



**Bureau of Water
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Re: EPA Review of South Carolina’s PWSS Program Primacy Applications for the Ground Water Rule, Lead and Copper Rule Short-Term Revisions and Clarifications, and Revised Total Coliform Rule

Dale,

Please accept this letter as SC DHEC’s response to the primacy application reviews for the regulations listed above. I have copied and pasted your comments from your April 27, 2020 e-mail to me and will have our response underlined below your action requests.

Ground Water Rule

With its GWR primacy application submitted to EPA in 2008, each of the program elements in the State Primacy Revision Checklist is marked “Yes” – indicating that the GWR primacy application represents a change to each element of the State’s PWSS primacy program. It is not clear to EPA how adoption of the GWR represents a change to several of the primacy elements, including but not limited to: (1) maintaining an inventory of public water systems, (2) authority to sue in courts of competent jurisdiction, (3) right of entry, (4) authority to assess civil and criminal penalties, (5) emergency plans, and (6) administrative penalty authority.

Action Request – Update the State Primacy Revision Checklist in consideration of the comment above.

DHEC Response: After closely and carefully reviewing the GWR as published in the Federal Register, there were no changes to the SC drinking water program as related to 40CFR 142.10. Each of those elements listed did NOT require any changes to the State drinking water program. The updated GWR 40CFR142.10 checklist is included with this document.

Lead and Copper Rule Short-Term Revisions and Clarifications

1. The following referencing errors have been identified in South Carolina’s regulations corresponding with the federal LCR STR. Region 4 legal staff have determined that the referencing errors do not leave the State’s lead and copper regulations less stringent than the federal rule. However, the errors may create burdensome confusion for water systems and the public; therefore, it is important that they be corrected as soon as feasible.

- a) 40 CFR § 141.85(b)(4)
- b) 40 CFR § 141.87(e)(2)(ii)
- c) 40 CFR § 141.90(a)(3)

Action Request – EPA requests that via response to this email or letter correspondence, DHEC acknowledge the regulatory referencing errors and commit to correcting each through a regulatory update as soon as feasible, but no later than when DHEC is next due to revise its regulations to obtain primacy for the next National Primary Drinking Water Regulation (NPDWR) adopted by EPA.

DHEC Response: DHEC acknowledges these minor errors and is committed to revising the regulations as soon as feasible, but no later than the next regulatory revision process to obtain primacy with the NPDWR.

2. Again, with its LCR STR primacy application submitted to EPA in 2010, each of the program elements in the State Primacy Revision Checklist is marked “Yes” – indicating that the LCR STR primacy application represents a change to each element of the State’s PWSS primacy program. It is not clear to EPA how adoption of the LCR STR represents a change to several of the primacy elements, including but not limited to: (1) maintaining an inventory of public water systems, (2) authority to sue in courts of competent jurisdiction, (3) right of entry, (4) authority to assess civil and criminal penalties, (5) emergency plans, and (6) administrative penalty authority.

Action Request – Update the State Primacy Revision Checklist in consideration of the comment above.

DHEC Response: After closely and carefully reviewing the LTR STR as published in the Federal Register, there were no changes to the SC drinking water program as related to 40CFR 142.10. Each of those elements listed did NOT require any changes to the State drinking water program. The updated 40CFR142.10 checklist is included with this document. This document is the same for both the GWR and LTR STR and is presented below as one document.

Revised Total Coliform Rule

1. The following column misalignment and duplicative language error has been identified in South Carolina’s regulations corresponding with the federal RTCR. Region 4 legal staff have determined that the error does not leave the State’s regulations less stringent than the federal rule. However, the error may create burdensome confusion for water systems and the public; therefore, it is important that it be corrected as soon as feasible.

Appendix B to Subpart Q of 40 CFR Part 141

DHEC Response: DHEC acknowledges the errors in this appendix. The Appendix B in the State Primary Drinking Water Regulation, R.61-58 is correct. The error is in the State Legislative Office’s online version of the regulation. There is also additional language in the online version that should have been removed and was not. All of these issues will be resolved as soon as feasible but no later than the next regulatory revision process to obtain primacy with the NPDWR.

