

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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FILED

AUG 15 12 27 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Department of Health and Human Resources TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code §16-1-7

AMENDMENT TO AN EXISTING RULE: YES NO

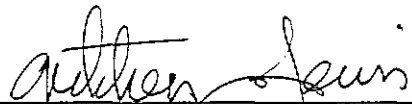
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Public Water Systems

IF NO, SERIES NUMBER OF NEW 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.



Gretchen O. Lewis, Secretary
Department of Health and Human Resources

7.20

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Public Water Systems, 64 CSR 3
 Type of Rule: X Legislative Interpretive Procedural
 Agency Department of Health and Human Resources
 Address Building 3, Capitol Complex
Charleston, W. Va. 25305

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					
Estimated Revenue					

2. Explanation of above estimates.

Implementation of the proposed amendments does not require additional general revenue funds.

3. Objectives of these rules:

Two proposed amendments adopt the National Primary Drinking Water Regulations related to lead and copper and update the rule to include a few changes in the national public drinking water standards promulgated and made effective by the United States Environmental Protection Agency (EPA) January 1, 1993 through December 31, 1993. These standards are mandatory for all public water systems by virtue of EPA regulations. Adoption at the State level will allow the Department of Health and Human Resources to continue to monitor compliance. In the absence of adoption at the State level, the standards will be enforced by the federal government. One additional revision revises reporting requirements.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Failure to adopt the revised rule will result in the loss of approximately \$595,000 in annual federal funding.

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

Some public water treatment plants will incur expenditures in upgrading to the new requirements. These costs will be incurred regardless of whether the State adopts the federal standards (See Item #3), and will vary. Data to provide specific estimates for individual systems is not available. The Division of Health will assist individual systems in minimizing costs.

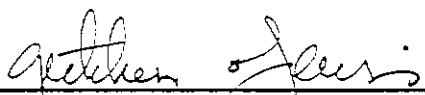
C. Economic Impact on Citizens/Public at Large.

The economic impact for the public at large will be negligible. Some systems may apply to the Public Service Commission to increase rates to fund their costs. Availability of water treated to meet current national standards may encourage the location of new business, thus improving the economic outlook in those areas in which water systems are upgraded.

Lead in drinking water, in combination with other sources of contamination such as dirt and dust, can pose a risk to young children with possible damage to their mental and physical development. These risks include lowering of IQ and shortened attention span in school. Pregnant women and the unborn fetuses may suffer premature deliveries and low birth weights. Copper above certain levels can induce a toxic reaction in people suffering with Wilson's Disease.

Date May 4, 1994

Signature of Agency Head or Authorized Representative



Gretchen O. Lewis, Secretary
Department of Health and Human Resources

DATE: August 15, 1994
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: Department of Health and Human Resources
LEGISLATIVE RULE TITLE: Public Water Systems

1. Authorizing statute(s) citation W. Va. Code §16-1-7

2. a. Date filed in State Register with Notice of Hearing:

5-6-94

b. What other notice, including advertising, did you give of the hearing?

Notice was sent to water companies.

c. Date of hearing(s): Comment Period 5-6-94 to 6-6-94

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)

August 15, 1994

f. Name and phone number of agency person to contact for additional information:

Kay Howard 558-3223

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 of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

RULE ABSTRACT

Date: August 12, 1994

Agency: Division of Health, Department of Health and Human Resources

Rule Title: Public Water Systems

CSR Title and Series: 64 CSR 3

Type: Legislative

Summary: The Department of Health and Human Resources proposes to amend Section 10 of the Public Water Systems Rule to adopt the National Primary Drinking Water Regulations related to lead and copper, and also a few changes in the national drinking water standards promulgated and made effective by the United States Environmental Protection Agency (EPA) January 1, 1993 through December 31, 1993.

These proposed new standards are applicable to public drinking water systems by virtue of their adoption by the EPA. Adoption of the standards by the Department means that the State, rather than the Federal government, will continue to monitor compliance. In Federal terminology, this allows the State to retain "primacy" for the national "Safe Drinking Water Act" which regulates the State's 2,500 public water supply systems. Present Federal funding for this monitoring program is \$595,000; failure to adopt this set of standards will result in the loss of these funds.

