

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

RE: Comments on Proposed Rulemaking – Chapter 109
Safe Drinking Water; General Update and Fees

On behalf of the 325 drinking water authorities of the Pennsylvania Municipal Authorities Association (PMAA), we submit the following comments on the proposed rulemaking, Chapter 109 Safe Drinking Water; General Update and Fees.

§ 109.708 (System service and auxiliary power)

In the preamble, regarding auxiliary power, DEP states that “This proposed rulemaking does not prescribe the specific method by which a system shall comply. Rather, this proposed rulemaking requires that a feasible plan be in place to ensure safe and potable water is continuously supplied to users. The water supplier will determine which option or combination of options it will use to comply. Ideally, suppliers will implement a combination of options to improve their redundancy and resiliency.”

One of the alternate provisions/methods that DEP is considering is finished water storage. This should be accepted as one method to comply with this section. Backup power is very expensive upfront and also the ongoing O&M costs are substantial. Backup power can fail and does fail even with a good O&M schedule. For this reason, putting too much reliance on backup power is a mistake, when the real solution, in most cases, is adequate finished water storage.

PWSs in more rural areas may not have a secondary water supplier as none exists and adequate fuel supply would be a very serious concern as natural gas may not be available, with the only other option being either propane or diesel fuels, both of which may not be available during an area wide power outage. A supply large enough of either of these fuels to operate some PWSs for any length of time would be impractical to store them, in a usable state, until such a time as they are needed. Finished water storage is the solution to the problem of loss of power.

In addition, PMAA agrees with TAC that using the services of PaWARN in emergency situations should be considered as an alternative option. DEP believes that PaWARN has limited resources and not equipped to handle any large scale event. Are these regulations written only for large scale emergency events? They are not the majority of situations and, if a statewide emergency is declared, PaWARN should be considered an option in order to comply with these requirements for those systems that need assistance.

Subchapter N. DRINKING WATER FEES

The state’s general fund once paid for most of the Safe Drinking Water Program. Now, a little more than half, \$7.7 million, funds it. Charging fees to fill the gap of a \$7.5 million shortfall to PWSs and

their customers/ratepayers is too much of a drastic change. The question for state government is why isn't this program fully funded anymore, as required? We believe core functions of DEP, like those involving the Safe Drinking Water Program, should be covered by the General Fund. The taxpayers (our customers) are already paying for the program through tax dollars; therefore, fees should never be relied upon to cover the cost of this program directly related to the public's health.

We agree that DEP must be fully funded to protect public health and safety but we question the equity of making water system customers pay for DEP staff and programs that once were underwritten for by all taxpayers. TAC recommended that, prior to seeking fees from the regulated water suppliers, the Department should first request adequate funding from the Legislature to maintain the Safe Drinking Water Program.

We support this as noted in one of our resolutions adopted by our membership this September at our 2017 annual conference:

Resolution 16-17

RESOLVED, That PMAA encourage the General Assembly to adequately fund the PA Department of Environmental Protection to maintain a viable state drinking water program for protection of public health and safety.

We were disappointed when DEP did not request additional funding at its 2017 budget hearings, and instead, opted to exclusively stick with this proposed fee package to address the funding gap. We believe that any subsidization should come from the General Fund and not through fees paid by the PWSs and their customers/ratepayers.

In addition, DEP should have provided an analysis of a fee structure based on services rendered. The PUC annually assesses public utilities based on the cost to provide service. It is recommended that DEP pursue a similar method to meet the statutory requirement of the Pennsylvania Safe Drinking Water Act (35 P.S. § 721.4) that fees must be structured to bear a reasonable relationship to the actual cost of providing a service.

DEP and the EQB need to take into consideration the overall cost that this rulemaking package will have on the water industry – small, medium and large-sized systems – because these fees will likely be increased every three years if the DEP's budget continues to get cut or its costs continue to increase.

Finally, with the water industry facing the recently adopted RTCR and the upcoming Final Rulemaking regarding the Disinfection Requirements Rule, the cumulative costs associated with compliance with these rulemakings must be taken into consideration.

§ 109.1404 (Community and noncommunity water system permitting fees)

This section establishes fees, based upon population served, involving the application for a construction permit or a major construction permit amendment. We oppose the proposal to base permit fees on population served. Permit fees should be based on the scope of work (i.e., type of project, scope of the project, project size and complexity) and are independent of the system size. They must bear a reasonable relationship to the actual cost of providing a service, as required by the Pennsylvania Safe Drinking Water Act.

§ 109.1406 (Permitting fees for bottled water and vended water systems, retail water facilities, and bulk water hauling systems)

Bottled and vended water fees do not seem equitable in relationship to the cost of the product. One way is to base the fee for bottled and vended water on gallons produced.

PMAA appreciates the opportunity to present these comments on this proposed rulemaking and respectfully requests the EQB's consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jennifer L. Case". The signature is written in a cursive style with a large initial "J".

Jennifer L. Case

Government Relations Liaison