

## **Law Mandates Consumer Confidence Reports**

*by Alan P. Petrov*

Effective September 18, 1998, the EPA adopted a new federal regulation mandating that water systems prepare Consumer Confidence Reports (CCR). The new requirement applies to every water system that sells potable drinking water to more than 15 customers, regardless of whether or not that system is owned by a city, district, corporation or private individual.

Water wholesalers are included under the regulation but their responsibility will only be to supply data and information to retailers if they have no end-use customers of their own.

The new federal requirement for the CCR stems from the adoption of the 1996 Safe Drinking Water Act Amendments. These amendments specify that all community water systems must provide customers an annual report on the quality of their drinking water.

Each CCR must contain, at a minimum, the following elements:

- 1) Information on the type and source of the water sold by the utility;
- 2) Definitions of certain terms, such as “maximum contaminant level (MCL) goal” and “maximum contaminant level”;
- 3) Information stating if any regulated contaminant is detected in the water;
- 4) Information stating if a source water assessment has been completed and certain information relating thereto;
- 5) Language regarding specified health effects in the event an MCL has been exceeded during the prior year;
- 6) Information on levels of unregulated contaminants for which monitoring is required, including radon and cryptosporidium;
- 7) Educational information regarding the risks posed by nitrate, arsenic and radon for certain systems and
- 8) A specific statement regarding the vulnerability of certain persons to drinking water contaminants.

In addition, the report is required to contain other information about the water system, as well as general information about drinking water.

Each water system must produce its first CCR by October 19, 1999, using information collected during the 1998 calendar year. Wholesale water distributors must provide information about their water to their wholesale customers by April 19, 1999, and by April 1 of each year thereafter. The second CCR for each water system must be produced by July 1, 2000, with subsequent reports due by July of each year thereafter.

In addition, within three months of completion of the CCR each year, the water system must certify to the Texas Natural Resource Conservation Commission that its CCR has been produced and distributed.

A copy of the CCR must be mailed to each customer of every water utility that serves more than 10,000 customers. Customers are defined as the listed accounts that are billed for water service.

For systems serving fewer than 10,000 customers but more than 500 customers, the governor may waive the mailing requirement and instead require that the CCR be published in at least one local newspaper. These systems also will have to notify their customers of the availability of the report. To systems serving fewer than 500 customers, an additional waiver may be granted that would allow an alternate means of notification about the availability of the CCR, in lieu of publication. In all cases, every water system must supply copies of its report on request by any person.

In addition, the regulation requires water utilities to make a good faith effort to reach customers who may not receive water bills, such as people living in apartments or condominiums. Such alternate means of notification may include posting the CCR on the Internet, issuing news releases regarding the availability of the CCR, circulating copies of the CCR to libraries and community centers and sending extra copies of the CCR to multifamily building managers for posting at a central location.

The EPA's goal is requiring production and distribution of CCRs is to provide water consumers accurate information regarding the quality of their drinking water.

By providing this information, water utilities have an important opportunity to increase public confidence and to demonstrate responsiveness to their customers.

Unfortunately, some of the mandatory language required in the reports may have the unintended effect of alarming customers, especially when "contaminants" are discussed. Some attorneys have even predicted that the reports will encourage toxic test litigation.

In order to avoid an unintentional backlash, Johnson Radcliffe & Petrov recommends that all of our water system clients not only follow the minimum requirements of the CCR, but go beyond such minimum requirements in order to educate their customers in advance of the report. We strongly recommend use of an advance mailing about the purpose of the report. When the reports are distributed, a utility system operator must be prepared to answer any questions or phone calls that the system may receive based on the reports.

By promptly, accurately and courteously responding to questions generated by distribution of the CCR, utilities may be able to avoid negative effects of the report.