

# REGULATORY REPORT

*January/February 2012*

*In this issue:*

- *Office Of Water Balances Expanding Agenda With Contracting Budgets*
- *EPA Kicks Off Consumer Confidence Reports Retrospective Review*
- *EPA Sets New Schedule For Hexavalent Chromium IRIS Risk Assessment*
- *Final UCMR3 Due For March Publication*
- *AMWA Pushes For Drinking Water Consideration in Integrated Planning Efforts*
- *Regulatory Update At-A-Glance*

## *Office Of Water Balances Expanding Agenda With Contracting Budgets*

As EPA kicks off the new year, the Office of Water continues to grapple with a continually expanding agenda, while at the same time struggling with stagnant or decreasing budgets. In addition to the usual (and growing) collection of statutory and program obligations that must be met, EPA is spending more time responding to or avoiding political scrutiny in a contentious election year. The combined effect for EPA's drinking water regulatory agenda seems to be a perceptible slowing of progress as EPA leadership and staff work to assess their priorities within this year's unique budgetary and political environment. Thus, AMWA anticipates that regulatory development and assessment activities will continue, but at a slower pace and while avoiding (as much as possible) heavy engagement in hot-button issues that could pull EPA into the political realm. It will be interesting to get additional perspectives on how the current regulatory and political dynamics may play out over the rest of the year when we hear from political experts, legislators, and regulators during AMWA's upcoming Water Policy Conference in March—we hope to see you there.

## *EPA Kicks Off Consumer Confidence Reports Retrospective Review*

The drinking water regulatory item that has probably had the most stakeholder engagement over the past two months is EPA's retrospective review of Consumer Confidence Reports (CCRs). To start stakeholder discussions, EPA held a January 4 conference call with AMWA and several other associations to discuss its goals and schedule for the review. This was followed on February 23 by a "listening session" during which the conversation was opened to the full public stakeholder community. The listening session provided background on the potential CCR changes and teed up questions for comment and discussion in an online forum (accessible at <http://CCRRetrospectiveReview.ideascale.com>) through March 9. All comments and discussions will be considered as part of the public comment record EPA will use as it progresses with its review process.

The online discussion is open to any comments or discussion related to CCRs, however, EPA released a set of “discussion questions” (see [www.amwa.net/cs/members\\_only/regulatory\\_committee\\_notes](http://www.amwa.net/cs/members_only/regulatory_committee_notes)), divided into subsets focused on different stakeholder groups and outlining the issues EPA feels are most pertinent to the review. Though EPA has outlined several topics for discussion, the main focus of EPA’s review will be an evaluation of alternative delivery methods for the CCR with the end goal of issuing policy guidance addressing alternative delivery methods in early 2013. Other issues that will undergo review include Tier 3 public notification limitations, state certification requirements, use of whole numbers and required health effects language. For these (and any other) additional topics, EPA intends to develop a review summary and make recommendations for further action “as Agency resources allow.”

The costs for delivering paper copies of CCRs through the mail is a growing concern in today’s tight budgetary environment, and there is a potential for significant savings from electronic delivery of CCRs. However, the scale of any savings is heavily dependent on the details. On several occasions, EPA has mentioned that it considers the “push” aspect of CCR delivery (i.e., proactively getting the reports into consumers hands) to be a very important aspect of the current CCR. Within this construct, proactive emailing of reports has been put forth as an option for electronic delivery. But such an alternative would require a significant effort to collect and maintain a large email database compared to a more passive approach such as providing a URL link to the CCR as part of customers’ billing statements. It is unclear if EPA can be convinced to move toward the latter approach which, many have argued, is the most practical and effective way to give the public access to CCRs in light of current trends in technology and patterns of information consumption.

As the CCR retrospective review proceeds within EPA, AMWA also continues to back legislation in the House and Senate (H.R. 1340/S. 1578) that would amend the Safe Drinking Water Act to allow electronic CCR communications. Staff on the House Energy and Commerce Committee have told AMWA that edits would be necessary if the legislation is to move forward, but they continue to express interest in working with the water sector on the issue. Additional discussion of AMWA’s legislative efforts on CCRs can be found in the January/February *Congressional Report*.

### ***EPA Sets New Schedule For Hexavalent Chromium IRIS Risk Assessment***

On February 28, EPA updated its schedule to complete its Integrated Risk Information System (IRIS) risk assessment of Hexavalent Chromium (Cr-VI). The draft Cr-VI IRIS assessment, focusing on oral ingestion of Cr-VI, was originally scheduled for a fall 2011 release. However, the oral risk assessment will now be combined with an inhalation exposure assessment also under development and will be released in 2013 for public and external peer review. Based on that schedule, release of a final Cr-VI IRIS assessment would not be expected until at least 2014.

