

333-061-0045

Variances

- (1) Variances from the maximum contaminant levels may be granted by the Department to public water systems under the following circumstances where:
 - (a) An evaluation satisfactory to the Department indicates that alternative sources of water are not reasonably available to the system;
 - (b) There will be no unreasonable risk to health;
 - (c) The water supplier has provided sufficient evidence to confirm that the best available treatment techniques which are generally available are unable to treat the water in question so that it meets maximum contaminant levels;
 - (d) The water supplier agrees to notify the water users at least once every three months, or more frequently if determined by the Department, that the water system is not in compliance;
 - (e) A compliance schedule is submitted which outlines how the water supplier intends to achieve compliance, and the water supplier agrees to review this schedule once every three years to determine whether changes have occurred in the conditions which formed the basis for the schedule; and
 - (f) A plan is submitted which outlines interim control measures including application of the best technology treatment technique to be implemented during the period that the variance is in effect.
- (2) The Department shall document all findings of its determinations and if the Department prescribes a schedule requiring compliance with a contaminant level for which the variance is granted later than five years from the date of issuance of the variance the Department shall:
 - (a) Document the rationale for the extended compliance schedule;
 - (b) Discuss the rationale for the extended compliance schedule in the required public notice and opportunity for public hearing; and
 - (c) Provide the shortest practicable time schedule feasible under the circumstances.
- (3) Before denying a request for a variance, the Department shall advise the water supplier of the reasons for the denial and shall give the supplier an opportunity to present additional information. If the additional information is not sufficient to justify granting the variance, the variance shall be denied.
- (4) If the Department determines that the variance should be granted, it shall announce its intention to either hold a public hearing in the affected area prior to granting the variance; or serve notice of intent to grant the variance either personally, or by registered or certified mail to all customers connected to the water system, or by publication in a newspaper in general circulation in the area. If no hearing is requested within 10 days of the date that notice is given, the Department may grant the variance.

- (5) When a variance has been granted, and a water supplier fails to meet the compliance schedule, or fails to implement the interim control measures, or fails to undertake the monitoring required under the conditions of the variance, the Department may initiate enforcement action authorized by these rules.
- (6) Variances from the maximum contaminant levels for volatile organic chemicals, organic chemicals and inorganic chemicals shall be issued by the Department as follows:
 - (a) The Department shall require Community water systems and Non-Transient Non-Community water systems to install and/or use any treatment method identified in OAR 333-061-0050(4)(b)(B), (E) and (F) as a condition for granting a variance except as provided in subsection (6)(b) of this rule. If, after the system's installation of the treatment method, the system cannot meet the MCL, that system shall be eligible for a variance.
 - (b) If a system can demonstrate through comprehensive engineering assessments, which may include pilot plant studies, that the treatment methods identified in OAR 333-061-0050(4)(b)(B), (E) and (F) would only achieve an insignificant reduction in contaminants, the Department may issue a schedule of compliance that requires the system being granted the variance to examine other treatment methods as a condition of obtaining the variance.
 - (c) If the Department determines that a treatment method identified in subsection (6)(b) of this rule is technically feasible, the Department may require the system to install and/or use that treatment method in connection with a compliance schedule. The Department's determination shall be based upon studies by the system and other relevant information.
 - (d) The Department may require a public water system to use bottled water, point-of-use devices, point-of-entry devices or other means as a condition of granting a variance to avoid an unreasonable risk to health.
- (7) The variances from the maximum contaminant level for fluoride shall be granted by the Department as follows:
 - (a) The Department shall require a Community water system to install and/or use any treatment method identified in OAR 333-061-0050(4)(b)(C) as a condition for granting a variance unless the Department determines that such treatment method is not available and effective for fluoride control for the system. A treatment method shall not be considered to be "available and effective" for an individual system if the treatment method would not be technically appropriate and technically feasible for that system. If, upon application by a system for a variance, the Department determines that none of the treatment methods identified in OAR 333-061-

0050(4)(b)(C) are available and effective for the system, that system shall be entitled to a variance. The Department's determination as to the availability and effectiveness of such treatment methods shall be based upon studies by the system and other relevant information. If a system submits information to demonstrate that a treatment method is not available and effective for fluoride control for that system, the Department shall make a finding whether this information supports a decision that such treatment method is not available and effective for that system before requiring installation and/or use of such treatment method.