For further information contact: William Herold, Office of Environmental Health, Bureau of Public Health, 815 Quarrier Street, Suite 418, Charleston, WV 25301, telephone 558-2981 or the Office of Regulatory Development, Department of Health and Human Resources, Room 265, Building 3, Capitol Complex, Charleston, WV 25305, telephone 558-3223.

Copies of the federal drinking water standards are available from the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, Telephone (215) 597-8227 or can be viewed at the Office of Environmental Health or in any public library which is a Government Documents Depository Library.

PROPOSED RULE

TITLE 64

WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH

PUBLIC WATER SYSTEMS

SERIES 3

199_

For Filing with the
Legislative Rule-Making Review Committee

[PROPOSED]
WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH
PUBLIC WATER SYSTEMS
64 CSR 3

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[PROPOSED] - TITLE 64
WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH
SERIES 3
PUBLIC WATER SYSTEMS

§64-3-1. General.

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** -

1.4. **Effective Date** -

1.5. **Supersession or Repeal of Former Regulations** - This rule amends and reenacts Public Water Systems, West Virginia Administrative Rules, Division of Health, 64 CSR 3, 1994.

§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 of the division of health.

§64-3-3. Definitions.

3.1. **Bottled Water** - 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** - Director of the division of 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 water system or supply which regularly supplies or offers to supply, piped water to the public for human consumption, if serving 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 and includes:

(1) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the 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 which otherwise meets the definition;

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

(4) which is not a carrier 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 source, design, facilities, equipment, operation and maintenance for producing and distributing 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 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.

4.2. Application for a permit to construct, alter or renovate shall be made to the director on forms prescribed by the director at least forty-five (45) days prior to the date on which approval by the director 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 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 in accordance with Design Standards for Public Water Supply Systems, West Virginia Administrative Rules, Division of Health, 64 CSR 42.

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 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 Design Standards for Public Water Supply Systems, West Virginia Administrative Rules, Division of Health, 64 CSR 47 42.

A written description of the proposed additions, alterations or renovations shall be submitted to the director no less than ten (10) working days prior to implementing the additions, alterations or renovations under this provision. The director 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 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 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 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 and sanitary surveys shall be conducted by the director in accordance with the federal regulations adopted in this rule.

6.2. The director 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 Design Standards for Public Water Supply Systems, West Virginia Administrative Rules, Division of Health, 64 CSR 42. 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.

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 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 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.

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 Primary Drinking Water Regulations and National Secondary Drinking Water Regulations, promulgated and published prior to January 1, 1993 1994, as final rules are hereby adopted by reference:

10.1.1. 40 C.F.R. Part 1417-~~except for Section 141.21(d)(2) and Subpart F (the lead and copper rule)~~;

10.1.2. 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. 40 C.F.R. Part 143.

10.2. The Director 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. Copies of these regulations are available from:

U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

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

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

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

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

11.4. The source of the water to be bottled and the bottled water shall comply with 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.

11.5. 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, 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.

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. 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 of any corrective action it is required to take by its state regulatory authority and shall notify the director 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. 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. The director 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 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 herein 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 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 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 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 shall be submitted to the director at least once per month. The director 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.

12.7. The water supply system shall submit to the director a representative copy of each type of notice distributed, posted or made available to the public or media within seven (7) days following any notification of the public of a violation 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 or by the Federal Environmental Protection Agency.

13.2. A certified laboratory shall comply with the requirements of this rule and with the requirements and criteria contained in the sections titled "Local Laboratories," "Other Considerations for Laboratory Certification," "Requirements for Maintaining Certification Status," "Criteria and Procedures for Downgrading/Revoking Certification Status," and "Training," 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, Third Edition, April, 1990, Change 1, October, 1991, and Change 2, September, 1992 and these parts of the manual are hereby adopted by reference.

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 if:

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

13.4.2. It has been certified by a program for the certification of laboratories equivalent to the program of this State as determined by the director. 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.

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 Section 13.4.1 or 13.4.2 of this rule. The out-of-state laboratory shall notify the director immediately of any change in its certification status under Section 13.4.1 or 13.4.2.

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

13.7. Certificates of approval shall be issued upon initial approval and are renewable on an annual basis thereafter pursuant to the conditions listed in this rule. Certificates issued will 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 when there is a change in ownership, laboratory director, technical personnel or location of the laboratory.

13.9. The director 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 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 dollars (\$25) nor more than two hundred dollars (\$200) and each day's violation shall constitute a separate offense. In addition, thereto, the director 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.

