts. CAFOs shall follow permitting requirements under the National Pollutant Discharge Elimination System (NPDES) regulations administered by the DEP under Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance). Those regulations address water quality, not odor management.

This proposed rulemaking was developed in close coordination with several groups. First, the Nutrient Management Advisory Board (NMAB) was highly involved with the development of this proposed rulemaking. The NMAB represents a wide range of agricultural, academic, governmental, environmental and private interests. A special NMAB committee was formed and met with Commission staff 11 times during 2006 and 2007, providing strong direction and assistance to Commission staff in developing this proposed rulemaking. The committee and Commission staff led discussions of the proposed rulemaking with the full NMAB on April 13, 2006, July 13, 2006, December 5, 2006, and February 6, 2007. The NMAB approved this proposed rulemaking and passed it on to the Commission with its recommendation for Commission approval.

In addition to the extensive involvement of the NMAB, Commission staff worked closely with a team of experts on odor management at the Pennsylvania State University (PSU). These experts developed and refined an odor management planning process over the last several years. This process was the one the Legislature had in mind when it passed the odor management provisions of Act 38.

Key elements of this process have been incorporated into this proposed rulemaking and are described in some detail in this preamble.

The Commission staff also worked with a third group—an interagency team of agriculture experts from the Department of Agriculture, the United States Department of Agriculture Natural Resources Conservation Service (NRCS), county conservation districts, the DEP, the PSU College of Agricultural Sciences and the Penn State Extension.

Finally, Commission staff provided briefings on the proposed rulemaking as it was being developed to numerous groups representing local government, industry and the public. The Agriculture Air Quality Task Force also received briefings on the draft regulations during 2006.

This proposed rulemaking incorporates the initial concepts approved by the Commission at its July 26, 2006, meeting. In addition, the proposed rulemaking follows the format of the nutrient management regulations in Chapter 83, to facilitate comprehension by the regulated community and others familiar with those regulations.

Two key aspects of the proposed rulemaking bear special mention. First, the proposed rulemaking is limited in scope to odors associated with new or expanding manure management and animal housing facilities at CAOs and CAFOs. The proposed rulemaking does not otherwise apply to existing agricultural operations and they do not address odor from land application of manure. These limitations reflect the odor management provisions in Act 38.

Second, the OMPs are not required to eliminate odors. Under Act 38, they only need to include reasonably available technology, practices, standards and strategies to manage odor impacts, considering both the practical and economic feasibility of installation and operation and the potential impacts from the facilities. This aspect of Act 38 reflects the impracticality of completely eliminating odors associated with agricultural operations, as well as the evolving nature of the science of odor management and of the regulation of odor management. The Legislature was obviously cognizant of the subjective nature of odors in rural areas and the difficulties in eliminating and regulating them. The Commission developed this proposed rulemaking with that legislative dictate in mind.

E. Summary of the Proposed Rulemaking

General

The applicability of the regulations is clearly described in § 83.741 (relating to general), where the two statutory criteria that must be met are listed—types of operations and types of activities at those operations. The Commission has been careful to stay within the scope of Act 38 in the regulations, which requires OMPs address only newly constructed and expanded facilities at CAOs and CAFOs once the regulations go into effect. A transition provision is also included to address agricultural operations that initiate activities prior to the effective date of the final-form rulemaking.

Section 83.741 also describes plan implementation requirements. First, plans must be fully implemented prior to commencing use of the regulated facility. Second, “implementation” includes taking all of the steps required in the plan, which in some cases will not immediately provide full odor management benefits (for example, shelter belts).

In addition, § 83.741 allows for voluntary plans by agricultural operations which are not otherwise subject to the odor management regulations. This provision is similar to the nutrient management regulations, promoting voluntary efforts by farmers and also providing certain legal protections to those farmers under Act 38.

Further, § 83.741 requires that OMPs be developed by certified odor management specialists. The Department of Agriculture is developing certification regulations under Act 38 concurrently with these regulations.

Finally, § 83.742 (relating to identification of construction activities) clarifies certain circumstances when questions may arise regarding “construction” activities.

Definitions

The proposed rulemaking incorporates several definitions used in Subchapter D (relating to nutrient management). Several definitions are added in § 83.701 (relating to definitions) due to the new subject matter:

The proposed rulemaking is applicable to two types of facilities—manure storage and animal housing. “Manure management facility” is described in Subchapter D and repeated here. This requires defining “animal housing facility,” which is not defined in Subchapter D. The comprehensive definition of “facility” represents both manure storage and animal housing facilities throughout the regulations.

The definitions of “impacts” and “offsite migration” work together with §§ 83.771 and 83.781 (relating to managing odors; and identification of Odor BMPs), which describe the basic odor management approach in these regulations, as well as § 83.703 (relating to purpose). Act 38 requires that OMPs address odor impacts, but it did not define them, hence the definition here, consistent with other aspects of the odor management provisions of Act 38. The Commission clarifies Act 38 by using the phrase “offsite migration,” since odors remaining on the farm would obviously not have impacts requiring an OMP.

“Odor BMP—odor best management practice” is a key term defined in a manner similar to that for nutrient best management practices (BMP). Odor BMPs are the measures which may be necessary for the agricultural operation to manage potential impacts identified from the facilities subject to the proposed rulemaking.

The definition of “plan—OMP—odor management plan” repeats the definition in Act 38 and adds clarifications similar to those for nutrient management plans in Subchapter D regarding volunteers and plan amendments.

“Odor management specialist” is a key term defined in a manner similar to that for a nutrient management specialist.

