
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1285 Session of
2020

INTRODUCED BY FONTANA, FARNESE, SANTARSIERO, TARTAGLIONE,
BREWSTER AND COSTA, SEPTEMBER 8, 2020

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY,
SEPTEMBER 8, 2020

AN ACT

1 Providing for legionnaires' disease prevention and reporting and
2 imposing duties on the Department of Environmental Protection
3 and the Department of Health.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Legionnaires'
8 Disease Prevention and Reporting Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Covered building." A building that meets any of the
14 following criteria:

15 (1) A health care facility where patient stays exceed 24
16 hours.

17 (2) A building that contains one or more areas for the
18 purpose of housing or treating occupants receiving treatment

1 for burns, chemotherapy, solid organ transplantation or bone
2 marrow transplantation.

3 (3) A building that contains one or more areas for the
4 purpose of housing or treating occupants that are
5 immunocompromised or at-risk, on medications that weaken the
6 immune system or have renal disease, diabetes or chronic lung
7 disease.

8 (4) A building that contains a whirlpool or spa either
9 in the building or on the site.

10 (5) A building that is more than 10 stories high,
11 including any level that is below grade.

12 (6) A building that includes multiple housing units with
13 one or more centralized potable water-heater systems.

14 (7) A building identified by the owner or designee as
15 being for the purpose of housing occupants over 65 years of
16 age.

17 (8) A building containing open-circuit and closed-
18 circuit cooling towers or evaporative condensers that provide
19 cooling or refrigeration, or both, for the heating, venting,
20 air-conditioning or refrigeration system or other systems or
21 devices in the building.

22 (9) A building that contains ornamental fountains,
23 misters, atomizers, air washes, humidifiers or other
24 nonpotable water systems or devices that release water
25 aerosols in the building or on the site.

26 "Department." The Department of Environmental Protection of
27 the Commonwealth.

28 "Health care facility." As defined in section 802.1 of the
29 act of July 19, 1979 (P.L.130, No.48), known as the Health Care
30 Facilities Act.

1 "Legionnaires' disease." A pulmonary disease caused by the
2 Legionella bacterium.

3 "Public water system." As defined in section 3 of the PSDWA.

4 "PSDWA." The act of May 1, 1984 (P.L.206, No.43), known as
5 the Pennsylvania Safe Drinking Water Act.

6 Section 3. Powers and duties of Environmental Quality Board.

7 In consultation with the Department of Health, the
8 Environmental Quality Board may adopt rules and regulations
9 under the PSDWA, as necessary, to require disinfectant
10 requirements that exceed the provisions of section 6(a) or
11 testing requirements of public water systems under the PSDWA to
12 minimize the growth and transmission of Legionella bacteria and
13 requirements for the monitoring of public water systems during
14 construction activities that may impact public water systems.

15 Section 4. Powers and duties of department.

16 (a) Public drinking water supply program.--The department
17 shall amend the public drinking water supply program established
18 under section 5 of the PSDWA to incorporate the requirements
19 under sections 3 and 6 of this act.

20 (b) Enforcement.--

21 (1) The department shall enforce the drinking water
22 standards established under this act.

23 (2) In implementing and enforcing the provisions of this
24 act, including monitoring and reporting regarding a covered
25 building, the powers and duties under section 5(b), (c), (d),
26 (e), (f), (g) and (h) of the PSDWA shall apply.

27 (c) Samples and testing.--Upon receipt of notification from
28 the Department of Health under section 5(a), the department
29 shall sample and test the public water system for the presence
30 of Legionella bacteria at all locations identified by the

1 Department of Health. The following shall apply:

2 (1) A Legionella culture analysis must be performed by a
3 laboratory that is approved to perform the analysis by the
4 department's Environmental Laboratory Accreditation Program.

5 (2) The laboratory under paragraph (1) must have
6 certification through the Environmental Legionella Isolation
7 Techniques Evaluation (ELITE) Program of the Centers for
8 Disease Control and Prevention or an internationally
9 recognized Legionella identification proficiency program.

10 (d) Further testing.--The department shall conduct, or
11 require the owner or operator of the applicable public water
12 system to conduct, further testing to confirm the presence of
13 Legionella bacteria in any source in which the bacteria is
14 detected through initial testing under this subsection, as the
15 department determines to be necessary.