The revised schedule comes after repeated calls from industry stakeholders (including AMWA) for EPA to delay the release of its draft IRIS assessment so it could fully consider recently completed Cr-VI toxicology research as part of the IRIS Cr-VI assessment. The latest conclusions from the American Chemistry Council (ACC)-sponsored research examining the potential human toxicological effects of Cr-VI exposure were reviewed at the Toxicology Forum’s annual winter meeting in Washington, D.C. and during a recent American Water Works Association and Water Research Foundation webinar. The

new studies' findings call into question EPA's past assumption that Cr-VI cancer risks are linear—an assumption based on high-dose studies. Study findings also suggest that Cr-VI, which is carcinogenic at high doses, is efficiently broken down in chromium III, a harmless (and potentially beneficial) form of chromium, in the human digestive system at low doses. By incorporating these new low-dose exposure data into IRIS assessment, EPA could very likely reach conclusions that would lead to less strict drinking water limits for Cr-VI than those estimated using previous modeling assumptions. The appropriate level at which a drinking water limit should be set to is an important issue to many utilities facing large costs to comply with potential revised standards that may not be warranted for public health protection.

Although most of the new Cr-VI toxicology studies are complete, several are still undergoing (or scheduled for) peer review. Despite efforts to remain transparent and open through a peer review process, some advocacy groups continue to question the findings, largely based on ACC's sponsorship. However, it is encouraging that EPA is taking extra time to ensure all relevant data is incorporated into the Cr-VI IRIS assessment.

### ***Final UCMR3 Due For March Publication***

One drinking water regulation that should be finalized soon is the Third Unregulated Contaminants Monitoring Rule (UCMR3). EPA's regulatory agenda lists the promulgation target for UCMR3 as March 2012, but that schedule may be slipping slightly since the rule package is still at the Office of Management and Budget (OMB) for review. OMB's 90-day review window ends on March 8, after which EPA must respond to any OMB comments and suggestions, revise the final rule package (including all supporting documents), route the final rule package through EPA review processes and prepare the *Federal Register* notice for publication. Though it is possible that this could all be done by the end of March, a more typical timeframe for completing all of these items would indicate a delay in final publication of UCMR3 until at least April.

The list of contaminants on the final UCMR3 is expected to largely follow the proposed list, with hexavalent chromium (Cr-VI) being the most likely exception. Although Cr-VI was not on the proposed UCMR3 list, in several recent public venues EPA has mentioned that it received significant comment requesting inclusion of Cr-VI. There is also speculation that EPA's recent revisions to its analytical method for Cr-VI (<http://amwa.net/method2187>) paves the way for Cr-VI's addition to the list. The revised method (Method 218.7) updates several requirements from the previous version, which was last revised in 1994. The older version of the method, developed more for analysis of wastewater, has long been critiqued as too conservative (and thus overly burdensome and costly) for regular analysis within typical drinking water matrices. Overly restrictive filtration, temperature and holding time requirements have been relaxed in Method 218.7.

During a February 23 meeting at OMB, AMWA and other associations were given an opportunity to reiterate their positions on UCMR3. AMWA staff reviewed recommendations outlined in the public comments submitted in response to the UCMR3 proposal (see [http://www.amwa.net/galleries/regcomm/AMWAFinal\\_UCMRcomm\\_2may2011.pdf](http://www.amwa.net/galleries/regcomm/AMWAFinal_UCMRcomm_2may2011.pdf)). OMB staff generally does not comment on rules under its review (and did not during this meeting), but AMWA's concerns will be fresh in their minds as they enter the final phase of their UCMR3 review.

## ***AMWA Pushes For Drinking Water Consideration In Integrated Planning Efforts***

EPA held a series of five public workshops over the past several weeks to “assist EPA in developing an integrated planning approach framework that could be used to help municipalities prioritize their infrastructure investments in order to maximize water quality benefits and consider various innovative approaches, such as green infrastructure, that may be more sustainable.” Workshop discussions focused on EPA’s “Draft Integrated Planning Approach Framework” (<http://amwa.net/IPFramework>), with EPA staff giving their perspective on the framework while engaging stakeholders in conversation on how to improve the approach. Input from the workshop discussions and other public comments are expected to be reflected in a final framework document.

Although the framework and workshops are generally focused on Clean Water Act (CWA) issues and AMWA has been supportive of the flexibility embedded in the framework, we continue to closely monitor this process and advocate for inclusion of drinking water issues in any integrated planning process. Many participants in the workshops, including several AMWA members, expressed concern that large capital commitments to meet CWA obligations, however managed, could crowd out equally necessary drinking water regulatory compliance and infrastructure and investment costs.

