

Rule Summary and Fiscal Analysis (Part A)**Ohio Environmental Protection Agency**

Agency Name

**Division of Drinking and Ground Water
(DDAGW)**

Division

Susan Baughman

Contact

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3745-81-32

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Public notification.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **6109.04**

5. Statute(s) the rule, as filed, amplifies or implements: **6109.04, 6109.06**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

This rule is being filed to fulfill the five year rule review requirements of section 119.032 of the Revised Code.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; if the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule sets forth requirements including the initiation, duration and level of

advisory information provided to the public by public water systems during a time in which the quality of water may be inadequate in protecting the health of individuals served. The proposed changes will require public water systems to issue an advisory when they fail to monitor and report total coliform samples when there is an exceedance in the turbidity level and they cannot gauge the microbiological quality of the water, and when they are experiencing operational or physical disruptions causing a loss of pressure accompanied by E.coli or fecal coliform samples.

Proposed revisions also increase the amount of time for systems to issue an advisory from ninety days to one year for monitoring and testing procedure violations and/or secondary maximum contaminant level violations. This revision will make the rule consistent with the federal equivalent.

Proposed revisions will also require noncommunity public water systems that serve children, such as in schools, to notify parents or legal guardians of violations of chronic contaminant levels or monitoring and treatment requirements.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This rule references 3745-85, 3745-81-11, 3745-81-23, 3745-81-14, 3745-81-01, 3745-81-10, 3745-81-70, 3745-81-75, 3745-82, and 3745-96 of the Administrative Code. This rule also references Title 40 section 141.207 of the Code of Federal Regulations, and U.S. EPA Surface Water Treatment Rule 54 Federal Register 27486 (6/29/89) and Interim Enhanced Surface Water Treatment Rule 63 Federal Register 69478 (12/16/98). In accordance with section 121.76 of the Revised Code, these references are exempt from the requirements of sections 121.71 to 121.74.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not applicable.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so:

Not Applicable.

12. 119.032 Rule Review Date: **10/11/2007**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

0.00

Not applicable.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

Please see the cost of compliance provided in Attachment C.

16. Does this rule have a fiscal effect on school districts, counties, townships, or

municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **Yes**

You must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub. 106 of the 121st General Assembly.

Rule Summary and Fiscal Analysis (Part B)

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
Yes	Yes	Yes	Yes

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

Please see the cost of compliance provided in Attachment C.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **Yes**

4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

The proposed rule exceeds minimum necessary federal requirements in some respects, but Ohio EPA attempted to minimize any excess costs to the public water systems associated with more stringent requirements. The proposed state rule differs from the federal version in the following ways:

Ohio EPA omitted a provision included in federal rule allowing for extensions of up to 3 months for the initial notice for Tier 2 violations, because it would be overly burdensome to the agency without significant benefit. It is not expected that this would result in excess costs to the public water system.

The federal rule allows for limited distribution of the public notice for violations in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system. To streamline the decision-making process and ensure that the public water system has effectively planned for limited distribution, a requirement was added that the public water system must describe the isolation in their emergency contingency plan. It is not expected that this would result in excess costs to the public water system.

Ohio EPA added a provision to Tier 1 violations, which requires public water systems to issue notice when there is a depressurization in the distribution system accompanied with confirmed microbiological contamination. The proposed language targets areas of public water systems in which there is a specific, potential risk of contamination. Ohio EPA's information indicates that these situations rarely occur, but believes that when they do a public advisory is necessary in order to be protective of public health. There is currently no federal equivalent to this provision, so Ohio EPA researched rules from other State's to facilitate the development of the proposed language in this rule. The associated cost of compliance can be found in Attachment C.

In sum, the increased stringency of the state rule should not result in significant excess costs to the public water system. (It should be noted that the provisions, other than for a depressurization, that are more stringent than the federal rule are not part of the proposed amendments and have been part of this rule since 1/1/2003, so the regulated community's ability to pay has already been established.) Finally, public water systems will not incur costs under this rule unless they have a violation or other situation that requires public notice.

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

Please see the cost of compliance provided in Attachment C.

(a) Personnel Costs

See above.

(b) New Equipment or Other Capital Costs

See above.

(c) Operating Costs

See above.

(d) Any Indirect Central Service Costs

See above.

(e) Other Costs

See above.

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

The proposed rule revisions are not expected to have significant costs associated with them. The agency's and local government's ability to pay are, therefore, already established and will be unaffected by the proposed amendments.

7. Please provide a statement on the proposed rule's impact on economic development.

The proposed rule is not anticipated to have any impact on economic development.

Environmental Rule Adoption/Amendment Form

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
 - (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
 - (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
 - (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.
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(A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted ? **Yes**

Please list each contact.

Please see Attachment A, List of Interested Parties.

(B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered ? **Yes**

Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)

Sections 6109.03, 6109.04, and 6109.06 of the Revised Code. Title 40 section 141 of the Code of Federal Regulations, the National Primary Drinking Water Regulations.

- (C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program ?

Yes

Is the proposed rule or rule amendment more stringent than its federal counterpart ? **Yes**

What is the rationale for not incorporating the federal counterpart?

There is no federal equivalent for the proposed provision requiring public water systems to issue an advisory when they have physical or operational disruptions with a significant loss in pressure and have bacteriological samples positive for E.coli or fecal coliform. The proposed language targets areas of public water systems in which there is a specific, potential risk of contamination. Ohio EPA's information indicates that these situations rarely occur, but believes that when they do a public advisory is necessary in order to be protective of public health.

- (D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? **No**

Not Applicable

Attachment A: List of Interested Parties
Notices sent via mail:

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Attachment B**OHIO REVISED CODE
CHAPTER 6109
SAFE DRINKING WATER****Section**

- 6109.01. Definitions.
 - 6109.02. Public water systems exempted from coverage.
 - 6109.03. Purpose of chapter.
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§ 6109.01. Definitions.

As used in this chapter:

(A) "Public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. "Public water system" includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system, any collection or pretreatment storage facilities not under such control that are used primarily in connection with the system, and any water supply system serving an agricultural labor camp as defined in section 3733.41 of the Revised Code.

(B) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(C) "Person" means the state, any political subdivision, agency, institution, or instrumentality thereof, any federal agency, and any person as defined in section 1.59 of the Revised Code.

