

**Salt Lake ~~Valley~~ County Health Department**

**Health Regulation**

**#33**

**FLUORIDATION IN PUBLIC  
WATER SUPPLIES**

**Adopted by the Salt Lake ~~Valley~~ County Board of Health  
October 3, 2002**

**Amended:  
November 4, 2004  
\*\*\*\*\*2014**

**Under Authority of Utah Code Ann. Section §26A-1-114  
~~Utah Code Annotated, 1953, as amended~~**

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# **1. PURPOSE & APPLICABILITY OF REGULATION**

1.1 The purpose of this regulation is to regulate the application of fluoride by a Regulated Public Water Systems (RPWS) in Salt Lake County to promote public health through the protection and maintenance of dental health through fluoridation of RPWS as approved by the citizens of Salt Lake County, to establish controls and standards for the fluoridation of RPWS, and preventing damage and injury to property, persons, and water systems through promotion of safe application and storage of fluoride compounds. by:

## **1.0 2. DEFINITIONS**

~~For the purpose of this regulation, the following phrases, terms, and words shall have the meanings given in this section.~~

~~1.1~~ 2.1 “Annual Control Range” ~~shall mean an annual range in which the fluoride ion concentration must fall.~~

~~1.2~~ an annual range for fluoride ion concentrations  
established by the Department initially set at an annual minimum of ~~0.9~~ 0.6 mg/L fluoride ion to an annual maximum of ~~1.2~~ 0.9 mg/L of fluoride ion.

~~1.3~~ 2.2 “Board” ~~shall mean~~ the Salt Lake Valley County Health Department Board of Health.

~~1.3~~ 2.3 “Calculated Dosage” ~~shall mean~~ the calculated amount of fluoride (mg/L) that has been added to a RPWS. The calculation is based on the total amount of fluoride (weight) that was added to the water system and the total amount of water (volume) that was produced.

~~1.4~~ 2.4 “Division of Drinking Water (DDW)” ~~shall mean~~ The Utah Department of Environmental Quality, Division of Drinking Water.

2.5 “~~DDW~~ Division of Drinking Water Director” or (“DDW”) shall mean the Director of the Division of Drinking Water as provided for in Utah Code Ann. ~~Section~~ §19-4-102.

~~1.5~~ 2.6 “Department” ~~shall mean~~ The Salt Lake Valley County Health Department (SLCoHD).

~~1.6~~ 2.7 “Director” ~~shall mean~~ the Director of the Salt Lake Valley County Health Department or his or her designated representative.

~~1.7~~ 2.8 “Distribution sample” ~~shall mean~~ a water sample taken by an authorized RPWS or Department representative from the distribution piping of a water system.

~~1.8~~ 2.9 “Distribution system” ~~shall mean~~ a collection of pipes, valves, fire hydrants, storage tanks, and reservoirs that carries water from the water source(s) or treatment plants(s) to Public Water System (PWS) customers.

~~1.9~~ 2.10 “Drinking water project” ~~shall mean~~ Any work or facility necessary or desirable to provide water for human consumption and other domestic uses which is a part of a RPWS.

- 1.10 “Executive Secretary”: ~~The Executive Secretary of the State Drinking Water Board as provided for in Section 19-4-106, Utah Code Ann., 1953 as amended.~~
- 1.11 2.10 “Fluoride Monitoring”:- shall mean ~~T~~the regular analysis and recording by RPWS or Department personnel of the fluoride ion content in the drinking water.
- 1.12 2.11 “Fluoride Overfeed”:- shall mean ~~A~~any measured level of fluoride above the Optimum Fluoride Concentration range detected in the RPWS drinking water supply for the time limit established by the Department. Different levels of response are expected from the RPWS depending on the extent of the overfeed (see Table 1).
- 1.13 2.12 “Fluoride Surveillance”:- shall mean ~~T~~the regular review by the Department and RPWS of sample monitoring data to ensure that the Optimum Fluoride Concentration range is maintained by the RPWS in a specific geographic area.
- 1.14 2.13 “Fluoride Underfeed”:- shall mean ~~A~~any measured level of fluoride below the Optimum Fluoride Concentration Range detected in the RPWS drinking water supply for the time limit established by the Department (see Table 2).
- 1.15 2.14 “Functionally Separate Water System” or (“FSWS”):- shall mean, ~~F~~for the purposes of ~~this regulation, a FSWS is a public water system that relies exclusively on its own water sources independent of any other public water systems; to provide water to its retail customers. Interconnections with any other public water systems maintained only for short term emergency service and not used to supplement water available for retail sale, shall not be considered in determining whether a system is a functionally separate water system.~~
- 1.16 2.15 “Milligrams per Liter”:- (mg/L); is also approximately equal to parts per million (ppm).
- 1.17 2.16 “Operating Permit”:- shall mean ~~W~~written authorization from the ~~DDW Executive Secretary~~ Division of Drinking Water Director to begin operation of a facility, system, or equipment constructed as part of a ~~RPWS~~.
- 1.18 2.17 “Operator”:- shall mean ~~A~~ a person employed by a RPWS to operate, repair, or maintain a RPWS.
- 1.19 2.18 “Optimum Fluoride Concentration Range”:- shall mean ~~A fluoride ion range as established by the Department which initially shall be between 0.7 mg/L to 1.4 mg/L.~~ the recommended fluoride concentration (mg/L) based on the annual average of the minimum daily temperature in the geographical area of the fluoridated water system.
- 1.20 2.19 “Owner”:- shall mean ~~A~~an individual, business entity, special district, governmental entity, or any other entity or person with a legal or equitable interest in a RPWS. “Owner” does not include any entity or person which/who does not operate the RPWS and which/who, without participating in a management, holds indicia of ownership primarily to protect its/his security interest.