2. DHEC's responses to two special primacy requirements of the RTCR need further minor clarification, as follows:

a) Special Primacy Requirement Regarding Baseline and Reduced Monitoring at 40 CFR § 142.16(q)(1)

DHEC Response: The inconsistency mentioned has been corrected. See The attached RTCR crosswalk (item 40CFR142.16(q)(1)).

b) Special Primacy Requirement for Reviewing and Revising Sample Siting Plans at 40 CFR § 142.16(q)(2)(i)

DHEC Response: The Drinking Water Program disagrees that this needs to be amended. All of the regional offices are instructed from the central office on the location and timing of compliance monitoring for federal regulations. Although the Department disagrees, the Appendix D has been modified to include a statement that DHEC will not allow dual purpose RTCR repeat/GWR triggered source water monitoring.

3. With its RTCR primacy application submitted to EPA in 2015, each of the program elements in the State Primacy Revision Checklist is marked "No" to indicate that the element has not been revised in association with DHEC's primacy revision request. For each element on the checklist marked "No", an appropriate state authority and its date of adoption need to be included.

Action Request – Update the State Primacy Revision Checklist in consideration of the comment above.

DHEC Response: After closely and carefully reviewing the RTCR as published in the Federal Register, there were no changes to the SC drinking water program as related to 40CFR 142.10. Each of those elements listed did NOT require any changes to the State drinking water program. The updated 40CFR142.10 checklist is included with this document. This document is the same for both the GWR, LTR STR, and RTCR and is presented below as one document.

142.10 State Primacy Revision Checklist

Required Program Elements	Revision to State Program (Yes or No)	State Citation
142.10 Primary Enforcement		SC Code 44-55-100
142.10(a) Regulations no less stringent		SC Code 1-23-120(H)(1)
142.10(b)(1) Maintain inventory		SC Code 44-55-100
142.10(b)(2) Sanitary survey program		SC Code 44-55-40(F)
142.10(b)(3) Laboratory certification program		SC Code 44-55-40(J) & Regulation R.61-81
142.10(b)(4) Laboratory capability		SC Code 44-55-40(J) & Regulation R.61-81
142.10(b)(5) Plan review program		SC Code 44-55-30
142.10(b)(6)(i) Authority to apply regulations		SC Code 44-1-70
142.10(b)(6)(ii) Authority to sue in courts of competent jurisdiction		SC Code 44-55-90(C)
142.10(b)(6)(iii) Right of entry		SC Code 44-55-40(H)
142.10(b)(6)(iv) Authority to require records		SC Code 44-55-40(F)
142.10(b)(6)(v) Authority to require public notification		SC Code 44-55-70
142.10(b)(6)(vi) Authority to assess civil and criminal penalties		SC Code 44-55-90
142.10(c) Maintenance of records		SC Code 44-55-40(F)
142.10(d) Variance and exemption conditions		SC Code 44-55-40(G)
142.10(e) Emergency plans		Regulation R.61-58.8.C
142.10(f)(1) Administrative penalty authority		SC Code 44-55-90
142.10(f)(2) Maximum administrative penalty		SC Code 44-55-90
142.10(g) Electronic reporting		Regulation R.61-115

Excerpt from primacy revision crosswalk for RTCR:

