

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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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: Health Department TITLE NUMBER: 64

CITE AUTHORITY §16-1-9a

AMENDMENT TO AN EXISTING RULE: YES NO

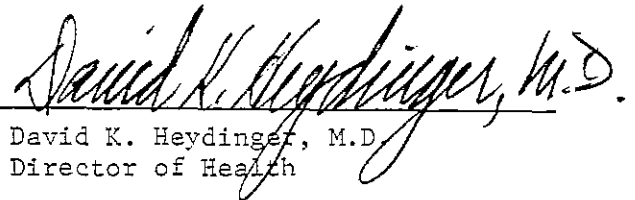
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 61

TITLE OF RULE BEING PROPOSED: Volatile Synthetic Organic Chemicals

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.


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

FISCAL NOTE FOR PROPOSED RULES

Rule Title: VOLATILE SYNTHETIC ORGANIC CHEMICALS

Type of Rule: Legislative Interpretive Procedural

Agency DEPARTMENT OF HEALTH Address 1800 Washington St., E.
Charleston

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					

2. Explanation of above estimates.

Cost of certification procedures for new laboratories may amount to \$1,000 the first year; less thereafter. Costs will be covered by federal grant funds.

3. Objectives of these rules:

This rule establishes standards regarding the maximum contaminant levels (MCLs) for Volatile Organic Chemicals (VOCs) in public drinking water systems.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

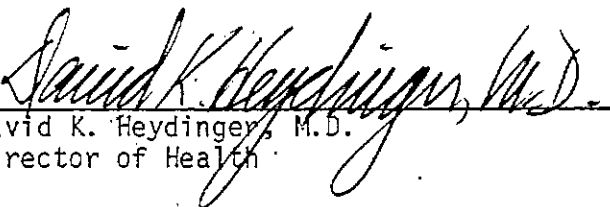
Initial costs \$800 for first year monitoring. Subsequent costs approximately \$200 every 3-5 years depending on system size and source. Systems detecting contaminants - \$800 per year.

C. Economic Impact on Citizens/Public at Large.

Negligible

Date June 3, 1988

Signature of Agency Head or Authorized Representative


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

FILED
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BUREAU OF HEALTH

DATE: October 19, 1988

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Health Department

LEGISLATIVE RULE TITLE: Volatile Synthetic Organic Chemicals

FILED
1988 OCT 19 PM 3:17
SECRETARY OF STATE

1. Authorizing statute(s) citation §16-1-9a

2. a. Date filed in State Register with Notice of Hearing:
July 12, 1988

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

Notice was mailed to all public water systems and county health departments.

c. Date of hearing (s): August 11, 1988

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)

October 19, 1988

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

Kay Howard 348-3223

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?

d. Attach findings and determinations and reasons:

Attached N/A

[PROPOSED]

TITLE 64

WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF HEALTH

VOLATILE SYNTHETIC ORGANIC CHEMICALS

SERIES 61

198_

For Filing with the
Legislative Rule-Making
Review Committee

FILED
1989 OCT 19 PM 3:17
WEST VIRGINIA
STATE DEPARTMENT OF HEALTH

WEST VIRGINIA BOARD OF HEALTH
RULE ABSTRACT

Title: Volatile Synthetic Organic Chemicals

CSR Title and Series: 64 CSR 61

Type: Legislative

Summary: The purpose of this new rule is to establish standards regarding the maximum contaminant levels for certain volatile synthetic organic chemicals in public drinking water. In addition to maximum contaminant levels, this rule establishes monitoring standards, approved analytical methods and laboratories, reporting, public notice requirements and procedures, and procedures and criteria for variances and exemptions. Provisions are made for penalties and enforcement. This rule is consistent with and implements provisions of the National Primary Drinking Water Regulations.

For further information contact: Regulatory Development Section, telephone 348-3223 or Robert Paul, Division of Environmental Engineering, telephone 348-2981, West Virginia Department of Health, 1800 Washington Street, East, Charleston, WV 25305.

