

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

DIVISION OF DRINKING WATER

Transcript of the

Revised Total Coliform Rule
Administrative Procedure Act Hearing

Thursday, December 17, 2020

State Water Resources Control Board
Division of Drinking Water
Regulatory Development Unit
1001 I Street, 17th Floor
Sacramento, California 95814

In accordance with Executive Order N-29-20 and Executive Order N-33-20, the physical location was canceled and the meeting was held via the Zoom video/audio internet and via teleconference platforms.

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Also Present:

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Bethany Robinson
Ashley Boudet, Heritage Systems, Inc.
Dawn White, Golden State Water Company
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AVServices Broadcast

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P R O C E E D I N G S

1
2 December 17, 2020

9:35 o'clock a.m.

3 MS. ROBINSON: Good morning, everyone. Again
4 welcome to the Revised Total Coliform Rule APA Hearing. We
5 are getting started now. So I would like to introduce
6 Melissa, our Senior Supervising Water Resource Control
7 Engineer that leads our Regulatory Development Unit. She is
8 going to be giving this presentation today.

9 MS. HALL: Good morning.

10 MS. ROBINSON: Good morning.

11 MS. HALL: We are going to start by going over the
12 Revised Total Coliform Regulations Timeline and Hearing Plan
13 for the morning. I will provide an overview of the purpose
14 and benefits of the existing federal regulation and proposed
15 state regulation. Then we'll get into the key provisions
16 and highlights of the California-specific requirements,
17 before finishing up with a summary of the projected costs,
18 taking a short break, and going to public comment.

19 On February 13th, 2013, U.S. EPA promulgated its
20 revisions to the Total Coliform Rule, or rTCR, as required
21 by the Safe Drinking Water Act Amendments of 1986. Those
22 regulations included an April 1st of 2016 deadline for
23 public water systems across the country to comply with the
24 new requirements. At that deadline and today, California's
25 Total Coliform Rule is still in effect. Since then,

1 California Public Water Systems have been working to comply
2 with both the federal rTCR, subject to federal enforcement,
3 as well as California's Total Coliform Rule.

4 In February 2017, State Water Board staff released
5 a draft regulation text for California's revisions to the
6 Total Coliform Rule and held six public workshops to receive
7 public input. On October 30th, earlier this year, a notice
8 of proposed rulemaking was published on the Proposed Revised
9 Total Coliform Rule.

10 We're holding an Administrative Procedure Act
11 Public Hearing today to receive oral comments, and we're
12 closing the written comment period tomorrow at noon. Staff
13 anticipates State Water Board consideration for adoption of
14 these regulations in early 2021 with an anticipated
15 effective date of the regulations for early next year.

16 For today's hearing, the State Water Board will
17 not be taking any action on the proposed regulations. The
18 purpose of this hearing is to receive oral comments from the
19 public. As I mentioned earlier, written comments are due
20 tomorrow by noon. Written responses to all comments, both
21 oral and written, will be provided in the Final Statement of
22 Reasons.

23 The primary purpose of the proposed regulations is
24 to maintain primary enforcement authority or primacy over
25 the federal rTCR regulations through adoption of California

1 Drinking Water regulations that are no less stringent than
2 those promulgated by U.S. EPA.

3 In addition to the increased health protection
4 afforded by the federal regulations, California-only
5 elements of the proposed regulations are intended to enhance
6 and more fully protect the public by ensuring the integrity
7 of the drinking water distribution system and monitoring for
8 the presence of microbial contamination.

9 The overall benefits to the proposed regulations
10 include improving clarity of requirements for water systems
11 to increase specificity and reduce redundancy; enhancing
12 public awareness of water quality served by requiring public
13 notification when an E. coli MCL, maximum contaminant level,
14 violation occurs; when a public water system fails to
15 conduct a required assessment or corrective action to
16 prevent microbial contamination; we're looking to increase
17 consumer confidence in the safety of their potable water
18 supply; improve clarity and understanding of the existing
19 regulations regarding the significant rise in bacterial
20 count; and provide relief for public water systems who are
21 burdened by tracking compliance with two different sets of
22 regulations with similar purposes; and in general to improve
23 overall public health and welfare.

24 As described in the cost-estimating methodology
25 that accompanied the Notice of Proposed Rulemaking and the

1 Initial Statement of Reasons, the proposed regulations can
2 be divided into three categories. The first category
3 includes those regulations that are substantively identical
4 to federal requirements. For these, any associated costs
5 are already being incurred by California public water
6 systems because they're required to comply with the federal
7 regulation regardless of whether California adopts a
8 parallel regulation.