<p><i>Requirements for States to adopt 40 CFR part 141 subpart Y – Revised Total Coliform Rule.</i> In addition to the general primacy requirements elsewhere in this part, including the requirements that State regulations be at least as stringent as federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart Y, must contain the information specified in this paragraph (q).</p>	<p>40 CFR 142.16(q)</p>	<p>See Appendix A - R.61-58: State Primary Drinking Water Regulations</p>
<p>In their application to EPA for approval to implement the federal requirements, the primacy application must indicate what baseline and reduced monitoring provisions of 40 CFR part 141, subpart Y the State will adopt and must describe how they will implement 40 CFR part 141, subpart Y in these areas so that EPA can be assured that implementation plans meet the minimum requirements of the rule.</p>	<p>40 CFR 142.16(q)(1)</p>	<p>Only non-seasonal, transient non-community systems that serve 1,000 or fewer people and that rely exclusively on ground water will be considered for reduced monitoring.</p> <p>State staff members will conduct compliance monitoring for TNC PWSs under the RTCR. Appendix C (attached) is the State’s Total Coliform Reduced Monitoring Guidance that is used to determine which TNC PWSs are eligible for reduced monitoring under the TCR.</p> <p>If triggered for increased monitoring, non-seasonal transient systems will be allowed to return to reduced monitoring provided all criteria listed in R.61-58.17.E(7) & (8) are met.</p>
<p>The State’s application for primacy for subpart Y must include a written description for each provision included in paragraphs (q)(2)(i) through (ix) of this section.</p>	<p>40 CFR 142.16(q)(2)</p>	

31. Sample Siting Plan

Purpose:

The purpose of this item is to evaluate the system's sample siting plan to determine if it is adequate to ensure that there is no place in the distribution system where microbiological contamination could persist indefinitely with little chance of detection.

Inspection Guidelines:

All Public Water Systems must collect coliform samples according to a written sample siting plan. This plan ensures that samples are collected at locations representative of the entire distribution system. The sample plan identifies both sample collection sites and a collection schedule. There are two parts to a satisfactory plan, a written description of the procedures, site locations and descriptions, and how the plan is carried out (SOP) and a system map that shows the sources, distribution piping, storage tanks and sample locations. Sample siting plans are required to be kept updated and should be reviewed during each sanitary survey. The inspector should review the plan to determine if the plan is representative of water throughout the distribution system and that the plan is adequately written to allow someone with limited knowledge of the system to carry out the plan.

The plan must contain routine and repeat sampling locations representative of the distribution system, as well as the sample collection schedule. The sample sites in the plan should be located in accessible locations at a customer's premises, dedicated sampling station, or other designated sampling site.

The plan must include a map of the distribution system and a detailed description of how the sampling plan will be carried out. The distribution map must show the locations of all distribution water lines, water sources, storage tanks and sampling points.

The sample siting plan should be designed such that system coverage is accomplished with each month's samples. Water systems must collect samples at regular time intervals throughout the month except for ground water systems that serve 4,900 people or fewer. Ground water systems that serve 4,900 people or fewer may collect all required samples on the same day if the samples are collected from different sample sites. All major portions of the distribution system must be covered by the sampling plan. Each routine sample point in the plan must be sampled at least every three (3) months. The sample plan should avoid sampling points that are served by major transmission mains, and should target areas served by smaller pipes or dead end lines.

The inspector must review the plan for adequacy. The plan must be representative of the entire distribution system. The plan must include all routine, repeat, and Ground Water Rule triggered source

monitoring (for ground water systems) sites. The inspector must also determine if the system is taking the correct number of samples for the system's population. It is appropriate for the inspector to remind systems to review the plan annually for adequacy and to contact either the local Regional office, or the Drinking Water Protection Division in Columbia for questions or when making revisions. Sample plans are subject to Department review and revision if needed.

Routine Monitoring requirements:

Non-community systems that serve 1,000 or fewer people and use only ground water must collect one sample per quarter, unless one or more of the criteria for reduced monitoring is met.

Seasonal transient non-community water systems that use only groundwater and serve 1,000 or fewer people must collect at least one sample per month when they are in operation.

All monitoring schedules are set by personnel in the central office, Drinking Water Compliance Monitoring Section.

