

On behalf of Trihydro, comments on WDEQ Chapter 12 Design and Construction Standards for Public Water Supplies:

Thank you for extending the comment period and allowing us the time to contribute to development of new Chapter 12 rules. Our comments are provided below:

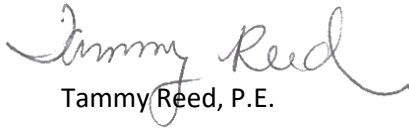
1. The proposed regulations incorporate sections of the Recommended Standards for Water Works 2018 edition. The 2022 edition of these standards are readily available, and it may be prudent to take the time to update the citations to reference the most up to date standards rather than adopt regulations that are out of date the moment they are promulgated. Can the rule be modified to incorporate new citations?
2. Are the words "Ten States Standards" included anywhere in the regulation? We see it immediately referred to as "2018 TSS" in Section 4(a) in response to earlier comments. Since most engineers typically refer to these as Ten States Standards, it would be useful to have the actual term used at least once at the beginning to connect with the acronym, rather than immediately going to TSS, which most engineers associate with the term total suspended solids. Perhaps we missed it? - Or perhaps there is a problem with using that name that we are unaware of?
3. The Ten States Standards (TSS) state "The terms shall and must are used where practice is sufficiently standardized to permit specific delineation of requirements or where safeguarding of the public health justifies such definite action. Other terms, such as should, recommended and preferred, indicate desirable procedures or methods, with deviations subject to individual consideration. "

In the proposed Chapter 12, Section 4 (c), it states "The State term "shall" shall replace the term "should" used in the Recommended Standards for Water Works 2018 Edition." While we realize that the Attorney General's Office would prefer the word "shall" so that rules are enforceable, perhaps these components should not be strictly enforced because they do not meet the criteria of standardized practice or necessity to safeguard the public health. We are losing flexibility by doing this, complicating the ability of WDEQ District Engineers to work with regulated entities and their consultants in favor of more onerous procedures where every single alternative design must be documented in the permit and narrative included to demonstrate equivalence to the requirements that now say "shall".

Perhaps the items that are in the TSS that fall into the "should" category really are more appropriate to be provided as guidance, not included in the proposed rule in such detail? Guidance documents are much easier to update than rules. Additionally, sections that are in the TSS that specifically mention the possibility of considering alternative designs do not appear to be included in the proposed rule (not shown in the highlighted version). Perhaps WDEQ is relying on an existing general clause that gives the Administrator or Director that option, but it is very difficult for the reader to understand that other design solutions can be considered when it is not referenced within these sections as it is in the TSS.

4. Lastly, previous comments mentioned the concern that addressing these new rules will drive up design costs dramatically. As engineering consultants, we support updating the regulations wholeheartedly and understand that some increase in costs go hand in hand with updated standards. However, cost increases because the regulations are difficult to understand for both WDEQ staff and the designers, and the excess paperwork that will likely be required to establish equivalency of alternative designs (since the shoulds are now shalls) seems like an increase in costs that municipalities and businesses will be paying for unnecessarily. We would also like to support the comment provided earlier by Mr. Engels of ACEC and dismissed in the Response to Comments document. That is, many publicly funded projects have a budget limit on the percentage of funds that are used for design, and this will impact smaller projects disproportionately. That is certainly not a reason to defer updating standards, but some communication from WDEQ to other agencies to potentially support an increase in the formal/informal percentage limit considering the new rules would be greatly appreciated by the engineering community.

Sincerely,

A handwritten signature in cursive script that reads "Tammy Reed". The signature is written in black ink and is positioned above the printed name.

Tammy Reed, P.E.

Senior Vice President