

Enforcement Manual

Version 2.0

October 2, 2023

ODW-2023-03-Enforcement Manual-10/02/2023



Enforcement Manual

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Foreword

The Virginia Public Water Supplies Law authorizes the State Board of Health (“Board”) to supervise and control all water supplies and waterworks in the Commonwealth of Virginia (“Commonwealth”) insofar as the bacteriological, chemical, radiological, and physical quality of waters furnished for human consumption may affect public health and welfare and may require that all water supplies be pure water.¹ In doing so, the Board may promulgate regulations governing waterworks that are designed to protect public health and promote public welfare.² The Board may issue administrative orders that include civil penalties or charges against an owner who violates the law or any Board order or regulation.³ A violation of a regulation or Board-issued administrative order may result in civil penalties, permit revocation, injunctive relief, and criminal punishment.⁴

The Enforcement Manual provides Office of Drinking Water (“ODW”) staff with a methodology for using enforcement tools when waterworks fail to return to compliance and ensures that ODW’s approach to protecting public health is logical, consistent, and timely.

This manual updates the Enforcement Manual, Version 1.0, dated October 5, 2020. This manual should serve as a training tool for staff in understanding their role in enforcement actions and how enforcement is an integral part of the drinking water program.

¹ See Va. Code § 32.1-169.A (“The Board shall have general supervision and control over all water supplies and waterworks in the Commonwealth insofar as...waters furnished for human consumption may affect the public health and welfare...”).

² See Va. Code § 32.1-170.A (“The regulations of the Board governing waterworks, water supplies, and pure water shall be designed to protect the public health and promote the public welfare...”).

³ Va. Code § 32.1-26 (“[T]he Board is authorized to issue orders to require any person to comply with the provisions of any law administered by it...or any regulations promulgated by the Board...”); Va. Code § 32.1-175.01 (“[T]he Board may issue a special order that may include a civil penalty against an owner who violates this article or any order or regulation adopted thereto by the Board.”).

⁴ See Va. Code § 32.1-27.A (“Any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or Commissioner or any provision of this title shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.”); Va. Code § 32.1-27.B (“Any person violating or failing, neglecting, or refusing to obey any lawful regulation or order of the Board or Commissioner or any provision of this title may be compelled in a proceeding instituted in an appropriate court...to comply therewith by injunction, mandamus, or other appropriate remedy...”); Va. Code § 32.1-27.C (“[A]ny person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy...shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for each violation...”); Va. Code § 32.1-27.D (“With the consent of any person..., the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums...”); Va. Code § 32.1-173.B (“The Commissioner may, on his own motion, amend any permit whenever he determines that...[t]he existing permit is no longer valid...”); Va. Code § 32.1-174 (“The Commissioner may revoke any permit...whenever he determines that...[t]he owner has failed to abide by an order issued by the Commissioner...”); Va. Code § 32.1-176 (“[A]ny owner who violates any provisions of [Chapter 6, Article 2 of Title 32.1] or any order or regulation...shall, upon a finding by a court of competent jurisdiction, be assessed a civil penalty of not more than \$5,000 for each day of violation.”); 12VAC5-590-310 (Amendment or reissuance of operation permits); and 12VAC5-590-320 (identifying grounds on which the Commissioner may revoke a permit and the procedure to be followed in pursuing such an action).

Disclaimer

This manual provides procedural guidance to ODW staff only and does not establish or affect the legal rights or obligations of the parties involved. These procedures are neither binding nor determinative of the issues addressed.

Revisions Summary

Date	Description of Changes
10-05-2020	Original
10-02-2023	Updated and revised to reflect best practices and incorporate recommendations from the Office of the State Inspector General's June 2021 performance audit report of ODW's drinking water regulation program.

List of Abbreviations

12VAC5-590	Waterworks Regulations, which are codified in Title 12 of the Virginia Administrative Code
APA	Virginia Administrative Process Act, Va. Code §§ 2.2-4000 through 2.2-4032
Board	State Board of Health
BWA	Boil Water Advisory
CEP	ODW Division of Compliance, Enforcement and Policy
CFR	Code of Federal Regulations
Commissioner	State Health Commissioner
DTS	ODW Division of Technical Services
EPA	United States Environmental Protection Agency
ERP	EPA Drinking Water Enforcement Response Policy, December 8, 2009
ETT	Enforcement Targeting Tool
ETTA	Enforcement Targeting Tool Assistant
FCAP	ODW Financial and Construction Assistance Program
IFFP	Informal fact finding proceeding
LOA	Letter of Agreement
MCL	Maximum contaminant level
MRDL	Maximum residual disinfectant level
NOAV	Notice of Alleged Violation
NPDWR	National Primary Drinking Water Regulations, 40 CFR §§ 141, 142 & 143
OAG	Office of the Attorney General
OCOM	Office of the Commissioner at the Virginia Department of Health
ODW	VDH Office of Drinking Water
PWSL	Public Water Supplies Law, Va. Code § 32.1-167 <i>et seq.</i>

Regulations	Waterworks Regulations, 12VAC5-590
RTC	Return to compliance
RTCR	Revised Total Coliform Rule
SDWA	Safe Drinking Water Act, 42 U.S. C. § 300f <i>et seq.</i>
SDWIS	Safe Drinking Water Information System; ODW and EPA each maintain separate SDWIS databases (SDWIS/State, SDWIS/Fed)
SOX	An enforcement action code entered into SDWIS/State that designates a violation has been resolved
SWTR	Surface Water Treatment Rule
TCDO	ODW Division of Training, Capacity Development, and Outreach
TT	Treatment technique
U.S.C.	United States Code
VAC	Virginia Administrative Code
Va. Code	Code of Virginia
VDH	Virginia Department of Health

Glossary of Terms

Acute violation	A violation with the potential to have serious adverse effects on human health as a result of short-term exposure. Examples include violations of the MCL for nitrate/nitrite; the presence of fecal coliforms or <i>E. coli</i> in the water distribution system; the occurrence of a waterborne disease outbreak; and violations of the MRDL for chlorine dioxide. 40 CFR § 141.202.
Case Decision	Any agency proceeding or determination that, under laws or regulations at the time, a named party as a matter of past or present fact, or of threatened or contemplated private action, either is, is not, or may or may not be in violation of such law or regulation or in compliance with any existing requirement for obtaining or retaining a license or other right or benefit. Va. Code § 2.2-4001.
Certified Mail	A service provided by the United States Postal Service that provides the sender with a mailing receipt and electronic verification that an article was delivered or that a delivery was attempted.
Compliance Activity	Verbal or written communication, effort, technical assistance, and other help to ensure that a waterworks is complying, or needs to take action to comply, with applicable policies, regulations, and law that protect public health and drinking water quantity or quality.
Consent Order	A voluntary agreement between the Board and the owner to resolve violations of the PWSL and Regulations, setting forth corrective action to be completed and a schedule of compliance. Authority for the Board to enter into a consent order, and for the Commissioner to act on the Board's behalf in doing so when the Board is not in session, is found in Va. Code §§ 32.1-20, 32.1-26, and 32.1-27.D.
Electronic Signature Service	A VDH-approved electronic signature service that provides online display, certified delivery, acknowledgement, electronic signature, and storage services for electronic documents.
Enforcement Priority	Means a Serious Violator for purposes of enforcement.

Enforcement Response Policy	EPA’s approach for targeting enforcement under the SDWA by focusing on waterworks with health-based violations and a history of noncompliance. The policy also ensures consistency, provides a model to escalate responses to violations, defines timely and appropriate actions, and defines what constitutes a formal action. <i>EPA Drinking Water Enforcement Response Policy.</i>
Enforcement Targeting Tool	A tool that implements the ERP by assigning each violation a number of points based on the assigned threat to public health, which are then added together to provide a total score for each waterworks. The tool helps identify waterworks with the most noncompliance across all federal rules within a five-year period. <i>EPA Drinking Water Enforcement Response Policy.</i>
Enforcement Targeting Tool Assistant	A tool that analyzes violations entered in the SDWIS/State database, calculates a real time assessment of waterworks that are out of compliance, and compares this data side-by-side with the latest State data reported to the SDWIS/Fed database.
Formal Enforcement	An action that cites specific violations, requires corrective action to return to compliance, and includes an enforceable consequence if the schedule of compliance is not met. Examples include administrative orders with and without consent (i.e., a consent order or special order), penalties, and civil or criminal action. <i>EPA Drinking Water Enforcement Response Policy.</i>
Informal Enforcement	Compliance and other activities leading up to, and including, an LOA, warning letter, or NOAV, as well as activities to enforce requested actions outlined in an NOAV. It includes all actions and conversations that are not formal enforcement actions that notify the owner or the owner’s agent of the alleged violations or seek compliance before formal enforcement.
Informal Fact Finding Proceeding	A proceeding in which ODW ascertains the fact basis for making a case decision. Va. Code § 2.2-4019.
Letter of Agreement	An informal enforcement action that may be used by ODW staff when an owner is demonstrating a good faith effort to

comply with the Regulations. An LOA sets forth a corrective action plan and schedule that may be completed in less than one year. LOAs are unenforceable.

No Action/Unaddressed

The status of a violation on the ETT when either no action has been taken to return the waterworks to compliance or the initial informal action or compliance assistance has not been successful in returning the waterworks to compliance. In such a situation, further action is required. *EPA Drinking Water Enforcement Response Policy.*

Notice of Alleged Violation

A written statement from ODW to an owner notifying the owner that ODW has reason to believe that a violation has occurred or is occurring. A Notice of Alleged Violation includes the facts that form the basis for the alleged violation and a legal citation to the statute or regulations allegedly violated. A Notice of Alleged Violation may include a request for corrective action. A Notice of Alleged Violation is not a determination that a violation has occurred or is occurring.

On Path to Compliance

The status of a violation that has been placed under a formal enforcement action to return the waterworks to compliance (meaning an enforceable consequence results if the schedule is not met). *EPA Drinking Water Enforcement Response Policy.*

Owner

An individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity, or the federal government, that supplies or proposes to supply water to any person within this Commonwealth from or by means of any waterworks. 12VAC5-590-10.

Potential Serious Violator

A waterworks with an ETT score of 5 to 10 points.

Return to Compliance

Following a violation, the waterworks has completed monitoring, reporting, implementation of treatment, or other activities necessary to comply with the Regulations. All forms of compliance assistance and informal or formal enforcement actions are appropriate means to achieve a return to compliance. *EPA Drinking Water Enforcement Response Policy.*

Serious Violator	The status of a waterworks with an ETT score greater than 10 points. This status may also be referred to as an Enforcement Priority. <i>EPA Drinking Water Enforcement Response Policy.</i>
Significant Deficiency	Any defect in a waterworks' design, operation, maintenance, or administration, as well as the failure or malfunction of any waterworks component that may cause or has the potential to cause, an unacceptable risk to health or could affect the reliable delivery of potable water to consumers.
Special Order	An administrative order issued by the Commissioner, acting on behalf of the Board, without an owner's consent after an IFFP, compelling the owner to bring the waterworks into compliance with the PWSL, the Regulations, or an order of the Board. Va. Code § 32.1-175.01.
Unresolved	A status of a waterworks with continuing, ongoing violations, where there has been compliance assistance, and informal and/or formal enforcement response without a return to compliance. This category is for those waterworks with chronic failure to return to compliance. <i>EPA Drinking Water Enforcement Response Policy.</i>
Unresolved/On Path to Compliance	A status of a waterworks that has a state or federal enforceable order in place to resolve certain violations. In these cases, formal enforcement is expected to successfully implement a schedule for sampling, treatment or construction, and no further enforcement is required. ODW or EPA will continue to monitor compliance with schedules and other requirements of the order. <i>EPA Drinking Water Enforcement Response Policy.</i>
Warning Letter	A written statement notifying the waterworks owner that it appears the waterworks is in violation of the applicable law and regulations, and ODW may initiate enforcement actions if the alleged violations are not resolved within a specified time period. ODW also uses warning letters to notify an owner that the waterworks is a Potential Serious Violator or Serious Violator under the ETT or ETTA. The

letter may schedule a compliance or enforcement meeting or request corrective action.

Waterworks

A system that serves piped water for human consumption to at least 15 service connections or 25 or more people for at least 60 days out of the year. Va. Code § 32.1-167.

Chapter 1 – General Information

1.1. Enforcement Authority

In 1974, Congress passed, and President Ford signed into law, the Safe Drinking Water Act⁵ to protect public health by regulating the nation’s public drinking water supply. The SDWA authorized EPA to promulgate regulations setting national standards for drinking water quality to protect the public against adverse health effects from exposure to naturally occurring and man-made contaminants. Congress amended and reauthorized the SDWA in 1986, 1996, 2005, 2015, 2016, and 2018.

Pursuant to the SDWA, EPA promulgated the National Primary Drinking Water Regulations to carry out the mandates set forth in the SDWA. The NPDWR provide drinking water standards and treatment techniques that limit contaminants in drinking water. In addition to setting drinking water standards and treatment techniques, the SDWA also allows EPA to award states with primary enforcement responsibility (*i.e.* “primacy”).⁶

To be awarded primacy, a state must promulgate regulations no less stringent than the federal requirements. As such, VDH developed drinking water regulations for public water systems (also known as “waterworks” in Virginia) that are at least as stringent as the federal requirements. In Virginia, the Public Water Supplies Law⁷ provides the Board with authority to promulgate the Waterworks Regulations⁸, which are at least as stringent as the NPDWR. On account of these steps by Virginia, EPA has granted Virginia primacy with respect to enforcement of federal drinking water requirements.

To maintain primacy, the SDWA also requires that states have mechanisms for enforcing state and federal drinking water standards.⁹ As such, the PWSL and Regulations provide VDH with authority to compel compliance through enforcement. EPA has provided guidance on the enforcement process through its Enforcement Response Policy (ERP). (See Attachment 1.) The ERP prioritizes noncompliant waterworks by considering all violations in a comprehensive way. The ERP identifies the most serious violators for enforcement response, provides a model for escalating responses, and defines timely and appropriate actions as well as what constitutes a formal action. This Manual is consistent with the ERP, in addition to state and federal laws and regulations.

⁵ Codified at 42 U.S.C. § 300f *et seq.*

⁶ See 42 U.S.C. § 300g-2.

⁷ Va. Code §§ 32.1-167 through 32.1-176.

⁸ 12VAC5-590.

⁹ See 42 U.S.C. § 300g-2(a)(2) and 40 CFR § 142.10(b).

1.2. Enforcement Policy

ODW's mission is to protect public health by helping to ensure that all waterworks in Virginia provide a safe and adequate supply of drinking water. ODW accomplishes this mission by advocating for safe drinking water; monitoring drinking water quality; providing technical assistance, training, and financing to waterworks owners and operators; and enforcing the laws and regulations for Virginia's drinking water program when waterworks are noncompliant.

ODW strives for waterworks to maintain full compliance with drinking water regulations. Consequently, ODW works with owners and operators as the first step to help them avoid or resolve potential violations. When assistance does not result in the timely resolution of violations, ODW uses enforcement tools to ensure the protection of public health and that waterworks return to, and maintain, compliance. The enforcement tools available to ODW are the focus of this Manual.

ODW responds to potential violations by waterworks in a consistent, timely, and appropriate manner. Although each case is fact-specific, consistency means treating "like situations" similarly. ODW takes all noncompliance seriously, while prioritizing health-based violations in accordance with federal and state drinking water policies.

In cases where insufficient technical, managerial, or financial resources present a barrier to compliance, ODW provides resources to owners in accordance with the EPA-approved Capacity Development Strategy to facilitate compliance.¹⁰ If ODW is unable to achieve compliance through assistance, whether due to the timeline for corrective action or the owner or operator's lack of resources or unwillingness to cooperate, ODW may recommend enforcement. ODW encourages an owner to return to compliance at any time during the enforcement process; however, more serious enforcement measures may be necessary to carry out ODW's mission to protect public health.

ODW is empowered with enforcement tools that enable it to compel compliance with the PWSL and Regulations to protect public health. Enforcement tools include: (1) administrative consent orders, which may include a civil penalty and corrective action plan for returning the waterworks to compliance; (2) administrative proceedings, which may result in the issuance of an administrative order without consent that can include a civil penalty, a corrective action plan for returning the waterworks to compliance, and could also result in permit revocation; (3) civil court actions, which can result in the issuance of an injunction and the assessment of a civil penalty; and (4) criminal court actions due to a violation of the PWSL, the Regulations, or an order of the Board or Commissioner, which is a Class 1 misdemeanor.

¹⁰ See generally <https://www.vdh.virginia.gov/drinking-water/capacity-development/>.

ODW may pursue enforcement actions that escalate in seriousness until the owner achieves full compliance. In becoming the healthiest state in the nation and striving for full compliance, civil or criminal action may be necessary.

ODW's organizational structure includes a Division of Compliance, Enforcement and Policy whose primary mission is to administer the enforcement program and ensure waterworks in Virginia comply with the PWSL and Regulations. This supports ODW's mission "to protect public health and help ensure that all waterworks provide a safe and adequate supply of drinking water."

To carry out its mission, ODW has established the following goals:

- Take enforcement actions that are timely, appropriate, consistent, certain, reasonable, fair and effective;
- Bring waterworks into compliance and stop continuous or repeat violations;
- Recover civil charges where appropriate, including amounts sufficient to remove any economic benefit of noncompliance;
- Deter future violations;
- Conduct enforcement actions courteously and professionally;
- Assist the regulated community in achieving and maintaining compliance with requirements that promote the protection of public health; and
- Earn public confidence in the enforcement program.

1.3. Enforcement Procedures

To carry out regulatory oversight of waterworks across the Commonwealth, ODW is made up of six field offices in Abingdon, Culpeper, Danville, Lexington, Norfolk, and Richmond, Virginia, as well as a central office located in Richmond. The central office includes the ODW office director, deputy office director, division directors, and staff for four ODW divisions.

ODW divisions include Financial and Construction Assistance Programs (FCAP); Training, Capacity Development, and Outreach (TCDO); Technical Services (DTS); and Compliance, Enforcement and Policy (CEP). ODW's emergency services coordinator is also based in Richmond. Each division has a division director and one or more staff.

CEP consists of a division director, an enforcement coordinator, and a policy and program coordinator. The CEP division director and the enforcement coordinator chiefly deal with issues of enforcement, with the policy and program coordinator providing additional assistance with enforcement as needed.

Each of the field offices have a field director, deputy field director, district engineers, compliance specialist, technical specialists, inspectors, and other support staff.

Staff in the field offices, with support from the divisions, interact directly with waterworks owners, operators, and the public. Among the tasks performed by field office staff include providing monitoring and reporting surveillance, inspecting waterworks, and providing technical, engineering, operational, and managerial assistance to help waterworks achieve and maintain compliance. Field office staff also work with local community officials, particularly the local health district director and environmental health manager, to address public health issues related to drinking water and waterworks. With respect to enforcement, staff in the field offices play key roles in implementing the program, consistent with the program's mission and goals. The compliance specialists, with the support of other staff in the field offices, perform a significant portion of the coordination and communication with owners during enforcement actions. CEP provides guidance and oversees statewide implementation of the enforcement program to ensure consistency, fairness, and effective strategies. Open communication and mutual support among ODW staff are essential for ensuring an efficient, responsive, and successful approach to enforcement.

The enforcement workflow starts in the field office with the district engineer, inspector, and/or compliance specialist who identifies potential violations during a sanitary survey, or through a complaint, laboratory data, or other compliance monitoring and reporting. Once field office staff identify a potential violation, the district engineer or inspector work with the compliance specialist, with input and oversight by the field director and/or deputy field director as needed, to provide the waterworks with an NOAV and monitor corrective actions in an effort to return the waterworks to compliance. Field office staff consult other divisions, including DTS, FCAP, and TCDO, to provide compliance assistance and additional technical, managerial, or financial resources, as needed.

If field offices cannot resolve an alleged violation in a timely and appropriate manner by providing notice of the alleged violation and compliance assistance, then the compliance specialist, with input and direction from the field director and/or deputy field director, will consult with CEP for next steps and possible referral to initiate formal enforcement action. (See Attachment 2 for a general pathway for compliance and enforcement efforts.)

The compliance specialists, working with other field office staff, are responsible for identifying key stakeholders, providing necessary input to CEP regarding factual and technical matters as they relate to enforcement communications, and coordinating with CEP once a case is referred for enforcement. Compliance specialists are also responsible for making sure the waterworks' official file to be relied upon in generating enforcement documents (i.e., the file of record) includes a complete list of all outstanding NOAVs, regulatory citations, and recommended corrective actions that are associated with an enforcement action. CEP, the field director and/or deputy field director, compliance specialists, and other field office staff routinely review enforcement options and decide on an appropriate path forward for noncompliant waterworks as each enforcement action proceeds.

After the compliance specialist, in concert with the field director and/or deputy field director and other field office staff, and CEP decide on an appropriate course of action for enforcement, the compliance specialist and/or the enforcement coordinator¹¹, with additional assistance as needed from the field office, will draft the appropriate correspondence and documents. In doing so, they should consider whether seeking input from TCDO and emergency preparedness staff is necessary. The enforcement coordinator will review the waterworks' compliance history and enforcement documents to ensure consistency and accuracy as needed and will assist in monitoring and tracking enforcement actions to ensure noncompliance is resolved as quickly as possible.

The CEP division director is responsible for ensuring documentation and procedures are consistent with the PWSL, Regulations, and APA, and will review enforcement documents and provide guidance on strategy, enforceability, and other legal considerations as needed. The CEP division director may seek guidance and legal advice from the OAG. The CEP division director, with the support of the compliance specialist, field office staff, and the enforcement coordinator, will take the lead on enforcement matters involving the EPA, OAG, or Commonwealth's Attorney. For all enforcement matters, the CEP division director will keep the ODW office director and deputy office director informed of ongoing case management.

See Attachments 2-6 for the business process flow diagram and expected timelines. The compliance specialists are responsible for monitoring staff activity and timelines pursuant to the business process flow diagram.

1.4. Important Considerations

This section includes general guidelines for compliance specialists and other ODW staff when working with waterworks on compliance and enforcement matters.

1.4.1. Public Health First

Acute violations are always a priority. Although compliance assistance is a first step to resolving noncompliance, it alone is likely inappropriate for health-based violations that represent a high and/or imminent risk of harm to public health.

¹¹ Typically, the enforcement coordinator takes the lead in drafting enforcement documentation and correspondence. If the particular case is highly technical or has a complicated history, however, the compliance specialist, with assistance from other field office staff, may be better positioned to take the lead in drafting some or all of the document. Additionally, time pressures and other work requirements may impact who is best positioned to be the lead author of the enforcement document in order to produce the best product in a timely manner. If there is any disagreement between the compliance specialist and the enforcement coordinator as to who should take the lead on drafting the document, it should be resolved by the field director and the director of CEP.

1.4.2. Plain English

Be sure to communicate with owners, operators, and the public using “plain language.” Avoid technical terms, acronyms, and slang. Be concise, specific, and accurate when communicating with owners and operators.

1.4.3. Written Correspondence

Adhere to the VDH Correspondence Handbook, which is available at <https://vdhweb.vdh.virginia.gov/administration/wp-content/uploads/sites/2/2017/10/VDH-Correspondence-Handbook-version-2.0.pdf>.

1.4.4. Recordkeeping

Always document spoken, written, and email communications in the appropriate electronic file for the waterworks. Until ODW and/or VDH implements a statewide records management system, the file of record for each waterworks is maintained in one of ODW’s field offices – where it is accessible to staff that regularly work with the waterworks. In accordance with the SDWIS Manual, ODW staff must document all NOAVs, formal enforcement actions, and related activities in SDWIS. Documentation in the record must include the appropriate enforcement action, the name of ODW staff who initiated the action, the date the action took place, and a description of the action. ODW staff should document phone calls, emails, and meetings in writing, including in SDWIS; minor phone calls may be documented in a phone log.

ODW staff should consider documentation necessary to support an enforcement recommendation when providing assistance. The following are examples of documents commonly used to support an enforcement referral: permits, correspondence, compliance assistance, and documentation that the water supply system in question meets the definition of a waterworks.

The compliance specialist, assisted by other field office staff as necessary, keeps the field office tracking document updated so details concerning the current status of compliance can be reviewed by others. This includes updating the status for waterworks that are currently under enforcement as well as for waterworks that are considered to be “case studies” because they are being monitored for possible future referral to enforcement. The compliance specialist shares the field office tracking document with CEP. Meanwhile, the enforcement coordinator ensures that the master tracking document, which consists of a series of spreadsheets identifying enforcement actions, is up to date.

1.4.5. Intra/Interagency Coordination

Collaboration, communication, and coordination are essential parts of a successful interaction with a waterworks during compliance efforts. ODW staff should consider other programs and ODW staff who can assist the waterworks, including DTS, TCDO, FCAP, and emergency preparedness, as well as the local health department. As appropriate, ODW staff should contact other state agencies with regulatory oversight and authority over the business or facility. ODW staff should consider providing an electronic copy of enforcement letters to other programs or

agencies for situational awareness or for more help. ODW staff should notify the appropriate local health district director and environmental health manager, as well as the locality's chief administrative officer, or their designee, about enforcement actions by sharing electronic copies of enforcement correspondence.¹²

Attachment 7 includes a list of programs or agencies that may be interested in receiving electronic copies of enforcement letters.

1.4.6. Best Professional Judgement

Selecting the appropriate enforcement action is complex because each situation is unique. Each waterworks has a unique compliance history, construction, operation, and technical, managerial, and financial capability. ODW staff should use sound judgement, collaborate, and make good decisions when choosing an appropriate course of action.

1.4.7. Identifying the Responsible Party

ODW staff should direct compliance assistance and enforcement communications to the responsible party, ensuring receipt. The responsible party is usually the owner. The owner may be a local governmental entity, small business, homeowner's association, private company, or an individual.¹³ A waterworks may be publicly or privately owned. ODW should work with the representative of the waterworks and review documents to identify the responsible party.

ODW staff may request, or the owner may designate, a representative of the waterworks to receive routine correspondence, such as an operator, administrator, homeowner's association president, engineering consultant, or public works director. Enforcement correspondence, however, must be directed to the owner (with a copy to the identified representative).

Appendix

Attachments:

- EM-C1-Attachment 1 – EPA Enforcement Response Policy
- EM-C1-Attachment 2 – Enforcement Process Flow Snapshot
- EM-C1-Attachment 3 – Enforcement Process Flow Referral
- EM-C1-Attachment 4 – Enforcement Process Flow with Consent
- EM-C1-Attachment 5 – Enforcement Process Flow without Consent
- EM-C1-Attachment 6 – Enforcement Process Flow Other
- EM-C1-Attachment 7 – Program and Agency Resources

¹² Va. Code § 32.1-175.1 requires notification to the appropriate “chief administrative officer or his designee of the county, city or town,” upon issuance of a violation to a waterworks.

¹³ See Va. Code § 32.1-167. “Owner” means an individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity, or the federal government, that supplies or proposes to supply water to any person within this Commonwealth from or by means of any waterworks.

Chapter 2 – Monitoring Noncompliance

Summary

Waterworks perform routine monitoring and reporting to ensure the water they provide to consumers meets the drinking water standards in the Regulations. When monitoring results do not comply with an established standard, the Regulations specify the next action for the waterworks to take, which may include additional sampling, increased sampling frequency, inspection of the waterworks, etc. Chapter 14 of ODW’s Field Operations Manual¹⁴ provides general guidance and procedures for ODW staff in documenting violations of the Regulations through NOAVs. Compliance specialists and other field office staff, consistent with their duties, must use the SDWIS/State database¹⁵ to track and determine compliance, and to track and monitor enforcement actions. Compliance specialists should also use other compliance metrics, as they are developed and become available, to track compliance and help guide decision making. This chapter describes how staff prioritize violations, track and monitor the compliance status, and refer the matter for enforcement as needed.

2.1. Prioritizing Federal Violations

Field offices prioritize violations based on the risk of harm to public health. Acute violations present an immediate risk of harm to public health and thus are a greater priority than chronic violations that present risk of harm over time.

Table 1. Response times by violation type.

Violation Type	Examples	ODW Response Time ¹⁶
Priority Acute Violations (10 ETT Points)	Nitrate MCLs (Code 01)	Within 24 hours of discovery of an alleged violation. A non-response by the owner/operator to an acute violation will move these violations to formal enforcement at an accelerated rate.
	Acute MRDL (Code 13)	
	RTCR E. Coli MCL (Code 1A)	
	Turbidity Treatment Technique (TT) – exceeds 1 NTU (Code 43) or 0.3 NTU in 5% of monthly samples (Code 44)	
	SWTR / GWR TT - failure to maintain microbial treatment (Code 41)	

¹⁴ The Field Operations Manual is identified as an agency guidance document and numbered ODW-2022-01.

¹⁵ EPA developed the SDWIS/State database to help states improve their quality of drinking water information. The database contains information about public water systems and their violations of EPA’s drinking water regulations. Information in the SDWIS/State database is uploaded to the SDWIS/Fed database, which is EPA’s national database that manages and collects public water system information from states, including reports of drinking water standard violations, reporting and monitoring violations, and other basic information, such as water system location, type, and population served.

¹⁶ Response time refers to the timeframe by which ODW must initiate appropriate action in response to an alleged violation, which may include, but is not limited to, contacting the owner, issuing an NOAV, and ordering DCLS sample kits.

Violation Type	Examples	ODW Response Time ¹⁶
Non-Acute Violations (5 ETT Points)	All chemical (excluding Nitrate), radiological MCLs, or lead action level (Codes 01 and 02)	Within 7 days of discovery of the alleged violation.
	Nitrate monitoring/reporting (M/R) (Code 04) following a Code 01	
	Non-acute MRDL (Code 11)	
	Non-acute TTs (Codes 33, 37, 40, 42, 45, 46, 47, 48, 57, 58, 59, 63, 64, 65, 2A, 2B, 2C, 2D)	
	Nitrate monitoring/reporting (M/R) (Code 03)	
Chronic, Non-acute Violations (1 ETT Point)	All other monitoring/reporting, TT, and other violations	Within 30 days of discovery of the alleged violation.

2.2. Tracking Federal Violations

Each quarter, ODW must transfer data from the SDWIS/State database to the EPA’s SDWIS/Fed database. ODW data management staff transfer the data 45 days after each quarter has ended to allow time for staff to run compliance reports, issue NOAVs, and ensure that all data is entered into the SDWIS/State database correctly. The data that ODW transfers quarterly includes violations, enforcement actions, inventory data, site visits, and some sample data (*i.e.*, lead and copper 90th percentile sample data). EPA uses this data to compile and distribute the ETT each quarter to help states identify waterworks that are violating federal rules.

As a result of the time lag between when ODW reports the data to EPA and when EPA releases the ETT, the data may be obsolete by the time it is released. For example, a waterworks may have submitted sample results shortly after the file transfer, resulting in a RTC¹⁷ that would not be reflected on the ETT until the following quarter. Thus, ODW uses ETTA to run real-time compliance data (see ETTA section below).

¹⁷ RTC is an acronym used when speaking of or referring to a waterworks that has “returned to compliance” by satisfying the requirements set forth in the EPA’s drinking water rule that was violated. Technically, in SDWIS, a violation that has been resolved is given a “SOX” Enforcement Code, and SOX means the violation has been Returned to Compliance, or “RTC’d.”

Table 2. Schedule for collecting and transferring data from the SDWIS/State database to the SDWIS/Fed database.

Quarterly ETT	Data Collection		Data Transfer Due Date ¹⁸	Data Lag
	Begin Date	End Date		
July	January 1 st	March 31 st	May 15 th	RTC actions entered in SDWIS after 3/31 not included.
October	April 1 st	June 30 th	August 15 th	RTC actions entered in SDWIS after 6/30 not included.
January	July 1 st	September 30 th	November 15 th	RTC actions entered in SDWIS after 9/30 not included.
April	October 1 st	December 31 st	February 15 th	RTC actions entered in SDWIS after 12/31 not included.

2.2.1. Enforcement Targeting Tool (ETT)

The ETT helps focus efforts on violations with the greatest potential to affect public health. EPA assigns a point value to each violation under the SDWA. Acute violations have a higher point value than chronic violations. A score is calculated for each waterworks as follows:

$$\text{ETT Score} = \text{Sum } (S_1 + S_2 + S_3 + \dots) + N$$

S = Violation Severity Factor

N = number of years the waterworks' oldest violation has been unaddressed (0-5 years)

Table 3. EPA's severity value by violation type is used to calculate a waterworks' ETT score.

S Value	Violation Type (violation number)
10	Acute violations, TTs, and MCLs Nitrate MCLs, Acute MRDL (Violation Code 13), RTCR <i>E. Coli</i> MCL (1A), Turbidity TT (43, 44), SWTR / GWR TT (41)
5	Other health-based violations, including non-acute TTs, MRDL, and MCLs Also Nitrate Monitoring/Reporting (03)

¹⁸ The data is typically transferred a few days early.

1	Monitoring/reporting violations, or any other violation All M/R violations (except Nitrate M/R)
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EPA generates the ETT quarterly based on data that ODW reports from the SDWIS/State database to the SDWIS/Fed database. EPA considers waterworks with ETT scores greater than 10 as “serious violators” and ETT scores of 5-10 as “potential serious violators.” The approach to waterworks with an ETT score less than 5 is discretionary. For waterworks with scores less than 5, ODW closely monitors corrective actions to determine the appropriate compliance assistance and/or enforcement response.¹⁹ Compliance specialists and field office staff must respond to noncompliance proactively and work with DTS, TCDO, FCAP, and CEP to deter a waterworks from becoming a potential serious or serious violator.

EPA considers a waterworks with an ETT score greater than 10 to be an enforcement priority. EPA sets criteria for returning a waterworks to compliance and removing it from the ETT, which it outlines for each violation type in the EPA RTC Table.

EPA’s ERP requires states to address waterworks designated as serious violators in a “timely” and “appropriate” manner. (See Attachment 1.) To be considered “timely,” ODW must address violations within two calendar quarters from when EPA designates the waterworks as a serious violator. “Appropriate” methods of addressing violations means the waterworks both resolves its violations and returns to compliance, or ODW proceeds with formal enforcement action. The EPA defines formal enforcement as an action that has the intent and effect of bringing a noncompliant waterworks back into compliance by a certain time with an enforceable consequence if the schedule is not met.²⁰ Generally, formal enforcement involves administrative orders (*i.e.* consent or special orders), but can also involve a court order. (See Chapter 4 for more information on formal enforcement actions.)

Conferring with EPA

By the time EPA provides the ETT list to the states, the data used to generate the scores is approximately six months old. Pursuant to the ERP, CEP provides to EPA a quarterly spreadsheet identifying “Serious Violators” (*i.e.*, those waterworks with an ETT score greater than 10). To address the data lag caused by the time between ODW transferring the data and EPA issuing the ETT list, the spreadsheet sent to EPA includes the current status of the violation and comments by ODW. ODW’s comments are the result of collaboration between CEP and the compliance specialist for the relevant ODW field office. Typically, EPA schedules a call with

¹⁹ If a waterworks has an ETT score of less than 5 but also has state violations, the state violations must be taken into account when considering the appropriate compliance and enforcement response by ODW.

²⁰ Drinking Water Enforcement Response Policy, United States Environmental Protection Agency. 2009. *See* <https://www.epa.gov/sites/production/files/2015-09/documents/drinking-water-erp-2009.pdf>.

the CEP division director and the enforcement coordinator to discuss the ETT and updates on all priority waterworks, as well as to address any questions or concerns.

In the “Status of Violation” column on the ODW “Serious Violators” spreadsheet, the compliance specialist, in consultation with other field office staff, must choose one of the following to describe the waterworks’ status:

- **Returned to Compliance** – The waterworks has completed monitoring, reporting, or implementation of treatment or other activities necessary to comply with the Regulations. All forms of compliance assistance and informal or formal enforcement actions are appropriate means to return to compliance. The appropriate RTC code shall be entered into SDWIS.
- **Unresolved but on the Path to Compliance** – This category includes waterworks that have an EPA or state enforceable compliance order or schedule in place to resolve violations. In these cases, formal enforcement is expected to be successful toward implementing a schedule for sampling, treatment or construction, and therefore no further enforcement is required. The state and/or EPA will continue to monitor compliance with schedules and other requirements of the order.
- **Unresolved, Chronic Failure to Return to Compliance** – Waterworks with continuing, ongoing violations that have had compliance assistance, or informal and/or formal enforcement response without a return to compliance. This category is for those waterworks with a chronic failure to return to compliance.
- **Unresolved, Intentional No Action** – Waterworks with no viable options to address violations.
- **Unresolved/Unaddressed** – Violation reported by state, with either no action by the owner to return the waterworks to compliance, or where the initial informal action(s) or compliance assistance have not been successful to return the waterworks to compliance. Further action will be needed.
- **Deactivated** – Waterworks has been inactivated in SDWIS/State – this means the waterworks is no longer operating, has been consolidated with another waterworks, or no longer meets the definition of a waterworks such that it is no longer subject to regulation under the PWSL or SDWA as a distinct entity.

2.2.2. Enforcement Targeting Tool Assistant (ETTA)

Although the ETT allows states to monitor noncompliance and report progress to EPA to ensure that ODW complies with the requirements to retain primacy, the ETT’s data lag presents a barrier to acting proactively with real-time data. As such, ODW uses the ETTA to maintain current information on waterworks compliance.

The ETTA provides an effective tool to assess “real-time” data for waterworks that are out of compliance with federal requirements and to compare this data with the recent data in the SDWIS/Fed database. ODW can compare the ETTA list to the recent ETT list to identify waterworks that are no longer serious violators or waterworks that have an ETTA score that is greater than the score on the last ETT list. The ETTA simplifies ODW’s quarterly discussions with EPA by focusing on waterworks of greatest concern and current data.

The ETTA uses the same formula that EPA uses to calculate the ETT score, but ETTA retrieves its data from the SDWIS/State database to provide a “real-time” assessment of compliance data. By contrast, EPA calculates the official federal ETT score from the SDWIS/Fed database. Whereas ODW updates the SDWIS/State database continuously, EPA only updates the SDWIS/Fed database quarterly. Thus, the ETTA allows ODW to obtain a “live snapshot” of drinking water compliance in Virginia.

Rather than waiting for a waterworks’ ETT score to “catch up” with its ETTA score, ODW should use the ETTA score proactively as a tool to identify enforcement targets. During the monthly compliance and enforcement call between a field office and CEP, there should be discussion of waterworks within the field office’s jurisdiction with an ETTA score of 5 or more that are not currently under a consent order. The compliance specialist, with assistance from other field office staff as needed, will report if a waterworks has failed to return to compliance within any timeframe set forth in the relevant NOAV. If the waterworks has not exceeded the time to return to compliance under the NOAV, then no enforcement action is needed. If the time to return to compliance under the applicable NOAV has passed, however, then the field office and CEP should discuss next steps to achieve compliance. If the NOAV does not provide a specific timeline for compliance, the field office should monitor whether compliance has been achieved in a timely manner under the circumstances. If timely compliance has not been achieved by the waterworks, then the field office should discuss the need for enforcement measures with CEP.

The compliance specialist, field director, and CEP are not limited to meeting on a monthly basis to discuss compliance and enforcement issues. Especially in the case of waterworks with acute violations for which the owner has been non-responsive (see Table 1) and waterworks with an ETTA score of 11 or more that have not returned to compliance consistent with the recommendations in an NOAV, discussion of appropriate enforcement should not be delayed on account of the timing of the scheduled monthly compliance and enforcement call. In such an instance of acute violations, the compliance specialist or other field office staff will notify CEP as soon as possible of the acute nature of the violation and that the waterworks is not adequately addressing the violation. A meeting will be held between the field director, compliance specialist, other field office staff as necessary, CEP division director, and enforcement coordinator regarding appropriate enforcement action as soon as possible. In such a circumstance, ODW may pursue formal enforcement as an initial matter, forgoing informal enforcement.

See Chapter 4 for more information regarding enforcement options.

2.3. Prioritizing State Violations

The Regulations include standards for the design, construction, and operation of waterworks that are not included in the NPDWR. As such, “state violations” are not considered a federal priority under the NPDWR but are integral to ODW’s mission to ensure safe and adequate drinking water that protects public health in Virginia.

Examples of state-only violations include, but are not limited to:

- Operating a waterworks without a waterworks operation permit for waterworks that do not provide filtration or disinfection treatment;
- Constructing or modifying a waterworks without a construction permit;
- Operating waterworks beyond the permit design capacity;
- Lacking a licensed operator when required;
- Late reporting of physical, chemical, or radiological compliance monitoring results;
- Failing to submit or complete a cross connection control plan;
- Failing to submit or complete a waterworks business operation plan; and
- Failing to maintain conditions throughout the entirety of a waterworks in a manner that assures a high degree of reliability.

ODW prioritizes state violations similar to federal violations. State violations that may present an acute potential for harm to public health are a greater priority than monitoring and reporting violations. For example, poor reliability or construction without a permit may affect the structural integrity of the drinking water supply and result in leaks, outages, contamination, and system failure; whereas failure to submit monthly operation reports limits ODW’s ability to monitor system capacity and performance that may result in harm to a waterworks’ consumers over time.

2.4. Tracking State Violations²¹

Compliance specialists track state violations in the SDWIS/State database. ODW does not report state violations to EPA since they are not based on the NPDWR. Nevertheless, state violations are integral to ensuring reliability and capacity, and to preventing health-based violations from occurring. As such, ODW treats state violations as seriously as federal violations.

Field office staff should monitor state violations to determine if the waterworks has taken the corrective actions set forth in the NOAV in the timeframe provided. If the waterworks has failed

²¹ Chapter 2.4 of the Enforcement Manual cross-references with Chapter 14 of the Field Operations Manual and Section V of the ODW SDWIS Manual.

to take timely corrective action, the compliance specialist will notify the CEP division director and enforcement coordinator.

If the state violation presents an acute potential for harm to public health, the compliance specialist should notify CEP as soon as possible of the acute nature of the violation and that the waterworks failed to return to compliance in a timely manner. In such a case, a meeting will be held between the field director, compliance specialist, other field office staff as necessary, CEP division director, and enforcement coordinator regarding appropriate enforcement action as soon as possible. Depending on the severity of the violation and the public health threat, it may be appropriate to forgo informal enforcement measures and instead pursue formal enforcement. See Chapter 4 for more information regarding enforcement options.

If the state violation does not present an acute potential for harm to public health, the field director and compliance specialist should discuss the status of noncompliance at the next monthly compliance and enforcement call between the field office and CEP. If the waterworks is not approaching compliance, and the continued noncompliance poses a public health threat, then further compliance efforts and the need for informal enforcement measures should be discussed in light of the severity of noncompliance and the public health threat posed by continued noncompliance, including the impact on the reliability of the waterworks.

2.5. Issuing Violations²²

When ODW believes a violation has occurred or is occurring, staff must notify the owner and provide the basis for the alleged violation. An NOAV is one way ODW formally notifies the owner of a potential violation. The NOAV must describe ODW's observations, cite the applicable statutory and/or regulatory requirements that the waterworks is allegedly not in compliance with, cite the regulatory authority for issuing the NOAV, including how the owner may obtain "a final decision or fact finding" regarding the alleged violation²³, and specify the corrective actions necessary to return the waterworks to compliance with expected completion dates.

An NOAV must be issued upon ODW determining there is sufficient evidence to allege a violation, with ODW issuing the required NOAV on a timeframe that complies with Table 1. ODW staff shall update the determination date, validation date, and the NOAV "SFJ" enforcement action code²⁴ in SDWIS/State to match the issuance date on the NOAV letter.

²² Chapter 2.5 of the Enforcement Manual cross-references with Chapter 14 of the Field Operations Manual.

²³ 12VAC5-590-110.A (stating, in part, that notice of a violation shall be in writing, cite the statute or regulations allegedly violated, state the facts that form the basis for believing a violation has occurred, and "include information on the process for obtaining a final decision or fact finding from [VDH] on whether or not a violation has occurred.").

²⁴ SFJ is an enforcement action code in SDWIS/State database that means a notice of alleged violation has been issued.

NOAVs shall not conclude that the waterworks is or is not in violation. Instead, the NOAV merely notifies the owner that it is alleged a violation has occurred based on ODW's observations and the applicable regulatory requirements. The observations and regulatory requirements must be cited separately within the NOAV. Observations are statements of fact about conditions at the waterworks or monitoring and reporting records that are specific to a particular owner or waterworks. Observations stated in tandem with the regulatory requirement may inadvertently form a case decision.²⁵ Consequently, it is important to make clear in the NOAV that a violation is merely being alleged. The regulatory requirements set forth in the NOAV shall follow the factual observation to support the basis for the belief that the owner may be operating the waterworks in violation of the law or regulations.

See Attachments 8 and 9 for CEP's communication strategy, which implores horizontal and cross-sectional teamwork to ensure field office staff, FCAP, TCDO, emergency services, CEP, and other interested stakeholders are situationally aware of case development.

2.6. Returning a Waterworks to Compliance²⁶

Once an owner performs certain corrective actions to comply with regulatory requirements, field office staff may return the waterworks to compliance by updating the status of the SOX enforcement action code associated with the violation in the SDWIS/State database to "T" ([action] Taken), and status date. Federal violations must be returned to compliance in accordance with EPA's comprehensive Return to Compliance (RTC) Table, which describes federal violations and their corresponding RTC definitions. (See Attachment 10.)

Field office staff should use the RTC Table to help determine when a waterworks can be returned to compliance and enter a SOX enforcement action code into SDWIS with Status = "T" to close or address the applicable alleged violations that have been issued to the waterworks.

Field office staff should make every effort to determine that a waterworks has returned to compliance as soon as possible. Delays in entering a SOX enforcement action code into the SDWIS/State database with Status = "T" can negatively affect a waterworks' ETT score. To avoid a waterworks being listed on the ETT in error because a violation was not returned to compliance correctly, the field office staff should collaborate to ensure that this information is current, including at least a monthly review, generally performed by the compliance specialist, of the violations not returned to compliance.