“Odor Site Index” is the preferred method of identifying potential impacts from odors, similar to the Phosphorus Index used in the nutrient management program. The Odor Site Index was developed and refined by odor experts at the PSU College of Agriculture Sciences. It will be reviewed and approved for use by the Commission in the odor management program under this proposed rulemaking.

This proposed rulemaking requires special consideration of public use facilities in identifying potential odor impacts, so a definition of “public use facility” is needed.

Purpose

This proposed rulemaking breaks new ground in this Commonwealth and addresses a difficult area of regulation. The Commission wants to make it clear what these regulations will address and § 83.703 is intended to do that. First, Act 38 clearly requires the Commission to consider certain criteria when developing the odor management program—site specific factors, reasonably available technology, practices, standards and strategies, and the practical and economic feasibility of their installation and operation. These purposes are stated in § 83.703(1)(i)–(iii).

Section 83.703(1)(iv), (2) and (3) provides additional clarification, based on the current state of the science of agricultural odor management in this Commonwealth, and the language of Act 38. The nature of that science is that odor management should contain two basic elements, described in more detail in §§ 83.771 and 83.781. First, odor management requires identifying a potential for odor impacts, which is necessarily a largely subjective exercise. Impacts are essentially conflict-based: will these agricultural activities increase the likelihood of odor related conflicts between the farmer and his neighbors? Second, once potential impacts are identified, how can they be managed? In most cases, the potential cannot be completely eliminated without violating the practical and economic considerations previously described, but it can be managed. These are the concepts underlying § 83.703(1)(iv), (2) and (3), as well as §§ 83.771 and 83.781.

Managing odors

The core requirements are in §§ 83.771 and 83.781. They require the previously-described two-step process. First, an evaluation must be conducted under § 83.771(b). The evaluation must look at the factors specified in Act 38. Several other criteria are allowed to be used, such as the number of animal equivalent units (AEU). The proposed rulemaking then authorizes use of the Odor Site Index, which was developed by PSU odor management experts and approved by the Commission to perform this evaluation. Other evaluation methodologies are allowed, if approved by the Commission. This is the same approach used in the nutrient management regulations, when a Phosphorus Index approved by the Commission is allowed.

If the evaluation identifies a potential for odor impacts, then the second step must be taken—identification of odor BMPs needed to manage the odors, as described in § 83.781. This section envisions two levels of odor BMPs, depending on the significance of the potential for odor impacts identified in the evaluation step. The Commission will issue a guidance document listing odor BMPs consistent with this approach, and use of that guidance is authorized by this proposed rulemaking. The Commission expects to publish notice of the availability of this guidance document for public input, concurrently with the public comment period of the proposed rulemaking.

Plan contents

Sections 83.751, 83.761, 83.762 and 83.783 contain requirements for the contents of OMPs, along the lines of those in the nutrient management regulations. The information required under § 83.761 (relating to identification of agricultural operations and regulated facilities), for example, will be used in the evaluation step under § 83.711 (relating to applicant eligibility). To ensure program consistency throughout this Commonwealth, the plan must follow a standard format provided by the Commission.

Plan review and implementation

Sections 83.782, 83.801 and 83.802 (relating to implementation schedule; initial plan review and approval; and plan implementation) contain parallel provisions to those in Subchapter D regarding review and implementation of the plan. OMPs developed under this proposed rulemaking are not required to be amended once approved unless the operation makes a significant change as described in § 83.811 (relating to plan amendments). While the proposed rulemaking authorizes the Commission to delegate administration of the regulations to county conservation districts, the Commission has no immediate plans to do so.

Funding for plan development and implementation

Financial assistance for OMP development and implementation is authorized under certain circumstances through § 83.711 and § 83.721 (relating to applicant eligibility). This assistance is limited, given that this proposed rulemaking generally applies to new and expanding operations, which are not authorized for financial assistance through the Commission.

Recordkeeping

Records regarding the development and implementation of the plan shall be kept at the operation under §§ 83.791 and 83.792 (relating to general recordkeeping requirements; and recordkeeping relating to odor BMPs).

Amendments and transfers

Section 83.811 and § 83.812 (relating to plan transfers) contain parallel provisions to those in Subchapter D regarding amendments and transfers. Changes requiring amendments are listed, such as an increase equal to or greater than 25% in AEUs after plan approval.

*F. Benefits, Costs and Paperwork**Benefits*

The main benefit of this proposed rulemaking is to establish a level of regulatory requirements regarding agricultural odor management that does not currently exist in rural communities in this Commonwealth. It is part of the balanced approach embodied in the Governor's ACRE initiative.

The Commission developed the proposed rulemaking in close coordination with various Federal, State and local agencies and institutions, including the NMAB, the PSU College of Agriculture, the Department of Agriculture, the DEP, the NRCS, various county conservation district and the Penn State Extension.

Farmers will benefit from this proposed rulemaking in several ways. First, implementation of an OMP approved by the Commission affords important legal protections under Act 38. Second, odor management is an important issue in rural areas of this Commonwealth and this proposed rulemaking will help to minimize conflicts between farmers and their neighbors, especially in areas where there is suburban encroachment into rural areas.

Costs

The cost of implementing this proposed rulemaking will mainly impact the regulated community and the Commonwealth. The Commonwealth costs are most readily seen in the financial assistance that the Commission is proposing to provide for plan development and plan implementation.

Note that CAO and CAFO farms that construct animal housing facilities or manure storage facilities are required to get an OMP.

Costs to the regulated community

Development of OMPs. Based on the Commission's experience with the nutrient management program costs, and the projected time to conduct a site assessment for the proposed OMP, the Commission anticipates that the average cost for an OMP will be \$1,120 per OMP.