- (b) The Department shall issue a schedule of compliance that may require the system being granted the variance to examine the following treatment methods to determine the probability that any of the following methods will significantly reduce the level of fluoride for that system, and if such probability exists, to determine whether any of these methods are technically feasible and economically reasonable, and that the fluoride reductions obtained will be commensurate with the costs incurred with the installation and use of such treatment methods for that system:
 - Modification of lime softening; Alum coagulation;
 - Electrodialysis; Anion exchange resins; Well field management; Alternate source; Regionalization.
 - (c) If the Department determines that a treatment method identified in subsection (6)(b) of this rule or any other treatment method is technically feasible, economically reasonable, and will achieve fluoride reductions commensurate with the costs incurred with the installation and/or use of such treatment method for the system, the Department shall require the system to install and/or use that treatment method in connection with a compliance schedule. The Department's determination shall be based upon studies by the system and other relevant information.
- (8) Public water systems that use bottled water as a condition for receiving a variance must meet the following requirements.
- (a) The public water system must develop and put in place a monitoring program approved by the Department that provides reasonable assurances that the bottled water meets all MCLs. The public water system must monitor a representative sample of the bottled water for all applicable contaminants under OAR 333-061-0036 the first quarter that it supplies the bottled water to the public, and annually thereafter. Results of the monitoring program shall be provided to the Department annually.
 - (b) As an alternative to subsection (7)(a) of this rule, the public water system must receive a certification from the bottled water company that the bottled water supplied has been taken from an "approved

source" as defined in 21 CFR 129.3(a); the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g)(1) through (3); and the bottled water does not exceed any MCLs or quality limits as set out in 21 CFR 103.35, 110, and 129. The public water system shall provide the certification to the Department the first quarter after it supplies bottled water and annually thereafter.

- (c) The public water system is fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water system, via door-to-door bottled water delivery.
- (9) Public water systems that use point-of-use devices as a condition for obtaining a variance must meet the following requirements:
- (a) It is the responsibility of the public water system to operate and maintain the point-of-use treatment system.
 - (b) The public water system must develop a monitoring plan and obtain Department approval for the plan before point-of-use devices are installed for compliance. This monitoring plan must provide health protection equivalent to a monitoring plan for central water treatment.
 - (c) Effective technology must be properly applied under a plan approved by the Department and the microbiological safety of the water must be maintained.
 - (d) The water system must submit adequate certification of performance, field testing and, if not included in the certification process, a rigorous engineering design review to the Department for approval prior to installation.
 - (e) The design and application of the point-of-use devices must consider the tendency for increase in heterotrophic bacteria concentrations in water treated with activated carbon. It may be necessary to use frequent backwashing, post-contractor disinfection, and Heterotrophic Plate Count monitoring to ensure that the microbiological safety of the water is not compromised.
 - (f) All consumers shall be protected. Every building connected to the system must have a point-of-use device installed, maintained, and adequately monitored. The Department must be assured that every building is subject to treatment and monitoring, and that the rights and responsibilities of the public water system customer convey with title upon sale of property.
- (10) Public water systems shall not use bottled water to achieve compliance with an MCL. At the discretion of the Department, point-of-use devices may be used to achieve compliance with MCLs for radionuclides and arsenic. Bottled water or point-of-use devices may be used on a temporary basis to avoid an unreasonable risk to health.
- (11) The Department may grant a variance from the requirements of OAR 333-061-0030(4) "Microbiological Contaminants" for any system that demonstrates to the satisfaction of the Department that violations of the total

coliform MCL are due to persistent growth of total coliform in the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. This demonstration, made by the system in writing and submitted to the Department for review, shall show that the system meets the following conditions:

- (a) The system meets treatment level requirements of OAR 333-061-0032,
 - (b) The system shows no occurrence of coliforms at the entry point to the distribution system,
 - (c) The system meets the turbidity MCL,
 - (d) The system maintains a detectable disinfectant residual in the distribution system,
 - (e) The system has no history of waterborne disease outbreaks using the current treatment and source configuration,
 - (f) The system maintains regular contact with the Department to assess possible illness outbreaks,
 - (g) The system complies with coliform monitoring requirements and shows no occurrence of *E. coli* positive samples during the previous six months,
 - (h) The system has addressed requirements and recommendations of the previous sanitary survey conducted by the Department,
 - (i) The system fully complies with cross connection control program requirements contained in OAR 333-061-0070,
 - (j) The system agrees to submit a biofilm control plan to the Department within twelve months of the granting of the first request for a variance,
 - (k) The system monitors heterotrophic plate count weekly in conjunction with routine coliform sample collection and maintains HPC counts at levels less than 500 colonies per ml at any point where the disinfectant residual is less than 0.2 mg/l, and
 - (l) The system has a microbiological contaminant sampling plan approved by the Department.
- (12) The Department is not permitted to issue any variances to the requirements of OAR 333-061-0030(3) as well as the requirements of OAR 333-061-0032, except as provided by section (13) of this rule, OAR 333-061-0034 and OAR 333-061-0036 pertaining to the treatment of surface water and groundwater under the direct influence of surface water and corrosion control treatment requirements for lead and copper. In addition, no exemptions will be granted for OAR 333-061-0032(3)(c) and 333-061-0032(5)(b).
- (13) The Department may grant variances from standards requiring the use of a specified water treatment technique if the department:

- (a) Determines that the use of a specified water treatment technique is not necessary to protect public health based on the nature of the raw water source for a public water system; and
- (b) Prescribes monitoring and other requirements to the variance to protect public health.