- ~~1.21~~ 2.20 “Person”~~;~~ shall mean ~~A~~ an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state.
- ~~1.22~~ 2.21 “Public Water System” or (“PWS”)~~;~~ shall mean ~~A~~ a system providing water for human consumption and other domestic uses, which has a least 15 service connections or serves an average of at least 25 individuals daily at least 60 days out of the year and includes collections, treatment, storage, and distribution facilities under the control of the operator and used primarily with the system, or collection, pretreatment or storage facilities used primarily in connection with the system but not under the operator’s control.
- ~~1.23~~ 2.22 “Regulated Public Water Systems” or (“RPWS”)~~;~~ shall mean, ~~F~~for the purposes of this regulation, a PWS that serves a population greater than 3,300 and any other PWS that voluntarily adjusts or changes the fluoride ion concentration in the water systems, ~~but not functionally separate water systems (FSWS) which are excluded of facilities and equipment.~~
- ~~1.24~~ 2.23 “Sanitary survey”~~;~~ shall mean ~~A~~an on-site inspection of RPWS facilities and operation. The survey can be conducted by the DDW, the Department, or qualified individuals authorized in writing by the Executive Secretary Division of Drinking Water Director. The survey consists of a review of operating methods and records and a physical inspection of facilities and equipment.
- ~~1.25~~ 2.24 “Split sample”~~;~~ shall mean ~~A~~ a distribution water sample taken by a trained authorized RPWS representative in duplicate or as a single sample divided into two samples. One sample is analyzed by the RPWS. The other sample is analyzed by a State-certified laboratory by a different method. Both results must be attached to the monthly report.

## **2.0 3. GENERAL PROVISIONS**

### **2.1 Purpose and Applicability**

- ~~2.1.1~~ The purpose of this regulation is to regulate the application of fluoride to RPWS to promote public health through the protection and maintenance of dental health as voted for by the citizens of Salt Lake County by:
- ~~2.1.1.1~~ Establishing and requiring an Annual Control Range;
  - ~~2.1.1.2~~ Establishing and requiring an optimum Fluoride concentration Range; and
  - ~~2.1.1.3~~ Preventing damage and injury to property, persons, and water systems through promotion of safe application and storage of fluoride compounds.

### **2.2 3.1 Jurisdiction of the Department**

- ~~3.1.1~~ This Regulation is promulgated by the Board as authorized by Utah Code Ann. § Sections 26A-1-121(1), 19-4-111, and Chapter 9.04, Salt Lake County Code of Ordinances.

3.1.2 The Department is empowered to enforce this Regulation in all incorporated and unincorporated areas served by the Department as authorized by Utah Code Ann. Section §26A-1-114(1)(a), Utah Code Ann., 1953 as amended and Chapter 9.04, Salt Lake County Code of Ordinances.

### 3.2 General Powers and Duties

3.2 The Department shall be responsible for the implementation of this regulation by:

3.2.1 Requiring RPWS to meet the Annual Control Range;

3.2.2 Requiring RPWS to operate within the Optimum Fluoride Concentration Range;

3.2.3 Requiring RPWS to submit reports on fluoride addition with calculated dosage and ion test analysis;

3.2.4 Providing fluoride surveillance;

3.2.5 Taking distribution samples for fluoride analysis in addition to the RPWS required samples; and

3.2.6 Performing any and all acts permitted by law that are necessary for the successful enforcement of this regulation.

### 3.3 Scope

3.3 Except as otherwise provided for, it shall be unlawful for any RPWS owner or any person or entity referenced in Section 10.7.1 not to comply with this any regulation as promulgated by the Salt Lake County Board of Health.

3.4 Compliance with this Regulation does not constitute a defense if charged with any environmental crime or violation of any local, state, or federal law.

3.5 Legal Action taken by the Department under this Regulation does not preclude prosecution for any environmental crime that may have been committed or violation of any other local, state, or federal law.