Reports back from the workshops and follow-up discussions with staff at EPA’s Washington, D.C. headquarters indicate that EPA is hearing the message for greater drinking water consideration in the process, but it is unclear to what degree it intends to address the concerns expressed. To further express our position, AMWA and the American Water Works Association submitted a joint letter to EPA (posted at [http://www.amwa.net/cs/sustainability/integrated\\_planning](http://www.amwa.net/cs/sustainability/integrated_planning)) to be considered as it finalizes its integrated planning framework. AMWA members are also encouraged to follow up with their appropriate local and regional authorities involved in the integrated planning process to ensure that drinking water is part of the integrated planning discussion.

## ***Regulatory Update At-A-Glance*** ***Proposed and Pending Rules (In Alphabetical Order)***

*Note: Changes since the last report are in italics. All AMWA comment letters are on the Regulatory Committee Notes page ([http://www.amwa.net/cs/members\\_only/regulatory\\_committee](http://www.amwa.net/cs/members_only/regulatory_committee)).*

**Rule/Notice:** Bisphenol A (BPA)

**Notice:** July 26, 2011 – Advance Notice of Proposed Rulemaking (ANPRM)

**Proposal:** TBD

**Description/Status:** EPA is evaluating comments on the ANPRM for BPA published under the Toxic Substances Control Act. EPA is considering environmental testing for BPA, including potential testing of drinking water and its sources.

**Rule/Notice:** Carcinogenic Volatile Organic Compounds (VOCs)

**Notice:** February 2, 2011 – EPA announced that it plans to develop a single national primary drinking water regulation (NPDWR) covering up to 16 carcinogenic VOCs.

**Proposal:** October 2013 (projected)

**Final:** April 2015 (projected)

**Description/Status:** EPA is conducting evaluations and developing supporting materials for proposal.

**Rule/Notice:** Clean Water Protection Rule

**Proposal:** *TBD*

**Final:** TBD

**Description/Status:** The Clean Water Protection Rule would codify requirements currently set forth in the EPA/Army Corps of Engineers “Draft Guidance on Identifying Waters Protected by the Clean Water Act.” *The guidance was submitted to the Office of Management and Budget for review on February 21, 2012.*

**Rule/Notice:** Lead and Copper Rule: Regulatory Revisions

**Proposal:** October 2012 (projected)

**Final:** December 2013 (projected)

**Description/Status:** EPA is conducting evaluations and developing supporting materials for proposal. On May 11, 2011 AMWA submitted comments to EPA’s Science Advisory Board (SAB) Drinking Water Committee for its review of the effectiveness of partial lead service line replacements (PLSLR).

**Rule/Notice:** NPDES Pesticides General Permit (PGP)

**Proposal:** June 4, 2010

**Final:** October 31, 2011

**Description/Status:** The requirement for pesticide users to obtain an NPDES permit for aquatic pesticide use went into effect on October 31, 2011.

**Rule/Notice:** Perchlorate

**Notice:** February 11, 2011 – regulatory determination

**Proposal:** February 2013 (statutory deadline)

**Final:** August 2014 (statutory deadline); May 2015 (potential extension)

**Description/Status:** EPA is conducting evaluations and developing supporting materials for proposal.

**Rule/Notice:** Radon Rule

**Proposal:** November 2, 1999

**Final:** TBD

**Description/Status:** EPA’s July 7, 2011 Regulatory Agenda lists the final action for this rule as “to be determined.”

**Rule/Notice:** Revised Total Coliform Rule (RTCR)

**Proposal:** June 17, 2010

**Final:** *June 2012 (projected)*

**Description/Status:** EPA is in the process of preparing final regulatory support documents prior to final senior-level Agency and Office of Management and Budget reviews.

**Rule/Notice:** Six-Year Review

**Notice:** March 29, 2010

**Final:** The notice of the Six-Year Review is not a regulatory decision in and of itself. The comment

period closed in June 2010 and EPA may now either release proposed regulation revisions in the future or decide not to pursue revising these drinking water regulations.

**Description/Status:** Awaiting EPA decisions on other possible regulatory determinations.

**Rule/Notice:** Unregulated Contaminant Monitoring Rule 3 (UCMR 3)

**Proposal:** March 3, 2011

**Final:** *March 2012 (projected)*

**Description/Status:** AMWA submitted comments to EPA on May 2, providing responses to 16 specific issues and requests for comment raised in EPA's proposal. The Office of Management and Budget commenced its review of the final rule package on December 8, 2011.

**Rule/Notice:** Wastewater Pretreatment: Coal Bed Methane and Shale Gas Production

**Proposal (coal bed methane):** June 2013 (projected)

**Proposal (shale gas):** October 2014 (projected)

**Final (coal bed methane):** TBD

**Final (shale gas):** TBD

**Description/Status:** The EPA announced its intent to develop pretreatment standards for wastewater associated with coal bed methane and shale gas production activities.