

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #3

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2001 JUL 25 P 3:08

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Health - DHHR TITLE NUMBER: 64

CITE AUTHORITY: W. Va. Code §16-1-9a

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Public Water Systems

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

**Brief Summary of Proposed Rule
Public Water Systems, 64csr3**

These regulations are revised to adopt federal regulations by reference for federal rules governing operation of public water systems that have been enacted since January, 1999. Rules include:

- Interim Enhanced Surface Water Treatment Rules
- Stage 1 Disinfection/Disinfection By Products Rules
- Revisions to the Lead and Copper Rules
- Revisions to the Public Notification Rules
- Revised Radio Nuclide Rules
- Clarifications to the Phase II/IV source water monitoring requirements.

Minor corrections include definition changes to match those adopted by Code in 1997 and update various citation information to reflect latest information.

STATEMENT OF CIRCUMSTANCES
Public Water Systems, 64csr3

Public Water Systems Regulations govern the requirements for public water systems for issuance of construction and operational permits; inspection requirements; control testing and record keeping and adoption of national regulations promulgated by the United States Environmental Protection Agency. The proposed revisions update similarly adopted regulations passed by the legislature in 1999 to include updated references and the adoption of the newly promulgated federal rules. Adoption of the new federal rules is a condition for continued primacy of the federal Safe Drinking Water Act and federal grant funding to the state for the public water systems surveillance program as well as the drinking water treatment revolving fund which collectively amount to over \$8 million annually.

REVISED FISCAL NOTE FOR PROPOSED RULES

Rule Title: Public Water Systems Regulations, Title 64 Series 3

Type of Rule: **Legislative** **Interpretive** **Procedural**

Agency: Bureau for Public Health, DHHR
Office of Environmental Health Services - Victor Wilford

Address: 815 Quarrier Street, Suite 418
Charleston, WV 25301

| 1. Effect of the Proposed Rule | ANNUAL | | FISCAL YEAR | | |
|----------------------------------|----------|----------|--------------|--------------|--------------|
| | Increase | Decrease | Current | Next | Thereafter |
| Estimated Total Cost | \$ | \$ | \$ 2,343,881 | \$ 2,560,367 | \$ 2,543,867 |
| Personal Services | | | 2,118,031 | 2,287,187 | 2,287,187 |
| Current Expense | | | 161,739 | 189,569 | 189,569 |
| Repairs & Alterations | | | | | |
| Equipment | | | 59,111 | 78,611 | 62,111 |
| Other (indirect cost) | | | 5,000 | 5,000 | 5,000 |
| Revenue | | | | | |

2. Explanation of above estimates.

Cost shown include current program costs. Additional costs for implementation of revised regulations is estimated as follows:

Personnel

| | | |
|--|------------------|------------------|
| 3 Environmental Resource Specialist III @ \$35,000 | \$105,000 | |
| 1 Office Assistant III @ 18,000 | 18,000 | |
| Fringes (SS, retirement, workers comp) @ 21.88% | 26,912 | |
| Civil Service Fee @ \$215/FTE | 860 | |
| Insurance @ \$4596/FTE | <u>18,384</u> | |
| Total Personnel | \$169,156 | \$169,156 |

Current Expense

| | | |
|--|-----------------|---------------|
| Office Supplies @ \$800/FTE | \$3,200 | |
| Telephone @ \$400/FTE | 1,200 | |
| Office rental @ 100ft ² /FTE @ \$12/ft ² | 4,800 | |
| Travel 1500 mi/mo/FTE @ \$.345/mi (only for 3 FTEs) | <u>18,630</u> | |
| Total Current Expenses | \$27,830 | 27,830 |

Equipment

| | | |
|--|--------------|---------------|
| Computers @ \$2500/FTE | \$7,500 | |
| Office furniture @ 3,000/FTE | 9,000 | |
| Misc. field equipment @ \$1,000/FTE (3ERIII) | <u>3,000</u> | |
| Total Equipment | \$19,500 | <u>19,500</u> |

Total Incremental Costs \$216,486

3. Objectives of this rule:

Update Public Water Systems Regulations to include new federal rules promulgated by EPA under the Safe Drinking Water Act as required to maintain primacy and avoid reductions in the federal Public Water Supply Supervision grant and capitalization grant for the Drinking Water Revolving Loan Fund.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The state is currently implementing the regulations with a budgeted amount of \$2,338,881. The amendments to the rule will add an estimated \$216,486 of additional costs. Without adoption of these regulations, the state cannot continue to be granted primacy from the United States Environmental Protection Agency and will lose a federal grant for the public water supply supervision program in the amount of \$816,900. Funding grants in the amount of \$7.5 million per year for the state Drinking Water Treatment Revolving Fund are also dependent upon continued primacy.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

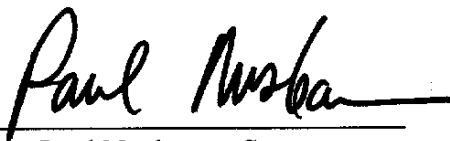
All public water supply systems will be burdened with the additional costs of monitoring and meeting the requirements of the federal Safe Drinking Water Act.

