

Water Management Plans and the Safe Drinking Water Act



Corporate counsel and environmental health and safety teams should be aware that certain building water management practices aimed at minimizing *Legionella* may trigger regulatory burdens under the Safe Drinking Water Act.

Legionnaires' disease is a form of pneumonia caused by inhalation of water droplets containing virulent forms of waterborne bacteria known as *Legionella*. The dramatic increase in Legionnaires' disease outbreaks in recent years prompted the Center for Disease Control and Prevention to embrace the concept of water management plans that seek to minimize *Legionella* contamination in building water systems. Other agencies and interest groups—including the Occupational Safety and Health Administration and the Centers for Medicare & Medicaid Services—followed suit, issuing updated guidance and policies relating to water management to minimize *Legionella* risks in the workplace and in certain healthcare facilities.

Those involved in the design and implementation of water management plans focused on minimizing *Legionella* risk often turn to chemical treatment, such as adding a disinfectant to the incoming water before its distribution in the building water system, or filtration, such as adding point of entry filters to reduce particulate matter. As more facilities evaluate treatment and filtration as part of their water management plans, there are more questions about whether such measures trigger the regulatory burden of public water system status.

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Public Water Systems

Title XIV of the Public Health Service Act, also known as the Safe Drinking Water Act (SDWA), serves as the principal federal law intended to ensure safe drinking water for the public. It focuses on all waters designed for drinking use in the United States.

Under the SDWA, a public water system (PWS) for regulatory purposes is a system that comprises at least 15 service connections or that provides water intended for human consumption to at least an average of 25 people at least 60 days per year. The regulations define human consumption broadly to encompass the actual drinking of water and also its use for hand washing, bathing, laundering, and food preparation. A water system includes pipes and other conveyances such as collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system, as well as any collection or pretreatment storage facilities that are used primarily in connection with the system.

Triggers for Regulated PWS Status

A PWS is exempt from regulation if it meets all four of the criteria laid out in the SDWA:

- ◆ It consists only of distribution and storage facilities (and does not have any collection and treatment facilities).
- ◆ It obtains all of its water from, but is not owned or operated by, a PWS regulated under the SDWA.
- ◆ It does not sell water to any person.
- ◆ It is not a common carrier (e.g., airplane, train) that conveys passengers in interstate commerce.

Thus, an entity that obtains its water from a regulated PWS and then treats that water before it is distributed at its facility, or an entity that relies on well water, is not exempt and may be a PWS subject to the SDWA regulations.

What constitutes treatment for purposes of SDWA is not specifically defined. EPA interprets "treatment" to include any activity intended to change the physical or chemical characteristics of the finished water received by a facility.

Secondary disinfection systems and water filters may constitute "treatment" for regulatory purposes, depending on the specific application. As such, SDWA's reach may extend to institutions, facilities, industrial sites, hotels, and businesses that filter or treat incoming municipal water before it is distributed through building plumbing systems for drinking, washing, food preparation, and other hygienic purposes.

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Next Steps

States have primary enforcement authority over the drinking water regulations if the state has implemented regulations that meet or exceed the federal requirements outlined in the SDWA. As most

states have primacy, each state's SDWA regulations differ. The regulatory requirements for non-community public water systems generally require periodic monitoring, testing, and reporting.

This is an emerging issue under SDWA. Many states are still developing their non-community water system programs and many lack clear guidance on interpretation of the regulations. Companies that install water filtration or secondary water treatment systems at their facilities should be aware that such measures may trigger regulated PWS status. Corporate counsel and environmental health and safety teams tasked with these areas of responsibility might consider:

- ◆ Whether the existing systems and practices trigger regulated PWS status.
- ◆ Whether any process changes considered as part of a new or updated water management plan might trigger regulated PWS status.
- ◆ Whether there are regulatory changes on the horizon that may alter the analysis.

When evaluating these issues, careful consideration should be given to each state's regulatory requirements, and a thorough understanding of each facility's source of drinking water and existing water systems and processes will be required.