Executive Summary - Report of the Small Business Advocacy Review Panel

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TCR / DS Federal Advisory Committee

April 9, 2008

Objective

Provide an overview of the recommendations of the EPA Small Business Advocacy Review Panel (SBAR Panel) on

The Revisions to the Total Coliform Monitoring and Analytical Requirements and Consideration of Distribution System Issues

Small Business Advocacy Review

- A process to comply with the Small Business Regulatory Enforcement Fairness Act (SBREFA)
- Prior to proposing a rule, EPA engages small entity stakeholders to learn more about their concerns and ideas
- If EPA believes that the rule may have a significant economic impact on a substantial number of small entities, or is uncertain about it, EPA begins the Panel process.
- The process provides an opportunity for small entities to supply EPA with information to consider regarding the impact of different options under consideration.

SBAR Panel Members

- EPA lead office developing the rule - Pamela Barr, OGWDW/SRMD
- EPA's Small Business Advocacy Chair - Alexander Cristafaro, OPEI
- Chief Counsel for Advocacy of the Small Business Administration - Thomas M. Sullivan (Represented by Kevin Bromberg)
- Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget – Susan E. Dudley (Represented by Jim Laity)

SBAR Panel Process

- EPA and SBA identified potential representatives of small entities (PWSs serving less than 10,000 persons per day).
- Panel appointed a group of official Small Entity Representatives (SERs).
- EPA convened the SBAR Panel on January 28, 2008
- The Panel reviewed background material with the SERs and collected advice and recommendations from them regarding potential impacts on small entities and alternatives to the rule.
- Panel had 60 days to consider SER comments in addition to other rule-related materials prepared by EPA.

SBAR Panel Process (cont.)

- Panel prepared a report, including an executive summary, on the potential small entity impacts of the rule and on possible ways to reduce those impacts.
- The report and executive summary were sent to to the Administrator of EPA on March 31, 2008.
- The Panel report is considered by the Agency as it makes decisions on the proposed rule.
- EPA makes Panel report publicly available by including it in the rulemaking record docket once the proposed rule is issued.

Findings and Recommendations

The Panel supports an approach that uses TC as trigger for investigation and/or corrective action.

With the appropriate monitoring, investigation and corrective action elements, The Panel believes that such an approach can be structured to maintain the level of public health protection in the current TCR.

- Under such an approach E. coli would serve as the basis for an acute MCL violation and trigger for immediate PN.
- EPA should develop a toolbox of appropriate enforceable investigative and corrective action responses.
- EPA should develop an approach that includes flexibility to rely on system operators and primacy state regulatory authorities expertise where appropriate.
- The TCR should continue to meet the three objectives of the 1989 rule.

Findings and Recommendations

SER comments:

- TC(+) samples could serve better purpose by triggering assessment or corrective action requirements appropriate to water system type and complexity
- PN requirement based only on Total Coliforms is ineffective, confusing, and leads to unnecessary public distrust
- Any corrective action requirements should leave flexibility to the operator to respond in an appropriate manner, given the wide variability in system sources, configurations, and issues.

Findings and Recommendations – Monitoring

EPA should develop options that would ensure that routine monitoring and reduced monitoring provisions appropriately balance risk and cost and ensure protection of public health.

- Criteria that may be appropriate to determine monitoring frequency include: system size, sanitary survey results, compliance history, past monitoring results, system configuration, source type, source water vulnerability, treatment in place, operator training.
- EPA should specifically tailor small system repeat monitoring requirements to the characteristics and situations of different system types, where practicable. Could include targeting more frequent monitoring for small CWS and/or NCWS to high risk sites or systems.
- EPA should consider public health protection and the resources required in tracking changes in monitoring frequency when considering criteria to reduce or increase monitoring.

Findings and Recommendations – Monitoring

SER comments:

- Several SERs were concerned that current the TCR monitoring scheme allows States to reduce monitoring to quarterly or annually, which may not be sufficiently protective of public health.
- SERs commented that requirements should be different for water systems without a DS (e.g. TNCWSs), because the system is much simpler and less vulnerable to sanitary breaches.
- Most SERs expressed concern with the current repeat and next-month routine sampling requirements following a TC(+).

Findings and Recommendations – Indicators and Methods

EPA should continue to evaluate what parameters are most appropriate for routine monitoring and as potential triggers for investigative and corrective actions.

- EPA should assess advantages/disadvantages of allowing the use of FC as alternative indicator to E. coli and the appropriate role for monitoring disinfectant residual.
- EPA should continue to evaluate the possible use of methods that will provide a rapid result for both TC and E. coli, so that any additional action(s) can be commenced as timely as possible.
- EPA should consider whether there is analytic value in receiving a colony count, as well as a presence/absence result, and tailor analytic requirements accordingly.

Findings and Recommendations – Misc.

EPA should continue to evaluate whether it is appropriate to further differentiate TCR requirements based on differences in water systems.

- SERs suggested that different requirements might be advisable for different system classes (e.g. type, size, configuration).

EPA should continue to ensure that any revisions to the TCR be coordinated with, and do not duplicate or conflict with, the requirements of related rules.

- SWTR, IE, LT1, LT2, TTH, Stage 1, Stage 2 DBP and GWR
- Consider how best to conform the sanitary survey requirements in the different rules.

EPA should also assess the need for revisions to reporting and recordkeeping requirements and will consider them in any estimation of the burden and benefits of any changes to the rule.