C. Economic Impact on Citizens/Public at Large.

Costs for operating public water supplies will be passed on to the consumer in the form of higher rates.

Date: July 25, 2001

Signature of Agency Head or Authorized Representative



Paul Nusbaum, Secretary
Department of Health and Human Resources

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 25, 2001

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency name, Address & Phone No.) Bureau for Public Health

Department of Health and Human Resources

State Capitol Complex, Building 3, Room 201; Charleston, WV 25305

Telephone: (304) 558-5598

LEGISLATIVE RULE TITLE: Public Water Systems Regulations

1. Authorizing statute(s) citation: WV Code Section 16-1-9a.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 11, 2001

b. What other notice, including advertising, did you give of the hearing?
Notice of the proposed rule was advertised in newspapers of general circulation and notifications were sent to industry associations including the WV Rural Water Association and WV Section of the American Water Works Association

c. Date of Public Hearing(s) or Public Comment Period ended:
July 11, 2001

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing (be exact):

July 25, 2001

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule (please type):

Martha Barnitt

Office of Regulatory Support - DHHR

Bldg. 3, Room 201, Capitol Complex

Charleston, West Virginia 25305

Tel: 558-5598

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

Vic Wilford, Director

Environmental Engineering Division - DHHR

815 Quarrier Street, Suite 418

Charleston, West Virginia 25305

Tel: 558-2981

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

- b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

TITLE 64

~~ADMINISTRATIVE LEGISLATIVE RULES~~
~~BUREAU FOR PUBLIC DIVISION OF HEALTH~~

PUBLIC WATER SYSTEMS

SERIES 3

1999-2002

WEST VIRGINIA ADMINISTRATIVE LEGISLATIVE RULES
DIVISION OF BUREAU FOR PUBLIC HEALTH
PUBLIC WATER SYSTEMS
64 CSR 3

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TITLE 64
ADMINISTRATIVE LEGISLATIVE RULES
DIVISION OF BUREAU FOR PUBLIC HEALTH
SERIES 3
PUBLIC WATER SYSTEMS

FILED

2001 JUL 25 P 3:08

§64-3-1. General.

OFFICE WEST VIRGINIA
SECRETARY OF STATE

1.1. Scope - This legislative rule establishes State standards and procedures and adopts national drinking water standards for public water systems. It establishes standards for the production and distribution of bottled drinking water, and also adopts federal standards for the certification of laboratories performing analyses of drinking water.

1.2. Authority - W.Va. Code §16-1-9a.

1.3. Filing Date - ~~April 29, 1999~~

1.4. Effective Date - ~~July 1, 1999~~.

1.5. Supersession or Repeal of Former Regulations - This rule amends and reenacts Public Water Systems, West Virginia Administrative Rules, Division of Health, 64CSR3, 1995 1999.

§64-3-2. Application and Enforcement.

2.1. Application. - This rule applies to public drinking water systems, to bottled water treatment plants and distributors and to laboratories desiring certification to perform analytic tests of drinking water.

2.2. Enforcement. - This rule is enforced by the ~~director~~ commissioner of the division of health.

§64-3-3. Definitions.

3.1. Bottled Water. - Bottled water is water that is intended for human consumption and is sealed in bottles or other containers with no added ingredients except that it may optionally contain safe and suitable antimicrobial agents. ~~Any natural or artificial mineral, spring, well, distilled or other water bottled or containerized for use primarily as drinking water.~~

3.2. Bottled Water Distributor. - A person who buys and sells bottled water on a wholesale basis.

3.3. Community Water System. - A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

3.4. ~~Director Commissioner~~ - ~~Director Commissioner~~ of the ~~division of bureau for public health~~ or his or her designee.

3.5. Non-Community Water System. - Any public water system that is not a community water system.

3.6. Person. - Individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency or any other entity recognized by law.

3.7. Public Water System. - ~~Any~~ The term "public water system" means a system or supply for the provision to the public of which regularly supplies or offers to supply, piped water to the public for human consumption through pipes or other constructed conveyances, if such system serving has at least an average of twenty-five (25) individuals per day for at least sixty (60) days per year, or which has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. Such term and includes:

(1) Any collection, treatment, storage, and distribution facilities under the control of the ~~owner or operator of the~~ such system and used primarily in connection with the such system, and

(2) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

A public water system does not include a system which meets all of the following conditions:

(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) which obtains all of its water from, but is not owned or operated by a public water system to which otherwise meets the definition such regulations apply;

(3) which does not sell water to any person; and

(4) which is not a carrier which conveys conveying passengers in interstate commerce.