(D) "Safe Drinking Water Act" means the "Safe Drinking Water Act," 88 Stat. 1660 (1974), 42 U.S.C. 300(f), as amended by the "Safe Drinking Water Amendments of 1977," 91 Stat. 1393, 42 U.S.C. 300(f), the "Safe Drinking Water Act Amendments of 1986," 100 Stat. 642, 42 U.S.C. 300(f), and the "Safe Drinking Water Act Amendments of 1996," 110 Stat. 1613, 42 U.S.C. 300(f), and regulations adopted under those acts.

(E) "Community water system" means a public water system that has at least fifteen service connections used by year-round residents or that regularly serves at least twenty-five year-round residents.

(F) "Small system" means a public water system serving a population of ten thousand or fewer individuals.

(G) "Technical assistance" means nonfinancial assistance provided by the state to public water systems and other eligible applicants, including, without limitation, assistance for planning and design, development, and implementation of source water quality protection programs; locating alternative supplies of drinking water; operational training; restructuring or consolidation of small systems; providing treatment information in order to assist compliance with a national primary drinking water standard; and other nonfinancial assistance authorized by the requirements governing the funds established under this chapter.

(H) "Disadvantaged community" means the service area or portion of a service area of a public water system that meets affordability and other criteria established by the director of environmental protection in rules adopted under division (M) of section 6109.22 of the Revised Code and may include the service area or portion of a service area of a public water system located in a distressed area as defined in section 122.19 of the Revised Code.

(I) "Director of environmental protection" or "director" includes an authorized representative of the director.

(J) "Federal Water Pollution Control Act" has the same meaning as in section 6111.01 of the Revised Code.

HISTORY: 137 v S 445 (Eff 12-14-78); 140 v S 244 (Eff 3-20-84); 145 v H 152 (Eff 7-1-93); 147 v H 321 (Eff 11-26-97); 148 v H 283. Eff 9-29-99.

§ 6109.02. Public water systems exempted from coverage.

Chapter 6109. of the Revised Code does not apply to a public water system which meets all the following conditions:

(A) Consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(B) Obtains all of its water from, but is not owned or operated by, a public water system;

(C) Does not sell water to any person;

(D) Is not a carrier which conveys passengers in interstate commerce.

HISTORY: 137 v S 445. Eff 12-14-78.

§ 6109.03. Purpose of chapter.

The purpose of Chapter 6109. of the Revised Code is to protect the public health and welfare and to enable the state to assume and retain primary enforcement responsibility under the Safe Drinking Water Act.

HISTORY: 137 v S 445. Eff 12-14-78.

§ 6109.04. Administration and enforcement of chapter; rules.

(A) The director of environmental protection shall administer and enforce this chapter and rules adopted under it.

(B) The director shall adopt, amend, and rescind such rules in accordance with Chapter 119. of the Revised Code as may be necessary or desirable to do both of the following:

(1) Govern public water systems in order to protect the public health;

(2) Govern public water systems to protect the public welfare, including rules governing contaminants in water that may adversely affect the suitability of the water for its intended uses or that may otherwise adversely affect the public health or welfare.

(C) The director may do any or all of the following:

(1) Adopt, amend, and rescind such rules in accordance with Chapter 119. of the Revised Code as may be necessary or desirable to do any or all of the following:

(a) Govern the granting of variances and exemptions from rules adopted under this chapter, subject to requirements of the Safe Drinking Water Act;

(b) Govern the certification of operators of public water systems, including establishment of

qualifications according to a classification of public water systems and of provisions for examination, grounds for revocation, reciprocity with other states, renewal of certification, and other provisions necessary or desirable for assurance of proper operation of water systems;

(c) Carry out the powers and duties of the director under this chapter.

- (2) Provide a program for the general supervision of operation and maintenance of public water systems;
 - (3) Maintain an inventory of public water systems;
 - (4) Adopt and implement a program for conducting sanitary surveys of public water systems;
 - (5) Establish and maintain a system of record keeping and reporting of activities of the environmental protection agency under this chapter;
 - (6) Establish and maintain a program for the certification of laboratories conducting analyses of drinking water;
 - (7) Issue, modify, and revoke orders as necessary to carry out the director's powers and duties under this chapter and primary enforcement responsibility for public water systems under the "Safe Drinking Water Act." Orders issued under this chapter are subject to Chapter 119. of the Revised Code.
- (D) Before adopting, amending, or rescinding a rule authorized by this chapter, the director shall do all of the following:
- (1) Mail notice to each statewide organization that the director determines represents persons who would be affected by the proposed rule, amendment, or rescission at least thirty-five days before any public hearing thereon;
 - (2) Mail a copy of each proposed rule, amendment, or rescission to any person who requests a copy, within five days after receipt of the request;
 - (3) Consult with appropriate state and local government agencies or their representatives, including statewide organizations of local government officials, industrial representatives, and other interested persons.

Although the director is expected to discharge these duties diligently, failure to mail any such notice or copy or to consult with any person does not invalidate any proceeding or action of the director.

HISTORY: 137 v S 445 (Eff 12-14-78); 147 v H 321. Eff 11-26-97.

§ 6109.05. Director to adopt plan and issue orders for water supply emergencies.

(A) The director of environmental protection shall adopt a plan for the provision of safe drinking water in emergencies. For purposes of this section "emergency" means an imminent and substantial danger to human health.

(B) Whenever the director determines that a water supply emergency exists requiring immediate action to protect the public health or welfare and the owner or operator of a public water system has not taken such action, he shall issue an order reciting the existence of the emergency and requiring that such action be taken as is necessary to meet the emergency. Such order shall be issued upon written or oral notice, as may be reasonable under the circumstances, and may be issued without prior hearing. Such order shall take effect immediately. Any person to whom such order is directed shall comply therewith immediately, but on application to the director within ten days after receipt of the order shall be afforded a hearing as soon as possible, and not later than twenty days after such application. On the basis of such hearing, the director shall continue such order in effect, revoke it, or modify it. No such emergency order shall remain in effect for more than ninety days after its effective date, except that the director may extend the effectiveness of the order for additional periods, not to exceed ninety days in any extension, if the emergency condition still exists on the date of extension.

HISTORY: 137 v S 445. Eff 12-14-78.

§ 6109.06. Water use advisories.

Whenever the director of environmental protection determines that use of water from a public water system presents a threat to the health of persons using such water, he may issue a "water use advisory" alerting the owner, operator, or users of such system of the threat and advising that the use of the water be discontinued or that the water be boiled or otherwise treated to render it safe for use. The director may order the owner or operator of

such system to notify its users, or potential users, of the water use advisory by newspaper or other means and to provide notification to radio and television stations.

