

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

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1989 OCT 19 PM 3:16

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: Board of Health TITLE NUMBER: 64

CITE AUTHORITY: §16-1-9a, W. Va. Code

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 61

TITLE OF RULE BEING FILED AS AN EMERGENCY: Volatile Synthetic Organic  
Chemicals

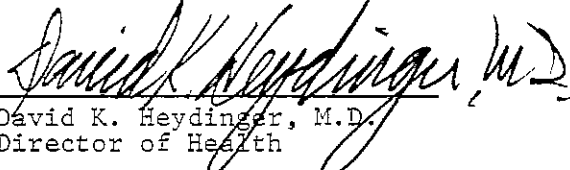
THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Promulgation of this new rule, Volatile Synthetic Organic Chemicals, will implement various provisions of the National Primary Drinking Water Regulations regarding maximum contaminant levels for certain volatile synthetic organic chemicals in public drinking water. Part of the Federal regulation, 40 CFR Parts 141 and 142, published in the Federal Register on July 8, 1987, became effective on January 1, 1988, and part becomes effective on January 9, 1989.

The W. Va. Board of Health must promulgate standards no less stringent than the Environmental Protection Agency (EPA) standard no later than January 8, 1989, in order for the Department of Health to retain primary enforcement responsibility ("primacy") for the public water supervision program. Additionally, some

Use Additional Sheets If Necessary.

  
David K. Heydinger, M.D.  
Director of Health

CONTINUATION SHEET

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY RELATING TO  
THE FILING OF 64 CSR 61, VOLATILE SYNTHETIC ORGANIC CHEMICALS

monitoring requirements have been in effect since January 1, 1988. This new rule adopts the EPA standards related to levels of volatile synthetic organic chemicals in public drinking water, monitoring, analytic techniques, public notification and other matters.

The emergency filing of this rule is necessary in order to comply with the above-mentioned Federal deadline and therefore allow West Virginia to maintain primacy for the public water supervision program. Additionally, having these standards in effect at the State level will assist the Department of Health in its enforcement efforts thereby preventing substantial harm to the public interest.

FILED  
1993 OCT 19 PM 3:16  
OFFICE OF THE REGISTER  
STATE OF WEST VIRGINIA

DATE: October 19, 1988

FILED

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE 10 PM 3:16

FROM: Health Department

OFFICE OF THE SECRETARY OF STATE

EMERGENCY RULE TITLE: Volatile Synthetic Organic Chemicals

1. Date of filing: October 19, 1988
2. Statutory authority for promulgating the emergency rule: §16-1-9a
3. Date of filing of proposed legislative rule: October 19, 1988
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?  
Adopts new language
5. Has the same or similar emergency rule previously been filed and expired?  
NO
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.  
See filing notice

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

See filing notice

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See filing notice

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1968 OCT 19 PM 3:16  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

[EMERGENCY]

TITLE 64

WEST VIRGINIA LEGISLATIVE RULES  
DEPARTMENT OF HEALTH

VOLATILE SYNTHETIC ORGANIC CHEMICALS

SERIES 61

198\_

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For Filing with the  
Legislative Rule-Making  
Review Committee

[EMERGENCY]  
WEST VIRGINIA LEGISLATIVE RULES  
DEPARTMENT OF HEALTH

VOLATILE SYNTHETIC ORGANIC CHEMICALS

64 CSR 61

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(EMERGENCY)  
TITLE 64  
WEST VIRGINIA LEGISLATIVE RULES  
DEPARTMENT OF HEALTH

SERIES 61  
VOLATILE SYNTHETIC ORGANIC CHEMICALS

FILED  
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OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**§64-61-1. General**

1.1. Scope - This rule establishes the rules and minimum requirements of the West Virginia board of health governing owners and operators of public drinking water systems in regard to volatile synthetic organic chemicals in public water systems.

1.2. Authority - W. Va. Code §16-1-9a. Related - W. Va. Code §16-1-9a.

1.3. Filing Date - October 19, 1988

1.4. Effective Date - October 19, 1988

1.5. Notice of Public Hearing - July 12, 1988

1.6. Public Hearing - August 11, 1988

1.7. Final Approval - This rule was approved by the State board of health on September 16, 1988.

**§64-61-2. Application and Enforcement**

2.1. Application - This rule applies to owners and operators of public drinking water systems.

2.2. Enforcement - Enforcement of this rule is vested in the director of the West Virginia department of health or his or her designee.

**§64-61-3. Definitions**

3.1. Certified Laboratory - A laboratory that meets federal and State requirements including those established for personnel, work space, equipment and procedures, and certified by the director to analyze drinking water for specified contaminants.