²⁵ See Va. Code § 2.2-4001 (defining case decision to mean "any agency proceeding or determination that, under the laws or regulations at the time, a named party as a matter of past or present fact, or of threatened or contemplated private action, either is, is not, or may or may not be (i) in violation of such law or regulation or (ii) in compliance with any existing requirement for obtaining or retaining a license or other right or benefit.").

²⁶ Chapter 2.6 of the Enforcement Manual cross-references with Section V of the ODW SDWIS Manual.

Appendix

Attachments:

EM-C2-Attachment 8 – NOAV Process in Field Office

EM-C2-Attachment 9 – Noncompliance Team Concept

EM-C2-Attachment 10 – RTC Table

Chapter 3 – Referrals to Enforcement

Summary

Most violations are resolved voluntarily or with assistance from field office staff soon after issuing the NOAV. In many cases, field office staff work with TCDO, DTS, and/or FCAP staff to assist owners and operators with technical assistance, training, funding, and other operational needs. In cases where the owner does not return the waterworks to compliance voluntarily or where monitoring data indicates repeat, ongoing, or chronic violations, field office staff works with the compliance specialist to discuss potential enforcement options. This discussion may include recommending terms for a corrective action plan and schedule to achieve compliance.

Ideally, the field office and CEP have discussed the waterworks prior to a referral to enforcement. If compliance assistance is unsuccessful the case can be referred to either informal or formal enforcement. The compliance specialist, with assistance from other field office staff as needed, should compile all information necessary to proceed with an enforcement referral. The information provided to CEP to support an enforcement referral may include:

- Documentation concerning all outstanding or relevant violations, including factual support and the regulatory basis for the violations;
- A recent sanitary survey or inspection report (usually within 6 months);
- Documentation of all contacts and discussions with waterworks personnel; and
- Complete and current information about the legal owner.

The amount of information required by CEP at this stage may be greater if formal enforcement is being pursued as opposed to informal enforcement. ODW encourages coordination and communication between field office and central office staff as early as staff know a problem exists. An open dialogue allows field office staff, CEP staff, and other divisions to know and understand compliance issues before the case is referred for enforcement. In the event the owner does not resolve the subject of noncompliance or the issue resulting in noncompliance keeps recurring, early communication enables easy, cohesive progression of the case to enforcement.²⁷ Likewise, the compliance specialist should provide updates to other field office staff as a case develops once enforcement procedures begin.

When enforcement is pursued, the compliance specialist is responsible for monitoring the case on behalf of the field office, while coordinating as needed with CEP staff.

²⁷ At this point, “enforcement” may include “informal enforcement” such as a warning letter or letter of agreement, or “formal enforcement” such as offering a consent order or noticing an IFFP, filing a criminal action, or requesting that the OAG file a civil lawsuit seeking an injunction and other relief as appropriate.

In the majority of enforcement actions, the compliance specialist will confer with other field office staff to evaluate the facts, identify relevant legal authority – which should have already been identified in an NOAV – and assist in reviewing and editing a corrective action plan and schedule for compliance while working with CEP staff.

In most instances, the initial formal enforcement document will consist of a proposed Consent Order or Notice of IFFP. In rare cases, the initial formal enforcement action will consist of pursuing misdemeanor charges in criminal court (which would be prosecuted by the Commonwealth’s Attorney’s office for the relevant jurisdiction) or requesting the OAG to file a civil action.

The CEP division director is the primary ODW contact for enforcement actions that go to court (e.g., civil cases initiated by the OAG or criminal cases filed by a Commonwealth’s Attorney) and enforcement actions initiated by EPA.

3.1. Notifying the Owner

CEP, with the assistance of the compliance specialist and field office staff, issues warning letters to notify an owner of violations that remain unresolved. After one or more NOAVs have been issued, the warning letter may serve as an elevated notice of noncompliance, notifying the owner that further enforcement action may or will follow to address the noncompliance. Staff may use warning letters as an informal enforcement measure to notify the waterworks owner that immediate corrective actions are necessary to resolve the violations and return to compliance, as described in Chapter 4.1.1. CEP and field office staff should coordinate to ensure the observations and legal requirements are accurate before issuing the letter.

3.2. Enforcement Referral

The field office may refer a waterworks to formal enforcement when the ETT or ETTA score is greater than 4; when a waterworks has recurring violations; when significant deficiencies are identified during a sanitary survey; for multiple, recurring, or ongoing state violations; when a waterworks has not resolved violations in a timely manner through the compliance process; or when the corrective action requires more than 30 days to complete. A warning letter is not required prior to referring a matter to CEP for formal enforcement.

Other field office staff should coordinate correspondence, conferences, and sanitary surveys related to or performed during case development with the compliance specialist. The compliance specialist should participate in such conferences and meetings for firsthand knowledge of the issues at play. The field office should inform the TCDO sustainability coordinator and the FCAP project manager, as appropriate. CEP will provide updates, as needed, to the ODW office director, deputy office director, division directors, and the OAG regarding such formal enforcement matters.

After an enforcement referral, the compliance specialist is responsible for monitoring the case, unless the enforcement action involves filing a court action or asking EPA to use its enforcement

authority to compel compliance. Compliance specialists, with input and direction from the field director and/or deputy field director and assistance as needed from other field office staff, and in coordination with CEP staff, evaluate the facts and appropriate legal authority, and apprise staff in their office of developments in the enforcement case. The compliance specialist, with input and direction from the field director and/or deputy field director, should monitor and track compliance activities and communicate effectively to ensure a case is resolved in a timely and appropriate manner.

In developing the basis for a waterworks to be referred for enforcement, the compliance specialist, with other field office staff as needed, must provide a thorough, consistent, and reasoned analysis of the situation, as follows:

- Identify the legal owner or responsible party;
- Identify the permit or PWSID number;
- State whether the violator is an enforcement priority;
- Cite the applicable legal requirements and describe the alleged violations;
- Provide a case summary, including relevant NOAVs, emails, documentations of phone calls and meetings, warning letters, and other correspondence; and
- Recommend a preferred course of action from the perspective of the field office, including any appropriate civil penalty under the civil charge worksheet.

3.2.1. Scope of Enforcement Action

Enforcement actions should address all outstanding violations and requirements for the waterworks to return to compliance. Only in limited circumstances may staff address violations individually as an enforcement strategy. For example, a waterworks may respond better to progressive requests for incremental improvement rather than a longer list of deficiencies in a single letter. Staff must consult with TCDO when considering the technical, financial, and managerial capacity of a waterworks as it relates to the scope of the enforcement action. (See Attachment 9 for a diagram of required communication and collaboration.) When sending letters to owners notifying them of a single violation, it is recommended that staff consider including a reminder in the letter of whether ODW has provided notice of other violations to be resolved.

EPA considers up to five years of compliance history when calculating the ETT score. Similarly, five years is a good time period to apply when processing violations. Staff may use older violations to demonstrate poor compliance history; however, staff should look out for new permits, changes in ownership or operation, or older violations that may no longer be relevant. A poor compliance history is not always indicative of future actions and should not be the sole basis for enforcement actions, especially if more recent activities indicate a desire to be compliant.

3.2.2. Enforcement Considerations

In developing an enforcement recommendation, staff must consider the following:

No Longer a Waterworks

ODW staff must confirm that the facility meets the definition of a “waterworks” (*i.e.*, the system serves piped water for human consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year). Facilities may change over time and drop under the regulatory threshold for qualifying as a waterworks. If ODW staff believes that a facility no longer qualifies as a “waterworks,” then appropriate procedures to potentially invalidate the permit should be followed, as set forth in the Project Review & Permit Procedures Manual.

Staff must also consider consolidation and regionalization options that would allow customers of a waterworks that is the subject of an enforcement action to become customers of another waterworks that is expected to provide better and more reliable service.

Other permits

Some other regulatory programs require the permitted party to provide pure/potable water.²⁸ Consequently, the existence of other permits or licenses can inform whether a system qualifies as a waterworks and complies with the appropriate waterworks permit. For example, the Department of Social Services issues licenses to operate assisted living facilities. The licenses may identify the maximum number of individuals that the facility is licensed to service. This number may be used to determine the population served in evaluating whether a system meets the definition of a waterworks.

Another example is that the VDH Office of Environmental Health Services oversees food establishment permits, which may specify the number of restaurant seats permitted at the establishment. Food establishment permits also require an “approved” water source.²⁹ If ODW revokes a waterworks operation permit for a water system that serves a food establishment, the failure to comply with the Regulations may also result in the local health department suspending or revoking the food establishment permit because the facility does not have an “approved” water source. Other examples of facilities that are required to have a permit from other divisions

²⁸ See 12VAC5-421-30 (the Food Regulations require that food establishments be connected to an approved water supply) and 12VAC5-421-2050 (the Food Regulations require that drinking water at food establishments be obtained from an approved source that is either a waterworks pursuant to the Waterworks Regulations or a private well pursuant to the Private Well Regulations (12VAC5-630)); 12VAC5-431-10 (the Sanitary Regulations for Hotels define “approved water supply” as “a waterworks that has a valid waterworks operation permit...”) and 12VAC5-431-400.A (the Sanitary Regulations for Hotels state that the water supply system serving a hotel must comply with the Waterworks Regulations or the Private Well Regulations); 12VAC5-450-80.A (the Rules and Regulations Governing Campgrounds state that all campgrounds must provide “[a]n adequate supply of safe, sanitary, potable water” from either “an approved private well or a permitted waterworks....maintained and operated in compliance with 12VAC5-590”).

²⁹ See 12VAC5-421-2050 (“Pure water shall be obtained from an approved water system defined as: 1. A waterworks constructed, maintained, and operated in compliance with 12VAC5-590.”); 12VAC5-421-2080 (“Water from a waterworks shall meet water quality and quantity standards in accordance with 12VAC5-590...”).

within VDH or other agencies – and that may also operate a waterworks – include marinas, campgrounds, hotels, and those holding alcohol licenses.

Field office staff should ensure the local health department has information about compliance and enforcement actions. The preferred method for field office staff to relay this information to the local health department is to send electronic copies of correspondence to the Environmental Health Manager. However, individual health departments may have different preferences.

Temporary Permits

ODW may use temporary permits to bring newly discovered waterworks into compliance with the Regulations, or for existing waterworks that have undergone a change in ownership or system improvements. The purpose of issuing a temporary permit for a newly discovered waterworks is to allow time for the owner to complete certain regulatory requirements. Such requirements may include water quality testing; raw water sampling to support an evaluation of whether a groundwater source is under the direct influence of surface water; or completing a sampling plan, lead and copper material survey, cross connection control plan, or waterworks business operation plan. The temporary permit allows time for the owner to upgrade infrastructure or operations as necessary to comply with the Regulations. Refer to ODW's Project Review and Permit Procedures Manual for more information on the use of temporary permits.

Temporary permits should not be used to address routine noncompliance. If the waterworks fails to comply with the Regulations or fails to complete temporary permit requirements, then the field office staff should take enforcement action to compel the waterworks to comply with the Regulations.

The compliance specialist, with coordination with field office staff, is responsible for monitoring and tracking compliance with the timelines and expectations specified in a temporary permit. A temporary permit compliance schedule must be entered into SDWIS and used to track compliance with permit requirements (refer to the ODW SDWIS Manual for more information). Failure to comply with temporary permit requirements should be addressed in a timely manner or enforcement action may be appropriate. Staff should issue NOAVs for the failure to comply with a temporary permit.

Receivership

Receivership is accomplished via a court order that conveys possession of the waterworks' assets and responsibility to operate the waterworks to a receiver, who will operate the waterworks in the best interests of the customers.³⁰

³⁰ See Va. Code § 32.1-174.3.

The first step in pursuing a receivership action is for ODW staff to confer internally as necessary regarding receivership being an appropriate option, including identifying potential entities that are good candidates to serve as the receiver. Internal ODW discussions will likely include the ODW office director, the CEP division director, the enforcement coordinator, the director of the relevant field office, the relevant compliance specialist, and other field office staff as appropriate.

Upon identifying a preferred entity to act as receiver, ODW staff, likely led by the CEP division director and the relevant field office director, should reach out to the relevant entity to gauge their interest in serving as receiver. This discussion may include providing information to the potential receiver about the waterworks that would be the target of the receivership action, including documentation related thereto. FCAP and TCDO may also need to be included in these conversations in order to discuss any funding that might be available to the potential receiver.

If ODW is unable to identify a willing receiver, further internal discussions will be necessary regarding whether to ask the Commissioner for permission to pursue receivership despite the absence of a willing receiver. Given the potential sensitivities in a receivership action with an unwilling receiver, ODW should discuss the issue with OCOM before submitting a request that the Commissioner take action.

If ODW decides that pursuing receivership is appropriate, with or without a willing receiver, the CEP division director should engage with OAG counsel and obtain any necessary legal advice. This should include a discussion with the OAG regarding relevant waterworks facts, prior conversations with potential receivers and whether there is a willing receiver, and the receivership process generally. Additionally, unless the OAG advises that ODW reverse course and not pursue receivership, the CEP division director should seek input from OAG counsel on drafting a declaration/affidavit for the Commissioner's consideration, which is further discussed below. OAG counsel may wish to draft pleadings for a receivership action prior to ODW seeking formal authorization from the Commissioner to file suit seeking receivership.

Once any points of discussion and input from the OAG is resolved, ODW will ask the Commissioner to find that the waterworks in question "is unable or unwilling to provide adequate and safe service for any of" six statutorily-identified reasons.³¹ The materials provided to the Commissioner for consideration should include a draft affidavit/declaration for the Commissioner's review for possible execution, which should have been finalized in consultation

³¹ Va. Code § 32.1-174.3.A ("1. The waterworks can no longer be depended upon to furnish pure water; 2. The waterworks has inadequate capacity to furnish pure water to its customers; 3. The owner has failed to comply with an order issued by the Commissioner; 4. The owner has abandoned the waterworks and has discontinued supplying pure water to his customers; 5. The owner is subject to a forfeiture order pursuant to § 32.1-174.1; or 6. The Commissioner has issued an emergency order because there is an imminent danger to public health and welfare resulting from the operation of the waterworks or the source of the water supply.")

with the OAG. The draft affidavit/declaration should set forth the factual background forming the basis for the Commissioner's statutorily-required finding, including identifying which of the six statutory grounds the Commissioner finds renders the waterworks "unable or unwilling to provide adequate and safe service" pursuant to Va. Code § 32.1-174.3.

ODW's request to the Commissioner to sign the proposed affidavit/declaration should also include a request that the Commissioner authorize ODW to ask that the OAG file an action petitioning for the appointment of a receiver. If the Commissioner authorizes the request, ODW should provide a referral package as described below.

If the OAG agrees to the request to file a lawsuit, OAG counsel will draft and file the petition for appointment of a receiver and represent the Commissioner before the circuit court (see below).

Referrals to OAG (Civil Actions)

The OAG is counsel to VDH and, as such, represents the agency in civil court actions. Referrals to the OAG may be appropriate for cases where there is a serious threat of harm to human health, an owner violated an order or written agreement, or ODW has been unable to achieve compliance through the administrative process.

Generally speaking, a civil action may seek injunctive relief, pursuant to Va. Code § 32.1-27.B, and the imposition of civil penalties, pursuant to Va. Code § 32.1-176. The CEP division director, in coordination with the ODW office director and the relevant field office, should identify the relief being sought in a civil action prior to asking that the Commissioner approve referral of the matter to the OAG.

If a referral is the best option, then the CEP division director or ODW office director, in coordination with the field office staff, will prepare a referral package that describes the case history and outstanding violations, and includes all supporting documentation. The CEP division director routes referrals to the OAG through the ODW office director and OCOM for review and approval. The CEP division director is the point of contact on referrals to the OAG and, for situational awareness, copies the ODW office director and deputy office director on communications with the OAG as appropriate.

While approval by the Commissioner is necessary to refer a matter to the OAG to pursue a civil action, the CEP division director is typically the person who will confer with OAG counsel prior to requesting that the Commissioner make such a referral. Early engagement with the OAG to discuss a possible civil action will help identify any legal issues that may exist, including any that might caution against filing the requested action.

Criminal Actions

The Commonwealth's Attorney in the jurisdiction where the waterworks is located handles criminal actions. In consultation with the CEP division director and the OAG, field office staff

may request that the Commonwealth's Attorney for the appropriate locality pursue criminal charges for an owner's failure to comply with the Regulations.³²

Field office staff should consider referring a matter for criminal action when there is evidence that strongly suggests the owner is willfully violating or refusing, failing or neglecting to comply with the Regulations or any existing order. An example of a possible criminal referral is the falsification of data.

Referrals to EPA

ODW may consider referring a case to EPA when ODW's enforcement efforts have been unsuccessful and EPA's resources may be more effective. EPA may be better equipped to handle complex cases with interstate or federal aspects, such as federally-owned waterworks. ODW should receive input from EPA on whether a referral is appropriate.

If a referral is the most appropriate option, then the CEP division director, in coordination with the relevant field office staff, will provide EPA with a description of the case history and outstanding violations, as well as supporting documentation. The CEP division director shall route the referral through the ODW office director and OCOM for review and approval. The CEP division director is the point of contact on referrals to the EPA and, for situational awareness, copies the ODW office director, deputy office director, and field director on communications with the EPA.

ODW considers the following criteria in deciding to refer a case to EPA for enforcement:

1. Whether ODW staff has explored and attempted, where appropriate, all reasonable administrative options and such efforts have not resulted in an acceptable conclusion;
2. ODW's resources to pursue the case relative to the nature and/or complexity of the case;
3. Whether the interstate aspects of the case warrant an action by EPA;
4. Whether the owner is out-of-state and beyond the reach of ODW; and/or
5. Whether federal remedies are more appropriate to address the alleged violations.

3.3. Appropriate, Timely, and Consistent Enforcement Action

Enforcement actions should be appropriate, timely, fair and consistent across Virginia. With administrative, civil, and criminal enforcement actions, ODW staff selects the most appropriate enforcement strategy for each action. Each enforcement action begins with an evaluation of the least adversarial method appropriate to resolve the noncompliance. An appropriate enforcement action addresses each violation. The enforcement response should be proportionate to the

³² See Va. Code § 32.1-27.A ("Any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or Commissioner or any provision of this title shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.").

violation and the owner's current and past willingness to cooperate. An enforcement response should deter similar noncompliance at that waterworks and in the regulated community.

A consistent enforcement program means that members of the regulated community should expect similar responses to comparable violations, given similar impacts on human health, regardless of where in the Commonwealth the violation occurs. ODW recognizes that each enforcement action is fact-specific, and it is unlikely that two enforcement actions will be the same. While consistency is an important factor in an enforcement program, it does not mean a strict adherence to past decisions that may no longer be appropriate for a variety of reasons. The compliance specialist should closely monitor and coordinate with field office staff and/or the owner to ensure that waterworks with active enforcement actions return to full compliance.

Most cases may be resolved through a consent order. Consent orders are bilateral and legally enforceable agreements that allow the owner to review and comment on the proposed order and return their waterworks to compliance without further enforcement action being taken by ODW. If an owner agrees to a consent order, it avoids the need for more adversarial measures, such as convening an IFFP with it possibly resulting in a unilateral special order. If the owner fails to respond to or sign a proposed consent order, then ODW should proceed with an IFFP. There may be occasions when ODW conducts an IFFP first, and then negotiates a consent order. Civil or criminal action usually occurs when the administrative process does not result in compliance.

ODW strives to address and resolve all cases in a timely fashion, considering the nature of the case and resources available. Cases are processed in accordance with an appropriate timeline that sets forth benchmarks for responding to enforcement. Timelines may vary depending on the complexity of issues involved. Projects requiring funding for infrastructure improvements may require more time to complete. The timeline may depend on circumstances beyond ODW's or the owner's control. Conversely, ODW should expedite resolution of emergencies or cases presenting an imminent and substantial threat to human health.

3.3.1. Decelerating/Accelerating Enforcement Cases

As an enforcement case develops, new information may affect the pace at which ODW proceeds with enforcement. The discovery of new or more acute violations at a waterworks may accelerate the enforcement action, whereas new information that negatively affects the enforceability, legal authority, or underlying factual basis for the enforcement action may decelerate an enforcement action.

Examples of when staff may accelerate enforcement:

- Repeat or ongoing violations;
- Length of time for owner to return to compliance is greater than six months;
- New violations;
- Violation(s) that represent an acute public health risk where the owner took no action;

- Long history of noncompliance; and
- Willful or egregious violations, such as falsifying data (note: falsifying data is a criminal violation and staff should consider whether a referral to the Commonwealth’s Attorney or the Department of Professional and Occupational Regulation, or to the U.S. Attorney for violations of federal law, is appropriate).

Examples of when staff may choose to decelerate enforcement:

- Change in owner or operator;
- Late water samples with no evidence of a threat to public health;
- BWA was issued and further monitoring would be duplicative (*e.g.*, a negative bacti would not reverse a BWA); and
- More time to determine whether compliance assistance was effective (only if the waterworks is demonstrating “good faith”).

3.3.2. Tracking Enforcement Actions and Assistance Actions

Formal enforcement actions are taken to return a waterworks to compliance. The compliance specialist must coordinate with field office staff to enter and track enforcement actions in the SDWIS/State database. The compliance specialist must monitor the status of formal enforcement activity actively and routinely, providing updates to the field director and other field office staff as necessary, the CEP division director, and the enforcement coordinator. The compliance specialist, and other field office staff as needed, also updates the field office tracker, which is shared with CEP, to allow for easy review of the status of compliance and enforcement efforts.

Enforcement assistance actions help the compliance specialist track the waterworks’ compliance with the requirements of an enforcement action. Field office staff should enter and track enforcement assistance actions in the SDWIS/State database or the file of record to document activities and keep an enforcement record.

Chapter 4 – Enforcement

Summary

This chapter provides guidance on the enforcement process and procedures that staff must take to address violations when an owner has been unwilling or unable to return the waterworks to compliance. The enforcement process includes: (1) initiating administrative or judicial action to compel an owner to resolve violations with or without the owner's consent; (2) monitoring enforcement actions and escalating them as necessary to achieve compliance; and (3) closing cases once the waterworks has returned to compliance.

Enforcement actions may be formal or informal and are generally administrative in nature (*i.e.*, non-judicial). Informal enforcement actions include warning letters and letters of agreements. Warning letters identify the outstanding violations and, when federal violations are concerned, the waterworks' ETT, and sometimes ETTA, score. Warning letters also inform the owner of the possibility of formal enforcement if the violations are not resolved, the possible routes formal enforcement can take, and ask that immediate action is taken to resolve the violations. Letters of agreement may be appropriate for owners that have demonstrated a "good faith" effort to comply with the Regulations, are not "serious violators," and can complete the corrective action in less than one year.

Formal enforcement may include administrative orders (*i.e.*, consent orders or special orders). Formal enforcement actions are binding and enforceable through the court system and may be required when the waterworks is listed as a "serious violator" on the ETT (*i.e.*, the waterworks has a score greater than 10), or in accordance with ODW policy.

During the enforcement process, field office staff may continue to assist the owner with drafting public notices, boil water advisories, and action plans to assist the owner with returning to compliance. However, for reoccurring or ongoing violations, staff should proceed with a binding and enforceable order to assure that the waterworks stays in compliance or adheres to a corrective action plan and schedule to return to compliance.

In determining the appropriate enforcement action, ODW may consider the size and type of the waterworks, the risk of harm to human health, and the willingness of the owner to cooperate. The procedures in this chapter are listed in order of increasing seriousness. While staff may begin with a consensual means of achieving compliance, enforcement is not discretionary and staff should proceed as necessary to protect human health. ODW encourages cooperation and open dialogue with the owner and operator of the waterworks, field offices, and divisions in developing a plan and facilitating compliance.

4.1. Informal Enforcement

Informal enforcement may be appropriate for waterworks that are responsive, cooperative, and demonstrate a "good faith" effort to return to compliance. Informal enforcement is encouraged

for waterworks identified as “potential serious violators” on the ETT, or that have not received multiple notices of the same violation or a notice of many violations. If the waterworks has been identified as a “serious violator” on the ETT, formal enforcement (with or without consent) is appropriate. In most cases, enforcement should start with informal actions and progress to formal, as necessary.

4.1.1. Warning Letters

Warning letters may be appropriate when a waterworks has the technical, financial, and managerial ability to comply with the Regulations but fails to do so.³³ Warning letters inform the waterworks owner of the violations and, with respect federal violations, of the current ETT and, as appropriate, ETTA scores. Warning letters also identify the possibility for formal enforcement and what forms such formal enforcement might take. Warning letters also ask that immediate action is taken to resolve the violations and that the owner contact ODW within 15 days in order to respond to the letter. Warning letters prompt the waterworks to take action and can result in a return to compliance without further action by ODW.

CEP staff most commonly issue warning letters to waterworks identified as “potential serious violators” and “serious violators” on the ETT or to waterworks that due to their ETTA score are anticipated to become a “potential serious violator” or “serious violator” under the ETT. Once a waterworks is identified as a “potential serious violator” or “serious violator” on the ETT, ODW should notify the waterworks of its status and the actions that it needs to take to return to compliance.

Each quarter, the enforcement coordinator downloads the ETT list from EPA. Based on that list, as well as the most recent ETTA list, the enforcement coordinator develops a list for each field office identifying the waterworks that the enforcement coordinator believes should receive warning letters. The categorization of the waterworks in terms of the type of warning letter ODW should send is in accordance with the EPA’s ERP and identifies warning letter targets as either a “serious violator” or a “potential serious violator.” The enforcement coordinator sends the field office-specific list of warning letter targets to the compliance specialist for the corresponding field office. The relevant compliance specialist provides feedback on the suggested warning letter targets, while also identifying any additional waterworks that the compliance specialist believes should be sent a warning letter.

After conferring with the compliance specialists, the enforcement coordinator drafts warning letters and sends them to the compliance specialists for review and feedback. The draft warning letters are based on ODW’s existing template warning letters. The compliance specialists consult with field office staff regarding whether the warning letter is still appropriate based on

³³ This determination should be based on the most recent triennial assessment of a waterworks’ technical, managerial, and financial capacity.

current compliance data. Once the compliance specialist reviews, revises as needed, and approves the warning letters for waterworks in their region, or provides a basis for withholding such letters, the enforcement coordinator sends the draft warning letters to the CEP division director for review. The CEP division director reviews the letters, engages in any necessary discussion with the enforcement coordinator and the compliance specialist, and signs the final draft of the warning letters. The warning letters are then sent to the field office for distribution to the owners, thereby notifying the owners of the waterworks' status on the ETT. (See Attachments 11 through 14.)

When evaluating which waterworks should receive a warning letter, and the type of warning letter, staff should assess not only the waterworks' ETT score, but also its current ETTA score. For example, a waterworks with a score of 5 on the quarterly ETT but a current ETTA score of 12 should receive a Serious Violator rather than a Potential Serious Violator warning letter based on the ETTA score. Conversely, a waterworks with a score of 12 on the quarterly ETT but a current ETTA score of 3 may not receive a warning letter at all, or the letter may need to be modified to provide notice but reflect the waterworks' current compliance status.

It is important to note that warning letters are not limited to issuance in conjunction with the quarterly ETT list. This is especially important with respect to state violations, which are not scored for ETT/ETTA purposes. See Chapter 2.4 for further discussion regarding tracking state violations and consideration of enforcement measures, including issuance of warning letters.

If a waterworks has not responded to a warning letter within the timeframe set forth in the letter, then the compliance specialist should contact the waterworks owner and the administrative contact. If the waterworks is not responsive to the warning letter, does not respond to follow-up communication from the field office, and has not taken concrete steps to return to compliance, the matter will typically be referred for formal enforcement after passage of the timeframe for compliance set forth in the warning letter. See Chapter 4.2 for a discussion of formal enforcement.

4.1.2. Letters of Agreement

Letters of agreement (LOA) are appropriate when the waterworks is demonstrating a "good faith" effort to comply with the Regulations and is willing to agree to a set of corrective actions and schedule of compliance. (See Attachment 15.) CEP does not generally recommend LOAs in cases where the corrective action and schedule is expected to take more than six months to complete. In instances where the corrective action is expected to last beyond six months, an administrative order is usually recommended. For corrective action expected to take more than one year to complete, an administrative order is required.

LOAs are informal, and less resource and time intensive, tools to encourage compliance that the field director can sign locally. LOAs also create a record of compliance efforts and agreed-upon expectations for ODW and the waterworks. However, LOAs are unenforceable, so they are not

considered “formal enforcement” according to EPA’s ERP. ODW does not use LOAs for waterworks listed on the ETT as serious violators or in cases where an administrative order is required.

If a waterworks fails to comply with the terms of an LOA, the field office should contact the owner and the administrative contact for the waterworks regarding the lack of compliance. In the absence of a return to compliance with the LOA within 15 days, the field office should typically refer the waterworks for formal enforcement.

4.2. Formal Enforcement

Formal enforcement is appropriate when ODW requires an enforceable, legally binding order with the waterworks or when the agency record indicates that the waterworks is unlikely to achieve compliance without one. If informal enforcement efforts have not resulted in the waterworks progressing to a return to compliance in a timely manner, then ODW will pursue formal enforcement.

EPA’s ERP defines formal enforcement as requiring specific actions for the waterworks to return to compliance, citing specific violations, and being independently enforceable without having to prove the original violation.³⁴ Formal enforcement includes administrative orders (with or without consent), and judicial actions through civil or criminal court.

ODW may pursue administrative orders with or without the owner’s consent. In most cases, ODW should offer a consent order as the first step of formal enforcement. Consent orders are appropriate when the waterworks is cooperating with ODW to resolve an issue but informal enforcement efforts still have been insufficient to obtain a return to compliance. Even in the case of waterworks owners that have been non-compliant and non-cooperative, consent orders are often an appropriate first step of formal enforcement as such owners will often engage with ODW upon receipt of a proposed consent order when the alternative is an IFFP.

If the waterworks is uncooperative or otherwise does not agree to the terms of the proposed consent order, then ODW must proceed with an IFFP to provide the owner with the opportunity to be heard and to determine the fact basis for a case decision before an administrative order may be issued. Depending on the findings that result from the proceeding, ODW may seek to have

³⁴ EPA’s ERP defines “formal enforcement” as meeting the following criteria:

1. Require specific actions necessary for the waterworks to return to compliance;
2. Be based on a specific violation(s);
3. Be independently enforceable without having to prove the original violation, meaning:
 - a. Contains a description of the noncompliant violation, a citation to the applicable state or federal rule or law, a statement of what is required for the waterworks to return to compliance, and a compliance schedule; and
 - b. Provide the state with authority to impose penalties for violating the state’s enforcement document.

the Commissioner, on behalf of the Board, issue a special order in which the Commissioner compels compliance unilaterally.

Generally, ODW offers a consent order to the owner for consideration before moving to an IFFP. If ODW and the owner cannot reach an agreement regarding the terms of a potential consent order, then an IFFP and special order is the usual outcome. Unless the waterworks owner has indicated a need for other delivery methods, CEP staff may send formal enforcement correspondence via certified mail, though email may also be used for formal enforcement correspondence. If delivery is made via email, ODW staff may need to follow-up to confirm receipt. An electronic signature service provides certification once the owner views and signs the order, which the enforcement coordinator or compliance specialist should save to the waterworks' enforcement file to document that certified delivery is complete. A final executed administrative order, whether a consent order or a special order, must be sent via certified mail to the owner, though it may also be sent via email.

Waterworks that are listed on the ETT as a "serious violator" require formal enforcement within six months of being listed (unless the violation has been returned to compliance). CEP strongly encourages that where formal enforcement is imminent, field office staff proceed with an administrative order before a waterworks reaches this point.

4.2.1. Consent Orders

Consent orders are appropriate when the waterworks is working cooperatively with ODW staff to resolve noncompliance. A consent order is an administrative order issued on behalf of the Board to an owner, with the owner's consent, requiring that the owner perform a set of actions to return the waterworks to compliance. Consent orders are case decisions authorized by law and enforceable in court.

ODW staff should use consent orders to establish an enforceable schedule that compels a waterworks to return to compliance in an expeditious manner by:

1. Complying with statutes, regulations, permit conditions, and orders;
2. Applying for a construction or operation permit (in lieu of a temporary permit);
3. Installing, testing, or implementing new operation or treatment techniques;
4. Complying with a schedule for facility upgrades and modifications; and/or
5. Completing required maintenance and repairs to the waterworks (*e.g.*, wells, pumps, tanks, and water plants).

Collaboration among offices is essential for efficient, effective, and professional development of documentation that is factually correct, legally enforceable, and consistent with statewide policy. The enforcement coordinator drafts the proposed consent order, working with the compliance specialist and other field office staff to develop the factual background. The enforcement coordinator should confer with the CEP division director as needed during the drafting process. Once the enforcement coordinator has completed the initial draft of the proposed consent order,

they should share the draft with field office staff for review. FCAP or TCDO should review the draft proposed consent order for input related to capacity development as applicable. Once input is received and the draft has been revised, the CEP division director conducts a final review of the draft proposed consent order.

CEP review of the draft proposed consent order should include the following considerations:

- Consent order correctly identifies the Board and/or legal authority in the PWSL and Regulations;
- Consent order identifies a legally responsible owner and uses the proper notary block;
- Definitions in a consent order are needed, correct, used in the body of the document, and in alphabetical order;
- Statements concerning the owner are accurate;
- All violations are addressed;
- The factual observations identified in the consent order support the violations cited in the legal requirements section of the consent order;
- The factual observations and legal requirements sections support the injunctive relief in the schedule of compliance;
- Injunctive relief in the schedule of compliance leads by necessity to a waterworks' return to compliance by a date certain in all possible cases;
- Civil charge calculations, including economic benefit, are consistent with policy and with similar cases across the Commonwealth;
- Model formats have been used;
- Any changes to administrative provisions;
- Legal citations are correct; and
- Enforcement action and injunctive relief are consistent with similar consent orders across the Commonwealth.

After the CEP division director has completed their review, they will share the revised draft proposed consent order with other interested parties at ODW, identifying any substantive changes that the CEP division director made to the draft proposed consent order.

At the discretion of the CEP division director, the draft proposed consent order may be sent to the OAG for review and comment. Situations that might call for seeking OAG input include if there are any legal issues raised during the drafting or review of the draft proposed consent order; if the draft proposed consent order is novel such that OAG review is called for; if there is a history of OAG involvement in the matter; or if other reasons exist for OAG input. If issues of concern are raised during the CEP division director's final review or the OAG's review, further discussion with the field office may be required before the draft proposed consent order is finalized.

Following CEP finalizing the draft proposed consent order, including receiving any input from the OAG, the field office sends the proposed consent order to the owner via certified mail or via email. A cover letter signifying that the proposed consent order is enclosed accompanies the proposed consent order. (See Attachment 17.)

The owner's participation and consent in arriving at a mutually agreed upon administrative order is the essence of a consent order. Consequently, the cover letter invites the owner to contact ODW to discuss the proposed consent order and its terms.³⁵ The owner is free to sign the consent order and return it to ODW as directed and without any further discussion. If the owner³⁶ is returning a signed hard copy, then the owner should have their signature notarized. Upon receipt of the signed consent order, the compliance specialist will return the consent order to the CEP division director and the enforcement coordinator. CEP staff routes the signed consent order to the Commissioner for review and signature.

Upon CEP's receipt of the consent order from OCOM after execution by the Commissioner, CEP will email the executed consent order to the field office. The field office must send the executed consent order to the owner via certified mail, with a cover letter stating that the consent order is executed. (See Attachment 18.) Consent orders become effective 15 days after mailing a copy to the owner by certified mail.³⁷

Consent orders may impose a civil charge in accordance with the criteria in Chapter 5 and pursuant to Va. Code § 32.1-27.D. In negotiating the terms of the consent order, ODW may offer up to a 30% reduction in the assessed civil charge gravity-based subtotal to encourage cooperativeness, prompt response and quick settlement, a "good faith" effort to comply, and based on the size and sophistication of the facility. Civil charges should cover violations dating back no more than five years. See Chapter 5 for how to calculate a civil charge.

Negotiating and Executing Enforcement Actions

Consent orders are bilateral agreements that the owner voluntarily enters into with the Commissioner, who is acting on behalf of the Board. As such, ODW provides the owner with an opportunity to review and comment on the terms in the proposed consent order.

After the above-discussed process for internal review of the proposed consent order is complete, the compliance specialist sends the proposed consent order to the owner for review and comment. If an owner asks for changes to the proposed consent order, the compliance specialist will discuss the proposed changes with field office staff, including the field director and

³⁵ Negotiating the terms of a consent order is discussed in more detail below.

³⁶ The "owner" may be an entity rather than an individual. If the owner is an entity, then someone with legal authority to bind the entity should execute the consent order on the owner's behalf.

³⁷ Va. Code § 32.1-26 ("Such order shall become effective not less than fifteen days after mailing a copy thereof by certified mail to the last known address of such person.")

technical staff, and with CEP staff. The compliance specialist may need to schedule a meeting with the owner or use other means to resolve differences over the terms of the proposed consent order. If the compliance specialist, or other ODW staff, discusses the proposed consent order with the owner, ODW staff should make clear that ultimately the terms in the consent order must be acceptable to the Commissioner. All ODW can do is recommend to the Commissioner that the consent order be agreed to, as the ultimate decision of whether to sign the consent order on behalf of the Board lies with the Commissioner.

Where appropriate, the owner's comments may result in ODW revising the proposed consent order. Generally, comments by the owner on the factual observations, background or context of a violation, and corrective actions in the proposed consent order may result in modification of the proposed consent order if agreeable to ODW. For example, the waterworks owner may want the proposed consent order revised to reflect the actions the owner has already taken to return the waterworks to compliance if the proposed consent order does not already include these actions. By contrast, changes to the proposed consent order regarding compliance and administrative provisions are typically not acceptable because the OAG has approved those standard sections. Any changes to the proposed consent order after being sent to the owner should be reviewed and approved by the CEP division director before a revised proposed consent order is sent to the owner.

ODW and the owner must agree to the terms of the consent order before the owner signs the order. The owner may sign and return the proposed consent order using an electronic signature service. After the owner signs the proposed consent order, the compliance specialist must notify the local health department's environmental health manager and health director. Calling the environmental health manager or health director directly is good practice.

Once ODW receives the signed consent order from the owner, the CEP division director, with assistance from the enforcement coordinator, will route the signed consent order to OCOM for the Commissioner's review and signature. The Commissioner, or the Commissioner's designee if applicable, executes the consent order on behalf of the Board. The field office must mail the fully executed consent order to the owner by certified mail, at which point it becomes effective 15 days after the certified mailing. In addition to the fully executed consent order being sent by certified mail, the field office may immediately send an executed, electronic copy to the owner for implementation. The field office should ensure that the CEP division director and the enforcement coordinator are notified when the consent order has been delivered. The field office should maintain a record of the certified mail receipt and create a digital copy as well.

If the consent order requires civil charge payments, then CEP must provide a copy of the order to VDH staff responsible for depositing the civil penalty payment upon receipt. See the below section on collection of civil charges for more information.

Amending and Superseding Consent Orders

After a consent order is executed, subsequent events may require modifying or supplementing its terms, through either an amended or superseding order. An amended consent order modifies or supplements the existing consent order but leaves the rest of the consent order intact. A superseding consent order replaces the previous consent order in its entirety and terminates it. Whether to amend or supersede a consent order depends on the extent of the required changes to the terms. Amended consent orders are used for less extensive changes.

Amendments may be used to:

- Modify, supplement, or supersede a schedule of compliance in an existing consent order (e.g., to extend deadlines or integrate new requirements);
- Resolve violations of the existing consent order or independent violations identified while the consent order is in effect; and
- Impose civil charges for such violations.

Because amendments are read together with the existing consent order, amended consent orders omit sections that would be redundant, usually “Section A: Definitions” and “Section D: Administrative Provisions.” In the amendment, Section B is renamed “Basis for Amendment.” If further definitions are necessary, staff may reinsert a “Definitions” section and modify the lettering of the sections in the rest of the amendment. Both the amended and existing consent order must be read carefully to ensure that their terms do not conflict. A model amended consent order is provided as Attachment 20.

A superseding consent order replaces the existing consent order entirely. For example, when a new NOAV or warning letter may be issued to an owner with an existing consent order, the superseding consent order may address the new violations and any uncompleted requirements from the existing consent order. Superseding consent orders insert a “Section A: Purpose” with the remainder of a superseding consent order mirroring a standard consent order except for adding language to clarify that the new consent order supersedes and terminates the existing consent order. A model superseding consent order is provided as Attachment 21.

4.2.2. Informal Fact Finding Proceedings

If the waterworks does not resolve a violation by consent, then ODW may proceed with an informal fact finding proceeding or formal hearing for purposes of pursuing enforcement.³⁸ Field office staff should seek compliance using the least adversarial means possible; although, it may

³⁸ See Va. Code § 2.2-4019.A (“Agencies shall ascertain the fact basis for their decisions of cases through informal conference or consultation proceedings...”); § 2.2-4020.A (“The agency shall afford opportunity for the formal taking of evidence upon relevant fact issues in any case in which the basic laws provide expressly for decisions upon or after hearing and may do so in any case to the extent that informal procedures under § 2.2-4019 have not been had or have failed to dispose of a case by consent.”).

not be possible to negotiate a consent order with an owner who is uncooperative or unresponsive. In cases where a waterworks refuses to cooperate, an IFFP may be appropriate.

Notice of IFFP

The APA requires that ODW provide reasonable written notice prior to an IFFP. Thirty days written notice is generally considered reasonable. The notice must include contact information (*i.e.*, name, telephone number, and government email address of the person designated by the agency to answer questions and assist the named party)³⁹, factual allegations, and the related regulations that the owner is alleged to have violated based on the factual allegations. The CEP division director may serve as the contact person for questions regarding the IFFP while the compliance specialist maintains the point of contact for technical or operational questions surrounding the waterworks. The notice must also notify the owner of their right to appear in person or to be represented by counsel or other qualified representative, to receive any contrary information that the agency may rely upon in making an adverse case decision, and for ODW to inform the owner of the factual or procedural basis for an adverse decision.⁴⁰

The notice should be accompanied by an exhibit package that contains all information in the possession of the agency that ODW may rely upon in making an adverse case decision. The exhibit package may contain the following:

- State Corporation Commission information for the owner (if applicable);
- Documentation demonstrating that the waterworks meets the definition of a waterworks;
- Most recent waterworks operation permit;
- Most recent sanitary survey;
- Relevant NOAVs, warning letters, and correspondence between ODW and the owner;
- Basis for the civil charge calculation (if applicable); and
- Any requests for corrective action.

Other documentation may include:

- Laboratory results;
- SDWIS/State database data;
- Waterworks questionnaire; and
- Waterworks business operation plan or other submittals.

³⁹ Va. Code § 2.2-4019.A (“[N]otice shall include contact information consisting of the name, telephone number, and government email address of the person designated by the agency to answer questions or otherwise assist a named party...”).

⁴⁰ Va. Code § 2.2-4019.A.

ODW staff, excluding the presiding officer, should collaborate as needed in the development of the Notice of IFFP. Collaboration among offices is essential for efficiency and professional documentation that is factually correct and legally sufficient.

See Attachment 22 for an example of a Notice of IFFP.

Preparing for an IFFP

When preparing for an IFFP, the compliance specialist should collaborate with the case team (*i.e.*, the enforcement coordinator, CEP division director, field office director, field office staff, and division staff) to provide information in the possession of the agency that will support the agency's action during the IFFP. Any documentation that ODW will ask the presiding officer to consider must be provided to the owner in advance of the IFFP. If new information develops between the date of the IFFP notice and the hearing, then ODW must provide copies to the owner as soon as the new information is identified.

Because an IFFP requires more time and resources, and staff have already dedicated considerable time to compliance assistance, a greater civil charge is considered appropriate following completion of an IFFP. The Code allows for up to \$1,000 per day per violation in a special order.⁴¹ The civil charge worksheet breaks down this amount into categories based on the potential for harm and aggravating factors. Using the civil charge worksheet to assess civil charges for violations improves consistency and fairness. Civil charges are integral to deterring future violations and creating a level playing field. The failure to cooperate represents a greater degree of culpability and thus, a greater civil charge amount for an IFFP than if the violations were resolved by consent. The length of time should also be updated to include the additional time it takes the agency to resolve the case.

Parties to an IFFP

The parties to an IFFP include a presiding officer, an agency advocate, the owner and any other waterworks representatives, and any witnesses who may be relied upon for testimony. The compliance specialist, other field office staff, the CEP division director, or the policy and program coordinator will serve as agency advocate. The agency advocate will present the case for ODW, which may include interviewing the field director, inspector, district engineer, or division staff, and will ultimately recommend a course of action to the presiding officer.

⁴¹ Va. Code § 32.1-175.01 (“Notwithstanding any other provision of law and to the extent consistent with federal requirements, following a proceeding as provided in § 2.2-4019, the Board may issue a special order that may include a civil penalty against an owner who violates this article or any order or regulation adopted thereto by the Board.”). *See also* Va. Code § 32.1-167 (defining “special order” to mean “an administrative order issued to any person to comply with: (i) the provisions of any law administered by the Board, (ii) any condition of a permit, (iii) any regulation of the Board, or (iv) any case decision...of the Board. A special order may include a civil penalty of not more than \$1,000 for each day of violation.”).

The presiding officer will conduct the proceeding and hear evidence and testimony for the agency and the opposing party. The presiding officer should be an unbiased third party with knowledge and experience about the Regulations.⁴² Generally, the presiding officer should be the policy and program coordinator (if neither the policy and program coordinator nor the CEP division director have served as an investigator, prosecutor, or advocate in the matter), or a field director or deputy field director from a different field office who, prior to the proceeding, has no prior knowledge or involvement related to the waterworks at issue in any way.