3.6 Nothing in this Regulation affects or modifies in any way the obligations or liability of any person under any other regulation or provision thereof issued by the Department, any ordinance adopted by Salt Lake County or any municipality located within Salt Lake County, or any state or federally issued law, including common law. However, except as otherwise provided for, Departmental regulations supersede other existing local and county standards, regulations and ordinances pertaining to similar subject matter that are inconsistent.

3.7 Verbal or contractual obligations shall not diminish or remove the owner's or other responsible person's obligation to comply with this Regulation.

3.8 **Severance.** If any Section, Sub-section, sentence, clause, or phrase of this Regulation is for any reason held to be invalid or unconstitutional by a decision of any court of

competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Regulation.

#### **4. SUBSTANTIVE PROVISIONS**

##### **3.0 4.1 TRAINING Fluoride Training Required.**

- 4.1.1 A fluoridation training course, recognized by the Department, shall be completed by all RPWS operators performing operation and maintenance of a drinking water fluoridation system(s). Training shall;
- (i) Include, but is not limited to the following: operator safety, operations, fluoride chemicals, fluoride analysis, emergency response procedures, equipment operation, reporting, and other applicable requirements of this Regulation.
  - (ii) Be a minimum six-hour fluoridation-training course, approved by the Salt Lake County Health Department.
  - (iii) Be completed by at least one operator in charge of the fluoridation system(s) before operation begins.

~~4.1.2 Each RPWS shall keep a record of operator training and provide training records to the Department, upon request; and~~

~~4.1.3 Each operator shall renew training every two (2) years. A minimum six-hour fluoridation training course, recognized by the Salt Lake County Health Department, shall be completed by at least one operator in charge of the fluoridation system(s) before operation begins. There must be at least one trained operator that is in charge of the fluoridation system at all times. Training shall include, but is not limited to the following: operations, maintenance, fluoride chemicals, operator safety, and regulatory requirements.~~

4.1.2 A 3 three-hour biennial fluoridation review course recognized by the Salt Lake County Health Department shall be required to maintain compliance. Training shall include, but is not limited to the following subjects: operator safety, operations, fluoride chemicals, fluoride analysis, emergency response procedures, equipment operation, reporting, and other applicable requirements of this Regulation.

4.1.3 Each RPWS shall keep a record of operator training and provide training records to the Department, upon request.

##### **5 4.2 FLUORIDE CONCENTRATIONS Fluoride Concentrations.**

~~5.1~~ 4.2.1 The Average Annual Target Concentration of fluoride is shall be 0.7 mg/L.

4.2.2 The Annual Control Range for fluoride ion concentrations set at an annual minimum of 0.6 mg/L of fluoride ion to an annual maximum of 0.9 mg/L of fluoride ion as established by the Department.

4.2.3 The Optimum Fluoride Concentration Range shall be between 0.6 mg/L to 1.4 mg/L as established by the Department. While fluoridating, a RPWS shall maintain;

5.1.1 ~~While fluoridating, RPWS shall maintain;~~

5.3.2 (i) The Optimum Fluoride Concentration Range for fluoride ion at each fluoride feed location;

~~5.3.2.1~~ (ii) The Annual Control Range for fluoride ion at each distribution sampling site, except as provided by 4.1.2.1 below. a. a RPWS with mixed sources requiring fluoridation in excess of 1.2 mg/L to reach the Annual Control Range minimum may meet a minimum annual fluoride ion concentration of ~~0.8~~ 0.6 mg/L.

~~5.4~~ 4.2.3 ~~The Annual Control Range, and Optimum Fluoride Concentration Range, and Average Annual Target Concentration of fluoride shall be reviewed at least biannually by the Department. The Department shall consider adjustments to the Annual Control Range and Optimum Fluoride Concentration Range based on recommendations from the Centers for Disease Control and Prevention (CDC) and the Utah Department of Health (UDOH) Oral Health Program.~~

#### 6 ~~4.3~~ **PLANS, EQUIPMENT, AND SUPPLIES** ~~Plans, Equipment, and Supplies.~~

~~6.1~~ 4.3.1 Plan Review. The installation of and/or modification of fluoride equipment for fluorosilicic acid (hydrofluorosilicic acid), sodium fluoride, or sodium fluorosilicate (sodium silicofluoride) to drinking water shall be reviewed by the DDW. These project plans and specifications shall conform to the Utah Administrative Code, Rule -309 and shall have written approval by the ~~Executive Secretary~~ Division of Drinking Water Director. A Project Notification form shall be completed and submitted to the DDW.

~~6.2~~ 4.3.2 Permits. Construction of a drinking water project shall not begin until complete plans and specifications have been approved in writing by the ~~Executive Secretary~~ Division of Drinking Water Director. Upon completion of construction or changes to fluoridation equipment, all RPWS must obtain an Operating Permit. Operating Permits are granted by the ~~Executive Secretary~~ Division of Drinking Water Director.