The Commission anticipates that 90 operations a year will develop OMPs under this proposed rulemaking. This will equate to a total annual planning cost to the farm community of \$100,800, a significant portion of this will be offset through the Commission's plan development cost share program.

Implementation of OMPs. The proposed rulemaking provides for multiple levels of odor BMPs and anticipates that there will be no new cost to the regulated community until Level 2 Odor BMPs are required to be implemented and maintained. The cost for implementing Level 2 BMPs on a given farm are extremely variable. Based on the Commission's assessment of the various BMPs that may be installed, and the general costs for installing these BMPs, the Commission determined an average cost of installing Level 2 BMPs on a farm to be \$15,000. Each plan uses site specific criteria and there will be large variability in the Level 2 odor BMPs implemented on regulated operations. Some farms needing Level 2 BMPs may only need to expend less than \$500 to implement these BMPs where other farms needing Level 2 BMPs may need to be expend thousands of dollars.

The Commission anticipates that 17 operations a year will develop OMPs requiring Level 2 BMPs. This will equate to a total annual plan implementation cost to the farm community of \$255,800. A portion of this will be offset through the Commission's plan development cost share program for certain eligible farms.

Costs to the Commonwealth

Development of OMPs. The proposed rulemaking provides for the Commonwealth, through the Commission, to provide funding for Financial Assistance for Plan Development to offset the cost of developing OMPs for farmers whose agricultural operations are in existence as of the effective date of this proposed rulemaking. This funding is similar to the Commission's PDIP that has provided cost share funding to farmers for the development of nutrient management plans since 1997. This new State cost share program, proposed to fund 75% of the cost of developing an OMP, is essential to ensure that farmers are not negatively impacted by these CAO and CAFO planning requirements. Applying the 75% State cost share program, the anticipated government cost per funded plan would be \$840 (\$1,120 total cost, \$840 cost share, \$280 farmer cost).

The Commission anticipates that 65 operations will be eligible annually for the Commission's PDIP. This will equate to a total annual plan development cost share amount from the Commonwealth of \$54,600.

Implementation of OMPs. The proposed rulemaking authorizes funding to offset the implementation of odor BMPs on certain participating operations installing manure storage facilities. This new grant program is proposed to provide support at an 80% State cost share rate. At the anticipated average cost for implementing a Level 2 odor BMP of \$15,000, the 80% cost share rate would equate to \$12,000 in State cost share funds per operation receiving this assistance (\$15,000 total cost, \$12,000 cost share, \$3,000 farmer cost).

The Commission anticipates that six operations will be eligible annually for the Commission's cost share program

to support OMP implementation. This will equate to a total annual plan implementation cost share amount from the Commonwealth of \$72,000.

Commission. The Commission will continue to spend approximately \$60,000 per year for Commission staff wages and expenses.

Technical assistance. The Commission will continue to contract with PSU to provide technical and educational assistance in the development and implementation of odor management regulations as well as the Department of Agriculture's Odor Management Specialist Certification Program. This project is funded at \$10,000 per year.

Paperwork Requirements

The proposed rulemaking was written to minimize paperwork but still maintain program integrity and tracking. Farmers are required to keep records on their farms, but are not required to submit those documents to the Commission.

G. Sunset Review

The Commission will evaluate the effectiveness of these regulations on an ongoing basis. Therefore, no sunset date is being established for the regulations.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Commission submitted a copy of these proposed regulations on August 22, 2007, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee. In addition to submitting the proposed regulations, the Commission has provided IRRC and the Committees with a copy of a detailed regulatory analysis form. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

I. Public Comment

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the State Conservation Commission, Agriculture Building, Room 405, 2301 North Cameron Street, Harrisburg, PA 17110. Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Commission by October 31, 2007. Interested persons may also submit a summary of their comments to the Commission. The summary may not exceed one page in length and must also be received by October 31, 2007. The one-page summary will be provided to each member of the Commission in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

Electronic comments. Comments may be submitted electronically to the Commission at scc-odor-regs@state.pa.us. A subject heading of the proposal must be included in the transmission. Comments submitted electronically must also be received by the Commission by October 31, 2007.

J. Public Meetings and Hearings

The Commission will hold two public meetings to explain the proposed rulemaking and to respond to questions from the audience. The public information meetings will be held from 7 p.m. to 9 p.m. as follows:

- Monday, October 1, 2007 Hampton Inn
1582 Bee Line Highway
Dubois, PA 15801
- Thursday, October 4, 2007 Lancaster County Farm and Home Center
1383 Arcadia Road
Lancaster, PA 17601

The Commission will also hold two public hearings for the purpose of accepting comments on the proposed rulemaking. The hearings will be held at 7 p.m. as follows:

- Monday, October 8, 2007 Hampton Inn
1582 Bee Line Highway
Dubois, PA 15801
- Thursday, October 11, 2007 Lancaster County Farm and Home Center
1383 Arcadia Road
Lancaster, PA 17601

Persons wishing to present testimony at a public hearing are requested to contact Karl Dymond, State Conservation Commission, PDA Region 3 Office, Route 92 South, P. O. Box C, Tunkhannock, PA, 18657, (570) 836-2181 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 5 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons with a disability who wish to attend a hearing or meeting and require an auxiliary aid, service or other accommodation to participate should contact Karl Dymond at (570) 836-2181 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users) to discuss how the Commission may accommodate their needs.

KATHLEEN A. MCGINTY,
Chairperson

(Editor's Note: For a notice relating to this proposed rulemaking, see 37 Pa.B. 4854 (September 1, 2007).)

