

REGULATORY UPDATE (6/3/08)

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The most significant ongoing regulatory effort at this time is the negotiations for **revisions to the Total Coliform Rule (TCR)**. These revisions are critical, as they will ultimately impact ALL drinking water systems (community, non-community, and transient systems). EPA formally chartered the Total Coliform Rule Distribution System Advisory Committee (TCRDSAC) in mid-2007. The TCRDSAC has 16 members representing stakeholders such as utilities, federal and state regulators, public health officials, cities, Indian tribes, consumer advocates, and environmental advocates. The TCRDSAC has met eight times between July 2007 and May 2008, and three more meetings are planned in June, July, and September. EPA plans to propose a revised TCR (based on the TCRDSAC Agreement-In-Principle [AIP]) in 2010, and will finalize the rule in 2011 or 2012.

While the AIP is still far from being finalized, the following areas of consensus appear to be emerging from the negotiations, and should form the foundation of the AIP:

- The non-acute MCLG/MCL for total coliforms will be substituted with a treatment technique with triggers for a simple Level 1 self-assessment by the utility based on the current total coliform MCL and a more detailed Level 2 self-assessment that will be triggered by an acute MCL violation or a Level 2 trigger yet to be determined;
- The acute MCLG/MCL for *E. Coli* will remain the same; and
- Corrective action from the self-assessments is limited to “sanitary defects” where a sanitary defect follows the current TCR definition of “a pathway of the entry of microbial contaminants into the distribution system or a weakness or a failure of a barrier that is already in place”.

Several additional regulatory issues and the important details of rule implementation will hopefully be resolved in the remaining three TCRDSAC meetings in June, July, and September.

In addition to developing recommendations for a proposed TCR, the TCRDSAC is making recommendations for a research agenda for distribution system issues. Developing priorities for research on this huge range of issues is challenging, as is developing an approach to ensure that the priority research is actually conducted.

Outside of the TCRDSAC negotiations, the most significant regulatory effort has been development of comments on the **Draft Third Contaminant Candidate List (CCL3)**. AWWA developed extensive comments on the 104 contaminants on the Draft CCL3. Our comments hit EPA hard on the large number of contaminants versus the agency's limited drinking water **research** budget and on its ability to conduct the appropriate research to make regulatory decisions. This follows up from the research discussion at the last Water Utility Council (WUC) meeting in April. Since that meeting, AWWA staff held one conference call with EPA research staff, have more conference calls planned, and are planning trips to the EPA laboratories in Research Triangle Park and Cincinnati in an effort to move the research program forward. This is a long-term issue that may end up taking significant effort on a variety of fronts.

EPA also asked for more data on **pharmaceuticals** in the *Federal Register* notice for the Draft CCL3. AWWA did not have any new data to provide with its CCL3 comments, but did quote previous Senate testimony by Shane Snyder from Southern Nevada Water Authority (SNWA) stating that detection by

itself is not necessarily a human health problem. AWWA's comments noted that 287 pharmaceuticals were considered in the CCL universe, but did not make it through the screening/scoring process. Our comments also mentioned a future AWWA dialogue on the issues of reporting and consumer notification and how they can be a disincentive for monitoring for emerging contaminants. This would be done with a limited number of stakeholders starting in the fall. AWWA staff will be meeting with the pharmaceutical manufacturers in June about this dialogue and other issues. AWWA is also considering development of a potential pharmaceutical monitoring list based on analytical feasibility.

The proposed rule for wells for **geologic sequestration of carbon dioxide** under the Underground Injection Control (UIC) program is still scheduled for release in July 2008. Proposals for a partnership project (between AwwaRF and the Water Industry Technical Action Fund [WITAF]) on this issue were received on June 2nd, and the results from this project will assist in the development of comments on this proposal. The development of groundwater monitoring protocols is an important output from the project. At this point, EPA plans to publish the final rule in 2010, with a possible Notice of Data Availability (NODA) in 2009.

In recent congressional testimony, Assistant Administrator for Water Ben Grumbles continued to stress EPA's intent to finalize the **perchlorate** regulatory determination by the end of 2008. The decision on whether or not to regulate perchlorate is under debate at the highest levels of the Bush Administration. This schedule would mean that EPA would have to both propose and finalize this determination in six months, but that can be done if those high-level Administration officials say to do it.

In mid-2009, EPA will propose the findings of its **second Six-Year Review**. As with the first Six-Year Review, EPA will be looking at the latest health effects and analytical methods data to determine if a revision to the existing regulation is warranted, or if the existing regulation should stay the same. In the first Six-Year Review, even though the standards for a few contaminants could have been lowered due to new health effects data, EPA elected not to revise these regulations because the revision would not have provided an opportunity for significant risk reduction as required by the Safe Drinking Water Act (SDWA). In the first Six-Year Review, EPA decided to only revise the TCR due to the many violations with this rule and other implementation issues.

EPA will also be looking at other implementation issues as part of the second Six-Year Review, in addition to the health effects issues. The Six-Year Review process was the focus of a recent WITAF-sponsored **dialogue with Association of State Drinking Water Administrators (ASDWA)** members in April. Preliminary recommendations from that joint regulator-utility panel identified some of the following topics that EPA might include in its review:

- Revising regulations or guidance to address nitrite and nitrate contributed through nitrification;
- More systematic review and revision of the Lead and Copper Rule; and
- Revision of the Fluoride standards and associated public notice language.

As this project effort continues, AWWA plans to work with ASDWA towards common objectives. For example, AWWA and ASDWA could encourage EPA to develop research and guidance relative to nitrification's contribution to nitrite and nitrate levels, rather than pursue MCL monitoring in the distribution system in a revised regulatory framework.