IFFP Procedure

The proceeding is conducted to ensure that the owner has a fair and adequate opportunity to present information about the alleged noncompliance before the agency makes a case decision. The proceeding may be conducted in the field office that administers the Regulations for the waterworks, in the central office, or in a mutually agreed upon neutral location.

The presiding officer and agency advocate should follow IFFP guidelines to maintain order and professionalism. (See Attachment 23.) The district engineer, inspector, and any other witnesses should be prepared to answer questions during the proceeding. The agency advocate may prepare the witnesses prior to the IFFP. The agency advocate should make clear to the presiding officer the relief that the agency advocate believes should be granted in a special order. This relief should, in most cases, follow the substantive relief that had been sought through a consent order.

Following the IFFP, the agency has 90 days from the date of the IFFP to issue a case decision.⁴³ This includes the time required for the agency advocate to prepare a recommendation and proposed special order for the presiding officer's consideration, the presiding officer to recommend a case decision to the Commissioner based on information presented at the IFFP, and the Commissioner to issue a decision and special order, as appropriate. The presiding officer's recommendation should include whether the waterworks is or is not in violation of the law and Regulations. (See Attachment 24.)

If the presiding officer finds that the waterworks is in violation of the Regulations, then the presiding officer should recommend a special order to the Commissioner compelling action by the waterworks to return the waterworks to compliance within a specified timeframe. (See

⁴² See Va. Code § 2.2-4024.1 regarding grounds for disqualification of a presiding officer.

⁴³ Va. Code § 2.2-4021.B ("In any informal fact-finding...proceeding,... the board, commission, or agency personnel responsible for rendering a decision shall render that decision within 90 days from the date of the informal fact-finding...proceeding, or from a later date agreed to by the named party and the agency. If the agency does not render a decision within 90 days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within 30 days from agency receipt of the notice, the decision shall be deemed to be in favor of the named party.").

Attachment 25.) The Commissioner will then approve, disapprove, or modify the recommended special order based on the presiding officer's recommendation within the remaining time.

The owner will have 30 days from the date they receive the decision to appeal the IFFP decision to a formal hearing under Va. Code § 2.2-4020 or to the circuit court with jurisdiction over the matter.⁴⁴ If the owner chooses not to appeal the decision, then the special order becomes effective 15 days after mailing a copy by certified mail to the last known address of the owner⁴⁵.

Recommendation

Because the Commissioner signs the special order but does not attend the proceeding, the presiding officer writes the recommendation to provide a summary of the participants, the presentation, and the outcome of the proceeding, and to recommend a case decision and recommended relief. The recommendation includes the following sections:

- Preliminary Statement: Describes the legal authority for IFFPs, the location of the hearing, the existence of proper notice and an opportunity to be heard for the owner, APA requirements, and who participated in the proceeding.
- Findings of Fact: Sets forth the jurisdiction and venue, factual observations as described in the IFFP notice, legal requirements, and information presented at the proceeding.
- Conclusions of Law: Combines the findings of fact with the legal requirements to conclude that the owner is or is not operating the waterworks in violation of the law and the Regulations.
- Recommended Relief: If the presiding officer concludes that the owner is operating the waterworks in violation of the law and the Regulations, then they should include recommended relief, which may include corrective action and penalties. The recommended relief is also reflected in a proposed special order that the presiding officer drafts for the Commissioner's consideration.

See the below section on special orders for more discussion of the presiding officer's recommendation to the Commissioner.

⁴⁴ Rule 2A:2 of the Rules of the Supreme Court of Virginia ("Any party appealing from a... case decision shall file with the agency secretary, within 30 days...after service of the final order in the case decision, a notice of appeal signed by the appealing party or that party's counsel."). Pursuant to Rule 2A:4(a), the appealing party must file a petition for appeal with the clerk of the applicable circuit court within 30 days of filing the notice of appeal.

⁴⁵ Va. Code § 32.1-26.

4.2.3. Special Orders

Special orders are unilateral and typically follow an IFFP. A special order is an administrative order issued on behalf of the Board to an owner, without the owner's consent, requiring that the owner perform a set of actions to return the waterworks to compliance. (See Attachment 25.)

Special orders are considered case decisions that are authorized by law and enforceable in court. Typically, the Commissioner issues special orders on behalf of the Board pursuant to the Commissioner's authority under Va. Code § 32.1-20 to act on behalf of the Board when the Board is not in session. As the Commissioner issues special orders unilaterally without the owner's consent, an IFFP must be held before rendering a case decision and to provide a clear record that the owner has received due process, including proper notice and the opportunity to be heard.⁴⁶

Like consent orders, special orders should establish an enforceable schedule that compels the owner to complete certain corrective actions as expeditiously as possible to return to compliance with the Regulations. Special orders may include a civil penalty. The civil penalty calculation should also reconsider the potential for harm to public health from extended noncompliance, delayed corrective actions, new violations, changes to aggravating factors, and updates to the economic benefit section. Any civil charge discounts offered during the negotiation phase of the consent order process are no longer applicable once enforcement has moved to the IFFP stage.

Following the IFFP, the presiding officer analyzes the facts presented during the IFFP and the relevant statutory and regulatory requirements imposed upon the waterworks. The presiding officer drafts a recommendation to the Commissioner about the appropriate case decision based on the IFFP, including any related special order that the presiding officer recommends that the Commissioner issue. Based upon the presiding officer's analysis, the presiding officer develops the findings of fact, conclusions of law, and recommended relief that are the basis for the presiding officer's recommendation and proposed special order that will be sent to the Commissioner for review. If necessary, the presiding officer may seek assistance from CEP staff with turning the presiding officer's findings of fact, conclusions of law, and recommended relief into a proposed special order. The presiding officer should use the Notice of IFFP as the starting point for the proposed special order's findings of fact and conclusions of law, with the presiding officer removing any factual allegations or legal conclusions that are not supported by the evidence presented at the IFFP and adding any necessary factual statements based on the evidence at the IFFP. The presiding officer's proposed special order to the Commissioner cannot include any conclusions of law that find violations of the Va. Code or the Regulations that were

⁴⁶ See Va. Code § 32.1-175.01 (requiring that an IFFP be held prior to the Board issuing a special order).

not alleged in the Notice of IFFP. The presiding officer should refer to the special order template to ensure that the appropriate terms and citations are used.

While drafting the recommendation and proposed special order, the presiding officer may seek assistance in the form of a review for technical accuracy by DTS or field office staff. Such a review may be especially beneficial if the presiding officer lacks relevant technical background in any material issues in the matter. The presiding officer may also seek legal advice from the OAG if needed. The CEP division director should review the presiding officer's draft recommendation and special order for program oversight and assistance.

The presiding officer is responsible for finalizing the recommendation and proposed special order before the CEP division director shares it with the OAG.

The OAG reviews and comments on the special order. Any feedback from the OAG is provided to the presiding officer to make any final edits to the recommendation and proposed special order. Upon the presiding officer finalizing the recommendation and proposed special order, the presiding officer signs the recommendation to the Commissioner and sends the signed recommendation and the unsigned proposed special order to the CEP division director. The CEP division director routes the presiding officer's recommendation and proposed special order to OCOM for the Commissioner's review and potential signature on behalf of the Board.

The special order, once signed by the Commissioner, becomes effective 15 days from the date that it is mailed to the owner by certified mail. The special order should notify the owner of how the special order's effective date is determined.

If the special order requires civil penalty payments, then a copy of the special order must be provided to the VDH financial management office.

Amending and Superseding Special Orders

Special orders may need to be amended to reflect changes in construction deadlines or superseded because of the owner's failure to comply in situations where another administrative order is the best strategy for timely and appropriate compliance.

Like consent orders, amending the special order modifies or supplements the existing order, but leaves the rest of the order intact. A superseding special order replaces the previous order in its entirety and terminates it. Whether to amend or supersede a special order depends on the extent of the required changes to the special order's terms. Amending a special order would be more appropriate for less extensive changes, such as a date change. Follow the guidance described in the section on amending and superseding consent orders for more information on selecting the appropriate option and locating helpful templates. If the owner does not consent to modification of a special order, a new IFFP must be convened to issue an amended or superseding special order.

Enforcing the Terms of Special Orders

Special orders are enforceable in the circuit court of appropriate jurisdiction. In situations where it is inappropriate to amend or supersede a special order (e.g., when there is substantial noncompliance), the case may be referred to the OAG for civil enforcement in the circuit court of appropriate jurisdiction.

Enforcement referrals to the OAG must be routed through the ODW office director and OCOM for approval. If the ODW office director and OCOM support the referral, then the CEP division director will send an email to the OAG with the case information, supporting documents, justification for the referral, as well as agency approval. The ODW office director and deputy office director should be copied on the email. The field director should also be kept apprised of the status of any further enforcement action. It is advisable for there to be a preliminary conversation with the OAG prior to making a recommendation to the Commissioner that enforcement of a consent order be pursued by the OAG in circuit court. (See Chapter 3.2.2 for more information on referrals to the OAG.)

Special orders are also enforceable through a criminal action pursuant to Va. Code § 32.1-27.A. If ODW wishes to pursue enforcement through a criminal action, the CEP division director should contact the relevant Commonwealth's Attorney's office to discuss the matter.

4.2.4. Formal Hearing

Formal hearings are appropriate in cases in which the owner and ODW have been unable to resolve the matter through an informal proceeding, or the owner has requested, and ODW agrees, to go directly to a formal hearing. An owner may request a formal hearing because they may wish to challenge a case decision resulting from an informal proceeding, for example, without seeking a court's review.⁴⁷

Formal hearings are typically conducted by an official known as a "hearing officer." The hearing officer is an attorney in good standing with the Virginia State Bar with specialized training in administrative proceedings and at least five years of active practice of law. The Secretary of the Supreme Court of Virginia maintains a list of hearing officers and, if an owner requests a formal hearing, the CEP division director will contact the Secretary to have a hearing officer assigned to the case. Once a hearing officer is identified for the case, they will contact the owner and the CEP division director to establish the time, place, and nature of the hearing, and to provide reasonable notice of these specifics to all parties. The hearing officer will also manage the pre-hearing exchange of information (including records and names of witnesses that may be called), establish the hearing procedures, manage the transcript and record of the case (including

⁴⁷ Formal hearings are addressed in Va. Code § 2.2-4020 and 12VAC5-590-115.A.2.

all evidence submitted and any pre- and post-hearing filings), and make a timely recommendation to the Commissioner that is communicated to all parties.

All parties will generally be required to have a pre-hearing conference with the hearing officer to identify issues and explain procedures. The hearing officer may also require all parties to the case to prepare pre-hearing statements (a.k.a. “briefs”) that may include stipulated facts, facts in dispute, a brief statement of applicable law, and other information to help with the proceeding. This is comparable to, but more formal than, the documentation for an IFFP. The CEP division director or the policy and program coordinator will prepare any required briefs with the help of the OAG⁴⁸. At the proceeding, the owner may be accompanied by and represented by counsel, submit oral evidence and documents, conduct cross-examination of witnesses, and offer rebuttal proof. ODW has the same rights and the CEP division director, or the policy and program coordinator, will usually represent ODW, with field office staff and others participating as witnesses. Generally, the hearing officer will not allow parties to engage in an open discussion about due process, permitting procedures, and other matters during the hearing. A court reporter is typically present and prepares a transcript of the hearing. Following the hearing, ODW and the owner may be required to file proposed findings of fact and conclusions of law that the hearing officer will consider in their recommendation to the Commissioner.

The Commissioner has 30 days following receipt of the hearing officer’s recommendation to render a decision. If the Commissioner fails to issue a decision within that period of time, then the owner may provide written notice to VDH that a decision is due. If no decision is made within 30 days of VDH’s receipt of the notice, then the decision is deemed to be in favor of the owner.⁴⁹

4.2.5. Appeal to Circuit Court

An owner may choose to appeal an agency case decision, whether following an IFFP or a formal hearing, to circuit court. The first step in actuating the right to appeal is for the owner to file a timely Notice of Appeal with the Commissioner.⁵⁰

The OAG will handle any appeal to court. The CEP division director shall notify the OAG upon the Commissioner’s receipt of a Notice of Appeal.

4.3. Collecting Civil Charges

For administrative orders that include a civil charge, the administrative order states that the civil charge payment is to be made payable to the “Treasurer of Virginia” and delivered to the

⁴⁸ Given that the OAG will handle any appeal of a case decision to court, it is advisable that the OAG be involved in the process of preparing for the formal hearing. Additionally, the CEP division director should ask that the OAG attend the formal hearing.

⁴⁹ Va. Code § 2.2-4021.C.

⁵⁰ See Rule 2A:2 of the Rules of Supreme Court of Virginia.

Virginia Department of Health, Office of Drinking Water at 109 Governor Street, 6th Floor in Richmond, Virginia 23219. The owner should indicate that the payment is being made in accordance with the requirements of the administrative order for deposit into the Virginia Water Supply Assistance Grant Fund.⁵¹

When a consent order is executed, or when a special order is issued and the time to appeal the decision has passed, the civil charge becomes an account receivable that VDH's financial management personnel will process. CEP will share a copy of the executed order with VDH's financial management personnel to initiate tracking procedures. The appropriate VDH financial management personnel should copy the CEP division director and the enforcement coordinator on correspondence requesting payment and keep them informed when the civil charge is paid. CEP will keep the relevant field director and compliance specialist informed as to any updates received regarding the status of payment of assessed civil penalties.

If the amount is not paid on time, VDH follows the Virginia Debt Collection Act.⁵² VDH's financial management office is responsible for administering debt collection procedures in accordance with the Act. If civil charges are not paid, administrative orders may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of the administrative order by the Commissioner or their designee.⁵³ CEP undertakes recording ODW administrative orders upon request.

See Attachment 26 for the civil charge payment process.

4.4. Monitoring Compliance with Administrative Orders

The compliance specialist is responsible for monitoring and tracking compliance with the terms of an administrative order. The compliance specialist shall enter an administrative order compliance schedule into SDWIS to track compliance with the requirements of the order (please refer to the ODW SDWIS Manual for more information). The compliance specialist should maintain an open dialogue with the owner or operator and ODW technical staff, notifying them of upcoming deadlines. The field office shall issue an NOAV for the failure to comply with a requirement listed in an administrative order unless ODW has agreed to extend a deadline or alter the schedule of compliance. An NOAV to an owner for failure to comply with the terms of an administrative order will identify that further enforcement action may be taken.

The compliance specialist, with input and oversight from the field director and/or deputy field director, should identify staff or stakeholders needed to develop and assist with the waterworks' path to return to compliance. Identifying stakeholders early allows field staff and divisions to operate from a single set of information. The compliance specialist will serve as the point of

⁵¹ See Va. Code § 32.1-176.

⁵² See Va. Code § 2.2-4800 *et seq.*

⁵³ Va. Code § 2.2-4023.

contact between ODW and the owner to ensure cohesive, clear, and effective oversight while the waterworks is under an enforcement action. The field office will provide technical and engineering expertise to the compliance specialist or owner as needed for the required corrective action under the applicable administrative order.

4.5. Closing Cases

ODW may close a case when the waterworks has complied with the administrative order, thereby resulting in the administrative order being terminated.⁵⁴ For compliance statuses that can change quickly (*e.g.*, monitoring/reporting violations), the compliance specialist should confirm that the waterworks has remained in compliance for a reasonable time (*e.g.*, consistently and reliably, or consistently over several monitoring periods).

The compliance specialist, with input and oversight by the field director and/or deputy field director, should inform the CEP division director and the enforcement coordinator in writing when the field office believes that an administrative order should be terminated. CEP staff will review the recommendation with the compliance specialist and the field director and/or deputy field director as needed. Depending upon the nature of the requirements of the administrative order, CEP staff may meet with the compliance specialist and/or the field director, and potentially with other field office staff, about the termination recommendation. If the CEP division director agrees that termination is appropriate, then CEP staff will draft a termination letter and appropriate routing slip for the Commissioner's review and signature.⁵⁵ (See Attachment 19.)

To close a case, the compliance specialist should document that the waterworks has complied with the terms of the administrative order and should enter the corresponding information into the SDWIS/State database.

Appendix

Attachments:

- EM-C4-Attachment 11 – Emerging Potential Serious Violator Warning Letter
- EM-C4-Attachment 12 – Potential Serious Violator Warning Letter
- EM-C4-Attachment 13 – Serious Violator Warning Letter
- EM-C4-Attachment 14 – Emerging Serious Violator Warning Letter
- EM-C4-Attachment 15 – Letter of Agreement
- EM-C4-Attachment 16 – Consent Order
- EM-C4-Attachment 17 – Consent Order Encl Letter
- EM-C4-Attachment 18 – Consent Order Exec Letter
- EM-C4-Attachment 19 – Consent Order Termination Letter

⁵⁴ An administrative order should be terminated pursuant to the terms set forth in the administrative order for its termination.

⁵⁵ If authority to terminate administrative orders has been delegated by the Commissioner to ODW staff, then the letter will be drafted for signature by the appropriate member of ODW staff.

EM-C4-Attachment 20 – Consent Order Amendment
EM-C4-Attachment 21 – Consent Order Superseding
EM-C4-Attachment 22 – IFFP Notice Letter
EM-C4-Attachment 23 – IFFP Agency Presentation Guidelines
EM-C4-Attachment 24 – IFFP Recommendation
EM-C4-Attachment 25 – IFFP Special Order
EM-C4-Attachment 26 – Civil Charge Payment Process

Chapter 5. Civil Charges and Civil Penalties

Summary

This civil charge guidance is used to establish appropriate penalties for noncompliance. This guidance applies to administrative actions for violations of the PWSL and Regulations. This guidance is intended to promote a consistent, statewide approach to civil charge calculations and, when effectively applied, result in the recovery of economic benefits from noncompliance, deter future noncompliance, and treat the regulated community fairly and equitably.

The Va. Code authorizes ODW to assess civil charges in administrative proceedings and for a court to award civil penalties in judicial proceedings, for violations of the PWSL and Regulations. An appropriate civil charge should accomplish three objectives. First, it should deter violations of the law by placing the violator in a less favorable position than those in the regulated community who have complied in a timely fashion. Second, it should treat the regulated community fairly and equitably. The penalty should be consistent with the penalty policy and promote a consistent and logical approach to the assessment of civil charges, while allowing for consideration of factors unique to each waterworks. Third, the civil charge should result in expeditious resolution of the identified problems. Such resolutions can be achieved through an incentive, such as mitigating the penalty for supplemental public health projects, or a disincentive, such as increasing the penalty figure for recalcitrant or willful noncompliance if settlement negotiations are drawn out.

The civil charge is calculated using factors based on the objectives above and applied quantitatively in this guidance. The calculation considers a gravity-based component and aggravating and mitigating factors, as follows:

- Potential or actual harm to public health and the regulatory program;
- Length of time the waterworks is out of compliance;
- Population size exposed to harm;
- History of noncompliance;
- Degree of culpability;
- Economic benefits realized by the owner resulting from noncompliance; and
- The owner's ability to pay.

This guidance sets out specific criteria and procedures that ODW may use to calculate civil charges in administrative proceedings, which include orders issued by consent (civil charge)⁵⁶ and special orders issued after an IFFP (civil penalty).⁵⁷ For simplicity, civil charges and civil

⁵⁶ Va. Code § 32.1-27.D.

⁵⁷ Va. Code §§ 32.1-167 (definition of "special order") and 32.1-175.01.

penalties will be referred to as civil charges hereafter, both referring to an administrative action. This guidance also may be used to estimate civil penalties in judicial proceedings.⁵⁸

The civil charge amounts calculated in accordance with this guidance represent the amount acceptable in settlement of administrative actions in the absence of other factors that serve to mitigate or exacerbate the situation. As new or better information is obtained during settlement negotiations, or if protracted negotiation unduly extends the expected duration of the violation, this “bottom line” civil charge amount should be adjusted consistent with various policy considerations set forth in this guidance and subject to concurrence from the ODW central office.

ODW may depart from the recommended calculations in this guidance to seek civil charges up to the maximum amounts authorized by law as the interests of equity, deterrence, and justice may require. While uncommon, such departures may be appropriate in significant instances of noncompliance such as:

- Where the violation and its potential threat or actual harm to public health and/or the drinking water supply are especially egregious or severe;
- Where the violation has resulted in a declared emergency by federal, state, or local officials;
- Where the violation has placed another person in imminent and substantial danger of death, serious bodily injury, or harm;
- Where the violation is contrary to the specific terms of an administrative order or judicial decree; and/or
- Where the violation is the result of a pattern or practice that demonstrates the willful avoidance of legal and/or regulatory requirements.

In those cases where ODW believes that the violation justifies seeking up to the maximum penalties authorized by law, staff must provide a reasoned analysis demonstrating how the facts of the violation warrant the civil charge recommended.

5.1. Scope of Authority

5.1.1. Statutory Basis

The PWSL authorizes the Board to adopt and enforce regulations that exercise supervision and control over, as defined in statute, all water supplies and waterworks in the Commonwealth to protect public health and welfare.⁵⁹ Pursuant to this law, the Board adopted the Regulations,

⁵⁸ Va. Code § 32.1-176.

⁵⁹ Va. Code §§ 32.1-12, 32.1-169, and 32.1-170.

which govern the design, maintenance, and operation of waterworks in Virginia, and implement the requirements of the SDWA and the NPDWR in order to maintain primacy.⁶⁰

The Board may seek enforcement of the PWSL and the Regulations through the issuance of orders⁶¹, and the Board or Commissioner may seek relief through a civil action⁶² or the filing of criminal charges⁶³.

The relevant sections of the Va. Code authorizing civil charges or penalties are as follows:

Va. Code § 32.1-27.D: “With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board or Commissioner or any provision of [Title 32.1 of the Va. Code], the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums, not to exceed” \$25,000 per violation. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Va. Code § 32.1-27.C.

Va. Code § 32.1-176: In addition to the civil penalty in Va. Code § 32.1-27.C, the PWSL provides that “any owner who violates any provisions of [the PWSL] or any order or regulation adopted pursuant thereto shall, upon such finding by a court of competent jurisdiction, be assessed a civil penalty of not more than \$5,000 for each day of such violation.”⁶⁴ An action for recovery of penalties pursuant to Va. Code § 32.1-176 is to be brought in a civil action by the Attorney General in the Commonwealth’s name.⁶⁵

Va. Code § 32.1-175.01: The Board, following an informal fact finding proceeding (Va. Code § 2.2-4019) may issue a special order “against an owner who violates [the PWSL] or any order or regulation adopted thereto by the Board.”⁶⁶ The “special order may include a civil penalty of not more than \$1,000 for each day of violation.”⁶⁷

⁶⁰ 42 U.S.C. § 300f *et seq.* Safe Drinking Water Act. 40 CFR Part 141. NPDWR.

⁶¹ Va. Code §§ 32.1-26 and 32.1-175.01.

⁶² Va. Code § 32.1-27.B and C (stating that an appropriate court may compel a person to obey a regulation or order, or any provision of Title 32.1 of the Va. Code, “by injunction, mandamus, or other appropriate remedy,” and that any person failing to obey the injunction, mandamus, or other remedy “shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for each violation,” with such payment being credited to the Water Supply Assistance Grant Fund).

⁶³ Va. Code § 32.1-27.A (stating that “[a]ny person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or Commissioner, or any provision of [Title 32.1] shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.”); Va. Code § 18.2-11 (stating that the punishment for conviction of a Class 1 misdemeanor is “confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.”).

⁶⁴ Va. Code § 32.1-176.

⁶⁵ Va. Code § 32.1-176.

⁶⁶ Va. Code § 32.1-175.01

⁶⁷ Va. Code § 32.1-167 (defining “special order” to include setting forth the \$1,000 civil penalty cap per day of violation).

5.1.2. Persuasive Authority

Title 32.1 of the Va. Code does not require the Board to develop guidelines and procedures that contain specific criteria for calculating an appropriate civil charge for violating or failing, neglecting, or refusing to obey any regulation or order of the Board. Without specific requirements applicable to the Board and VDH, ODW looked to other Va. Code sections to develop a basis for this guidance. Va. Code §§ 10.1-1316.D (Air), 10.1-1455.L (Waste), and 62.1-44.15(8e) (Water) contain specific criteria for calculating an appropriate civil charge for each violation.

Additionally, ODW reviewed the provisions set forth in the SDWA granting EPA authority to assess civil penalties and EPA's corresponding guidance.⁶⁸

Considering the factors set forth in other Va. Code sections, the SDWA, and federal policy, the civil charge calculation may be based on the following factors, as applied to ODW's mission to protect the public health by ensuring that people in Virginia have access to an adequate supply of clean and safe drinking water:

- The severity of the violation(s);
- The extent of any potential or actual harm to public health;
- The length of time the service population was exposed to risk;
- The degree of culpability of the owner or operator;
- The compliance history of the facility or person;
- Any economic benefit realized by the owner from the noncompliance; and
- The ability of the owner to pay the charge.

These factors are listed in the civil charge worksheet (Attachment 27) to break down the statutory maximum into amounts per violation. Unless a violation results in significant harm warranting a departure from this guidance, ODW uses the civil charge worksheet to calculate a civil charge (or penalty). In calculating the amount for a civil charge, ODW first identifies the appropriate "Potential for Harm" classification and then works through the various statutory categories on the civil charge worksheet to calculate a total civil charge.

Civil charges are generally more appropriate when one or more of the following criteria are met:

- Failure to adequately respond to compliance assistance efforts;
- Violation of a consent order or special order without mitigating circumstances;
- Violations that are avoidable or due to negligence;
- Violations fundamental to ODW's oversight of the drinking water regulatory program;

⁶⁸ 42 U.S.C. §§ 300g-3(b) and (g)(3); 300i(b); 300i-1(c); and 300j-4(c).

- Noncompliance that is continuing, or likely to continue or reoccur, absent a civil charge or penalty to serve as a deterrent;
- Knowing or willful violations; or
- Violations that result in actual harm to human health or a threat of harm to human health.

5.2. Potential for Harm Component

Using best professional judgement, ODW staff place violations into one of three “Potential for Harm” categories: serious, moderate, or marginal. These categories are listed near the top of the civil charge worksheet. ODW classifies violations as serious, moderate, or marginal, based on, in part, (1) the severity of the violation, and (2) the extent of any potential or actual harm.

- **Severity of the violation:** This consideration examines whether the violation(s) or pattern of violations at issue are fundamental to the integrity of the regulatory program and ODW’s ability to monitor and protect human health.
- **Potential or actual harm:** Evaluating harm considers the potential and actual harm that the violation has on human health.

For each violation, staff should provide a reasoned analysis in the discussion table for why a potential for harm classification was selected by documenting how the integrity of the regulatory program was affected and/or documenting the actual or potential harm to human health.

5.2.1. Serious Classification

A violation is considered “serious” if the severity of the violation presents actual harm or a substantial risk of harm to the integrity of the regulatory program or has or may have a substantial adverse effect on human health.

- Violations that may be classified as “serious” include those that require public notice and reporting within 24 to 48 hours, including, but not limited to, E. coli in the distribution system, violation of the primary maximum contaminant level for E. coli or nitrate/nitrite, and the occurrence of a waterborne disease outbreak.

5.2.2. Moderate Classification

A violation is classified as “moderate” if the severity of the violation presents some risk of actual harm to the integrity of the regulatory program, or the violation has or may have some adverse effect on human health.

- Violations that may be classified as “moderate” include all other violations of the primary maximum contaminant level and treatment technique requirements (except where Tier 1 public notice is required), failure to comply with the terms of a variance, and failure to maintain at least four-log treatment of viruses before or at the first consumer.

5.2.3. Marginal Classification

A violation is classified as “marginal” if the severity of the violation presents little or no risk of actual harm to the integrity of the regulatory program or has or may have little to no adverse effect on human health.

5.3. Aggravating Factors

Aggravating factors may be applied to the gravity-based subtotal and include the waterworks type, the owner’s compliance history, the degree of culpability, and the length of time that the waterworks has been out of compliance.

5.3.1. Waterworks Type

The civil charge worksheet considers the type and size of the waterworks in applying a “risk factor” that may increase or decrease the civil charge.

The more regularly the waterworks serves its customers, the greater the risk of harm to the public and thus the greater the risk factor. For transient noncommunity waterworks, a factor of 0.5 is applied. For nontransient noncommunity waterworks, a factor of 1 is applied. For community waterworks, the factor increases from 1 to 5 depending on the size of the residential population. The risk factor also reflects whether the waterworks serves a vulnerable population, such as children or elderly.

5.3.2. Compliance History

ODW evaluates the owner’s compliance history to determine if an increase in the civil charge is warranted. This factor is not used to reduce a civil charge when an owner has a history of compliance. When an owner previously violated a drinking water requirement or operational standard at the same or a different waterworks, this may be viewed as evidence that ODW’s prior enforcement response was not effective at deterring noncompliance.

In adjusting the calculation for compliance history, ODW may consider:

- NOAVs, warning letters, or similar correspondence.
- Consent orders, special orders, judicial orders, or federal consent decrees at the same waterworks that became effective within 36 months preceding the initial violation (50% of the current gravity-based civil charge). If there has been more than one enforcement action at the same waterworks within the 36-month period, then ODW may consider whether it is appropriate to depart from the worksheet, as described in the summary section above.
- Consent orders, special orders, judicial orders, or federal consent decrees at any other commonly owned waterworks that became effective in the 36 months preceding the initial violation (5% of the current gravity-based civil charge or \$500, whichever is less).

The evidence to establish the culpability calculation cannot be identical to the evidence used to support an adjustment to the civil charge based on compliance history. For example, an owner’s

compliance history may be considered for an administrative order within the past 36 months, whereas the culpability explanation may state that the owner knew or should have known of the regulatory requirements and could have prevented the violation from occurring. If the evidence is identical (e.g., high culpability is based on a prior order and the compliance history factor is adjusted for a prior order), an adjustment is made for the compliance history rather than the culpability.

5.3.3. Degree of Culpability

ODW assesses the owner's culpability based on the facts and circumstances of the case. ODW may add a multiplying factor to the civil charge amounts for one, some, or all violations, depending on the assessment. The owner's culpability may be rated as low (0%), moderate (50%), or serious (100%) based on one or more of the factors listed below. Culpability may not increase the civil charge in all cases. A violation without further evidence of culpability would receive a low rating. As discussed above, evidence used to establish culpability cannot be identical to that used to adjust compliance history. In determining the degree of culpability, one or more of the following should be considered:

- The degree to which the owner or operator knew or should have known that a legal requirement was violated;
- The degree of control the owner or operator had over the events constituting the violation;
- The foreseeability of the events constituting the violation;
- Whether the owner or operator knew or should have known of the hazards associated with the conduct;
- Whether the owner or operator took reasonable precautions against the events constituting the violation;
- Whether there is evidence of unjustified delay in preventing, mitigating, or remedying the violation;
- Whether the owner failed to comply with a consent order, special order, judicial order, or federal consent decree;
- Whether ODW has issued NOAVs to the owner within the 36 months preceding the initial violation that is the subject of the current enforcement action (do not consider notices that were rescinded);
- Commonality of ownership, management, and personnel with other waterworks that have been the subject of enforcement actions; and
- The level of sophistication within the industry in dealing with the type of compliance issues that are the subject of the violation.

Lacking knowledge of a legal requirement is not a basis for reducing the civil charge.

5.3.4. Length of Time

The longer a violation continues uncorrected, the greater the potential for harm to human health. The timespan (expressed in days) used to calculate the civil charge begins either on the day the violation began or the date the violation notice was issued, whichever ODW's records support. The number of days is multiplied by \$1 per day of violation.

For a consent order, the calculation of the number of days should end upon the date the proposed consent order is sent to the owner. The owner subsequently engaging in protracted negotiations over the proposed consent order's terms or the owner simply failing to timely sign the proposed consent order, while a violation remains uncorrected, is grounds for ODW withdrawing the proposed consent order.

ODW should notify the owner in writing of any deadline to accept the proposed consent order. ODW's notification to the owner should state whether the owner's failure to sign the consent order by the deadline will result in: (1) ODW withdrawing the original proposed consent order and issuing a new proposed consent order with an updated civil penalty to account for additional days of noncompliance, or (2) ODW withdrawing the proposed consent order and issuing a Notice of IFFP. CEP and the field office should confer regarding the best strategy in a particular circumstance.

With respect to a special order, the calculation of the number of days for purposes of the civil penalty should end upon the date of compliance or, if compliance has not occurred, the date of the IFFP.

5.4. Economic Benefit

Owners may benefit economically from failing to comply with the PWSL and/or Regulations. An owner may delay or completely avoid expenditures during the period of noncompliance or generate profit from a competitive advantage gained through noncompliance. Each enforcement action is considered on a case-by-case basis using best professional judgement when initially determining that an economic benefit exists.

Avoided costs typically include operation and maintenance costs, or other annually recurring costs. Examples include:

- Sampling and analysis (including laboratory fees, cost of mailing samples, and cost of operator's time to take the samples);
- Operation and maintenance expenses and other annual expenses; and
- Failure to employ an operator that meets the licensure requirements.

Delayed costs typically include capital investments in the waterworks or one-time expenditures required to comply with the PWSL and Regulations. Examples include:

- Public notifications, including printing and mailing;

- Capital equipment improvements or repairs (including engineering design, purchase, installation, and replacement);
- Failure to acquire, install, and operate required monitoring or treatment equipment; and
- Development and implementation of a source water program.

The method of calculating the economic benefit from delayed and avoided expenditures is using the EPA's BEN model. Please use the BEN User's Manual for specific information on the BEN model.⁶⁹

An owner may also enjoy an increase in profits from a failure to comply with the PWSL and/or the Regulations. For instance, an owner of a store that includes a water system that qualifies as a waterworks could open the store and begin using the water supply system prior to ODW issuing a permit. In such a case, the civil charge should acknowledge the economic benefit gained by the owner in generating business at the store prior to ODW issuing an operation permit. While the amount of profit made by the owner during the period of unpermitted operation may be difficult, or even impossible, to calculate, a daily charge that considers the size of the store and the type of business is appropriate. A small store that sells inexpensive goods would likely warrant a smaller daily profit charge than a large store selling more profitable goods.

5.5. Ability to Pay

ODW may reduce the civil charge assessment if the owner demonstrates it is beyond their means to pay. It is important that the regulated community not perceive violations of drinking water requirements and operational standards as a cost-saving tool. When appropriate, ODW will seek civil charges when an owner has failed to allocate compliance costs in the waterworks' business operation plan. It is unlikely that ODW will reduce a civil charge when the owner refuses to correct conditions or practices that led to the violation, has a history of noncompliance, or the violations are particularly egregious.

If an owner wants to assert that they are unable to pay a civil charge, the owner must provide sufficient documentation of their inability to pay before an administrative order has been executed. ODW will not reduce or abate a civil charge after a case decision has been issued based on a claim of inability to pay. The burden to demonstrate an inability to pay rests on the owner.

To evaluate an owner's ability to pay, the owner must provide sufficient information to make the determination. ODW may use the business operation plan or EPA's ABEL, INDIPAY, or

⁶⁹ EPA's BEN model (2023.0.0) calculates a violator's economic benefit of noncompliance from delaying or avoiding pollution control expenditures. More information is available at <https://www.epa.gov/enforcement/penalty-and-financial-models>.

MUNIPAY computer models to determine an inability to pay.⁷⁰ Failure of the owner to provide sufficient information to complete the business plan or run the models will result in a determination that the owner has the ability to pay the civil charge.

If ODW determines that the owner is unable to pay a civil charge or would be prevented from carrying out essential corrective actions by doing so, ODW may consider an installment payment plan, delayed payment schedule, or a reduced civil charge (excluding economic benefit and/or competitive advantage).

Regardless of ODW's determination of an appropriate civil charge to pursue based on ability to pay considerations, the owner is responsible for complying with the applicable law, regulations, orders, permit conditions, and any corrective action. The compliance specialist should discuss with the CEP division director and the enforcement coordinator any proposed reductions in the civil charge beyond 30%. In rare circumstances, a greater than 30% reduction in the civil charge may be appropriate based on the costs of litigation and the best interest of the customers.

5.6. Adjustments in the Civil Charge

ODW may adjust the civil charge – excluding the economic benefit calculation – downward by up to 30% based on cooperativeness and quick settlement, prompt responses and good faith effort to comply, and the size and sophistication of the waterworks.

5.6.1. Cooperativeness and Quick Settlement

ODW may adjust the civil charge when a waterworks is cooperative and agrees to resolve violations in a consent order in a timely and appropriate manner and makes a good faith effort to settle outstanding issues quickly.

5.6.2. Prompt Responses and Good Faith Effort to Comply

ODW may adjust the civil charge when the waterworks takes prompt corrective action and cooperates with reporting noncompliance and investigating issues.

5.6.3. Size and Sophistication of the Waterworks

ODW may adjust the civil charge when considering the size and sophistication of the waterworks. Small businesses, non-profits, and municipalities may not have the same resources and capabilities as other waterworks.

⁷⁰ EPA's penalty and financial models are used to analyze the financial aspects of enforcement actions. More information is available at <https://www.epa.gov/enforcement/penalty-and-financial-models>.

Appendix

Attachments:

EM-C5-Attachment 27 – Civil Charge Worksheet

Chapter 6. Enforcement Training and Performance Management

Staff training and performance management are critical components of the growth and success of the enforcement program. CEP holds annual trainings for the compliance specialists and for ODW staff. In addition to annual trainings, the CEP division director and the enforcement coordinator meet with compliance specialists monthly to address issues affecting the enforcement program and changes to policies and procedures.

To measure the success of the enforcement program, the CEP division director and the enforcement coordinator work with staff in ODW Data Management to develop, track, and monitor enforcement data that the compliance specialists enter into the SDWIS/State database. Due to the length of time it takes to identify, process, and execute an enforcement action, enforcement metrics are presented on a quarterly basis.

The CEP division director and the enforcement coordinator should work with ODW Data Management in identifying needed metrics, including developing new metrics that account for the universe of data that is available and areas of compliance and enforcement emphasis for ODW.

Appendix with Attachments

EM-C1-Attachment 1 – EPA Enforcement Response Policy
EM-C1-Attachment 2 – Enforcement Process Flow Snapshot
EM-C1-Attachment 3 – Enforcement Process Flow Referral
EM-C1-Attachment 4 – Enforcement Process Flow with Consent
EM-C1-Attachment 5 – Enforcement Process Flow without Consent
EM-C1-Attachment 6 – Enforcement Process Flow Other
EM-C1-Attachment 7 – Program and Agency Resources
EM-C2-Attachment 8 – NOAV Process in Field Office
EM-C2-Attachment 9 – Noncompliance Team Concept
EM-C2-Attachment 10 – RTC Table
EM-C4-Attachment 11 – Emerging Potential Serious Violator Warning
EM-C4-Attachment 12 – Potential Serious Violator Warning Letter
EM-C4-Attachment 13 – Serious Violator Warning Letter
EM-C4-Attachment 14 – Emerging Serious Violator Warning Letter
EM-C4-Attachment 15 – Letter of Agreement
EM-C4-Attachment 16 – Consent Order
EM-C4-Attachment 17 – Consent Order Encl Letter
EM-C4-Attachment 18 – Consent Order Exec Letter
EM-C4-Attachment 19 – Consent Order Termination Letter
EM-C4-Attachment 20 – Consent Order Amendment
EM-C4-Attachment 21 – Consent Order Superseding
EM-C4-Attachment 22 – IFFP Notice Letter
EM-C4-Attachment 23 – IFFP Agency Presentation Guidelines
EM-C4-Attachment 24 – IFFP Recommendation
EM-C4-Attachment 25 – IFFP Special Order
EM-C4-Attachment 26 – Civil Charge Payment Process
EM-C5-Attachment 27 – Civil Charge Worksheet



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 8 2009

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Drinking Water Enforcement Response Policy

FROM: Cynthia Giles
Assistant Administrator *Cynthia Giles*

TO: Regional Administrators

Attached is a new enforcement approach designed to help our nation's public water systems comply with the requirements of the Safe Drinking Water Act. This new approach replaces the existing contaminant by contaminant compliance strategy with one that focuses enforcement attention on the drinking water systems with the most serious or repeated violations. The new strategy will bring the systems with the most significant violations to the top of the list for enforcement action in states, territories and in federal Indian Country, so that we can return those systems to compliance as quickly as possible. As we work to protect the public's access to clean and safe drinking water, we need to be especially vigilant about noncompliance that has the potential to affect children, such as violations at schools and day care centers.

This policy was developed through the intensive cooperation of the Association of State Drinking Water Administrators, all EPA Regions, the Office of Water and Office of Enforcement and Compliance Assurance, and reflects our shared commitment to clean and safe drinking water. This new approach will be implemented starting in January of 2010, and will be evaluated during the coming year to see if improvements are necessary to best protect public health.

Thank you for the work your staff does, working closely with the states, to achieve the goals of the Safe Drinking Water Act. We expect that this new enforcement approach will help us do an even better job of increasing compliance with this important law.

If you have any questions, please contact me, or have your staff contact Mark Pollins at (202-564-4001) or Karin Koslow at (202)564-0171.

cc:
Peter Silva
Cynthia Dougherty
Adam Kushner

Lisa Lund
Regional Enforcement Directors
Regional Water Division Directors
Regional Counsel, Regions II - VII, IX, X
Regional Legal Enforcement Managers, Regions I, VIII



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 8th 2009

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Proposed Revision to Enforcement Response Policy
for the Public Water System Supervision (PWSS)
Program under the Safe Drinking Water Act and
Implementation of the Enforcement Targeting Tool

FROM: Mark Pollins, Director
Water Enforcement Division *Mj*
Office of Civil Enforcement

fan Karin Koslow, Acting Director *R. Jarrell*
Compliance Assistance and Sector Programs Division
Office of Compliance

TO: Office of Regional Counsel, Regions 1-10
Drinking Water Program Managers, Regions 1-10
Drinking Water Enforcement Managers, Regions 1-10
Association of State Drinking Water Administrators

Introduction

EPA is proposing a new approach for enforcement targeting under the Safe Drinking Water Act (SDWA) for Public Water Systems. The new approach is designed to identify public water systems with violations that rise to a level of significant noncompliance by focusing on those systems with health-based violations and those that show a history of violations across multiple rules. This system-based methodology is intended to ensure consistency and the integrity of the PWSS national enforcement program. The new approach includes a revised Enforcement Response Policy (ERP) and new Enforcement Targeting Tool (ETT).

The Enforcement Response Policy and Enforcement Targeting Tool re-emphasize a focus on "return to compliance" (RTC) rather than simply "addressing" a violation. The policy is intended to increase our

effectiveness in the protection of public health. Together the ERP and ETT will prioritize and direct enforcement response to systems with the most systemic noncompliance by considering all violations incurred by a system in a comprehensive way. The policy and tool identify priority systems for enforcement response, provide a model to escalate responses to violations; define timely and appropriate actions; and clarify what constitutes a formal action.

In general, the goal of the revised ERP and new ETT is to allow States and EPA to:

- Align public water system violations of the Safe Drinking Water Act within a prioritization that is more protective of public health;
- View public water system compliance status comprehensively;
- Ensure that both EPA and the States act on and resolve drinking water violations;
- Recognize the validity of informal enforcement response efforts while ensuring that, if these efforts have proven ineffective, enforceable and timely action is taken;
- Ensure that EPA and the States escalate enforcement efforts based on the prioritization approach;
- Increase the effectiveness of state and federal enforcement targeting efforts by providing a “tool” that calculates comprehensive noncompliance status for all systems and identifies those systems not meeting national expectations as set by EPA. It also provides an additional resource for identifying systems possibly in need of other State/EPA assistance in the areas of Capacity Development and Sustainability.

The final revised Enforcement Response Policy will supersede the following existing guidance by revising the definition of “timely” and “appropriate” enforcement response: *“Change in the PWSS Program’s Definition of Timely and Appropriate Actions”* WSG 56 (Water Supply Guidance), April 20, 1990 and *“Revised Definition of Significant Non-complier (SNC) and the Model for Escalating Responses to Violations for the PWSS Program”* WSG 57 (Water Supply Guidance), May 22, 1990.

Identification of Priority Systems for Enforcement Using the Enforcement Targeting Tool

This system-based approach uses a tool that enables the prioritization of public water systems by assigning each violation a “weight” or number of points based on the assigned threat to public health. For example, a violation of a microbial rule maximum contaminant level will carry more weight than that of a Consumer Confidence Report reporting violation. Points for each violation at a water system are summed to provide a total score for that water system. Water systems whose scores exceed a certain threshold will be considered a priority system for enforcement. Based on this approach, States and EPA will be able to target resources to address those public water systems which EPA determines have the most significant problems.

Currently it is difficult to identify a systematic pattern of violations for a PWS because the focus of the current approach has been to assign “significant non-compliance” (SNC) status based on failure to comply with individual drinking water rules. Under the existing system, all SNCs are treated equally, without regard to the gravity of the violation and without considering other violations a system may have that are not identified as SNC. The new approach will look at PWS noncompliance comprehensively across all rules without using the rule-based SNC definitions and will ultimately replace the current rule-based SNC definitions to identify systems that are a high priority for an enforcement response.

Enforcement Targeting Formula

The enforcement targeting formula is the basis for the enforcement targeting tool that identifies public water systems having the highest total noncompliance across all rules, within a designated period of time. A higher weight is placed on health-based violations (including Treatment Technique and Maximum Contaminant Level violations). The formula calculates a score for each water system based on open ended violations and violations that have occurred over the past 5 years, but does not include violations that have returned to compliance or are on the “path to compliance” through a specified enforceable action. The “path to compliance” is the status of a public water system that has been placed under an enforceable action to return it to compliance. These enforceable actions have different names in different states but the characteristic they all share is that an enforceable consequence results if the schedule is not met. The formula only considers violations for Federally-regulated contaminants.

As part of any State or Federal program, it is expected that enforceable actions will be adequately tracked to make certain compliance is ultimately achieved.