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WEST VIRGINIA
DEPARTMENT OF HEALTH

[PROPOSED]
WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF HEALTH

VOLATILE SYNTHETIC ORGANIC CHEMICALS

64 CSR 61

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[PROPOSED]
TITLE 64
WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF HEALTH

SERIES 61
VOLATILE SYNTHETIC ORGANIC CHEMICALS

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§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** -

1.4. **Effective Date** -

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-chloropropane¹
 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 dibromide¹
 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

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 Contaminants¹

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

Proposed Rules:
Public Comments Received
Discussion and Response

Title: Volatile Synthetic Organic Chemicals, Department of
Health Legislative Rules, 64 CSR 61.

A public hearing regarding this rule was held on August 11, 1988, and was attended by six people. An attendance record is attached. The West Virginia Manufacturer's Association (herein after referred to as the Association) provided the only comments (copy attached) on the rule.

Proposed changes to the rule are described, except for Item #10 in which proposed additions to the rule are indicated by underlining of the actual text and proposed deletions by strike-throughs. A numbering error in Section 8 has been corrected; related comments have been renumbered.

1. Comment: The Association supports maintaining a State program which is equivalent and consistent with the Federal safe drinking water program, and argues that the West Virginia regulations should be no more stringent than Federal regulations. The Association states that unnecessary deviations from Federal regulatory language is a problem which permeates the entire State system. The minor discrepancies from the Federal program which exist in the system make comprehension difficult for regulated industries. Whereas there are considerable resources available to assist in the interpretation and application of Federal regulations, e.g., Preambles, RIMs and RILs, the absence of similar guidance at the State level makes interpretation of State regulations, in some instances, inordinately complicated. For these reasons, the Association urges the Director to amend the State regulations by incorporating by reference the relevant provisions of the Federal program.

Response: It has long been recognized that although state rules must be no less stringent than Federal rules, they may be more detailed or more stringent as deemed necessary or useful by each state. The United States Environmental Protection Agency (EPA) in some cases actively encourages extra requirements tailored to the specific needs of particular states. Were absolutely uniform rules adequate, superior, or even legal, EPA could save the nation considerable expense by mandating a uniform nation-wide rule. They do not.

Although the Board of Health (herein after referred to as the Board) cannot speak for all State agencies, it considers deviations from Federal language to be both necessary and practical depending on the specific rule and the circumstances. In the Board's experience, regulated industries want to know what they must do, and they prefer the information to be provided in the clearest and most condensed form possible.

The Board believes that the present rule is at least as stringent as the Federal rule and that it has been appropriately tailored to meet West Virginia's needs and circumstances. A very small number of the 2,500 water systems subject to this rule are part of a company with a multi-state operation. To such companies the existence of a regulation which is uniform to all states would be an advantage. This is not the case for the majority of the public water systems subject to this rule for whom the rule is adjusted as much as possible within the overall goal of remaining as stringent as, and consistent with, the Federal regulation.

2. Comment: Sections 3.1, 5.1 and 11.7. The Association made a number of comments concerning laboratory certification: Are there laboratories which have already been certified? If so, the Association requests that a list be provided of the certified laboratories. The Association also questions whether or not there would be any provisions for the certification of plant's laboratories. The final regulation should specify the State and Federal requirements which would apply. If there are procedures to follow for such approval, a sufficient allowance of time to obtain certification for those plant laboratories would be needed.

Section 5.1 addresses Approved Analytical Methods and Laboratories. Some water facilities affected by these proposed regulations employ laboratories located outside of the State. The Association perceives potentially serious administrative difficulties regarding the certification or approval of such laboratories by the Director suggests that upon notifying the Director of the out-of-State lab, that the water system be permitted to use the lab unless directed otherwise by the Board of Health.

Response: There is an existing program to certify laboratories capable of analyzing water samples for organics, inorganics, trihalomethanes, and other contaminants. This program extends from the Federal to the state level, and a list of certified laboratories is available from the Department of Health. Since the list may change on short notice, it should not be included in the rule itself. VOC certification has only recently been added by the EPA and will be incorporated as soon as possible. The program includes out-of-state laboratories and reciprocity with other Federally certified state programs.

3. Comment: Section 3.7. This section defines "maximum contaminant level" (MCL). Unlike 40 CFR 141.2(c), the proposed State regulation omits the phrase ". . . which is delivered to the free flowing outlet of the ultimate user of a public water system." This omission significantly affects the meaning of this term. The Association urges that the full definition be adopted from the Federal regulations.