~~5.3~~ 4.3.3 Standards. All chemicals and equipment shall conform to R309-525, R309-535, and to Utah Code Ann. §19-4-111. ~~of the most recent published~~  
copy of National Sanitation Foundation (NSF) Standard 60 and 61 and shall be marked to ensure trace contaminants are tested and meet the requirements of the most recent published copy of the American Water Works Association (AWWA) Standards B703-84 (hydrofluorosilicic acid), B701-84 (sodium fluoride), or B702-84 (sodium fluorosilicate).

~~5.4~~ 4.3.4 Equipment Evaluation. The Department shall conduct evaluations of fluoridation equipment of an RPWS at the time of the sanitary survey.

~~5-5~~ 4.3.5 Equipment and Methods. Chemical feed equipment and methods shall conform to the applicable rules of the State Drinking Water Board as found in the Utah Administrative Code, Rule 309-525 and R-309-535, ~~and with any other applicable local, state, or federal regulations.~~

~~7~~ **4.4 STORAGE AND CONTAINMENT** **Storage and containment.**

~~7-1~~ 4.4.1 Fluoridation system design, construction, maintenance, and operation shall be in compliance with the Utah Occupational Safety and Health Act (UOSHA), Utah Code Ann. ~~Section §34A-6-101 et seq., Utah Code Ann., 1953 as amended~~ (UOSHA), and applicable state and federal regulations. ~~For example, facilities may be required to have shower and eye wash facilities, guarding where applicable, and personal protective equipment.~~

~~7-2~~ 4.4.2 Fluoride chemicals shall be isolated from other chemicals to prevent contamination.

4.4.3 Fluoride chemicals shall be stored in covered or unopened containers inside a building. Provisions shall be made for the transfer of dry fluoride compounds from shipping containers to storage bins or hoppers, in such a way, as to minimize the quantity of fluoride dust which may enter the room in which the equipment is installed. The enclosure shall be provided with an exhaust fan and dust filter which place the hopper under a negative pressure. Buildings are not required for hydrofluorosilicic acid. Unsealed storage containers for hydrofluorosilicic acid shall be vented to the atmosphere where they are stored. Bags, fiber drums, steel drums, and other storage containers shall be stored on pallets. Provisions shall be made for disposing of empty bags, drums or barrels in a manner which will minimize exposure to fluoride dust.

~~7-3~~ 4.4.4 Secondary containment shall be provided for fluoride chemicals.

~~8~~ **4.5 ACCIDENTAL RELEASES** **Accidental Releases.** In the event of a spill, leak, or accidental release operators shall follow the “accidental release measure” instructions found on the Material Safety Data Sheet (MSDS) and any applicable Occupational Safety and Health Administration (OSHA) requirements. These instructions and any applicable UOSHA requirements shall be posted at all chemical injection sites. In the case of a release to the environment the RPWS shall contact the State Department of Environmental Quality (DEQ), Division of Environmental Response and Remediation (DEQDERR), the Division of Solid and Hazardous Waste (DSHW), the local responsible HAZMAT agency, and the DDW. The RPWS shall notify the Department within 24 hours of any spill or release greater than five gallons.

~~9~~ **4.6 MONITORING AND REPORTING** **Monitoring and reporting.**

4.6.1 For all RPWS:

~~9-1~~ (i) Fluoride concentrations exceeding 4.0 mg/L at any site shall be reported to customers by the RPWS according to EPA Public Notification (PR) rule and DDW requirements. The report shall include EPA recommended standard health effects language. The RPWS shall notify the Department within 24 hours.

- 9.2 (ii) Fluoride concentrations exceeding 2.0mg/L at any site shall be reported to customers by the RPWS according to EPA Public Notification (PR) rule and DDW requirements. The report shall include EPA recommended standard health effects language. The RPWS shall notify the Department within seven (7) calendar days. Any fluoridation sites that have a concentration more than 2.0 mg/L shall be sampled daily until the concentration is within the required range.
- 9.3 (iii) The RPWS shall submit a sampling plan to the Department for approval as specified in Appendix A. An RPWS that changes the sampling plan shall submit the new plan to the Department for approval.
- 9.4 (iv) The RPWS shall submit a fluoride report each calendar month to the Department, and to the DDW as required by Utah Administrative Code, ~~Rule~~ 309.
- 9.5 (v) Fluoride ion levels shall be determined at least weekly at each of the representative points in the distribution system as defined in the sampling plan. Systems meeting the Annual Control Range may reduce sampling to twice monthly at each distribution site the following year. The RPWS shall take a split sample every month for the purpose of equipment calibration verification. Additional samples may be required depending on the system monitoring test.
- 9.6 (vi) Fluoride concentration may be determined at the source, provided monitoring takes place at a point sufficiently distant to allow complete mixing. Fluoride ion concentration from a general source; e.g., reservoir or treatment plant, may be used for each connection of the general source to the RPWS provided that no source of water outside the Optimum Fluoride Concentration Range is added before the connection. Sources which are mixed within the system shall be monitored according to a sampling plan approved by the Department.
- 9.7 (vii) The RPWS shall determine daily fluoride concentrations by recording and calculating the dosage, including natural and additional fluoride. Weekly fluoride concentrations at sample sites within the distribution system shall be determined by sample analysis. Sample sites shall be representative of the entire system. Where continuous monitoring equipment is used, the RPWS shall report daily average and the monthly average or an equivalent. A yearly average of each sampling site shall be submitted by January 15 of the following year. Monthly reports shall be submitted prior to the fifteenth ~~working~~ day of the following month.
- 9.8 (viii) Each RPWS shall respond to Fluoride Overfeeds according to Table 1 below and Fluoride Underfeeds according to Table 2 below. Fluoride Overfeeds are considered on a timely basis. Fluoride Underfeeds are considered only after a six month period but shall occur only once annually before a violation occurs. Each RPWS shall notify the Department within 3 weeks of any underfeed or introduction of a non-fluoridated source.