HISTORY: 137 v S 445. Eff 12-14-78.

§ 6109.07. Approval of construction or installation plans; notice of violation.

(A) No person shall begin construction or installation of a public water system, or make a substantial change in a public water system, until plans therefor have been approved by the director of environmental protection under division (A)(1) or (2) of this section.

(1) Upon receipt of a proper application, the director shall consider the need for compliance with requirements of the Safe Drinking Water Act, and generally accepted standards for the construction and equipping of water systems, and shall issue an order approving or disapproving the plans. In granting an approval, the director may stipulate conditions designed to ensure that the system will be able to meet the requirements of this chapter and rules adopted under it.

(2) The director may enter into an agreement with a political subdivision or investor-owned public utility that owns or operates a public water system and that intends to extend the distribution facilities of its system, to increase the number of service connections to its system, or to add distribution system pump stations or storage tanks in the distribution system, which agreement authorizes a qualified officer or employee of the political subdivision or investor-owned public utility, as determined by the director, to review plans for the extension of the distribution facilities, the increase in the number of service connections, or the addition of distribution system pump stations or storage tanks in the distribution system for compliance with this chapter and the rules adopted under it and to certify to the director whether the plans comply with this chapter and the rules adopted under it. If, pursuant to such an agreement, the official or employee of the political subdivision or investor-owned public utility designated in the agreement certifies to the director that the plans comply with this chapter and the rules adopted under it and if the plans and certification are accompanied by an administrative service fee calculated in accordance with division

(N)(2) of section 3745.11 of the Revised Code, the director shall approve the plans without further review by issuance of an order as a final action.

As used in division (A)(2) of this section, "investor-owned public utility" means a person, other than an individual, that is a water-works company, as defined in section 4905.03 of the Revised Code, and that is not owned or operated by a municipal corporation or operated not-for-profit.

(B) No person shall construct or install a public water system, or make any substantial change in a public water system, that is not in accordance with plans approved by the director.

(C) No person shall operate a public water system, and no person who is an owner of a public water system shall permit its operation, if the person knows or has reason to know that the system was constructed or installed, or that a substantial change was made in the system, in violation of division (A) or (B) of this section unless the person has obtained written authorization from the director to operate the system pursuant to division (D) of this section.

(D) The director may issue a notice by certified mail to the operator or owner of a public water system that was constructed, installed, or changed in violation of this section, informing the operator or owner of the violation. The director may issue an order authorizing the operator or owner to operate for ninety days, and the director may extend by order the authorization for periods as may be necessary to allow the owner or operator to submit plans, obtain their approval, and make such changes in the system as may be necessary to bring the system into compliance with the approved plans.

HISTORY: 137 v S 445 (Eff 12-14-78); 145 v H 152 (Eff 7-1-93); 147 v H 321. Eff 11-26-97.

§ 6109.08. Escrow deposit for certain systems; use to correct deficiencies.

The director of environmental protection shall not approve plans for construction, installation, or substantial modification of a community water system which serves fewer than five hundred service connections, or any part of such system, except a system owned and operated by a public entity, a system which supplies water only to premises owned by the water supplier, or a system regulated by the public utilities commission, unless the owner or operator of such system or part thereof has

deposited in escrow an amount equal to fifteen per cent of the cost of the system or part thereof owned by him, but not to exceed fifty thousand dollars.

If a system for which an escrow is required under this section is not properly constructed, maintained, repaired or operated, the director may order the owner or operator of such system or part thereof to correct the deficiencies, and shall authorize use of the funds in the escrow as necessary to enable compliance with his order. When funds are withdrawn from an escrow account, they shall be replaced by the owner or the operator of such system or part thereof within six months of withdrawal.

For purposes of this section, "community water system" means a public water system that serves at least fifteen service connections used by year-round residents or which regularly serves at least twenty-five year-round residents.

For purposes of this section, "public entity" means the federal government, the state, any political subdivision, and any agency, institution, or instrumentality thereof.

HISTORY: 137 v S 445. Eff 12-14-78.

§ 6109.10. Lead contamination prevention; notice to consumers.

(A) As used in this section, "lead free" means:

- (1) When used with respect to solders or flux, solders or flux containing not more than two-tenths of one per cent lead;
- (2) When used with respect to pipes or pipe fittings, pipes or pipe fittings containing not more than eight per cent lead.

(B) Any pipe, pipe fitting, solder, or flux that is used in the installation or repair of a public water system of any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system shall be lead free. This division does not apply to leaded joints necessary for the repair of cast iron pipes.

(C) Each public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water. The notice shall be in such form and manner as may be reasonably required by the director of environmental protection, but shall provide a clear and readily understandable explanation of

all of the following:

- (1) Potential sources of lead in the drinking water;
- (2) Potential adverse health effects;
- (3) Reasonably available methods of mitigating known or potential lead content in drinking water;
- (4) Any steps the public water system is taking to mitigate lead content in drinking water;
- (5) The necessity, if any, of seeking alternative water supplies.

The notice shall be provided notwithstanding the absence of a violation of any drinking water standard.

HISTORY: 142 v H 754. Eff 9-14-88.

§ 6109.11. Complaint of impure water supply or fluoride content outside limits.

Whenever any person files with the environmental protection agency a complaint, in writing, setting forth that it is believed that water provided by a public water system is impure and dangerous to health or does not contain quantities of fluoride as required by section 6109.20 of the Revised Code, the director of environmental protection shall forthwith inquire into and investigate the conditions contained in the complaint.

HISTORY: GC § 1252; 99 v 75, § 2; 108 v Ptl, 297; Bureau of Code Revision, RC § 6111.12, 10-1-53; 133 v S 137 (Eff 11-17-69); 134 v S 397 (Eff 10-23-72); RC § 6109.11, 137 v S 445. Eff 12-14-78.

§ 6109.12. Analyses of water required at intervals.

Every owner or operator of a public water system shall have analyses of the water made at such intervals and in such manner as may be ordered by the environmental protection agency. Records of the results of such analyses shall be maintained and reported as required by the agency.

HISTORY: GC § 1252-2; 109 v 319, § 2; Bureau of Code Revision, RC § 6111.14, 10-1-53; 134 v S 397 (Eff 10-23-72); RC § 6109.12, 137 v S 445. Eff 12-14-78.

§ 6109.13. Prohibition against connection with private,

auxiliary, or emergency water supply.