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

3.3. Consecutive System - A public water system whose drinking water is supplied entirely by another public water system.

3.4. Contaminant - Any physical, chemical, microbiological or radiological substance or matter in water.

3.5. **Director** - Director of the department of health or his or her designee.

3.6. **Drinking Water** - Water free from biological, chemical, physical and radiological contaminants which cause disease or harmful physiological effects. The minimum quality of the water shall conform to these regulations and applicable standards of the department of health.

3.7. **Maximum Contaminant Level (MCL)** - The maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except where otherwise specified. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

3.8. **Non-transient Non-Community Water System** - Any public non-community water system which regularly serves at least twenty-five (25) of the same individuals over six (6) months per year.

3.9. **Operator** - A person who has been granted a certificate issued pursuant to the provisions of Public Water Supply Operator Regulations, 64 CSR 4, to operate a specific class of public water system.

3.10. **Permit** - A written document issued by the director giving a designated person permission to construct, operate, alter, or renovate a specific public water system or bottled water plant.

3.11. **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.

3.12. **Public Water System** - Any water system 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 shall include: (1) any collection, treatment, storage, and distribution facilities under the control of the owner or operator of such system and used primarily in connection with such system; and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system shall 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.

3.13. Source - Any surface or ground-water supply used as a source of water for a public water system.

3.14. VOC - Volatile synthetic organic chemical.

**§64-61-4. Volatile Synthetic Organic Chemical Requirements; Maximum Contaminant Levels; Monitoring Frequency; Sampling**

4.1. The maximum contaminant level for VOCs applies only to community and non-transient non-community water systems. Analysis for maximum contaminant levels shall be made in accordance with Section 5 of this rule. Monitoring shall be in accordance with Section 10 of this rule.

4.2. Maximum contaminant levels for VOCs are found in Table 64-61A at the end of this rule.

4.3. Compliance shall be determined based on the results of a running annual average of quarterly sampling for each sampling location. If any one sample result would cause the annual average to exceed the maximum contaminant level, the system shall be deemed to have exceeded the maximum contaminant level immediately. Initiation of monitoring and monitoring frequency shall be in accordance with Tables 64-61B, 64-61C and 64-61D.

4.4. Ground-water systems shall sample at points of entry to the distribution system representative of each well.

4.5. Surface water systems shall sample at points in the distribution system representative of each source or at entry points to the distribution system after any application of treatment.

4.6. Sampling must be conducted at the same location or a more representative location and in accordance with Tables 64-61C and 64-61D.

4.7. Monitoring for vinyl chloride is required only for ground-water systems that have detected one or more of the following organic compounds: trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, 1,1-dichloroethylene. Analysis for vinyl chloride is required at each distribution or entry point at which one or more of the specified organic compounds is detected. Repeat monitoring frequency shall be in accordance with Table 64-61E.

**§64-61-5. Approved Analytical Methods and Laboratories**

5.1. For the purpose of determining compliance with the maximum contaminant levels and in accordance with Section 5.2, samples may be considered only if they have been analyzed by the

department of health's laboratories, or by a laboratory certified by the director.

5.2. Approved analytical methods are specified in Tables 64-61I and 64-61J found at the end of this rule.

#### §64-61-6. Reporting Requirements

6.1. Except as specified below, a system owner or operator shall report results to the director within forty (40) days following a test, measurement or analysis required to be made by this rule.

6.2. A system owner or operator shall report failure to comply with this rule to the director within forty-eight (48) hours.

6.3. A system owner or operator is not required to report analytical results to the director in cases where the health department's laboratories perform the analysis.

6.4. All reports and summaries required by this section shall be submitted in a manner or form approved by the director.

6.5. The water 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 public notification as required by §64-61-7 of this rule.

#### §64-61-7. Public Notification

7.1. The owner or operator of a public water system shall notify the public when any maximum contaminant level is exceeded or when the system owner or operator fails to comply with a prescribed treatment technique or a schedule prescribed by a variance or exemption.

7.2. The owner or operator of a public water system shall notify the public when: (1) the system owner or operator fails to comply with applicable monitoring requirements or testing procedures and analytical techniques provided in Sections 4, 5, and 10 of this rule; or (2) a variance or exemption is granted.

7.3. Community water systems shall notify the public by publishing notice of the violation in a newspaper serving the general area. Notice shall be published within fourteen (14) days of the detection of the violations specified in Section 7.1. Notice shall be published within three months of the occurrence of violations listed in Section 7.2. If the area supplied by a community water system is not served by a daily or weekly newspaper of general circulation, notification shall be given by posting the notice in the courthouse in the area served by the system within the time limits specified.