16 (e) Qualified professionals.--When testing for the
17 Legionella bacteria is required under this act, the department
18 shall ensure that the sampling shall be conducted by qualified
19 water safety and management professionals certified in
20 accordance with ASSE Series 12000-2018, Professional
21 Qualifications Standard for Infection Control Risk Assessment
22 for All Building Systems.

23 (f) Publication of notice requirements.--Not later than 120
24 days after the effective date of this subsection, in
25 consultation with the Department of Health, the department shall
26 transmit notice to the Legislative Reference Bureau for
27 publication in the Pennsylvania Bulletin of the form and manner
28 of the notice required under section 6(b), including the
29 specific information to be included in that notice.

30 Section 5. Powers and duties of Department of Health.

1 For every reported diagnosis of Legionnaires' disease, the
2 Department of Health shall immediately provide notification to
3 the department of the diagnosis in a manner that is compliant
4 with the Health Insurance Portability and Accountability Act of
5 1996 (Public Law 104-191, 110 Stat. 1936). The notification
6 shall include addresses where the individual diagnosed with
7 Legionnaires' disease resided, frequently visited or was
8 employed in the 14 days immediately prior to the individual's
9 diagnosis.

10 Section 6. Duties of owner or operator of public water system.

11 (a) Residuals and testing.--Notwithstanding any other
12 provision of law, the owner or operator of a public water system
13 shall:

14 (1) Maintain a minimum free chlorine residual of 0.5
15 milligrams per liter or a minimum combined chlorine residual
16 of 1.0 milligrams per liter in all active parts of the
17 distribution system at all times. For purposes of this
18 paragraph, maintaining the residual shall be based on 95% of
19 samples monitored weekly at the total coliform rule sites.

20 (2) Conduct disinfectant residual testing at frequent
21 and regular intervals to determine the amount and type of
22 detectable disinfectant residual existing at different points
23 in the public water system.

24 (b) Notice.--

25 (1) The owner or operator of a public water system shall
26 provide a timely written notice, in a form and manner as
27 determined by the department under section 4(f), to all
28 residential, commercial and institutional customers and
29 residents served by the public water system and located in an
30 affected area of disruptions in the water distribution system

1 that could result in increased levels of Legionella bacteria
2 being present in the public water system.

3 (2) The notice under this subsection shall include, but
4 not be limited to, the following:

5 (i) Notification of planned or unplanned events that
6 reduce water delivery pressure below 20 pound-force per
7 square inch, or 140 kilopascal, caused by, but not
8 limited to, new construction tie-ins, replacement of
9 valves, hydrants or meters, pumping failures, pipeline
10 breaks or other system repairs or emergency conditions
11 that may affect Legionella bacteria in the water
12 distribution system and temporarily increase the level of
13 Legionella bacteria in the public water system.

14 (ii) The estimated length of time that the level of
15 Legionella bacteria may remain elevated, as determined by
16 the department.

17 (iii) General information on the possible sources of
18 Legionella bacteria in the public water system and the
19 health effects of Legionnaires' disease and related
20 illnesses to at-risk populations.

21 (iv) Measures that consumers can take to reduce or
22 eliminate exposure to Legionella bacteria, including, but
23 not limited to, flushing water lines during and after
24 completion of construction work, removing and cleaning
25 faucet aerator screens and showerheads and installing a
26 water filter or water treatment device certified to
27 remove Legionella bacteria.

28 (v) Recommendations for severely immunocompromised
29 individuals who wish to take extra measures to avoid
30 waterborne Legionella and other types of infection,

1 including, but not limited to, bringing water to a full
2 boil for one minute, use of a point-of-use personal use,
3 end-of-tap or under-sink filter or use of bottled water
4 as described in "Guidance for People with Severely
5 Weakened Immune Systems" by the Environmental Protection
6 Agency (1995).

7 (3) If a public water system serves a municipality in
8 which the primary language of 10% or more of the residents is
9 a language other than English, the owner or operator of the
10 public water system shall provide the notice required under
11 this subsection in both English and the other language to the
12 residents.

13 (4) The owner or operator of a public water system shall
14 not be required to provide the notice required under this
15 subsection until the department has published the public
16 notice required under this section.