The formula provides a rank-order of all public water systems based on the total points assigned for each violation and the length of time since the first unaddressed violation. The factors of the formula are:

- The severity of the violation—which is based on a modification of Public Notification Tiers, as set forth in Title 40 of the Code of Federal Regulations at Part 141, Subpart Q, “Public Notification of Drinking Water Violations,” Section 141.201. The severity or weight of the violation is highest for acute contaminant health based violations, with a lower weight for chronic and other health based violations (and nitrate monitoring and total coliform repeat monitoring violations), and with the lowest weighting for other monitoring, reporting, and other violations.
- The number of years that a system’s violations have been unaddressed

For each public water system (PWS), a point score of non-compliance is calculated using this formula:

$$\text{Sum } (S_1 + S_2 + S_3 + \dots) + n$$

The total points for each violation are added together, and a time factor is added to achieve the total score for the public water system, where:

S = violation severity factor

- 10** For each acute health-based violation
- 5** For each other health-based violation and Total Coliform Rule (TCR) repeat monitoring violation
For each Nitrate monitoring and reporting violation
- 1** For each other monitoring and reporting, or any other violation

n = number of years that the system's oldest violations have been unaddressed (0 to 5)

Examples of Priority Systems for Enforcement

During the trial period, any public water system with a score resulting from the application of the enforcement targeting formula which is greater than or equal to 11 points will be considered a priority system for an enforcement response under this policy. Public water systems whose violations score at this level have at least one recent acute health-based violation, or at least two recent other non-acute health-based violations, or eleven other recent non-health-based violations. The following table illustrates examples of how a public water system may exceed the 11-point threshold:

Violations (S)	Years since first unaddressed violation (n)	Score (ΣS)+n	
2 acute turbidity exceedances	0 (occurred in current year)	$(10+10)+0$	=20
2 non-acute TCR MCL violations	1 (1 in previous year)	$(5+5) +1$	=11
11 monthly TCR monitoring violations	0 (all in current year)	$(1+1+1+1+1+1+1+1+1+1+1) +0$	=11
6 quarterly TCR monitoring violations, 1 annual nitrate monitoring violation	1 (first violations occurred in previous year)	$((1+1+1+1+1+1)+5) + 1$	=12
Failure to monitor annual VOC, SOC, IOC, Stage 1 DBP and 2 TCR MCL	2 (chemical violations occurred 2 years ago)	$((1+1+1+1)+5+5) + 2$	=16

Violations of tier 1 public notification requirements are significant because they reflect the failure to provide critical and real-time information to the public regarding drinking water. Although these violations are assigned a "1" under the policy, they would, by definition, be accompanied by an underlying violation of the health-based standard and would receive a score of at least 11.

Model for Escalating Responses to Violations

The existing model for escalating responses to violations sets forth EPA's expectation for EPA and the States' responses to a violation. The following concepts continue to be part of this new Enforcement Response Policy:

The primacy agency should respond to each violation of the national primary drinking water regulations.

Responses to violations should escalate in formality as the violation continues or recurs.

Some violations are very serious and pose an immediate risk to public health. In these circumstances, it is appropriate to proceed directly to a formal action, such as an emergency administrative order, an injunction or a temporary restraining order (TRO), or an emergency civil referral.

States have primary enforcement responsibility, and EPA retains independent enforcement authority under the Safe Drinking Water Act. In cases where the EPA Region is directly implementing the program "State" should be read to include the EPA Regional office. In addition, these guidelines should not be interpreted to preclude federal action at any point in the process if the situation warrants it.

Historically, the majority of enforcement actions taken for violations at public water systems are administrative in nature and these actions continue to be an important tool. Judicial cases also are an important enforcement tool and the use of judicial authority is encouraged.

EPA recognizes that States carry out both formal and informal enforcement and compliance assistance activities. These activities are effective tools for achieving compliance. Nevertheless, systems specifically identified by the targeting tool as priorities must be returned to compliance (RTC) or EPA will expect formal, enforceable mechanisms to return such systems to compliance. States will be expected to escalate their response to ensure that return to compliance is accomplished. Systems that are unable to sustain compliance should receive additional scrutiny.

Timely and Appropriate Response

Once a PWS is identified as an enforcement priority on the targeted list, an appropriate formal action or return to compliance will be required within two calendar quarters to be considered “timely.” However, regardless of a public water system’s position on a State’s enforcement target list, EPA expects that States will act immediately on acute, health-based violations and subsequently confirm that systems with such violations return to compliance.

Formal enforcement response includes: administrative orders with and without penalty, civil/criminal referral, and civil/criminal case filed. (See Table A, below, for a complete list.) Nevertheless, it should be noted that EPA has broad prosecutorial discretion to discuss specific timetables and mechanisms to return a system to compliance. For example, if a system can show that RTC is imminent but for reasons such as installation of new treatment or construction or other reason, RTC may take just over two quarters, EPA may not require a formal action by the State to give the system the opportunity to RTC. This discretion allows for some flexibility for systems that simply need a little more time but whose return to compliance is imminent. It is not, however, something that can be extended indefinitely as a way to avoid formal action.

The return to compliance or enforcement action needs to be achieved within two quarters of a system appearing as a priority system for enforcement and recorded such that it is reflected in the next update of the national database. For example, if a system is identified in January as an enforcement priority, the state would have until June to RTC the system’s violations or take a formal enforcement action. The return to compliance or enforcement action should be reported to EPA so that it is reflected in the Federal database in October.

Formal Enforcement

EPA has defined what constitutes a “formal” enforcement response in Water Supply Guidance 27 (WSG 27), *“Guidance for FY 1987 PWSS Enforcement Agreements”*. That guidance states: “According to the Agency’s policy framework, a formal action is defined as one which requires specific actions necessary for the violator to return to compliance, is based on a specific violation, and is independently enforceable without having to prove the original violation”. The definition of “formal” enforcement response in WSG 27 will be adopted by this Policy. A formal enforcement action has the

intent and effect of bringing a non-compliant system back into compliance by a certain time with an enforceable consequence if the schedule is not met. This may be accomplished through a variety of mechanisms, depending on a State's legal authorities. The enforcement mechanism selected by the State must (1) contain a description of the non-compliant violation, a citation to the applicable State, or federal law or rule, a statement of what is required to return to compliance, and a compliance schedule; and (2) provide the State with authority to impose penalties for violation of the State's enforcement document.

Trial and Implementation of the Enforcement Response Policy and Targeting Tool

During the trial period, EPA will generate a national scored list using the enforcement targeting tool and formula described above. This list will include only systems with violations that have not been returned to compliance nor are on the path to compliance. Systems on the list with a score of 11 points or more will be considered as priority systems for enforcement response. This list will also indicate those systems that scored 11 points or higher on a previous list for tracking systems on the path to compliance and to help ensure return to compliance is achieved. EPA and the States will discuss the priority water systems on the list each quarter and determine additional steps that may be needed to achieve RTC.

As discussed above, a State may use initial compliance assistance to resolve the violations, as long as the return to compliance (RTC) takes place within two quarters of the system appearing as a priority for enforcement response. If RTC is not likely during those two quarters, escalation of the response is expected via an enforceable action within the "timely" period to compel the system to RTC in the shortest time possible. In many cases, this response will be in the form of an administrative order with or without penalties or other enforceable mechanism. States will enter the appropriate code in the SDWIS data base to reflect the State formal action or that compliance has been achieved.

Once a system's violations are on the path to compliance (i.e. incorporated into a formal enforcement action) or returned to compliance, the system drops off the targeting list and is no longer a priority for enforcement response. Those systems on the path to compliance will continue to be tracked by States and EPA until return to compliance is achieved with appropriate escalated enforcement response, as necessary.

Return to compliance is the ultimate goal and the State and Federal data systems should reflect all final return to compliance codes.

Defining the Status of Systems on the "Targeting List"

Until a State has returned a system's violations to compliance, the violations have not been completely resolved. The following categories are the general categories that States and EPA can use when discussing whether a system's violations are being adequately addressed. The focus under the new Enforcement Response Policy is to have a public water system return to compliance in the shortest time possible.

No Action/Unaddressed- Violation reported by State, with either no action taken to return the public water system to compliance, or where the initial informal action(s) or compliance assistance have not been successful to return to compliance. Further action will be needed.

Returned to Compliance- The public water system has completed monitoring, reporting or implementation of treatment or other activities to be in compliance with the regulations. All forms of compliance assistance and informal or formal enforcement actions are appropriate means to return to compliance. The appropriate return to compliance code shall be entered into SDWIS.

Unresolved but on the Path to Compliance: This category includes systems that have an EPA or State enforceable compliance order or schedule in place to resolve violations. In these cases, formal enforcement is expected to be successful toward implementing a schedule for sampling, treatment or construction, and therefore no further enforcement is required. The State and/or EPA will continue to monitor compliance with schedules and other requirements of the order.

Unresolved: Systems with continuing, ongoing violations that have had compliance assistance, informal and/or formal enforcement response without a return to compliance. This category is for those systems with a chronic failure to return to compliance.

Additional Factors to Consider in the Evaluation of the Targeting Formula: *Population and System-Type Factors*

The joint EPA-ASDWA workgroup recommended initiating the policy using the formula previously described. However, there was significant discussion over whether population and system type factors should be included in the formula. Concern was generally expressed that an emphasis on large population systems might skew the relative ranking of systems toward those servicing large population centers. Care must be given, however, to make certain small systems receive attention, particularly since those systems often serve vulnerable populations and have the most difficulty maintaining compliance. During the trial period evaluation, EPA requests that States consider whether including population and system-type factors, or other variables, should be incorporated into the targeting formula. The details of this analysis may be found in the Appendix to this Memorandum.

Safe Drinking Water Information System (SDWIS) Enforcement Codes and Descriptions

The following table evaluates the existing enforcement codes available for use in SDWIS and categorizes them into formal and informal categories.

FORMAL According to the Agency's Policy Framework, a formal action is defined as:

- One which requires specific actions necessary for the violator to return to compliance,
- Is based on a specific violation, and
- Is independently enforceable without having to prove the original violation.

A formal enforcement action has the intent and effect of bringing a non-compliant system back into compliance by a certain time with an enforceable consequence if the schedule is not met. This may be accomplished through a variety of mechanisms, depending on a State's legal authorities.

To be formal, the enforcement mechanism selected by the State must:

1. Contain a description of the non-compliant violation, a citation to the applicable State, or federal law or rule, a statement of what is required to return to compliance, and a compliance schedule; and
2. Provide the State with authority to impose penalties for violation of the State's enforcement document.

Current SDWIS Code	Description
SFL or EFL	St or Fed AO (w/o penalty) issued
SFO	St AO (w/penalty) issued
<i>None - closest is SFK or EFK</i>	<i>St or Fed BCA signed (if meets "Formal" definition)</i>
SF& or EF&	St or Fed Crim Case referred to AG
SF9 or EF9	St or Fed Civil Case referred to AG or Fed case referred to DOJ
SFQ or EFQ	St or Fed Civil Case filed
SFV or EFV	St or Fed Crim Case filed
EF/	Fed 1431 (Emergency) Order
<i>SF% or EF%</i>	<i>St or Fed Civil Case concluded</i>
<i>SFR or EFR</i>	<i>St or Fed Consent Decree/Judgment</i>
<i>SFW or EFW</i>	<i>St or Fed Criminal Case concluded</i>
<i>SFM</i>	<i>St Admin Penalty assessed</i> NOTE: EPA recognizes the use of administrative penalty actions as a valid tool to move a system toward compliance even though the penalty action may not include a compliance schedule per EPA's definition of "formal action".

EF-	<i>Fed Complaint for Penalty Consent Agreement/Final Order with penalty</i>
EF=	<i>Fed Complaint for Penalty Default Judgment</i>
EF<	<i>Fed Complaint for Penalty issued</i>
Once a system reaches the level of a priority system for enforcement, the actions above will put the system on the path to compliance. These systems will continue to be tracked until a resolution is achieved.	

** Changes from the current "addressing" approach are in italics.*

Resolving		
SOX or EOX	St or Fed Compliance achieved	
SO0 or EO0	St or Fed No Longer Subject to Rule	
SO6 or EO6 for violation types 9, 12, 29, 37, 56, 57, 58, 59, 63, 64.	St or Fed Intentional no-action for violation types: 9 Record Keeping; 12 Treatment Technique No Certif. Operator; 29 M&R Filter Profile/CPE Failure; 37 Treatment Technique State Prior Approval; the following codes are also applicable if a PWS has "tested back into compliance" and no longer has lead/copper results over the action level: 56 Initial, Follow-up, or Routine SOWT M&R ; 57 OCCT Study Recommendation; 58 OCCT Installation/ Demonstration; 59 WQP Entry Point Non-Compliance; 63 MPL Non-Compliance; 64 Lead Service Line Replacement (LSLR)	
These six resolving actions/ codes mean that the violation has been resolved either by return to compliance, a determination that the rule is no longer applicable, or a determination that no further action is needed.		

Note that any violation that has one of the above Formal or Resolving codes will not count against a system's total score using the formula.

INFORMAL	The actions below are informal. Violations with these codes will continue to count against a system until a formal or resolving action is taken and recorded in SDWIS/Fed. If a system has reached the level of a priority system for enforcement, these actions will NOT count for putting the system on a "path to compliance."	
Current SDWIS Code	Description	Examples of States Actions
None - closest is SFK or EFK	St or Fed BCA signed (if does not meet "Formal" definition)	
SFJ or EFJ	St or Fed Formal NOV issued	Violation Notice; Notice of Violation(NOV);
SO6 or EO6 for violation types not specified in resolving list	St or Fed Intentional no-action	
None - propose new code SIU	Referral to U.S. EPA	
None - propose new code SIT or EIT	Treatment Installed	
SF2 or EF2	Referred for Higher St or Fed Level Review	
SFH or EFH	St or Fed Boil Water Order	
SF3	St Case appealed	
SF4	St Case dropped	
SFP	St Civil Case under development	
SIB or EIB	St or Fed Compliance Meeting conducted	
SFS or EFS	St or Fed Default Judgment	
SF5	St Hook-up/Extension Ban	
SFT or EFT	St or Fed Injunction	
SO+ or EO+	St or Fed no additional Formal Action needed	
SO8 or EO8	St or Fed Other	
SFG or EFG	St or Fed Public Notification issued	
SIF or EIF	St or Fed Public Notification received	
SIE or EIE	St or Fed Public Notification requested	
SFN or EFN	St or Fed Show-cause Hearing	
SID or EID	St or Fed Site Visit (enforcement)	
SIC or EIC	St or Fed Tech Assistance Visit	
SFU or EFU	St or Fed Temp Restrain Order/Prelim Injunction	
SOZ or EOZ	St or Fed Turbidity Waiver issued	
SO7 or EO7	St or Fed Unresolved	
SOY or EOY	St or Fed Variance/Exemption issued	
SIA or EIA	St or Fed Violation/Reminder Notice	
SII or EII	St or Fed CCR Follow-up Notice	

APPENDIX

In an effort to analyze the influence of a population factor on the outcome of the system's ranking, the States and EPA Regions should calculate the results using the following formula. The results should then be compared to the results of the non population-based formula.

The alternative formula would calculate a point score for each drinking water system using this formula:

Alternate Formula:

$$\text{Sum } (S * T * P) + n$$

Where:

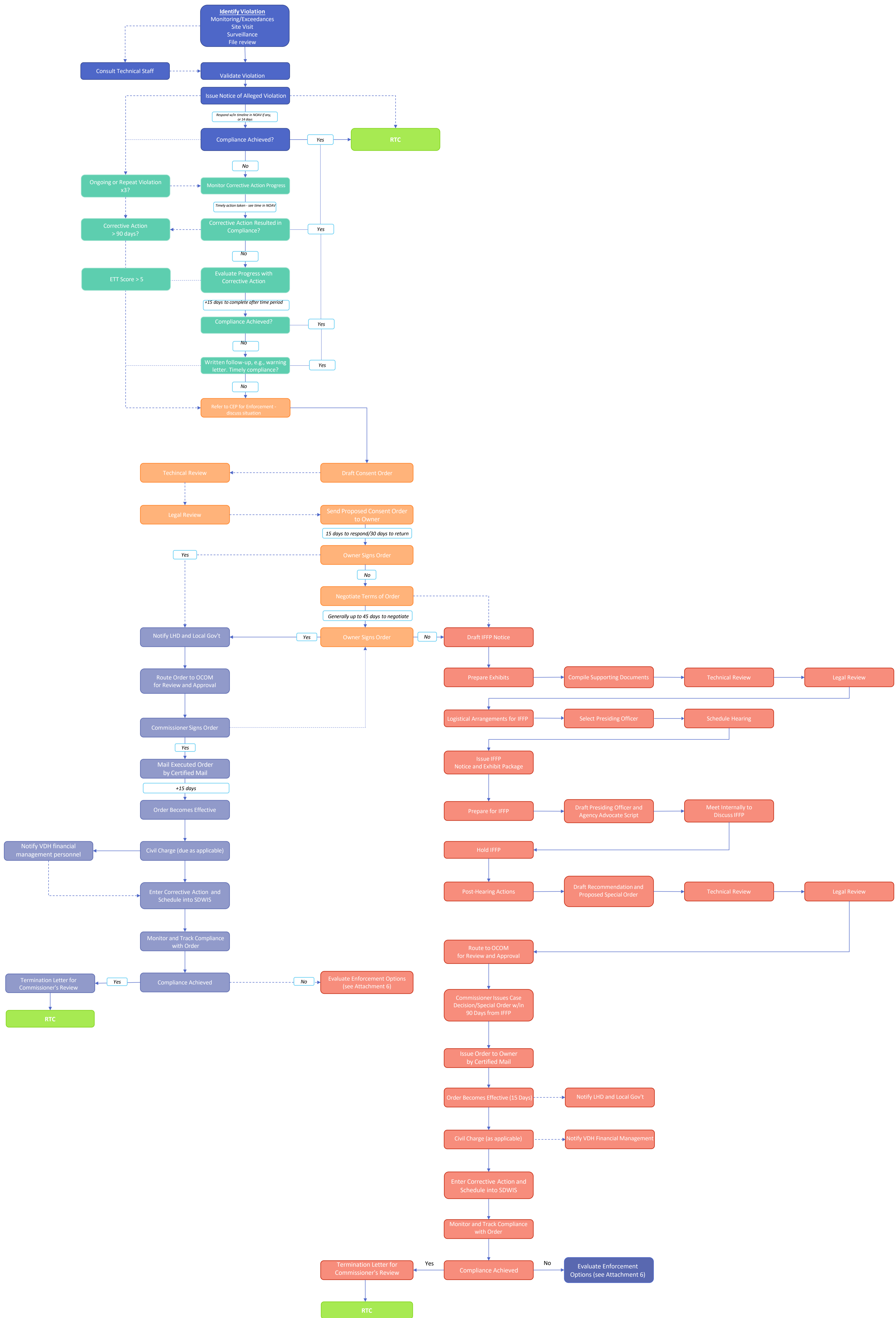
S and n = use the definitions on page 4

T = water system type factor

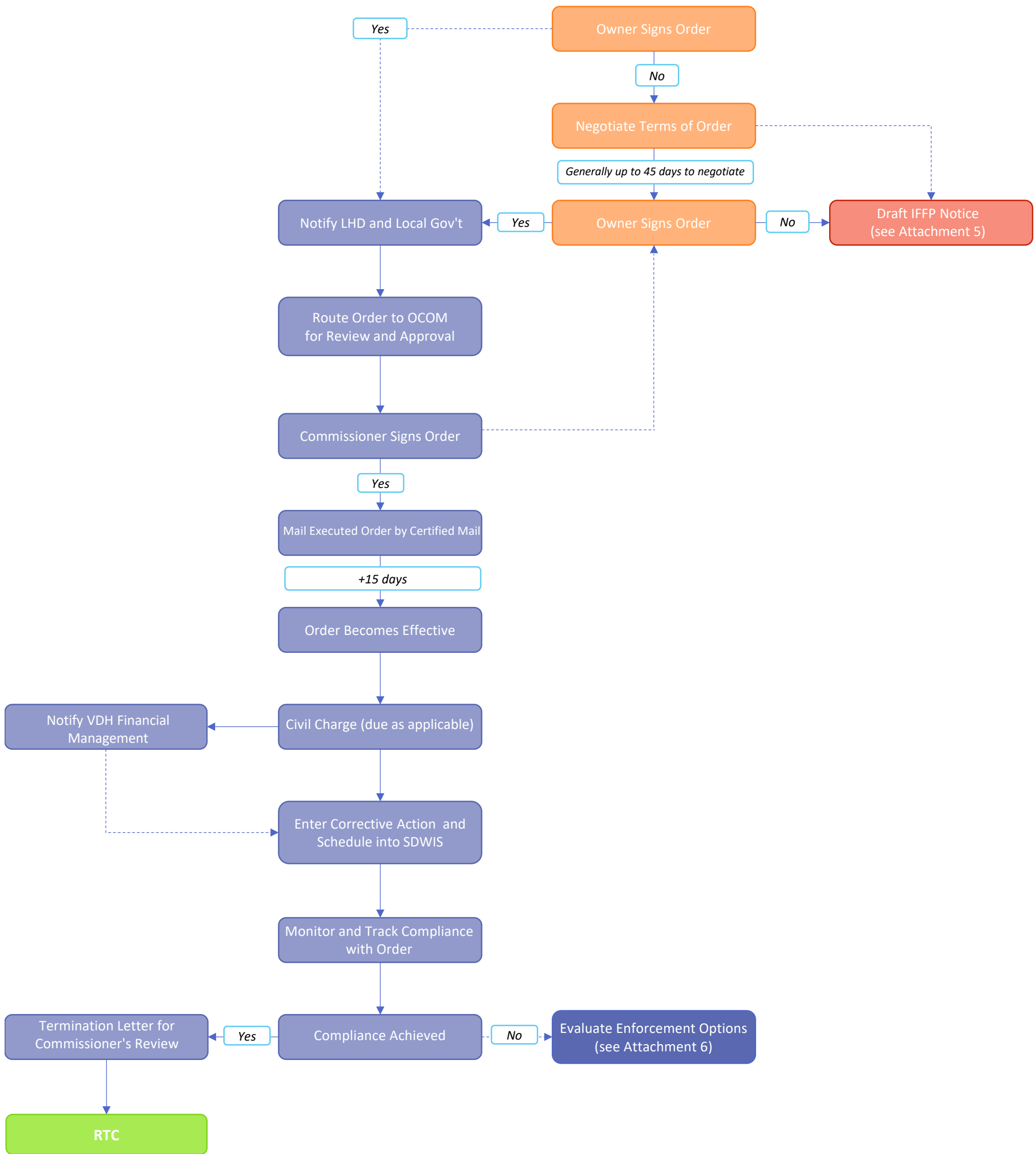
2	CWS, NTNCWS
1	TNCWS

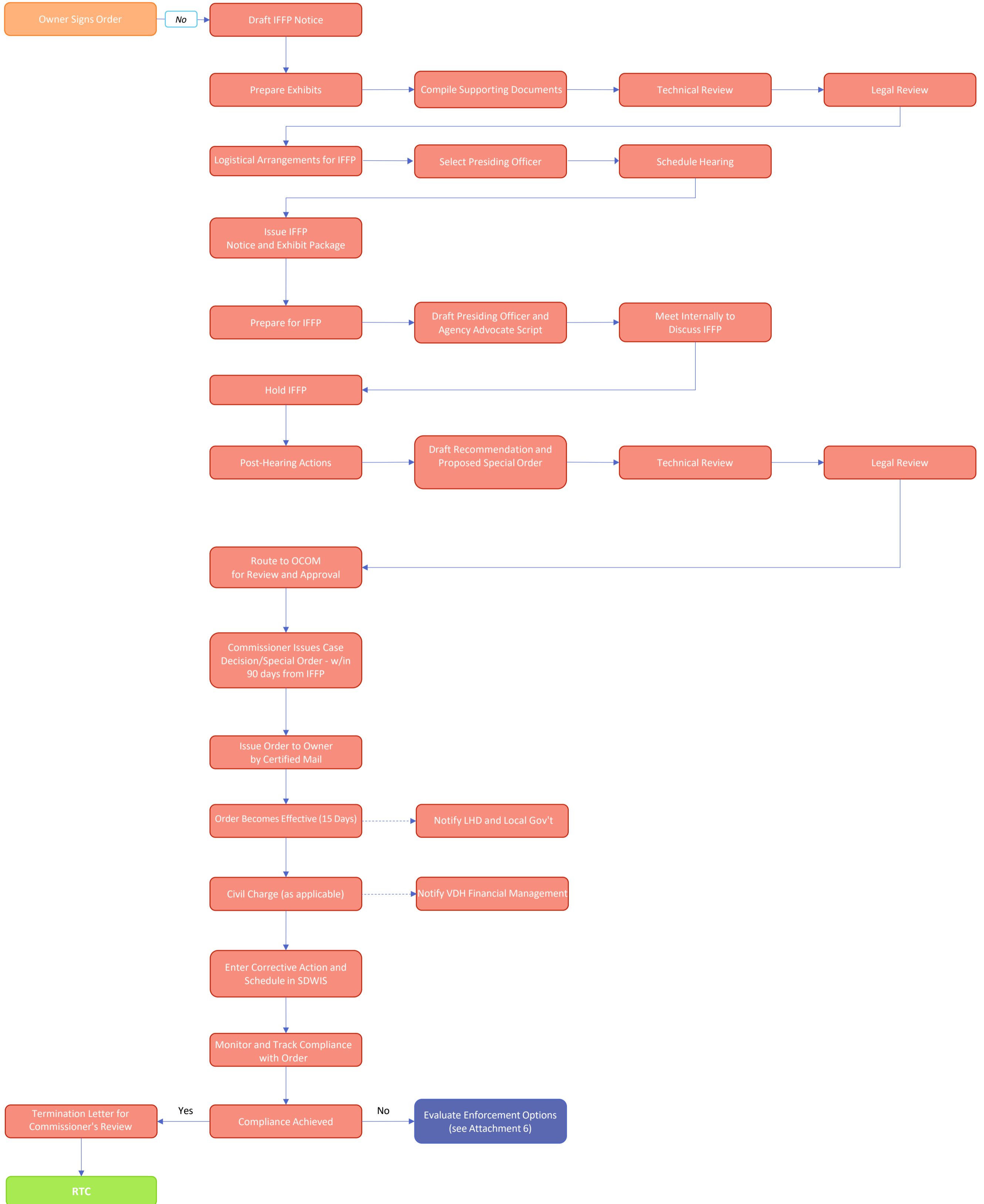
P = retail population served factor

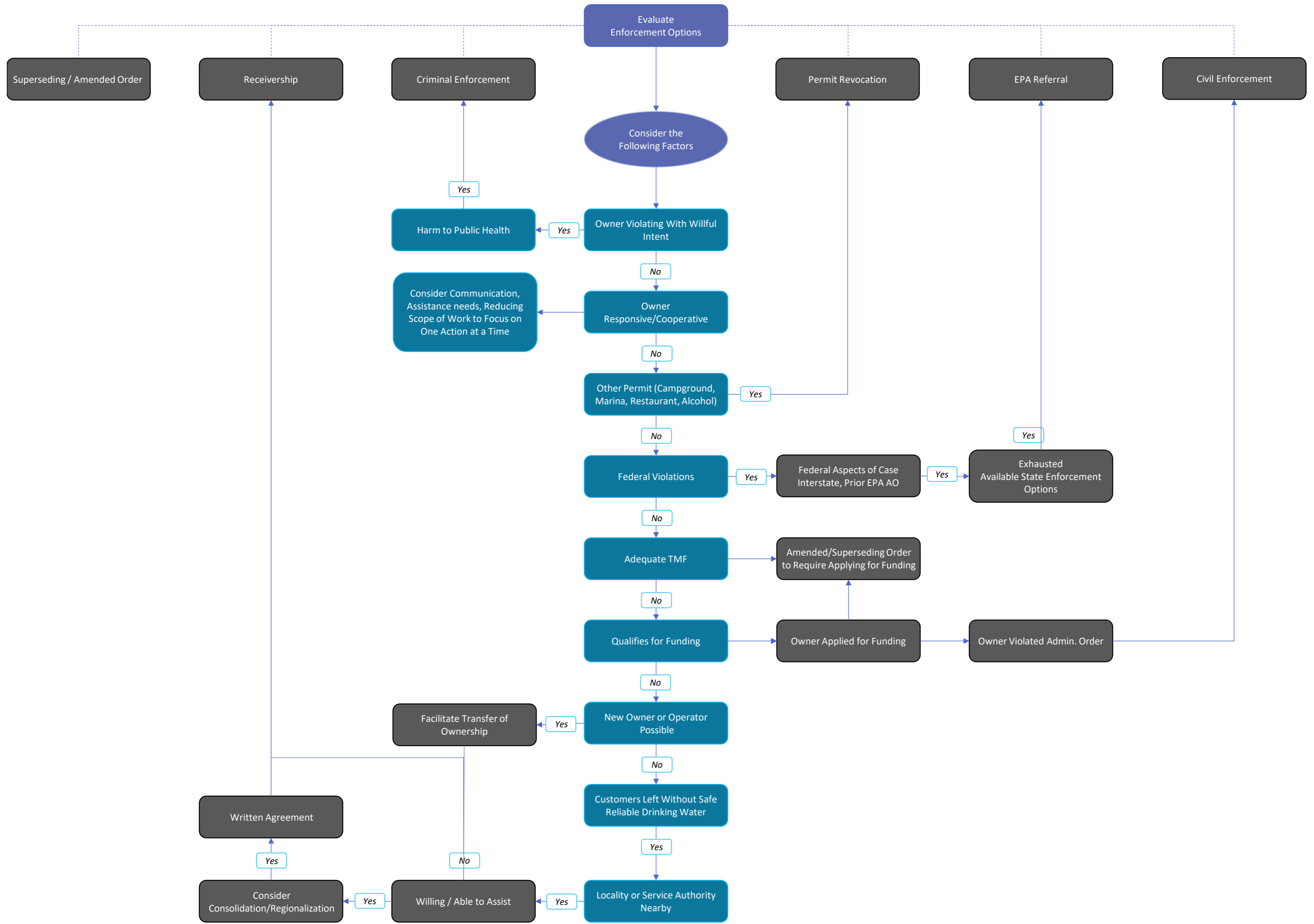
1	Very small (less than 501)
1.5	Small (501-3,300)
2	Medium (3,301-10,000)
2.5	Large (10,001-100,000)
3	Very large (100,001...)







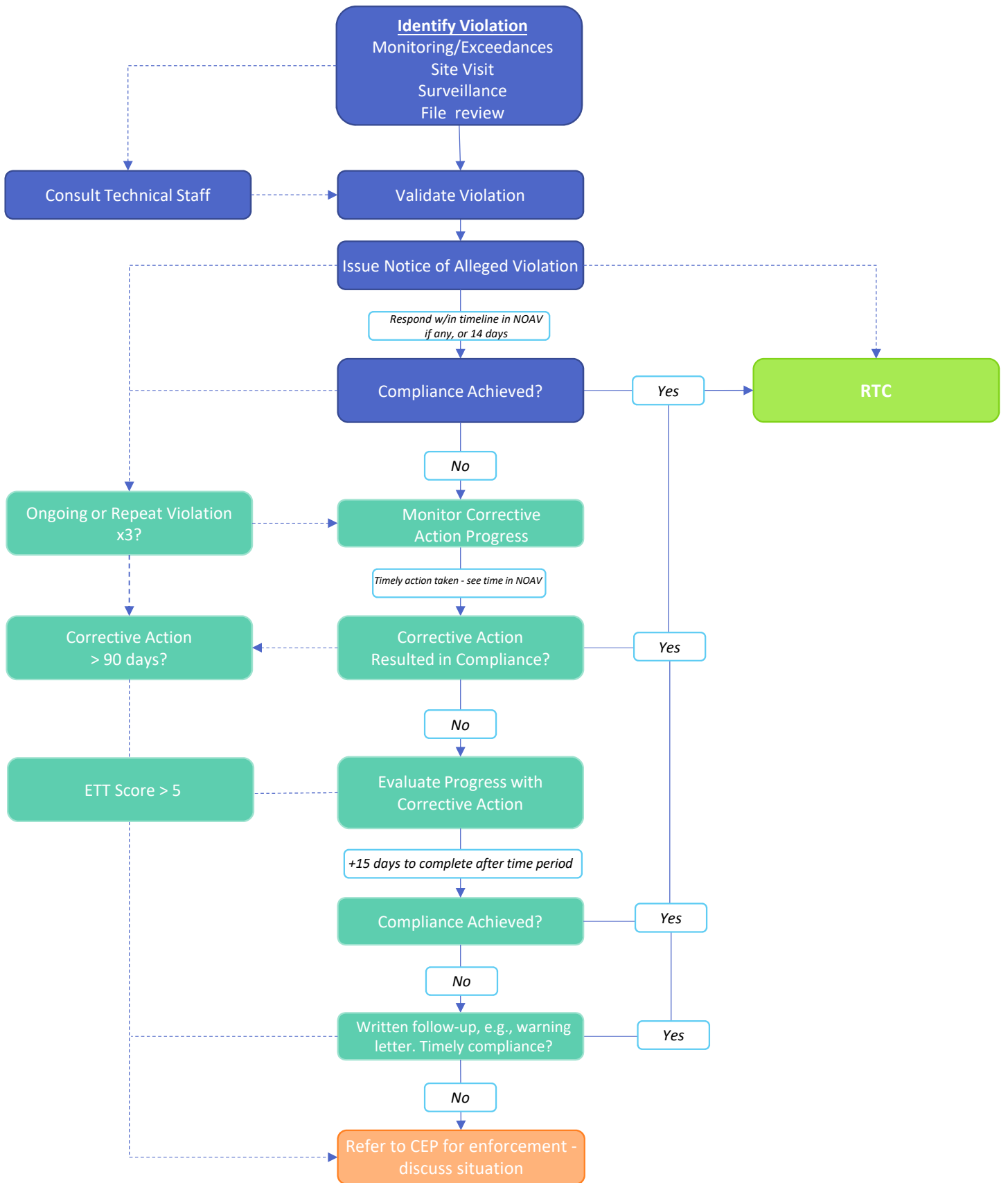




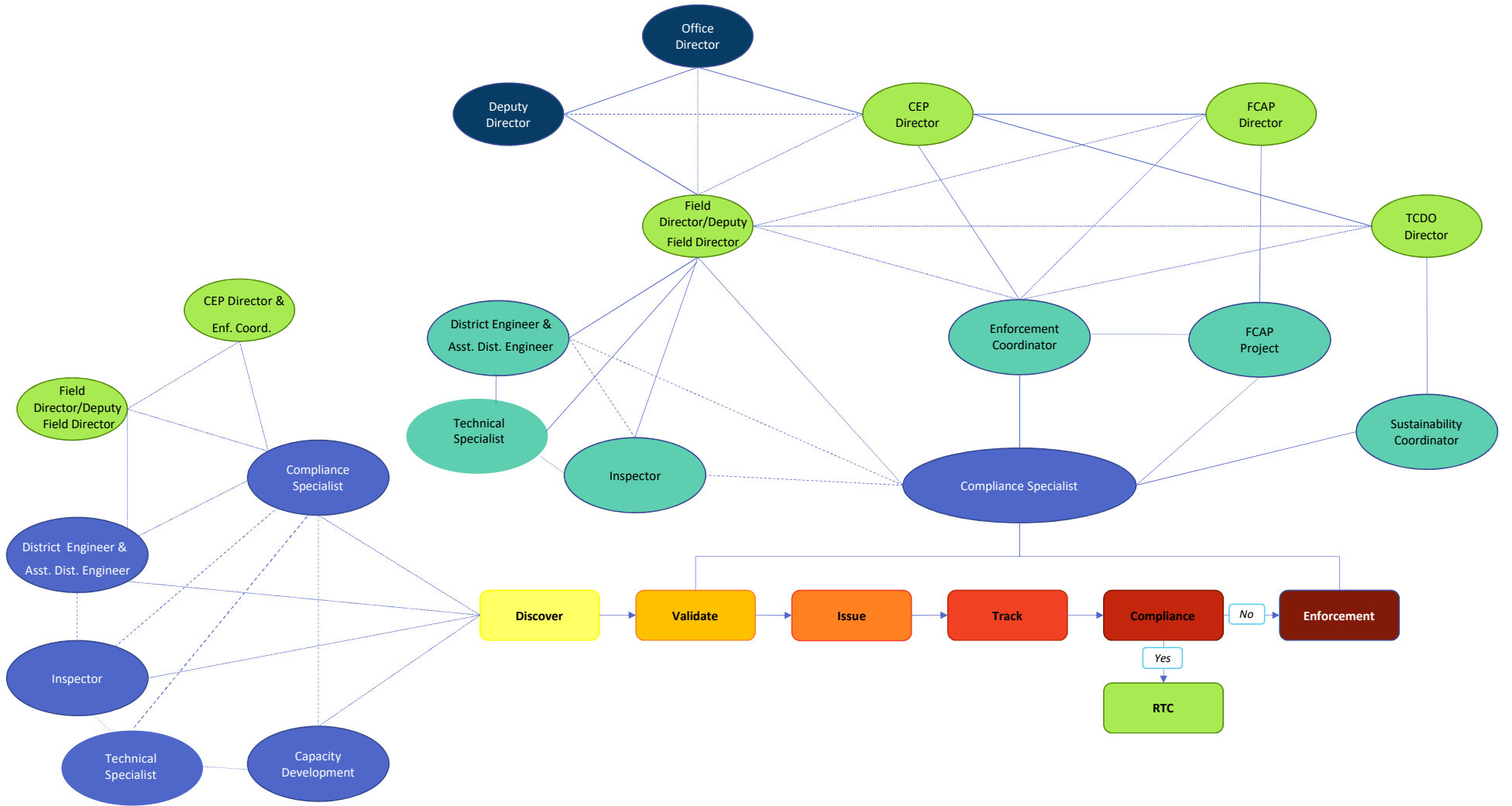
Program and Agency Resources

Alcoholic Beverage Control (ABC)
American Council of Engineering Companies of Virginia
Environmental Finance Center Network
Financial Construction and Assistance Programs
Southeast Rural Community Assistance Project
State Corporation Commission
USDA – Rural Development
VDH Office of Environmental Health Services
Virginia Association of Counties
Virginia Association of Planning District Commissions
Virginia Department of Agriculture and Consumer Services
Virginia Department of Conservation and Recreation (if reservoir involved)
Virginia Department of Environmental Quality
Virginia Department of Housing and Community Development
Virginia Department of Social Services
Virginia Manufacturers Association
Virginia Municipal League
Virginia Resources Authority (VRA)
Virginia Rural Water Association
Virginia Section of AWWA
Virginia Society of Professional Engineers
Virginia Tech
Virginia Water Environment Association
Virginia Water Well Association
Water Environmental Federation

Attachment 8



General Routing of Waterworks Issues Upward to CEP



Attachment 10

NPDWR Drinking Water Violations and RTC Definitions - Nov 25, 2014 (revised violations 2A, 2B, & 4A March 7, 2016) NEW two character NOMENCLATURE for violations where the first character is numeric (with 1=MCL, 2=Treatment Technique Violation, 3=Monitoring 4= Reporting 5=Other) describing the violation category and the second character is an alphabetical character that represents a Rule's unique violations.				Monitoring and Reporting violations have been separated and will not be combined. All of the TCR violation codes will be replaced when the RTCR is fully effective. Public Notice and CCR requirements for the RTCR fall under the PN and CCR categories of existing violation codes and are not included under the RTCR category.		
Item#244: All conditions that create an <i>E. coli</i> MCL violation. Item#245: all conditions for failure to do Level 1 Assessment. Item#246: all conditions for failure to do Level 2 Assessment. Item#247: all conditions for failure to complete corrective actions. Item#249: Failure to conduct routine monitoring vs Item#250: Failure to conduct additional routine monitoring. Item#252: All conditions related to lab / analytical method error. Item#254: All reporting violation conditions related to failure to report monitoring results/violations. Item#258: All reporting violation conditions related to failure to report related to violations involving failure to conduct assessments/assessment forms/corrective actions, failure to report completed corrective actions from assessment. Item#259: All conditions related to failure to have sample siting plan Item#260: All recordkeeping type conditions						
NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
Arsenic	1	1005	1	A system that has any one sample result which causes the running annual average to immediately exceed the MCL for Arsenic. [141.23(i)(1) & 141.62]	MCL	RTC is achieved when the system begins quarterly monitoring at all sampling points that exceeded the MCL and when subsequent analytical results demonstrate that the RAA is less than the arsenic MCL at the sampling point of exceedance after a minimum of two consecutive quarters at the sampling point for a ground water system or four consecutive quarters at the sampling point for a surface water system.
Nitrates	1	1038, 1040, 1041	2	A system that has any one sample result which causes the original sample to immediately exceed the MCL. [141.23]	MCL	RTC is achieved when when the system begins quarterly monitoring at all sampling points that exceeded the MCL and all subsequent analytical results demonstrate that the sample results are less than the nitrate MCL at the sampling point of exceedance after a minimum of two consecutive quarters at the sampling point for a ground water system or four consecutive quarters at the sampling point for a surface water system.
Phase II/V	1	ALL Phase II/V	3	A system that has any one sample result which causes the running annual average to immediately exceed the MCL. [141.23(i)1]; 141.24(f)(15); 141.24(h)(11)]	MCL	RTC is achieved when the system begins quarterly monitoring at all sampling points that exceeded the MCL and when subsequent analytical results demonstrate that the RAA is less than the MCL at the sampling point of exceedance after a minimum of two consecutive quarters at the sampling point for a ground water system or four consecutive quarters at the sampling point for a surface water system.
Radiological	1	4000, 4010, 4101, 4006, 4100, 4102, 4174, 4264	4	If any one sample result causes the running annual average to exceed, the system is out of compliance with the MCL immediately. [141.26(c)(3)(i)]	MCL	RTC is achieved once the system meets the MCL for the compliance period.
Arsenic	2	1005	5	The system's arsenic running annual average (RAA) is greater than 0.010 mg/L. [141.23(h)(1); 141.62]	MCL	RTC is achieved when subsequent analytical results demonstrate that the RAA is less than the arsenic MCL at the sampling point of exceedance after a minimum of two consecutive quarters at the sampling point for a ground water system or four consecutive quarters at the sampling point for a surface water system.
Nitrates	2	1038, 1040, 1041	6	A system with an average of an original sample and a confirmation sample that exceeds the MCL(s) for nitrate or nitrite, as specified in 40 CFR 141.62(b). [141.23(i)(3) & 141.62(b)]	MCL	RTC is achieved when when the system begins quarterly monitoring at all sampling points that exceeded the MCL and subsequent analytical results are less than the nitrate MCL at the sampling point of exceedance after a minimum of two consecutive quarters at the sampling point for a ground water system or four consecutive quarters at the sampling point for a surface water system.
Phase II/V	2	ALL Phase II/V	7	A PWS that exceeds an MCL (except nitrate or nitrite) at any sampling point, based on 4 consecutive quarterly samples for calculating the running annual average. [141.23(i)1]; 141.24(f)(15); 141.24(h)(11)]	MCL	RTC is achieved when the system begins quarterly monitoring at all sampling points that exceeded the MCL and when subsequent analytical results demonstrate that the RAA is less than the MCL at the sampling point of exceedance after a minimum of two consecutive quarters at the sampling point for a ground water system or four consecutive quarters at the sampling point for a surface water system.

<p>NPDWR Drinking Water Violations and RTC Definitions - Nov 25, 2014 (revised violations 2A, 2B, & 4A March 7, 2016) NEW two character NOMENCLATURE for violations where the first character is numeric (with 1=MCL, 2=Treatment Technique Violation, 3=Monitoring 4= Reporting 5=Other) describing the violation category and the second character is an alphabetical character that represents a Rule's unique violations.</p>	<p>Monitoring and Reporting violations have been separated and will not be combined. All of the TCR violation codes will be replaced when the RTCR is fully effective. Public Notice and CCR requirements for the RTCR fall under the PN and CCR categories of existing violation codes and are not included under the RTCR category.</p>
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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
Radiological	2	4000, 4010, 4101, 4006	8	A system that has an running annual average at any sampling point that is greater than the MCL [141.26(c)(3)(i)] or if any sample will cause the running average to exceed the MCL. [141.26(c)(3)(i)] and 141.26(c)(3)(ii)]	MCL	RTC is achieved when the system has results at the sampling point with the exceedance where the running annual average is at or below the MCL.
Stage 1	2	1011, 2456, 2950	9	A system that has an individual quarter within the first year of monitoring with an average that will cause the running annual average of that system to exceed the MCL for TTHMs, HAA5s, or bromate. [141.133(a)(3) & 141.64]	MCL	RTC is achieved after one quarter without additional MCL violations.
Stage 1	2	1011	10	A system that has an average of samples covering any consecutive 4 quarter period that exceeds the MCL for bromate. [141.64 & 141.133(b)(2)]	MCL	RTC is achieved after one quarter without additional MCL violations.
Stage 1	2	1009	11	A system that has an arithmetic average of any three sample sets that exceed the MCL for chlorite. [141.133(b)(3) & 141.64(a)]	MCL	RTC is achieved after one month without additional MCL violations.
Stage 1	2	2456, 2950	12	A system that has a running annual arithmetic average of quarterly averages covering any consecutive 4 quarter period exceeds the MCL for TTHMs and HAA5s. [141.133(b)(1) & 141.64(a)]	MCL	RTC is achieved after one quarter without additional MCL violations.
Stage 2	2	2456, 2950	13	A system whose LRAA exceeds the MCL for TTHM and HAA5 in 141.64(b)(2). [141.625(b)]	MCL	RTC is achieved after one quarter without additional M&R or MCL violations.
Stage 2	2	2456, 2950	14	A system that monitors quarterly is in violation of the MCL when the locational running annual average exceeds the MCL. [141.620(d)(1) & 141.64(b)(2)]	MCL	RTC is achieved after one quarter without additional M&R or MCL violations.
Arsenic	3	1005	15	A community or non-transient, non-community system fails to monitor at each sampling point for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium in accordance with 141.23(c)(1)-(6). [141.23(c)(1)-(6)]	M&R	RTC is achieved when a system samples for the contaminant at each sampling point as required by 141.23, 141.24(f) and (h) for an entire compliance period and reports the results to State.
Arsenic	3	1005	16	A system fails to ensure samples are analyzed properly in accordance with 141.23(k). [141.23(k)(1)-(3)]	M&R	RTC is achieved when a system reports results that have been analyzed in accordance with 141.23(k).
Arsenic	3	1005	17	Failure of new systems or systems that use a new source of water to demonstrate compliance at each sampling point or representative sampling point(s) within the time frame specified by the State. [141.23(c)(9)]	M&R	RTC is achieved when the system demonstrates compliance at each sampling point or representative sampling point(s) to the State.
Arsenic	3	1005	18	Failure to report arsenic results to the nearest 0.001 mg/L. [141.23(i)(4)]	M&R	RTC is achieved when the system submits one complete round of valid arsenic results for each sampling point, to the State, with values reported to the nearest 0.001 mg/L.