7.4. The owner or operator of a community water system shall notify the public every three (3) months as long as the failure to comply for the reasons set forth in Section 7.1 or 7.2 continues. In the event the system does not issue water bills at least every three (3) months, then the notice shall be made or supplemented by a form of direct mail.

7.5. In addition to the requirements of Sections 7.3 and 7.4, if a community water system exceeds a maximum contaminant level or fails to comply with a prescribed treatment technique the system owner or operator shall:

7.5.1. Notify the public by notice on or with the first set of water bills issued by the system, if that set is issued within thirty (30) days of detection of the violation, or by direct mail within thirty (30) days of the detection of the violation.

7.5.2. Furnish a copy of the notice to radio and television stations in the area served by the system when the violation poses an acute risk to human health. Notice shall be furnished within seventy-two (72) hours of the violation.

7.6. The requirements of Section 7.5 may be waived at the director's discretion if it is determined that the violation has been corrected within thirty (30) days of occurrence, and the waiver is issued in writing by the director within the thirty-day (30-day) period.

7.7. If a non-transient non-community water system fails to comply with Sections 7.1 or 7.2, the owner or operator shall have the option of notifying the public in the same manner as a community water system, or by a continuous and conspicuous posting in a location where it can be seen by consumers.

7.8. Notices shall fairly inform the users of the system, disclosing all material facts, including the nature of the problem, and where appropriate, shall include a clear statement of the violation and any preventive measures which should be taken by the public.

7.9. Public water systems shall include the mandatory health effects information specified in this rule in their notices of:

- (1) Maximum contaminant level violations;
- (2) Failure to comply with a prescribed treatment technique;
- (3) Issuance or continued existence of variances and exemptions; and
- (4) Violations of variance and exemption schedules.

7.10. Prior to or at the time service begins, community water systems shall inform new customers of any existing violation, exemption or variance.

7.11. All public notices shall include the telephone number of the community water system's owner or operator or both so that customers may obtain further information regarding information in the notice.

7.12. **Mandatory Health Effects Information** - When providing the information on potential adverse health effects required by Section 7.9 in public notices of: (1) violations of maximum contaminant levels; (2) violations of treatment techniques; (3) issuance of and continued existence of exemptions and variances from maximum contaminant levels; and, (4) violation of variance and exemption schedules, the owner or operator of a public water system shall include the language specified below or the equivalent language contained in 40 CFR 143.32(e), 1987, for each contaminant. If language for a particular contaminant is not specified below at the time notice is required, this section does not apply.

7.12.1. **Trichloroethylene** - Trichloroethylene (TCE) in drinking water is a health concern because it has been shown to cause cancer in mice and rats when given at very high doses over the animals' lifetime. Some chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Although it has not been shown that exposure to trichloroethylene results in an increased cancer risk in humans, TCE is considered to be a probable human carcinogen because it has caused cancer in two species of laboratory animals. To reduce any potential risk of cancer or any other adverse health effects which may have been observed in laboratory animals at higher doses over the animals' lifetime, the Environmental Protection Agency has set a drinking water standard for trichloroethylene at 0.005 parts per million (ppm).

7.12.2. **Carbon Tetrachloride** - Carbon tetrachloride in drinking water is a health concern because it has been shown to cause cancer in mice and rats when given at very high doses over the animals' lifetime. Some chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Although it has not been shown that exposure to carbon tetrachloride results in an increased cancer risk in humans, carbon tetrachloride is considered to be a probable human carcinogen because it has caused cancer in two species of laboratory animals. To reduce any potential risk of cancer or any other adverse health effects which may have been observed in laboratory animals at higher doses over the animals' lifetime, the Environmental Protection Agency has set a drinking water standard for carbon tetrachloride at 0.005 parts per million (ppm).

7.12.3. **1,2 Dichloroethane** - Dichloroethane in drinking water is a health concern because it has been shown to cause cancer in mice and rats when given at very high doses over the animals' lifetime. Some chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Although it has not been shown that exposure to 1,2-dichloroethane results in an increased cancer risk in humans, it is considered to be a probable human carcinogen because it has caused cancer in two (2) species of laboratory animals. To reduce any potential risk of cancer or any other adverse health effects which may have been observed in laboratory animals at higher doses over the animals' lifetime, the Environmental Protection Agency has set a drinking water standard for 1,2-dichloroethane at 0.005 parts per million (ppm).