Fiscal Note: 7-418; (1) Nutrient Management and General Fund;

	<i>Nutrient Management Fund Planning, Loans, Grants and Technical Assistance</i>	<i>General Fund General Government Operations</i>
(2) Implementing	Year 2006-07 is \$ 0	\$70,000
(3) 1st Succeeding	Year 2007-08 is \$127,000	\$70,000
2nd Succeeding	Year 2008-09 is \$127,000	\$70,000
3rd Succeeding	Year 2009-10 is \$127,000	\$70,000
4th Succeeding	Year 2010-11 is \$127,000	\$70,000
5th Succeeding	Year 2011-12 is \$119,000	\$70,000

<i>Nutrient Management Fund Planning, Loans, Grants and Technical Assistance</i>	<i>General Fund General Government Operations</i>
(4) 2005-06 Program—\$1,600,000	\$29,451,000
2004-05 Program—\$3,016,000	\$31,017,000
2003-03 Program—\$4,852,000	\$30,009,000

(7) Nutrient Management Fund and General Fund; recommends adoption. The distribution of funding for the grant programs will be provided to the extent funds are available.

Annex A

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

**Subpart C. PROTECTION OF NATURAL
RESOURCES**

ARTICLE I. LAND RESOURCES

**CHAPTER 83. STATE CONSERVATION
COMMISSION**

Subchapter G. FACILITY ODOR MANAGEMENT

(Editor's Note: The following chapter is new. It has been printed in regular type to enhance readability.)

GENERAL PROVISIONS

- Sec. 83.701. Definitions.
- 83.702. Scope.

- 83.703. Purpose.
- 83.704. Relation to Subchapter D (relating to nutrient management regulations).
- 83.705. Preemption of local ordinances.
- 83.706. Limitation of liability.
- 83.707. Compliance assistance and enforcement.

FINANCIAL ASSISTANCE FOR PLAN DEVELOPMENT

- 83.711. Applicant eligibility.

FINANCIAL ASSISTANCE FOR PLAN IMPLEMENTATION

- 83.721. Applicant eligibility.

DELEGATION TO LOCAL AGENCIES

- 83.731. Delegation to local agencies.

ODOR MANAGEMENT PLANS

- 83.741. General.
- 83.742. Identification of construction activities.

CONTENT REQUIREMENTS FOR ALL PLANS

- 83.751. Content of plans.

PLAN SUMMARY INFORMATION

- 83.761. Identification of agricultural operations and regulated facilities.
- 83.762. Operator commitment statement.

MANAGING ODORS

- 83.771. Managing odors.

ODOR BMPs

- 83.781. Identification of Odor BMPs.
- 83.782. Implementation schedule.
- 83.783. Operation and maintenance schedule.

RECORDKEEPING AND INFORMATIONAL REQUIREMENTS

- 83.791. General recordkeeping requirements.
- 83.792. Recordkeeping relating to Odor BMPs.

PLAN REVIEW AND IMPLEMENTATION

- 83.801. Initial plan review and approval.
- 83.802. Plan implementation.

PLAN AMENDMENTS AND TRANSFERS

- 83.811. Plan amendments.
- 83.812. Plan transfers.

GENERAL PROVISIONS

§ 83.701. Definitions.

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

AEU—Animal equivalent unit—One thousand pounds live weight of livestock or poultry animals, on an annualized basis, regardless of the actual number of individual animals comprising the unit.

Act—3 Pa.C.S. §§ 501—522 (relating to nutrient management and odor management).

Agricultural operations—The management and use of farming resources for the production of crops, livestock or poultry.

Animal housing facility—A roofed structure or facility, or any portion thereof, used for occupation by livestock or poultry.

CAFO—Concentrated animal feeding operation—An agricultural operation that meets the criteria established by the Department in regulations under the authority of The Clean Streams Law (35 P. S. §§ 691.1—691.1001), found in Chapter 92 (relating to National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance).

CAO—Concentrated animal operation—Agricultural operations with eight or more animal equivalent units where the animal density exceeds two AEU's per acre on an annualized basis.

Commission—The State Conservation Commission established by the Conservation District Law (3 P. S. §§ 849—864).

Conservation district—A county conservation district established under the Conservation District Law.

Facility—Refers to the animal housing facility and manure management facility, or portion of a facility, which are required to be, or are voluntarily subject to this subchapter.

Farming resources—The animals, facilities and lands used for the production or raising of crops, livestock or poultry. The lands are limited to those located at the animal facility which are owned by the operator of the facility, and other owned, rented or leased lands under the management control of the operator of the facility that are used for the application, treatment or storage of manure generated at the facility.

Fund—The Nutrient Management Fund established under section 512 of the act (relating to nutrient management fund).

Impacts—

(i) Conflicts arising from the offsite migration of the odors from agricultural facilities.

(ii) The term does not include mental or physical health affects, or changes in property values.

Livestock—

(i) Animals raised, stabled, fed or maintained on an agricultural operation with the purpose of generating income or providing work, recreation or transportation.

(ii) Examples include: dairy cows, beef cattle, goats, sheep, swine and horses.

(iii) The term does not include aquatic species.

Manure—

(i) Animal excrement, including poultry litter, which is produced at an agricultural operation.

(ii) The term includes materials such as bedding, washwater and other materials which are commingled with that excrement.

Manure management facility—

(i) A manure storage facility, including a permanent structure or facility, or a portion of a structure or facility, utilized for the primary purpose of containing manure.