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Item#244: All conditions that create an <i>E. coli</i> MCL violation. Item#245: all conditions for failure to do Level 1 Assessment. Item#246: all conditions for failure to do Level 2 Assessment. Item#247: all conditions for failure to complete corrective actions. Item#249: Failure to conduct routine monitoring vs Item#250: Failure to conduct additional routine monitoring. Item#252: All conditions related to lab / analytical method error. Item#254: All reporting violation conditions related to failure to report monitoring results/violations. Item#258: All reporting violation conditions related to failure to report related to violations involving failure to conduct assessments/assessment forms/corrective actions, failure to report completed corrective actions from assessment. Item#259: All conditions related to failure to have sample siting plan Item#260: All recordkeeping type conditions						
NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
Arsenic	3	1005	19	Failure of a system that has exceeded the MCL at a sampling point to begin quarterly monitoring in the next quarter. [141.23(c)(7)]	M&R	RTC is achieved when the system begins quarterly monitoring at all sampling points that exceed the MCL, as specified in 141.31(a)&(b) and reports the results to the State.
Nitrates	3	1038, 1040, 1041	20	Community and non-transient non-community groundwater systems that fail to conduct annual monitoring. [141.23(d)(1)]	M&R	RTC is achieved once the groundwater system begins annual monitoring.
Nitrates	3	1038, 1040, 1041	21	Community and non-transient non-community surface water systems that fail to conduct quarterly monitoring. [141.23(d)(1)]	M&R	RTC is achieved once the surface water system begins quarterly monitoring.
Nitrates	3	1038, 1040, 1041	22	Transient non-community water systems that fail to conduct annual monitoring. [141.23(d)(4); 141.23(e)(3)&(e)(4)]	M&R	RTC is achieved once the system begins annual monitoring.
Phase II/V	3	1010, 1015, 1020, 1024, 1025, 1035, 1036, 1045, 1074, 1075, 1085	23	A community or non-transient, non-community system fails to monitor at each sampling point for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium in accordance with 141.23(c)(1)-(6). [141.23(c)(1)-(6)]	M&R	RTC is achieved when a system samples for the contaminant at each sampling point as required by 141.23, 141.24(f) and (h) for an entire compliance period and reports the results to State.
Phase II/V	3	ALL Phase II/V	24	For any contaminant except nitrate and nitrite: Failure to complete/report valid regular monitoring results at each sampling point during the State designated timeframe. [141.23(b), (c) & (d); 141.24(f)(1)-(4); 141.24(h)(1)-(4); 141.31]	M&R	RTC is achieved when results are reported or when the next complete round of routine monitoring is taken and successfully reported.
Phase II/V	3	ALL Phase II/V	25	Failure of a system monitoring annually or less frequently that has exceeded the MCL at a sampling point to begin quarterly monitoring in the next quarter. [141.24(f)(12); 141.24(h)(8); 141.23(b)(8); 141.23(c)(7)]	M&R	RTC is achieved when the system begins quarterly monitoring at all sampling points that exceed the MCL, as specified in 141.31(a)&(b) and reports the results to the State.
Phase II/V	3	ALL Phase II/V with the exception of IOCs.	26	Failure to monitor/report valid quarterly sample results from each sampling point at which a VOC (including vinyl chloride) has been detected at a level exceeding 0.0005 mg/L in any sample (141.24(f)(11) & 141.31) or at which a SOC has been detected as defined in 141.24(h)(18) in any sample. [141.24(h); 141.31]	M&R	RTC is achieved when the system monitors/reports the next full round of valid quarterly compliance sample results for the affected sample point(s), to the State.
Phase II/V	3	ALL Phase II/V	27	Failure of new systems or systems that use a new source of water to demonstrate compliance at each sampling point or representative sampling point(s) within the time frame specified by the State. [141.24(f)(22), 141.24(h)(20)]	M&R	RTC is achieved when the system demonstrates compliance at each sampling point or representative sampling point(s) to the State.
Phase II/V	3	1094	28	Asbestos: A system fails to monitoring for asbestos during the first 3-year compliance period of each 9-year compliance cycle. [141.23(b)]	M&R	RTC is achieved when the system samples for the contaminant at each sampling point as required and reports the results to State.

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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
Phase II/V	3	1094	29	A system that exceeds the MCL for asbestos fails to begin quarterly monitoring the next quarter after the violation occurred. [141.23(b)(8)]	M&R	RTC is achieved when the system samples for the contaminant at each sampling point as required and reports the results to State.
Phase II/V	3	ALL Phase II/V	30	A system fails to comply with the analytical requirements. [141.23(k)(1); 141.24(e)(1)(2)]	M&R	RTC is achieved when samples are analyzed in accordance with 141.24(e).
Phase II/V	3	2265, 2257	31	A system using acrylamide and epichlorohydrin fails to certify annually the combination (or product) of dose and monomer level does not exceed the levels specified in 141.111. [141.111]	M&R	RTC is achieved when the system submits the certification to the State.
Radiological	3	4000, 4010, 4101, 4006	32	A system that fails to include all samples taken and analyzed under the provisions of 141.26(a) & 141.26(c) in order to determine MCL compliance. [141.26(a); 141.26(c)(3)(iii)]	M&R	RTC is achieved once the system includes all samples taken and analyzed.
Radiological	3	4000, 4020, 4030, 4006	33	A system that fails to properly monitor as required in 141.26(a) or report as required in 141.31. [141.26(a) and 141.31]	M&R	RTC is achieved when the system properly monitors and reports according to the requirements in 141.26 and 141.31 as required by 141.31.
Radiological	3	4000, 4020, 4030, 4006	34	A system that fails to conduct initial monitoring in accordance with 141.26(a), collecting four consecutive quarterly samples at all sample points to determine compliance with radionuclides MCLs. [141.26(a)(1)]	M&R	RTC is achieved once the system has completed initial monitoring.
Radiological	3	4000, 4020, 4030, 4006	35	An existing community water system that fails to sample in accordance with 141.26(a), at every entry point to the distribution system that is representative of all sources being used under normal operating conditions. [141.26(a)(1)(i)]	M&R	RTC is achieved once the system has monitored at each entry point to the distribution system, and the State has determined that the results are representative of all sources being used under normal operating conditions.
Radiological	3	4102, 4174	36	A community water system designated by the State as vulnerable that fails to collect quarterly samples for beta emitters and annual samples for tritium and strontium-90 in accordance with 141.26(b), at each entry point to the distribution system beginning within one quarter after being notified by the State. [141.26(b)(1)]	M&R	RTC is achieved after the PWS begins monitoring quarterly for beta emitters for each entry point to the distribution to the State.

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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
Radiological	3	4100, 4264	37	A system designated by the State as utilizing waters contaminated by effluents from nuclear facilities in accordance with 141.26(b), that fails to sample quarterly for gross beta and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system. [141.26(b)(2)]	M&R	RTC is achieved once the system has conducted the monitoring.
Radiological	3	4100	38	A system notified that the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the appropriate screening level in accordance with 141.26(b), and fails to perform an analysis of the sample to identify the major radioactive constituents present in the sample and fails to calculate the appropriate doses. [141.26(b)(5)]	M&R	RTC is achieved once the analysis is performed and the doses calculated.
Radiological	3	4100	39	A system that fails to monitor monthly in accordance with 141.26(b), at the sampling point(s) which exceed the MCL beginning the month after the exceedance occurs. [141.26(b)(6)]	M&R	RTC is achieved once the system complies with the requirement to begin monitoring.
Radiological	3	4100	40	A system that fails to continue monthly monitoring in accordance with 141.26(b), until the system has established, by a rolling average of 3 monthly samples, that the MCL is being met. [141.26(b)(6)]	M&R	RTC is achieved once the system continues monthly monitoring.
Radiological	3	4100	41	A system that does not return to quarterly monitoring in accordance with 141.26(b), once the system has established that the MCL is being met. [141.26(b)(6)]	M&R	RTC is achieved once the system returns to quarterly monitoring.
Radiological	3	ALL RADS	42	A system that fails to monitor at the time designated by the State in accordance with 141.26(c), during each compliance period. [141.26(c)(2)]	M&R	RTC is achieved once the system monitors and continues to monitor at the time determine by the State.
Radiological	3	ALL RADS	43	Major M&R violation when a system monitoring on a triennial or less frequent basis collects NO samples in accordance with 141.26 and/or fails to report in accordance 141.31. [141.26; 141.31]	M&R	RTC is achieved when the system has monitored and reported one round of valid sample results for all sampling points to the State according to the requirements in 141.26 and 141.31 as required by 141.31.
Radiological	3	ALL RADS	44	Minor M&R violation when a system monitoring on a triennial or less frequent basis with multiple sampling points conducts monitoring at some points but NOT at all sampling points in accordance with 141.26 and/or fails to report in accordance 141.31. Note: For States electing to report by sampling point, any violation during a monitoring period will be a "major" violation, since in this case it would be impossible for a CWS to conduct some but not all of the required monitoring. [141.26; 141.31]	M&R	RTC is achieved when the system has monitored and reported one round of valid sample results for all sampling points to the State according to the requirements in 141.26 and 141.31 as required by 141.31.

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Arsenic	4	1005	45	Failure to complete a check, repeat, or confirmation sample or accurately report the analytical result of a check, repeat, or confirmation sample at a sampling point, when required. [141.23(f)(1)]	M&R	RTC is achieved when the system completes a check, repeat, or confirmation sample and accurately reports the analytical result of a check, repeat, or confirmation sample at a sampling point, to the State as specified in 141.31(a)&(b).
Arsenic	4	1005	46	Failure to report check/repeat/confirmation results within specified time frame. Failure to report non-compliance within specified time frame. [141.31(a)&(b)]	M&R	RTC is achieved when the system completes a check, repeat, or confirmation sample and accurately reports the analytical result of a check, repeat, or confirmation sample at a sampling point, to the State as specified in 141.31(a)&(b).
Nitrates	4	1038, 1040, 1041	47	A system that fails to collect a valid check, repeat, or confirmation sample(s) within 24 hours. [141.23(f)(2)]	M&R	RTC is achieved once the public notification is distributed.
Nitrates	4	1038, 1040, 1041	48	A system that has failed to collect a valid check, repeat, or confirmation sample(s) within 24 hours but has notified the public via Tier 1 PN and fails to collect a valid check, repeat, or confirmation sample(s) within the two week timeframe. [141.23(f)(2)]	M&R	RTC is achieved once valid samples are collected and reported to the State for any missed check, repeat or confirmation samples.
Phase II/V	4	ALL Phase II/V	49	A system that fails to collect a valid check, repeat, or confirmation sample(s) within 2 weeks and report a valid result to the State by the deadline. [141.23(f); 141.24(f)(13), & 141.24(h)(9); 141.31]	M&R	RTC is achieved once valid samples are collected and reported to the State for any missed check, repeat or confirmation samples.
Radiological	4	ALL RADS	50	A system (as required by the State) that fails to collect a valid check, repeat, or confirmation sample(s) and report a valid result to the State by the specified deadline. [141.26(c)]	M&R	RTC is achieved once valid samples are collected and reported to the State for any missed check, repeat or confirmation samples.
GWR	5	0700	51	A system conducting compliance monitoring that fails to notify the State by the end of the next business day any time the system fails to meet any State-specified requirements. [141.405(a)(1)]	OTHER	RTC is achieved once the State has been notified that the system has met the State-specified requirements.
GWR	5	0700	52	A system that fails to notify the State within 30 days of completing a corrective action. [141.405(a)(2)]	OTHER	RTC is achieved once the State has been notified that the system has completed its corrective action.
GWR	5	0700	53	A system conducting triggered source water monitoring that fails to provide documentation to the State within 30 days of the total coliform positive sample that it met the State criteria for exception to the triggered source water monitoring requirements. [141.405(a)(3)]	OTHER	RTC is achieved once the system provides documentation to the State that it meets the State criteria for exception to the triggered source water monitoring requirements.
LCR	5	5000	54	This violation is no longer applicable. Appropriate reportable violations code types include # 57 and 59.	OTHER	Not applicable.

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Nitrates	5	1038, 1040, 1041	55	A transient non-community water system that has any one sample result which causes the running annual average to immediately exceeds the nitrate MCL and fails to notify the State within 7 days. [141.23(m)]	OTHER	RTC is achieved once the system notifies the State.
Nitrates	5	1041	56	A transient non-community water system that has an average of four samples collected pursuant to 141.23(m), that exceeds the MCL for nitrate and fails to notify the State pursuant to 141.31. [141.23(n)]	OTHER	RTC is achieved once the system notifies the State.
Nitrates	5	1038, 1040, 1041	57	A transient non-community water system with an average of an original sample and a confirmation sample that exceeds the MCL(s) for Nitrate, as specified in 40 CFR 141.62(b) and fails to notify the State pursuant to 141.31. [141.23(o)]	OTHER	RTC is achieved once the system notifies the State.
Phase II/V	5	ALL Phase II/V	58	A system that fails to report non-compliance to the State within 48 hours. [141.31(b)]	OTHER	RTC is achieved once the system reports the non-compliance to the State.
TCR	5	3100	59	A system that has a fecal coliform or E. coli positive routine or repeat sample and fails to report it to the State by the end of the business day. [141.21(e)(1)]	OTHER	RTC is achieved once the system notifies the State of the positive fecal coliform or E. coli sample.
TCR	5	3100	60	A system which has exceeded the acute or monthly MCL for total coliforms and fails to report the violation to the State by the end of the next business day after it is notified of the violation. [141.21(g)(1)]	OTHER	RTC is achieved once the system notifies the State.
TCR	5	3100	61	A system which has failed to comply with a coliform monitoring requirement and fails to report the monitoring violation to the State within 10 days after the system discovers the violation. [141.21(g)(2)]	OTHER	RTC is achieved once the system notifies the State.
Phase II/V	7	2257, 2265	62	A system using acrylamide and epichlorohydrin exceeds the levels specified in 141.111. [141.111]	OTHER	RTC is achieved when the next full round of monitoring demonstrates that no additional MCL or M&R violations occurred.
Arsenic	8	1005	63	Failure of a system to meet the variance or exemption conditions, compliance schedule (including milestones), or other criteria specified in the variance, or exemption. [142.53, 142.55, 142.57, 142.62(c), (f), (g) & (h), 142.307]	OTHER	RTC is achieved when the system meets the conditions, compliance schedule (including milestones), variance, or exemption.
Phase II/V	8	ALL Phase II/V	64	Failure to a system to meet the variance or exemption conditions, compliance schedule (including milestones), or other criteria specified in the variance or exemption. [142.53, 142.55, 142.57, 142.62(a), (f), (g) & (h), 142.307]	OTHER	RTC is achieved when the system meets the conditions, compliance schedule (including milestones), variance, or exemption.

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Radiological	8	ALL RADS	65	Failure to a system to meet the variance or exemption conditions, compliance schedule (including milestones), or other criteria specified in the variance or exemption. [142.53, 142.55, 142.57, 142.65]	OTHER	RTC is achieved when the system meets the conditions, compliance schedule (including milestones), variance, or exemption.
FBRR	9	0500	66	A system that fails to collect and retain on file recycle flow information required by the rule. [141.76(d)]	OTHER	RTC is achieved when the system notifies the State that recycle flow information is being retained and can be provided to the State; or the State confirms that the system has collected and retained recycle flow information for at least the following month.
GWR	9	0700	67	A system that fails to document and maintain records as indicated in 141.405(b).	OTHER	RTC is achieved when the system can provide the State with the documented materials; or has maintained the required records for a period of at least one year.
IESWTR, LT1	9	0300	68	A system that fails to meet reporting and recordkeeping requirements. [141.75, 141.175, 141.503(g), 141.570, and 141.571]	OTHER	RTC is achieved when the PWS reports that it has begun proper recordkeeping, or State verifies that PWS is maintaining records.
LCR	9	5000	69	A system that fails to retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, State determinations, and any other information for no fewer than 12 years. [141.80(j) and 141.91]	OTHER	RTC is achieved once the system provides the documented materials to the State.
LT2	9	0800	70	Failure to maintain records as required by 141.722. [141.722(a)-(c)]	OTHER	RTC is achieved when the required information can be provided to the State; or the system has collected and retained the required information for at least 3 years.
Stage 2	9	0600	71	Fails to retain subpart V monitoring plans and subpart V monitoring results as required by 141.33. [141.629(b)]	OTHER	RTC is achieved when the PWS reports that it has begun proper recordkeeping, or State verifies that PWS is maintaining records.
Stage 1	11	0999, 1006, 1008	72	A system that exceeds the MRDL for a contaminant according to 141.133(c) of if during the first year of monitoring under 141.132, any individual quarter's average will cause the RAA to exceed the MRDL, the system is out of compliance at the end of that quarter. [141.65, 141.133(a)(3) & 141.133(c)]	MRDL	RTC is achieved after one monitoring round without additional MRDL violations.
Stage 1	11	1008	73	A system that has any two consecutive daily samples taken at the entrance to the distribution system which exceed the MRDL for chlorine dioxide and all the distribution system samples taken are below the MRDL. [141.133(c)(2)(ii)]	MRDL	RTC is achieved after one month without M&R or MRDL violations.

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Stage 1	11	1008	74	Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system is also a non-acute MRDL violation. [141.65(a) & 141.133(c)(2)(ii)]	MRDL	RTC is achieved after appropriate sampling is completed.
Stage 1	11	0999, 1006	75	A system that has a running annual arithmetic average covering any consecutive 4 quarter period that exceeds the MRDL for chlorine/chloramines. [141.133(c)(1)]	MRDL	RTC is achieved after one quarter without additional M&R violations or four consecutive quarters with the RAA below the MRDL.
Stage 1	12	0400	76	A system that is not operated by a state-approved qualified operator. [141.130(c)]	TT	RTC is achieved when a state-approved qualified operator begins operating the system.
Stage 1	13	1008	77	A system that has a daily sample taken at the entrance to the distribution system which exceeds the MRDL for chlorine dioxide and on the following day one (or more) of the three samples taken in the distribution system exceed the MRDL. [141.133(c)(2)(i)]	MRDL	RTC is achieved after one month without additional M&R or MRDL violations.
Stage 1	13	1008	78	Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system is also an acute MRDL violation. [141.65(a) & 141.133(c)(2)(i)]	MRDL	RTC is achieved after appropriate sampling is completed.
GWR	19	3002, 3014, 3028	79	A system that fails to conduct assessment source water monitoring required by the State according to State-determined requirements for such monitoring. [141.402(b)]	M&R	RTC is achieved once assessment source water monitoring is conducted according to the requirements.
GWR	20	0700	80	A system that fails to consult with the State within 30 days regarding notice from the State of a significant deficiency, or notice from a laboratory of a ground water source sample being fecal indicator-positive, or that corrective action is required after a fecal indicator-positive sample result. [141.403(a)(4)]	OTHER	RTC is achieved once the system consults with the State.
LT2	20	0800	81	For a sanitary survey performed by EPA, when a system fails to respond in writing to a significant deficiency within 45 days of report receipt, indicating how and on what schedule the system will address deficiency. [141.723(c)]	TT	RTC is achieved when the system responds in writing to EPA.

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TCR	21	3100	82	A system exceeds the MCL if it has a routine total coliform-positive sample and any fecal coliform-positive repeat sample or E.coli-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or E.coli-positive routine sample. [141.63(b)]	MCL	RTC is achieved when the next full round of monitoring demonstrates that no additional MCL or M&R violations occurred.
TCR	22	3100	83	A system that collects at least 40 samples per month exceeds the MCL if more than 5.0 percent of the samples collected during a month are total coliform positive. [141.63(a)(1)]	MCL	RTC is achieved when the next full round of monitoring demonstrates that no additional MCL or M&R violations occurred.
TCR	22	3100	84	A system that collects fewer than 40 samples/month exceeds the MCL if more than one sample collected during the month is total coliform-positive. [141.63(a)(2)]	MCL	RTC is achieved when the next full round of monitoring demonstrates that no additional MCL or M&R violations occurred.
TCR	23	3100	85	A system that fails to collect all of the scheduled routine total coliform samples at sites approved in the written sample siting plan according to the determined monitoring frequency. [141.21(a)(1)-(2)]	M&R	RTC is achieved once the system collects a full round of required routine monitoring samples for the following compliance period.
TCR	23	3100	86	A system collecting fewer than 5 routine samples per month has one or more total coliform positive samples and fails to collect all of the 5 routine samples the following month. [141.21(b)(5)]	M&R	RTC is achieved once the system has collected the 5 routine samples.
TCR	23	3100	87	An unfiltered system that fails to collect at least one sample near the first service connection each day the turbidity level of the source water, measured in accordance with 141.74(b)(2), exceeds 1 NTU. [141.21(a)(5)]	M&R	RTC is achieved once the system has collected the sample(s).
TCR	24	3100	88	A system collects some but not all of the scheduled routine total coliform samples at sites approved in the written sample siting plan according to the determined monitoring frequency. [141.21(a)(1)-(2)]	M&R	RTC is achieved once the system collects a full round of routine monitoring samples.
TCR	24	3100	89	A system collecting fewer than 5 routine samples per month has one or more total coliform positive samples and collects some but not all of the 5 routine samples the following month. [141.21(b)(5)]	M&R	RTC is achieved once the system has collected the 5 routine samples.
TCR	25	3100	90	A system that has been notified of a total coliform positive routine sample and collects none of the repeat samples within 24 hours of being notified of the positive result. [141.21(b)(1)]	M&R	RTC is achieved once the system collects the same number of non-special purpose samples as the number of missed repeat samples, from the required locations.

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TCR	25	3100	91	A system that is notified of total coliform positive repeat sample and fails to continue collecting all of the additional sets of repeat samples, unless the MCL has been exceeded. [141.21(b)(4)]	M&R	RTC is achieved once the system collects the same number of non-special purpose samples as the number of missed repeat samples, from the required locations, or notifies the State that the MCL has been exceeded.
TCR	25	3100	92	A system notified of a total coliform positive routine or repeat sample and fails to analyze the total coliform positive culture medium for fecal coliforms/E. coli. [141.21(e)(1)]	M&R	RTC is achieved once the total coliform positive culture medium is tested for fecal coliforms, unless the total coliform positive culture medium is no longer capable of being tested for fecal coliforms. In that case, the system must resample for each total coliform positive sample not tested for fecal coliforms.
TCR	26	3100	93	A system notified of total coliform positive repeat sample and analyzes some but not all of the total coliform positive samples for fecal coliform/E. coli. [141.32(e)(1)]	M&R	RTC is achieved once the total coliform positive culture medium is tested for fecal coliforms, unless the total coliform positive culture medium is no longer capable of being tested for fecal coliforms. In that case, the system should resample for each total coliform positive sample not tested for fecal coliforms.
TCR	26	3100	94	A system that has been notified of a total coliform positive routine sample and collects some but not all of the repeat samples within 24 hours of being notified of the positive result. [141.21(b)(1)]	M&R	RTC is achieved once the system collects a full round of repeat monitoring samples.
Stage 1	27	0999, 1011, 2920, 1006, 1009, 1008, 2456, 2950	95	A system that fails to comply with M&R requirements according to 141.132 and 141.134. [141.132 and 141.134]	M&R	RTC is achieved after one monitoring round without additional M&R violations.
Stage 2	27	2456, 2950	96	Fails to report to the State as required by 141.629(a)(1)-(2). [141.629]	M&R	RTC is achieved when a system submits its report with all the required data elements.
GWR	28	0700	97	A system that fails to provide the State, at the State's request, any existing information that may enable the State to conduct a sanitary survey. [141.401]	OTHER	RTC is achieved once the system provides the documentation requested by the State.
TCR	28	No Ccode	98	A system that does not collect 5 or more routine samples per month and fails to undergo an initial sanitary survey by June 29, 1994, for community water systems, and June 29, 1999 for non-community water systems; or fails to undergo another sanitary survey every five years for community water systems and every 10 years for non-community water systems. [141.21(d)(1)(i)]	OTHER	RTC is achieved once a sanitary survey has been performed at the system.

NPDWR Drinking Water Violations and RTC Definitions - Nov 25, 2014 (revised violations 2A, 2B, & 4A March 7, 2016) NEW two character NOMENCLATURE for violations where the first character is numeric (with 1=MCL, 2=Treatment Technique Violation, 3=Monitoring 4= Reporting 5=Other) describing the violation category and the second character is an alphabetical character that represents a Rule's unique violations.				Monitoring and Reporting violations have been separated and will not be combined. All of the TCR violation codes will be replaced when the RTCR is fully effective. Public Notice and CCR requirements for the RTCR fall under the PN and CCR categories of existing violation codes and are not included under the RTCR category.		
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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
IESWTR	29	0300	99	For filtered systems serving more than 10,000: 1) Failure to have a Comprehensive Performance Evaluation (CPE) conducted by the State or a third party no later than 30 days after an exceedance (>2.0 NTU in two consecutive measurements taken 15 minutes apart in 2 consecutive months); and 2) Failure to complete the CPE and submit it to the State no later than 90 days following the exceedance. [141.175(b)(4)].	M&R	RTC is achieved when the CPE is conducted at system, unless, for a system serving less than 10,000 people: 1) A CPE has been conducted in last 12 months; or 2) State and PWS are participating in CTA.
IESWTR	29	0300	100	For a system serving at least 10,000 people, failure to produce and/or report to State an individual filter profile or reason for exceedance within 7 days of exceedance (>1.0 NTU in two consecutive measurements taken 15 minutes apart). [141.175(b)(1)]	M&R	RTC is achieved when the PWS produces a filter profile and reports it to the State.
IESWTR, LT1	29	0300	101	Failure to conduct and/or report to State a self-assessment of an individual filter within 14 days of exceedance (>1.0 NTU in two consecutive measurements taken 15 minutes apart in each of 3 consecutive months). [141.175(b)(3) or 141.563(b)].	M&R	RTC is achieved when the PWS produces a filter profile and reports it to the State.
LT1	29	0300	102	For a system serving less than 10,000 people, failure to conduct and/or report an exceedance and cause of exceedance, if known by 10th day of following month (>1.0 NTU in two consecutive measurements taken 15 minutes apart). [141.563(a)].	M&R	RTC is achieved when the PWS reports to the State the filter number(s), corresponding date(s), turbidity value(s) which exceeded 1.0 NTU and the cause if known.
IESWTR	29	0300	103	For a system serving at least 10,000 people, failure to produce and/or report to State an individual filter profile or reason for exceedance within 7 days of exceedance (>0.5 NTU in two consecutive measurements taken 15 minutes apart). [141.175(b)(2)]	M&R	RTC is achieved when the PWS reports to the State the filter number(s), turbidity value(s), date(s), and that a profile(s) has been produced or the reason(s) for the exceedance.
LT1	29	0300	104	For subpart H systems serving less than 10,000: 1) Failure to have a Comprehensive Performance Evaluation (CPE) conducted by the State or a third party no later than 60 days after an exceedance (>2.0 NTU in two consecutive measurements taken 15 minutes apart in two consecutive months); and 2) Failure to have the CPE completed and submitted to the State no later than 120 days following the exceedance [141.563(c)].	M&R	RTC is achieved when the CPE is conducted at system, unless, for a system serving less than 10,000 people: 1) A CPE has been conducted in last 12 months; or 2) State and PWS are participating in CTA.
Stage 2	30	2456, 2950	105	A system that fails to monitor for each quarter that a monitoring result would be used in calculating an LRAA. [141.621(e)]	M&R	RTC is achieved after one quarter without additional M&R violations.

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Stage 2	30	2456, 2950	106	A system that fails to conduct standard monitoring according to 141.601 or a system specific study that meets the requirements in 141.602. [141.600]	M&R	RTC is achieved when a system submits its report with appropriate monitoring data.
Stage 2	30	0600	107	Failure to submit an IDSE standard monitoring plan, System Specific Study plan, 40/30 waiver, or submitted plan found to be deficient. [141.600(c);141.601(a); 141.602(a)]	M&R	RTC is achieved when a system submits an IDSE standard monitoring plan, System Specific Study plan, 40/30 waiver, or resubmits a plan that was found to be deficient.
GWR	31	0700	108	A system serving greater than 3,300 people that fails to continuously monitor or report the residual disinfectant concentration or conduct grab sampling every 4 hours until continuous monitoring equipment is returned to service, using approved analytical methods. [141.403(b)(3)(i)(A)]	M&R	RTC is achieved once the system begins monitoring and reporting as specified in 141.403(b)(3)(i)(A).
GWR	31	0700	109	A system serving 3,300 or fewer people that fails to monitor or report the residual disinfectant concentration using the approved analytical methods at a State-approved sampling location. [141.403(b)(3)(i)(B)]	M&R	RTC is achieved once the system begins monitoring and reporting as specified in 141.403(b)(3)(i)(B).
GWR	31	0700	110	A system that uses membrane filtration and fails to monitor or report the membrane filtration process in accordance with all State-specified monitoring requirements. [141.403(b)(3)(ii)]	M&R	RTC is achieved once the MF process is monitored AND operated in accordance with all State-specified compliance requirements.
GWR	31	0700	111	A system that places a new ground water source into service after November 30, 2009 is notified of a TC+ in the distribution system, does not notify the state that it provides 4 log treatment, and fails to conduct compliance monitoring within 30 days of placing the source in service. [141.403(b)(2)]	M&R	RTC is achieved once the system notifies the State that it provides 4 log treatment and once it begins compliance monitoring.
SWTR	31	0200	112	Failure to collect and report required 1) fecal or total coliform samples; 2) turbidity samples; 3) CT calculations and parameters; 4) entry point disinfectant residual concentrations; or 5) distribution system disinfectant concentrations from an unfiltered water system. [141.74(b)]	M&R	RTC is achieved when the PWS complies with monitoring requirements for the parameter(s) which caused the violation, during the next month of operation.
LT2	31	0800	113	An unfiltered system that has not been approved by the State to certify operation within required parameters for treatment credit and fails to report to the State in accordance with 141.721(f) any microbial toolbox options used to comply with the treatment requirements under 141.711 or 141.712. [141.721(f)]	M&R	RTC is achieved once the system reports the microbial toolbox options certification data to the state.

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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
LT2	32	0100, 3014, 3015	114	A system that fails to collect or report any source water sample required in accordance with the sampling schedule, sampling location, analytical method, approved laboratory, and reporting requirements of the rule. [141.701 - 141.706]	M&R	RTC is achieved once the system complies with the sampling plan (schedule, location, analytical method, and approved lab usage) and reporting requirements.
LT2	32	0100, 3014, 3015	115	For a system that requested grandfathering of some or all data, failure to conduct additional monitoring to replace rejected data on a schedule the State approves. [141.707(h)]	M&R	RTC is achieved when the system has conducted additional monitoring to replace rejected data on a State approved schedule.
LT2	32	0800	116	A system that fails to submit a complete source water monitoring plan, including a sampling schedule and description of sampling location. [141.702(a) & 141.703(f)]	M&R	RTC is achieved when the system submits a complete source water monitoring plan.
LT2	33	0800	117	A filtered system that fails to report their initial bin classification to the State for approval within 6 months of the date the system is required to have completed initial source water monitoring or second round of source water monitoring. [141.710(e)(1) & (e)(2)]	TT	RTC is achieved once the system has submitted the applicable bin classification.
LT2	33	0800	118	An unfiltered system that fails to calculate and report the arithmetic mean of all Crypto sample concentrations, including a data summary, within 6 months of the date the system is required to complete the initial source water monitoring or second round source water monitoring. [141.712(a)(1-4)]	TT	RTC is achieved once the system calculates and reports the value.
GWR	34	3002, 3014, 3028	119	A system that is not approved to provide 4-log treatment viruses before or at the first customer and fails to conduct triggered source water monitoring. [141.402(a)]	M&R	RTC is achieved once it begins to conduct triggered source water monitoring OR provides 4 log treatment.
GWR	34	3002, 3014, 3028	120	A system is notified of a total coliform positive sample collected under TCR that is not invalidated by the State and fails to conduct triggered source water monitoring within 24 hours of notification at each of the groundwater sources in use at the time the total coliform sample was collected. [141.402(a)(2)]	M&R	RTC is achieved once the system conducts triggered source water monitoring of each of the groundwater sources in use at the time of the TC+.
GWR	34	3002, 3014, 3028	121	A system that is not referred to corrective action for a fecal indicator positive source water sample collected following a total coliform positive source water sample and fails to collect five additional source water samples for analysis from the same source within 24 hours of being notified of the fecal indicator-positive sample. [141.402(a)(3)]	M&R	RTC is achieved once the system collects the 5 additional samples and completes the fecal indicator analysis.

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GWR	34	3002, 3014, 3028	122	A system that fails to collect a standard sample volume of at least 100 mL for fecal indicator analysis regardless of the fecal indicator or analytical method used. [141.402(c)(1)(a)]	M&R	RTC is achieved once a sample of at least 100 mL is taken for analysis.
GWR	34	3002, 3014, 3028	123	A system that fails to comply with one of the approved analytical methods for ground water source sample fecal indicator analysis. [141.402(c)(2)]	M&R	RTC is achieved when samples are analyzed according to the approved analytical methods.
GWR	34	3002, 3014, 3028	124	A system that fails to collect another ground water source sample and analyze the new sample for the same fecal indicator according to the approved analytical methods for ground water source sample fecal indicator analysis within 24 hours of the initial sample having been invalidated by the State and analyze it. [141.402(d)(2)]	M&R	RTC is achieved once the sample is retaken and analyzed.
GWR	34	3002, 3014, 3028	125	A system that fails to collect a ground water source sample at a location prior to any treatment of the ground water source unless the State approves a sampling location after treatment. [141.402(e)(1)]	M&R	RTC is achieved once the system collects the source sample at the approved location.
GWR	34	3002, 3014, 3028	126	A system with a new source placed into service after November 30, 2009 that fails to conduct State-required assessment source water monitoring OR fails to begin State-required monitoring before the ground water source is used to provide water to the public. [141.402(f)]	M&R	RTC is achieved once the new source conducts assessment source water monitoring and begins State-required monitoring before the source is used to provide water to the public.
GWR	34	3002, 3014, 3028	127	A system with discontinued 4 log treatment that fails to conduct triggered source water monitoring. [141.403(e)]	M&R	RTC is achieved once the system conducts triggered source water monitoring.
GWR	34	3002, 3014, 3028	128	A system that fails to notify the State that it provides 4-log treatment of viruses before or at the first customer (prior to the December 1, 2009), fails to begin compliance monitoring, and does not collect a triggered source water sample after being notified of a positive Total Coliform sample collected in the distribution system. [141.403(b)(1)]	M&R	RTC is achieved once the system notifies the State that it provides 4 log treatment and once it begins compliance monitoring.

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GWR	34	3002, 3014, 3028	129	A wholesale system that receives notice from a consecutive system it serves of a total coliform positive sample result and fails to collect a sample from its ground water source(s) within 24 hours of being notified and analyze it for a fecal indicator. [141.402(a)(4)(ii)(A)]	M&R	RTC is achieved once the sample is collected from the ground water source(s) and analyzed for fecal indicators.
Stage 2	35	2456, 2950	130	A system that exceeds the operational evaluation level (OEL) and fails to conduct an operational evaluation including the required elements and submit a written report of the evaluation to the State no later than 90 days after being notified of the analytical result that caused the system to exceed the operational evaluation level. [141.626]	M&R	RTC is achieved once the operational evaluation level (OEL) report is submitted and includes all required elements.
Stage 2	35	0600	131	A system that fails to submit an IDSE report or Subpart V monitoring plan, or submitted plan found to be missing required elements. [141.601(c)(1-4); 141.602(b)(1-6); 141.605; and 141.622]	M&R	RTC is achieved when a system submits its IDSE report, or Subpart V monitoring plan, or resubmitted plan found to be adequate with required elements.
SWTR	36	0200	132	Failure to collect and/or report required 1) turbidity samples; or 2) entry point disinfectant residual concentrations; or 3) distribution system disinfectant concentrations from a filtered water system. [141.74(c)]	M&R	RTC is achieved when the PWS complies with monitoring requirements for the parameter(s) which caused the violation, during the next month of operation.
LT2	36	0800	133	A filtered system that has not been approved by the State to certify operation within required parameters for treatment credit and fails to report to the State in accordance with 141.721(f) any microbial toolbox options used to comply with the treatment requirements under 141.711 or 141.712. [141.721(f)]	M&R	RTC is achieved once the system reports the microbial toolbox options certification data to the state.
IESWTR, LT1	37	0300	134	A system that fails to profile or consult with the state before making a significant change to a disinfection practice if required to develop a disinfection profile. [141.530; 141.532; 141.536; 141.540; and 141.542]	TT	RTC is achieved once the system has consulted with the state regarding the treatment change.
LT2	37	0800	135	Failure to submit proposal for treatment change to the state before making a significant disinfection change. [141.708(a)]	TT	RTC is achieved once the system submits a treatment change proposal to the State.
IESWTR, LT1	38	0300	136	Failure to report that the system has exceeded 1 NTU (or maximum set by State) in representative samples by end of next business day. [141.175(c)]	M&R	RTC is achieved when the system reports the exceedance to the state.

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IESWTR, LT1	38	0300	137	Failure to collect and/or report at least 90% of required combined filter effluent turbidity samples. [141.175(a) or 141.570(a)]	M&R	RTC is achieved once the system collects and reports 90% of CFE turbidity samples.
IESWTR, LT1	38	0300	138	Failure to report that the system has conducted all individual filter turbidity monitoring to State within 10 days after the end of the month. [141.175(b) or 141.570(b)]	M&R	RTC is achieved when the PWS reports that the PWS has conducted monitoring.
FBRR	39	0500	139	A system that fails to notify the State in writing by December 8, 2003 if the system recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes and/or include a plant schematic and typical recycle flow in the notification. [141.76(b)]	M&R	RTC is achieved when the system provides the State notification including a plant schematic and typical recycled flows.
FBRR	40	0500	140	Failure to meet treatment technique requirements. [141.76(c)]	TT	Return recycled streams to an approved location, or finalization of the required capital improvements.
GWR	41	0700	141	A system that uses membrane filtration and fails to operate the membrane filtration in accordance with all State-specified compliance requirements. [141.403(b)(3)(ii)]	TT	RTC is achieved once the membrane filtration process is monitored AND operated in accordance with all State-specified compliance requirements.
GWR	41	0700	142	A system that uses a State-approved alternative treatment to provide 4 log treatment and fails to: 1) monitor the alternative treatment in accordance with all State-specified monitoring requirements; AND [141.403(b)(3)(iii)(A)]	TT	RTC is achieved once the alternative treatment is monitored AND operated in accordance with all State-specified compliance requirements.
GWR	41	0700	143	A system that uses a State-approved alternative treatment to provide 4 log treatment and fails to: 2) operate the alternative treatment in accordance with all compliance requirements that the State determines to be necessary to achieve at least 4 log treatment of viruses. [141.403(b)(3)(iii)(B)]	TT	RTC is achieved once the alternative treatment is monitored AND operated in accordance with all State-specified compliance requirements.
GWR	41	0700	144	A system that fails to maintain 4 log treatment of viruses before or at the first customer for a ground water source and fails to correct the deficiency within four hours of determining that the system is not maintaining at least 4 log treatment before or at the first customer. [141.404(c)]	TT	RTC is achieved once the deficiency is corrected and 4 log treatment is regained.

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IESWTR, LT1	41	0300	145	Failure to install and properly operate water treatment processes which reliably achieve: (1) At least 99 percent (2-log) removal of Cryptosporidium. [141.170(a)(1) and 141.500(a)]	TT	RTC is achieved when the system installs and properly operates water treatment processes which reliably achieves requirements.
LT2	41	0800	146	An unfiltered system using chlorine dioxide or ozone that fails to achieve required Cryptosporidium inactivation required on more than one day in the calendar month. [141.712(b) & 141.712(c)(1)]	TT	RTC is achieved after PWS meets Cryptosporidium inactivation requirements for one month.
LT2	41	0800	147	An unfiltered system using UV light that fails to achieve required Cryptosporidium inactivation for at least 95% of the water treated that month. [141.712(b) & 141.712(c)(2)]	TT	RTC is achieved after PWS meets Cryptosporidium inactivation requirements for one month.
LT2	41	0800	148	Following completion of initial round of monitoring, a system that fails to maintain the level of treatment necessary for bin classification. [141.711]	TT	RTC is achieved once the system maintains the level of treatment necessary for bin classification for the next round of monitoring.
SWTR	41	0200	149	A system that does not meet the residual disinfectant concentration level for longer than the specified period of time. [141.72(a)(3), 141.72(a)(4), 141.72(b)(2) and 141.72(b)(3)]	TT	RTC is achieved once the system has complied with the disinfectant residual requirements during the next round of monitoring.
SWTR	41	0200	150	A system using slow sand or diatomaceous earth filtration that fails to ensure the turbidity level of representative samples of a system's filtered water be less than or equal to 1 NTU in at least 95% of the measurements taken each month. [141.73(b)(1) and 141.73(c)(1)]	TT	RTC is achieved when the PWS meets turbidity limit requirements for the next round of monitoring.
SWTR	41	0200	151	An unfiltered system that fails to have (i) redundant components to ensure continuous disinfectant application or (ii) automatic shut off whenever the residual disinfectant concentration is less than 0.2 mg/L. [141.72 (a) (2)]	TT	RTC is achieved when the PWS installs necessary components.
SWTR	41	0200	152	A system using slow sand or diatomaceous earth filtration that exceeds 5 NTU at any time in representative samples of the system's filtered water. [141.73(b)(2) & 141.73(c)(2)]	TT	RTC is achieved when the PWS meets turbidity limit requirements for the next round of monitoring.
LT2	42	0800	153	A filtered system that fails to achieve treatment credit in any month by meeting the requirements in 141.716 through 141.720 for microbial toolbox options at least equal to the level of treatment required. [141.711(c)]	TT	RTC is achieved once the system has achieved treatment credit according to the stated provisions for one month.

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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
LT2	42	0800	154	Following completion of initial round of monitoring, a filtered system that fails to meet treatment requirements specified at 141.711 by the schedule in 141.713(c). [141.713(a)]	TT	RTC is achieved when the system meets their applicable treatment requirements.
LT2	42	0800	155	Following completion of second round of monitoring, a filtered system that fails to meet treatment requirements specified at 141.711 by the schedule specified by the State. [141.713(d)]	TT	RTC is achieved when the system meets their applicable treatment requirements.
LT2	42	0800	156	Following completion of initial round of monitoring, an unfiltered system that fails to meet Cryptosporidium inactivation requirements specified at 141.712(b)-(d) by the schedule in 141.713(c). [141.713(b)]	TT	RTC is achieved when the system meets their Cryptosporidium inactivation requirements.
LT2	42	0800	157	Following completion of second round of monitoring, an unfiltered system whose mean Cryptosporidium level has changed and the PWS fails to meet the required level of Cryptosporidium treatment specified at 141.712 by the schedule specified by the State. [141.713(e)]	TT	RTC is achieved when the system meets their applicable treatment requirements.
SWTR	42	0200	158	An unfiltered system that fails to meet any one of the criteria in 141.71(a)&(b) and/or which the State has determined that filtration is required and the system fails to install filtration by the applicable deadline. [141.71(c)(1)]	TT	RTC is achieved once filtration has been installed or the unfiltered source is abandoned.
SWTR	42	0200	159	A system not required to install filtration that has a representative sample of the source water immediately prior to the first or only point of disinfection application exceeding 5 NTU (and PWS does not meet exception criteria outlined in 141.71(a)(2)) or has been identified as the source of a waterborne disease outbreak. [141.71(c)(2)].	TT	RTC is achieved once filtration has been installed or the unfiltered source is abandoned.
GWR	42	0700	160	Failure to install treatment in response to a fecal indicator positive source water sample, including failure to satisfy Primacy Agency specified schedule. [141.404(b) and 141.404(a)(6)(iv)]	TT	RTC is achieved once the treatment has been installed or the system is complying with the Primacy Agency specified schedule.
IESWTR, LT1	43	0300	161	A conventional or direct filtration system that exceeds 1 NTU in representative samples of a system's filtered water. [141.173(a)(2) and 141.551(b)(1)]	TT	RTC is achieved once the PWS meets the turbidity requirements for the next monitoring round.