Response: It is true that the omission affects the meaning of this term. 40 CFR 141.24(g)(1) and 141.24(g)(2) state that

ground and surface water systems are to sample VOCs at points of entry to the distribution system which are representative of each well or source, or, after any application of treatment. These samples will then be analyzed to determine if MCLs are met. VOC's are not sampled for at "... the free flowing outlet of the ultimate user ..."; therefore the Board felt that inclusion of the phrase would be incorrect and misleading. Evidently the converse was true.

Proposed: The suggestion has been adopted except that the words "except where otherwise specified" have been added at the end of the definition.

4. Comment: Section 3.8. This section defines "non-transient non-community water system." Is it possible that a non-transient non-community water system can be a public water system? A clarification of the meaning of each of the terms "public," "non-transient," and "non-community" should be included in the final regulations.

Response: Public water system and community water system are defined. A non-transient, non-community water system is a type of public water system which is not a community water system and is "non-transient" by virtue of the characteristics indicated in this definition. Further definition is not needed.

5. Comment: Section 3.11. This section defines "person." Unlike 40 CFR 141.2(d) the term "municipality" has been omitted from the list of included entities. The Association stated that it understands that the majority of public water systems in West Virginia are municipally-owned. Therefore, the Association believes it is critical that "municipality" should be among those entities included under the definition of person for the purposes of these regulations.

Response: This definition is already in use in the general Public Water Supply Regulations, 64 CSR 3 and has been successfully applied to municipalities. The language is taken from W. Va. Code §16-1-9a where it is used to list entities subject to penalties for violation of W. Va. Code §16-1-9a or rules issued thereunder, and since a municipality is an "entity recognized by law" it is, therefore, included in the definition. (It might be noted that only approximately 160 public water supply systems out of 2500 within the State are classified as municipal, contrary to the commenter's understanding.)

6. Comment: Section 3.12. This proposed section defines "public water system." Subpart (1) of the definition refers to the water facilities which collect, treat, store and distribute under the control of the "owner or operator." The Federal counterpart, 40 CFR 141.2(e), refers only to the control of the operator. The proposed regulation adds "owner or" to the definition of public water system. The Association urges that the definition of public water system be adopted verbatim from the Federal

regulations.

Response: The definition is taken from W. Va. Code §16-1-9a.

7. Comment: Section 3.14. This proposed section defines VOC. The Association questions the use of "synthetic" in the definition because a number of chemicals listed as VOC's can be non-synthetic or naturally occurring. If the qualifying term "synthetic" remains in the final regulations, the Board should clarify the meaning of this term and its application in the regulations.

Response: VOC is defined as "volatile synthetic organic chemical" in the Federal regulation.

8. Comment: Sections 4.4. and 4.5. These proposed sections generally address special monitoring for organic chemicals. There should be included in these provisions a cross-reference to Table 64-61H which provides the requisite monitoring frequencies.

Response: The appropriate cross-reference to Tables 64-61B and 64-61C is given in Section 4.3.

9. Comment: Section 6.5. This section states that the water system has seven days to submit to the Director a representative copy of each type of notice distributed to the public or media. The Federal counterpart, 40 CFR 141.31(d), allows ten days. The proposed State regulation should provide for the same ten day allowance found in the Federal regulations.

Response: The seven-day requirement is identical to that found in the existing Public Water Supply Regulations, 64 CSR 3. The Board believes that a variation in State requirements would be a needless complication.

10. Language in Section 7.2 is revised slightly and moved to Section 7.1 for purposes of clarification.

Proposed: 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) schedules prescribed by a variance or exemption are exceeded;~~ or (2) a variance or exemption is granted.

11. Comment: Section 7.5.1. This section addresses public

notification of failure to comply with MCLs or testing procedures or variances. The proposed rule requires notice through the water bills within 30 days of occurrence of the violation. A clarification is needed of the phrase "occurrence of the violation." The Association assumes its meaning is that notice must be given within 30 days of the receipt of results evidencing a violation.

Response: Violations are judged to have occurred when they are detected. The Board has substituted the term "detection" for "occurrence" in both Sections 7.3 and 7.5. to clarify this.