No official, officer, or employee in charge of or being employed in the maintenance and operation of a public water system and no other person, firm, or corporation shall establish or permit to be established any connection whereby water from a private, auxiliary, or emergency water system may enter the public water system, unless such private, auxiliary, or emergency water system, and the method of connection and use of such system, has been approved by the environmental protection agency.

HISTORY: GC § 1252-3; 109 v 319, § 3; Bureau of Code Revision, RC § 6111.15, 10-1-53; 134 v S 397 (Eff 10-23-72); RC § 6109.13, 137 v S 445. Eff 12-14-78.

§ 6109.14. Notice of danger of contamination, inadequate system or fluoride content outside limits.

When the director of environmental protection finds, upon investigation, that water in a public water system is subject to the danger of contamination by reason of unsatisfactory location, protection, construction, operation, or maintenance of the system, or by reason of the existence of an unsafe emergency system or connection to an unsafe private or auxiliary system, or if the director finds upon investigation that the public health is endangered by reason of the existence of an inadequate public water system, or that the system does not contain quantities of fluoride as required by section 6109.20 of the Revised Code, he shall notify the municipal corporation, county, public institution, or person, owning or operating such public water system of his findings and of the time and place, when and where a hearing may be had. Such notice shall be by personal service, or shall be sent by certified mail to the mayor or managing officer or officers of the municipal corporation, county, or public institution or to the person owning or operating such supply.

HISTORY: GC § 1252-4; 109 v 319, § 4; Bureau of Code Revision, RC § 6111.16, 10-1-53; 134 v S 397 (Eff 10-23-72); RC § 6109.14, 137 v S 445. Eff 12-14-78.

§ 6109.15. Corrections and changes; notice.

After the hearing provided for in section 6109.14 of the Revised Code, if the director of environmental protection determines that improvements or changes are necessary and should be made, the director shall order the mayor or managing officer or officers of the municipal corporation, county, or public institution or other person

owning or operating a public water system to make improvements, corrections, and changes in the location, protection, construction, operation, or maintenance of the system satisfactory to the director, so as to prevent the contamination of the water or to provide a system not subject to the danger of contamination, or to provide a system adequate to avoid endangering the public health or to provide required quantities of fluoride. Notice of the director's order shall be made by personal service upon or by certified mail to the mayor or managing officer or officers of the municipal corporation, county, or public institution or to the officials, corporation, partnership, or person to whom the order applies.

HISTORY: GC § 1252-5; 109 v 319, § 5; Bureau of Code Revision, RC § 6111.17, 10-1-53; 134 v S 397 (Eff 10-23-72); RC § 6109.15, 137 v S 445. Eff 12-14-78.

§ 6109.16. Order may be enforced by mandamus.

If the responsible officers of a municipal corporation, county, or public institution fail to submit to the director, within ninety days after receipt of notice of an order of the director of environmental protection under section 6109.15 of the Revised Code, plans for compliance with the order, or fail to perform any act required of them by such order within a reasonable time, the order may be enforced by a writ of mandamus issued by any court authorized to issue such writ.

HISTORY: 137 v S 445. Eff 12-14-78.

§ 6109.17. Funds.

The legislative authority of each municipal corporation, or the department or officer having jurisdiction to provide for the raising of revenue by tax levies, sales of bonds, or otherwise shall take all steps necessary to secure the funds for any purpose set forth in sections 6109.11 to 6109.20 of the Revised Code. When the funds are secured, or the bonds therefor have been sold, such funds shall be considered as in the treasury and appropriated for such particular purpose, and shall not be used for any other purpose.

HISTORY: GC § 1259; 99 v 77, § 5; 107 v 185; 108 v Ptl, 297; 112 v 364(384), § 18; Bureau of Code Revision, RC § 6111.28, 10-1-53; 132 v H 314 (Eff 12-14-67); 134 v S 397 (Eff 10-23-72); RC § 6109.17, 137 v S 445. Eff 12-14-78.

§ 6109.18. Issue of bonds in an emergency.

If the director of environmental protection determines that the municipal corporation is unable to comply with section 6109.17 of the Revised Code by reason of existing debt and tax limitations, the director may find that an emergency exists requiring the immediate issuance of bonds. When such finding is approved by the tax commissioner and is certified to the taxing authority of the municipal corporation, it shall issue bonds, or notes in anticipation thereof, and such bonds or notes shall be outside the limitations provided by section 133.05 of the Revised Code. The debt charges on bonds issued under order of the director outside the limitations prescribed by section 133.05 of the Revised Code shall be outside the one per cent limitation prescribed by Section 2 of Article XII, Ohio Constitution.

HISTORY: GC § 1259-1; 106 v 461; 108 v Ptl, 297; 112 v 364(384), § 18; Bureau of Code Revision, RC § 6111.29, 10-1-53; 134 v S 397 (Eff 10-23-72); RC § 6109.18, 137 v S 445 (Eff 12-14-78); 143 v H 230. Eff 10-30-89.

§ 6109.19. Application for additional charges for water supply.

Where an order of the director of environmental protection to a person owning and operating a public water system whose rates are regulated by the public utilities commission is final and it is claimed by such person that the revenues derived from the operation of such system is not sufficient to warrant the expense of making the improvements or changes so ordered, an application may be made to the public utilities commission for authority to make and collect additional charges from the water consumers and users of the utility's service. Upon the filing of such application the commission shall fix a time for the hearing thereof and give notice thereof to the mayor of the municipal corporation and the director. If upon hearing the commission finds that the rates theretofore authorized to be charged will not provide revenue sufficient to operate said system and make a reasonable return upon the investment after such improvements and changes are made, it shall by order authorize the collection of such additional charges and compensation as may be just and reasonable.

HISTORY: GC § 1258-1; 108 v Ptl, 297; Bureau of Code Revision, RC § 6111.23, 10-1-53; 134 v S 397 (Eff 10-23-72); RC § 6109.19, 137 v S 445. Eff 12-14-78.

§ 6109.20. Fluoride to be added to public water**system.**

If the natural fluoride content of supplied water of a public water system is less than eight-tenths milligrams per liter of water, fluoride shall be added to such water to maintain fluoride content of not less than eight-tenths milligrams per liter of water nor more than one and three-tenths milligrams per liter of water beginning:

(A) On or before January 1, 1971, for a public water system supplying water to twenty thousand or more persons;

(B) On or before January 1, 1972, for a public water system supplying water to five thousand or more persons, but less than twenty thousand persons.