9 The second category includes California-only
10 requirements that have a potential for cost increase. This
11 includes requirements with cost impacts that we could
12 quantify, which I'll summarize later and changes with
13 negligible or nonquantifiable cost impacts.

14 The third category includes state-only
15 requirements for changes with no cost impacts. For this
16 category, the proposed regulations amend existing state
17 regulations for the purpose of nonsubstantive changes, such
18 as case, plurals, taxonomy (*italics*), correcting grammar and
19 punctuation, adding clarifying language and deleting
20 obsolete references in the requirements, and none of those
21 would result in additional costs to regulated community.

22 Because water systems have already been subject to
23 federal rTCR requirements for a few years now, I'm going to
24 briefly go over the highlights of those before focusing on
25 the similar requirements and especially those of this

1 regulation.

2 Here are some of the key provisions of the federal
3 Revised Total Coliform Rule. The rule established an E.
4 coli maximum contaminant level, or MCL, for protection
5 against potential fecal contamination. It set a Coliform
6 treatment technique requirement and established requirements
7 for monitoring total coliform and E. coli according to a
8 bacteriological sample siting plan and schedule, specific to
9 the public water system. Provisions allowing public water
10 systems to transition to the federal rTCR using now existing
11 Total Coliform Rule monitoring frequency, including public
12 water systems on reduced monitoring under the existing TCR.

13 It also included requirements for seasonal systems
14 to monitor and certify the completion of State-approved
15 start-up procedures; requirements for assessments of
16 corrective action when monitoring results show that public
17 water systems may be vulnerable to contamination. Public
18 notification requirements for violations. And specific
19 language for community water systems to include in their
20 annual consumer confidence reports when they must conduct an
21 assessment or if they incur an E. coli MCL violation.

22 The vast majority of the regulations being
23 proposed today are the same as those already included in the
24 federal Revised Total Coliform Rule. For the remainder of
25 the presentation, I will be focusing on the California-only

1 requirements that we're proposing.

2 This is a list of all the sections in Title 22
3 that are affected by the proposed regulation. Highlighted
4 sections are those that have components, not even the whole
5 thing, that are -- would be in the California-specific
6 requirements. Those that are highlighted with dollar signs
7 are the ones that have California-specific elements with
8 costs that are quantifiable.

9 So key -- some of the key provisions of the
10 proposed California requirements include requirements for
11 bacteriological monitoring of ground water not including
12 those for ground water under the direct influence of surface
13 water, or GWUDI; a source that is treated with primary or
14 residual disinfectant on a continuous basis and for revising
15 bacteriological sample siting plans to include the source
16 sample sites.

17 We're proposing requirements for public water
18 systems on reduced bacteriological monitoring to return to
19 routine biological monitoring frequencies; and set
20 requirements for Coliform density determinations of total
21 coliforms and E. coli, if directed by the State Water Board.

22 We're proposing to eliminate the monthly
23 bacteriological result summary for systems collecting only
24 one sample per month; and to clarify the minimum monthly
25 summary elements for public water systems collecting more

1 than one sample per month and still subject to the summary
2 report. We're proposing requirements for a report on
3 corrective action when monitoring results indicate a
4 possible significant rise in bacterial count, and
5 requirements for seasonal system start-up procedure
6 components, actions to be taken prior to serving water to
7 the public and a provision allowing an alternative to
8 certain start-up procedure components.

9 We are including a few definitions for clarity.
10 Most of these definitions are -- some of these definitions
11 are already included elsewhere and they are just being
12 carried into the section of the regulations for clarity and
13 are sort of self-contained.

14 We're proposing that for ground water not GWUDI
15 that is continuously disinfected and not monitored under the
16 Surface Water Treatment Rule, that the water systems must
17 collect at least one raw water sample per quarter. And then
18 if the sample result is total Coliform positive, then
19 monthly sampling is required. If after three consecutive
20 months of no coliform detections, the public system must
21 return to quarterly monitoring frequency.

22 Water systems would be required to maintain
23 training documentation for personnel performing sample
24 collection and/or field testing. Plans and procedures and
25 requests must be made in writing to the State Board or the

1 local primacy agency and include the basis and supporting
2 documentation.