§64-3-16. Severability.

The provisions of this rule are declared to be severable. If any provision of this rule is held invalid, the remaining provisions remain in effect.

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	0.9	1.2

Discussion of Public Comments Received
Concerning the Proposed Rule,
Public Water Systems, 64 CSR 3

The proposed rule was filed May 6, 1994, for a public comment period to end June 6, 1994. The Department's responses to comments received are presented below.

1. **Comment:** Section 12.1. Three commenters objected to the proposed change in the time requirements for reporting test, measurement or analyses results to the Director from forty days of the systems receipt of the test, measurement or analysis to on or before ten calendar days after the last day of the sampling period for the test, measurement or analysis.

Response: The Department has reconsidered and has withdrawn the proposed amendment. An emergency filing of this rule, executed in order to comply with a federal deadline, was approved by the Secretary of State June 30, 1994. The emergency rule did not include the proposed change in reporting time requirements.

2. **Comment:** One commenter supported having State-level enforcement of the rule.

PUBLIC WATER SYSTEMS
64 CSR 3
Comments

Date Received	Name	Copy Mailed to Bill Herold
5/23/94	Arthur I. Boreman Elementary School	5/23/94
5/23/94	West Virginia-American Water Company (Sent Certified-Return receipt requested)	5/23/94
6/2/94	Town of Oceana	6/2/94
6/6/94	West Virginia Rural Water Association	6/13/94



West Virginia-American Water Company

RECEIVED

P.O. Box 1906 • Charleston, WV 25327-1906 • (304) 345-3474

MAY 25 1994

REGULATORY DEVELOPMENT SECTION

May 20, 1994
File No. 384.08

CERTIFIED - RETURN RECEIPT REQUESTED
P 680 205 813

Regulatory Development
Department of Health & Human Resources
Room 265, Building 3
Capitol Complex
Charleston, WV 25305

Attention: Kay Howard

**SUBJECT: PUBLIC COMMENT ON THE MAY 4, 1994, PROPOSED AMENDMENT TO
THE PUBLIC WATER SYSTEMS LEGISLATIVE RULE 64 CSR 3**

Comments are submitted herein on behalf of West Virginia-American Water Company which owns and operates 15 water treatment plants in West Virginia which serves water through 24 public water systems in West Virginia, Ohio, and Virginia. Pertaining to that segment of the May 4, 1994, proposed rule amendment, cited as follows:

The Department also proposes to change the time requirements for reporting test, measurement or analyses results to the Director from "within forty (40) days of the system's receipt of the test, measurement or analysis" to "on or before ten (10) calendar days after the last day of the sampling period for the test, measurement or analysis." This change will insure that public water systems meet current Federal requirements and will allow the Department to respond quickly to violations which may affect public health...

...the complexity of certain types of analyses, such as organic chemicals, necessitates that these tests be performed by laboratories housed in facilities other than those of the public water supplies. Sample transport and laboratory analysis time almost always result in a turn-around time greater than 10 calendar days for such an analysis. Therefore, to require that all analysis results be reported to the State on or before 10 calendar days after the last day of the sampling period effectively decreases the monitoring period; that is, for facilities to meet these deadlines, samples will have to be collected in the first portion of the monitoring period in order to have any reasonable assurance that results will be received, reviewed, and submitted by 10 days after the end of the sampling period. It seems that this is not consistent with EPA's intent in allowing quarterly monitoring periods for parameters such as synthetic organic chemicals, disinfection by-products, and volatile organic chemicals. We would also point out that this shortening of the sampling period would cause an undue hardship on laboratories required to process

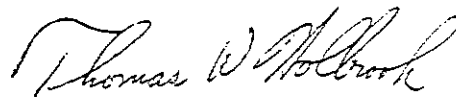
Department of Health & Human Resources
May 20, 1994
Page 2

samples from multiple facilities submitted in the first month of a given quarter. It seems, as well, that shortening of the monitoring period would greatly increase the potential for systems to encounter non-compliance as a result of failure to monitor or failure to report according to deadlines.

Regarding concerns for quick and appropriate responses to "violations which may affect public health," it seems that the follow-up monitoring and public notice requirements which are contained in the current regulations should provide this protection.

If further discussion or clarification on this issue is necessary, please contact me at 340-0710.