17 Section 7. Duties of owner or operator of covered building.

18 (a) Management program and plan.--

19 (1) Not later than one year after the effective date of
20 this subsection, the owner or operator of a covered building
21 shall implement a water management program to minimize the
22 growth and transmission of Legionella bacteria in the water
23 system of the covered building, consistent with the American
24 Society of Heating, Refrigeration, and Air Conditioning
25 Engineers (ASHRAE) Standard 188-2018 or comparable standards
26 adopted by a nationally recognized, accepted and appropriate
27 organization.

28 (2) A copy of the sampling and management plan and
29 sampling results shall be retained for at least three years
30 and provided to the department and the Department of Health

1 upon request.

2 (3) The owner or operator of a covered building shall
3 make the water management program available upon request to
4 an employee of the department, the Department of Health or
5 any other department or agency with license or inspection
6 authority for the covered building.

7 (b) Procedures.--Consistent with Standard 188-2018 under
8 subsection (a)(1), the water management program team must
9 establish procedures to confirm initially and on an ongoing
10 basis that the Legionnaires' disease risk management plan is
11 implemented as designed and that, when implemented as designed,
12 the Legionnaires' disease risk management plan controls the
13 hazardous conditions throughout the building water systems.

14 (c) Sampling and analysis.--In addition to the sampling
15 required by the water management plan, an owner or operator of a
16 covered building shall conduct Legionella culture sampling and
17 analysis of the potable water system in a time frame to be
18 determined by the department upon any of the following:

19 (1) A determination by the department that one or more
20 cases of Legionnaires' disease are, or may be, associated
21 with the covered building.

22 (2) Any other conditions specified by the department or
23 the Department of Health.

24 (d) Reviews.--The owner or operator of a covered building
25 shall annually review its sampling and water management plan and
26 shall conduct an additional review under any of the following
27 conditions:

28 (1) If one or more cases of Legionnaires' disease are,
29 or may be, associated with the covered building.

30 (2) Upon completion of any construction, modification or

1 repair activities that may affect the potable water system of
2 the covered building.

3 (3) Upon expansion or relocation of the covered
4 building's hematopoietic stem cell transplant and solid organ
5 transplant units.

6 (4) Any other conditions specified by the department or
7 the Department of Health.

8 (e) Covered buildings with cooling tower systems.--For
9 covered buildings with cooling tower systems, the owner or
10 operator shall obtain or update a maintenance program and plan
11 for each cooling tower developed in accordance with Standard
12 188-2018 under subsection (a)(1). In addition, the maintenance
13 program and plan shall include the following elements:

14 (1) A schedule for routine bacteriological culture
15 sampling and analysis to assess microbiological activity at
16 intervals not to exceed 30 days while the cooling tower is in
17 use and that requires additional bacteriological culture
18 sampling and analysis, as needed, to validate process
19 adjustments.

20 (2) A schedule for routine Legionella culture sampling
21 and analysis within 14 days of seasonal start-up and,
22 thereafter, at intervals not to exceed 90 days while the
23 cooling tower is in use. Cooling towers in use year-round
24 must sample at intervals not to exceed 90 days and within two
25 weeks after start-up following maintenance.

26 (3) In addition to the routine Legionella culture
27 sampling and analysis required under this subsection,
28 conditions that require immediate Legionella culture sampling
29 and analysis, which shall include, but are not limited to,
30 the following:

1 (i) Power failure of sufficient duration to allow
2 for the growth of bacteria.

3 (ii) Loss of biocide treatment of sufficient
4 duration to allow for the growth of bacteria.

5 (iii) Failure of conductivity control, or any other
6 control methods, to maintain proper cycles of
7 concentration.

8 (iv) A determination by the department or local
9 health department that one or more cases of Legionnaires'
10 disease is, or may be, associated with the cooling tower,
11 based upon epidemiologic data or laboratory testing.

12 (v) Any other conditions specified by the department
13 or the d of Health.

14 (4) Provisions requiring immediate and appropriate
15 action, including remedial action, in response to
16 bacteriological and Legionella culture analyses.

17 (5) Provisions requiring that any Legionella culture
18 analyses must be performed in accordance with section 4(c).

19 (6) A shutdown and disinfection plan for removing or
20 permanently discontinuing use of a cooling tower.

21 (7) Provisions requiring treatment and manual or
22 automated flushing of any piping, basin, sump or wetted
23 surface during idle conditions.

24 (8) Provisions requiring cleaning and disinfection prior
25 to start-up of a stagnant cooling tower that has been shut
26 down without treatment and recirculation for more than five
27 consecutive days.