(ii) The term includes liquid manure structures, manure storage ponds, component reception pits and transfer pipes, containment structures built under a confinement building, permanent stacking and composting facilities and manure treatment facilities.

(iii) The term does not include the animal confinement areas of poultry houses, horse stalls, free stall barns or bedded pack animal housing systems.

OMP—Odor management plan—Plan—

(i) A written site-specific plan identifying the Odor BMPs to be implemented to manage the impact of odors generated from animal housing and manure management facilities located or to be located on the site.

(ii) The term includes plans approved for VAOs and facilities not required to submit a plan under this subchapter.

(iii) The term includes plan amendments required under this subchapter, except when otherwise stated.

Odor BMP—Odor best management practice—A practice or combination of practices, technologies, standards and strategies to manage the potential for impacts from offsite migration of odors generated from animal housing facilities and manure management facilities that are subject to this subchapter.

Odor management specialist—A person satisfying the certification requirements of the Department of Agriculture's proposed Odor Management Certification Program which will appear in 7 Pa. Code Chapter 130f (relating to odor management certification) upon final rulemaking by the Department of Agriculture.

Odor Site Index—The field evaluation methodology developed specifically for this Commonwealth and approved by the Commission, which applies site-specific factors such as proximity to adjoining landowners, land use of the surrounding area, type of structures proposed, species of animals, local topography and direction of the

prevailing winds, to determine the potential for impacts from the offsite migration of odors from agricultural operations.

Offsite migration—The airborne movement of odors past the property line of an agricultural operation.

Public use facility—Public schools, hospitals, public nursing homes/elder care facilities and apartment buildings with greater than four dwelling units.

VAO—*Voluntary agricultural operation*—

(i) Any operation that voluntarily agrees to meet the requirements of this subchapter even though it is not otherwise required under the act or this chapter to submit an odor management plan.

(ii) The term includes agricultural operations applying for financial assistance under the act.

§ 83.702. Scope.

This subchapter specifies the criteria and requirements for:

(1) Odor management planning required under the act for certain facilities at CAOs and CAFOs.

(2) Voluntary odor management plans developed for VAOs and facilities not required to submit a plan under this subchapter, that are submitted to the Commission or delegated conservation district for approval under the act.

(3) The construction, location and operation of animal housing facilities and animal manure management facilities, and the expansion of existing facilities, as part of a plan developed under the act.

(4) The awarding of financial assistance under the act for the development and implementation of odor management plans for existing agricultural operations.

§ 83.703. Purpose.

The purposes of this subchapter are as follows:

(1) To provide for the management of odors generated only from animal housing facilities and manure management facilities on certain CAOs and CAFOs, considering the following:

- (i) Site-specific factors.
- (ii) Reasonably available technology, practices, standards and strategies.
- (iii) The practical and economic feasibility of installation and operation of the technology, practices, standards and strategies.
- (iv) The potential impacts from the facilities that may lead to conflicts between the agricultural operation and neighbors, arising from the offsite migration of the odors.

(2) To apply scientific information on odor management that is current at the time of plan approval, using the factors in paragraph (1), and recognizing the limitations of that scientific information and the subjective nature of identifying and managing odor impacts from agriculture.

(3) Odor management plans are intended to address the potential for impacts from the offsite migration of odors associated with agricultural operations. The plans are not required to completely eliminate the potential for impacts from the offsite migration of odors associated with agricultural operations.

(4) To encourage the management of odors generated from any VAOs and facilities, not required to submit a plan under this subchapter, consistent with paragraphs (1)—(3).

§ 83.704. Relation to Subchapter D (relating to nutrient management regulations).

This subchapter may not be construed as modifying, rescinding or superseding applicable manure management requirements for water quality protection contained in Subchapter D (relating to nutrient management).

§ 83.705. Preemption of local ordinances.

(a) The act and this subchapter are of Statewide concern and occupy the whole field of regulation regarding odor management to the exclusion of all local regulations.

(b) No ordinance or regulation of a political subdivision or home rule municipality may regulate the management of odors generated from animal housing or manure management facilities regulated by this chapter if the municipal ordinance or regulation is in conflict with this chapter and the regulations or guidelines promulgated under it.

(c) Nothing in the act or this subchapter prevents a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of the act and this subchapter.

(d) A penalty may not be assessed under any valid local ordinance or regulation for any violation for which a penalty has been assessed under the act or this subchapter.

§ 83.706. Limitation of liability.

If an operator for an agricultural operation is fully and properly implementing and maintaining an odor management plan approved by the Commission or a delegated county conservation district under the act and this subchapter, the implementation shall be given appropriate consideration as a mitigating factor in any civil action for penalties or damages alleged to have been caused by the odor impacts.

§ 83.707. Compliance assistance and enforcement.

(a) The Department of Agriculture will assist the Commission in developing programs to assist those engaged in production agriculture to comply with the act and this subchapter.

(b) The Department of Agriculture will act as an ombudsman to help resolve issues related to county conservation district implementation of the act and this subchapter for those conservation districts delegated odor management program responsibilities under § 83.731 (relating to delegation to local agencies).

(c) The Commission will be responsible for taking enforcement actions under the act and this subchapter. In the exercise of its enforcement authority, the Commission will be assisted by the staff of the Departments of Agriculture and Environmental Protection.

FINANCIAL ASSISTANCE FOR PLAN DEVELOPMENT

§ 83.711. Applicant eligibility.

(a) An existing agricultural operation subject to this subchapter under § 83.741(b) (relating to general), as of _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*), may apply for funding for the development of an odor management plan.