7.12.4. **Vinyl Chloride** - Vinyl chloride in drinking water is a health concern because exposure has been shown to result in an increased cancer risk in humans who are exposed over long periods of time. To reduce the risk of cancer or any other adverse health effects which may have been observed in laboratory animals at high doses over the animals' lifetime, the Environmental Protection Agency has set a drinking water standard for vinyl chloride at 0.002 part per million (ppm).

7.12.5. **Benzene** - Benzene in drinking water is a health concern because exposure has been shown to result in an increased cancer risk in humans who are exposed over long periods of time. To reduce the risk of cancer or any other adverse health effects which may have been observed in laboratory animals at high doses over the animals' lifetime, the Environmental Protection Agency has set a drinking water standard for benzene at 0.005 parts per million (ppm).

7.12.6. **1,1-Dichloroethylene** - 1,1-Dichloroethylene in drinking water is a health concern to humans who are exposed over long periods of time because there is some but not conclusive evidence that it may cause cancer in laboratory animals at high doses over the animals' lifetime. To reduce any potential risk of cancer or any other adverse health effects which may have been observed in laboratory animals at high doses over the animals' lifetime, the Environmental Protection Agency has set a drinking water standard for 1,1-dichloroethylene at 0.007 parts per million (ppm).

7.12.7. **1,1,1-Trichloroethane** - 1,1,1-Trichloroethane in drinking water is a health concern because it has been shown to damage the liver, the nervous system and the circulatory system of laboratory animals and humans at high doses. The Environmental Protection Agency has set a drinking water standard for 1,1,1-trichloroethane at 0.20 parts per million (ppm) to protect against these effects with a margin of safety.

7.12.8. **Para or p-dichlorobenzene** - Para or p-dichloroben-

zene (p-DCB) in drinking water is a health concern because it has been shown to cause cancer in mice when given at very high doses over the animals' lifetime. Some chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Although it has not been shown that exposure to p-dichlorobenzene results in an increased cancer risk in humans, p-dichlorobenzene is considered to be a probable human carcinogen because it has caused cancer in two species of laboratory animals. To reduce any potential risk of cancer or any other adverse health effects which may have been observed in laboratory animals at high doses over the animals' lifetime, the Environmental Protection Agency has set a drinking water standard for p-dichlorobenzene at 0.075 parts per million (ppm).

#### **§64-61-8. Variances**

8.1. The director may grant one or more variances to a public water system from any requirement respecting a maximum contaminant level upon a finding that:

(1) Because of characteristics of the raw water sources which are reasonably available to the system, the system cannot meet the requirements respecting the maximum contaminant levels despite application of the best available technology, treatment techniques, or other means which the director finds are available (taking costs into consideration); and,

(2) The granting of a variance will not result in an unreasonable risk to the health of persons served by the system.

8.2. An owner or operator may request the granting of a variance by submitting the request in writing to the director. Owners or operators may submit a joint request for variance when they seek similar variances under similar circumstances. Written requests for a variance or variances shall include the following:

(1) A complete description of the nature and duration of the variance requested.

(2) Relevant analytical results of raw and treated quality sampling of the system, including results of tests conducted pursuant to the requirements of these regulations.

(3) An explanation in full and evidence of the best available treatment, technology and techniques.

(4) Economic and legal factors relevant to the ability to apply.

(5) A proposed compliance schedule, including the date each step toward compliance with this rule will be achieved. The compliance schedule shall include at a minimum the following dates:

(a) Date by which arrangement for an alternative raw water source or improvement of existing raw water source will be completed.

(b) Date of initiation of the connection of the alternative raw water source or improvement of existing raw water source.

(c) Date by which final compliance with this rule is to be achieved.

(6) A plan for the provision of safe drinking water in case of an excessive rise in the contaminant level for which the variance is requested.

(7) A plan for additional interim control measures during the effective period of the variance.

(8) Such other information as the director may require.

8.3. The director shall act on any variance request within ninety (90) days of receipt.

8.4. The director shall notify the applicant if he or she decides to deny an application for a variance, by including a statement of reasons for the proposed denial, and shall offer the applicant an opportunity to present, within thirty (30) days of receipt of the notice of denial, additional information or argument to the director. The director shall make a final determination on the request within thirty (30) days after receiving any such additional information or argument. If no additional information or argument is submitted by the applicant, the application shall be denied.

8.5. The director shall notify the applicant, in writing, if an application for a variance is approved. The notification shall identify the variance, the facility covered, shall specify the maximum period of time for which the variance will be effective and shall indicate any conditions with which the applicant must comply.

