

January 27, 2009

June Swallow, PE, Chief
Office of Drinking Water Quality
Rhode Island Department of Health
Three Capitol Hill
Providence, RI 02908-5094

Dear Ms. Swallow:

I am providing comments on the 'Rules and Regulations Pertaining to Public Drinking Water (R46-13-DWQ) on behalf of the Independent Testing Laboratory Association (ITLA). The ITLA has been in existence since 1994 and is a professional industry organization comprised of member laboratories that are certified to perform environmental testing. Our membership includes laboratories from Massachusetts, Rhode Island, Connecticut, and New Hampshire. The purpose of ITLA is to promote professionalism, ethical competition, and public relations of association members. In addition we provide comments to public officials regarding proposed legislation that has an impact on our membership.

This letter formally documents the comments of ITLA to RIDOH's proposed amendments to the "Rules and Regulations Pertaining to Public Drinking Water (R46-13-DWQ)", located on the RIDOH Department's website:

<http://www.health.ri.gov/regulations/index.php> .

Specifically the association opposes the changes made in:

- 12.1 Requirements revised to specify analyses that may only be conducted by the RI Department of Health (RIDOH) Laboratory or by other specified laboratories;
- 16.1 (s) Requirement added (effective March 1, 2009) to specify that compliance samples for Antimony, Arsenic, Barium, Beryllium, Cadmium, Chromium, Nickel and Thallium can only be analyzed by the RIDOH Laboratory;
- 16.2 (a) (12) Requirement added (effective March 1, 2009) to specify that compliance samples for contaminants listed in §16.2(a) can only be analyzed by the RIDOH Laboratory;
- 16.2 (a) (37) Requirement added (effective March 1, 2009) to specify that compliance samples for contaminants listed in §§16.2(b) (1) through (21) can only be analyzed by the RIDOH Laboratory.
- 16 (j) Effective March 1, 2009, only the results of samples analyzed by the Rhode Island Department of Health Laboratory will be accepted for the purpose of complying with §16.1(j). Sample results from any other laboratory will be rejected and not recognized for the purpose of determining compliance with the

monitoring requirements for arsenic. The Director may waive this requirement in the event that the Rhode Island Department of Health Laboratory is unable to provide this analytical service.

ITLA believes the rationale for these proposed amended regulations to be incorrect, unnecessary, and wasteful. The amended regulations state that the rationale for the changes are that the proposed changes are required to adopt standards compatible with current (2008) National Primary Drinking Water Regulations [40 CFR 141] promulgated by the United States Environmental Protection Agency (EPA). The proposed changes specifically address:

- Stage 2 Disinfectants and Disinfection Byproducts Rule [71 FR 388 – 4 January 2006],
- Long Term 2 Enhanced Surface Water Treatment Rule [71 FR 654 – 5 January 2006],
- Ground Water Rule [71 FR 65574 – 8 November 2006],
- Analysis and Sampling Procedures [72 FR 11200 – 12 March 2007] and
- Lead and Copper: Short-Term Regulatory Revisions and Clarifications [72 FR 57782 – 10 October 2007].

There are no current regulations in the current (2008) National Primary Drinking Water Regulations [40 CFR 141] that prohibit the testing of any analyte by private testing laboratories. Only if Human Health was in jeopardy should the state enact some type of emergency requirements to address a particular situation. This has not been stated nor is any laboratory aware that this situation has occurred. If there is data in question, the state, which certifies private laboratories, would have recourse to pull the certification of a ‘bad’ laboratory. All laboratories currently performing work for public drinking water suppliers, that ITLA has questioned, have not been cited for ‘bad’ practices. How does an agency that certifies the testing laboratories using in depth auditing procedures and proficiency testing now claim that only the RIDOH State Laboratory has the ability to perform this testing. This seems disingenuous and also involves a conflict of interest.

ITLA is also not aware of any shortage of capacity that might dictate such an amendment. In the current economic state, most private laboratories have ample capacity to handle this type of testing.

ITLA is concerned with the type of precedent this sets for future changes in the regulations. The state will be cherry picking the most profitable testing from the drinking water sector, leaving the rest to the private laboratories. The state will also raise the pricing for these tests without a concern for competitive pricing, having “knocked out” the competition. The average price from a private laboratory for a volatile analysis using method 524.2 is \$90. The amendment states that this test will now cost \$200. Typically private laboratory pricing is much less than the revised price list stated in the amendments. Therefore you will be putting an additional monetary burden on many of the public drinking water suppliers. These costs will ultimately be transferred to the taxpayers of this state. Also, does it stop at drinking water? What about wastewater? What other states will want to follow this precedence?

ITLA feels that these regulations as stated cause 'Unfair Competition', 'Restraint of Business' and 'Restriction of Free Trade'. In the current economic climate and with the high unemployment rate this restriction for small businesses is onerous. Many businesses rely on this testing as an income stream. Many small laboratories have built their businesses around the needs and requirements of this particular testing.

The drinking water providers will also lose the benefits of package pricing and competitive pricing. Splitting samples raises costs on both ends. For smaller laboratories to only perform the remaining analysis will increase costs and may put some laboratories out of business.

ITLA has been in contact with a number of businesses, municipalities and professional organizations regarding these issues. We question the legality and ethics of the proposed amendments in regards to our comments noted above. Many businesses already have contracts with private laboratories for a given period of time. These regulations interfere with these contracts. There is also the issue of discriminatory bidding processes. The open bidding process is being circumvented by the RIDOH laboratory. It is our understanding that in all state regulations, there is a requirement for an open bidding process. Some of our members are considering seeking legal guidance regarding these issues.

It appears that in Section II – Chemistry under Inorganic Chemistry 4 (a) page 336, the graphite furnace method for Thallium has been omitted from the table of acceptable methods as referenced in 40 CFR part 141.

Our organization respectfully awaits your comments regarding our concerns.

Sincerely

Chris Wakefield
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Laboratory Director
Alpha Analytical

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