12. As proposed for public hearing, §7.5.2 required that if a community water system exceeds a maximum contaminant level or fails to comply with a prescribed treatment technique, and if the violation poses an acute risk to human health, that public notice was to be furnished to radio and television stations in the area served by the system within seven days. Review of the Federal standard detected an error in that the time period should be seventy-two hours and the item has been changed to correspond to the Federal value.

13. Comment: Sections 7.12.1 through 7.12.8. These sections address Mandatory Health Effects Information. The language of these State regulations is found in the proposed rule for the National Primary and Secondary Drinking Water Regulations (52 Fed. Reg., p. 10972, April 6, 1987). However, the final review of the Federal rule has been promulgated and is reflected in 40 CFR 143.32(e) (52 Fed. Reg., p. 41534, Oct. 28, 1987). The State regulations should reflect the final Federal rule.

Response: The final Federal rule specified additional wording indicating the probable origin of the contaminant. The Board believes that this wording unfairly and unnecessarily suggests that various specified types of industry and commercial operations are guilty of contaminating the water supply. The Board also believes that the length of the final language makes it less likely that it will be read by the consumer. Although the section is referred to as "Health Effects" language, the EPA language deleted by the Board has no bearing on health effects. The Department of Health and the water supply system immediately address a contamination incident on a case-by-case basis and need the flexibility to resolve the problem and communicate information to the public in a more timely and understandable manner. If a water supply system wishes to use the exact Federal wording, the Department certainly will accept it and language to that effect has been added to the Section 7.12 of the rule.

14. The concentration values given in Sections 7.12.1. through 7.12.8 as part of the mandatory health effects information have been converted from parts per billion to parts per million in order to correspond with the values given in Table 64-61A. Additionally, two incorrect values in the text were changed to correspond to the values given correctly in Table 64-61A.

15. Comment: Section 8.1(1). This section addresses variances. The Federal counterpart 40 CFR 142.40(a)(1), provides that the Administrator may grant a variance upon a finding that the system cannot meet the maximum contaminant level (MCL) requirements despite application of the best available technology. Unlike 40 CFR 142.40(a)(1), the proposed regulation uses the word "installation" replacing "application." The Association can perceive no basis for this discrepancy and urges that the proposed State regulation should adopt the language of the Federal regulations.

Response: The word "application" has been replaced with the word "installation."

16. Comment: Section 8.2(4). This section requires that "relevant and economic legal factors" be included in any request for a variance. The proposed State regulation fails to qualify the meaning of "relevant." The Association feels that the Federal language found in 40 CFR 142.41(c)(2) is much clearer and should be adopted. The Federal regulation reads, "economic and legal factors relevant to ability to apply."

Response: The Board has no objection to using the Federal language. Retaining the word "relevant" allows the State and the affected utility more flexibility in dealing with the variance protocol.

17. Comment: Section 8.2(7). This proposed section requires that a written request for a variance include a plan for interim control measures during the effective period of the variance. The Federal regulations 40 CFR 142.41(c)(6) requires a plan for additional interim control. The Association urges that the Federal language be adopted.

Response: The Federal language has been adopted.

18. Comment: Section 8.8. This section addresses the contents of the schedule for compliance. Upon referring to the schedule, the proposed State regulation uses the adjective "prescribed" to describe the schedule for compliance. The language of 40 CFR 142.43(d) uses "proposed schedule." In light of the requirement of notice and hearing before becoming effective, the use of the term "prescribed" to characterize the schedule is inappropriate. The language of the Federal regulations should be adopted.

Response: If Federal wording is followed, the applicant "proposes" a schedule, then upon review of the application, the State "proposes" a schedule which may differ from the schedule originally "proposed." The Board believes that the use of "proposed" to describe two potentially different schedules is confusing. The Board chose to use the term "prescribed" to clarify the process and as indicative of the status of the schedule proposed by the Director. Section 8 makes the process and the status of

the prescribed schedule clear -- note especially Section 8.14, page 10.

19. Comment: Section 8.15. This section concerns notice to be given by the Director regarding a variance or schedule. The proposed State regulation provides 30 days notice. The Federal regulation, 40 CFR 142.44(d), provides for 15 days notice. The 15 days notice given in the Federal regulation should be adopted in the final rule.