8.6. The variance may be terminated at any time upon finding that the public water system has failed to comply with monitoring and other requirements prescribed by the director as a condition of a variance, and shall automatically terminate when the system comes into compliance with this regulation.

8.7. For a variance, the director shall prescribe a schedule and control measures for compliance (including increments of progress) by the public water system for each maximum contaminant level requirement covered by the variance.

8.8. The prescribed schedule for compliance shall specify dates by which steps towards compliance are to be taken, including, where applicable:

(1) Date by which arrangement for an alternative raw water source or improvement of the existing raw water source will be completed.

(2) Date of initiation of the connection for the alternative raw water source or improvement of the existing raw water source.

(3) Date by which final compliance is to be achieved.

8.9. The prescribed schedule may, if the public water system has no access to an alternative raw water source, and can effect or anticipate no adequate improvement of the existing raw water source, specify an indefinite time period for compliance until a new and effective treatment technology is developed at which time a new compliance schedule shall be prescribed by the director.

8.10. The prescribed schedule for implementation of interim control measures during the period of variance shall specify interim treatment techniques, methods and equipment, and dates by which steps toward meeting the interim control measures are to be met.

8.11. The prescribed schedule shall be confirmed by the director and take effect within one (1) year after the granting of the variance, subsequent to provision or opportunity for public hearing.

8.12. Before variance or a schedule prescribed by the director may be confirmed and take effect, the director shall provide notice and opportunity for public hearing on the variance or schedule.

8.13. Public notice of an opportunity for hearing on a variance or schedule shall be circulated in a manner designed to inform interested persons of the proposed variance or schedule and shall include at least the following:

(1) Posting of a notice in the courthouse of each county served by the public water system, and publishing of a notice in a newspaper or newspapers of general circulation in the county served by the public water system.

(2) A summary of the prescribed variance or schedule and a statement informing interested persons that they may request a public hearing on the prescribed variance or schedule.

8.14. Request for a hearing shall be submitted by any interested person within thirty (30) days after the public notices are issued. Frivolous or insubstantial requests for a hearing may be denied by the director. A request shall include the following information:

(1) Name, address and telephone number of the individual, organization or other entity requesting a hearing.

(2) A brief statement of the interest of the person making the request and the information that the requesting person intends to submit at such hearing.

(3) The signature of the individual making the request or signature of the responsible person in the organization making the request.

8.15. The director shall give notice of any public hearing to be held pursuant to a request or on his or her own motion in the manner set forth in Section 8.14 not less than fifteen (15) days prior to the date of the hearing. In addition, said notice shall be sent to the persons requesting a hearing. The notice shall include a statement of purpose, time and location, name, address and telephone number where interested persons may obtain further information concerning the hearing.

8.16. A public hearing convened pursuant to this section shall be conducted informally, expeditiously and in an orderly manner. Oral testimony and written material may be received at the hearing.

8.17. The variance or schedule shall be confirmed and take effect thirty (30) days after notice is given for opportunity for a hearing, if no request for hearing has been submitted.

8.18. Within thirty (30) days after the public hearing the director shall confirm, revise or rescind the prescribed variance or schedule.

#### §64-61-9. Exemptions

9.1. The director may grant an exemption to a public water system from any requirement respecting a maximum contaminant level or any treatment technique requirement, or both, upon finding that:

(1) Due to compelling factors (which may include economic factors), the public water supply is unable to comply with such contaminant level or treatment technique requirement; and,

(2) The public water system was in operation on the effective date of such contaminant level or treatment technique requirement; and,

(3) The granting of an exemption will not result in an unreasonable risk to health.

9.2. An owner or operator may request the granting of an exemption for a public water system by submitting a request in writing to the director. Owners or operators may submit a joint

request for exemptions when they seek similar exemptions under similar circumstances. Any written request for an exemption or exemptions shall include the following:

(1) A description of the nature and duration of the exemption requested.

(2) Relevant analytical results of water quality sampling of the system, including results of tests conducted pursuant to the requirements of these regulations.

(3) Explanation of the compelling factors such as time or economic factors which prevent the system from achieving compliance.

(4) Other pertinent information.

(5) A proposed compliance schedule, including the date when each step toward compliance will be achieved.

(6) Such other information as the director may require.

9.3. The director shall act on any exemption request submitted within ninety (90) days of receipt of the request.

9.4. The director shall consider the following factors:

(1) Construction, installation, or modification of treatment equipment or systems.

(2) The time needed to put into operation a new treatment facility to replace an existing system which is not in compliance.

(3) Economic feasibility of compliance.