**Table 1**  
Fluoride Overfeeds

Fluoride Concentration	Actions
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>1.4 mg/L to 2.0 mg/L (over 30 minute continual average or single sample analysis)	<ol style="list-style-type: none"> <li>1. Leave the fluoridation system on.</li> <li>2. Determine malfunction and make repair.</li> </ol>
2.0 mg/L to 4.0 mg/L (over 30 minute or single sample analysis)	<ol style="list-style-type: none"> <li>1. Leave the fluoridation system on.</li> <li>2. Determine malfunction and make repair.</li> <li>3. Report the incident to customers served as soon as practical but within 12 months.</li> <li>4. Notify the Department within seven calendar days.</li> </ol>
>4.0 mg/L to 10.0 mg/L	<ol style="list-style-type: none"> <li>1. Determine malfunction and immediately attempt repair. If the malfunction is not found and corrected immediately, turn off the fluoridation system.</li> <li>2. Report the incident to customers served as soon as practical but within 30 days.</li> <li>3. Notify the Department within 24 hours.</li> <li>4. Take water samples at several points in the distribution system, as set forth by the Department for fluoride analysis, until the results are below 1.4 mg/L.</li> <li>5. Determine malfunction and make repair.</li> <li>6. After the repair is complete, restart the fluoridation system.</li> <li>7. Notify the Department fluoridation has resumed.</li> </ol>
>10 mg/L	<ol style="list-style-type: none"> <li>1. Turn off the fluoridation system immediately.</li> <li>2. Report the incident immediately to the Department.</li> <li>3. Take water samples for fluoride analysis at several appropriate points in the distribution system until the results are below 1.4mg/L. Save part of each sample for a State certified laboratory to test.</li> <li>4. Determine malfunction and make repair.</li> <li>5. With the Department's permission, restart the fluoridation system.</li> <li>6. Comply with all EPA and DDW reporting requirements.</li> </ol>

**Table 2**  
Fluoride Underfeeds

For less than three consecutive weeks	1. Take no action
From three consecutive weeks to six months	1. Contact the Department to inform of the extended period by phone and in writing within three weeks of the first day of Fluoride Underfeed.

For longer than six months	<ol style="list-style-type: none"> <li>1. Respond to any remedial action in any Notice of Violation from the Department.</li> <li>2. Meet with the Department to determine how to inform health professionals about the situation prior to any public information being released so that the Department can be prepared to prescribe fluoride supplements and fill prescriptions.</li> <li>3. With the cooperation of the Department, fully inform the public of the situation through a news release.</li> <li>4. Fully inform the public through a news release of the Fluoride Underfeed at least 30 days before fluoridating again.</li> <li>5. Notify the Department that the underfeed has continued past six months.</li> </ol>
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~~10~~ **4.7 ANALYTICAL METHODS Analytical Methods.** Analytical procedures shall be consistent with those found in the ~~most recent Standard methods for Analysis of Water and Wastewater (APHA, AWWA, WEF), including those recorded in CDC water fluoridation manuals~~ 40 CFR 141.23, Inorganic Chemical Sampling and Analytical Requirements. Continuous monitors may be used, provided they are installed at a representative point in the water supply. Instructions provided by the manufacturer for analytical equipment shall be followed. Analytical methods which do not perform with equivalency to split samples shall not be used.

**5. INTENTIONALLY LEFT BLANK**

**6. INSPECTIONS & INVESTIGATIONS**

6.1. To ensure compliance, the Department has the authority to perform inspections, investigations, reviews, and other actions as necessary.