(b) Only existing agricultural operations erecting or constructing of new or expanded animal housing facilities,

or the construction of new or expanded manure management facilities, as of _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.), are eligible to receive funding under this program.

FINANCIAL ASSISTANCE FOR PLAN IMPLEMENTATION

§ 83.721. Applicant eligibility.

An owner of an agricultural operation existing as of _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.), may apply for financial assistance for the implementation of odor management plans developed under the act only when the Commission requires construction of a manure management facility as part of the nutrient management program requirements, as determined under Subchapter D (relating to nutrient management). The owner shall have legal and financial responsibility for the agricultural operation during the term of the financial assistance provided by the Commission.

DELEGATION TO LOCAL AGENCIES

§ 83.731. Delegation to local agencies.

(a) The Commission may by written agreement delegate to a conservation district one or more of its administrative or enforcement authorities under the act.

(b) The delegation of administrative or enforcement authority may be made to a conservation district when the district demonstrates it has or will have an adequate program and sufficient resources to accept and implement the delegation.

(c) To the extent delegated by the agreement, the delegations may include the authority to enforce the act and this subchapter and to exercise other powers and duties otherwise vested in the Commission to implement the act.

(d) A delegation agreement will:

(1) Specify the powers and duties to be performed by the delegated district.

(2) Provide for the commitment of sufficient trained staff and resources to perform the powers and duties to be delegated.

(3) Require the delegated conservation district to maintain records of activities performed under the delegation

ODOR MANAGEMENT PLANS

§ 83.741. General.

(a) Odor management plans submitted under this subchapter must meet the requirements in §§ 83.741, 83.742, 83.751, 83.761, 83.762, 83.771 and 83.781—83.783.

(b) *Applicability.* Agricultural operations that meet the criteria of paragraphs (1) and (2) shall develop and implement an odor management plan:

(1) *Types of operations.* Operations that meet one of the following:

(i) CAOs and CAFOs existing as of _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.).

(ii) Agricultural operations existing on _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.) which, because of an increase, resulting from expansion or construction, in

the number of animals maintained at the operation, will become regulated as either a CAO or CAFO.

(iii) New agricultural operations after _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.) which will be regulated as either a CAO or CAFO.

(2) *Types of activities.* Operations that meet one of the following:

(i) Erecting or constructing a new animal housing facility or a new manure management facility after _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.).

(ii) Erecting or constructing an expansion of an animal housing facility or a manure management facility after _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.).

(c) *Transition.* Agricultural operations that initiate facility construction prior to _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.), are not required to develop and implement an odor management plan.

(d) *Scope of plan.*

(1) The odor management plan for activities under subsection (b)(2)(i) are only required to be developed and implemented with respect to the new facility.

(2) The odor management plan for activities under subsection (b)(2)(ii) are only required to be developed and implemented with respect to the newly erected or newly constructed portion of the facility.

(e) *Schedule to obtain plan approval.* Operations required to have an odor management plan under this subchapter shall obtain approval of their odor management plan prior to the commencement of construction of new or expanded facilities.

(f) *Implementation of plans.*

(1) Operations required to have an odor management plan under this subchapter shall fully implement the approved plan prior to commencing use of the new or expanded animal housing facility and manure management facility.

(2) A plan is considered fully implemented when the Odor BMPs in the plan are being implemented in compliance with the schedule of Odor BMPs.

(g) *Voluntary plans.* An agricultural operation which is not required to comply with this subchapter may voluntarily submit a plan any time after _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.).

(h) *Qualifications.* Plans shall be developed by odor management specialists certified in accordance with the Department of Agriculture's proposed odor management certification requirements which will appear in 7 Pa. Code Chapter 130f (relating to odor management certification) upon final rulemaking by the Department of Agriculture. The specialists shall certify that the plans are in accordance with the act and this subchapter.

(i) *Signature requirements.* Plans shall be signed by the operator of the agricultural operation indicating concurrence with the information in the plan and acceptance of responsibilities under the plan. The following signature requirements apply:

(i) For sole proprietorships, the proprietor.

(ii) For partnerships, a general partner.

(iii) For corporations, a vice president, president or authorized representative. The plan must contain an attachment executed by the secretary of the corporation which states that the person signing on behalf of the corporation is authorized to do so.

(j) *Penalties.* Operators and odor management specialists who sign plans may be subject to penalties for any false information contained in the plans.

§ 83.742. Identification of construction activities.

(a) *Animal housing facilities.* The following are not considered to be construction activities requiring the development of an odor management plan under this subchapter:

(1) Replacement of existing equipment at an existing animal housing facility.

(2) Replacement of an existing animal housing facility in existence as of _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.) that has been destroyed under circumstances beyond the operator's control.

(b) *Manure management facilities.* The following are not considered to be construction activities requiring the development of an odor management plan under this subchapter:

(1) Improving storage integrity with less than or equal to a 15% increase in storage volume.

(2) Adding treatment technology, such as solids separation and composting, and their associated facilities, to agricultural operations in existence as of _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.) provided that the treatment technology is designed, constructed and operated consistent with the Commission's current "Odor Management Guidance."

CONTENT REQUIREMENTS FOR ALL PLANS

§ 83.751. Content of plans.

(a) A plan must follow the standardized plan format provided by the Commission, unless otherwise approved by the Commission.

(b) The operator shall be involved in the development of the plan.

(c) The Odor BMPs listed in the plan must be consistent with the management practices listed in other relevant plans, such as the nutrient management plan developed for the operation, unless otherwise approved by the Commission or delegated conservation district.

PLAN SUMMARY INFORMATION

§ 83.761. Identification of agricultural operations and regulated facilities.

