



# ADEQ DRINKING WATER REGULATIONS RULEMAKING: INCORPORATION BY REFERENCE

By Dale Alimena, AWPCA Government Affairs Committee Chair

**I**N DECEMBER 2004, THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (ADEQ) INITIATED a rulemaking effort to rewrite the drinking water regulations in the Arizona Administrative Code (A.A.C.), Title 18, Chapter 4, titled Department of Environmental Quality, Safe Drinking Water (18 A.A.C. 4). The comment period for this rulemaking was scheduled for closing on January 14, 2005, but ADEQ had extended the comment period for the rule until the end of February 2005, and as of March 1, 2005, has decided to keep the comment period open even longer. The ADEQ is currently in the process of compiling a list of differences between its current rules and its proposed rules, which it will then circulate among its stakeholders to assist with their review of the rulemaking. The Department will keep the comment period open until stakeholders have a chance to review the list of changes and submit any additional comments they might have at that point. The contact person at ADEQ is Sean McCabe (602) 771-4600; McCabe.Sean@azdeq.gov.

This rulemaking will revise the entire structure of 18 A.A.C. 4 so that it will mirror the format of the federal drinking water rules; additionally, most of the National Primary Drinking Water Regulations in 40 CFR Part 141 and various primacy provisions from 40 CFR Part 142 will be incorporated by reference in 18 A.A.C. 4. ADEQ believes that this rulemaking will simplify the process for review and approval of Arizona's safe drinking water regulations by the Governor's Regulatory Review Council (GRRC) and the U.S. Environmental Protection Agency (EPA). ADEQ's drinking water regulations cannot be enacted without GRRC approval and EPA primacy approval.

According to notice of proposed rulemaking in the Arizona Administrative Register, December 12, 2004; Volume 9: Issue 50, page 5330 (<http://www.azsos.gov/aar/2003/50/docket.pdf>), the main goal of the rulemaking is to maintain primary enforcement authority (primacy) of the Safe Drinking Water Act (SDWA) in Arizona. In addition to the primacy goal, there are two main reasons for undertaking this rulemaking. First, incorporating the federal rules by reference with the purpose of simplifying the process for amending and approving rules in the future. Second, a number of new federal drinking water rules will be written into the State's regulations.

By instituting a fundamental change in the way the ADEQ drafts drinking water regulations, the rule review and approval process will be greatly simplified. Currently, after new federal drinking water rules are adopted, ADEQ will follow up by implementing them at a state level by means of revising the language in 18 A.A.C. 4. However, because of the differing

formatting and text that currently exists between the federal rules and state rules, the ADEQ spends a significant amount of resources to make those revisions. With the new format of the state rules, ADEQ will be able to simply incorporate the federal rules into the state rules by reference because the federal and state rules will mirror each other. Therefore the changes will require a minimal effort compared to the current methodology. Consequently, ADEQ anticipates it will be able to redirect staff resources to other program areas in need of assistance.

Another foreseen benefit of restructuring the state drinking water rules to mirror the federal rules will be the ability of persons affected by the rules to easily and effectively utilize EPA's comprehensive guidance documents. The EPA's guidance documents make it easier for people to understand and comply with EPA's (and primacy States') drinking water regulations. A good source for information and guidance regarding federal drinking water rules is the following EPA websites: <http://www.epa.gov/safewater/regs.html> or <http://www.epa.gov/safewater/publicoutreach/quickreferenceguides.html>.

In addition to restructuring the format of 18 A.A.C. 4, the ADEQ will also incorporate several new federal drinking water rules into Arizona's safe drinking water regulations. All water systems are already legally required to comply with the new federal rules and the ADEQ is currently working with public water systems as the contact for assistance with and interpretation of the rules. Some of the more significant new federal rules are as follows:

- Radionuclides Rule; Final Rule, 55 Federal Register 76,708 (2000).
- Filter Backwash Recycling Rule; Final Rule, Federal Register 31,086 (2001).
- Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring Rule; Federal Register 6,976 (2001), as clarified at 68 Federal Register 1,4502 (2003).
- Long Term 1 Enhanced Surface Water Treatment Rule; Final Rule, 67 Federal Register 1,812 (2002).

The following text provides an overview of the new these regulations.

## **Radionuclides Rule**

On December 7, 2000, EPA published revisions to the Radionuclides Rule that retains the existing MCLs for combined radium-226 and radium-228, gross alpha particle radioactivity, and beta particle and photon activity. The rule regulates uranium for the first time. The rule allows reduced monitoring for systems which have low levels of the targeted contaminants during the first year of monitoring results.



### ***Arsenic Rule***

On January 22, 2001 EPA adopted a new standard for arsenic in drinking water at 10 ppb, replacing the old standard of 50 ppb. The rule became effective on February 22, 2002. The date by which systems must comply with the new 10 ppb standard is January 23, 2006.

### ***Clarifications to Compliance and New Source Contaminants Monitoring Rule***

At the same time the arsenic standard was revised, the EPA published clarifications for monitoring and compliance determination provisions for inorganic contaminants (IOCs), volatile organic contaminants (VOCs), and synthetic organic contaminants (SOCs). The clarifications for IOCs, VOCs, and SOCs address calculation of compliance when a water system fails to collect the required number of samples, and also address monitoring and demonstration of compliance provisions for new public water systems or new sources of drinking water.

### ***Filter Backwash Recycling Rule***

On June 8, 2001, the EPA published the Filter Backwash Recycling Rule. It applies to public water systems that: (1) use surface water or ground water under the direct influence of

surface water, (2) utilize conventional or direct filtration, and (3) recycle spent filter backwash, thickener supernatant, or liquids from dewatering processes. These systems are required to return recycle flows back through all the processes of the water system's existing conventional or direct filtration system; or they may send it to an alternate location approved by ADEQ. This rule will reduce the risk of illness from microbial pathogens, particularly Cryptosporidium.

### ***Long Term 1 Enhanced Surface Water Treatment Rule***

On January 14, 2002, the EPA published revisions to the Long Term 1 Enhanced Surface Water Treatment Rule. It applies public water systems that serve fewer than 10,000 persons and use surface water or ground water under the direct influence of surface water. Implementation of the Long Term 1 Enhanced Surface Water Treatment Rule will provide reduced risk of exposure to microbial pathogens such as Cryptosporidium, disinfection-resistant pathogens, and other waterborne bacterial or viral pathogens in small drinking water systems. The major provisions of the rule address the control of cryptosporidium and performance standards for turbidity removal.