3.8. Sanitary Survey. - An on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of the such source, ~~design~~, facilities, equipment, operation and maintenance for producing and distributing safe drinking water, as described in the federal regulations adopted in this rule.

§64-3-4. Public Water System Construction, Alteration or Renovation; Standards; Exceptions.

4.1. No person may shall construct, alter, renovate or award a contract for any construction, alteration or renovation of a public water system without obtaining a permit from the director commissioner.

4.2. Application for a permit to construct, alter or renovate shall be made to the director commissioner on forms prescribed by the director commissioner at least forty-five (45) days prior to the date on which approval by the director commissioner is desired. The application shall be accompanied by an engineering report, maps, and detailed plans and specifications of the proposed construction, alteration or renovation prepared by or under the direction of a registered professional engineer.

4.3. A permit to construct, alter or renovate may be revoked by the director commissioner for failure of the public water system to comply with this rule.

4.4. A permit to construct, alter or renovate is valid for two (2) years from the date of issuance.

4.5. The public water system shall be constructed, altered or renovated in accordance with the plans and specifications approved by the director commissioner in accordance with **Public Water Systems Design Standards for Public Water Supply Systems, West Virginia Administrative Legislative Rules, Division of Health, 64 CSR 42 77.**

4.6. To the extent practical, all new or expanded facilities shall be located outside of the one-hundred-year flood plain.

4.7. The director commissioner has the authority to issue an order requiring a change in the source of the water supply for the system or in the manner of collection, treatment, storage, or distribution facilities of the system before delivery to the consumer as may be necessary to safeguard the public health.

4.8. A permit to construct, alter or renovate is not required for any minor addition to, or alteration or renovation of an existing public water system which will not significantly affect the quality or quantity of the water supply service rendered. The work shall be done in accordance with the provisions of **Public Water Systems Design Standards for Public Water Supply Systems, West Virginia Administrative Legislative Rules, Division of Health, 64 CSR 42 77.**

A written description of the proposed additions, alterations or renovations shall be submitted to the director commissioner no less than ten (10) working days prior to implementing the additions, alterations or renovations under this provision. The director commissioner shall notify the system whether or not the proposed additions, alterations or renovations qualify under this provision within five (5) days of receipt of the description.

4.9. All public water supply systems using a raw water source which is open to the atmosphere or subject to surface runoff shall, at a minimum, provide filtration treatment.

§64-3-5. Permit to Operate a Public Water System.

5.1. A public water system shall be operated in accordance with this rule and the federal regulations adopted in this rule.

5.2. The ~~director~~ commissioner has the authority to develop a program for the issuing of a permit to operate a public water system. The permit is renewable annually and may be revoked for failure to comply with the requirements of this rule or the federal standards adopted herein. The permit program shall be administered uniformly. No permit shall be granted until after the ~~director~~ commissioner has completed a sanitary survey.

5.3. In the event of a proposed change in the ownership of a public water system, a written application to transfer the permit to operate shall be made to the ~~director~~ commissioner by the new owner at least fifteen (15) days before the proposed change.

5.4. The current permit to operate shall be posted in a conspicuous place at the public water system's treatment plant or main office.

§64-3-6. Inspections and Sanitary Surveys of Public Water Systems.

6.1. Public water systems shall be inspected as scheduled by the ~~director~~ commissioner and sanitary surveys shall be conducted by the ~~director~~ commissioner in accordance with the federal regulations adopted in this rule.

6.2. The ~~director~~ commissioner has the right of access to all parts of a public water system and shall be furnished access to all information and records required to be kept by this rule and the federal regulations adopted in this rule.

§64-3-7. Public Water System Disinfection Requirements.

7.1. Disinfection with chlorine, chlorine dioxide, chloramine or ozone is required of all public water systems, provided the requirements of Section 7.6 of this rule are met.

7.2. The disinfectant shall be applied during treatment at a point before entering the distribution system which will provide effective contact time.

7.3. The minimum chlorine contact time for groundwater systems not influenced by surface waters is thirty (30) minutes from the point of application to the point of delivery to the first consumer or as stipulated in Public Water Systems Design Standards for Public Water Supply Systems, West Virginia Administrative Legislative Rules, Division of Health, 64 CSR 4277. At the end of the chlorine contact time, minimum free chlorine residuals shall comply with the requirements of Table 64-3A found at the end of this rule. For these systems, the

amount of residual disinfectant in the drinking water at the treatment plant and in the distribution system shall be determined at least once per day, or more often if considered necessary by the director commissioner.

7.4. Surface water systems and groundwater systems under the direct influence of surface waters shall meet the disinfection requirements of the federal regulations adopted in this rule.