6.2. **Authority for Department to Enter Premises.**

6.2.1. **Regulated Commercial Premises.** Upon presenting proper identification, authorized representatives of the Department may enter upon the premises of properties regulated by the Department to perform routine inspections to ensure compliance with rules, standards, regulations, and ordinances adopted by the Department, the Departments of Health & Environmental Quality, county or municipal governing bodies, or the Division of Occupational and Professional Licensing.

6.2.2. **Unregulated Commercial Properties.** The Department may enter upon the premises of commercial properties not pervasively regulated by the Department upon the consent of the owner or other party having legal authority or upon a court order.

6.2.3. **Private Dwellings.** Inspections of private dwellings are made by consent of the owner or other party having legal authority or upon a court order.

6.2.4. **Consent by Permit.** The Department shall require permit holders to allow access for inspections as part of their permit. Failure to allow access for inspections as set out in the permit may result in the suspension or revocation of the permit.

## 11—ENFORCEMENT

### 11.1 Notice of Violation

~~If the Director has inspected any property or facility used for water fluoridation or fluoridation chemical storage, or has sample analyzed and has determined the result to be in violation of this Regulation or has reasonable grounds to believe that there has been a violation of any part of this Regulation, the Director shall give written notice of violation to the RPWS manager or operator thereof.~~

### 11.2 Requirements of Notice and Order

The notice of violation shall:

- 11.2.1 Describe the property or sample results;
- 11.2.2 Contain a factual statement describing the violation;
- 11.2.3 Set forth the necessary remedial action to comply with this regulation;
- 11.2.4 Set a time for the completion of the remedial action; and
- 11.2.5 Advise of the right to an administrative hearing as provided for in the Department's Adjudicative Hearing Procedures.

### 11.3 Previous Notices and Failure to Comply

~~The Director shall not be required to issue a notice of violation prior to seeking judicial relief if the violator has, within the prior 24 months, been given notice of violation, by having been issued written Notice Of Violation or otherwise, and failed to comply with that notice or an immediate action is necessary to protect health, safety, or well-being.~~

### 11.4 Emergency Orders

~~If the Department finds that an emergency exists because of an overfeed in excess of 4.0 mg/L requiring immediate action to protect the public health, safety, or well-being, the Director may issue an order declaring an emergency and requiring that remedial action be taken. The order shall be effective immediately.~~

### 11.5 Procedures for Cost Collection

~~Upon completion of any monitoring, sampling, or lab costs and issuing a Notice of Violation, the Director shall prepare an itemized statement of all costs, including administrative expenses incurred. The itemized statement shall be sent to the owner demanding payment to the Department within 20 days of the mailing date. If the owner fails to make payment within 20 days of the date of the mailing, the Director may take appropriate legal action to collect all costs incurred.~~

## 11.6 Right to Appeal

~~Any Notice of Violation and order issued pursuant to Section 10.1 and 10.4 shall become final and unappealable to any court without further action unless, within ten days after the Notice of Violation or Order is received, the aggrieved party files a written request and the request is received by the Department within the ten days requesting a departmental conference, departmental hearing, or departmental appeal. Appeals shall follow the Department's Adjudicative Hearing Procedure.~~

## 11.7 Penalty

11.7.1 ~~Any of the following persons or entities who violates this regulation or any notice or order issued pursuant to this regulation is subject to the penalties set out in Section 26A-1-123 Utah Code Ann., 1953 as amended.~~

11.7.1.1 ~~Any person unauthorized by the RPWS who disables fluoridation equipment or operation or adds or adjusts fluoride in violation of this regulation or any notice or order issued pursuant to this regulation.~~

11.7.1.2 ~~Any RPWS owner, including but not limited to any person, trust, firm, estate, company, corporation, partnership, association, municipality, or political subdivision of the state; and~~

11.7.1.3 ~~Any RPWS officer, director, agent, operator, manager, or employee.~~

11.7.2 ~~Each day a violation is committed or permitted to continue shall constitute a separate violation.~~

11.7.3 ~~In addition to other penalties imposed by a court of competent jurisdiction, any person found guilty of violating any of this regulation shall be liable for all expenses incurred by the Department including, but not limited to, the costs incurred for sampling and analysis, cleaning and disposal or any other costs incurred in mitigating and abating the violation.~~

**7. ENFORCEMENT MECHANISMS** If the Department has investigated or inspected any property or facility and believes the property owner or other responsible party is in violation of this Regulation or the Department has other reasonable grounds to believe that there has been a violation of any part of this Regulation or that the property owner or otherwise responsible party is not in compliance with this Regulation, the Department may take civil enforcement action as authorized by statute, rule, ordinance, and regulation and may also refer the matter for criminal prosecution. Civil enforcement may involve court or administrative actions, injunctive actions, and closures and may involve cost recovery, penalties, and other remedies. Civil and criminal actions may be brought simultaneously. A person does not need to be first adjudged liable in a civil matter before facing criminal charges.

