

Legislative Council
Administrative Rules Committee
June 9, 2011
North Dakota Administrative Code (N.D.A.C.) Article 33-17
Public Water Supply System

Good morning, Mr. Chairman and Committee Members. My name is Larry Thelen. I am Administrator of the Drinking Water Program for the North Dakota Department of Health.

The Health Department is adopting these changes to N.D.A.C. Article 33-17, Public Water Supply Systems because of revisions made by the U.S. Environmental Protection Agency pursuant to the federal Safe Drinking Act (PL 104-182). The rule revisions did not result from statutory changes made by the Legislative Assembly. The revisions were made to conform state rules to federal rules. The federal rules were adopted by reference with permission by EPA. Therefore, the revised state rules are no more stringent than the federal rules.

The changes were to three rules: the Lead and Copper Rule (LCR), the Public Notice Rule (PN) and the Consumer Confidence Report (CCR).

The LCR (33-17-01-07) improves public health protection through the control of lead and copper in drinking water. The rule requires monitoring of public water systems in the distribution system. Changes to this rule include:

- Minimum number of samples required,
- Timing of monitoring requirements,
- Required notice to the sampler of the lead results at their residence,
- Advanced notification and approval of long-term treatment or source changes, and,
- Reevaluation of lead service lines.

The PN Rule (33-17-01-13) requires public water systems to alert consumers to potential health risks from violations of drinking water standards and to tell them how to avoid or minimize such risks. The goal of this rule is to protect public health, build trust with consumers and establish an ongoing, positive relationship with the community.

The CCR (33-17-01-13.1) requires community public water systems to distribute a consumer confidence report to all consumers once per year. The change requires all consumer confidence reports to include specific language regarding the health effects of lead.

Our process for adopting these changes began on August 18, 2010 when the Department notified the State Health Council concerning the amendments to Art. 33-17 and proceeded with the public hearing. The Notice of Intent to amend Art. 33-17 and a copy of the proposed rules were sent to the Legislative Council on August, 18, 2010 and posted on the Department's web site. The public hearing notice was published one time in all county newspapers from September 1 to September 8, 2010. The public hearing was held on October 5, 2010 at the Gold Seal Center at 918 E. Divide Ave. in Bismarck, N.D. No comments were received during the hearing or the 10 day comment period after the hearing.

The revised rules were submitted to the Attorney General on November 1, 2010 for an opinion. The Attorney General's Opinion dated December 8, 2010 determined the administrative rules are in compliance with North Dakota Century Code. (N.D.C.C.) Chapter 28-32.

On March 3, 2011, the State Health Council gave final approval to the rule revisions.

The cost for publication of the public hearing notice and holding the hearing was \$1,619.60.

A written regulatory analysis was not completed because a request was not filed as required in N.D.C.C. Section 28-32-08 and an economic impact statement on small entities as required by N.D.C.C. Section 28-32-08.1 was not done because the rules are mandated by federal law.

A taking assessment is not required as the rules do not result in takings in the context of N.D.C.C. Section 23-32-09 and the rules were not adopted as emergency rules.

In summary, the amendments are necessary to conform our state drinking water rules to the federal rules promulgated by the EPA pursuant to the federal Safe Drinking Water Act, and to retain the State's primacy authority to implement the State and federal Safe Drinking Water Act.

Thank you and I will answer any questions you may have about these amendments.