28 Section 8. Covered building water systems.

29 (a) Development of rules and regulations.--Not later than
30 180 days after the effective date of this subsection, in

1 consultation with the Department of Health and a public
2 stakeholder group that shall be comprised of no more than five
3 public members, including one representative of a public health
4 organization dedicated to eradicating Legionnaires' disease and
5 one representative of an organization representing owners or
6 operators of public water systems, the department shall adopt
7 rules and regulations applicable to the water systems of covered
8 buildings to implement the provisions of this act.

9 (b) Contents.--

10 (1) The rules and regulations adopted under this section
11 shall include requirements for the monitoring and testing for
12 Legionella bacteria in the water system of covered buildings.

13 (2) In potable water systems, the sampling and
14 management plan must include at a minimum:

15 (i) Legionella culture sampling sites as determined
16 by the environmental assessment.

17 (ii) Provisions requiring Legionella culture
18 sampling and analysis at intervals not to exceed 90 days
19 for the first year following adoption of the sampling and
20 management plan. The following shall apply:

21 (A) Thereafter, the plan shall include
22 provisions for annual Legionella culture sampling and
23 analysis.

24 (B) The plan shall further require that those
25 portions of any potable water system that serve
26 hematopoietic stem cell transplant or solid organ
27 transplant patients shall continue to be sampled and
28 analyzed at intervals not to exceed 90 days.

29 (iii) Provisions requiring actions in response to
30 Legionella culture analysis results, including all

1 responsive actions required and specific time frames for
2 such actions.

3 (c) Sample sites.--

4 (1) Sample sites shall include, but not be limited to,
5 the following locations:

6 (i) One sample of the inlet cold water supply at the
7 first available tap.

8 (ii) One sample from the return piping of the
9 circulated potable water heating system.

10 (iii) One sample from the outlet of a heating
11 system.

12 (iv) At least three samples collected from each
13 floor as follows:

14 (A) One sample from the tap closest to first
15 delivery of hot water from the riser.

16 (B) One sample from the middle of the water
17 system.

18 (C) One sample from the last outlet before the
19 water returns to the piping that conveys water back
20 to the heater.

21 (D) During an investigation of Legionnaires'
22 disease, samples from the portion of the water supply
23 that serves locations in the covered building that
24 housed affected patients or residents.

25 (2) If risers supply multiple circulation loops with
26 each loop providing water to a group of rooms, sample sites
27 shall be designated to represent each loop.

28 (3) One additional random sample shall be collected from
29 each floor when wings have extensive lengths of piping and
30 complex paths.

1 (4) During the initial building assessment, a surface
2 sample shall be performed at locations representing the
3 middle or end of the hot water line on each floor.

4 Section 9. Public nuisance.

5 (a) Violation.--A violation of a provision of this act, rule
6 or regulation of the department, order of the department or term
7 or condition of a permit shall constitute a public nuisance.

8 (b) Liability.--A person or municipality committing a
9 violation as described in subsection (a) shall be liable for the
10 costs of abatement of any pollution and any public nuisance
11 caused by the violation.

12 (c) Jurisdiction.--The Environmental Hearing Board and a
13 court of competent jurisdiction shall have jurisdiction over
14 actions to recover the costs of abatement of a public nuisance
15 under this act.

16 (d) Abatement.--An activity or condition that is declared by
17 this act to be a public nuisance, or that is otherwise in
18 violation of this act, shall be abatable in the manner provided
19 by law or equity for the abatement of public nuisances.

20 (e) Equitable remedies.--The department may proceed in
21 equity to abate the nuisance or restrain or prevent a violation
22 of this act.

23 Section 10. Penalties and remedies.

24 (a) Duty, penalty and remedy.--It shall be the duty of a
25 person to proceed diligently to comply with an order issued
26 under this act. If the person fails to proceed diligently or
27 fails to comply with the order within the time, if any, as may
28 be specified, the person shall be guilty of contempt and shall
29 be punished by the court in an appropriate manner. For this
30 purpose, application may be made by the department to

1 Commonwealth Court, which shall have jurisdiction over the
2 matter.

3 (b) Actions.--A person having an interest that is or may be
4 adversely affected may commence a civil action on the person's
5 own behalf to compel compliance with this act or a rule,
6 regulation, order or permit issued under this act against any of
7 the following:

8 (1) The department, if there is alleged a failure of the
9 department to perform an act that is not discretionary with
10 the department. Commonwealth Court shall have jurisdiction
11 over this action.