7.5. Chlorine residual testing equipment shall enable measurement of free and total chlorine residuals to the nearest 0.2 milligrams per liter in the range of 0.0 milligrams per liter to 2.0 milligrams per liter.

7.6. For all public water systems, at least 0.2 milligrams per liter of total chlorine residual shall be maintained throughout the distribution system at all times.

7.7. The director commissioner has the authority to authorize variances in the chlorine disinfection parameters specified in this section.

§64-3-8. Public Water System Fluoridation.

8.1. Except for water systems operated by public schools, average concentrations of fluoride present in the drinking water of a public water system, which artificially adjusts fluoride concentrations, shall be no less than the minimum and no higher than the maximum concentrations shown in Table 64-3B found at the end of this rule.

8.2. Average concentrations of fluoride present in a public school drinking water system shall be no less than three (3.0) milligrams per liter and no higher than six (6.0) milligrams per liter, with an optimum concentration of four and one-half (4.5) milligrams per liter.

8.3. The drinking water of fluoridated or defluoridated public water systems shall be monitored once per day for fluoride concentration. Records of the monitoring shall be maintained in accordance with Sections 9 and 10 of this rule.

8.4. At least once a month, a sample of drinking water shall be submitted by the public water system to the director commissioner or to a certified laboratory for fluoride analysis.

8.5. The requirements of Section 8.2 of this rule supersede the requirements of the **National Secondary Drinking Water Regulations**, 40 CFR Part 143, as applicable to fluoridation of public school drinking water.

§64-3-9. Public Water System Control Tests and Record Maintenance

9.1. Records of microbiological, turbidity, radiological and chemical analyses, or a summary thereof, shall be retained at a convenient location on or near the premises of the public water system. Turbidity, radiological and chemical analytical records shall be kept for ten (10) years. Control test, microbiological and operational records shall be kept for five (5) years. All

tests and analyses required by this rule or the federal regulations adopted in this rule, with the exception of on-site water system operational tests, shall be conducted by a laboratory certified by the director commissioner.

9.2. The records shall include the date, place and time of sampling; the name of the person who collected the sample; identification as to whether it was a routine distribution system sample, resample, raw or drinking water sample, or other special purpose sample; the date of the analysis; the laboratory and person responsible for performing the analysis; the analytical technique or method used for microbiological testing; and the results of the analysis.

9.3. Records of action taken by the system to correct violations of this rule or the federal regulations adopted in this rule shall be kept for three (3) years after the correction is completed.

9.4. Copies of written reports relating to sanitary surveys of the system shall be kept for ten (10) years.

9.5. Records concerning a variance or exemption from this rule or the federal regulations adopted in this rule shall be kept for at least five (5) years following the expiration of the variance or exemption.

§64-3-10. Adoption of National Regulations.

10.1. The following national regulations ~~National Primary Drinking Water Regulations and National Secondary Drinking Water Regulations~~, promulgated and published ~~prior to January 1, 1994~~, as final rules prior to adoption of this rule are hereby adopted by reference:

10.1.1. National Primary Drinking Water Regulations, 40 C.F.R. Part 141;

10.1.2. National Primary Drinking Water Regulations Implementation, Subparts F and G of 40 C.F.R. Part 142, except for Sections 142.57, 142.60, 142.61, and 142.62(c)-142.62(h); and

10.1.3. National Secondary Drinking Water Regulations, 40 C.F.R. Part 143.

10.2. The director commissioner shall use the provisions of 40 C.F.R. Part 142, Subparts F and G, as adopted in this rule as applicable in granting exemptions.

10.3. In the event of a conflict between a federal standard adopted in this rule and a state standard adopted in this rule, the more stringent standard applies, except as stated in Section 8.5 of this rule.

10.4. These regulations can be viewed on the internet at <www.epa./OGWDW/regs/cfr>.
Copies of these regulations are available in hard copy from:

U.S. Environmental Protection Agency

Region III
841 Chestnut Building 1650 Arch Street
Philadelphia, PA 19107 19103

§64-3-11. Bottled Water Treatment Plants and Distributors.

11.1. No person ~~may~~ shall operate a bottled water treatment plant in this State without receiving a permit to bottle and distribute water from the ~~director~~ commissioner.

11.2. No person ~~may~~ shall distribute bottled water in this State without receiving a permit to distribute bottled water from the ~~director~~ commissioner.

11.3. Application for a permit to bottle and distribute water shall be made to the ~~director~~ commissioner on forms prescribed by the ~~director~~ commissioner. Four (4) sets of completed applications, and plans and specifications for the treatment plant shall be submitted to the ~~director~~ commissioner for approval at least forty-five (45) days prior to the date on which a permit from the ~~director~~ commissioner is desired.