3 If directed by the State Water Board, new
4 bacteriological sample siting plans would be required to be
5 developed and submitted to the State Board or local primacy
6 agency within three months after the rTCR effective date for
7 review and approval. If required, the plan must include a
8 physical location of routine, repeat, and ground water rule
9 sample points, routine and repeat sample sites
10 representative of the distribution system, including
11 pressure zones, water sources, or reservoirs. The
12 requirement that routine samples could be rotated-- or
13 option, I suppose--for samples could be rotated if the
14 number of bacteriological sample siting plan sites exceeds
15 the minimum monthly sampling requirement.

16 The proposed regulations would require that
17 sampling be done in accordance with the approved
18 bacteriological sample siting plan that has been approved
19 either by the State Board or the local primacy agency. And
20 updated bacteriological sample siting plans are required at
21 least once every 10 years and now it would be within 30 days
22 of when the public water systems or State Board or local
23 primacy agency determines that the plan is no longer
24 representative of the public water supply or within 30 days
25 when the public water system determines an alternative

1 location for the standard operating procedure for repeat
2 sites or dual purpose sample sites need revision.

3 For any quarter in which a water system serves
4 1,000 or fewer persons in each month and uses only ground
5 water, not ground water under the direct influence, and if
6 the criteria in subsections of the regulations permit, the
7 system would be allowed to submit a request to the State
8 Water Board to monitor at a reduced sampling frequency.
9 Requests must include historical data that demonstrates the
10 system has served 1,000 or fewer persons each month of a
11 calendar quarter for which the request is made and must
12 include a revised bacteriological sample siting plan with
13 updated sampling schedule.

14 Unfiltered surface water systems would sample at
15 least once -- one sample per day at or before each service
16 connection -- that's the California-specific element -- for
17 each day on which the turbidity level of source water rather
18 than the delivered water exceeds one NTU.

19 All routine and "other" samples would still be
20 reported as presence/absence, although we would be happy to
21 have enumerated results here, but if directed by the State
22 Board, based on an identified sanitary defect, exceedance of
23 a Level 1 or Level 2 Coliform treatment technique trigger,
24 history of total coliform positive samples within the past
25 twelve consecutive months or a determination of a possible

1 significant rise in the bacterial count in accordance with
2 Section 64426, analytical results could be required to be
3 reported in terms of Coliform density of total Coliform and
4 E. coli in the sample, whichever is appropriate. Water
5 systems would also be required to provide their laboratory
6 with name and contact information to facilitate compliance
7 with existing notification requirements.

8 Section 64423.1. All analytical results must be
9 reported to the State Board or our local primacy agency by
10 the tenth day of the following month. Water systems serving
11 greater than 400 service connections must submit a monthly
12 summary of the bacteriological results to the State Board
13 and local primacy agencies. And, as I mentioned earlier,
14 we're proposing to no longer require monthly summary reports
15 for small water systems, with fewer than 400 service
16 connections or, in other words, one sample per month or
17 less. And we did specify the minimum content for those
18 systems that are required to submit the monthly summary.

19 For water systems serving fewer than 10,000
20 service connections, or 33,000 people, all others subject to
21 monthly summary requirements, we're requiring labs to submit
22 copies of all required bacteriological results directly to
23 the Water Board or the local primacy agency. If a water
24 system is serving more than 10,000 service connections and
25 more than 33,000 people, we would require that laboratories

1 submit -- water systems to require the lab to submit copies
2 of all positive routine and repeat sample results to the
3 State Water Board or LPA.

4 Still on Section 64423.1. For public water
5 systems failing to test the same sample -- to test the same
6 sample for E. coli following to the Total Coliform positive
7 routine sample results, they would be required to notify the
8 State Water Board and the local primacy agency within 10
9 days after learning of the monitoring violation and they
10 would be required to conduct mitigation; failure to report
11 to the State Water Board or a local primacy agency within 10
12 days will be considered a reporting violation and would
13 require that public water system to conduct a Tier 3 Public
14 Notification.

15 Moving on to Section 64426, the significant rise
16 in bacterial counts. While the Revised Total Coliform Rule
17 replaces the Total Coliform MCL and public notification with
18 assesment and correction, there were some cases that would
19 indicate a possible significant rise in bacterial counts.
20 If there is one, then the public water system would be
21 required to conduct an investigation of possible causes
22 within 24 hours of the test result notification and would be
23 required to submit the status information to the State Water
24 Board or local primacy agency.