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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
IESWTR, LT1	43	0300	162	A system using alternative technology filtration that exceeds the standard set by the State (not to exceed 5 NTU) in representative samples of the system's filtered water. [141.173(b) and 141.551(b)(2)]	TT	RTC is achieved once the PWS meets the turbidity requirements for the next monitoring round.
IESWTR, LT1	44	0300	163	A conventional or direct filtration system that fails to meet the turbidity requirements in 141.173(a) and 141.551(a)(1) (must be less than or equal to 0.3 NTU in at least 95% of the measurements taken each month). [141.73(a)(3), 141.173(a), 141.550 - 141.553, 141.551(a)(1)]	TT	RTC is achieved once the system meets turbidity limit requirements for a month.
IESWTR, LT1	44	0300	164	A system serving using an alternative filtration technology that fails to ensure the turbidity level of representative samples of a system's filtered water be less than or equal to the standard set by the State (not to exceed 1 NTU) in at least 95% of the measurements taken each month. [141.173(b) and 141.551(a)(2)]	TT	RTC is achieved once the system remains at or below the turbidity level standard set by the State for a month.
LT2	45	0800	165	For a sanitary survey performed by EPA, a system's failure to meet EPA's approved corrective action schedule, or the schedule contained in PWS response to EPA. [141.723(d)]	TT	RTC is achieved when the system has achieved all corrective actions in schedule or place on a state-approved schedule to correct actions.
GWR	45	0700	166	A system with a significant deficiency that after 120 days of receiving written notification of the significant deficiency from the State fails to: 1) complete corrective action in accordance with any applicable State plan review processes or other State guidance and direction. [141.404(a)(1)]	TT	RTC is achieved once the corrective action has been completed OR the system is in compliance with a State-approved corrective action plan and schedule.
GWR	45	0700	167	A system with a significant deficiency that after 120 days of receiving written notification of the significant deficiency from the State fails to: 2) be in compliance with a State approved corrective action plan and schedule. [141.404(a)(2)]	TT	RTC is achieved once the corrective action has been completed OR the system is in compliance with a State-approved corrective action plan and schedule.
Stage 1	46	2920	168	A system that is required to meet Step 1 TOC removals and the value calculated under 141.135(c)(1)(iv) is less than 1.00. [141.133(d)]	TT	RTC is achieved once the system meets the TOC removal value for the next full round of monitoring.
IESWTR, LT1	47	0300	169	Begins construction of uncovered finished water storage facilities on or after February 16, 1999. [141-170(c)]	TT	RTC is achieved when the system ceases construction of a new uncovered reservoir or completed covering an existing uncovered finished water reservoir.

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Item#244: All conditions that create an <i>E. coli</i> MCL violation. Item#245: all conditions for failure to do Level 1 Assessment. Item#246: all conditions for failure to do Level 2 Assessment. Item#247: all conditions for failure to complete corrective actions. Item#249: Failure to conduct routine monitoring vs Item#250: Failure to conduct additional routine monitoring. Item#252: All conditions related to lab / analytical method error. Item#254: All reporting violation conditions related to failure to report monitoring results/violations. Item#258: All reporting violation conditions related to failure to report related to violations involving failure to conduct assessments/assessment forms/corrective actions, failure to report completed corrective actions from assessment. Item#259: All conditions related to failure to have sample siting plan Item#260: All recordkeeping type conditions						
NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
IESWTR, LT1	47	0300	170	Failure to cover any uncovered finished water reservoir that you began to construct on or after March 15, 2002 as described in 141.510 and 141.511. [141.503(a)]	TT	RTC is achieved when the system ceases construction of a new uncovered reservoir or completed covering an existing uncovered finished water reservoir.
LT2	47	0800	171	A system that uses an uncovered finished water storage facility that fails to notify the State of the use of each facility by the April 1, 2008 deadline. [141.714(b)]	TT	RTC is achieved when the a state is notified of the use of each uncovered finished water storage facility.
LT2	47	0800	172	A system that fails to cover any uncovered finished water storage facility by the April 1, 2009 deadline or a fails to treat the discharge from the uncovered finished water storage facility to the distribution system to achieve 4 log virus, 3 log Giardia, and 2 log Crypto treatment using State-approved protocols by the April 1, 2009 deadline. [141.714(c)(1) and 141.714(c)(2)]	TT	RTC is achieved when the uncovered finished water storage facility is covered or when the required treatment is provided.
GWR	48	0700	173	A system with a fecal indicator positive sample (that has not been invalidated by the State) and after 120 days of receiving notice of the fecal indicator positive sample has failed to: 1) complete corrective action in accordance with any applicable State plan review processes or other State guidance and direction. [141.404(b)(1)]	TT	RTC is achieved once the corrective action has been completed OR the system is in compliance with a State-approved corrective action plan and schedule.
GWR	48	0700	174	A system with a fecal indicator positive sample (that has not been invalidated by the State) and after 120 days of receiving notice of the fecal indicator positive sample has failed to: 2) be in compliance with a State approved corrective action plan and schedule. [141.404(b)(2)]	TT	RTC is achieved once the corrective action has been completed OR the system is in compliance with a State-approved corrective action plan and schedule.
LCR	51	5000	175	A system which fails to comply with initial tap monitoring requirements as required and specified in 141.86(a)-(c). [141.86(a)-(c)]	M&R	RTC is achieved when system collects the specified number of samples for two consecutive 6-month periods using appropriate sampling procedures in accordance with 141.86(a) and (b); collects the required number of samples listed in 141.86(c) during the specified time frame.
LCR	52	5000	176	A system which fails to comply with initial tap monitoring requirements as required and specified in 141.86(a)-(c). [141.86(a)-(c)]	M&R	RTC is achieved when the system collects the required number of tap samples in accordance with 141.86(c) and (d)(1); using correct sampling procedures in accordance with 141.86(a) and (b); and conduct analyses using the correct procedures in accordance with 141.89(a).

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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
LCR	52	5000	177	For States that have chosen to calculate the 90th percentile for the systems failure to provide all the monitoring information on time or to provide sample information need for the State to perform 90th percentile calculation. [141.90(h)]	M&R	RTC is achieved when the system provides sample information needed for your State to perform the 90th percentile calculation as outlined in 141.90(h) and all required monitoring information is submitted in accordance with 141.90(a).
LCR	52	5000	178	Failure by a system that is deemed optimized under 141.81(b)(3) to notify the State of an upcoming long-term change in treatment or addition of a new source. [141.81(b)(3)(iii) & 141.90(a)(3)]	M&R	RTC is achieved when the systems reports the long-term change in treatment or an addition of a new source and the State approves the change or addition.
LCR	52	5000	179	Failure by a system on reduced lead and copper tap sampling, under 141.86(d) to notify the State and get State approval of an upcoming long-term change in treatment or addition of a new source before implementing the change. [141.86(d)(4)(vii) & 141.90(a)(3)]	M&R	RTC is achieved when the system notifies the State of the long-term change in treatment, and/or the addition of a new source, and the state has approved the change or new source.
LCR	52	5000	180	Failure to replace invalidated samples, if the samples are needed to meet minimum sampling requirements, in accordance with 141.86(f)(4). [141.86(f)(4)]	M&R	RTC is achieved when the system reports one complete round of valid lead and copper tap samples.
LCR	53	5000	181	Failure to collect the required number of WQP samples using correct sampling procedures and conduct analyses using the correct procedures. [141.87(a) - (e)]	M&R	RTC is achieved if in the subsequent compliance period the system collects the required number of WQP samples using correct sampling procedures and conducts analyses using the correct procedures.
LCR	53	5000	182	Failure to report all required WQP results and information within 10 days from the end of the monitoring period, or earlier, if specified by the State. [141.90(a)]	M&R	RTC is achieved when all required monitoring information is submitted in accordance with 141.90(a)(vi)-(viii).
LCR	53	5000	183	Failure to meet their State-approved sampling plan for collecting Water Quality Parameters at representative entry point locations. [141.87(c)(2) & (c)(3)]	M&R	RTC is achieved if in the subsequent compliance period the system meets their State-approved sampling plan for collecting Water Quality Parameters at representative entry point locations.
LCR	53	5000	184	A new large system (i.e., a small or medium system that becomes a large system) that fails to collect/report the required number of valid sample results for lead and copper tap sampling and Water Quality Parameter monitoring for large systems during two consecutive six month monitoring periods, unless an action level was exceeded in the first 6 month period. [141.86(a)-(c), 141.86(d)(1)(i), & 141.90]	M&R	RTC is achieved when system monitors and reports the required number of valid lead and copper tap samples and water quality parameter results, for two consecutive 6-month periods.

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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
LCR	56	5000	185	Failure to collect the required number of source water samples using correct sampling procedures and conduct analyses using the correct procedures in accordance with 141.88(a)(1) -(e)(3) & 141.89(a). [141.88(a)(1) - (e)(3) & 141.89(a)]	M&R	RTC is achieved when in a subsequent monitoring period a system collects the required number of samples in accordance with 141.88(a)(1) - (e)(3); using appropriate sampling procedures in accordance with 141.88(a)(1) and samples are analyzed properly in accordance with 141.89(a) and reported to the State. If the case of follow-up source water monitoring a system is required to conduct two 6-month consecutive source water monitoring, in this case RTC is achieved when two 6-month consecutive source water monitoring is completed and reported to the State.
LCR	56	5000	186	Failure to provide all the sampling information on time in accordance with 141.90(b)(1)&(2). [141.90(b)(1)&(2)]	M&R	RTC is achieved when a system provides all the sampling information to the State.
LCR	57	5000	187	For an OCCT Study/Recommendation violation, failure to meet any of the following: 1) Submit an OCCT recommendation on time in accordance with 141.82(a) and 141.90(c)(2); 2) Submit an "acceptable" study on time in accordance with 141.82(c) and 141.90(c)(3); or 3) Provide additional information needed by the State to make an OCCT determination in accordance with 141.82(d)(2). [141.82(a), (c) & (d)(2); & 141.90(c)(2), (c)(3)]	TT	RTC is achieved when a system submits its OCCT recommendation in accordance with 141.82(a) and 141.90(c)(2); submits an "acceptable" study in accordance with 141.82(c) and 141.90(c)(3); and provides any additional information needed by the State to make an OCCT determination in accordance with 141.82(d)(2). RTC is achieved for systems serving ≤50,000 when they are below both action levels during 2 consecutive monitoring periods after incurring this violation.
LCR	57	5000	188	For an SOWT Recommendation violation, failure to submit a SOWT recommendation no later than 180 days after the end of the monitoring period during which the lead or copper action level was exceeded. [141.83(a)(1) & 141.90(d)(1)]	TT	RTC is achieved when a system submits its SOWT recommendation in accordance with 141.83(a)(1) & 141.90(d)(1), even if the recommendation is no source water treatment is required.
LCR	58	5000	189	For an OCCT Installation violation, failure to meet any of the following: have the State-designated treatment properly installed and operating in accordance with 141.82(e); submit a certification of proper installation and operation in accordance with 141.90(c)(4), or demonstrate that OCCT already exists. [141.81(b)(1)-(3), 141.82(e) and 141.90(c)(1)]	TT	RTC is achieved once the system has the State-designated treatment properly installed and operating in accordance with §141.82(e) and submits a certification of proper installation and operation in accordance with §141.90(c)(4); or demonstrates that OCCT already exists in accordance with §§141.81(b)(1)-(3) and 141.90(c)(1). Note: Systems serving ≤50,000 are RTC if they are below both action levels during 2 consecutive monitoring periods after incurring this violation.
LCR	58	5000	190	Failure to properly install and operate source water treatment in accordance with 141.83(b)(3) & (5) and submit certification to the State of proper SOWT installation and operation. [141.83(b)(3) & (5), & 141.90(d)(2)]	TT	RTC is achieved once the system installs State designated treatment, <i>and</i> submits proof of proper installation and operation.

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LCR	58	5000	191	A system which exceeds the lead or copper action level and fails to implement applicable source water treatment requirements specified in 141.83. [141.80(e) and 141.83]	TT	RTC is achieved once the system completes lead and copper source water treatment steps to the satisfaction of the State.
LCR	58	5000	192	Failure by a system with a full or partial monitoring waiver under 141.86(g) to notify the State and get State approval of an upcoming long-term change in treatment or addition of a new source before implementing the change. [141.86(g)(4)(iii) & 141.90(a)(3)]	TT	RTC is achieved when the system notifies the State of the long-term change in treatment, and/or the addition of a new source, and the state has approved the change or new source.
LCR	59	5000	193	Failure to: Maintain OWQP minimum or ranges in accordance with 141.82(g). Also, If you adopted the OWQP compliance method from the LCRM, the violation definition also includes failure to: Meet daily values for more than 9 days in a 6-month monitoring period. [141.82(g)]	TT	RTC is achieved when in a subsequent monitoring period a system maintains OWQP minimum or ranges in accordance with 141.82(g).
LCR	63	1022, 1030	194	Failure to meet either State-designated or approved MPL in accordance with 141.83(b)(5). [141.83(b)(5)]	TT	RTC is achieved when a system meets either State-designated or approved MPL in accordance with 141.83(b)(5) and collect samples from all locations during a subsequent compliance period. Note: A system is not required to meet State-designated MPLs when it is below both action levels during the entire source water monitoring periods in effect after incurring this violation, therefore the system can be considered RTC in the aforementioned scenario.

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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
LCR	64	5000	195	A system which exceeds the lead AL after implementation of applicable corrosion control and/or source water treatment requirements (whichever sampling occurs later) and fails to meet any of the following: 1) replace the required amount of lead service lines (LSLs) by the annual deadline, in accordance with 141.84(a) & (b); or 2) report the required LSL information on time, in accordance with 141.90(e) that demonstrates that the replacement rate was met; 3) Where the system does not replace the entire LSL, provide notice and guidance to residents at least 45 days before LSLR begins (unless you allow a shorter notification period) and collect a tap sample within 72 hours of completing the partial LSLR in accordance with 141.84(d)(1); 4) Mail and/or post results of the analysis to the owner and residents within 3 days of receipt of the results in accordance with 141.84(d)(2); or 5) Report information that you deem necessary to assess whether the system met its partial LSLR monitoring and notification requirements in accordance with 141.90(e). [141.84(a) & (b), 141.84(d)(1) & (2); & 141.90(e)]	TT	RTC is achieved once the system has completed all lead service line replacement requirements by: 1) replacing the required amount of lead service lines (LSLs) in accordance with §§141.84(a) & (b); 2) reporting the required LSL information, in accordance with §141.90(e) that demonstrates that the replacement rate was met; 3) In cases of where the system does not replace the entire LSL (i.e., "partial LSLR replacement"), by providing notice and guidance to residents to minimize their exposure to lead; collecting a tap sample after completing the partial LSLR; mailing and/or post results of the analysis to the owner and residents; and 4) reporting information to the State that you deem necessary to assess whether the system met its partial LSLR monitoring and notification requirements. Note you can also RTC if you meet the lead AL for two consecutive monitoring periods even if you haven't replaced 7% of lead service lines that year.
LCR	65	5000	196	Failure to meet any of the following public education provisions: 1) include all applicable content requirements in 141.85(a); 2) meet the delivery requirements of 141.85(b); or 3) report all required public education information to the State on time, within 10 days after the end of the period in which public education was required, in accordance with 141.90(f)(1) & (2). [141.85(a) & (b)]	TT	RTC is achieved once the system completes the public education requirements and provides a letter to the Primacy agency that the public education requirements are completed in accordance with 141.85(a)&(b).
LCR	66	5000	197	Failure to provide notice of lead results to individual served by taps used for LCR tap monitoring, in accordance with the timing, content and delivery requirements at 141.85(d)(1)-(3), or failure to submit a sample notice and certification to the State in accordance with 141.90(f)(3) . [141.85(d)(1)-(3) & 141.90(f)(3)]	M&R	RTC is achieved once the system provides notice of lead results to all individuals served by taps used for lead and copper tap monitoring in accordance with §141.85(d)(1); and submits a sample notice and certification of delivery to the State that they have provided notice of lead results to all individuals served by taps used for lead and copper tap monitoring.
LCR	66	5000	198	Failure to meet timing, content, delivery and reporting requirements for the notice. [141.85(d)]	M&R	RTC is achieved once the system provides notice of lead results to all individuals served by taps used for lead and copper tap monitoring in accordance with 141.85(d)(1) and the notification meets the content requirements in 141.85(d)(3) and the delivery requirements in 141.85(d)(4); and the system certifies to the State that they have provided notice of lead results to all individuals served by taps used for lead and copper tap monitoring meeting the reporting and certification requirements in 141.90(f)(3).

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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
CCR	71	7000	199	Failure to produce and deliver a copy of the Consumer Confidence Report (CCR) to the public by July 1.[141.152(a)].[141.152(a); 141.155(c)]	OTHER	RTC is achieved once the system produces and delivers the missed CCR report currently due to the public and to the appropriate regulatory agency fulfilling the Rule's content and delivery requirements.
CCR	71	7000	200	Failure to mail a copy of the report to the primacy agency by July 1, followed within three months by a certification form [141.155(c)].	OTHER	RTC is achieved once the system produces and delivers the missed CCR report currently due to the public and to the appropriate regulatory agency fulfilling the Rule's content and delivery requirements.
CCR	71	7000	201	An existing system that fails to produce and deliver its first CCR to the public by October 19, 1999, its second report by July 1, 2000, and subsequent reports by July 1 annually thereafter. [141.152(b)]	OTHER	RTC is achieved once the system produces and delivers the missed CCR report currently due to the public and to the appropriate regulatory agency fulfilling the Rule's content and delivery requirements.
CCR	71	7000	202	A new system that fails to produce and deliver a CCR by July 1 of the year after its first full calendar year in operation. [141.152(c)]	OTHER	RTC is achieved once the system produces and delivers the missed CCR report currently due to the public fulfilling the Rule's content and delivery requirements.
CCR	71	7000	203	A CWS that sells water to another CWS and fails to deliver CCR contents to the buyer by April 19, 1999, April 1, 2000, and by April 1, annually thereafter or on a date mutually agreed upon by both the seller and purchaser. [141.152(d)]	OTHER	RTC is achieved once the system delivers the contents of the CCR currently due to the buyer.
CCR	72	7000	204	Failure of a system that detects more than 0.005 mg/L and up to and including 0.010 mg/L of arsenic to include an informational statement. [141.154(b), 141.154(b)(1)]	OTHER	RTC is achieved when the system includes an informational statement in the CCR.
CCR	72	7000	205	Failure of a system that detects more than 0.010 mg/L of arsenic to include the health effects language prescribed by Appendix A to Subpart O. [141.154(f)]	OTHER	RTC is achieved when the system includes the health effects language in their next CCR.
CCR	72	7000	206	Failure to provide adequate information about a variance or exemption in CCR for those systems operating under a variance or an exemption. [141.152, 141.153(c)(2), 141.153(f)(7), and 141.153(g)]	OTHER	RTC is achieved when the system provides adequate information about a variance or exemption in CCR for those systems operating under a variance or an exemption.
CCR	72	7000	207	Delivery of a CCR that is significantly deficient in content to the extent that the CCR does not meet the requirements of the SDWA and the Federal regulations. [141.205]	OTHER	Correcting a significantly deficient CCR as directed by the State and/or EPA and delivering it to the public and primacy agency.

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CCR	72	7000	208	A system that fails to deliver a copy of the CCR with certification to the primacy agency within 3 months (October 1) of community CCR distribution. [141.155(e)]	OTHER	RTC is achieved once the system delivers the report with certification form to the primacy agency.
CCR	72	7000	209	A system that fails to provide the CCR to any other agency or clearinghouse identified by the primacy agency. [141.155(d)]	OTHER	RTC is achieved once the system provides the CCR to the specific party or parties identified by the primacy agency.
CCR	72	7000	210	A system serving 100,000 or more persons that fails to post its current CCR to a publicly-accessible site on the Internet. [141.154(f)]	OTHER	RTC is achieved once the system has posted the missed CCR on a publicly-accessible site on the Internet.
CCR	72	7000	211	Failure to inform customers of any uncorrected significant deficiency or any fecal indicator-positive ground water source sample in the next CCR report. [141.153(h)(6)]	OTHER	RTC is achieved once the system notifies the customer of the uncorrected significant deficiency and its status as well as the fecal indicator-positive ground water source sample.
CCR	72	7000	212	Failure to include required additional health information. [141.154]	OTHER	RTC is achieved once the system has corrected the CCR and delivers it to the public and primacy agency.
CCR	72	7000	213	A system tha fails to provide information in every CCR on lead in drinking water irrespective of whether the system detected lead in any of its samples. All CCRs must include: sources of lead in drinking water, health effects from lead exposure, ways to reduce lead in drinking water, recommended flushing times, and places to go for more information including lead testing. Also, a system is in violation if it doesn't report the 90th percentile value and the number of sample sites exceeding the lead AL along with the additional requirements. [141.154]	OTHER	A system is returned to compliance when it provides information in every CCR on lead in drinking water irrespective of whether the system detected lead in any of its samples. All CCRs must include: sources of lead in drinking water, health effects from lead exposure, ways to reduce lead in drinking water, recommended flushing times, and places to go for more information including lead testing. And reports the 90th percentile value and the number of sample sites exceeding the lead AL along with the additional requirements.
GWR	73	0700	214	A consecutive system that has a total coliform positive sample collected and fails to notify their wholesale system(s) within 24 hours of being notified of the total coliform positive sample OR a wholesaler that is notified of a total coliform-positive sample and collects and analyzes a sample for fecal indicator and that sample is positive for fecal indicator and fails to notify the consecutive system(s). [141.402(a)(4)(i); 141.402(a)(4)(i)(B)]	OTHER	RTC is achieved once the consecutive system notifies the wholesale system(s) OR once the wholesaler notifies the consecutive system(s).
PN	75	7500	215	Failure to issue proper Public Notification in the form, manner, and frequency required. [141.203, 141.204(a)-(c) Appendix A to Subpart Q of Part 141]	OTHER	RTC is achieved when the system issues proper Public Notification in the form, manner, and frequency required.

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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
PN	75	7500	216	Failure to send adequate, timely, and repeat public notice for failure to comply with any schedule prescribed pursuant to a variance or exemption, or timely and adequate notice after the granting of a variance or exemption. [141.6(c), 141.32(a), 141.201, 141.204(a) & (b), 141.205(b), 141.206 Appendix A to Subpart Q of Part141]	OTHER	RTC is achieved when the system sends adequate, timely, and repeat public notice for failure to comply with any schedule prescribed pursuant to a variance or exemption, or timely and adequate notice after the granting of a variance or exemption.
PN	75	7500	217	A system required to provide public notice that fails to provide notice to persons served by the water system. [141.201(c)(1)]	OTHER	RTC is achieved once the system provides notice to customers.
PN	75	7500	218	A wholesale system required to provide public notice that fails to provide notice to its consecutive system(s). [141.201(c)(1)]	OTHER	RTC is achieved once the wholesaler provides notice to its consecutive system(s).
PN	75	7500	219	A system required to provide public notice that fails to provide a copy of the notice to the primacy agency. [141.201(c)(3)]	OTHER	RTC is achieved once the system provides a copy of the notice with certification form to the primacy agency.
PN	75	7500	220	A system required to monitor under 141.701 that fails to notify persons served by the water system that monitoring has not been completed as specified no later than 30 days after the system has failed to collect any 3 months of monitoring as specified in 141.701(c). [141.211(a)]	OTHER	RTC is achieved once the system notifies the persons served by the water system that the monitoring has not been completed or if the system completes the required monitoring.
PN	75	7500	221	A system required to determine bin classification under 141.710 or to determine mean Cryptosporidium level under 141.712 and fails to notify persons served by the water system that the determination has not been made as required no later than 30 days after the system has failed to report the determination as specified in 141.710(e) or 141.712(a); and fails to provide notice in a form and manner consistent with a Tier 2 notice and fails to include mandatory language per 141.211(d). [141.211(b) and 141.211(c)]	OTHER	RTC is achieved once the system notifies the persons served by the water system in a form and manner that is consistent with a Tier 2 public notice that the monitoring has not been completed or if the system completes the required monitoring.
PN	75	7500	222	A system required to provide Tier 1 public notice that fails to distribute a Tier 1 notice as soon as practical but no later than 24 hours after the system learns of the violation. [141.202(b)(1)]	OTHER	RTC is achieved once the system distributes a Tier 1 notice.
PN	75	7500	223	A system required to provide Tier 1 public notice that fails to initiate consultation with the primacy agency as soon as practical but no later than 24 hours after the system learns of the violation. [141.202(b)(2)]	OTHER	RTC is achieved once the system initiates consultation with the primacy agency.

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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
PN	75	7500	224	A system required to provide Tier 2 public notice that fails to do so within 30 days after the system learns of the violation or without providing a notice in form and manner reasonably calculated to reach all persons served. [141.203(b)(1) and 141.203(c)]	OTHER	RTC is achieved once the system provides the Tier 2 public notice in a form and manner reasonably calculated to reach all persons served.
PN	75	7500	225	A system required to provide Tier 2 public notice that fails to repeat the notice every three months while the violation or situation persists. [141.203(b)(2)]	OTHER	RTC is achieved once the system provides the Tier 2 public notice and corrects the violation/situation so as to not have to repeat the notice; or the system provides the Tier 2 public notice and repeats the notice every three months while the violation/situation persists.
PN	75	7500	226	A system required to provide Tier 3 public notice that fails to do so within one year of learning about the violation or without providing a notice in form and manner reasonably calculated to reach all persons served. [141.204(b)(1) and 141.204(c)]	OTHER	RTC is achieved once the system provides the Tier 3 public notice in a form and manner reasonably calculated to reach all persons served.
PN	75	7500	227	A system that fails to provide public notification under 141.203 for treatment technique violations. [141.404(d)]	OTHER	RTC is achieved once the public notification is distributed.
PN	75	7500	228	A system that fails to provide public notification under 141.204 for monitoring violations. [141.402(h) and 141.403(d)]	OTHER	RTC is achieved once the public notification is distributed.
PN	75	7500	229	A system that fails to notify the public via Tier 1 PN after failing to collect a valid check, repeat, or confirmation sample(s) within 24 hours. [141.23(f)(2)]	OTHER	RTC is achieved once the public notification is distributed.
PN	76	7500	230	Failure to submit certification within specified time frame under the Public Notification Rule requirements. [141.31(d)]	OTHER	RTC is achieved when the system submits certification to the State that it has fully complied with the public notification requirements.
PN	76	7500	231	A system required to provide Tier 1 public notice that fails to do so within 24 hours of learning of the violation or without providing a notice in form and manner reasonably calculated to reach all persons served. [141.202(b)(1) and 141.202(c)]	OTHER	RTC is achieved once the system provides the Tier 1 public notice in a form and manner reasonably calculated to reach all persons served.
PN	76	7500	232	A system required to provide Tier 1 public notice that fails to comply with additional public notification requirements that are established as a result of consulting with the primacy agency. [141.202(b)(3)]	OTHER	RTC is achieved once the system fully complies with additional public notification requirements established by the primacy agency.

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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
PN	76	7500	233	Failure of a PWS to include all required elements of a public notice [141.205(a)] including standard language that must be included. [141.205(d)]	OTHER	RTC is achieved once the system provides the public notice that includes all required elements and standard language of a public notice.
PN	76	7500	234	Failure of a CWS to provide a copy of the most recent public notice for any continuing violation, the existence of a variance or exemption, or other ongoing situations requiring a public notice to all new billing units or new customers prior to or at the time service begins. [141.206(a)]	OTHER	RTC is achieved once the copy of the most recent public notice is provided to the new billing units/customers.
PN	76	7500	235	Failure of a NCWS to continuously post the public notice in conspicuous locations in order to inform new consumers of any continuing violation, variance or exemption, or other situation requiring a public notice for as long as the violation, variance, exemption, or other situation persists. [141.206(b)]	OTHER	RTC is achieved once the system has continuously posted the public notice in conspicuous locations for the duration of a compliance period.
PN	76	7500	236	A system required to monitor under 141.40 that fails to notify persons served by the system of the results of such sampling no later than 12 months after the monitoring results are known; and fails to provide the notice in a form and manner consistent with the requirements for a Tier 3 public notice. [141.207(a) and 141.207(b)]	OTHER	RTC is achieved once the system provides the sampling results to the public in a form and manner consistent with the requirements of a Tier 3 public notice.
PN	76	7500	237	A system that fails to comply with the requirements for issuing special notice for exceedance of SMCL for fluoride. [141.208]	OTHER	RTC is achieved once the system provides the special notice to the public in a form and manner consistent with the requirements of a Tier 3 public notice.
PN	76	7500	238	A NCWS system granted permission to exceed the MCL for nitrate that fails to comply with the requirements for issuing notice to persons served according to the requirements for a Tier 1 notice under 141.202(a) and (b) in the specified form and manner under 141.209(b). [141.209(a) and 141.209(b)]	OTHER	RTC is achieved once the system provides the special notice consistent with the requirements of a Tier 1 public notice in the form and manner specified under 141.209(b).
PN	76	7500	239	Failure to submit certification within specified time frame under the Public Notification Rule requirements. [141.31(d)]	OTHER	RTC is achieved when the system submits certification to the State that it has complied it has fully complied with the public notification requirements.

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PN	76	7500	240	Failure to issue proper Public Notification in the form, manner, and frequency required. [141.203, 141.204(a)-(c) Appendix A to Subpart Q of Part 141]	OTHER	RTC is achieved when the system issues proper Public Notification in the form, manner, and frequency required.
PN	76	7500	241	Failure to send adequate, timely, and repeat public notice for failure to comply with any schedule prescribed pursuant to a variance or exemption. [141.6(c), 141.32(a), 141.201, 141.204(a) & (b), 141.205(b), 141.206 Appendix A to Subpart Q of Part 141]	OTHER	RTC is achieved when the system sends adequate, timely, and repeat public notice for failure to comply with any schedule prescribed pursuant to a variance or exemption, or timely and adequate notice after the granting of a variance or exemption.
PN	76	7500	242	If a system fails to properly deliver public notice. [141.203]	OTHER	RTC is achieved when the system delivers public notice as required in 141.203.
PN	76	7500	243	A system that fails to notify the public of a significant deficiency or a fecal indicator-positive source sample annually until resolved. [141.202 and 141.403(a)(7)]	OTHER	RTC is achieved once the public notification is distributed.
RTCR	1A	8000	244	<p>E. coli MCL (Violation Code 1A) Plain language: 1) EC+ routine with insufficient repeat samples, or 2) Combination of EC+ and TC+ results between the routine and repeat samples, or 3) TC+ routine with TC+ repeat sample not tested for <i>E. coli</i> by lab</p>	MCL	A new violation ID is generated for each instance the PWS meets the conditions of an <i>E. coli</i> MCL violation. RTC is achieved in the month when a complete round of monitoring is done using approved analytical methods/laboratories and includes ALL required samples (i.e. 1) all required routine samples, 2) all required repeat samples, 3) any additional, expedited, corrective action monitoring required by the State) collected in accordance with the State-approved sample siting plan and there are no monitoring violations or additional <i>E. coli</i> MCL violations
RTCR				EC+ routine with insufficient repeat samples		
RTCR				A system that has an EC+ routine sample, is approved for dual purpose GWR/RTCR sampling, that fails to have an associated sample taken at the GW source. 141.402(a)(2) 141.860(a)(3)		
RTCR				A system that has an EC+ routine sample, is approved for dual purpose GWR/RTCR sampling, that fails to have the designated dual purpose sample tested for <i>E. coli</i> by the laboratory. 141.402(a)(2) 141.860(a)(3)		
RTCR				For each routine EC+ sample, when a PWS with a single service connection is required and approved by the State to take a total volume repeat sample of at least 300 mL, and the PWS fails to meet this requirement to collect the appropriate volume sample. 141.858(a)(2) 141.859(a)(2)(i)		
RTCR				For each routine EC+ sample, when a PWS with a single service connection is required and approved by the State to take three repeat samples within a three day period, and the PWS fails to meet this requirement. 141.858(a)(2) 141.859(a)(2)(i)		

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Item#244: All conditions that create an *E. coli* MCL violation. Item#245: all conditions for failure to do Level 1 Assessment. Item#246: all conditions for failure to do Level 2 Assessment. Item#247: all conditions for failure to complete corrective actions. Item#249: Failure to conduct routine monitoring vs Item#250: Failure to conduct additional routine monitoring. Item#252: All conditions related to lab / analytical method error. Item#254: All reporting violation conditions related to failure to report monitoring results/violations. Item#258: All reporting violation conditions related to failure to report related to violations involving failure to conduct assessments/assessment forms/corrective actions, failure to report completed corrective actions from assessment. Item#259: All conditions related to failure to have sample siting plan Item#260: All recordkeeping type conditions

NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
RTCR				A system that has an EC+ routine sample and fails to collect all the required repeat samples. 141.860(a)(3)		
RTCR				Combination of EC+ and TC+ results between the routine and repeat samples		
RTCR				A system that has a TC+ routine sample with an associated repeat EC+ sample taken at the GW source that is designated dual purpose as an RTCR repeat and GWR triggered source water sample when the PWS is eligible and approved for dual purpose GWR/RTCR sampling. 141.402(a)(2) 141.860(a)(1) 141.853a(5)(ii)(A)		
RTCR				A system that has a TC+ routine sample with an associated EC+ repeat sample. 141.860(a)(1) 141.853a(5)(ii)(c)		
RTCR				A system that has an EC+ routine sample with an associated TC+ repeat sample. 141.860(a)(2)		
RTCR				TC+ routine with TC+ repeat sample not tested for E. coli by lab		
RTCR				A system that has a TC+ routine sample with an associated TC+ repeat sample that fails to test for <i>E. coli</i> in the associated TC+ repeat sample. 141.860(a)(4)		
RTCR				Level 1 Assessment/Assessment Form Treatment Technique (Violation Code 2A) Plain language: 1) Failure to conduct L1 assessment, or or complete form, or 2) Inadequate L1 assessment, or insufficient content of assessment form.		
RTCR				Failure to conduct L1 assessment or corrective action(s) or complete form-		

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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
RTCR	2A	8000	245	A system, that triggers a Level 1 assessment, (1) fails to conduct the Level 1 assessment within 30 days from when system learns of the trigger; and/or, (2) fails to complete the Level 1 assessment or corrective actions acceptable to the State within the agreed-upon schedule, not to exceed 30 days, after the initial assessment has been deemed insufficient by the state and the state and system have consulted with each other. 141.859(a)(1)(i) 141.859(3)(ii) 141.859(4)(iii) 141.860(b)(1) 141.859(c)	TT	<p>A new violation ID is generated for each instance the PWS triggers a Level 1 assessment and fails to conduct the Level 1 assessment. RTC is achieved when the system completes a Level 1 assessment according to state requirements (including completing the assessment according to required schedule). Completion of a Level 1 assessment that is deemed sufficient by the primacy agency will return to compliance all previous violations with this violation code. Level 2 assessment or a sanitary survey that meets the criteria and time frame of the Level 1 assessment may be conducted in lieu of the Level 1 assessment. A new violation ID is generated for each instance the PWS triggers a Level 1 assessment and fails to conduct the Level 1 assessment. RTC is achieved when the system has completed a Level 1 assessment according to state requirements which includes a schedule of when to complete the assessment and includes submission of the assessment form). A complete Level 2 assessment which includes submission of the assessment form or sanitary survey report, can also satisfy the Level 1 assessment requirement when they are conducted in the timeframe required by the Level 1 schedule. Completion of a Level 1 or Level 2 assessment including the assessment form will return to compliance all previous violations with this violation code. Or completion of a sanitary survey covering the 8 elements including submission of the sanitary survey report will return to compliance all previous violations with this violation code.</p>
RTCR				Inadequate L1 assessment or insufficient assessment form content		
RTCR				A system, that triggers a Level 1 assessment, fails to ensure that a Level 1 assessment is conducted in order to identify the possible presence of sanitary defects and defects in distribution system coliform monitoring practices. 141.859(b)(1)		
RTCR				A system, that triggers a Level 1 assessment, fails to ensure the Level 1 assessment is consistent with any State directives (e.g. the Level 1 assessment is not conducted in accordance to State directives for Level 1 assessor qualifications). 141.859(b)(2) 141.859(b)(3)		
RTCR				A system, that triggers a Level 1 assessment, fails to ensure that the assessor evaluates the minimum elements as outlined in 141.859(b)(2).		
RTCR				A system, that triggers a Level 1 assessment, fails to describe in the assessment form the detected sanitary defect(s), corrective action(s) completed, and/or a timetable for any corrective actions not already completed in the event that a sanitary defect is identified. 141.859(b)(3)(i) 141.860(b)(1) 141.859(c)		

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RTCR	2B	8000	246	Level 2 Assessment/Assessment Form Treatment Technique (Violation Code 2B) Plain language: 1) Failure to conduct L2 assessment, or complete form, or 2) Inadequate L2 assessment, or Insufficient content of assessment form, or 3) L2 Assessor not State-approved	TT	<p>A new violation ID is generated for each instance the PWS triggers a Level 2 assessment and fails to conduct the Level 2 assessment. RTC is achieved when the system completes a Level 2 assessment according to state requirements (including completing the assessment according to required schedule). Completion of a Level 2 assessment that is deemed sufficient by the primacy agency will return to compliance all previous violations with this violation code. Completion of a sanitary survey that meets the criteria and time frame of the Level 2 assessment may be conducted in lieu of the Level 2 assessment. A new violation ID is generated for each instance the PWS triggers a Level 2 assessment and fails to conduct the Level 2 assessment. RTC is achieved when the system completes the Level 2 assessment according to state requirements (which includes a schedule of when to complete the assessment and submit the form). Completion of a Level 2 assessment will return to compliance all previous violations with this violation code. A complete sanitary survey covering the 8 elements, which includes submission of the sanitary survey report, can also satisfy the Level 2 assessment requirement when they are conducted in the timeframe required by the Level 2 schedule. Completion of a sanitary survey covering the 8 elements including submission of the sanitary survey report will return to compliance all previous violations with this violation code.</p>
RTCR				Failure to conduct L2 assessment		
RTCR				A system, that triggers a Level 2 assessment, (1) fails to conduct the Level 2 assessment within 30 days from when system learns of the trigger; and/or, (2) fails to complete the Level 2 assessment or assessment form or corrective actions acceptable to the State within the agreed-upon schedule, not to exceed 30 days, after the initial assessment has been deemed insufficient by the state and the state and system have consulted with each other. 141.860(b)(1) 141.859(a)(2)(i) 141.859(a)(2)(ii) 141.859(a)(2)(iii)		
RTCR				Inadequate L2 assessment or insufficient content of assessment form		
RTCR				A system, that triggers a Level 2 assessment, fails to ensure that a Level 2 assessment is conducted in order to identify the possible presence of sanitary defects and defects in distribution system coliform monitoring practices. 141.860(b)(1)		
RTCR				A system, that triggers a Level 2 assessment, fails to ensure that the assessor evaluates the minimum elements outlined in 141.859(b)(2).		
RTCR				A system, that triggers a Level 2 assessment, fails to ensure the Level 2 assessment is consistent with any State directives. 141.859(b)(2) 141.859(b)(4)		

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RTCR				<p>A system, that triggers a Level 2 assessment, fails to describe in the assessment form the detected sanitary defect(s), corrective action(s) completed, and/or a timetable for any corrective actions not already completed in the event that a sanitary defect is identified. 141.859(b)(4)(i) 141.860(b)(1) 141.859(c)</p>		
RTCR				<p>L2 Assessor not State-approved</p>		
RTCR				<p>A system, that triggers a Level 2 assessment, fails to ensure that a Level 2 assessment is conducted by the State or a party approved by the State. 141.859(b)(1) 141.860(b)(1)</p>		
RTCR	2C	8000	247	<p>Corrective Actions/Expedited Actions Treatment Technique (Violation Code 2C) Plain language: 1) Failure to complete corrective actions within the required timeframe when a Level 1 or Level 2 assessment is triggered 2) Failure to comply with State-required expedited/additional actions when an E. coli MCL happens</p>		<p>RTC is achieved when the system completes all required corrective action(s), including any expedited or additional actions required by the State. This is an open ended violation until the corrective action associated with this violation ID is corrected.</p>
RTCR				<p>Failure to complete corrective actions within the required timeframe when a Level 1 or Level 2 assessment is triggered</p>		
RTCR				<p>A system, that triggers a <u>Level 1</u> assessment, fails to correct the sanitary defect(s) found through a Level 1 assessment and/or fails to complete the corrective actions specified in the assessment form within 30 days from when the system learns of the trigger or according to a schedule approved by the state. 141.859(a)(1)(i) 141.859(a)(1)(ii)</p>	TT	
RTCR				<p>A system, that triggers a <u>Level 2</u> assessment, fails to correct the sanitary defect(s) found through a Level 2 assessment and/or fails to complete the corrective actions specified in the assessment form within 30 days from when system learns of the trigger or according to a schedule approved by the state. 141.860(b)(1) 141.859(a)(2)(i) 141.859(a)(2)(ii) 141.859(a)(2)(iii)</p>		

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RTCR				Failure to comply with State-required expedited/additional actions when an <i>E. coli</i> MCL happens		
RTCR				A system, with an <i>E. coli</i> MCL violation, fails to comply with any expedited actions or additional actions required by the State. 141.859(b)(3)(iii)(4)		
RTCR	2D	8000	248	Start-up Procedures Treatment Technique Violation (Violation Code 2D) Plain language: Failure to complete seasonal system start-up procedures	TT	A new violation ID is generated for each instance the PWS fails to complete start-up procedures. RTC is achieved when the PWS completes the State approved start-up procedure(s) and/or completes any associated State directives or corrective actions related to start-up procedures and submits the start-up procedures certification.
RTCR	2D	8000	248	A seasonal water system that is not operated on a year-round basis and starts up and shuts down and fails to complete State approved start-up procedures prior to serving water to the public. 141.854(i)(1) 141.856(a)(4)(i) 141.857(a)(4)(i) 141.860(b)(2)	TT	This is an open ended violation until the startup procedure, and any associated State directives or corrective actions related to start-up procedures are conducted. Completion of seasonal system start-up and/or any associated State directives will return to compliance all previous violations with this violation code.
RTCR				Routine Monitoring Violation (Violation Code 3A) Plain language: 1) Failure to collect routine samples at appropriate site/frequency 2) Failure to collect replacement samples when State or lab invalidates one or more routine samples		
RTCR				Failure to collect routine samples at appropriate site/frequency		
RTCR				PWS fails to collect routine total coliform samples according to the written sample siting plan or in accordance to the Standard Operating Procedures listed in the plan. 141.853(a)(1)		
RTCR	3A	8000	249	PWS' existing sample siting plan identifies more compliance monitoring locations than the minimum required and fails to monitor at the additional locations. This provision requires that these extra samples be included in the calculation of a treatment technique trigger or <i>E. coli</i> MCL violation. 141.853(a)(4)	Monitoring	If the PWS monitors monthly, RTC is achieved in the month when a complete round of monitoring is done using approved analytical methods/laboratories and includes all required samples (i.e. a) routine samples, b) repeat samples, c) any additional, expedited, corrective action monitoring required by the State) in accordance with the State approved sample siting plan and the PWS has no monitoring violations. If the PWS monitors less than monthly, then 1) RTC is achieved at the end of the monitoring period when the PWS monitors (including: a) all required routine samples, b) all required repeat samples, c) any additional, expedited, corrective action monitoring required by the State) in accordance to the State approved sample siting plan and has no monitoring violations OR 2) RTC is achieved (regardless of whether any additional routine samples are collected) in the month when the PWS

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RTCR				A PWS fails to conduct the required routine monitoring at least at the minimum number of locations listed in 141.857(b) according to the sample siting plan as listed in 141.853(a) when the PWS meets any of the criteria which requires <u>MONTHLY MONITORING</u> .		routine monitoring frequency is changed to monthly and the PWS has no monitoring violations; (PWS must meet the requirements from increased to baseline monitoring to return to quarterly monitoring). Due to this monitoring violation, refer to "Details - Monitoring Frequency" spreadsheet to determine if the PWS met the conditions requiring monthly routine monitoring.
RTCR				A PWS (using GW only serving 1,000 or fewer persons) on an approved monitoring frequency that is less than monthly (e.g., quarterly, annually, twice in a year) fails to conduct the required routine monitoring at least at the minimum number of locations listed in 141.857(b) and according to the approved sample siting plan as listed in 141.853(a) and 141.854(c)(2) when the PWS meets the criteria which allows <u>LESS THAN MONTHLY</u> routine monitoring.		
RTCR	3B	8000	250	<p>Additional Routine Monitoring Violation (Violation Code 3B) Plain language: Failure to collect additional routine samples required the next month after any TC+ happens * Only applicable when PWS's baseline RTCR monitoring frequency is not monthly</p>	Monitoring	RTC is achieved when the PWS collects 3 routine samples the next month. If the PWS does not collect the additional routine samples the next month, RTC is achieved in the month the PWS collects first the routine baseline sample plus the 3 additional routine samples. Regardless of whether the PWS collects the 3 routine samples, RTC is achieved when the baseline routine monitoring frequency is changed permanently to monthly in the State database of record and the PWS has no monitoring violations; (PWS must meet the requirements from increased to baseline monitoring to return to quarterly monitoring). Due to this monitoring violation, refer to "Details - Monitoring Frequency" spreadsheet to determine if the PWS met the conditions requiring monthly routine monitoring.
RTCR				A PWS that is on monitoring frequency that is less than monthly (e.g., quarterly, annually, or twice in a year) fails to collect at least 3 routine samples ((during the month following one or more TC+ (routine or repeat) samples the month following a TC+ sample result)) AND does NOT meet all the criteria listed in 141.854(j)(1),(2), or (3) and 141.855(f)(1)(2), or (3) to be exempt from additional routine monitoring.		

