

Legal Lookout: EPA Speeds Alternative Method Approvals

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As anyone in the water business will tell you, standard analytical methods are critically important. On April 10, 2007, the EPA announced its intent to implement an expedited process for approving alternative analytical testing methods under various federal water programs.

Background

Under the Safe Drinking Water Act (SDWA), EPA promulgates national primary drinking water regulations (NPDWRs) that specify maximum contaminant levels or treatment techniques for drinking water contaminants. The NPDWRs include analytical testing methods used to measure compliance. Under the SDWA Section 1401(1)(D), NPDWRs include "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures"

EPA can promulgate national secondary drinking water regulations that primarily affect the aesthetic qualities of drinking water. These regulations are not federally enforceable, but are used by the states as guidelines. The secondary regulations include analytical techniques.

The 1996 SDWA amendments authorized EPA to add "quality control and testing procedures by guidance published in the *Federal Register*." These procedures are treated as an alternative for public water systems to assess the quality control and testing procedures listed in the regulations. The April 2007 action confirmed EPA's plans to use this authority to develop an expedited process for establishing alternative testing methods. Under this approach, the agency will publish a notice in the Federal Register rather than using a notice-and-comment rulemaking process to approve the use of alternative testing methods for existing regulations.

In the notice, the agency specifically listed two methods under consideration for approval using the expedited approval process. The first is EPA Method 200.5, Revision 4.2., *Determination of Trace Elements in Drinking Water by Axially Viewed Inductively Coupled Plasma-Atomic Emission Spectrometry*. This method can be used to determine concentrations of several trace elements and water matrix elements in drinking water. Method 200.5, Revision 4.2 is available at www.epa.gov/nerlcwww/ordmeth.htm.

The second is Standard Method 6610-04, *High-Performance Liquid Chromatographic Method for Carbamate Pesticides*. This method can be used to determine concentrations of carbamate pesticides in drinking water. Standard Method 6610-04 is based on EPA Method 531.2. Standard Method 6610 B-04 is available at www.standardmethods.org.

Implications

The availability of an expedited process for approving analytical testing methods means professionals will be challenged to be aware of what these methods are, how they should be used, and quickly assess whether one test method is more suitable than another in any given situation.

Lawyers appreciate the implications of developing analytical results that may not be consistent with a client's expectations, particularly if the results are intended to measure compliance or establish a cleanup standard. The determination of which method will yield the most scientifically defensible result in any given context will become all the more challenging, as the expedited review process sanctions the use of alternative test methods, as is EPA's expectation.

Professionals also will need to be vigilant in monitoring the opportunities to provide comment on the approval of alternative test methods. It almost certainly will be the case that some methods should not be approved. If they nonetheless are, the use of these methods could inspire real mischief. In short, the environmental professional's job is about to get more interesting and more challenging.

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