9.5. The director shall notify the applicant if he or she intends to deny an exemption request. Such notice shall include a statement of reasons for the proposed denial, and shall offer the applicant an opportunity to present within thirty (30) days of receipt of the notice, additional information or argument to the director. The director shall make a final determination on the request within thirty (30) days after receiving any such additional information or argument as submitted by the applicant.

9.6. If the director grants an exemption request submitted pursuant to Section 9.2, he or she shall notify the applicant of his or her decision in writing. The notice shall identify the facility covered, and shall specify the termination date of the exemption, and shall provide that the exemption may be terminated upon a finding by the director that the system has failed to comply with any requirement of a final schedule issued pursuant to Sections 9.13 through 9.15. An exemption shall automatically terminate when the system comes into compliance with the appli-

cable regulation.

9.7. The director shall prescribe a schedule for:

(1) Compliance (including increments of progress) by the public water system with each maximum contaminant level requirement and treatment technique requirement covered by the exemption; and,

(2) Implementation by the public water system of such control measures as the director may require for each contaminant covered by the exemption.

9.8. The schedule shall be prescribed by the director within one (1) year after the granting of the exemption, subsequent to provision of opportunity for a hearing provided in Sections 9.9 through 9.12.

9.9. Before a schedule prescribed by the director is confirmed and takes effect, the director shall provide notice and opportunity for public hearing on the schedule.

9.10. Public notice of an opportunity for a hearing on an exemption schedule shall be circulated in a manner designed to inform interested persons of the proposed schedule, and shall include at least the following:

(1) Posting of a notice in the courthouse of each county served by the public water system, and publishing of a notice in a newspaper or newspapers of general circulation in the county served by the public water system.

(2) A summary of the prescribed schedule and a statement informing interested persons that they may request a public hearing on the prescribed schedule.

9.11. Requests for a hearing may be submitted by any interested person. Frivolous or insubstantial requests for a hearing may be denied by the director. Requests shall be submitted to the director within thirty (30) days after issuance of the public notices provided for in Section 9.10. Such requests shall include the following information.

(1) The name, address and telephone number of the individual, organization or other entity requesting a hearing.

(2) A brief statement of the interest of the person making the request.

(3) The signature of the individual making the request, or signature of the responsible person in the organization making the request.

9.12. The director shall give notice in the manner set

forth in Section 9.10 of any hearing to be held pursuant to a request submitted by an interested person or on his or her own motion. Notice of the hearing shall be sent to the person requesting the hearing, if any. Notice of the hearing shall include a statement of the purpose, time and location of the hearing, and the address and telephone number where interested persons may obtain further information concerning the hearing. Notice of hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing.

9.13. Within thirty (30) days after the public hearing, the director may revise the prescribed schedule as necessary and confirm the revised schedule for compliance and interim measures for the exemption.

9.14. Such schedule shall require compliance by the public water system with each maximum contaminant level and treatment technique requirement prescribed within a time period not to exceed three (3) years.

9.15. If the public water system serves no more than five hundred (500) connections, an additional two-year (2-year) exemption may be granted by the director if it can be established to the director's satisfaction that the system is taking all practicable steps to meet the applicable requirements.

#### **§64-61-10. Effective Dates for Monitoring and Minimum Required Monitoring Frequency**

10.1. Public water systems will be required to monitor for maximum contaminant levels for VOCs in accordance with Tables 64-61B, 64-61C, 64-61D and 64-61E.

10.2. Consecutive systems may be regarded as a single system for monitoring purposes if approved by the director.

#### **§64-61-11. Special Monitoring Requirements - Unregulated Contaminants**

11.1. All public water systems shall monitor for unregulated contaminants listed in Table 64-61F. Each system shall monitor once every five (5) years or more frequently as determined by the director. Initial monitoring shall be in accordance with Table 64-61G.

11.2. Surface water systems shall sample in the distribution system representative of each water source or at entry points to the distribution system. The minimum number of samples is one (1) year of quarterly samples per water source.

11.3. Ground-water systems shall sample at points of entry to the distribution system representative of each well. The minimum number of samples is one (1) sample per entry point to the distribution system.

11.4. Monitoring frequency shall be in accordance with Table 64-61H.

11.5. The owner or operator shall notify persons served by the system of the availability of the results of sampling for unregulated contaminants by including a notice in the first set of water bills issued by the system after the receipt of the results or by written notice within three (3) months. The notice shall identify a person and supply the telephone number to contact for information on the monitoring results. Newspaper notification will fulfill this requirement if widely circulated within the area served by the water system.

11.6. The owner or operator of a community water system or non-transient non-community water system shall send a copy of the results of monitoring and any public notice to the director within thirty (30) days of receipt of the results.