During *each* sanitary survey, inspectors must determine whether or not the water system is being appropriately monitored (number & frequency of samples). The system will increase to monthly monitoring if: They trigger a level 2 assessment, 2 level 1 assessments, has an E. coli MCL violation, has a coliform treatment technique violation, or has two RTCR monitoring violations or one RTCR monitoring violation and a Level 1 trigger in a rolling 12-month period.

*Note – there are provisions for a non-community system using only groundwater and serving 1,000 or fewer people to increase their monitoring and criteria to return to quarterly monitoring. While not in the sample siting plan, each inspector should review the appropriate portions of the regulations (R.61-58.17) to ensure that the system is on the correct monitoring schedule. Transient non-community systems that are seasonal always sample monthly when they are in operation. There are no increase or decrease provisions for them.

Community water systems serving 1,000 or fewer people and use only ground water must collect and have analyzed one sample per **month**.

Surface Water systems serving 1,000 or fewer people must collect one sample per **month**.

DHEC will not permit dual purpose RTCR repeat/GWR triggered source water monitoring.

All water systems serving more than 1,000 people must collect the number of samples according to their service population each **month**.

Minimum Population Served	Minimum Number of Samples per Month	Minimum Population Served	Minimum Number of Samples per Month
1,001 to 2,500	2	70,001 to 83,000	80
2,501 to 3,300	3	83,001 to 96,000	90
3,301 to 4,100	4	96,001 to 130,000	100
4,101 to 4,900	5	130,001 to 220,000	120
4,901 to 5,800	6	220,001 to 320,000	150
5,801 to 6,700	7	320,001 to 450,000	180
6,701 to 7,600	8	450,001 to 600,000	210
7,601 to 8,500	9	600,001 to 780,000	240
8,501 to 12,900	10	780,001 to 970,000	270
12,901 to 17,200	15	970,001 to 1,230,000	300
17,201 to 21,500	20	1,230,001 to 1,520,000	330
21,501 to 25,000	25	1,520,001 to 1,850,000	360
25,001 to 33,000	30	1,850,001 to 2,270,000	390
33,001 to 41,000	40	2,270,001 to 3,020,000	420
41,001 to 50,000	50	3,020,001 to 3,960,000	450
50,001 to 59,000	60	3,960,001 or more	480
59,001 to 70,000	70		

Special monitoring evaluations for water systems serving less than 1,000 people using only ground water.

During each sanitary survey, the inspector must evaluate whether or not the water system is on the correct monitoring schedule. When performing a survey on these types of systems, the inspector will discuss with the Drinking Water Protection Division to get input on the correct schedule. It is important to determine if the system should be on routine, reduced, or increased monitoring. There are several criteria in the regulations (R.61-58.17) that will need to be met and have a bearing on what schedule the system is on and can remain on. The system’s water quality, compliance history, and barriers to contamination all play a role in determining the appropriate schedule. Seasonal transient non-community water systems must monitor monthly when in operation. There is no reduction or increase in monitoring for those systems.

Evaluation Criteria:

(N) A Not Applicable rating should be given for this item to State systems.

(S) If the sample siting plan includes a detailed description of how the plan is carried out as well as an adequate map (if required) that identifies the required system components (i.e. tanks, valves, etc.) and all sampling points, then a Satisfactory rating should be given for this item.

(I) If all of the elements for a proper plan are in place, but there are some elements of the plan that are missing or should be changed (i.e. no written procedure, sampling points on major transmission lines, lack of full system coverage, etc.) then a Needs Improvement rating should be given, and the system should be asked to revise the plan.

(U) If the system does not seem to have a documentable sampling procedure, a rating of Unsatisfactory should be given. An Unsatisfactory rating may also be given if no action has been taken to correct a rating of Needs Improvement given in a previous survey.

If changes to the sample siting plans are required based on Department review, it will be the water system's responsibility to make those changes and show to the Department's satisfaction that the changes have been implemented.

References:

R.61-58.7 B (2)(f): (Operation and Maintenance Criteria)

R.61-58.17 (Revised Total Coliform Rule)