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RTCR	3C	8000	251	<p>TC Samples (triggered by turbidity exceedance) Monitoring (Violation Code 3C) Plain Language: Failure to collect required extra total coliform samples due to turbidity exceedance * Only applicable to Subpart H systems avoiding filtration</p>	Monitoring	<p>A new violation ID is generated for each instance the PWS fails to collect the total coliform sample triggered by the 1 NTU turbidity exceedance. RTC is achieved in the month when a complete round of monitoring is done using approved analytical methods/laboratories and includes all required samples (i.e. a) routine samples, b) repeat samples, c) any additional, expedited, corrective action monitoring required by the State) in accordance with the State approved sample siting plan and the PWS has no monitoring violations.</p>
RTCR				<p>A PWS that uses GWUDI, SW, or GWUDI/SW blended sources and that does not practice filtration in compliance with Subparts H, P, T and W has a monitoring violation when it fails to collect at least one total coliform sample near the first service connection each day the turbidity level of the source water exceeds 1 NTU, where turbidity is measured as specified in 141.74(b)(2). The PWS must collect this total coliform sample within 24 hours of the turbidity exceedance unless approved by the State to collect the sample on an alternative sample collection schedule when the State determines that the PWS, for logistical reasons outside the PWS's control, cannot have the sample analyzed within 30 hours of collection. 141.857(c)</p>		
RTCR				<p>Monitoring Violation due to Lab and/or Analytical Method Errors (Violation Code 3D) Plain Language: 1) Failure to use the required/approved analytical methods, or to follow holding times, or sample preparation or collection methods 2) Failure to use certified and/or State-approved laboratory</p>		
RTCR				<p>Failure to use the required/approved analytical methods, or to follow holding times, or sample preparation or collection methods</p>		
RTCR				<p>Failure to analyze for <i>E. coli</i> when there is a total coliform positive routine sample. 141.860(c)(2)</p>		

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RTCR	3D	8000	252	Failure to use the 100mL standard sample volume required for analysis, regardless of analytical method used for a routine sample. 141.852(a)(1)	Monitoring	RTC is achieved in the monitoring period when PWS monitors using the approved laboratory and analytical method.
RTCR				PWS fails to determine the presence or absence of total coliforms and <i>E. coli</i> for a routine sample. 141.852(a)(2)		
RTCR				Failure to keep the time from sample collection to initiation of test medium incubation to 30 hours or less for a routine sample. 141.852(a)(3)		
RTCR				Failure to add sufficient sodium thiosulfate to the sample bottle before sterilization in order to neutralize any residual chlorine in the water sample if the water has residual chlorine (measured as free, combined, or total chlorine) for a routine sample. 141.852(a)(4)		
RTCR				PWS fails to conduct total coliform and <i>E. coli</i> analyses in accordance with one of the analytical methods in the table referenced in 141.852(a)(5) or one of the alternative methods listed in Appendix A to subpart C of part 141 for a routine sample. 141.852(a)(5)		
RTCR				Failure to use certified and/or State-approved laboratory		
RTCR				PWS fails to have all compliance samples (required under the RTCR) analyzed by a laboratory certified by EPA or a primacy State to analyze drinking water samples. The laboratory used by the PWS must be certified for each method (and associated contaminants) used for compliance monitoring analyses under this rule for a routine sample. 141.852(b)		
RTCR				Failure to collect replacement samples when State or lab invalidates one or more routine samples		

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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
RTCR				<p>PWS fails to collect a replacement routine sample from the same location as the original sample within 24 hours of being notified that the laboratory must invalidate total coliform sample (unless total coliforms are detected) if the sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined, produces a turbid culture in the absence of an acid reaction in the Presence-Absence coliform test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter. The State may waive the 24 hour time limit on a case by case basis. Alternatively, the State may implement criteria for waiving the 24 hour time limit to use in lieu of case by case extensions. 141.853(c) 141.853(c)(2) 141.853(a)(3) 141.860(c)</p>		
RTCR				<p>PWS fails to collect replacement routine samples to meet the minimum monitoring requirements of the RTCR when a total coliform positive sample is invalidated because of conditions listed in 141.853(c)(1)(i-iii). The laboratory establishes that improper sample analysis caused the total coliform positive result. The State determines the total coliform positive sample resulted from a domestic or other nondistribution system plumbing problem. The State has substantial grounds to believe that a total coliform positive result is due to a circumstance or condition that does not reflect water quality in the distribution system. 141.853(c) 141.853(a)(3) 141.860(c) 141.853(c)(i-iii)</p>		
RTCR	4A	8000	253	<p>Assessment Forms Reporting Violation (Violation Code 4A) Plain Language: Failure to timely submit a completed assessment form. *Assessment and assessment form is complete and adequate, only the delivery of the form is late.</p>	Reporting	RTC is achieved when the State validates in the database of record that the PWS submitted an assessment form acceptable to the State. Submission of any subsequent assessment forms will return to compliance all previous violations with this description.
RTCR				<p>When a PWS fails to submit a monitoring report or completed assessment form after a system properly conducts monitoring or assessment in a timely manner within 30 days. When a PWS properly conducts the required assessment and completes the assessment form in a manner acceptable to the State, however, the PWS fails to submit the assessment form within 30 days. 141.860(d)(1) 141.861(a)(3)</p>		

<p>NPDWR Drinking Water Violations and RTC Definitions - Nov 25, 2014 (revised violations 2A, 2B, & 4A March 7, 2016) NEW two character NOMENCLATURE for violations where the first character is numeric (with 1=MCL, 2=Treatment Technique Violation, 3=Monitoring 4= Reporting 5=Other) describing the violation category and the second character is an alphabetical character that represents a Rule's unique violations.</p>	<p>Monitoring and Reporting violations have been separated and will not be combined. All of the TCR violation codes will be replaced when the RTCR is fully effective. Public Notice and CCR requirements for the RTCR fall under the PN and CCR categories of existing violation codes and are not included under the RTCR category.</p>
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Item#244: All conditions that create an *E. coli* MCL violation. Item#245: all conditions for failure to do Level 1 Assessment. Item#246: all conditions for failure to do Level 2 Assessment. Item#247: all conditions for failure to complete corrective actions. Item#249: Failure to conduct routine monitoring vs Item#250: Failure to conduct additional routine monitoring. Item#252: All conditions related to lab / analytical method error. Item#254: All reporting violation conditions related to failure to report monitoring results/violations. Item#258: All reporting violation conditions related to failure to report related to violations involving failure to conduct assessments/assessment forms/corrective actions, failure to report completed corrective actions from assessment. Item#259: All conditions related to failure to have sample siting plan Item#260: All recordkeeping type conditions

NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
RTCR	4B	8000	254	<p>Sample Results Reporting Violation (Violation Code 4B) Plain Language: 1) Failure to provide sample results information to the State 2) Failure to provide notification to the State that a monitoring violation happened</p>	Reporting	
RTCR				<p>When a PWS properly conducts monitoring and fails to submit the monitoring report in a timely manner. 141.860(d)(1)</p>		<p>RTC is achieved when the sample result information is entered and validated in the database of record.</p>
RTCR				<p>When a PWS fails to notify the State within 10 days about the monitoring violation after the system fails to comply with a coliform monitoring requirement, in which case the PWS must notify public in accordance with subpart Q of this part. 141.861(a)(4)</p>		<p>RTC is achieved when the PWS notifies the State of the monitoring violation or when the State enters and validates the monitoring violation in the database of record.</p>
RTCR	4C	8000	255	<p>Certification Form (for Start-up Procedures) Reporting Violation (Violation Code 4C) Plain Language: Failure to provide the certificate that confirms seasonal system start-up procedures have been completed *Start-up procedures were complete on time and adequate, only the delivery of the certificate is late.</p>	Reporting	<p>RTC is achieved when the state validates in the database of record that the seasonal system start-up procedures were conducted according to State requirements AND the State validates receipt of the certification. Completion of start-up procedures and the submission of any subsequent certification forms will return to compliance all previous violations with this description.</p>
RTCR				<p>When a PWS properly conducts seasonal system start-up procedures and fails to submit certification of completion of State-approved start-up procedures. 141.860(d)(3) 141.861(a)(5)</p>		
RTCR				<p>EC+ Notification Reporting (Violation Code 4D) Plain Language: Failure to notify the State within 24 hours about an EC+ compliance sample result *Applies to any PWS each time it has an EC+ result, even if there is no E. coli MCL violation.</p>		<p>A new violation ID is generated for each instance the PWS fails to report the EC+</p>

<p>NPDWR Drinking Water Violations and RTC Definitions - Nov 25, 2014 (revised violations 2A, 2B, & 4A March 7, 2016) NEW two character NOMENCLATURE for violations where the first character is numeric (with 1=MCL, 2=Treatment Technique Violation, 3=Monitoring 4= Reporting 5=Other) describing the violation category and the second character is an alphabetical character that represents a Rule's unique violations.</p>	<p>Monitoring and Reporting violations have been separated and will not be combined. All of the TCR violation codes will be replaced when the RTCR is fully effective. Public Notice and CCR requirements for the RTCR fall under the PN and CCR categories of existing violation codes and are not included under the RTCR category.</p>
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Item#244: All conditions that create an *E. coli* MCL violation. Item#245: all conditions for failure to do Level 1 Assessment. Item#246: all conditions for failure to do Level 2 Assessment. Item#247: all conditions for failure to complete corrective actions. Item#249: Failure to conduct routine monitoring vs Item#250: Failure to conduct additional routine monitoring. Item#252: All conditions related to lab / analytical method error. Item#254: All reporting violation conditions related to failure to report monitoring results/violations. Item#258: All reporting violation conditions related to failure to report related to violations involving failure to conduct assessments/assessment forms/corrective actions, failure to report completed corrective actions from assessment. Item#259: All conditions related to failure to have sample siting plan Item#260: All recordkeeping type conditions

NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
RTCR	4D	8000	256	When a PWS has an <i>E. coli</i> positive routine or repeat sample and fails to notify the State by the end of the day when the system is notified of the test result, unless the system is notified of the result after the State office is closed and the State does not have either an after-hours phone line or alternative notification procedure, in which case the system must notify the State before the end of the next business day. 141.860(d)(2) 141.858(b)(1) 141.861(a)(1)(ii)	Reporting	result to the State. RTC is achieved when the PWS notifies the State or when the <i>E. coli</i> positive result sample information is entered and validated in the database of record.
RTCR	4E	8000	257	E. coli MCL Reporting (Violation Code 4E) Plain Language: Failure to provide notification to the State that an E. coli MCL violation happened	Reporting	RTC is achieved when the PWS notifies the State of the <i>E. coli</i> MCL violation or when the State enters and validates the <i>E. coli</i> MCL violation in the database of record.
RTCR				When a PWS fails to notify the State by the end of the day when the system incurs an <i>E. coli</i> MCL violation, unless the system learns of the violation after the State office is closed and the State does not have either an after hours phone line or an alternative notification procedure, in which case the PWS must notify the State before the end of the next business day. 141.861(a)(1)(i)		
RTCR	4F	8000	258	Assessments, Assessment Forms, Corrective/Expedited Actions Reporting (Violation Code 4F) Plain Language: Failure to provide notification to the State that violations related to Level 1 and 2 assessments, assessment forms, and corrective actions have happened.	Reporting	RTC is achieved when the PWS notifies the State of Treatment Technique violations or when the State enters and validates in the database of record of the Treatment Technique Violation(s) related to failure to complete corrective action and/or failure to conduct assessment(s)/assessment form(s) according to State requirements.
RTCR				When a PWS fails to notify the State by the end of the next business day when the system incurs a RTCR Treatment Technique violation for failure to complete the assessment/assessment form or failure to conduct corrective actions as described in 141.859. 141.861(a)(2)		

<p>NPDWR Drinking Water Violations and RTC Definitions - Nov 25, 2014 (revised violations 2A, 2B, & 4A March 7, 2016) NEW two character NOMENCLATURE for violations where the first character is numeric (with 1=MCL, 2=Treatment Technique Violation, 3=Monitoring 4= Reporting 5=Other) describing the violation category and the second character is an alphabetical character that represents a Rule's unique violations.</p>	<p>Monitoring and Reporting violations have been separated and will not be combined. All of the TCR violation codes will be replaced when the RTCR is fully effective. Public Notice and CCR requirements for the RTCR fall under the PN and CCR categories of existing violation codes and are not included under the RTCR category.</p>
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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
RTCR				When a PWS fails to notify the State in accordance with 141.859 when each scheduled corrective action is completed for corrections not completed by the time of submission of the assessment form. 141.861(a)(3)		RTC is achieved when the PWS notifies the State that the corrective action is completed or when the State enters and validates in the database of record that each corrective action was completed according to State requirements.
RTCR	5A	8000	259	Errors with Sample Siting Plan (Violation Code 5A) Plain Language: Failure to develop sample siting plan or to revise sample siting plan to include: 1) a sample collection schedule, and/or 2) sample sites or the SOP describing how the sample sites will be chosen	OTHER	RTC is achieved when the State approves the revised sample siting plan or approves the sample siting plan that is developed.
RTCR				Inadequate Sample Collection Schedule		
RTCR				PWS fails to develop a written sample siting plan that identifies sampling sites and a sample collection schedule that are representative of water throughout the distribution system no later than March 31, 2016. The sample collection schedule must be written with regular time intervals throughout the month, except PWSs that use only ground water and serve 4,900 or fewer people, may have a sample siting plan specifying a sample collection schedule with all required samples collected on a single day if they are taken from different sites. PWS that have an existing written sample siting plan fails to demonstrate that the sample siting plan remains representative of the water quality in the distribution system. 141.853(a)(1) 141.853(a)(5) 141.853(a)(6) 141.853(a)(1) 141.853(a)(2)		
RTCR				Failure to describe routine, repeat, dual GWR / RTCR monitoring locations in accordance to regulations.		
RTCR				PWS fails to revise sample siting plan, including any required alternative monitoring locations or SOPs, in accordance with State directive. 141.853(a)(1) 141.853(a)(5)		
RTCR				PWS fails to include routine and repeat sample sites and any sampling points necessary to meet the requirements of subpart S in the sampling plan. 141.853(a)(1) 141.853(a)(5)		

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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
RTCR				<p>PWS fails to identify, in the sample siting plan, repeat samples from the sampling tap where the original total coliform positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. When allowed by the State, PWS fails to identify alternative repeat sampling locations in lieu of the requirement to collect at least one repeat sample upstream or downstream of the original sampling site; where the system believes is representative of a pathway for contamination of the distribution system. When allowed by the State, PWS fails to select either alternative fixed repeat monitoring locations in the sample siting plan or fails to specify the criteria for selecting repeat sampling sites on a situational basis in a standard operating procedure where the SOP design best verifies and determines the extent of potential contamination of the distribution system area based on specific situations. 141.853(a)(5) 141.853(a)(5)(i)</p>		
RTCR				<p>For a GW system serving 1,000 or fewer persons with a single well with WRITTEN State approval, the PWS fails to identify one of its repeat samples in its sample siting plan at the monitoring location required for triggered source water monitoring under 141.402(a). 141.853(a)(1) 141.853(a)(5)(ii)</p>		
RTCR				<p>RCTR Recordkeeping Violations (Violation code 5B) Plain Language: 1) Failure to keep records for Level 1 and Level 2 assessments and corrective/expedited actions for 5 years. 2) Failure to keep records for 1 year on repeat sample results that the State approved and extended the timeframe for sample collection</p>		

<p>NPDWR Drinking Water Violations and RTC Definitions - Nov 25, 2014 (revised violations 2A, 2B, & 4A March 7, 2016) NEW two character NOMENCLATURE for violations where the first character is numeric (with 1=MCL, 2=Treatment Technique Violation, 3=Monitoring 4= Reporting 5=Other) describing the violation category and the second character is an alphabetical character that represents a Rule's unique violations.</p>	<p>Monitoring and Reporting violations have been separated and will not be combined. All of the TCR violation codes will be replaced when the RTCR is fully effective. Public Notice and CCR requirements for the RTCR fall under the PN and CCR categories of existing violation codes and are not included under the RTCR category.</p>
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NPDWR	Reportable Violation Code (SDWIS/FED)	Contaminant Code	Item #	Violation Description	Violation Type	Violations return to compliance ("RTC") when the system meets the following criteria:
RTCR	5B	8000	260	When the PWS fails to maintain all assessment forms, regardless of who conducts the assessment. When the PWS fails to maintain documentation of corrective actions completed as a result of any assessments. When the PWS fails to maintain documentation of other available summary documentation of the sanitary defects and corrective actions taken under 141.858 for State review. This record must be maintained for a period not less than 5 years after completion of the assessment or corrective action. 141.861(b)(1)	OTHER	RTC is achieved when the PWS reports that it has begun recordkeeping, subject to State verification or when the State enters and validates in the database of record that the PWS has met recordkeeping requirements.
RTCR				When the PWS fails to maintain a record of any routine or repeat sample results, including repeat samples taken that meets the State criteria for an extension of the 24 hour period for collecting repeat samples as provided for under 141.858(a)(1) of this part. This record must be maintained for a period not less than 5 years. 141.861(b)(2) 142.14(a)(1)(iii) 141.33(a)		
RTCR				When the PWS has developed a sample siting plan but fails to keep a record of the sample siting plan for a period not less than 5 years. 141.33(f)		

USE APPROPRIATE LETTERHEAD

WARNING LETTER

Date

«AddrBlockBegin»
Via Email: Address
Via Email: Address
«Company»
«Street»
«Street2»
«ADDRBlockEnd»

**Re: «Subj1»
Potential Serious Violator – Environmental Protection Agency**

Dear «Greeting»:

According to Virginia Department of Health (VDH), Office of Drinking Water (ODW) records, the «**Wsysname**» waterworks may be operating in violation of the federal Safe Drinking Water Act and National Primary Drinking Water Regulations. These alleged violations are reported to the U.S. Environmental Protection Agency (EPA) and monitored using its Enforcement Targeting Tool (ETT). VDH also uses the Enforcement Targeting Tool Assistant (ETTA), which provides “real-time” compliance data to VDH. The ETT and ETTA allow VDH and EPA to identify waterworks with the most serious health-based violations in order to prioritize the enforcement response and protect public health.

A review of ODW’s records indicates that the «**Wsysname**» waterworks has the following alleged violations:

Alleged Violations

Issued Date - Violation Type [Analyte Group] {Monitoring Period}

«MemoViolationBlock»

Based on this information, EPA identified the «**Wsysname**» waterworks as a potential “Serious Violator” because it has an ETT score equal to or less than 10. While the «**Wsysname**» waterworks’ current **ETT score is «ETT»**, according to ODW records the “real time” **ETTA score is «ETTA»**. The ETT and ETTA scores are based on ongoing, serious, or multiple alleged violations of health-based drinking water standards, monitoring and reporting requirements, or other federal requirements. Please note that if the alleged violations are not resolved during this calendar quarter, VDH may take further enforcement action.

Enforcement Authority

By identifying the «**Wsysname**» waterworks as a potential “Serious Violator”, VDH intends to work with the «**Wsysname**» waterworks to resolve issues before the waterworks becomes a “Serious Violator” and triggers the requirement that within six months either the waterworks returns to compliance or VDH takes formal enforcement action to resolve the alleged violations.

Formal enforcement may include one or more of the following: administrative orders that may include civil penalties and permit revocation; a civil action; or criminal punishment. VDH considers operating a waterworks in violation of state and federal requirements to present a serious risk of harm to public health and enforcement action may be necessary to protect public health. Code of Virginia (Va. Code) §§ 32.1-167 and 32.1-175.01 authorize the State Board of Health (Board) to issue special orders that may include civil penalties up to \$1,000 per day of violation against an owner who violates the law or any order or regulation adopted by the Board. Va. Code § 32.1-176 authorizes a court of competent jurisdiction to assess civil penalties of not more than \$5,000 per day of violation. Va. Code § 32.1-27 states that any person willfully violating or refusing, failing or neglecting to comply with any regulation of the Board or the State Health Commissioner or any provision of Title 32.1 of the Va. Code shall be guilty of a Class 1 misdemeanor.

VDH has previously provided */Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate/* notice of these alleged violations and requested corrective actions to resolve these issues. These notices, including this letter, set forth VDH’s observations and regulatory requirements only and do not constitute a “case decision” as that term is defined in Va. Code § 2.2-4001.

Future Actions

VDH requests that */Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate/* take immediate steps to resolve this matter. **Please respond to this letter no later than 15 days of the receipt of this notice.** For technical assistance or questions regarding the steps that need to be taken to comply with the law, please contact [the compliance specialist] at [phone number] and [email]. If */Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate/* [disagrees / disagree] with the observations set forth in this notice and would like to request an informal conference in accordance with Va. Code § 2.2-4019, please contact the ODW Director of the Division of Compliance, Enforcement and Policy by telephone or email at [Phone] or [email].

We look forward to working with */Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate/* to resolve this matter as expeditiously as possible.

Sincerely,

[Name]
Director of the Division of Compliance,
Enforcement, and Policy

ec: «FDirector», Field Director, VDH ODW «FieldOffice» Field Office; Email Address
_____, MD, MPH, District Director, _____ Health District;
Email Address
_____, Environmental Health Manager, _____ Health District;
Email Address
_____, [County Administrator/City Manager/Town Manager], [_____
County/City of _____/Town of _____]; Email Address

USE APPROPRIATE LETTERHEAD

WARNING LETTER

<<Date>>

«AddrBlockBegin»
Via Email: Address
«Company»
«Street»
«Street2»
«ADDRBlockEnd»

**Re: «Subj1»
Potential Serious Violator – Environmental Protection Agency**

Dear «Greeting»:

According to Virginia Department of Health (VDH), Office of Drinking Water (VDH) records, the «**Wsysname**» waterworks may be operating in violation of the federal Safe Drinking Water Act and National Primary Drinking Water Regulations. These alleged violations are reported to the U.S. Environmental Protection Agency (EPA) and monitored using its Enforcement Targeting Tool (ETT). VDH also uses the Enforcement Targeting Tool Assistant (ETTA), which provides “real-time” compliance data to VDH. The ETT and ETТА allow VDH and EPA to identify waterworks with the most serious health-based violations in order to prioritize the enforcement response and protect public health.

A review of ODW’s records indicates that the «**Wsysname**» waterworks has the following alleged violations:

Alleged Violations

Issued Date - Violation Type [Analyte Group] {Monitoring Period}

«MemoViolationBlock»

Based on this information, EPA identified the «**Wsysname**» waterworks as a potential “Serious Violator” because it has an ETT score equal to or less than 10. While the «**Wsysname**» waterworks’ current **ETT score is «ETT»**, according to ODW records the “real time” **ETTA score is «ETTA»**. The ETT and ETТА scores are based on ongoing, serious, or multiple alleged violations of health-based drinking water standards, monitoring and reporting requirements, or other federal requirements. If the alleged violations are not resolved during this calendar quarter, VDH may take further enforcement action.

Enforcement Authority

Attachment 12 - Potential Serious Violator Warning Letter

By identifying «**Wsysname**» waterworks as a potential “Serious Violator”, VDH intends to work with the «**Wsysname**» waterworks to resolve issues before the waterworks becomes a “Serious Violator” and triggers the requirement that within six months either the waterworks returns to compliance or VDH takes formal enforcement action to resolve the alleged violations.

Formal enforcement may include one or more of the following: administrative orders that may include civil penalties and permit revocation; a civil action; or criminal punishment. VDH considers operating a waterworks in violation of state and federal requirements to present a serious risk of harm to public health and enforcement action may be necessary to protect public health. Code of Virginia (Va. Code) §§ 32.1-167 and 32.1-175.01 authorize the State Board of Health (Board) to issue special orders that may include civil penalties up to \$1,000 per day of violation against an owner who violates the law or any order or regulation adopted by the Board. Va. Code § 32.1-176 authorizes a court of competent jurisdiction to assess civil penalties of not more than \$5,000 per day of violation. Va. Code § 32.1-27 states that any person willfully violating or refusing, failing or neglecting to comply with any regulation of the Board or the State Health Commissioner or any provision of Title 32.1 of the Va. Code shall be guilty of a Class 1 misdemeanor.

VDH has previously provided *[Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate]* notice of these alleged violations and requested corrective actions to resolve these issues. These notices, including this letter, set forth VDH’s observations and regulatory requirements only and do not constitute a “case decision” as that term is defined in Va. Code § 2.2-4001.

Future Actions

VDH requests that *[Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate]* take immediate steps to resolve this matter. **Please respond to this letter no later than 15 days of the receipt of this notice.** For technical assistance or questions regarding the steps that need to be taken to comply with the law, please contact [the compliance specialist] at [phone number] and [email]. If *[Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate]* [disagrees /disagree] with the observations set forth in this notice and would like to request an informal conference in accordance Va. Code § 2.2-4019, please contact the ODW Director of the Division of Compliance, Enforcement and Policy by telephone or email at [Phone] or [email].

We look forward to working with *[Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate]* to resolve this matter as expeditiously as possible.

Attachment 12 - Potential Serious Violator Warning Letter

Sincerely,

[Name]
Director of the Division of Compliance,
Enforcement, and Policy

ec: «FDirector», Field Director, VDH ODW «FieldOffice» Field Office; Email Address
_____, MD, MPH, District Director, _____ Health District;
Email Address
_____, Environmental Health Manager, _____ Health District;
Email Address
_____, [County Administrator/City Manager/Town Manager], [_____
County/City of _____/Town of _____]; Email Address

USE APPROPRIATE LETTERHEAD

WARNING LETTER

<<Date>>

«AddrBlockBegin»
Via Email: Address
«Company»
«Street»
«ADDRBlockEnd»

**Re: «Subj1»
Serious Violator – Environmental Protection Agency**

Dear «Greeting»:

According to Virginia Department of Health (VDH), Office of Drinking Water (ODW) records, the «**Wsysname**» waterworks may be operating in violation of the federal Safe Drinking Water Act and National Primary Drinking Water Regulations. These alleged violations are reported to the U.S. Environmental Protection Agency (EPA) and monitored using its Enforcement Targeting Tool (ETT). *(Remove if ETTA is not to be included: VDH also uses the Enforcement Targeting Tool Assistant (ETTA), which provides “real-time” compliance data to VDH.)* The ETT and ETTA allows/allow VDH and EPA to identify waterworks with the most serious health-based violations in order to prioritize the enforcement response and protect public health.

A review of ODW’s records indicates that «**Wsysname**» waterworks has the following alleged violations:

Alleged Violations

Issued Date - Violation Type [Analyte Group] {Monitoring Period}

«MemoViolationBlock»

Based on this information, EPA identified the «**Wsysname**» waterworks as a “Serious Violator” because it has an ETT score greater than 10. The «**Wsysname**» waterworks’ current **ETT score is «ETT»**. *(Remove if ETTA is not to be included: ; however, according to ODW records the “real time” ETTA score is «ETTA»*. The score is/ETT and ETTA scores are based on ongoing, serious, or multiple alleged violations of health-based drinking water standards, monitoring and reporting requirements, or other federal requirements. *(Remove if under a CO: If the alleged violations are not resolved during this calendar quarter, VDH may take further enforcement action.)*

Enforcement Authority

The «**Wsysname**» waterworks' designation as a Serious Violator requires that either the waterworks returns to compliance or VDH takes formal enforcement action to resolve the alleged violations within six months of the waterworks being listed as a Serious Violator.

Formal enforcement may include one or more of the following: administrative orders that may include civil penalties and permit revocation; a civil action; or criminal punishment. VDH considers operating a waterworks in violation of federal requirements to present a serious risk of harm to public health and enforcement action may be necessary to protect public health. Code of Virginia (Va. Code) §§ 32.1-167 and 32.1-175.01 authorize the State Board of Health (Board) to issue special orders that may include civil penalties up to \$1,000 per day of violation against an owner who violates the law or any order or regulation adopted by the Board. Va. Code § 32.1-176 authorizes a court of competent jurisdiction to assess civil penalties of not more than \$5,000 per day of violation. Va. Code § 32.1-27 states that any person willfully violating or refusing, failing or neglecting to comply with any regulation of the Board or the State Health Commissioner or any provision of Title 32.1 of the Va. Code shall be guilty of a Class 1 misdemeanor.

VDH has previously provided *[Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate]* notice of these alleged violations and requested corrective actions to resolve these issues. These notices, including this letter, set forth VDH's observations and regulatory requirements only and do not constitute a “case decision” as that term is defined in Va. Code § 2.2-4001.

Future Actions

VDH requests that *[Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate]* take immediate steps to resolve this matter. **Please respond to this letter no later than 15 days of the receipt of this notice.** For technical assistance or questions regarding the steps that need to be taken to comply with the law, please contact [the compliance specialist] at [phone number] and [email]. If *[Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate]* [disagrees / disagree] with the observations set forth in this notice and would like to request an informal conference in accordance Va. Code § 2.2-4019, please contact the ODW Director of the Division of Compliance, Enforcement and Policy by telephone or email at [phone] or [email].

We look forward to working with *[Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate]* to resolve this matter as expeditiously as possible.

Attachment 13 - Serious Violator Warning Letter

Sincerely,

[Name]
Director of the Division of Compliance,
Enforcement, and Policy

ec: «FDirector», Field Director, VDH ODW «FieldOffice» Field Office; Email Address
_____, MD, MPH, District Director, _____ Health District;
Email Address
_____, Environmental Health Manager, _____ Health District;
Email Address
_____, [County Administrator/City Manager/Town Manager], [_____
County/City of _____/Town of _____]; Email Address

USE APPROPRIATE LETTERHEAD

WARNING LETTER

<<Date>>

«AddrBlockBegin»
Via Email: Address
«Company»
«Street»
«ADDRBlockEnd»

**Re: «Subj1»
Serious Violator – Environmental Protection Agency**

Dear «Greeting»:

According to Virginia Department of Health (VDH), Office of Drinking Water (ODW) records, the «Wsysname» waterworks may be operating in violation of the federal Safe Drinking Water Act and National Primary Drinking Water Regulations. These alleged violations are reported to the U.S. Environmental Protection Agency (EPA) and tracked using its Enforcement Targeting Tool (ETT). The ETT and ETTA allow VDH and EPA to identify waterworks with the most serious health-based violations in order to prioritize the enforcement response and protect public health.

A review of ODW’s records indicates that «Wsysname» waterworks has the following alleged violations:

Alleged Violations

Issued Date - Violation Type [Analyte Group] {Monitoring Period}

«MemoViolationBlock»

Based on this information, VDH has identified the «Wsysname» waterworks as a “Serious Violator” because it has an ETTA score greater than 10. While the «Wsysname» waterworks’ current **ETT score is «ETT»**, according to ODW records the “real time” **ETTA score is «ETTA»**. The ETT and ETTA scores are based on ongoing, serious, or multiple alleged violations of health-based drinking water standards, monitoring and reporting requirements, or other federal requirements. If the alleged violations are not resolved during this calendar quarter, VDH may take further enforcement action.

Enforcement Authority

Failure to resolve the alleged violations in a timely manner may result in VDH taking formal enforcement action. Please note that the «**Wsysname**» waterworks qualifying as a “Serious Violator” under the ETT score would require that either the waterworks return to compliance or VDH take formal enforcement action to resolve the alleged violations within 6 months. However, to protect public health, VDH may pursue formal enforcement sooner than that and prior to the ETT score qualifying the «**Wsysname**» waterworks as a “Serious Violator.”

Formal enforcement may include one or more of the following: administrative orders that may include civil penalties and permit revocation; a civil action; or criminal punishment. VDH considers operating a waterworks in violation of federal requirements to present a serious risk of harm to public health and enforcement action may be necessary to protect public health. Code of Virginia (Va. Code) §§ 32.1-167 and 32.1-175.01 authorize the State Board of Health (Board) to issue special orders that may include civil penalties up to \$1,000 per day of violation against an owner who violates the law or any order or regulation adopted by the Board. Va. Code § 32.1-176 authorizes a court of competent jurisdiction to assess civil penalties of not more than \$5,000 per day of violation. Va. Code § 32.1-27 states that any person willfully violating or refusing, failing or neglecting to comply with any regulation of the Board or the State Health Commissioner or any provision of Title 32.1 of the Va. Code shall be guilty of a Class 1 misdemeanor.

VDH has previously provided *[Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate]* notice of these alleged violations and requested corrective actions to resolve these issues. These notices, including this letter, set forth VDH’s observations and regulatory requirements only and do not constitute a “case decision” as that term is defined in Va. Code § 2.2-4001.

Future Actions

VDH requests that *[Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate]* take immediate steps to resolve this matter. **Please respond to this letter no later than 15 days of the receipt of this notice.** For technical assistance or questions regarding the steps that need to be taken to comply with the law, please contact [the compliance specialist] at [phone number] and [email]. If *[Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate]* [disagrees / disagree] with the observations set forth in this notice and would like to request an informal conference in accordance Va. Code § 2.2-4019, please contact the ODW Director of the Division of Compliance, Enforcement and Policy by telephone or email at [phone] or [email].

We look forward to working with *[Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate]* to resolve this matter as expeditiously as possible.

Attachment 14 – Emerging Serious Violator Warning Letter

Sincerely,

[Name]
Director of the Division of Compliance,
Enforcement, and Policy

ec: «FDirector», Field Director, VDH ODW «FieldOffice» Field Office; Email Address
_____, MD, MPH, District Director, _____ Health District;
Email Address
_____, Environmental Health Manager, _____ Health District;
Email Address
_____, [County Administrator/City Manager/Town Manager], [_____
County/City of _____/Town of _____]; Email Address

[Insert Field Office Letterhead]

Date

Waterworks Owner
Waterworks Company
Address
City, State, Zip

If the owner is an entity, then the letter should be addressed to entity and sent to the attention of the administrative contact for the waterworks. If the owner is an individual, then the letter should be addressed to the owner, with their title as owner being identified (e.g., John Doe, Owner).

Letter of Agreement

Re: Issue (e.g., *Reliability Problem*)
Waterworks Name – Waterworks PWSID
Name County/City

Dear [Owner / Administrative Contact – *if the owner is an entity the salutation should be directed towards the administrative contact, but if the owner is an individual then it should be directed to the owner by name*]:

This Letter of Agreement (Agreement) between [**Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate**] and the Virginia Department of Health, Office of Drinking Water (ODW), sets forth actions that [**Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate**] [has / have] taken or [plans / plan] to take to address alleged violations of the Public Water Supplies Law, Code of Virginia § 32.1-167 *et seq.*, and the Waterworks Regulations, 12VAC5-590-10 *et seq.*, at the [Waterworks Name] located in [County/City], Virginia. By signing and dating this letter, and returning it to this office, you are agreeing to the terms of this Agreement to resolve certain issues voluntarily.

Background

Very briefly describe the observations, legal requirements, and the dates of inspections, NOAVs, or Warning Letters. Do not state that the Waterworks Owner is or may be in violation of any requirement. Use proper citation format for legal requirements.

Agreed Actions

Accordingly, ODW recommends that the [Waterworks Owner], and the [Waterworks Owner] agrees, to perform the following:

1. By date, complete... [provide related legal citations]
2. By date, complete... [provide related legal citations]

ODW expects that these items be completed according to the schedule set forth in this Agreement. In the event [Waterworks Owner] does not act in accordance with this Agreement, or new information suggests that other measures may be required, ODW may take additional enforcement actions as necessary to protect public health. If [Waterworks Owner] determines that it will not be able to complete the above actions by the agreed upon date(s), [Waterworks Owner] should notify ODW immediately. This Agreement becomes effective upon [Waterworks Owner] signing, dating, and returning the letter by [the specified date]. This Agreement automatically terminates 12 months after the date the letter is signed.

Please note that this Agreement is not a “case decision,” as that term is defined in Code of Virginia § 2.2-4001. The purpose of this Agreement is to resolve alleged violations using the least adversarial means available in certain circumstances as the case may warrant.

Thank you for your cooperation. Please return the signed and dated Agreement to ODW by [date]. Please contact me at [Phone] or [Email] if [**Entity name / you – if the owner is an entity use that name, but if the owner is the person to whom the salutation is addressed then “you” is appropriate**] [has / have] any questions or concerns about this Agreement.

Sincerely,

[Name]
Field Director
[Field Office]

cc: [Name], ODW Director of Division of Compliance, Enforcement, and Policy, ODW Central Office
«FDirector», Director, VDH ODW «FieldOffice» Field Office
_____, Environmental Compliance Specialist, VDH ODW «FieldOffice» Field Office
_____, MD, MPH, District Director, _____ Health District
_____, Environmental Health Manager, _____ Health District
_____, [County Administrator/City Manager/Town Manager], [_____
County or City of _____ or Town of _____]

Waterworks Name
Date of Letter
Page # of Total

By signing this Agreement, I, _____, _____,
on behalf of the [Owner – *if the owner is an individual, then we don't need "acting on behalf of
the"*], have reviewed and voluntarily agree to the terms of this Agreement.

Date: _____ **Signature:** _____

REMEMBER TO ADD THE STATE HEADER

**STATE BOARD OF HEALTH
ORDER BY CONSENT
ISSUED TO
Waterworks Owner
FOR THE
Waterworks Name Waterworks
PWSID No. _____**

This is a Consent Order issued under authority granted by Va. Code § 32.1-26 between the State Board of Health and [Waterworks Owner] for the [Waterworks Name] waterworks for the purpose of resolving certain violations of the Public Water Supplies Law and the applicable regulations.

Any definitions that aren't used in the body of the document should be deleted. Other definitions can be added.

Section A. Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned below:

1. “_FO” means the _____ Field Office located in _____ County/City, Virginia.
2. “Board” means the State Board of Health, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code § 32.1-5.
3. “Commissioner” means the State Health Commissioner, who supervises and manages the Department, as described in Va. Code §§ 32.1-16 and 17.
4. “Department” or “VDH” means the Department of Health, an agency of the Commonwealth of Virginia, as described in Va. Code § 32.1-16.
5. “Notice of Alleged Violation” or “NOAV” means a type of notice of alleged violation issued under 12VAC5-590-110 of the Regulations.
6. “ODW” means the VDH Office of Drinking Water.

7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," which the Board is authorized to issue to require any person to comply with the provisions of any law administered by it, the Commissioner or the Department, or any regulations promulgated by the Board, or to comply with any case decision, as defined in Va. Code § 2.2-4001, of the Board or Commissioner.
8. "Owner" means [Waterworks Owner Full Name].
9. "Permit" means Waterworks Operation Permit No. _____.
10. "Public Water Supplies Law" or "PWSL" means Article 2, Chapter 6 of Title 32.1 of the Va. Code.
11. "Pure water" means water fit for human consumption that is (i) sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts and (ii) adequate in quantity and quality for the minimum health requirements of the persons served.
12. "PWSID" means Public Water System Identification.
13. "Regulations" means the Waterworks Regulations, 12VAC5-590-10, *et seq.*
14. "Waterworks" means a system that serves piped water for human consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year. Waterworks includes all structures, equipment, and appurtenances used in storage, collection, purification, treatment, and distribution of pure water except the piping and fixtures inside the building where such water is delivered.
15. "[Waterworks Name] Waterworks" means the [Waterworks Full Name] waterworks.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.

Section B. Findings of Fact and Conclusions of Law

1. The Owner owns [Waterworks Name] Waterworks. The Owner meets the definition of "owner" in Va. Code § 32.1-167 and 12VAC5-590-10 of the Regulations.

2. [Waterworks Name] Waterworks is located in [_____ County / City of _____], Virginia, and serves piped water for human consumption to ___ service connections and approximately ___ individuals for at least 60 days out of the year. *[Further description of the waterworks may be provided as needed, such as information about the system, the population served – such as a restaurant or campground – and other information that is relevant to the order.]*
3. On [date], ODW issued the Permit to the Owner to operate [Waterworks Name] Waterworks in compliance with the PWSL and the Regulations.
4. Based on a review of ODW records, ODW staff made the following observations:
 - a. *[This should include a listing of the facts on which any violations rest. This should generally be taken directly from issued NOAVs. Additional subparagraphs should be included for each additional factual finding. This may include information from sanitary surveys, in which case the details of the sanitary survey should be identified.]*
5. The Regulations, at 12VAC5-590-XXX ([Name of Section of the Regulations]), state... *[these citations should be related to the factual findings listed above. There should be a newly numbered paragraph for each legal citation. The paragraph should quote relevant language from the legal citation. If any permit conditions or other requirements on the waterworks that are not based on a statutory or regulatory violation, they should receive their own numbered paragraph].*
6. [Va. Code § 32.1-XXX ([Name of Section of the Code])] states... *or* The Regulations at 12VAC5-590-XXX ([Name of Section of the Regulations]) state... *[There should be a separate numbered paragraph for each Code/Regulation violation being cited.]*
7. Pursuant to Va. Code § 32.1-26, the Board may to issue orders requiring compliance with any law or regulation administered by the Board.
8. Based on a review of ODW records, the Board concludes that the Owner has violated *[this should repeat the identified sections of the Va. Code and Regulations, any permit conditions, or any other requirements on the Waterworks Owner that were identified earlier in the document]*, as described in paragraphs B.X through B.X, above.

Section C. Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 32.1-26 and 32.1-27, the Board orders the Owner, and the Owner agrees, to:

1. Perform the actions described in Appendix A of this Order.
2. Pay a civil charge of \$_____ within 30 days of the effective date of this Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and shall be delivered to:

Office of Drinking Water
Virginia Department of Health
109 Governor Street, 6th Floor
Richmond, Virginia 23219

The Owner shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Water Supply Assistance Grant Fund. If VDH has to refer collection of moneys due under this Order to the Department of Law, the Owner shall be liable for attorneys' fees of 30% of the amount outstanding.

Section D. Administrative Provisions

1. This Order addresses and resolves only those violations specifically identified in Section B of this Order. This Order shall not preclude VDH from taking any action authorized by law, including but not limited to taking any action authorized by law regarding additional, subsequent, or subsequently discovered violations or taking subsequent action to enforce this Order.
2. This Order does not suspend, minimize, or otherwise alter the Owner's obligation to comply with federal, state, and local laws and regulations. The Board waives no lawful means of enforcing the laws it administers, the regulations it has adopted, or this Order.
3. The Owner agrees that it has received fair and due process under the Administrative Process Act (Va. Code § 2.2-4000, *et seq.*) and waives its right to further hearings or challenges, whether civil or administrative, regarding the terms, conditions, or issuance of this Order and specifically waives its rights to a hearing under Va. Code §§ 2.2-4019 or 2.2-4020 as a predicate for issuance of this Order. The Owner consents to the issuance of this Order freely, voluntarily, and after an opportunity to consult counsel of its choice.

4. To the fullest extent allowed by law, this Order is binding on the Owner, its agents and legal representatives, heirs, devisees, executors, administrators, and successors in interest, jointly and severally as applicable.
5. The Board may modify, rewrite, or amend this Order with the consent of the Owner. Additionally, the Board may modify, rewrite, or amend this Order on the Board's own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000, *et seq.*, after the Owner has received notice and opportunity to be heard. Any request by the Owner for modification of this Order shall be submitted to VDH in writing to be considered for approval by the Board or its designee.
6. Any plans, reports, schedules, or specifications submitted by the Owner and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
7. This Order shall not preclude the Board, the Commissioner, or the Department from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce this Order.
8. Failure by the Owner to comply with any terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or Department as a result of such violation. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
9. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
10. The Owner shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Owner shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Owner shall notify the Department in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

- a. The reasons for the delay or noncompliance;
- b. The projected duration of any such delay or noncompliance;
- c. The measures taken and to be taken by the Owner to prevent or minimize such delay or noncompliance; and
- d. The timetable by which the Owner will implement such measures and the date full compliance will be achieved.

Failure by the Owner to notify the Department verbally within 24 hours and in writing within three business days of learning of any condition above, which the Owner intends to assert will result in the impossibility of compliance, shall constitute a waiver by the Owner of any claim to inability to comply with a requirement of this Order.

11. This Order shall become effective on the 15th day after a copy of it is mailed to the Owner by certified mail. Va. Code § 32.1-26.
12. This Order shall continue in effect until:
 - a. The Commissioner or his designee terminates the Order after the Owner has completed all of the requirements of this Order;
 - b. The Owner petitions the Commissioner or his designee to terminate the Order after the Owner has completed all of the requirements of the Order and the Commissioner or his designee approves the termination of the Order; or
 - c. The Commissioner or Board, in their sole discretion, terminates the Order upon 30 days written notice to the Owner. Termination of the Order pursuant to this authority without the Owner having satisfied all terms of the Order may result in VDH pursuing further enforcement related to the violations identified in the Order.
13. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Owner from its obligation to comply with any statute, regulation, permit condition, other order, certificate, standard, or requirement otherwise applicable.
14. The undersigned representative of the Owner certifies that they are a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally

bind the Owner to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Owner.

15. By its signature below, the Owner voluntarily agrees to the issuance of this Order.

It is SO ORDERED this day, _____.

STATE BOARD OF HEALTH
Commonwealth of Virginia

XXXXX, MD, XX
State Health Commissioner

[Waterworks Owner Full Name] voluntarily agrees to the issuance of this Order.

Name Title

Date Signature

State of _____

City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of

_____, 202X, by _____ who is

_____ of [Waterworks Owner Full Name], signing on behalf of the entity.

Notary Public

Registration No.

My commission expires: _____

Notary seal:

Appendix A

Corrective Action Plan and Schedule for Compliance

If at all possible, the terms of a CAP/Schedule should be established as part of the discussion process with the owner prior to signing the order. Revise language below appropriately.

[Waterworks Owner] shall:

- a. Within 30 days of the effective date of this Order, submit to ODW for review and approval a Corrective Action Plan (CAP) and Schedule for Compliance (Schedule) that sets forth actions that [Waterworks Owner] has taken or plans to take, and a schedule within which to take them, to comply consistently with the PWSL and the Regulations.
- b. Upon ODW approval of the CAP and Schedule, implement the CAP in accordance with the Schedule. The approved CAP and Schedule shall become a part of, and enforceable under, the terms of this Order. If [Waterworks Owner] does not present a CAP and Schedule with terms that are acceptable to ODW such that ODW cannot approve it, and [Waterworks Owner] and ODW are unable to reach agreement on the terms of a mutually agreeable CAP and Schedule, the Board or Commissioner may terminate this Order subject to Section D.12.c of this Order, which may result in further enforcement action against [Waterworks Owner] as stated therein.
- c. After initial approval of the CAP and Schedule by ODW, submit any proposed modifications to the CAP and Schedule to [Field Office] for review, discussion and consideration for approval prior to [Waterworks Owner] taking any action. [Waterworks Owner] shall submit any proposed modification of the CAP and Schedule to [Field Office] at least 30 days prior to expiration of a deadline that [Waterworks Owner] seeks to modify.
- d. Upon completion of the CAP, submit to [Field Office] a final report verifying that the CAP has been completed in accordance with the terms of this Order.
- e. Mail all submittals and reports required by this Order to:

Compliance Specialist Name
Title
Field Office
Address 1
Address 2

Add the State Letterhead

Date

If the owner is an entity, then the letter should be addressed to the entity, to the attention of the administrative contact for the owner. In that case, the salutation should be to the administrative contact. If the owner is an individual then the letter can be addressed to the owner, e.g., “John Doe, Owner” and the salutation should be to the owner.

