



November 30, 2017

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
Sent via electronic mail



Re: Comments on draft POU/POE permanent regulations

Dear Chair Marcus and board members,

On behalf of the above-listed organizations, we appreciate the opportunity to comment on the proposed permanent regulations governing the approval of point-of-use (POU) and point-of-entry (POE) water treatment devices as an interim measure for small communities that lack safe drinking water. We share the Board's interest in ensuring that households have as little disruption as possible in accessing safe drinking water within their homes and share the following suggestions for improving the program.

We limited our comments to the POU sections of the regulations, but would request similar edits to the POE sections

Ensuring treatment devices are adequately operated and maintained is critical.

Treatment devices are only as effective as they are adequately operated and maintained. We think the regulations do a good job of ensuring proper O/M by requiring a life-cycle cost comparison, the submission and proactive board approval of an Operation and Maintenance Plan, and requiring proof of 24/7 service availability for the in-home units.

Regulations should reflect statutory requirements

The statute for which these regulations are being promulgated has some specific requirements that are not currently reflected in the regulations, specifically, the limitation on the size of the community water system that is eligible for this option. We suggest the following amendment:

§64418(a) A public water system *of less than 200 connections*, except for a proposed new community water system that does not have a domestic water supply permit, may be permitted to use POU's in lieu of centralized treatment ...

Additionally, statute does not specify that a system must apply for *public* funding sources to be eligible for this compliance option. We suggest the following amendment:

§64418(a)(2)(A) [has] applied for funding from any federal, state, ~~or~~ local ~~agency or~~ *private source* to (A) correct the system's violations; and

Finally, the statute limits the granting of a permit to three years. We suggest the following amendment:

§64418(a)(3) the public water system has applied for a permit or permit amendment ~~to use POU's upon completion of pilot testing and determination of a specific POU device pursuant to Section 64418.3. Any approved permit or permit amendment will be for a three (3) year term with the option to reapply for an amendment every three (3) years.~~

Terms of compliance need to be clarified

The intent of these regulations is to ensure that a public water system continues to provide safe drinking water to its customers while developing and implementing permanent solutions. Unfortunately, we have had an experience – in the case of Pond Mutual – in which the system was deemed compliant due to installation of POU devices, but then ruled ineligible for planning/feasibility funding based on that compliance. Pond was denied the opportunity to pursue a permanent solution based upon their implementation of an interim solution. We're hopeful that this circular argument isn't repeated in the future, but just in case, we'd like the following language included in the regulations:

New section §64418(a)(7) Neither the application for, nor the approval thereof, a permit or permit amendment shall be construed as compliance with state and federal Safe Drinking Water Act standards as they apply to funding eligibility for planning or construction funding from the Safe Drinking Water State Revolving Fund or other Funds administered by the State Water Resources Control Board.

We also are concerned with the presumption that 100% of customers must agree to installation in order for the system to be deemed in compliance. This is an extremely high and in many, if not

most, cases impossible bar for a public water system to reach. It potentially sets up the untenable situation where a public water system either cannot receive a permit amendment because of a few recalcitrant customers; or is forced to deny basic water service to those customers in order to qualify for a permit or funding. One suggestion might be the addition of a customer notification program as one of the requirements of the program, either instead of or in addition to the rote notification process contained in the current regulations. Here's a suggestion:

New section §64418(a)(5)(D). POU education program that identifies the public hearing required by HSC 116552, the process by which each customer will be notified, multiple types of followup for non-responsive customers, and notification of residential customers who refuse access for installation/monitoring maintenance of POU device.

We might then amend related sections as follows;

*§64418(a)(6) the public water system ensures that each building and each dwelling unit, ~~commercial building or other establishment or institution,~~ served by the ~~connected to the~~ public water system, has a POU installed pursuant to this Article, *unless the dwelling unit has refused access for installation/operation/maintenance of POU after implementation of the Education Program identified in section (5).**

We understand that our concern can be met by making a request that would be specifically approved by the State Board under current section 64418(b). However, in our experience it is common for a small minority of customers to choose not to comply with a POU installation request, and rare that a system will achieve 100% compliance. We think the regulations should be couched to address the more likely event.

*§64418(b) With State Board approval and without having to meet the requirement of (b) subsection (a)(6), a public water system may utilize POUs in lieu of centralized treatment for the purpose of reducing contaminants, other than microbial contaminants, volatile organic chemicals, or radon, to levels at or below one or more of the maximum contaminant levels or action levels in this Title, in the water it supplies to some or all of the persons it serves, but the public water system will not be deemed in compliance ~~without meeting~~ *unless customers served by at least 75% of connections served by the public water system meet* the requirement of subsection (a)(6). A public water system's application for a permit to utilize POU's pursuant to this subsection may include a request that one or more of the requirements of this article be amended or eliminated to address the public water system's specific utilization, and such request may be granted or denied by the State Board.*

Time, not affordability, should be primary eligibility factor in approving POU/POE as an interim water supply option

The purpose of permitting the POU/POE option is to ensure safe drinking water while a permanent solution is achieved. The economic feasibility of installing a permanent solution is dependent on the ability of a public water system to fund the project. If a system must pursue outside funding, that creates a delay in achieving a permanent solution that this program is intended to address. Rather than use an MHI formula to determine economic feasibility, why not use the cost of the project and the expected schedule for obtaining funding? That complies with the statute being implemented. If a system requests public funding for installing the interim system, the eligibility formula listed in 64418.1 may be appropriate. But subsidies for interim solutions are not part of this regulation.

We do agree with the intent of staff in adding a temporal element to the demonstration of economic feasibility required by the board to approve POU/POE interim treatment. We strongly feel that communities should have as little interruption as possible in the provision of safe drinking water. We think it would be helpful to include a definition of “immediately” either in the definitions section or when the term is introduced in §64418(a)(2)(B). Potential language might say

“Not immediately economically feasible” is defined as that provision of safe drinking water through installation of centralized treatment cannot be achieved by the public water system without access to an outside funding sources; and that financing and installation of such a system will take longer than 90 days.

The Board must develop protocol for approving treatment devices when 3rd party certification is not available.

Several contaminants, including Uranium, 1,2,3-TCP and Hexavalent Chromium, currently have no 3rd-party certified devices. POE systems are similarly unlikely to have been certified. We think this provides an opportunity to work with the Board to identify pilot testing protocols that will allow devices to be approved for these contaminants and for POE systems. Unfortunately, the regulations as written don’t really take into account the availability (or lack thereof) of existing data or the different amount of time required to conduct pilot testing for different contaminants. We recommend the inclusion of the following:

64418.3(a)(11): Add “*Pilot Test*” or *Pilot Test Plan*” between (C) and (D)

Thank you for considering our remarks. We would be happy to set up a time to review them with you.

Sincerely



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