Response: Section 8.15 gives a time required for the Department to give advance notice of a public hearing regarding a variance or prescribed schedule once an interested party has requested the hearing. Since there occurs first a thirty day period after notice of an opportunity to request a hearing, reducing the minimum advance notice time of the actual public hearing probably would still allow the interested parties ample time to prepare comment. Therefore, the Board has accepted the suggestion.

20. Comment: Section 9.12. This section is concerned with notice to be given by the Director regarding exempted schedules. The proposed State regulation provides 30 days notice. The Federal regulation, 40 CFR 142.54(d), provides for 15 days notice. The 15 days notice in the Federal regulation should be adopted in the final rule.

Response: The Board has no objection to specifying 15 days notice rather than 30, since the situation is analogous to that described in item #18 relating to Section 8.16.

21. Comment: Tables 64-61C and 64-61D. These tables address monitoring frequencies for VOCs. Both tables are based on vulnerability. The Association urges that a clear definition be provided which will define "vulnerable system."

Response: There currently is no definition of "vulnerable system" at either the Federal or State level. The components defining "vulnerable systems" are to be developed (probably as guidance) at a later date by the EPA and the states. Since each public water supply is unique, the Board believes that all the components used in defining "vulnerable systems" should be in place prior to attempting to develop any definition specific to West Virginia. At the present time, in the absence of a definition all systems are assumed to be "vulnerable."

22. Comment: Table 64-61F. This table lists unregulated contaminants which are listed in 40 CFR 141.40(e). Those contaminants are ethylene dibromide (EDB) and 1,2-dibromo-3-chloropropane (DBCP). These contaminants should be included in the State regulations.

Response: The Board agrees with the comments and has added the two unregulated contaminants to the listing in Table 64-61F

and also to the list of approved analytical methods in Table 64-61I.

23. Comment: Table 64-61H. This table addresses monitoring frequencies for unregulated contaminants. Unlike the Federal counterpart found in 40 CFR 141.40(c), the proposed State regulations require that during the first year in which the regulations are in effect monitoring of surface and groundwater system be conducted quarterly. The Federal regulation 40 CFR 141.40(c) states that the minimum number of samples for groundwater is one sample per entry point to the distribution system. The State regulation should replicate the Federal.

Response: The table has been corrected to show one sample per entry point for groundwater systems.

PUBLIC HEARING

Volatile Synthetic Organic Chemicals
August 11, 1988

DO YOU WISH
TO COMMENT
(YES/NO)

GROUP REPRESENTED
(IF ANY)

ADDRESS

NAME

NAME	ADDRESS	GROUP REPRESENTED (IF ANY)	DO YOU WISH TO COMMENT (YES/NO)
RALPH EISENHUT	608 LAKEWOOD DR. CHARLESTON, W.V.	SISSONVILLE P.S.D.	NO
Ronald L. Buggless	P.O. Box 1906 Charleston, W.V. 25327	W.V. - American Waterworks Charleston, W.V.	No
Ronald L. Bird	P.O. Box 1906 Charleston, WV 25327	WV - American Water Co. Charleston Div.	No
JOHN A. POTTER	NORTH 13 TH AND RICHLAND AVE WHEELING, W.V. 26003	WHEELING WATER WORKS	No
Edward Catlin	Box 593 Charl., 25322	American Water Works Serv. Co.	No
Robert Foster	257 P.O. Box 5004 S. CHARLESTON, W.V. 25302	WV - MANUFACTURERS ASSOC.	No



WEST VIRGINIA
MANUFACTURERS ASSOCIATION

COMMENTS OF
WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON PROPOSED VOLATILE SYNTHETIC ORGANIC REGULATIONS
64 CSR 61

Prepared By:

Environmental Control Committee
West Virginia Manufacturers Association

and

M. Ann Bradley
Kathy G. Beckett

Robinson & McElwee
600 United Center
Post Office Box 1791
Charleston, West Virginia 25326
(304) 344-5800

Counsel for
West Virginia Manufacturers Association

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COMMENTS OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON PROPOSED REGULATIONS FOR VOLATILE SYNTHETIC ORGANIC CHEMICALS
64 CSR 61

A. Introduction

On July 12, 1988, the West Virginia Board of Health filed proposed drinking water regulations for Volatile Synthetic Organic Chemicals ["the proposed regulations"]. Pursuant to this notice, the West Virginia Manufacturers Association ["WVMA"] filed these comments on the proposed regulations. The WVMA represents a broad cross-section of the industrial sector of West Virginia. As users of public water system and as owners and operators of the water systems in their plants and businesses, many of our members can be affected by the application of drinking water regulations. These comments on the proposed regulations are in the tradition of the active and supportive role that the WVMA has assumed with regard to West Virginia laws and regulations governing environmental issues.