HISTORY: GC § 1252-1; 109 v 319; Bureau of Code Revision, RC § 6111.13, 10-1-53; 133 v S 137 (Eff 11-17-69); 134 v H 330 (Eff 10-19-72); 134 v S 397 (Eff 10-23-72); 135 v H 1 (Eff 3-22-73); RC § 6109.20, 137 v S 445. Eff 12-14-78.

§ 6109.21. Initial license for system; renewal.

(A) Except as provided in divisions (D) and (E) of this section, on and after January 1, 1994, no person shall operate or maintain a public water system in this state without a license issued by the director of environmental protection. A person who operates or maintains a public water system on January 1, 1994, shall obtain an initial license under this section in accordance with the following schedule:

- (1) If the public water system is a community water system, not later than January 31, 1994;
- (2) If the public water system is not a community water system and serves a nontransient population, not later than January 31, 1994;
- (3) If the public water system is not a community water system and serves a transient population, not later than January 31, 1995.

A person proposing to operate or maintain a new public water system after January 1, 1994, in addition to complying with section 6109.07 of the Revised Code and rules adopted under it, shall submit an application for an initial license under this section to the director prior to commencing operation of the system.

A license or license renewal issued under this

section shall be renewed annually. Such a license or license renewal shall expire on the thirtieth day of January in the year following its issuance. A license holder that proposes to continue operating the public water system for which the license or license renewal was issued shall apply for a license renewal at least thirty days prior to that expiration date.

The director shall adopt, and may amend and rescind, rules in accordance with Chapter 119. of the Revised Code establishing procedures governing and information to be included on applications for licenses and license renewals under this section. Through June 30, 2006, each application shall be accompanied by the appropriate fee established under division (M) of section 3745.11 of the Revised Code, provided that an applicant for an initial license who is proposing to operate or maintain a new public water system after January 1, 1994, shall submit a fee that equals a prorated amount of the appropriate fee established under that division for the remainder of the licensing year.

(B) Not later than thirty days after receiving a completed application and the appropriate license fee for an initial license under division (A) of this section, the director shall issue the license for the public water system. Not later than thirty days after receiving a completed application and the appropriate license fee for a license renewal under division (A) of this section, the director shall do one of the following:

- (1) Issue the license renewal for the public water system;
- (2) Issue the license renewal subject to terms and conditions that the director determines are necessary to ensure compliance with this chapter and rules adopted under it;
- (3) Deny the license renewal if the director finds that the public water system was not operated in substantial compliance with this chapter and rules adopted under it.

(C) The director may suspend or revoke a license or license renewal issued under this section if the director finds that the public water system was not operated in substantial compliance with this chapter and rules adopted under it. The director shall adopt, and may amend and rescind, rules in accordance with Chapter 119. of the Revised Code governing such suspensions and revocations.

(D) (1) As used in division (D) of this section, "church"

means a fellowship of believers, congregation, society, corporation, convention, or association that is formed primarily or exclusively for religious purposes and that is not formed or operated for the private profit of any person.

(2) This section does not apply to a church that operates or maintains a public water system solely to provide water for that church or for a campground that is owned by the church and operated primarily or exclusively for members of the church and their families. A church that, on or before March 5, 1996, has obtained a license under this section for such a public water system need not obtain a license renewal under this section.

(E) This section does not apply to any public or nonpublic school that meets minimum standards of the state board of education that operates or maintains a public water system solely to provide water for that school.

HISTORY: 145 v H 152 (Eff 7-1-93); 146 v H 117 (Eff 6-30-95); 146 v S 31 (Eff 3-5-96); 147 v H 215 (Eff 6-30-97); 148 v H 283 (Eff 6-30-99); 149 v H 94. Eff 6-6-2001; 150 v H 95, § 1, eff. 6-26-03.

§ 6109.22. Drinking water assistance fund.

(A) There is hereby created the drinking water assistance fund to provide financial and technical assistance for the purposes of protecting public health and achieving and maintaining compliance with the Safe Drinking Water Act and this chapter. In addition to the accounts created under divisions (G) and (H) of this section, the drinking water assistance fund may include any other accounts established by the director of environmental protection. The fund shall be administered by the director consistent with the Safe Drinking Water Act, this section, and rules adopted under division (M) of this section.

(B) The drinking water assistance fund shall consist of the moneys credited to it from all capitalization grants received under the Safe Drinking Water Act except for moneys reserved by the governor pursuant to title III, section 302 of that act, all moneys credited to the fund from nonfederal sources, including, without limitation, the proceeds of state bonds or notes issued for the benefit of the fund, all payments of principal and interest on loans made from the fund, and all investment earnings on moneys held in the fund. On or before the date that a capitalization grant payment made under the authority of the Safe Drinking Water Act is credited to the fund,

required matching moneys shall be credited to the fund. Any moneys transferred to or reserved from the drinking water assistance fund pursuant to title III, section 302 of the Safe Drinking Water Act shall be accounted for separately.

(C) In a manner consistent with the Safe Drinking Water Act and the applicable drinking water assistance management plan prepared in accordance with this section, the director may reserve and award for assistance moneys allotted to the state under section 1452 of the Safe Drinking Water Act, provided that the director makes a determination that the use of the moneys will accomplish the state's objectives and the objectives established for capitalization grants under the Safe Drinking Water Act. The director may use a portion of the reserved moneys to enter into contracts with qualified organizations, including private nonprofit organizations, to provide statewide on-site technical assistance to small public water systems.

(D) Subject to the terms of the agreements provided for in division (E) of this section, moneys in the drinking water assistance fund shall be held in trust by the Ohio water development authority for the purposes of this section, shall be kept in the same manner that funds of the authority are kept under section 6121.11 of the Revised Code, and may be invested in the same manner that funds of the authority are invested under section 6121.12 of the Revised Code. Moneys in the drinking water assistance fund shall be separate and apart from and not a part of the state treasury or of the other funds of the authority. No withdrawals or disbursements shall be made from the drinking water assistance fund without the written authorization of the director.

(E) The director shall adopt written criteria to ensure that fiscal controls are established for prudent administration of the drinking water assistance fund. For that purpose, the director and the authority shall enter into any necessary and appropriate agreements under which the authority may perform or provide any of the following:

- (1) Fiscal controls and accounting procedures governing fund balances, receipts, and disbursements;
- (2) Administration of loan accounts;
- (3) Maintenance, management, and investment of moneys in the fund.