11.4. The source of the water to be bottled and the bottled water shall comply with Beverages, 21 CFR, §165 final regulations promulgated and published as final rules prior to the adoption of this rule, with the exception of Sections 165.3(b), 165.110(a)(2)(ii) and 165.110(b)(2). ~~the requirements of this rule and the requirements of the federal regulations adopted in this rule pertaining to primary and secondary contaminants, sodium, fluoridation, maximum contaminant levels, sampling techniques and monitoring frequencies, for a community water system, except that the monitoring frequency for microbiological contaminants shall be no less than once each week.~~

11.4.a. The name of the water from a subsurface saturated zone that is under a pressure equal to or greater than atmospheric pressure is "ground water". Ground water found to be under the direct influence of surface water as defined in 40 C.F.R. §141.2, as adopted by this rule, shall be treated by a method approved by the commissioner.

11.4.b. The frequency for microbiological monitoring shall be not less than weekly and the determination of microbiological acceptability shall be determined in accordance with 40 C.F.R. §141.63, as adopted by this rule.

11.5. A bottled water treatment plant shall be operated in accordance with the provisions of the federal standards, **Current Good Manufacturing Practice in Manufacturing, Packaging or Holding Human Food, 21 CFR Part 110, and Processing and Bottling of Bottled Drinking Water, 21 CFR §129,** final regulations promulgated and published as a final rule prior to the adoption of this rule in effect as of October 30, 1990, and these standards are hereby adopted by reference.

11.6. Each in-State bottled water treatment plant shall be inspected every twelve (12) months or as otherwise determined by the ~~director~~ commissioner.

11.7. An out-of-State bottled water treatment plant desiring to distribute bottled water in West Virginia shall apply for a permit to bottle and distribute bottled water on forms approved by the ~~director~~ commissioner. Four (4) copies of all materials shall be submitted. The out-of-state treatment plant shall comply with the requirements of this rule and the federal regulations adopted in this rule for in-state bottled water treatment plants. Subsequent to the initial evaluation, monitoring of the treatment plant by the regulatory agency of the state wherein the treatment plant is located is considered acceptable for the purposes of this rule. The out-of-state treatment plant shall notify the ~~director~~ commissioner of any corrective action it is required to take by its state regulatory authority and shall notify the ~~director~~ commissioner of any change in ownership or in the event that it closes.

11.8. A person wishing to distribute bottled water in the State who does not operate a bottled water treatment plant shall apply for a permit to distribute bottled water on a form approved by the ~~director~~ commissioner. The applicant shall identify the location of the plants from which the bottled water is obtained and any distributor other than the bottled water plant from which the bottled water is obtained and shall provide other information required by the ~~director~~ commissioner. The ~~director~~ commissioner shall grant a permit to distribute bottled water if the bottled water complies with the requirements of this rule.

11.9. A permit issued by the ~~director~~ commissioner may be revoked for failure to comply with provisions of this rule.

§64-3-12. Public Water System Reporting Requirements.

12.1. Unless otherwise specified in this rule or the federal regulations adopted in this rule, the results of any test, measurement or analysis required to be made by this rule or the federal regulations adopted in this rule shall be reported to the ~~director~~ commissioner within forty (40) days of the system's receipt of the test, measurement or analysis.

12.2. Analytical results for total trihalomethane (TTHM) analyses shall be reported to the ~~director~~ commissioner within thirty (30) days of the system's receipt of the results.

12.3. Failure to comply with this rule or the federal regulations adopted in this rule shall be reported to the ~~director~~ commissioner within forty-eight (48) hours of the discovery of the violation.

12.4. Analytical results of tests performed by the laboratory of the division of health are not required to be reported.

12.5. A written summary of the public water system operation, test data, and other information as may be required by the ~~director~~ commissioner shall be submitted to the ~~director~~ commissioner at least once per month. The ~~director~~ commissioner may require more frequent reports in cases where there are public health concerns.

12.6. All reports and summaries required by this rule or ~~the~~ federal regulations adopted

in this rule shall be submitted in a manner or form approved by the director commissioner.

12.7. The water supply system shall submit to the director commissioner a representative copy of each type of notice distributed, posted or made available to the public or media within seven (7) days following any public notification ~~of the public~~ of a violation(s) of this rule or of the federal regulations adopted in this rule.

§64-3-13. Certification of Laboratories to Conduct Drinking Water Tests.

13.1. All laboratories providing drinking water testing results for purposes of this rule or the federal regulations adopted in this rule shall be certified by the director commissioner or by the Federal Environmental Protection Agency.

