

**Summary of comments and questions not previously addressed at the
April 16, 2013 SDWC meeting, and department responses**

Comment: One commissioner commented that large utilities don't need all of the design requirements that a small utility needs because they can rely more on operators.

Response: The department recognizes that larger systems generally have greater resources and hence are well-operated. But the department also utilizes a multi-barrier approach for protecting public health that includes source water protection, permitting for design and construction, certified operator requirements, and public awareness, among other approaches. This system maximizes public health protection, which is especially important in case one or more barriers fail. The general public almost certainly expects water systems to meet minimum design standards endorsed by the state regulatory agency and not to rely too heavily on the skills of operators in ensuring the safety of a community's water supply.

Comment: Two commissioners and one public commenter stated that it should be the utilities' and consulting engineers' responsibility to follow best practice to meet outcome-based standards.

Response: If a design standards regulation is promulgated, it will still be the utilities' decision, made in consultation with their engineers, which treatment options and system design they need to utilize to meet water quality standards and other outcome-based needs. The proposed design standards simply provide a minimum baseline for design in order to maximize returns while minimizing risk. It provides a "level playing field" for all water systems.

In the absence of minimum design standards, it is not clear what "best practices" will be followed by utilities and engineers. Certainly, most systems will follow acceptable guidelines and will meet outcome-based standards. But regardless of the acceptability of the design, the department will be expected to approve the design in order to allow the project to move forward. This places the department in a difficult position, especially in instances in which designs fail and there is a need to take corrective actions to address original design deficiencies. This has been an issue in the past, and when it occurs, engineers and utilities often blame the department for approving the original designs.

Enforceable design standards would provide the department the authority to require that minimum standards are followed from the outset.

Lastly, the consulting engineers' responsibility typically does not last longer than the warrantee or guarantee period provided in the contract. Consulting engineers generally

do not fund, at their own expense, corrective actions needed to fix problems arising from design deficiencies.

Comment: Two commissioners requested examples of past cases where the department's inability to enforce the Community Systems Design Guide resulted in diminished water quality and/or other problems for a public water system.

Response: Examples are attached.

Comment: Two commissioners requested a copy of the checklist used by regional office staff when inspecting a water system (Electronic Sanitary Survey).

Response: The electronic sanitary survey questions are attached.

Comment: Two commissioners asked why the department is pursuing a regulation when "for the most part" systems are complying.

Response: We agree that most water systems comply with standards. This rulemaking is intended to provide the department the authority to enforce standards for the small percentage of cases where this will be necessary. This question could be turned around to ask why, if "for the most part" systems comply with standards, is there so much opposition to establishing minimum standards in rule?

Comment: One commissioner commented that meeting design standards (and obtaining department approval) will not guarantee that it will work.

Response: There are no guarantees that any design will work. However, the Minimum Design Standards document contains information based on respected industry documents such as Ten States Standards, AWWA standards, etc., in order to reduce risks and maximize the chance for a successful installation. The inherent risks are also mentioned in the preamble of the design standards document.

Comment: One public commenter suggested that the current design standards could be obsolete before it even becomes regulation.

Response: Published design standards do not necessarily keep pace with the cutting edge of the industry, and this document does not attempt to do so. The minimum requirements in these standards represent practice that is sufficiently standardized to be able to delineate requirements with a very high degree of confidence. Variances are incorporated very prominently in the new document to allow flexibility if such cases are presented where the promulgated standards no longer apply or where new technology is proposed.

It is recognized that a new version of the Ten States Standards has recently been released. Unfortunately this revision was issued concurrent with the completion of the

Branch's multi-year effort for revising the Minimum Design Standards document. A preliminary review of the new standards did not reveal any changes that would significantly impact our proposed standards. But performing a formal review to compare the Minimum Design Standards with the latest version of Ten State Standards would have taken a great deal of time, virtually requiring the entire process to be started again from scratch. It would have required re-convening the internal departmental work group, conducting a line-by-line review of the two documents, creating a new version of the Minimum Design Standards for review and comment, conducting additional stakeholder meetings, etc. This would have significantly delayed completion while adding little value to the current document. As a result, the Branch elected not to further delay the project. That said, it should be noted that section 536.175 requires DNR to re-evaluate all of its rules every five years, beginning with July 1, 2016 and this will include the Design Standards rule. One of the specific criteria to be considered is the rule's obsolescence.

Comment: Some commissioners and public commenters expressed concerns that promulgation of a design standards rule will create a rift between the Public Drinking Water Branch and drinking water industry. Some fear this will result in a contentious relationship similar to that which exists in the Clean Water sector.

Response: DNR/Water Pollution Control Branch/Enforcement Section staff were contacted and asked how many of their enforcement cases pertain to refusal or failure to adhere to the Water Pollution Design Guide (which has been promulgated as a rule). Staff report that there are no such cases. Instead, the vast majority of Water Pollution enforcement cases regard failure to attain effluent limitations or other violations of permits. Staff report that Design Guide deficiencies are noted during on-site inspections but do not constitute a significant percentage of findings.