B. General Comments

1. State Regulations Which Are Different From And More String Than Federal Regulations.

Under the Federal Safe Drinking Water Act, 42 U.S.C. 300(f) et seq., states have primary enforcement responsibility provided that each state has adopted drinking water regulations which are consistent with the national primary drinking water regulations. Each state must promulgate rules and regulations which are in accord with those promulgated by the EPA under the authority of the Safe Drinking Water Act. 42 U.S.C. 300(g)-3. In the theme of maintaining a state program which is equivalent

and consistent with the federal safe drinking water program, the West Virginia regulations should be no more stringent than the federal regulations.

2. Need To Use Incorporation By Reference Approach.

Unnecessary deviations from federal regulatory language is a problem which permeates the entire State system. The minor discrepancies from the federal program which exist in the system make comprehension difficult for regulated industries. Whereas there are considerable resources available to assist in the interpretation and application of federal regulations, e.g., Preambles, RIMs and RILs, the absence of similar guidance at the State level makes interpretation of State regulations, in some instances, inordinately complicated. For these reasons, we urge the Director to amend the State regulations by incorporating by reference the relevant provisions of the federal program.

C. Comments On Specific Sections

Section 3.1 (page 1). This section defines certified laboratory. Are there laboratories which have already been certified? If so, we request that a list be provided of the certified laboratories. We also question whether or not there will be any provisions for the certification of plant's laboratories. The final regulation should specify the state and federal requirements which would apply. If there are procedures to follow for such approval, a sufficient allowance of time to obtain certification for those plant laboratories would be needed.

Section 3.7. (page 2). This section defines "maximum contaminant level" (MCL). Unlike 40 C.F.R. 141.2(c), the proposed state regulation omits the phrase ". . . which is delivered to the free flowing outlet of the ultimate user of a public water system." This omission significantly affects the meaning of this term. We urge that the full definition be adopted from the federal regulations.

Section 3.8 (page 2). This section defines "non-transient non-community water system." Is it possible that a non-transient non-community water system can be a public water system? A clarification of the meaning of each of the terms "public", "non-transient", and "non-community" should be included in the final regulations.

Section 3.11 (page 2). This section defines "person". Unlike 40 C.F.R. 141.2(d) the term "municipality" has been omitted from the list of included entities. We understand that the majority of public water systems in West Virginia are municipally-owned. Therefore, we believe it is critical that municipality should be among those entities included under the definition of person for the purposes of these regulations.

Section 3.12 (page 2). This proposed section defines "public water system." Subpart (1) of the definition refers to the water facilities which collect, treat, store and distribute under the control of the "owner or operator." The federal counterpart, 40 C.F.R. 141.2(e), refers only to the control of the operator. The proposed regulation adds "owner or" to the definition of public water system. In line with our general

comment under B.2 above, we urge that the definition of public water system be adopted verbatim from the federal regulations.

Section 3.14 (page 3). This proposed section defines VOC. We question the use of "synthetic" in the definition because a number of chemicals listed as VOCs can be non-synthetic or naturally occurring. If the qualifying term "synthetic" remains in the final regulations, the Board should clarify the meaning of this term and its application in the regulations.

Sections 4.4 and 4.5 (page 3). These proposed sections generally address special monitoring for organic chemicals. There should be included in these provisions a cross-reference to Table 64-61H which provides the requisite monitoring frequencies.

Section 5.1 (page 3). This proposed section addresses Approved Analytical Methods and Laboratories. Some water facilities affected by these proposed regulations employ laboratories located outside of the state. We perceive potentially serious administrative difficulties regarding the certification or approval of such laboratories by the Director. We suggest that upon notifying the Director of the out of state lab, that the water system be permitted to use the lab unless directed otherwise by the Board of Health.