13.2. A certified laboratory shall:

~~13.2.a. comply with the requirements contained in the federal Environmental Protection Agency's manual for the certification of laboratories analyzing drinking water, fourth edition, March 1997, and the requirements of this manual are hereby incorporated by reference; or~~

13.2.a. Comply with the requirements and criteria contained in the sections titled "Types of Certification," "Other Considerations for Laboratory Certification," "Requirements for Maintaining Certification Status," "Criteria and Procedures for Downgrading/Revoking Certification Status," and "Laboratory Quality Assurance Plan" of Chapter III, and in Chapters IV, V and VI of the federal Environmental Protection Agency's Manual for the Certification of Laboratories Analyzing Drinking Water, Fourth Edition, March 1997 including all changes made hereto and promulgated and published as a final rule prior to the adoption of this rule; or any other accreditation deemed to be equivalent by the commissioner, or

13.2.b. Comply with the requirements of this rule and hold a certificate of recognition from the National Environmental Laboratory Accreditation Program (NELAP) for the analysis of drinking water.

13.3. An in-state laboratory shall submit an application form when seeking initial approval sixty (60) days prior to the date certification is desired.

13.4. A laboratory located outside the boundaries of this state shall be certified by the director commissioner if:

13.4.a. It has been certified by the Federal Environmental Protection Agency; or

13.4.b. It has been certified by a program for the certification of laboratories equivalent to the program of this state as determined by the director commissioner. If the program of the state in which the laboratory is located is not judged equivalent, the laboratory may request an on-site evaluation and full certification review by the director commissioner.

13.5. An out-of-state laboratory shall submit an application form when seeking initial approval and shall include with its application evidence of compliance with Subdivision Section 13.4.a.1 or 13.4.b 2. of this rule. The out-of-state laboratory shall notify the director commissioner immediately of any change in its certification status under Subdivision 13.4.a. or 13.4.b. of this rule.

13.6. The director commissioner shall conduct an on-site inspections of in-state laboratories to determine compliance with this rule and the federal standards adopted in this rule initially prior to certification, and at least every three (3) years thereafter. ~~An inspection shall be conducted prior to certification and inspections shall be conducted at least every three (3) years thereafter.~~ The division has the right of entry ~~may enter a laboratory~~ upon proper identification at any time considered necessary during operating hours in order to conduct the inspections.

13.7. The director commissioner shall issue certificates of approval upon initial approval and shall renew the certificates on an annual basis thereafter pursuant to the conditions listed in this rule. Certificates issued shall contain the name and location of the laboratory, a laboratory code number, the name of the laboratory director and the date of expiration of the certificate.

13.8. Certified laboratories shall notify the director commissioner when there is a change in ownership, laboratory director, technical personnel or location of the laboratory.

13.9. The director commissioner shall administer and use the criteria and procedures of the section titled "Criteria and Procedures for Downgrading/Revoking Certification Status" of the **Manual for the Certification of Laboratories Analyzing Drinking Water** referenced in Subsection Section 13.2. of this rule.

§64-3-14. Penalties.

Any person who violates any provision of this rule or orders issued under this rule, is guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ~~twenty-five~~ fifty (\$50) dollars ~~(\$25)~~ nor more than ~~two five~~ five hundred dollars ~~(\$200) (\$500)~~ and each day's violation shall constitute a separate offense. In addition, thereto, the director commissioner of health or his or her authorized representative may seek injunctive relief in the circuit court of the county in which all or part of the public water system is situated for threatened or continuing violations. For a willful violation of this rule or orders issued under this rule, a person, upon a finding thereof by the circuit court of the county in which the violation occurs, is subject to a civil penalty of not more than five thousand dollars (\$5,000), and each day's violation is grounds for a separate penalty.

§64-3-15. Administrative Due Process.

Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the **Rules of Procedure for Contested Case Hearings and Declaratory Rulings, West Virginia Administrative Rules, Division of Health, 64 CSR 1.**

64 CSR 3

TABLE 64-3A.

**Minimum Levels of Free Chlorine Residual at Various
Water Sample pH Levels**

| <u>pH VALUE</u> | <u>FREE CHLORINE RESIDUAL</u> |
|-----------------|-----------------------------------|
| Up to 7.0 | 0.4 mg/l |
| 7.1 to 8.0 | 0.6 mg/l |
| 8.1 to 9.0 | 1.0 mg/l |

TABLE 64-3B.

**Average Acceptable Range of Fluoride Concentration
at Various Annual Average Maximum Daily Air
Temperatures**

| <u>ANNUAL AVERAGE MAXIMUM DAILY AIR TEMPERATURE</u> | <u>FLUORIDE CONCENTRATION IN MILLIGRAMS PER LITER</u> | | |
|---|---|----------------|--------------|
| | Lower | Optimum | Upper |
| 53.8 - 58.3° F 12.1 - 14.6° C | 0.8 | 1.1 | 1.5 |
| 58.4 - 63.8° F 14.7 - 17.7° C | 0.8 | 1.0 | 1.3 |
| 63.9 - 70.6° F 17.7 - 21.4° C | 0.7 | 1.9 | 1.2 |

PUBLIC COMMENTS AND DEPARTMENT RESPONSES

Public Water Systems Regulations 64CSR3

Howdy Henritz, Manager, Sweet Springs Valley Water Company and Cecil Martin, Plant Manager, Allegheny Products, Inc. commented about subsection 11.4 of the proposed regulation. Both commenters provided similar comments and proposed solutions.