Any agreement entered into under division (E) of this section shall provide for the payment of reasonable

fees to the authority for any services it performs under the agreement and may provide for reasonable fees for the assistance of financial or accounting advisors. Payment of any of the fees to the authority may be made from the drinking water assistance administrative account established under division (G) of this section.

(F) The authority may make moneys available to the director for the purpose of providing matching moneys required to be credited to the drinking water assistance fund under division (B) of this section, subject to any terms that the director and the authority consider appropriate, and may pledge moneys that are held by the authority to secure the payment of bonds or notes issued by the authority to provide those matching moneys.

The director and the authority may enter into trust agreements to enable the authority to issue and refund bonds or notes for the sole benefit of the drinking water assistance fund, including, without limitation, the raising of matching moneys required to be credited to the fund in accordance with division (B) of this section. The agreements may authorize the pledge of moneys accruing to the fund from payments of principal or interest or both on loans made from the fund to secure bonds or notes, the proceeds of which bonds or notes shall be for the sole benefit of the drinking water assistance fund. The agreements may contain any terms that the director and the authority consider reasonable and proper for the payment and security of the bondholders or noteholders.

(G) There is hereby established within the drinking water assistance fund the drinking water assistance administrative account. No state matching moneys deposited into the fund under this section shall be used for the purpose of paying for or defraying the costs of administering this section. The director may establish and collect fees from applicants for assistance provided under this section. The total fees charged to an applicant under this division for assistance under this section shall not exceed the following:

- (1) For the environmental protection agency, one per cent of the principal amount of the assistance awarded to the applicant;
- (2) For the authority, thirty-five one-hundredths of one per cent of the principal amount of the assistance awarded to the applicant.

All moneys from the fees shall be credited to the drinking water assistance administrative account in the fund. The moneys shall be used solely to defray the costs of administering this section.

- (H) There is hereby established within the drinking water assistance fund the water supply revolving loan account. The director may provide financial assistance from the water supply revolving loan account for improvements to community water systems and to nonprofit noncommunity public water systems.
- (I) All moneys from the fund credited to the water supply revolving loan account, all interest earned on moneys credited to the account, and all payments of principal and interest on loans made from the account shall be dedicated in perpetuity and used and reused solely for the following purposes, except as otherwise provided in this section:
- (1) To make loans to community water systems and nonprofit noncommunity public water systems, subject to all of the following conditions:
 - (a) The loans are made at or below market rates of interest, including, without limitation, interest-free loans;
 - (b) Each recipient of a loan shall establish a dedicated source of security or revenue for repayment of the loan;
 - (c) All payments of principal and interest on the loans shall be credited to the water supply revolving loan account.
 - (2) To purchase or refinance at or below market rates interest debt obligations incurred after July 1, 1993, by municipal corporations, other political subdivisions, and interstate agencies having territory in the state;
 - (3) To guarantee or purchase insurance for debt obligations when the guarantee or insurance would improve the borrower's access to credit markets or would reduce the interest paid on those obligations;
 - (4) As a source of revenue or security for the payment of principal and interest on general obligation or revenue bonds or notes issued by this state if the proceeds of the sale of the bonds or notes are or will be deposited into the account;
 - (5) To provide subsidies in addition to any other financial assistance afforded disadvantaged communities under this section;
 - (6) To earn interest on moneys credited to the account;
- (7) To provide any other assistance authorized by the Safe Drinking Water Act.
- (J) The director may provide financial assistance from the water supply revolving loan account after determining all of the following:
- (1) The applicant for financial assistance has the legal, institutional, managerial, and financial capability to construct, operate, and maintain its public water system and the proposed improvements to it;
 - (2) The applicant will implement a financial management plan that includes, without limitation, provisions for satisfactory repayment of the financial assistance;
 - (3) The public water system of which the project for which assistance is proposed is a part is economically and nonmonetarily cost-effective, based on an evaluation of feasible alternatives that meet the drinking water treatment needs of the planning area in which the proposed project is located;
 - (4) Based on a comprehensive environmental review approved by the director, there are no significant adverse environmental effects resulting from all necessary improvements to the public water system of which the project proposed for assistance is a part;
 - (5) Public participation has occurred during the process of planning the project in compliance with applicable requirements under the Safe Drinking Water Act;
 - (6) The application meets the requirements of this section and rules adopted under division (M) of this section and is consistent with section 1452 of the Safe Drinking Water Act and regulations adopted under it;
 - (7) If the applicant for assistance is a water district formed under Chapter 6119. of the Revised Code that operates a public water system and that water district seeks to extend the distribution facilities, increase the number of service connections to its system, or provide for any other expansion of its system, the water district has consulted with the board of county commissioners from each county in which is located the proposed extension of distribution facilities, increase in the number of

service connections, or other expansion of the public water system;

- (8) The application meets any other requirements that the director considers necessary or appropriate to protect public health and the environment and to ensure the financial integrity of the water supply revolving loan account.

Upon approval by the director of an application for financial assistance, the Ohio water development authority shall disburse the appropriate financial assistance from the water supply revolving loan account. If the proposed financial assistance is a loan, and if the payments of the principal or interest on the loan are or are expected to be pledged to secure payment of bonds issued or expected to be issued by the authority, the director shall submit the application for the loan to the authority for review and approval with respect to any matters pertaining to security for and the marketability of authority bonds. Review and approval by the authority shall be required prior to the making of such a loan.

(K) In accordance with rules adopted under division (M) of this section, the director periodically shall prepare a drinking water assistance management plan establishing the short-term and long-term goals for the assistance provided under this section, the allocation of available resources for the purposes of this section, the environmental, financial, and administrative terms, conditions, and criteria for the award of financial and technical assistance under this section, and the intended uses of capitalization grants and available moneys from the drinking water assistance fund. Criteria for awarding financial or technical assistance under this section shall not favor or disfavor any otherwise qualified nonprofit noncommunity public water system because it is owned by, operated by, or services a religious organization or a facility used for religious purposes. Prior to its adoption, the director shall make the drinking water assistance management plan available for public review and comment at a minimum of two public meetings and shall take adequate steps to ensure that reasonable public notice of each public meeting is given at least thirty days prior to the meeting.

The plan shall include, without limitation, a system that prioritizes projects funded by the water supply revolving loan account based on the relative risk to human health being addressed, their necessity for ensuring compliance with requirements of the Safe Drinking Water Act, and their affordability to the applicants, as determined by the director. Financial assistance for projects from the water supply revolving loan account shall be limited to

projects that are included in that prioritization and shall be awarded based upon their priority position and the applicants' readiness to proceed with their proposed activities as determined by the director. The drinking water assistance management plan shall include terms, conditions, amounts of moneys, and qualifying criteria, in addition to any other criteria established under this section, governing the financial assistance to be awarded to applicants from the water supply revolving loan account. The director shall determine the most effective use of the moneys in that account to achieve the state's drinking water assistance goals and objectives.