11.7. Approved analytical methods for analysis of unregulated contaminants are listed in Table 64-61I. Analysis for unregulated contaminants must be conducted in laboratories approved for such analysis by the director.

11.8. A public water system serving fewer than one hundred fifty (150) connections will be considered in compliance with this section if the system submits a letter to the director no later than January 1, 1991 stating that the system is available for sampling. Such system shall provide samples at the discretion of the director.

**§64-61-12. Trihalomethanes (THMs)**

12.1. All public water systems shall monitor for trihalomethanes.

12.2. Maximum contaminant level, monitoring frequency and determination of compliance shall otherwise be in accordance with Section 10 of the Public Water Supply Regulations, 64 CSR 3, 1982.

**§64-61-13. Penalties** - Any person who violates any provision of this rule or orders issued hereunder shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00), 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 hereunder, a person, upon a finding thereof by the circuit court of the county in which the violation occurs, shall be subject to a civil penalty of not more than five thousand dollars (\$5,000.00), and each day's violation shall be grounds for a separate penalty.

**§64-61-14. 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, 64 CSR 1.

**§64-61-15. Severability** - The provisions of this rule are declared to be severable. If any provision of this rule shall be held invalid, the remaining provisions shall remain in effect.

Table 64-61A. Maximum Contaminant Levels For Volatile Synthetic Organic Chemicals

<u>Contaminant</u>	<u>MCL in Milligrams per Liter</u>
Benzene	0.005
Carbon Tetrachloride	0.005
p-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
1,1,1-Trichloroethane	0.20
Trichloroethylene	0.005
Vinyl Chloride	0.002

Table 64-61B. Deadlines for Initial Analysis for Community and Non-Transient Non-Community Systems

System Size	Deadline
>10,000 People	Quarter Beginning January 1, 1988
3,300-10,000 People	Quarter Beginning January 1, 1989
<3,300 People	Quarter Beginning January 1, 1991

Table 64-61C. Repeat Monitoring Frequency for VOCs in Ground Water Systems

System Size and Vulnerability	VOCs Not Detected In First Sample	VOCs Detected
Vulnerable System, >500 Connections	Every 3 Years	Every 3 Months
Vulnerable System, <500 Connections	Every 5 Years	Every 3 Months
System Not Vulnerable	Every 5 Years	Every 3 Months

Table 64-61D. Repeat Monitoring Frequency for VOCs in Surface Water Systems

System Size and Vulnerability	During First Year of Monitoring	VOCs Not Detected During First Year of Monitoring	VOCs Detected
Vulnerable System, >500 Connections	Quarterly	Every 3 Years	Quarterly
Vulnerable System, <500 Connections	Quarterly	Every 5 Years	Quarterly
System Not Vulnerable	Quarterly	Not Required	Quarterly

TABLE 64-61E. Vinyl Chloride Repeat Monitoring Frequency

Initial Analysis	Repeat Sampling Per Sample Location
Vinyl Chloride Detected	Quarterly
Vinyl Chloride Not Detected	Every 3 Years

TABLE 64-61F. Unregulated Contaminants

Bromobenzene  
 Bromodichloromethane  
 Bromoform  
 Bromomethane  
 Chlorobenzene  
 Chlorodibromomethane  
 Chloroethane  
 Chloroform  
 Chloromethane  
 o-Chlorotoluene  
 p-Chlorotoluene  
 Dibromomethane  
 1,2-Dibromo-3-chloropropane<sup>1</sup>  
 m-Dichlorobenzene  
 o-Dichlorobenzene  
 trans-1,2-Dichloroethylene  
 cis-1,2-Dichloroethylene  
 Dichloromethane  
 1,1-Dichloroethane  
 1,1-Dichloropropene  
 1,2-Dichloropropane  
 1,3-Dichloropropane  
 1,3-Dichloropropene  
 2,2-Dichloropropane  
 Ethylbenzene  
 Ethylene dibromide<sup>1</sup>  
 Styrene  
 1,1,2-Trichloroethane  
 1,1,1,2-Tetrachloroethane  
 1,1,2,2-Tetrachloroethane  
 Tetrachloroethylene  
 1,2,3-Trichloropropane  
 Toluene  
 p-Xylene  
 o-Xylene  
 m-Xylene

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1. Monitoring required only if the director determines that the system is vulnerable to contamination by either or both substances.