COMMENT

The reference to 21CFR165.3(b) would create unnecessary and costly expenses for the bottling facilities within the State of West Virginia since it proposes multiple sampling of each source.

AGENCY RESPONSE

The agency proposes not to adopt 21CFR165(b). The requirements have been replaced with sampling requirements previously in effect of sampling once per week. This is shown in §64-3-11.4(b).

COMMENT

Adoption of 21CFR165.110(4)(b)(2) requires that microbiological standards be determined in a manner inconsistent with current laboratory practices and microbiological standards for public water supply systems.

AGENCY RESPONSE

The agency proposes not to adopt 165.110(4)(b)(2) of 21CFR165. The agency is proposing that microbiological standards be determined for acceptability using current methodologies and laboratory practices for public water supply systems. The change is indicated in §64-3-11.4(b) that will require microbiological acceptability be determined in accordance with the 40CFR161.63.

COMMENT

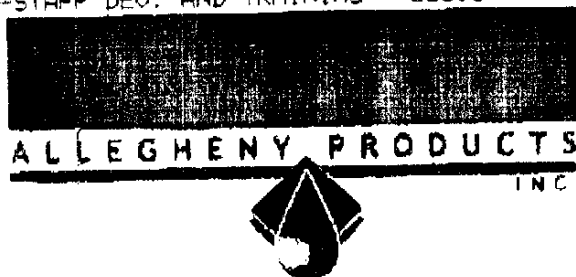
Adoption of the requirement of 40CFR165.110(a)(2)(ii) would greatly adverse the state's bottled water industry because it would require groundwater under the direct influence of surface water not to be used as a source for bottled water plants. Many of the state's bottled water companies rely upon wells and/or springs that may be adversely impacted by this requirement.

AGENCY RESPONSE

Groundwater under the direct influence of surface water may not necessarily be harmful to public health provided that it is treated in accordance with the requirements of the *Surface Water Treatment Rule* adopted by these regulations under 40CFR141. Accordingly, the agency proposes not to adopt 21CFR165.110(a)(2)(ii) and instead, modify the regulation to require that groundwater found to be under the direct influence of surface water as defined by 40CFR141.2 shall be treated in a method approved by the Commissioner. This will permit current groundwater sources that may be under direct influence to be treated in the same manner as municipal water supplies for the bottling industry.

AGENCY MODIFICATIONS

In its final review of the rule, the agency determined that it had erroneously omitted changing the word "*director*" to the word "*commissioner*" to be compatible with recent changes to the West Virginia State Code, Chapter 16, Article 1 which refers to the commissioner of health rather than the director of health.



RECEIVED

JUL 11 2001

July 10, 2001

Beth Marquart
Director
Regulatory Support - DHHR
State Capitol Complex Building 3, Room 201
Charleston, West Virginia 25305

Dear Ms. Marquart:

In regard to the public comment period for the proposed rule change for the Division of Health pertain to Department of Health and Human Resources, Title 64 Series 3, W Va. Code 16-1-9A pertaining to public water systems, I suggest the following:

Section 64-3-11.4 for Bottled Water Treatment Plans and Distributors affects Allegheny Products, Inc. directly. The statement "the source of the water to be bottled and the bottled water shall comply with Beverages, 21CFR, 165". The definition of a sample in 165.3(b) will create a huge expense for bottling facilities in the State of West Virginia. With a requirement to take one sample a week from each source water and each product water for analysis as defined in the in the above-mentioned, would increase to an unbelievable amount of time and expense. A sample in terms of those of us in the business is that a sample consists of the amount of water necessary in any given lot for the purpose of analysis in a credited laboratory. It is more feasible that section 165.3b be omitted from you adoption of Beverages 21 CFR 165.

The microbiological standard for bottled water is somewhat different from those for public water systems inasmuch that the microbiological quality standard for bottled water should be the same as those standard adopted in the rule for public water systems. The current microbiological standard are more than sufficient to protect public health and makes Section 165.110(4)(b)(2) of 21 CFR 165 unnecessary as part of a final ruling

The adoption of Section 165.110(a)(2)(11) states "ground water must not be under the direct influence of surface water as defined in 40CFR 141.2." The wording of


ALLEGHENY PRODUCTS



INC.

this Section will invariably may force bottlers of natural spring water to change product labels to drinking water or bottled water, thus diminishing their marketing advantage of natural spring water. This wording can actually cause such loss of revenue that it may force the closure of some bottled water facilities. Ground water, under the direct influence of surface water, is not harmful to public health. It is my wish that Section 165.110(a)(2)(ii) be adopted with the omission that ground water found to under the direct influence of surface water as defined by 49CFR 141.2, shall be treated by a method that is approved by the Director of Public Health, Sanitation Division.