(L) The director, consistent with this section and applicable rules adopted under division (M) of this section, may enter into an agreement with an applicant for assistance from the drinking water assistance fund. Based on the director's review and approval of the project plans submitted under section 6109.07 of the Revised Code, any determinations made under division (J) of this section if an applicant seeks funding from the water supply revolving loan account, and any other requirements of this section and rules adopted under it, the director may establish in the agreement environmental and financial terms and conditions of the financial assistance to be offered to the applicant. If the recipient of financial assistance under this section defaults on any payment required in the agreement for financial assistance or otherwise violates a term or condition of the agreement or of the plan approval for the project under section 6109.07 of the Revised Code, the director, in addition to any other available remedies, may terminate, suspend, or require immediate repayment of the financial assistance. The director also may take any enforcement action available under this chapter.

(M) The director may adopt rules in accordance with Chapter 119. of the Revised Code for the implementation and administration of this section. The rules shall be consistent with section 1452 of the Safe Drinking Water Act.

(N) (1) For the purposes of this section, appealable actions of the director pursuant to section 3745.04 of the Revised Code are limited to the following:

- (a) Adoption of the drinking water assistance management plan prepared under division (K) of this section;
- (b) Approval of priority systems, priority lists, and written program administration policies;
- (c) Approval or disapproval under this section of

applicants' project plans submitted under section 6109.07 of the Revised Code;

(d) Approval or disapproval of an application for assistance.

(2) Notwithstanding section 119.06 of the Revised Code, the director may take the final actions described in divisions (N)(1)(a) to (d) of this section without holding an adjudication hearing in connection with the action and without first issuing a proposed action under section 3745.07 of the Revised Code.

(3) Each action described in divisions (N)(1)(a) to (d) of this section and each approval of a plan under section 6109.07 of the Revised Code is a separate and discrete action of the director. Appeals are limited to the issues concerning the specific action appealed. Any appeal shall not include issues determined under the scope of any prior action.

(O) The failure or inability of a public water system to obtain assistance under this section does not alter the obligation of the public water system to comply with all applicable requirements of this chapter and rules adopted under it.

HISTORY: 147 v H 321. Eff 11-26-97.

§ 6109.23. Monetary penalties for noncompliance.

To the extent required by the Safe Drinking Water Act, the director of environmental protection may adopt, amend, and rescind rules pursuant to section 6109.04 of the Revised Code providing for the administrative assessment and collection of monetary penalties for failure to comply with this chapter or rules adopted under it. For public water systems serving populations of more than ten thousand, a monetary penalty assessed under this section shall be not less than one thousand dollars for each day of each violation, but in no case shall the total amount of monetary penalty exceed ten thousand dollars per violation. For public water systems serving populations of ten thousand or fewer, the rules adopted under this section shall establish a methodology for calculating the monetary penalty based on the size of the system, the threat to public health presented by the failure to comply, and other factors that may be necessary to ensure compliance with this chapter and rules adopted under it, but in no case shall the total amount of monetary penalty exceed two thousand five hundred dollars per violation. For the purposes of this section, the director may require

the submission of compliance schedules and related information.

Any orders, payments, sanctions, or other requirements imposed pursuant to rules adopted under this section are in addition to any other orders, payments, sanctions, or requirements issued or imposed under this chapter and rules adopted under it and shall not affect any civil or criminal enforcement proceedings brought under this chapter, rules adopted under it, or any other state or local law. Moneys collected pursuant to this section shall be credited to the drinking water protection fund created in section 6109.30 of the Revised Code.

HISTORY: 147 v H 321. Eff 11-26-97.

§ 6109.24. New systems to demonstrate technical, managerial and financial capability.

A public water system that is a community water system, or that is not a community water system and serves a nontransient population, and that proposes to commence providing water to the public after October 1, 1999, shall include with the submission of plans required under section 6109.07 of the Revised Code documentation that demonstrates the technical, managerial, and financial capability of the system to comply with this chapter and rules adopted under it. The director of environmental protection shall adopt, and may amend and rescind, rules pursuant to section 6109.04 of the Revised Code establishing requirements governing the demonstration of technical, managerial, and financial capability for the purposes of this section.

The director may deny approval of plans submitted under section 6109.07 of the Revised Code if the public water system that submitted the plans fails to demonstrate technical, managerial, and financial capability in accordance with this section and rules adopted under it.

HISTORY: 147 v H 321. Eff 11-26-97.

§ 6109.30. Drinking water protection fund.

(A) There is hereby created in the state treasury the drinking water protection fund, which shall be administered by the director of environmental protection. The fund shall consist of moneys distributed to it and shall be used for all of the following purposes:

(1) Administration of this chapter and rules adopted under it;

- (2) Administration in this state of the "Safe Drinking Water Act";
- (3) Provision of technical assistance to public water systems in this state for the purposes of this chapter and rules adopted under it;
- (4) Special studies conducted by the director for the monitoring and testing of drinking water quality in this state;
- (5) Support of programs for the prevention of contamination of surface and ground water supplies in this state that are sources of drinking water.

Moneys in the fund shall not be used to meet any state matching requirements that are necessary to obtain federal grants.

(B) The director may expend not more than two hundred thousand dollars from the fund in each fiscal year for the purpose of making loans to owners and operators of public water systems for emergency remediation of threats of contamination to public water supplies. The director shall not loan more than twenty-five thousand dollars to the owner or operator of any single public water system. The director shall adopt, and may amend and rescind, rules in accordance with Chapter 119. of the Revised Code establishing application procedures and requirements for those loans. The rules shall require that an owner or operator receiving a loan under this division repay the loan to the fund not later than twelve months after receiving it.

HISTORY: 145 v H 152. Eff 7-1-93.

§ 6109.31. Violation of order, rule or variance prohibited.

No person shall violate this chapter, any rule adopted under it, or any order or term or condition of a license, license renewal, variance, or exemption granted by the director of environmental protection under it. Each day of noncompliance is a separate violation.

HISTORY: 137 v S 445 (Eff 12-14-78); 145 v H 152. Eff 7-1-93.