**7.1. Criminal Enforcement Actions.** The Department may recommend criminal prosecution for environmental violations either alone or in conjunction with civil enforcement. Criminal prosecutions for environmental violations of state or federal law may be filed by the District

Attorney, Utah Attorney General, United States Department of Justice, or other enforcement entity. Factors that the Department may consider in recommending criminal enforcement include the following factors and any other relevant factors:

- 7.1.1. The nature and seriousness of the offense including the immediacy of the threat of danger to the life or safety of another or the harm or threatened harm to human health or environment;
  - 7.1.2. The degree to which the violation was designed to provide economic gain or cost avoidance, or involved a pattern of conduct or a common attitude of illegal conduct;
  - 7.1.3. The degree to which the offender is a known violator and has avoided prior actions by the Department;
  - 7.1.4. The degree to which prosecution might deter future violations;
  - 7.1.5. The person's actual culpability in connection with the offense including the presence in connection with the offense including the presence of criminal intent;
  - 7.1.6. The person's willingness to cooperate in the investigation including whether the violator has attempted to conceal evidence or prosecution of others;
  - 7.1.7. The appropriateness of referring the case to other agencies having prosecutorial interest; and
  - 7.1.8. Possibilities of civil remedies which would be more appropriate than initiating the criminal justice process.
- 7.2. **Civil Enforcement Actions.** The Department may request that the District Attorney bring an action to restrain or enjoin actions in violation of public health, environmental laws, and other laws or abate conditions in violation of such laws.
- 7.3. **Administrative Actions.**
- 7.3.1. The Department may, at its discretion, issue a Notice of Violation & Order of Compliance (NOV).
  - 7.3.2. **Service of NOV.** The Department may provide notice to the owner of the property or otherwise responsible person by sending the NOV via certified mail to the last known address of the owner of the property or other responsible person. If notice is returned undeliverable, the owner of the property or other responsible person may be personally served or be given notice by other methods reasonably calculated to give actual notice to the owner or other responsible party.
  - 7.3.3. **Contents of NOV.** The NOV shall:
    - (i) Describe the property and the persons believed to be in violation;
    - (ii) Describe the violation;

- (iii) Describe remedial action that will comply with the provisions of this Regulation;
- (iv) Set a reasonable time for the performance of any required remedial action(s);
- (v) Describe the procedure to contest the NOV and the time limits for such a contest; and
- (vi) Notify the owner or other responsible person that if no written contest is filed within the time required, the NOV will become final and unappealable to any administrative entity or court.

7.3.4. **Challenging an NOV.** As detailed in the Department’s Adjudicative Hearing Procedures, a party aggrieved by an NOV may request a departmental conference, departmental hearing, or departmental appeal in writing within ten (10) days of the date of the NOV.

7.3.5. **Departmental Conference, Settlement Agreements, and Stipulations & Orders.**

- (i) After issuance of the NOV, the alleged violator has the option to request and attend a Departmental Conference to discuss the NOV and settlement with the Department and its legal counsel. No hearing officer will be present. The process of requesting a Departmental Conference is more fully described in the Department’s Adjudicative Hearing Procedures.
- (ii) If the parties agree to a settlement, the Department will prepare, in conjunction with the District Attorney’s Office, a binding Settlement Agreement or Stipulation & Consent Order which may require the payment of penalties and the costs of investigation. Parties may also agree to a settlement at any time subsequent to the Departmental Conference. After signing a Settlement Agreement or Stipulation & Consent Decree, the parties waive all rights to further department and court hearings or appeals. Settlement Agreements or Stipulation & Consent orders may be enforced in state courts.

7.3.6. **Hearings & Appeals.** Parties Aggrieved by an NOV may also request a Departmental Hearing or a Departmental Appeal. A hearing officer is present at these proceedings and makes a written determination. The methods of challenging an NOV are more fully described in the Department’s Adjudicative Hearing Procedures. Departmental Hearing Orders and Departmental Appeal Orders may be appealed to the entities and within the time limits set out in the Department’s Adjudicative Hearing Procedures.

7.3.7. **Failing to respond to an NOV.** If a party fails to respond to an NOV within the required time, the NOV becomes a final order unappealable to any administrative entity or court. The Department may then enforce the order in state court.

7.4. **Additional Administrative Enforcement Authority.**

- 7.4.1. Any variances allowed by the Department to the requirements of this Regulation shall be only by written approval of the Salt Lake County Board of Health.
- 7.4.2. **Emergency Enforcement.** If the Director finds that an emergency exists that requires immediate action to protect the public health, he or she may without notice or hearing issue an order declaring the existence of an emergency and requiring that action be taken as he deems necessary to meet the emergency. The order shall be effective immediately. Any person to whom the order is directed shall comply and abate the nuisance immediately, but may petition the Director for a hearing in accordance with the Department's Adjudicative Hearing Procedures. After the hearing and depending upon the findings as to whether the person has complied with the provisions of this Regulation, the Director shall continue the order in effect or modify or revoke it. If circumstances warrant because of the seriousness of the hazard, the Department may act to correct or abate the emergency without issuance of an order or directive or without waiting for the expiration of compliance time previously given in an order.