Please accept my recommendations that Section 11.4 of 64-3-1 be considered:

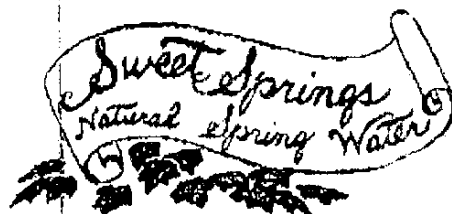
- 11.4.1 The source of the water to be bottled and the bottled water shall comply with Beverages, 21CFR, 165 final regulations promulgated and published as final rules prior to the adoption of this rule, except that the monitoring frequency for microbiological contaminants shall be no less than once each week.
- 11.4.a The name of the water from a subsurface saturated zone that is under a pressure equal to or greater than atmospheric pressure is "ground water." Ground water found to be under the direct influence of surface water as defined in the CFR 141.2 should be treated by a method approved by the Director.
- 11.4.b. Microbiological quality shall be the same as adopted in this rule for public water.

Thank you for your time and for allowing me to represent my thoughts regarding Allegheny Products, Inc. and the impact of the above-mentioned rulings.

With best regards,

Cecil Martin
Plant Manager

CM/klc



798 Rowan Road
Cap Mills, West Virginia 24941

Bottled and Distributed by
Sweet Springs Valley Water Co.
Cap Mills, West Virginia 24941

RECEIVED

JUL 10 2001

Howdy Henriz
Plant/Sales Manager
(304) 772-3201



June 29, 2001

Beth Marquart, Director
Regulatory Support - DHHR
State Capitol Complex
Bldg. 3, Room 201
Charleston, WV 25305

This letter is in response to the public comment period for the proposed rule change for the Division of Health; DHHR, Title 64 series 3, W.Va. Code 16-1-9A for Public Water Systems. My concerns are with Section 64-3-11.4 for Bottled Water Treatment Plants and Distributors in which it states that "the source of the water to be bottled and the bottled water shall comply with Beverages, 21CFR, 165.

My first concern is that the definition of a "sample" in 165.3(b) will create an unnecessary and costly expense for bottling facilities in the state. We are already required to send one sample a week from each source water and each product water for analysis and as defined above this sampling would increase almost 10 fold. I feel a more appropriate definition of a sample would be that a sample consist of the amount of water necessary from a representation of a given lot for the purpose of analysis. I therefore suggest that you exclude section 165.3(2)(b) from your adoption of Beverages 21CFR, 165.

My next concern is that the microbiological standards for bottled water are different than those for public water systems. I feel that the microbiological quality standards for bottled water should be the same as those adopted in this rule for public water systems. I also believe that the current microbiological standards are sufficient to protect the public health and therefore section 165.110(4)(b)(2) of 21CFR 165 should not be adopted as part of your final rule.

My final concern with your proposed rule has to do with the adoption of Section 165.110(a)(2)(ii) where it states "Ground water must not be under the direct influence of surface water as defined in 40CFR 141.2." This terminology may force bottlers of natural spring water to have to change their product names to just drinking water or bottled water thereby eliminating their marketing advantage of a natural spring water. It could actually cause such loss of revenue that it could force the closing of some spring water bottling facilities.

Ground water under the direct influence of surface water is not necessarily harmful to the public health. I therefore suggest that you adopt section 165.110(a)(2)(ii) with the exception that ground water found to be under the direct influence of surface water as defined by 40CFR 141.2 shall be treated by a method approved by the director.

(over)

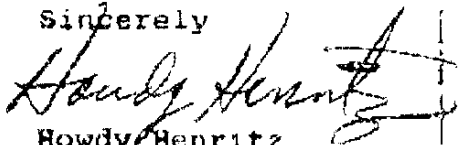
In conclusion, I would recommend that Section 11.4 of 64-3-1 be adopted as follows;

11.4. The source of the water to be bottled and the bottled water shall comply with Beverages, 21 CFR, 165 final regulations promulgated and published as final rules prior to the adoption of this rule, except for Section 165.3(b); Section 165.110(a)(2)(ii); Section 165.110(b)(2) and except that the monitoring frequency for microbiological contaminants shall be no less than one each week.

11.4.a. The name of the water from a subsurface saturated zone that is under a pressure equal to or greater than atmospheric pressure is "ground water." Ground water found to be under the direct influence of surface water as defined in 40 CFR 141.2 shall be treated by a method approved by the Director.

11.4.b. Microbiological quality shall be the same as adopted in this rule for public water.

Sincerely



Howdy Henritz
Manager