(a) *Agricultural operation identification sheet.* The plan must include an agricultural operation identification sheet that contains the following information:

(1) The operator name, address and telephone number, and the address for the regulated facilities if that address is different from the operator's address.

(2) A description of the operation for both the existing and proposed facilities, clearly indicating the regulated facilities or portions thereof, or both, identifying how the odor will be addressed through the plan, including the following:

(i) Animal types and numbers included on the agricultural operation.

(ii) Types of structures proposed.

(iii) Land use of the surrounding area.

(3) The signatures and documentation as required by § 83.741 (relating to general).

(4) The counties and municipalities where land included in the plan is located.

(5) The name, odor management certification program identification number and signature of the odor management specialist that prepared the plan and the date of plan preparation.

(b) *Maps.* The plan must include a topographic map drawn to scale identifying the lands where the facilities that are addressed in the plan are located. The plan must clearly identify the following:

(1) The location and boundaries of the agricultural operation.

(2) The location of the neighboring homes, businesses, churches and public use facilities in the evaluation distances as determined by § 83.771(b)(3) (relating to managing odors).

(3) Land use of the surrounding area.

(4) Local topography.

(5) Direction of the prevailing winds.

(6) The location of proposed and existing animal housing and manure management facilities.

§ 83.762. Operator commitment statement.

The plan must include a statement, signed by the operator, committing to the following:

(1) Implementation of the Odor BMPs.

(2) Maintaining the Odor BMPs consistent with the operation and maintenance criteria contained in the plan.

(3) Keeping records, as described in the plan, and to allow access by the Commission or delegated conservation district to the records needed to determine compliance status.

(4) Allowing access to the agricultural operation by the Commission or delegated conservation district needed for status reviews and inspections for complaints.

(5) Providing operator's biosecurity protocols to the Commission or a delegated conservation district, if requested.

MANAGING ODORS

§ 83.771. Managing odors.

(a) *General.* Odor management plans must address the offsite migration of odors generated from facilities, as described in subsections (b) and (c). Odor management plans are intended to address the potential for impacts from the offsite migration of odors associated with agricultural operations. The plans are not required to completely eliminate the potential for impacts from the offsite migration of odors associated with agricultural operations.

(b) *Evaluation.* The plans must include an evaluation of the potential offsite migration of odors according to the following:

(1) The evaluation must address proximity to adjoining landowners, land use of the surrounding area, type of structures proposed, species of animals, local topography and direction of the prevailing winds.

(2) The evaluation need only consider the adjoining landowners and approved land use of the surrounding area, existing at the time of the submission of the plan.

(3) The number of AEUs on the agricultural operation may be used as the primary factor in determining the evaluation distance.

(4) The geographic center of a facility may be used when considering proximity to neighboring homes, businesses, churches and public use facilities.

(5) The criteria and procedures in the current "Odor Management Guidance" (Guidance) issued by the Commission, and in effect at the time of plan submission, may be used to comply with this paragraph, including the use of an Odor Site Index contained in the Guidance. If the criteria and procedures in the Guidance issued by the Commission are not followed, an alternative method must be approved by the Commission.

(c) *Odor BMPs.* Based on the evaluation in subsection (b), the plan must include Odor BMPs that are necessary, if any, to address the potential for offsite migration of odors to meet the purposes of this subchapter, and as described in § 83.781 (relating to identification of Odor BMPs).

(d) *Time period to implement.* If use of the new or expanded facility does not commence within 3 years of the date of plan approval, a new plan shall be submitted.

ODOR BMPS

§ 83.781. Identification of Odor BMPs.

(a) *General.* A plan must identify all existing and planned Odor BMPs used to address the potential for impacts from the offsite migration of odors generated from the facilities covered by the plan.

(b) *Odor BMPs.* Odor BMPs are only required if they are necessary to address the potential for impacts from the offsite migration of odors, and installation and operation of the BMPs are feasible from a practical and economic perspective.

(c) *Level of Odor BMPs.*

(1) Based on the evaluation in § 83.771(b) (relating to managing odors), and the criteria in subsection (b), determine the Odor BMPs which need to be included in the plan, if any. If Odor BMPs are needed, the BMPs must meet one of the following levels:

(i) *Level 1 Odor BMPs.* Basic Odor BMPs that are applicable to the operation according to the species of animals and that manage odors by normal maintenance activities used in the industry in this Commonwealth.

(ii) *Level 2 Odor BMPs.* Specialized Odor BMPs that are applicable to the type of operation that are in addition to the Level 1 Odor BMPs, and that manage odors according to the purposes of this subchapter.

(2) The criteria and Odor BMPs contained in the current "Odor Management Guidance" issued by the Commission, and in effect at the time of plan submission, may be used to comply with this subsection. If the criteria and Odor BMPs contained in the current "Odor Management Guidance" issued by the Commission are not followed, an alternative method must be approved by the Commission.

(d) *Description of Odor BMPs.* The plan must list the Odor BMPs, their construction and implementation criteria, and their operation and maintenance requirements.

(e) *Implementation of supplemental Odor BMPs.* Supplemental Odor BMPs may be implemented in addition to the approved Odor BMPs in the plan, on a temporary or permanent basis, without approval by the Commission or a delegated conservation district.

(1) Plan updates to address operational changes of these supplemental Odor BMPs shall be:

(i) Retained at the operation.

(ii) Submitted to the Commission or delegated conservation district for inclusion in the approved odor management plan within 30 days after the end of the calendar year in which they are implemented.

(2) Inspection reports, as provided for in § 83.802(b) (relating to plan implementation), may be used as documentation for plan updates.