12 (2) Another person alleged to be in violation of a
13 provision of this act or a rule, regulation, order or permit
14 issued under this act. The following shall apply:

15 (i) Notwithstanding any other provision of law, a
16 court of common pleas shall have jurisdiction over this
17 action.

18 (ii) Venue for this action shall be as specified
19 under the Rules of Civil Procedure concerning actions in
20 assumpsit.

21 (c) Specific penalties.--

22 (1) A person who violates a provision of this act, rule
23 or regulation of the department, order of the department or
24 term or condition of a permit issued under this act is guilty
25 of a summary offense and, upon conviction, shall be subject
26 to a fine of not less than \$50 nor more than \$5,000, and
27 costs, for each separate offense. In default of the payment
28 of the fine or costs, the person shall be subject to
29 imprisonment for not less than 30 days nor more than 90 days.

30 (2) A person who willfully or negligently violates a

1 provision of this act, rule or regulation of the department,
2 order of the department or term or condition of a permit
3 issued under this act is guilty of a misdemeanor of the third
4 degree and, upon conviction, shall be subject to a fine of
5 not less than \$1,250 nor more than \$12,500 for each separate
6 offense or to imprisonment for a period of not more than one
7 year, or both.

8 (3) A person who, after a conviction of a misdemeanor
9 for a violation within two years as provided in paragraph
10 (2), willfully or negligently violates a provision of this
11 act, rule or regulation of the department, order of the
12 department or term or condition of a permit issued under this
13 act is guilty of a misdemeanor of the second degree and, upon
14 conviction, shall be subject to a fine of not less than
15 \$1,250 nor more than \$25,000 for each offense or to
16 imprisonment for a period of not more than two years, or
17 both.

18 (d) Pre-enforcement conference.--Notwithstanding any other
19 provision of this act, before the department shall institute a
20 criminal proceedings against a person under subsection (c), the
21 department shall, in writing, provide the person with an
22 opportunity for a pre-enforcement conference.

23 (e) Civil penalties.--In addition to proceeding under any
24 other remedy available at law or in equity for a violation of a
25 provision of this act, rule or regulation of the department,
26 order of the department or term or condition of a permit issued
27 under this act, the department may assess a civil penalty upon a
28 person for the violation. The following shall apply:

29 (1) The penalty may be assessed whether or not the
30 violation was willful or negligent.

1 (2) When the department assesses a civil penalty, the
2 department shall inform the person of the amount of the
3 penalty.

4 (3) The person charged with the penalty shall then have
5 30 days to pay the penalty in full or, if the person wishes
6 to contest the amount of the penalty or the fact of the
7 violation, the person shall within the 30-day period, file an
8 appeal of the action with the Environmental Hearing Board.

9 (4) Failure to appeal within 30 days shall result in a
10 waiver of all legal rights to contest the violation or the
11 amount of the penalty.

12 (5) The maximum civil penalty which may be assessed
13 under this section shall be \$5,000 per day for each
14 violation.

15 (6) Each violation for each separate day and each
16 violation of a provision of this act, rule or regulation of
17 the department, order of the department or term or condition
18 of a permit issued under this act shall constitute a separate
19 and distinct offense under this section.

20 (f) Nonexclusive penalties and remedies.--The penalties and
21 remedies prescribed by this act shall be deemed concurrent and
22 the existence of or exercise of a remedy shall not prevent the
23 department from exercising any other remedy at law or in equity.

24 (g) Violations on separate days.--Violations on separate
25 days shall constitute separate offenses for purposes of this
26 act.

27 Section 11. Reports.

28 Not later than one year after the effective date of this
29 section and annually thereafter, in conjunction with the
30 Department of Health, the department shall submit a report to

1 the Governor and the General Assembly that shall include the
2 following:

3 (1) The number of cases of Legionnaires' disease in this
4 Commonwealth reported in each of the previous 10 years.

5 (2) The number of reported Legionella-positive test
6 results received by the department or the Department of
7 Health.

8 (3) The number and type of violations of this act for
9 which penalties were assessed.

10 (4) Recommendations for legislative action as may be
11 necessary to further control Legionella bacteria in the
12 public water supply and affected covered buildings.

13 Section 12. Effective date.

14 This act shall take effect immediately.