25 Water systems would also have to submit an

1 investigation report within 30 days to the State Water Board
2 or the local primacy agency identifying sanitary defects and
3 time lines for corrective actions for those not already
4 completed.

5 A possible significant rise condition would
6 require the public water system to conduct an investigation,
7 if possible, in 24 hours or to submit the results, mentioned
8 earlier. They would also must determine whether a
9 significant -- possible significant rise in bacterial count
10 has occurred for each month in which it is required to
11 monitor potential coliform and any samples that are not
12 invalidated by the State Water Board, or the laboratory must
13 include in that determination of bacteria count.

14 Still on Section 64426. The three cases that
15 would trigger a possible significant rise in bacterial count
16 include for public water systems collecting 40 or more
17 routine samples per month, a routine total coliform positive
18 sample, if one is followed by two positive repeat samples or
19 if a water system has a sample that is positive for E. coli,
20 or if a water system fails the E. coli MCL.

21 If there is a significant rise or a possible
22 significant rise in bacterial counts and an investigation is
23 triggered, that those investigations must include the
24 current operating procedures and records, interruptions in
25 the treatment process, evaluation of system pressure loss to

1 less than five pounds per square inch, vandalism and/or
2 unauthorized access, evidence that would indicate
3 contamination, and analytical results of additional
4 sampling, and community illness if suspected.

5 Within 24 hours of receiving notification from the
6 State Water Board or the local primacy agency of a
7 significant rise in bacteriological count there, the public
8 water system must implement its emergency notification plan.

9 Moving on to Section 64426.9. I think this is the
10 last section. For seasonal systems and start-up plans, they
11 are due within three months of the effective date of the
12 regulation and if directed by the State Water Board or LPA,
13 they will be required to include: Notification of system
14 shutdown and prior to serving water to the public;
15 inspection of water system components; disinfection and
16 flushing procedures; bacteriological and chlorine residual
17 sampling plans; and use of certified distribution operator
18 for start-up procedures. Failure to notify the State Water
19 Board or LPA and failure to submit starting up -- start-up
20 sample results would require public notification.

21 Water systems would be allowed to propose an
22 alternative start-up plan. It may be appropriate if the
23 entire distribution system remains pressurized during a
24 seasonal closure. Water systems may request extensions
25 from some start-up requirements. And alternatives must

1 provide equivalent protection of public health and be
2 approved by the State Water Board or LPA.

3 Seasonal systems, start-up and shutdown. Start-up
4 requirements. Prior to serving the public, the water system
5 would need to perform the actions described in the approved
6 start-up plan. It would need to certify to the State Board
7 or local primacy agency that the approved start-up plan had
8 been implemented. Certification would include the results
9 of bacteriological and chlorine residual samples in
10 accordance with the plan; and written approval from the
11 State Water Board or LPA to serve the public.

12 Now we're going to go into the summary of the cost
13 estimates. All the assumptions, data sources, and
14 methodology used in estimating costs associated with the
15 nonfederal elements of the proposed regulation are described
16 in detail in the cost estimating methodology available on
17 our rulemaking website.

18 The table shown here is taken from Table 22 of the
19 cost estimating methodology and summarizes estimated total
20 costs for the proposed rTCR. There, as you can see, the
21 annual increases from the raw water bacteriological
22 monitoring statewide is expected to be \$363,000. That's
23 offset in part by a decrease in the monthly Coliform Summary
24 Report reduction for those systems monitoring only once per
25 month. There is also a loss of previous cost savings for

1 removing the option to go to a lower frequency of
2 bacteriological monitoring, and there are one-time costs
3 associated with updating bacteriological sample siting
4 plans.

5 And in looking ahead for the first three years
6 after the regulation takes effect, that first year would
7 look like statewide a total cost would be \$272,000 and about
8 \$209,000 per year on an ongoing basis. The costs that we
9 consider -- couldn't consider adequately are ones that are
10 dependent on conditions and these are the ones we could
11 predict-- those are the costs that we're looking at.

12 For more information on the Initial Statement of
13 Reasons, the cost estimating methodology, the text of the
14 proposed regulations, and the Notice of Proposed Rulemaking,
15 and other rulemaking documents to date are or will be
16 available at our rulemaking website listed above. You can
17 also contact me at the email address provided on this page
18 or at DDWRegUnit@WaterBoards.ca.gov.

19 That is the end of our staff presentation. I
20 think Bethany will let us know about our time for a break to
21 see about opening up to public comment.