§ 6109.32. Investigations by director; attorney general to bring enforcement actions.

The director of environmental protection may on his own initiative investigate or make inquiries into any suspected violation of section 6109.31 of the Revised Code.

The attorney general, upon written request by the director, shall bring an action for injunction or other appropriate action against any person violating or threatening to violate such section. In an action for injunction to enforce any final order of the director, the finding by the director, after hearing, is prima-facie evidence of the facts found therein.

HISTORY: 137 v S 445. Eff 12-14-78.

§ 6109.33. Civil penalty for violation.

Any person who violates section 6109.31 of the Revised Code shall pay a civil penalty of not more than twenty-five thousand dollars for each violation, to be paid into the state treasury to the credit of the drinking water protection fund created in section 6109.30 of the Revised Code. The attorney general, upon written request by the director of environmental protection, shall bring an action for such a penalty against any person who violates that section. Such an action is a civil action, governed by the Rules of Civil Procedure and other rules of practice and procedure applicable to civil actions.

HISTORY: 137 v S 445 (Eff 12-14-78); 145 v H 152. Eff 7-1-93.

§ 6109.34. Entry to inspect conditions; samples; inspection warrant.

The director of environmental protection or his duly authorized representative may enter at reasonable times upon any private or public property to inspect and investigate conditions relating to the construction, maintenance, and operation of a public water system, and may take samples for analysis. If entry or inspection authorized by this section is refused, hindered, or thwarted, the director or his authorized representative may by affidavit apply for, and any judge of a court of record may issue, an appropriate inspection warrant necessary to achieve the purposes of this chapter within the court's territorial jurisdiction.

HISTORY: 137 v S 445. Eff 12-14-78.

§ 6109.35. Immunity of water suppliers.

- (A) As used in this section:
- (1) "Water supplier" means an entity that is subject to this chapter and rules adopted under it and that supplies drinking water through pipes, through tubing, or in a similar manner to consumers within this state.
 - (2) "Acquiring water supplier" means a water supplier that satisfies both of the following:
 - (a) The water supplier acquires ownership of an existing water supplier.
 - (b) The water supplier and the acquired existing water supplier do not have any mutual directors, officers, controlling shareholders, or other persons with an ownership interest prior to the acquisition.
 - (3) "Drinking water standards" means safe drinking water standards established by the environmental protection agency under this chapter or established by the United States environmental protection agency under the Safe Drinking Water Act.
- (B) An acquiring water supplier that acquires ownership of an existing public water system is not liable in damages in a civil action for injury, death, or loss to person or property that occurred prior to the acquisition and that was allegedly caused by the previous water supplier's failure to comply with drinking water standards if the acquiring water supplier does both of the following:
- (1) Enters into a written agreement with the environmental protection agency to bring the water system into compliance with drinking water standards within a specified period of time;
 - (2) Brings the water system into compliance with drinking water standards within the time period agreed to under division (B)(1) of this section.
- (C) A water supplier that operates a public water system is not liable in damages in a civil action to any person for injury, death, or loss to person or property that allegedly arises from the person's consumption of water supplied by the water supplier if all of the following apply:
- (1) During the period of time that the water supplier supplies water to the person, the water supplied by the water supplier meets all applicable drinking water standards.
 - (2) The water supplier has not been found to be in significant noncompliance with drinking water standards.
 - (3) The injury, death, or loss to person or property is alleged to be caused by a substance for which drinking water standards have been established.
- (D) (1) This section does not create a new cause of action or substantive legal right against a water supplier.
- (2) This section does not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which a water supplier may be entitled under circumstances not covered by this section.
 - (3) This section does not create immunity from civil liability for violations of section 6109.31 of the Revised Code.

HISTORY: 149 v S 65. Eff 6-18-2002.

OAC Rule Amendment 3745-81-32
Rule Summary / Fiscal Analysis, Attachment C
Cost of Compliance

The cost of compliance for Ohio Administrative Code (OAC) rule 3745-81-32 of the Administrative Code is derived from the economic analysis conducted by U.S. EPA in the Public Notification, Final Rule as published in the Federal Register on May 4, 2000. U.S. EPA provided a per system cost estimate representing average annual costs to comply with all of the public notification requirements included in the rule. These costs include a composite of personnel costs, new equipment or other capital costs, operating costs and any indirect central service costs associated with public notice preparation and distribution. Note that only public water systems with a violation or other situation requiring a public notice incur costs under this rule.

The average per system annual costs provided by U.S. EPA were then adjusted to 2006 dollars using the Bureau of Labor Statistics' Inflation Calculator to account for inflation and then applied to the number of systems in Ohio with violations that required public notice in 2006. Based on this analysis, we estimate that systems in Ohio spent approximately \$ 485,818.33 in 2006 to comply with this rule.

Summary of Costs to Affected Ohio Water Systems in 2006

Population Served	Number of Systems* in Violation in 2006	Cost per system adjusted for 2006	Total Cost per Year
PWS serving 25-500	1,524	\$ 195.91	\$ 298,566.84
PWS serving 501-3,300	127	\$ 464.11	\$ 58,941.97
PWS serving 3,301-10,000	19	\$ 1,442.84	\$ 27,413.96
PWS serving 10,001- 100,000	14	\$ 3,843.64	\$ 53,810.96
PWS serving over 100,000	1	\$ 47,084.60	\$ 47,084.60

*Includes government and non-government owned systems. Note: Ohio EPA has changed recordkeeping software in order to support newly adopted rules. This software does not perform detailed queries, and limits us from showing the cost of compliance to systems based on ownership (e.g. school districts, townships, and so forth).

The proposed provision in OAC rule 3745-81-32 paragraph B requiring Tier 1 notice when a public water system experiences a depressurization and has either *E. coli* or fecal coliform present in associated samples, will add to the above cost of compliance. A survey of several public water systems, with a wide range of population size, indicated that none of the systems surveyed experienced any depressurizations where *E. coli* or fecal coliform was detected in 2006. As the situation described in this rule occurs very rarely, the cost incurred to comply with this rule is minimal.

Should a public water system encounter this rare situation, the estimated cost to these systems would include the labor to prepare and deliver the notice, as well as the cost of the materials used to create and

deliver the notice, similar to the cost per system incurred under the federal Public Notification Rule (U.S. EPA Economic Analysis Summary). These costs are likely significant overestimates for public water systems that would have to comply with the provision on depressurization because it is expected that the incident would be isolated to a small area and therefore, the cost to the system would be significantly less to develop and deliver the public notification.