TABLE 64-61G. Monitoring for Unregulated Contaminants

Number of persons served	Monitoring shall begin no later than:
Over 10,000	January 1, 1988
3,300 to 10,000	January 1, 1989
Less than 3,300	January 1, 1991

TABLE 64-61H. Monitoring Frequency for Unregulated Contaminants

Type of System	First Year of Monitoring	After First Year
Ground Water Systems (Per Entry Point)	One Sample	Every 5 Years
Surface Water Systems (Per Water Source)	Quarterly	Every 5 Years

TABLE 64-61I. Approved Analytical Methods for VOCs and Unregulated Contaminants<sup>1</sup>

Contaminant	Applicable Methods	
	Packed Methods	Capillary Column
Benzene	503.1, 524.1	502.2, 524.2
Bromobenzene	502.1, 503.1, 524.1	502.2, 524.2
Bromodichloromethane	502.1, 524.1	502.2, 524.2
Bromoform	502.1, 524.1	502.2, 524.2
Bromomethane	502.1, 524.1	502.2, 524.2
Carbon tetrachloride	502.1, 524.1	502.2, 524.2
Chlorobenzene	502.1, 503.1, 524.1	505.2, 524.2
Chlorodibromomethane	502.1, 524.1	502.2, 524.2
Chloroethane	502.1, 524.1	505.2, 524.2
Chloroform	502.1, 524.1	502.2, 524.2
Chloromethane	502.1, 524.1	505.2, 524.2
o-Chlorotoluene	502.1, 503.1, 524.1	502.2, 524.2
p-Chlorotoluene	502.1, 503.1, 524.1	502.2, 524.2
Dibromomethane	502.1, 524.1	502.2, 524.2
1,2-Dibromo-3-chloropropane	--	504
o-Dichlorobenzene	502.1, 503.1, 524.1	502.2, 524.2
m-Dichlorobenzene	502.1, 503.1, 524.1	505.2, 524.2
para-Dichlorobenzene	502.1, 503.1, 524.1	502.2, 524.2
1,1-Dichloroethane	502.1, 524.1	502.2, 524.2
1,2-Dichloroethane	502.1, 524.1	502.2, 524.2
1,1-Dichloroethylene	502.1, 524.1	502.2, 524.2
cis-1,2-Dichloroethylene	502.1, 524.1	502.2, 524.2
trans-1,2-Dichloroethylene	502.1, 524.1	502.2, 524.2
Dichloromethane	502.1, 524.1	502.2, 524.2
1,2-Dichloropropane	502.1, 524.1	502.2, 524.2
1,3-Dichloropropane	502.1, 524.1	502.2, 524.2
2,2-Dichloropropane	502.1, 524.1	502.2, 524.2
1,1-Dichloropropene	502.1, 524.1	502.2, 524.2
1,3-Dichloropropene	502.1, 524.1	502.2, 524.2
Ethylbenzene	503.1, 524.1	502.2, 524.2
Ethylene dibromide	--	504
Styrene	503.1, 524.1	502.2, 524.2
1,1,1,2-Tetrachloroethane	502.1, 524.1	502.2, 524.2
1,1,2,2-Tetrachloroethane	502.1, 524.1	502.2, 524.2
Tetrachloroethylene	502.1, 503.1, 524.1	502.2, 524.2
1,1,1-Trichloroethane	502.1, 524.1	502.2, 524.2
1,1,2-Trichloroethane	502.1, 524.1	502.2, 524.2
Trichloroethylene	502.1, 503.1, 524.1	502.2, 524.2
Toluene	503.1, 524.1	502.2, 524.2
1,2,3-Trichloropropane	502.1, 524.1	502.2, 524.2
Vinyl chloride	502.1, 524.1	502.2, 524.2
o-Xylene	503.1, 524.1	502.2, 524.2
m-Xylene	503.1, 524.1	502.2, 524.2
p-Xylene	503.1, 524.1	502.2, 524.2

1. Methods for the Determination of Organic Compounds in Finished Drinking Water and Raw Source Water, September, 1986, EMSL-CI, USEPA, Cincinnati, Ohio 45268.

TABLE 64-61J. Analytical Methods

Method 502.1	--	Volatile Halogenated Organic Compounds in Water by Purge and Trap Gas Chromatography
Method 502.2	--	VOCs in Water by Purge and Trap Gas Chromatography with Photoionization and Electrolytic Conductors in Series
Method 504	--	Measurement of 1,2-Dibromoethane (EDB) and 1,2-Dibromo-3-chloropropane (DBCP) in Drinking Water by Microextraction and Gas Chromatography
Method 503.1	--	Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography
Method 524.1	--	Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography/Mass Spectrometry
Method 524.2	--	VOCs in Water by Purge and Trap Capillary Column Gas Chromatography/Mass Spectrometry