

NDEP Summary of R194-08 “Green-Line” Amendments

The following 7 sections of R194-08 include modifications subsequent to LCB’s September 3, 2009 version. These proposed modifications were included in the material presented to the State Environmental Commission for the adoption hearing on October 6, 2009.

1) Summary of the Regulation; Page 1

The NDEP respectfully requests following text be added to the regulation summary to ensure the regulated community is aware of the primary purpose of the petition, which is adoption of the Stage 2 Disinfectants and Disinfection Byproducts Rule and the Long Term 2 Enhanced Surface Water Treatment Rule. Earlier versions of this text proposed by the NDEP, and eliminated by LCB, indicated that the regulation would be “requiring compliance with” the US EPA Rules regulation, however the NDEP requests that the phrase be included as “adopting by reference” to better reflect the action being taken in the amendment to NAC 445A.4525 to change the reference year from July 1, 2005 to July 1, 2006.

A REGULATION relating to public water systems; adopting by reference the United States Environmental Protection Agency federal regulations of Stage 2 Disinfection Byproducts and Long Term 2 Enhanced Surface Water Treatment Rules; requiring the determination and reporting of bin classification of source water; ...

2) Section 10 – New Section; Pages 4-6

Upon receipt and evaluation of LCB’s September 3, 2009 version, NDEP staff believed that it was prudent to move the reference to the Ultraviolet Disinfection Guidance Manual from the end of Section 10 and tie it to Subsection 1, at the beginning. The NDEP intent is to ensure that it is not interpreted to only apply to Subsection 2 or 2(d); but rather to all of the actions involving ultraviolet light that might be pursued by a public water system under this regulation for using treatment to control *Cryptosporidium*.

3) Section 17 – NAC 445A.4525; Pages 9-10

The NDEP respectfully requests that the amended language proposed below be the final format for this regulation. As indicated by e-mail correspondence from the US EPA Office of Regional Council (ORC), also copied below, there is concern for potential misinterpretation of the adopted requirements, as well as the version year, for the “related federal regulations applicable to public water systems” if this phrase is included *after* the adoption year.

Sec. 1. NAC 445A.4525 is hereby amended to read as follows:

445A.4525 **1.** The provisions of 40 C.F.R. §§ 141.1, 141.2, 141.4 to 141.42, inclusive, subsections (a) and (d) of § 141.43 ~~and~~ and §§ 141.60 to ~~[141.571,]~~ 141.722, inclusive, of the “National Primary Drinking Water Regulations ~~and~~” and related federal regulations applicable to public water systems, including all tables and appendices therein, as those provisions existed on July 1, ~~[2005,]~~ 2006, ~~[and related federal regulations applicable to public water systems,]~~ are hereby adopted by reference.

September 23, 2009 e-mail correspondence from Ms. Gretchen Busterud, EPA Region 9 ORC:

“...the revised version of Section 17 could present interpretation problems. We had suggested the phrase “and related federal regulations applicable to public water systems” be placed directly after the

term "National Primary Drinking Water Regulations" to ensure that all of the federal drinking water regulations (including public notification, etc. requirements) were included -- not just MCLs and treatment techniques. By placing the "related federal regulations" phrase near the end of the sentence, it may make that less clear and, as you suggest, raise the question of which version of those "related" regulations are incorporated by reference -- pre and/or post 2006?"

4) Section 35 – NAC 445A.524; Page 30

As with number 2, above, upon receipt and evaluation of LCB's September 3, 2009 version, NDEP staff believed that it was prudent to modify the form of reference to the Membrane Filtration Guidance Manual to use a "return arrow" (↩) to tie it back to Subsection 1. The NDEP intent is to ensure that it is not interpreted to only apply to Subsection 1(c); but rather to all of 1(a), 1(b) and 1(c) when the listed technologies are being pursued by a water system.

5) Section 39 – NAC 445A.230; Page 34

The NDEP respectfully submits that there appears to be a word missing in this amended regulation:

(e) *Provide equipment for measuring and recording the combined filter effluent turbidity.*

6) Section 46 – NAC 445A.538; Pages 42 and 43

With the underline style of the NDEP's prior proposed amendments, it was presumably hard to see that the reference to the federal regulations includes a "Q", not an "O" on page 42.

...identified in Appendix A to Subpart ~~40~~Q of 40 C.F.R. § 141, as adopted by reference in NAC...

On page 43, the NDEP respectfully requests the following language change to reflect the fact that the "supplier of water" is the entity responsible for making notification to the Division and not the "distribution system" (i.e. the water pipes and conveyances).

(b) There is a failure to maintain at least 0.2 milligrams per liter of residual disinfectant in the water being delivered to the distribution system. ~~[, regardless of] The [distribution system]~~supplier of water shall also notify the Division or the appropriate district board of health as to whether *or not* the residual level of disinfectant was restored to at least 0.2 milligrams per liter within 4 hours.

7) Section 138 – Repeals; Page 131

As discussed with Mr. Randy Stephenson, subsequent to September 3, 2009, the NDEP withdraws the proposed repeal of NAC 445A.66055 "Health Authority defined" until such time as NAC 445A.6682 is amended by the State Board of Health.