Section 6.5 (page 4). This section addresses reporting requirements. The proposed rule states that the water system has seven days to submit to the Director a representative copy of each type of notice distributed to the public or media. The federal counterpart, 40 C.F.R. 141.31(d), allows ten days. The proposed state regulation should provide for the same ten day

allowance found in the federal regulations (see comment in paragraph B.2, above).

Section 7.5.1 (page 5). This section addresses public notification of failure to comply with MCLs or testing procedures or variances. The proposed rule requires notice through the water bills within 30 days of occurrence of the violation. A clarification is needed of the phrase "occurrence of the violation". We assume its meaning is that notice must be given within 30 days of the receipt of results evidencing a violation.

Sections 7.12.1 through 7.12.8 (pages 6-8). These sections address Mandatory Health Effects Information. The language of these state regulations is found in the proposed rule for the National Primary and Secondary Drinking Water Regulations. (52 Fed. Reg. 10972) (April 6, 1987). However, the final review of the federal rule has been promulgated and is reflected in 40 C.F.R. 143.32(e). (52 Fed. Reg. 41534) (Oct. 28, 1987). The state regulations should reflect the final federal rule.

Section 8.1(1) (page 8). This section addresses variances. The federal counterpart 40 C.F.R. 142.40(a)(1), provides that the Administrator may grant a variance upon a finding that the system cannot meet the maximum contaminant level [MCL] requirements despite application of the best available technology. Unlike 40 C.F.R. 142.40(a)(1), the proposed regulation uses the word "installation" replacing "application." We can perceive no basis for this discrepancy and urge that the proposed state regulation should adopt the language of the federal regulations.

Section 8.2.(4) (page 8). This section requires that "relevant and economic legal factors" be included in any request for a variance. The proposed state regulation fails to qualify the meaning of "relevant". We feel that the federal language found in 40 C.F.R. 142.41(c)(2) is much clearer and should be adopted. The federal regulation reads, "economic and legal factors relevant to ability to apply".

Section 8.3(7) (page 9). This proposed section requires that a written request for a variance include a plan for interim control measures during the effective period of the variance. The federal regulations 40 C.F.R. 142.41(c)(6) requires a plan for additional interim control. We urge that the federal language be adopted.

Section 8.9. (page 9). This section addresses the contents of the schedule for compliance. Upon referring to the schedule, the proposed state regulation uses the adjective "prescribed" to describe the schedule for compliance. The language of 40 C.F.R. 142.43(d) uses "proposed schedule". In light of the requirement of notice and hearing before becoming effective, the use of the term "prescribed" to characterize the schedule is inappropriate. The language of the federal regulations should be adopted.

Section 8.16. (page 11). This section concerns notice to be given by the Director regarding a variance or schedule. The proposed state regulation provides 30 days notice. The federal regulation, 40 C.F.R. 142.44(d), provides for 15 days notice. The 15 days notice given in the federal regulation should be adopted in the final rule.

Section 9.12. (page 13). This section is concerned with notice to be given by the Director regarding exempted schedules. The proposed state regulation provides 30 days notice. The federal regulation, 40 C.F.R. 142.54(d), provides for 15 days notice. The 15 days notice in the federal regulation should be adopted in the final rule.

Section 11.7. (page 15). See comment regarding Section 5.1., certification of laboratories.

Tables 64-61C and 64-61D (page 18). These tables address monitoring frequencies for VOCs. Both tables are based on vulnerability. We urge that a clear definition be provided which will define "vulnerable system."

Table 64-61F (page 19). This table lists unregulated contaminants. It omits two unregulated contaminants which are listed in 40 C.F.R. 141.40(e). Those contaminants are Ethylene dibromide (EDB) and 1,2-Dibromo3-chloropropane (DBCP). These contaminants should be included in the state regulations.

Table 64-61H (page 20). This table addresses monitoring frequencies for unregulated contaminants. Unlike the federal counterpart found in 40 C.F.R. 141.40(c), the proposed state regulations require that during the first year in which the regulations are in effect monitoring of surface and groundwater system be conducted quarterly. The federal regulation 40 C.F.R. 141.40(c) states that the minimum number of samples for ground water is one sample per entry point to the distribution system. The state regulation should replicate the federal.