Sincerely,



Thomas W. Holbrook
Director of Water Quality

TWH/ja

cc: Mr. William Herold
Office of Environmental Health
Bureau of Public Health

TOWN OF OCEANA
P. O. Box 190
OCEANA, WEST VIRGINIA 24870
1(304) 682-6231

May 31, 1994

RECEIVED

JUN - 2 1994

REGULATORY DEVELOPMENT
SECTION

Regulatory Development
Department of Health & Human Resources
Room 265, Building 3, Capitol Complex
Charleston, West Virginia 25305
ATTN: Kay Howard

Re: Agency: Department of Health and Human Resources - Title Number 64
Rule Type: Legislative: Cite Authority: W.Va. Code §16-1-9a
Series Number of Rule Being Amended: 3
Title: Public Water Systems

Date: May 4, 1994

Agency: Division of Health, Department of Health and Human Resources
Rule Title: Public Water Systems
CSR Title and Series: 64 CSR 3 Type: Legislative

The Town of Oceana, Wyoming County, West Virginia, is a municipal corporation owning and operating the community public water system of Oceana Water Works.

During the months of October and November, 1993, the Oceana Water Works collected, submitted for testing, measurement and analyses 40 samples of water used in the households served by the system pursuant to the regulations.

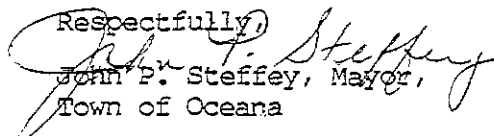
These samples were submitted to REIC Laboratory, P.O.Box 286, Beaver, W.Va. 25813 (Telephone: 1-304-255-2500), and it is noted from the records that the period of time for the completion of the analyses consisted of ten days or more at a total cost to the Oceana Water Works of \$945.50.

The proposed change of the time requirements for reporting test, measurement or analyses results to the Director from "within forty (40) days of the system's receipt of the test, measurement or analysis" to "on or before ten (10) calendar days after last day of the sampling period for the test, measurement or analysis," may not be feasible by the Oceana Water Works in view of the records of the performance of the laboratory of the testing in 1993.

The collection of the samples for the testing and submission to the laboratory and reporting the results to the Director are performed by the regular operators of the Oceana Water Works in addition to their regular duties and responsibilities, and it may be necessary to hire additional employees to assist in this procedure.

The costs and expenses incurred in the testing is a financial burden on the Oceana Water Works; and, inasmuch as all of these services on the part of the Oceana Water Works constitutes a part of the monitoring process by the State, which receives Federal funding in the amount of \$595,000.00, it is proposed that the Town of Oceana and other municipalities be reimbursed for the expenses of the testing based upon the number of tests required.

Respectfully,


John P. Steffey, Mayor,
Town of Oceana

WEST VIRGINIA RURAL WATER ASSOCIATION

June 3, 1994

Ms. Kay Howard
Regulatory Development
Dept. of Health & Human Resources
Room 265, Building 3, Capitol Complex
Charleston, West Virginia 25305

Dear Ms. Howard:

Thank you for the opportunity of commenting on the proposed changes to the legislative rule on Public Water Systems.

My comment addresses the proposed change to Sec. 64-3-12.1.

The deletion of the "forty (40) days" and substitution of "ten (10) days" will adversely affect the original purpose of the paragraph. When originally drafted, the forty (days) was established to provide the necessary delay in reporting daily tests conducted by the system and reported in the required monthly operation report (ref. para. 12.5).

This rule requires the daily testing of chlorine residuals (ref. para. 3-7.3). This same requirement is true for fluoride (ref. para. 3-8.3).

The National Primary Drinking Water Regulations adopted by reference (64-3-10) requires that public water systems conduct daily testing for turbidity - 141.22 (a).

Subpart D of the NPDW Regulations (141.31.a) may make the change and my comments moot points. When comparing the proposed change and this section, I am left in doubt as to what the requirement for reporting daily tests will be if the proposed language is adopted.

Sincerely,

Chet Fleming
Chet Fleming
Groundwater Technician

cc:Wm. Herold

Recvd 6/6/94



ARTHUR I. BOREMAN ELEMENTARY SCHOOL
P.O. Box 299
Middlebourne, West Virginia 26149

I'm all For having State People Run
our Water Systems over Federal People.
Federal People forgot the Constitution
says: "We the People". Once inside the
Beltway, they become Tyrants.