§ 83.782. Implementation schedule.

(a) Odor management plans must contain a schedule that identifies all Odor BMPs with the corresponding time frames that each Odor BMP will be implemented.

(b) Odor BMPs that involve planting of vegetation such as a shelterbelt are considered fully implemented if the planting satisfies the criteria in the odor management plan.

(c) Prior to utilizing a new or expanded facility that is required to implement an odor management plan under this subchapter, the operation must receive written approval from the Commission, or a delegated conservation district, confirming implementation of the plan.

(1) The operation shall provide the Commission, or a delegated conservation district, with written notification provided by certified mail, of the intent to utilize the facility.

(2) If the Commission, or a delegated conservation district, fails to act within 10 business days on the notification to utilize the facility, it will be deemed approved.

§ 83.783. Operation and maintenance schedule.

Odor management plans must contain a schedule that identifies all operation and maintenance procedures, and the time frames that the operation and maintenance procedures will be conducted.

RECORDKEEPING AND INFORMATIONAL REQUIREMENTS

§ 83.791. General recordkeeping requirements.

(a) Unless otherwise specified in the plan, records required under this subchapter are not required to be submitted to the Commission or delegated conservation district, but shall be retained by the agricultural operation for at least 3 years.

(b) Records required under this subchapter and the plan shall be maintained on forms provided by the Commission, unless otherwise allowed by the Commission.

§ 83.792. Recordkeeping relating to Odor BMPs.

(a) Plans must be supported by the information required in this section and §§ 83.781—83.783 (relating to odor BMPs).

(b) The agricultural operation shall keep and maintain accurate records of the Odor BMPs consistent with implementation and operation and maintenance schedules under §§ 83.781—83.783 (relating to Odor BMPs).

PLAN REVIEW AND IMPLEMENTATION**§ 83.801. Initial plan review and approval.**

(a) Plans shall be submitted for initial review and approval to the Commission, or alternatively to delegated conservation districts, for agricultural operations located in counties delegated administrative authority under § 83.731 (relating to delegation to local agencies). A person performing the plan review shall be certified in accordance with the Department of Agriculture's proposed odor management certification requirements which will appear in 7 Pa. Code Chapter 130f (relating to odor management certification) upon final rulemaking by the Department of Agriculture.

(b) The Commission or a delegated conservation district will, within 10 days from the date of receipt of the plan, provide notice to the operator indicating whether all of the required plan elements have been received.

(c) The Commission or a delegated conservation district will approve or disapprove the plan or plan amendment within 90 days of receipt of a complete plan or plan amendment. The Commission or a delegated conservation district may confer with experts in odor management, such as those at Pennsylvania State University, Natural Resources Conservation Service, and with others having knowledge of the local community of the agricultural operation that is being evaluated. Upon request by the Commission or the agricultural operation, the Commission or delegated conservation district, prior to the Commission acting on the plan, shall request a recommendation on the plan from a technical committee appointed by the Nutrient Management Advisory Board.

(d) If the Commission or delegated conservation district does not act on the plan within the 90-day period, the agricultural operation that submitted the plan is authorized to implement the plan. The Commission or delegated conservation district will thereafter have another 90 days to complete review of the plan, beginning on the expiration of the initial 90-day review period. If the Commission or delegated conservation district fails to act within the second 90-day period, it will be deemed approved.

(e) The notice of determination to disapprove a plan will be provided in writing to the operator submitting the plan, and include an explanation specifically stating the reasons for disapproval. If a plan is disapproved, the operator submitting the plan for the first time shall have 90 days after receipt of the notice of disapproval to resubmit a revised plan.

(f) Approvals will be granted only for those plans that satisfy the requirements of this subchapter, and will be valid for a maximum of 3 years or until construction begins, whichever is sooner.

§ 83.802. Plan implementation.

(a) The plan shall be fully implemented in accordance with the implementation schedule included as part of the approved plan.

(b) Periodic inspections and review of the agricultural operation, the plan and the records will be conducted by the Commission or a delegated conservation district at least annually to determine the status of the operation's compliance and whether a plan amendment is required.

PLAN AMENDMENTS AND TRANSFERS**§ 83.811. Plan amendments.**

(a) A plan amendment is required if the operation expects to make a significant change in any animal housing and manure management facilities subject to this subchapter, prior to those changes being implemented.

(b) Any of the following are presumed to be a significant change in the operation which will require a plan amendment:

(1) An increase of equal to or greater than 25% in AEU's after the plan is approved.

(2) If calculations in the plan as originally submitted are in error, or if figures used in the plan are inconsistent with this subchapter, and adequate justification has not been given in writing for the inconsistency.

(3) If there is a change in the operational management system that is expected to result in an increase in the potential for offsite migration of odors under § 83.771 (relating to managing odors).

(c) Any operation which would be required to submit a plan amendment under subsection (b) may avoid that requirement if it can demonstrate that there will not be an increase in the potential for offsite migration of odors under § 83.771.

(d) A plan amendment under subsection (a) shall be developed and certified by an odor management specialist and be submitted to the Commission or delegated conservation district for approval under this subchapter.

§ 83.812. Plan transfers.

(a) An approved odor management plan may be transferred to a subsequent owner or operator of an agricultural operation by notification of the transfer to the Commission or a delegated conservation district, unless the transfer results in operational changes requiring a plan amendment under § 83.811 (relating to plan amendments).

(b) If the transfer of the approved plan results in operational changes requiring a plan amendment under § 83.811, the plan amendment shall be submitted for approval of the Commission or a delegated conservation district along with, or before, the notification required under subsection (a).

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