## 12 SEVERABILITY

~~If any provision, clause, sentence, or paragraph of this regulation or the application thereof to any person or circumstances shall be held to be invalid, such invalidity shall not affect the other provisions or applications of this regulation.~~

## 13 VARIANCES

~~Written variances to this regulation may be granted by the Board on a case-by-case basis in connection with one or more wells with limited production, with difficulty in providing fluoridation to non-residential areas, or due to unusual circumstances encountered by a RPWS. However, the RPWS must comply with all provisions of this regulation to which it does not have a written variance. Requests for variances must be written and sent to the Director.~~

## 14 WATER FLUORIDATION EFFECTIVE DATES

~~14.1 All RPWS systems shall comply with this regulation by October 1, 2003.~~

~~14.2 This regulation shall be effective on the date of its adoption by the Board of Health.~~

## **8. CRIMINAL, CIVIL & ADMINISTRATIVE PENALTIES**

### **8.1. Criminal Penalties.**

- 8.1.1. Any person who is found guilty by a court of violating any of the provisions of this Regulation, either by failing to do the acts required herein or by doing a prohibited act, is guilty of a class B misdemeanor, pursuant to § 26A-1-123, Utah Code Ann.
- 8.1.2. Each day such violation is committed or permitted to continue shall constitute a separate violation.

8.1.3. Each similar subsequent violation occurring within two years of the initial violation may constitute a class A misdemeanor.

8.2. **Civil & Administrative Penalties.**

8.2.1. Penalties be included in a Settlement Agreement or Stipulation & Consent Order. Penalties may be assessed according to the following factors:

- (i) The violator's history of compliance or non-compliance;
- (ii) The violator's economic benefit of non-compliance;
- (iii) The documented costs associated with environmental or health damage;
- (iv) The violator's degree of willfulness or negligence; and
- (v) The violator's good faith efforts to comply and cooperate.

8.2.2. The Director may multiply the penalty by the number of days the violation occurred.

8.3. **Recovery of Investigation & Abatement Costs.**

8.3.1. The Department may recover its inspection, investigative and abatement expenses and costs from owners or other responsible person.

8.3.2. The Department may record a judgment lien on a violator's property to recover its expenses and costs.

9. **EFFECTIVE DATE**

9.1. This Regulation shall become effective upon its adoption by the Salt Lake County Board of Health.

**APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

SALT LAKE ~~VALLEY~~ COUNTY BOARD OF HEALTH

By: \_\_\_\_\_  
~~BARBARA THOMAS~~ Dr. George Delavan,

Chair

ATTEST:

\_\_\_\_\_  
~~PATTI T. PAVEY~~ Gary L. Edwards, M.S.  
Executive Director  
Salt Lake ~~Valley~~ County Health Department

## APPENDIX A

### GUIDANCE DOCUMENT

#### FLUORIDE SAMPLING PLAN REQUIREMENTS

Objective: To ensure sampling of RPWS is representative of all points within each system.

Requirements:

1. A map of the distribution system including:
  - a. All sources.
  - b. The use of sources.
  - c. Points of entry of sources.
  - d. Points of addition of fluoride.
  - e. Fluoride chemical additive.
  - f. General flow of the system.
  - g. Number and location of sampling sites.
2. A narrative of the way sample sites were determined.
3. The address of each site.
4. A description of the procedure of split samples, the laboratory used, and how comparisons with the fluoride testing equipment is used and recorded.
5. A list of personnel and their defined duties pertaining to fluoridation and testing.

#### COMPLIANCE FOR OPTIMUM FLUORIDE CONCENTRATION RANGE

The fluoride ion range shall be determined by average daily calculated dosage and daily or weekly sampling at fluoride feed stations. Overfeeds will be determined by a single sample, daily calculated dosage, or by a maximum 30 minute average for continuous monitoring results.

#### COMPLIANCE FOR ANNUAL CONTROL RANGE

A RPWS annual average for compliance purposes for the annual control range shall be calculated from the monthly averages of required weekly distribution system samples. Systems with online monitors shall calculate monthly averages from weekly averages based on the calculations of daily averages.

#### DEPARTMENT WEBSITE

The Department web site is <http://www.slvhealth.org> <http://www.slcohealth.org>, Regulation #33 and this accompanying Guidance Document is located at <http://www.slvhealth.org/eh/pdf/reg33.pdf> <http://www.slcohealth.org/eh/pdf/reg33.pdf>.

#### DEPARTMENT EMERGENCY PHONE NUMBER

The Department's emergency phone number to report accidental releases is ~~313-6702~~ (385) 468-3862 during regular business hours and (801) 580-6681 after hours and weekends.