22 MS. ROBINSON: Yes. Thank you.

23 So we are going to be taking a quick break before
24 comments, we're going to resume at 10:05 to give everyone a
25 little bit of time. Again, if you would like to comment,

1 you can email us at DDWRegUnit@WaterBoards.ca.gov to get the
2 meeting password. So thank you, everyone, and we'll be
3 right back at 10:05.

4 (Recess taken from 9:57 to 10:05 a.m.)

5 MS. ROBINSON: Okay, I think we're about to get
6 started with comments. Give a couple of minutes for
7 everyone to get ready. Our first commenter is going to be
8 Dawn White from Golden State Water Company, followed by
9 Ashley Boudet from Heritage Systems Incorporated.

10 Dawn, you should be able to unmute yourself. You
11 can share your screen if you wish.

12 MS. WHITE: Yes. Can you hear me?

13 MS. ROBINSON: Yes.

14 MS. WHITE: Good morning. My name is Dawn White
15 and I'm the water quality manager for Golden State Water
16 Company.

17 First of all, I'd like to express my support for
18 the adoption of the proposed rTCR. Water suppliers have
19 been having to comply with separate state and federal rules,
20 and we all look forward to having one clear standard.

21 I also agree that California's proposed rule,
22 builds on the federal rule and provides additional public
23 health protection.

24 The rule -- the draft of the rule was released in
25 2017 and comments were solicited at that time. I appreciate

1 that I had the opportunity to work with staff to address
2 several areas at that time, including the use of enumeration
3 or density methods versus the presence-absence testing. And
4 I believe my comments were adequately addressed. And I look
5 forward to the long-awaited adoption and implementation of
6 California's Revised Total Coliform Rule. Thank you.

7 MS. ROBINSON: Thank you, Dawn.

8 Next up we have Ashley Boudet from Heritage
9 Systems Incorporated.

10 And, Ashley, you should be able to unmute yourself
11 and share your camera if you wish.

12 If you're having issues you can chat to us in the
13 chat box.

14 Okay, we're just going to it give a couple more
15 seconds for Ashley in case she wants to comment.

16 Okay. I think we have her listed as a maybe
17 comment, so it's possible that she decided not to comment.

18 Again, if you're having any technical
19 difficulties, please contact us and we'll be sure to get
20 your comment in. But for now we have no more commenters, so
21 I think we're going to take a quick couple minute break just
22 in case Ashley wants to comment or in case anyone else would
23 like to sign in for comments. Thank you, guys.

24 (Off the record from 10:08 to 10:10 a.m.)

25 MS. ROBINSON: Okay. I don't think we have any

1 more commenters today. We are still accepting written
2 comments until tomorrow at noon, so be sure to send those in
3 in case you would like to. Thank you, everyone, for
4 participating, and we will post this recording online as
5 soon as we can. I hope you all enjoyed the meeting and
6 thank you for joining us.

7 (Whereupon, the Hearing was adjourned at 10:20 o'clock
8 a.m.)

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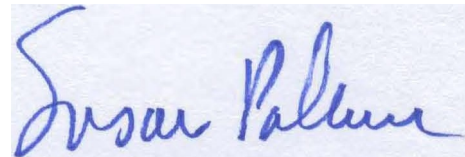
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REPORTER'S CERTIFICATE

I DO HEREBY CERTIFY THAT THE TESTIMONY IN THE FOREGOING HEARING WAS TAKEN AT THE TIME AND PLACE THEREIN STATED; THAT THE TESTIMONY OF SAID WITNESSES WERE REPORTED BY ME, A CERTIFIED ELECTRONIC COURT REPORTER AND A DISINTERESTED PERSON, AND WAS UNDER MY SUPERVISION THEREAFTER TRANSCRIBED INTO TYPEWRITING.

AND I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR ATTORNEY FOR EITHER OR ANY OF THE PARTIES TO SAID HEARING NOR IN ANY WAY INTERESTED IN THE OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 22ND DAY OF FEBRUARY, 2021.



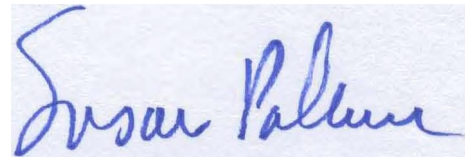
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CERTIFIED REPORTER
CERT 00124

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of February, 2021.



Susan Palmer
Certified Reporter
CERT 00124