

Documentation of EPA's Review of
Virginia Department of Health Primacy Application
For the Revised Total Coliform Rule

January 2017

Background

On December 13, 2016, the Virginia Department of Health (VDH) submitted to Shawn Garvin, Regional Administrator, the final primacy revision application for the Revised Total Coliform Rule (RTCR). VDH adopted this rule by amending 12VAC5-590 Waterworks Regulations on October 3, 2016, with the rule becoming effective November 2, 2016.

These materials were immediately reviewed to determine whether all of the necessary materials were provided and a letter was prepared to the Virginia Commissioner of Health stating as such. This letter, signed by Cecil Rodrigues, Deputy Regional Administrator acting for the Regional Administrator on January 18, 2017, officially started the review period and provided interim primacy until EPA completes the review of the primacy application and either approves or disapproves primacy for the RTCR. The Regional Administrator is the only person delegated to make this determination (see 40 CFR §142.12(d)(2) and Delegation 9-4).

Reviews Conducted

Along with the required documentation (checklist, Crosswalk, Attorney General certification statement and information on the Special Primacy provisions) VDH also provided several of their internal working memos which describe to field staff how the rule will be implemented, records to retain, sample notification and violations letters to water systems, among other resources.

Note that the Commonwealth regulations use the term waterworks, which is comparable to public water system in the Federal regulations. This is not a change.

During December 2016, the primacy revision checklist, state reporting and recordkeeping checklist and additional details related to the special primacy provisions were reviewed and *found to be complete, thorough in detail and consistent with Federal RTCR provisions and implementation guidance.*

During December 2016, the working memos (WM) 630 and 917 were reviewed. These capture the process for and personnel able to conduct Level 2 assessments, record keeping (WM 917, page 17), and sample notice of violation letters and public notifications. Page 12 defines sanitary defects. WM 917, page 16 also addresses that invalidation of bacti samples will only be invalidated via letter from the Field Office Director.

Working Memo 851 and Chapter 4 of WM 898 were also reviewed. WM 851, page 6, discussed alternate sampling site criteria and the process for review and approval either under a water system SOP or on an ad hoc basis.

WM 823 related to SDWIS data management was also reviewed. This memo provides a timeline for completion of certain data management activities related to the RTCR (inventory, compliance determinations, etc.)

These internal working memos and materials were found to be consistent with Federal RTCR provisions and implementation guidance.

During December 2016 and January 2017, the Crosswalk was reviewed. This is the bulk of the primacy application and includes a side-by-side review of the state rule to the Federal Rule. Much of the text of the Commonwealth's rule is written using the exact wording of the Federal Rule. This review also included the related Virginia Laboratory Certification regulations (1VAC30-41).

A few notes about Virginia's RTCR:

- VDH regulations are not structured as the Federal Rule with various subsections for the different types of water systems. However, VDH does capture all monitoring requirements properly in several sections of the rule (see 12VAC5-590-370, -380, -392. Reporting and recordkeeping are in 12VAC5-590-530 and -550.
- VDH is not allowing any reduced monitoring to annual monitoring.
- VDH staff will conduct Level 2 assessments using a prepared form. A working memo defines the experience staff must have in order to conduct these assessments.
- VDH has developed a Level 1 assessment form for waterworks to use.
- VDH does not use the word 'exempt' as EPA does. In order to avoid confusion with the exemptions allowed under the regulations, VDH uses the word 'waive'.
- VDH uses one appendix (Appendix O) to define the health effects language to be used in Consumer Confidence Reports and Public Notices.
- VDH has included seasonal system required sampling prior to start-up under the definition of special purpose samples as these aren't included in compliance calculations.
- Invalidation of samples will be put into writing and signed by the Field Office Director.
- VDH will make case-by-case decisions concerning the waiving of the 24-hour limit for collecting repeat samples following a total coliform-positive results. As such, according to EPA regulation, the state does not need to develop and submit criteria to EPA for review. VDH discusses this in Working Memo 917 for consistency in staff implementation.

Due to the format of the EPA Crosswalk, certain appendices do not provide for corresponding state regulation to be provided. These include Appendix A to subpart O for the CCR Rule, Appendix A and B to subpart Q for the PN Rule and a list of analytical methods for total coliforms and *E. Coli* analyses. Below is a list of where the corresponding Virginia regulation can be found:

Appendix A to subpart O – found in 12VAC5-590, Appendix O

Appendix A to subpart Q – not included; is a reference only and not regulatory. All text appears within the Virginia Waterworks Regulations.

Appendix B to subpart Q – found in 12VAC5-590, Appendix O

Analytical Methods – found at 1VAC30-41-55 includes methods adopted by reference from the Federal rule as of July 1, 2013 (which incorporates the February 13, 2016 RTCR).

Minor revisions occurred throughout 12VAC5-590 Waterworks Regulations to maintain consistency with other Federal Rules (Ground Water Rule, Consumer Confidence Report Rule, Public Notification Rule, Variance and Exemptions); for consistent terminology (water system revised to waterworks); and to remove provisions which no longer apply (former Total Coliform Rule).

No issues were found in this review. The VDH regulations are consistent with, and no less stringent than the Federal RTCR.

This review documentation provided by Patti Kay Wisniewski, Drinking Water Branch (3WP21), EPA Region III. January 24 2017