Owner, Title
Waterworks Company
Address 1
Address 2

**Re: Order by Consent
Public Water System Identification No. _____
Waterworks Name (_____ County/City)**

Dear [Owner]:

Enclosed for [Waterworks Owner’s] consideration is a proposed Consent Order between the State Board of Health (Board) and [Waterworks Owner] to resolve certain violations of the Public Water Supplies Law and applicable regulations at the [Waterworks Name] waterworks located in _____ [County/City].

Please review the document and should [Waterworks Owner] find the terms acceptable, sign and return it to this office by no later than [date]. Upon receipt of a proposed Consent Order signed by [Waterworks Owner], the document will be sent to the State Health Commissioner (Commissioner) for review. If the Commissioner, in her discretion, decides to sign the proposed Consent Order on behalf of the Board, a copy of the fully executed order will be returned to you for implementation.

If [Waterworks Owner] has any questions or wishes to discuss the proposed Consent Order, please contact [Compliance Specialist Name] by telephone at _____ or email at _____ no later than [date]. Depending on the nature of your questions or concerns, a meeting may be scheduled.

If there is no response to this letter by [date], the Office of Drinking Water will plan to move forward with scheduling a Notice of Informal Fact Finding Proceeding regarding the [Waterworks Name] waterworks in order to resolve this matter.

Sincerely,

[Field Director Name]
Field Director

Attachment 17 – Proposed Consent Order Enclosure Letter

VDH-ODW _____ Field Office

Enclosure

cc: Case File

_____, Director of the Division of Compliance, Enforcement, and Policy,
VDH-ODW Central Office

_____, Compliance Specialist, VDH-ODW _____ Field Office

_____, [County Administrator/City Manager/Town Manager],

[_____ County/City of _____ /Town of _____]

_____, MD, MPH, District Director, _____ Health District

_____, Environmental Health Manager, _____ Health District

Add State Letterhead

If the owner is an entity, then the letter should be addressed to the entity, to the attention of the administrative contact for the owner. In that case, the salutation should be to the administrative contact. If the owner is an individual then the letter can be addressed to the owner, e.g., “John Doe, Owner” and the salutation should be to the owner.

Date

Owner, Title
Waterworks Company
Address 1
Address 2

**Re: Waterworks Name (Public Water System Identification No. _____)
Name County/City
Order by Consent – Effective Date**

Dear [Owner]:

Enclosed is a copy of the Order by Consent (Order) that [Waterworks Owner] entered into with the State Board of Health, pursuant to the Code of Virginia (Va. Code) § 32.1-26, to resolve certain violations of the Public Water Supplies Law and applicable regulations at [Waterworks Name] in [County/City]. The Order becomes effective on [date], which is 15 days after mailing [Waterworks Owner] a copy of the Order by certified mail (Va. Code § 32.1-26).

Thank you for your cooperation in this matter. Please do not hesitate to contact [Compliance Specialist Name] by telephone at _____ or email at _____ should [Waterworks Owner/you] have any questions.

Sincerely,

[Field Director Name]
Field Director
VDH-ODW _____ Field Office

Enclosure

cc: Case File
_____, Director of the Division of Compliance, Enforcement, and Policy,
VDH-ODW Central Office
_____, Compliance Specialist, VDH-ODW _____ Field Office
_____, [County Administrator/City Manager/Town Manager],
[_____ County/City of _____/Town of _____]

_____, MD, MPH, District Director, _____ Health District
_____, Environmental Health Manager, _____ Health District

Add State Letterhead

Date

If the owner is an entity, then the letter should be addressed to the entity, to the attention of the administrative contact for the owner. In that case, the salutation should be to the administrative contact. If the owner is an individual then the letter can be addressed to the owner, e.g., “John Doe, Owner” and the salutation should be to the owner.

Owner, Title
Waterworks Company
Address 1
Address 2

**Re: Waterworks Name – PWSID No. _____
Name County/City
Termination of Consent Order – Effective date**

Dear [Owner]:

The State Health Commissioner, acting on behalf of the State Board of Health, entered into an Order by Consent (Order) with [Waterworks Owner], which became effective on [date], to resolve certain violations of the Public Water Supplies Law and applicable regulations at the [Waterworks Name] waterworks in _____ [County/City].

The Order requires that [Owner] _____.

According to the Virginia Department of Health’s records, the [Owner] has completed the requirements of the Order. Section [D.7] of the Order states that the State Health Commissioner or his designee may terminate the Order upon [Owner] completing all the requirements of the Order. Therefore, this letter gives notice that the Order is hereby terminated.

Termination of the Order does not relieve [Owner] from the obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or other applicable requirement.

Thank you for your cooperation in resolving this matter. If you need additional information about this letter, please contact [Compliance Specialist] by telephone at _____ or email at First.Last@vdh.virginia.gov.

Sincerely,

Attachment 19 – Consent Order Termination Letter

[State Health Commissioner or designee –
revise as appropriate]

ec: _____, Field Director, VDH-ODW [] Field Office, [email]
_____, Director of Division of Compliance, Enforcement, and
Policy, VDH-ODW Central Office, [email]
_____, Environmental Health Compliance Specialist, VDH-
ODW [] Field Office, [email]
_____, MD, [other credentials], Health Director, _____ Health
District [email]
_____, Environmental Health Manager, _____ Health
District [email]
_____, [County Administrator/City Manager/Town Manager],
[_____ County/City of _____/Town of _____]
[email]

ADD STATE LETTERHEAD

**STATE BOARD OF HEALTH
AMENDMENT TO ORDER BY CONSENT
ISSUED TO
Waterworks Owner
FOR THE
Waterworks Name Waterworks
PWSID No. _____**

Section A. Purpose

This Amendment to Order by Consent (Amended Consent Order) is between the State Board of Health (Board) and [Waterworks Owner]. This Amended Consent Order amends a Consent Order, issued under authority granted by Va. Code § 32.1-26, between the Board and [Waterworks Owner] that became effective on [date] (Original Consent Order). The Original Consent Order was entered into by the Board and [Waterworks Owner] for the purpose of resolving certain violations of the Public Water Supplies Law (PWSL) and the applicable regulations at the [Waterworks Name] waterworks. The Board and [Waterworks Owner] now agree to amend the Original Consent Order as described below.

Section B. Basis for Amendment

1. [Waterworks Owner] owns [Waterworks Name] waterworks in [location], Virginia. [Waterworks Owner] meets the definition of “owner” in Va. Code § 32.1-167.
2. [Waterworks Name] serves [restaurant / campground / etc.] and consists of [description].
3. On [date], ODW issued an operation permit, PWSID #####, to [Waterworks Owner] to operate the [Waterworks Name] waterworks in compliance with the PWSL and the Waterworks Regulations.
4. [Provide detail of factual background that led to the need for amendment of the Consent Order. E.g., “On [date], ODW staff conducted a sanitary survey of the waterworks. Based on the sanitary survey and a review of ODW records, ODW staff made the following factual observations:]

5. On [date], [Waterworks Owner] requested [include a description of the request and specifics of the nature of the amendment as sought by Waterworks Owner].
6. Based on the information available to ODW, [Waterworks Owner] is otherwise in compliance with the Order.

Section C. Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 32.1-26 and 32.1-27, the Board orders [Waterworks Owner], and [Waterworks Owner] agrees, to perform the actions described in [*Appendix A of this Amended Consent Order, which supersedes and cancels only Appendix A of the Original Consent Order* – the foregoing language is an example. Substitute other language as appropriate.] Both the Board and [Waterworks Owner] understand and agree that this Amended Consent Order does not alter, modify, or amend any other provision of the Original Consent Order and that the unmodified provisions of the Original Consent Order remain in effect by their own terms.

It is SO ORDERED this day, _____.

STATE BOARD OF HEALTH
Commonwealth of Virginia

XXXX, MD, XX
State Health Commissioner

[Waterworks Owner Full Name] voluntarily agrees to the issuance of this Order.

[Waterworks Owner Full Name] voluntarily agrees to the issuance of this Order.

Name	Title
------	-------

Date

Signature

State of _____
City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of _____, 202X, by _____ who is _____ of [Waterworks Owner Full Name], signing on behalf of the entity.

Notary Public

Registration No.

My commission expires: _____

Notary seal:

Appendix A
Corrective Action Plan and Schedule for Compliance

[Waterworks Owner] shall:

- a. [Identify amended language for Appendix A. Use additional paragraphs if needed.]

ADD STATE LETTERHEAD

**STATE BOARD OF HEALTH
ORDER BY CONSENT
ISSUED TO
Waterworks Owner
FOR THE
Waterworks Name Waterworks
PWSID No. _____**

Section A. Purpose

This is a Consent Order issued under authority granted by Va. Code § 32.1-26 between the State Board of Health and [Waterworks Owner] for the [Waterworks Name] waterworks for the purpose of resolving certain violations of the Public Water Supplies Law and the applicable regulations. This Consent Order supersedes and terminates the Order by Consent between the State Board of Health and [Waterworks Owner] that became effective on [date].

The remainder of the superseding Consent Order should follow the template of a Consent Order, though the introductory language to Section C should state, "Accordingly, by virtue of the authority granted it in Va. Code §§ 32.1-26 and 32.1-27, the Board orders Owner, and Owner agrees, that this Consent Order supersedes and terminates the Order by Consent entered into between the Board and [Waterworks Owner] that became effective on [date], and that the Owner shall:"

Add State Letterhead

Owner, Title
Waterworks Company Name
Address 1
Address 2

Date

If the owner is an entity, then the letter should be addressed to the entity, to the attention of the administrative contact for the owner. In that case, the salutation should be to the administrative contact. If the owner is an individual then the letter can be addressed to the owner, e.g., "John Doe, Owner" and the salutation should be to the owner.

NOTICE OF INFORMAL FACT FINDING PROCEEDING

**Re: Informal Fact Finding Proceeding Scheduled on [Month, Day, Year at Time]
Public Water System Identification No. _____
Waterworks Name (_____ County/City)**

Dear [Owner]:

The Virginia Department of Health (VDH) requests [Waterworks Owner]’s presence at an informal fact finding proceeding (IFFP) to address alleged violations of the Virginia Public Water Supplies Law, Code of Virginia (Va. Code) § 32.1-167 *et seq.*, and the Virginia Waterworks Regulations, 12VAC5-590-10 *et seq.* (Regulations), at the [Waterworks Name] (the Waterworks) in _____ County, Virginia. VDH will conduct the proceeding on **Day, Month Day, Year at [10:00 am]** at the **VDH Office of Drinking Water _____ Office** located at **Address**.

The purpose of the proceeding is to (i) receive and review evidence from [Waterworks Owner] (Owner) and VDH regarding the alleged violations; (ii) to make a finding that Owner is or is not operating the Waterworks in violation of the law and regulations; and (iii) if found to have violated the law and regulations, determine the appropriate course of action.

This notice lists VDH’s observations about operating conditions at the Waterworks and cites corresponding requirements in the Public Water Supplies Law and Regulations. This letter is not a case decision as that term is defined in the Administrative Process Act (APA), Va. Code § 2.2-4000 *et seq.*

Observations and Legal Requirements

1. According to VDH records, Owner owns and operates the [Waterworks Name] waterworks (Waterworks) located on [Address] in _____ County/City, Virginia. The Waterworks consists of [describe the system]. The Waterworks serves approximately __ individuals and __ service connections.

2. On [date], the VDH Office of Drinking Water (ODW) issued Waterworks Operation Permit No. _____ to Owner to operate the Waterworks in compliance with the law and regulations.
3. On _____, ODW staff [describe basis for obtaining the facts alleged, e.g., through conducting a sanitary survey]. Based on [reference the information in the prior sentence, such as the sanitary survey] and a review of ODW records, the following describe staff's factual observations and applicable legal requirements:

- a. Observation: [These are examples of what we could put based on the facts: Owner failed to provide and maintain conditions throughout the entirety of the waterworks in a manner that assures a high degree of capability and reliability. The lid to the atmospheric tank was missing, leaks were observed in the distribution system, and meter readings submitted during monthly operation reports indicate that the waterworks is exceeding greater than 80% of its permitted capacity].

Legal Requirements: [An example of what we could put depending on the situation: The Regulations, at 12VAC5-590-360(A) (Responsibilities of the owner.), state, in part, "The water utility owner... shall provide and maintain conditions throughout the entirety of the water supply system in a manner that will assure a high degree of capability and reliability to effect compliance with these standards. This requirement shall pertain to the source of supply, treatment, transmission, storage, and distribution facilities and the operation thereof."]

- b. Observation: [An example of what we could put: Owner failed to submit routine samples for bacteriological examination during the month, month, and month year monthly monitoring periods].

Legal Requirement: [An example of what we could put: The Regulations, at 12VAC5-590-370(A) (Sampling frequency.), state, in part, "The owner shall collect total coliform samples at specific sites and according to a schedule that is representative of water quality throughout the distribution system, which shall be documented in a written bacteriological sampling siting plan... The minimum number of bacteriological samples for total coliform evaluation to be collected and analyzed monthly from the distribution system of a community... waterworks shall be [one]."]

- c. Observation: [Example: Owner failed to designate a licensed operator to be in responsible charge of the Waterworks from year to present].

Legal Requirement: [Example: The Regulations, at 12VAC5-590-460 (Personnel.), state, “The owner shall designate one or more properly licensed operators to be in responsible charge of the waterworks at all times. When no designated operator is on duty or in communication with the operating personnel in attendance at the waterworks, a substitute operator shall be designated by the owner. The substitute operator shall possess a valid operator license of a classification equal to or greater than that of the waterworks.”].

- d. Observation: [Example: Owner failed to submit monthly operation reports by no later than the 10th day of the month following the end of the monitoring period for the month, month, and month, year monitoring periods].

Legal Requirements: [Example: The Regulations, at 12VAC5-590-530(A) (Reporting.), state, in part, “The results of any required monitoring activity shall be reported by the owner... to the ODW no later than... the 10th day of the month following the month during which the test results were received.”].

4. On [date], [date], and [date], ODW issued notices of alleged violation to the Owner for the alleged violations.
5. On [date], ODW proposed an order by consent to the Owner to resolve the alleged violations, but was unable to reach an agreement with the Owner.

Procedures

[Waterworks Owner] has the right to appear at the proceeding in person, by counsel, or by other qualified representative, pursuant to Va. Code § 2.2-4019. At the proceeding, [Waterworks Owner] will be able to present factual data, argument, or proof in connection with this case. VDH may rely on the enclosed documents, documents in its files, and statements of VDH staff to substantiate the alleged violations. A presiding officer will hear the evidence in this case and recommend an appropriate decision and course of action to the State Health Commissioner (Commissioner) for review. The Commissioner may then issue a decision on this matter.

Enforcement Authority

VDH considers operating a waterworks in violation of the Public Water Supplies Law and Regulations to present a serious risk to public health and further enforcement action may be necessary to ensure that [Waterworks Owner] is operating the Waterworks in a manner that protects public health. Va. Code § 32.1-175.01 authorizes the Commissioner to issue special orders that may include civil penalties against an owner who violates the law or any order or regulation adopted by the Board. Va. Code § 32.1-27 states that any person willfully violating or

Waterworks Owner

Date

Page 4 of Total

refusing, failing or neglecting to comply with any regulation of the Board or Commissioner or any provision of Title 32.1 shall be guilty of a Class 1 misdemeanor.

Future Actions

During the scheduled proceeding, counsel may accompany [Waterworks Owner] to assist with the informal presentation of factual data, arguments, or proof germane to this case. Additionally, [Waterworks Owner] is entitled to receive advance notice of any facts, documents, or information that the agency possesses and may rely upon in making an adverse determination. Enclosed are copies of VDH records relevant to this proceeding. If [Waterworks Owner] wishes to provide records or information to support, contradict, or otherwise supplement VDH records, please provide copies to me by [date]. If [Waterworks Owner] is unable to provide copies of documents in advance, I recommend bringing three (3) copies of each document to the proceeding. The proceeding will not be recorded or transcribed so [Waterworks Owner] may also provide a written statement that can be added to the record at the proceeding.

After reviewing this letter, please contact me no later than [date], to confirm [Waterworks Owner]'s intent to appear at the proceeding on [date] at [time]. Bear in mind should [Waterworks Owner] fail to appear at the IFFP absent good cause, the presiding officer may render an adverse case decision as contemplated by Va. Code § 2.2-4020.2 (Default.).

[Waterworks Owner] may contact me regarding the contents of this letter by telephone or email at [telephone number] or [email address]. I look forward to working with [Waterworks Owner] to resolve this matter.

Sincerely,

Name, Director
Division of Compliance, Enforcement, and Policy
VDH Office of Drinking Water

cc: Name, PE, Field Director, VDH ODW _____ Field Office [email]
Name, Environmental Health Manager, _____ Health District [email]
Name, District Director, _____ Health District [email]
Name, [County Administrator/City Manager/Town Manager],
[_____ County/City of _____/Town of _____] [email]
Name, Registered Agent, [Waterworks Owner]

VDH ODW Presentation of Data, Argument, and Proof

Informal Fact Finding Proceeding

Date, at Time

Location

Re: Waterworks Owner

Waterworks Name – PWSID No. _____ (_____ County)

Presiding Officer: Name, Title, Office

Agency Advocate: Name, Title, Office

Agency Witnesses: Name, Title, Office

Waterworks Reps: Waterworks Owner, Waterworks Company Name

Introduction

Presiding Officer: Good morning, my name is [Name] and I am the [Title] in the _____ Field Office for the Virginia Department of Health Office of Drinking Water. I would like to begin by having all participants sign in and introduce their name and title, starting with ODW staff, followed by [Owner], and/or any representatives of [Waterworks Name].

This is an informal fact finding proceeding, or IFFP, conducted pursuant to Code of Virginia § 2.2-4019. The purpose of the proceeding is to gather information in order for the Virginia Department of Health to make a “case decision.” A “case decision” is defined in the Virginia Code as “any agency determination that, under the laws or regulations at the time, a named party as a matter of past or present fact, either is, is not, may or may not be in violation of such law or regulation.” This proceeding will result in the making of findings of fact and conclusions of law that the [Waterworks Name] waterworks is or is not, or has or has not been, operated in violation of the law, regulations, or permit.

According to Virginia’s Administrative Process Act, you, as a representative of [Owner], are entitled to reasonable notice of

today's proceedings, as well as the right to appear in person, or by counsel or other qualified representative, before the agency for the informal presentation of factual data, argument, or proof in connection with any case. You have the right to receive notice of any contrary fact basis or information in the possession of the agency that may be relied upon in making an adverse decision and be informed in writing of the factual or procedural basis for an adverse decision in any case. The Office of Drinking Water sent you a Notice of Informal Fact Finding Proceeding and supporting documentation on [date]. [ODW staff also followed up with telephone calls at the available telephone numbers on file.] ODW received confirmation that the notices were received on [date].

[Background of the presiding officer – example: As a professional engineer and office director, I am familiar with the Public Water Supplies Law and the Waterworks Regulations at issue in this proceeding and therefore, competent to conduct today's proceeding.]

As such, I will hear the evidence presented today. Following the proceeding, I will review the record in this matter and make a recommendation to the State Health Commissioner, Dr. [Name]. Based on this recommendation, the Commissioner is authorized to make a "case decision" and issue a special order to any owner who violates the Public Water Supplies Law and the Waterworks Regulations, which may include injunctive relief and civil penalties.

This proceeding will be informal and not recorded. There will be no formal objections or evidence excluded from the record. The rules of evidence do not apply. Each party may ask questions of their own witnesses, if any, and present what information they think is necessary to help resolve this matter. There will not be cross-examination of the parties. If you have a question for clarification, please direct that question to me and I will ask the appropriate person to answer.

Are there any procedural issues to be addressed?

[Direct to Owner] I am going to presume that you have been provided copies of all documents that ODW may rely upon in this proceeding. If you need copies of anything, please let me know

and we can provide you with copies today. If you feel any information is new and you have not been provided with adequate notice, we have the option to continue this proceeding on another date with the agreement of all parties.

I will ask the Office of Drinking Water to present its information first.

Agency Advocate:

Good morning and thank you [Owner] for taking the time to participate in today's proceeding. We are here today to address your compliance with the Public Water Supplies Law and Waterworks Regulations for Waterworks Name located in _____, County. We sent you a Notice of IFFP for the system that is the subject of today's hearing on [date] and received confirmation that you received a copy of the notice and supporting documentation on [date]. [Staff also followed up with via telephone and email, and left voice messages on your office and personal cell phone voicemail.]

[More background as appropriate. For example: Prior to issuing the IFFP notice, the record will show that the Office of Drinking Water provided ongoing compliance and technical assistance to Waterworks from [year] to present. Despite compliance assistance, Owner has been either unwilling or unable to comply with the law and regulations.]

[As appropriate: On [date], ODW staff presented Owner with a consent order for the Waterworks. Owner reviewed and commented on the consent order, but ODW staff and Owner were unable to reach an agreement. The draft consent order is included in the exhibit package as Exhibit ____.]

Today, I will walk through the observations and legal requirements as set forth in the Notice of IFFP, as well as the agency's supporting documentation, to demonstrate the agency's position that [Owner] is operating the [Waterworks Name] waterworks in violation of the Public Water Supplies Law and the Waterworks Regulations. Based on the information presented today, I will then ask that the presiding officer recommend to the State Health Commissioner that the Board of Health issue an order compelling [Owner] to comply with the law and regulations and perform certain corrective actions to resolve the noncompliance.

[The following is an example of an examination by the agency advocate or an agency witness]

First, I would like to introduce [Name], District Engineer and ask that s/he introduce her/himself, including her/his name, title, and experience with waterworks at ODW.

- District Engineer:** My name is [Name] and I am the District Engineer for the _____ Field Office. I have been with ODW for about _____ years. In my capacity as District Engineer, I review plans, issue permits, and determine compliance with the regulations.
- Agency Advocate:** Are you familiar with the Waterworks, and if so, could you please describe how you are familiar and tell us about the waterworks?
- District Engineer:** [Site Visit, Permit, Sanitary Survey, File Review]
- Agency Advocate:** I would like to ask that you please introduce Exhibit ___ and describe your observations of conditions at the waterworks as described in Exhibit ___.
- District Engineer:** [Describe conditions relevant to the proceeding today.]
- Agency Advocate:** To your knowledge, has ODW provided Owner with notice of the conditions at this site prior to this hearing?
- District Engineer:** Yes.
- Agency Advocate:** I would now like to ask [Inspector] Name to introduce her/himself, including your name, title, and experience at ODW.
- Inspector:** [Describe roles and responsibilities as inspector.]
- Agency Advocate:** Can you please describe how you are familiar with the Waterworks?
- Inspector:** [Site visit, sanitary survey, review of ODW records]
- Agency Advocate:** Can you please describe your observations as set forth in Exhibit ___?
- Inspector:** [Describe conditions relevant to the proceeding today.]

- Agency Advocate:** I would now like to introduce [Compliance Specialist Name], and ask that s/he introduce her/himself, including her/his name, title, and experience with waterworks at ODW.
- Compliance Specialist:** [Describe roles and responsibilities as compliance specialist.]

Agency Advocate: Can you please describe how you are familiar with the Waterworks?

Compliance Specialist: [Review of record / notices of violation / WLs / issuance of orders]

Agency Advocate: Can you please describe your observations as set forth in Exhibit ___?

Agency Advocate: [May introduce FCAP or CapDev staff, Field Director, or other staff with knowledge of information presented in hearing.]

Presiding Officer: [May ask questions for clarification.]

Presiding Officer: Owner, would you like to proceed?

Waterworks Owner: Presents case.

Presiding Officer: [May ask questions for clarification.]

Presiding Officer: I will ask ODW if there is any additional information to add.

Agency Advocate: [Adds information, if any.]

Presiding Officer: [May ask questions for clarification.]

Presiding Officer: Owner, do you have any additional information to add?

Waterworks Owner: [Adds information, if any.]

Presiding Officer: The Office of Drinking Water may give its closing remarks.

Agency Advocate: The agency believes that the information presented today demonstrates that [Owner] operated the [Waterworks Name] serving [describe the community served as appropriate] in violation of the law and regulations, as set forth in the agency record. As such, I ask that you recommend to the Commissioner that he issue an order compelling [Owner] to comply with the law and regulations, which will include a civil charge and injunctive relief. [Describe the civil charge and injunctive relief sought.]

Presiding Officer: Owner, do you have any closing remarks?

Waterworks Owner: [Gives closing remarks.]

Presiding Officer: The proceeding regarding the [Waterworks Name] waterworks is now concluded. I will make a recommendation to the Commissioner. He will review the record and issue a decision, which may include an order with injunctive relief and civil penalties, within 90 days of the date of this proceeding. The decision will be mailed to you.

VIRGINIA

IN THE DEPARTMENT OF HEALTH OFFICE OF DRINKING WATER

IN RE: Waterworks Owner

Waterworks Name (PWSID No. _____)

RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Preliminary Statement

Pursuant to § 32.1-175.01 of the Code of Virginia (Code), the State Board of Health (Board) may issue a special order against any owner, as defined in § 32.1-167 of the Code, who violates the Public Water Supplies Law (Article 2, Chapter 6 of Title 32.1 of the Code) or any order or regulation adopted by the Board following an informal fact finding proceeding (Proceeding), as provided in § 2.2-4019 of the Code. The issuance of a special order shall be considered a “case decision,” as defined in § 2.2-4001 of the Code.

On [date], the Virginia Department of Health Office of Drinking Water (ODW) held an informal fact finding proceeding (Proceeding) pursuant to Code § 2.2-4019 for the [Waterworks Name] waterworks (Waterworks) located in _____ County. The Waterworks is owned by [Waterworks Owner] (Owner). The Proceeding was held to determine whether the Owner violated certain provisions of the Public Water Supplies Law (PWSL) and the Waterworks Regulations, 12VAC5-590 (Regulations), and to recommend an appropriate course of action for addressing the alleged violations.

The Proceeding took place at the ODW _____ Field Office (FO) located at [Street Address] in _____ [County/City], Virginia. The Owner [did / did not] participate in the Proceeding [nor was the Owner represented by counsel]. The Owner was provided with the Notice of Informal Fact-Finding Proceeding and copies of all ODW exhibits before the Proceeding. [Name, Title] presented the case for ODW. I, [Name, Title] served as the presiding officer for the case.

After reviewing the record and exhibits presented at the [date] Proceeding, I conclude that the Owner is in violation of the PWSL and the Regulations. As such, I recommend that the State Health Commissioner (Commissioner), on behalf of the Board, issue the Owner a Special Order, attached, requiring that the Owner comply with the law and Regulations, as follows: *[The following are some examples of terms – the presiding officer should select terms that fit the situation]*

1. Apply for funding to evaluate costs for improving waterworks infrastructure so that it may be operated in a manner that assures a high degree of reliability.

2. Submit routine samples for bacteriological examination each month in compliance with the bacteriological sampling siting plan.
3. Designate a licensed operator to be in responsible charge of the Waterworks at all times.
4. Pay a civil charge of \$_____ in settlement of the violations cited in the Order.]

II. Findings of Fact

Jurisdiction and Venue

1. The Owner is a waterworks “owner” in the Commonwealth of Virginia pursuant to the PWSL and the Regulations.
2. The Owner owns and operates the Waterworks located in _____ County, Virginia.
3. The Waterworks is a community waterworks that serves __ service connections and approximately __ year-round residents. The Waterworks consists of... _____.
4. The Waterworks is located within the part of the Commonwealth of Virginia administered by the ODW _____ Field Office (__FO).

Presentation of Data, Argument, and Proof

5. During the Proceeding, ODW staff presented...
6. *[This is an example of language that could be used here. The presiding officer should draft language to fit the specifics of the case and the evidence provided at the Proceeding: On [date], ODW staff conducted a sanitary survey at the Waterworks. Based on the sanitary survey and a review of ODW records, staff observed the following:*
 - a. Owner failed to maintain conditions at Waterworks in a manner that assures a high degree of reliability throughout the entirety of the water supply system. The hatchway and lid were corroded and the flow meter operation was inaccurate. The bulk storage tank and two transfer pumps were removed from service. Free chlorine was detected in the distribution system.
 - b. Owner failed to submit routine samples for bacteriological examination during the month, month, and month year monthly monitoring periods.
 - c. Owner failed to designate a licensed operator to be in responsible charge of Waterworks from year to present.

- d. Owner failed to submit monthly operation reports by no later than the 10th day of the month following the end of the monitoring period for the month, month, and month year monitoring periods.]

7. The Owner presented...

Regulatory Requirements

8. [*The following are examples of language that could be used here:* The Regulations, at 12VAC5-590-360(A) (Responsibilities of the owner.), state, in part, “The water utility owner... shall provide and maintain conditions throughout the entirety of the water supply system in a manner that will assure a high degree of capability and reliability to effect compliance with these standards. This requirement shall pertain to the source of supply, treatment, transmission, storage, and distribution facilities and the operation thereof.”
9. The Regulations, at 12VAC5-590-370(A) (Sampling frequency.), state, in part, “The owner shall collect total coliform samples at specific sites and according to a schedule that is representative of water quality throughout the distribution system, which shall be documented in a written bacteriological sampling siting plan... The minimum number of bacteriological samples for total coliform evaluation to be collected and analyzed monthly from the distribution system of a community... waterworks shall be [one].”
10. The Regulations, at 12VAC5-90-460 (Personnel.), state, “The owner shall designate one or more properly licensed operators to be in responsible charge of the waterworks at all times. When no designated operator is on duty or in communication with the operating personnel in attendance at the waterworks, a substitute operator shall be designated by the owner. The substitute operator shall possess a valid operator license of a classification equal to or greater than that of the waterworks.”
11. The Regulations, at 12VAC5-590-530(A) (Reporting.), state, in part, “The results of any required monitoring activity shall be reported by the owner... to the ODW no later than... the 10th day of the month following the month during which the test results were received.”]

III. Conclusions of Law

1. The Owner is an “owner” under Va. Code § 32.1-167 and 12VAC5-590-10 of the Regulations.
2. The location was an appropriate venue for the Proceeding.
3. The Owner [did / did not] participate in the Proceeding. [*If the Owner did not participate, the*

4. The Owner violated the PWSL and Regulations by failing to...

VI. Recommended Relief

I recommend that the Commissioner issue a Special Order pursuant to Va. Code § 32.1-175.01 to compel the Owner to comply with the PWSL and Regulations. Specifically, I recommend that the Owner be required to:

1. *[The following is an example of relief that could be recommended. The relief should be specific to the case: Within 60 days of the effective date of the Order, apply for funding to evaluate costs for improving waterworks infrastructure so that it may be operated in a manner that assures a high degree of reliability.*
2. Effective immediately, submit routine samples for bacteriological examination each month in compliance with the bacteriological sampling siting plan.
3. Within 30 days of the effective date of the Order, designate a licensed operator to be in responsible charge of the Waterworks at all times.
4. Within 30 days of the effective date of the Order, pay a civil charge of \$_____ in settlement of the violations cited in the Order.]

Respectfully submitted,

Name, Director
_____ Field Office
VDH Office of Drinking Water

[The signature block should be modified if the presiding officer isn't an office director]

ADD STATE LETTERHEAD

**STATE BOARD OF HEALTH
SPECIAL ORDER
ISSUED TO
Waterworks Owner
FOR
Waterworks Name Waterworks
PWSID No. _____**

Section A. Purpose

This is a Special Order issued by the State Board of Health to [Waterworks Owner] under authority granted by Va. Code § 32.1-175.01 to resolve certain violations of the Public Water Supplies Law and applicable regulations.

Any definitions that aren't used in the body of the document should be deleted. Other definitions can be added.

Section B. Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned below:

1. “_FO” means the _____ Field Office located in _____ [County/City], Virginia.
2. “Board” means the State Board of Health, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code § 32.1-5.
3. “Commissioner” means the State Health Commissioner, who supervises and manages the Department, as described in Va. Code §§ 32.1-16 and 17.
4. “Community waterworks” means a waterworks that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. [*As needed use definition of TNC or NTNC*]
5. “Department” or “VDH” means the Department of Health, an agency of the Commonwealth of Virginia, as described in Va. Code § 32.1-16.
6. “Notice of Alleged Violation” or “NOAV” means a type of notice of alleged violation issued under 12VAC5-590-110 of the Regulations.

7. “ODW” means the VDH Office of Drinking Water.
8. “Owner” means [Waterworks Owner Full Name].
9. “Permit” means written waterworks operation permit VA_____.
10. “Public Water Supplies Law” or “PWSL” means Article 2, Chapter 6 of Title 32.1 of the Va. Code.
11. “Pure water” means water fit for human consumption that is (i) sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts and (ii) adequate in quantity and quality for the minimum health requirements of the persons served.
12. “PWSID” means Public Water System Identification.
13. “Regulations” means the Waterworks Regulations, 12VAC5-590-10, *et seq.*
14. “Special Order” means this document, which the Board may issue, pursuant to Va. Code § 32.1-175.01, and as defined in Va. Code § 32.1-167.
15. “Waterworks” means a system that serves piped water for human consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year. Waterworks includes all structures, equipment, and appurtenances used in storage, collection, purification, treatment, and distribution of pure water except the piping and fixtures inside the building where such water is delivered.
16. “[Waterworks Name] Waterworks” means the [Waterworks Full Name] waterworks.
17. “Va. Code” means the Code of Virginia (1950), as amended.
18. “VAC” means the Virginia Administrative Code.

Section C. Findings of Fact and Conclusions of Law

1. The Owner owns [Waterworks Name]. The Owner meets the definition of “owner” in Va. Code § 32.1-167 and 12VAC5-590-10 of the Regulations.
2. [Waterworks Name] waterworks is located in [_____ County / City of _____], Virginia, and serves piped water for human consumption to ___ service connections and approximately ___ individuals for at least 60 days out of the year. [*Further description*]

of the waterworks may be provided as needed, such as information about the system, the population served – such as a restaurant or campground – and other information that is relevant to the order.]

3. On [date], ODW issued the Permit to the Owner to operate [Waterworks Name] Waterworks in compliance with the PWSL and the Regulations.
4. Based on a review of ODW records, ODW staff made the following observations:
 - a. *[This should include a listing of the facts on which any violations rest. This should generally be taken directly from issued NOAVs. Additional subparagraphs should be included for each additional factual finding. This may include information from sanitary surveys, in which case the details of the sanitary survey should be identified.]*
5. The Regulations, at 12VAC5-590-XXX ([Name of Section of the Regulations]), state, *[these citations should be related to the factual findings listed above. There should be a newly numbered paragraph for each legal citation. The paragraph should quote relevant language from the legal citation. If any permit conditions or other requirements on the waterworks that are not based on a statutory or regulatory violation, they should receive their own numbered paragraph].*
6. On [date], [date], and [date], ODW notified the Owner of the abovementioned alleged violations.
7. Pursuant to Va. Code § 2.2-4019, ODW held the Proceeding on [month day, year] to ascertain the fact basis for its case decision through an informal proceeding.
8. After reviewing the record and exhibits from the Proceeding, and the Presiding Officer's Recommended Findings of Fact and Conclusions of Law in the above-referenced matter, the Board adopts those Recommended Findings of Fact and Conclusions of Law, which ODW has incorporated into this Special Order. *[If the Board/Commissioner decides otherwise, then this language should be modified appropriately to reflect the Board/Commissioner's decision.]*
9. Based on VDH records, the Board concludes that the Owner has violated *[this should repeat the identified sections of the Va. Code and Regulations, any permit conditions, or any other requirements on the Waterworks Owner that were identified earlier in the document]*, as described in paragraphs C.X through C.Y, above.
10. Pursuant to Va. Code §§ 32.1-20 and 32.1-26, the Commissioner, acting for the Board, may issue orders to require any person to comply with the provisions of any law

administered by it, the Commissioner or the Department or any regulations promulgated by the Board or to comply with any case decision, as defined in Va. Code § 2.2-4001, of the Board or Commissioner.

Section D. Order for Compliance

Accordingly, by virtue of the authority granted in Va. Code § 32.1-26, the Board orders the Owner to:

1. Perform the actions described in Appendix A of this Special Order;
2. Pay a civil charge of \$_____ within 30 days of the effective date of this Special Order in settlement of the violations cited in this Special Order.

An Appendix A can be created. Alternatively, all terms can be provided here.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and shall be delivered to:

Office of Drinking Water
Virginia Department of Health
109 Governor Street, 6th Floor
Richmond, Virginia 23219

The Owner shall indicate that the payment is being made in accordance with the requirements of this Special Order for deposit into the Virginia Water Supply Assistance Grant Fund. If VDH has to refer collection of moneys due under this Special Order to the Department of Law, the Owner shall be liable for attorneys’ fees of 30% of the amount outstanding.

Section E. Administrative Provisions

1. This Special Order addresses and resolves only those violations specifically identified in Section C of this Special Order. This Special Order shall not preclude VDH from taking any action authorized by law, including but not limited to taking any action authorized by law regarding additional, subsequent, or subsequently discovered violations or taking subsequent action to enforce this Special Order.
2. This Special Order does not suspend, minimize, or otherwise alter the Owner’s obligation to comply with federal, state, and local laws and regulations. The Board waives no lawful means of enforcing the laws it administers, the regulations it has adopted, or this Special Order.

3. To the fullest extent authorized by law, this Special Order is binding on the Owner, its agents and legal representatives, heirs, devisees, executors, administrators, and successors in interest, jointly and severally as applicable.
4. The Board may modify, rewrite, or amend this Special Order with the consent of the Owner. Additionally, the Board may modify, rewrite, or amend this Special Order on the Board's own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000, *et seq.*, after the Owner has received notice and opportunity to be heard. Any request for modification of this Special Order shall be submitted to VDH in writing to be considered for approval by the Board or its designee.
5. Failure by the Owner to comply with any terms of this Special Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or Department as a result of such violation. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Special Order is found to be unenforceable for any reason, the remainder of the Special Order shall remain in full force and effect.
7. Any plans, reports, schedules, or specifications submitted by the Owner and approved by the Department pursuant to this Special Order are incorporated into this Special Order. Any non-compliance with such approved documents shall be considered a violation of this Special Order.
8. This Special Order shall not preclude the Board, the Commissioner, or the Department from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce this Special Order.
9. The Owner shall be responsible for failure to comply with any of the terms and conditions of this Special Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Owner shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on their part. The Owner shall notify the Department in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Special Order. Such notice shall set forth:

- a. The reasons for the delay or noncompliance;
- b. The projected duration of any such delay or noncompliance;
- c. The measures taken and to be taken by the Owner to prevent or minimize such delay or noncompliance; and
- d. The timetable by which the Owner will implement such measures and the date full compliance will be achieved.

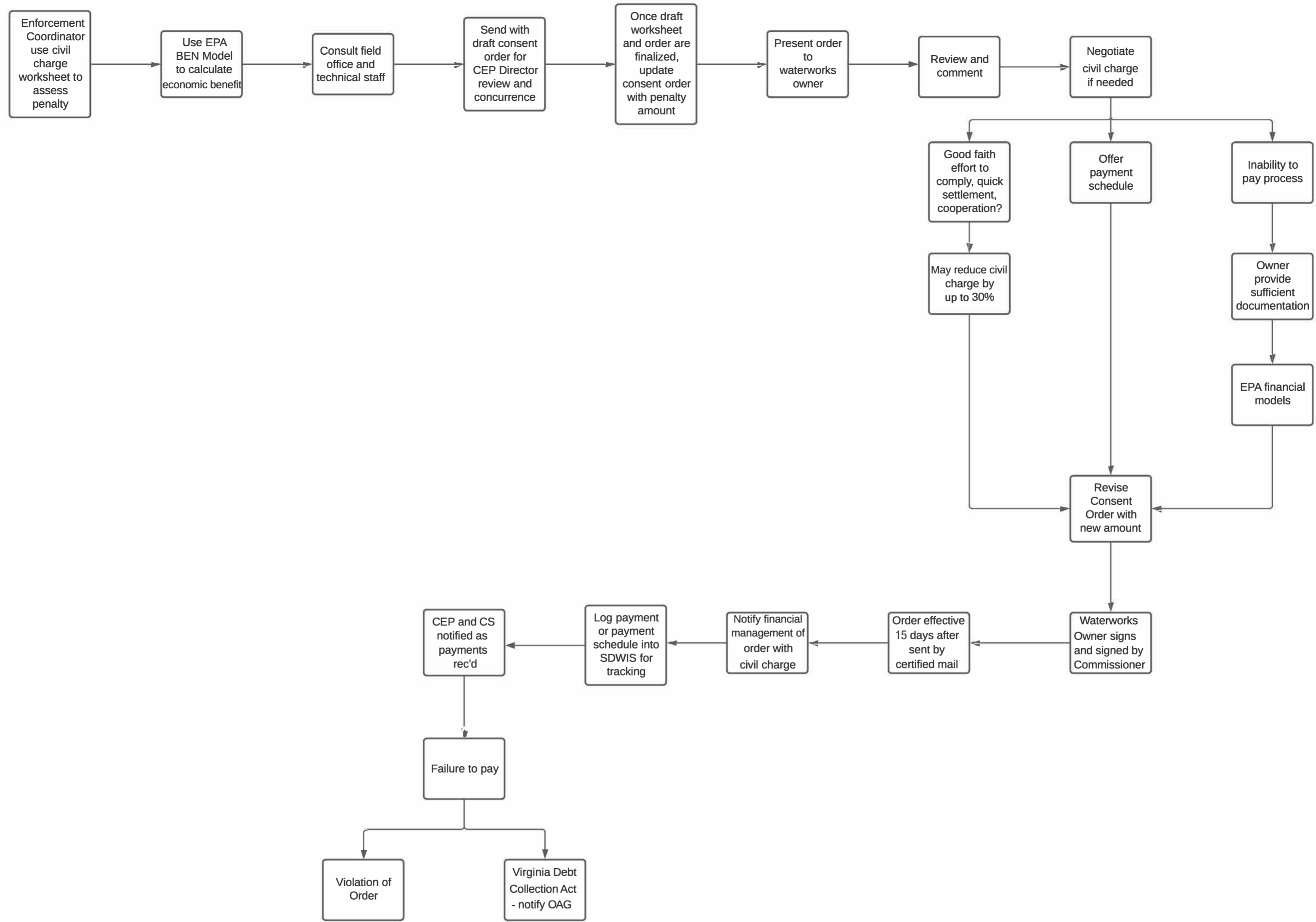
Failure by the Owner to notify the Department verbally within 24 hours and in writing within three business days of learning of any condition above, which the Owner intends to assert will result in the impossibility of compliance, shall constitute a waiver by the Owner of any claim to inability to comply with a requirement of this Order.

10. This Special Order shall become effective on the 15th day after a copy of it is mailed to the Owner. Va. Code § 32.1-26.
11. This Special Order shall continue in effect until:
 - a. The Commissioner or his designee terminates the Special Order after the Owner has completed all of the requirements of this Special Order;
 - b. The Owner petitions the Commissioner or his designee to terminate the Special Order after the Owner has completed all of the requirements of the Special Order and the Commissioner or his designee approves the termination of the Special Order; or
 - c. The Commissioner or Board, in their sole discretion, terminates the Special Order upon 30 days written notice to the Owner. Termination of the Special Order pursuant to this authority without the Owner having satisfied all terms of the Order may result in VDH pursuing further enforcement related to the violations identified in the Order.
12. Termination of this Special Order, or any obligation imposed in this Special Order, shall not operate to relieve the Owner from its obligation to comply with any statute, regulation, permit condition, other order, certificate, standard, or requirement otherwise applicable.

It is SO ORDERED this _____ day of _____.

STATE BOARD OF HEALTH
Commonwealth of Virginia

XXXX, MD,
State Health Commissioner



CIVIL CHARGE WORKSHEET

Waterworks Name:	Permit No.:		NOV Date:	
	Potential for Harm			Amount
	Serious	Moderate	Marginal	
1. Gravity-based Component				
(a) PMCL exceedance	\$100 × ___	\$75 × ___	\$50 × ___	
(b) Failure to monitor or report	\$100 × ___	\$75 × ___	\$50 × ___	
(c) Public notice and CCR	\$100 × ___	\$75 × ___	\$50 × ___	
(d) Treatment technique	\$100 × ___	\$75 × ___	\$50 × ___	
(e) Failure to pay operation fee	\$100 × ___	\$75 × ___	\$50 × ___	
(f) Reliability or design capacity	\$100 × ___	\$75 × ___	\$50 × ___	
(g) No permit	\$100 × ___	\$75 × ___	\$50 × ___	
(h) No operator	\$100 × ___	\$75 × ___	\$50 × ___	
(i) Plans and certifications	\$100 × ___	\$75 × ___	\$50 × ___	
(j) Incomplete WBOP	\$100 × ___	\$75 × ___	\$50 × ___	
(k) No WBOP	\$100 × ___	\$75 × ___	\$50 × ___	
(l) Seasonal procedure	\$100 × ___	\$75 × ___	\$50 × ___	
(m) Other (specify)	\$100 × ___	\$75 × ___	\$50 × ___	
Subtotal 1:				
2. Aggravating Factors				
Waterworks Type				
Community ≥ 10,000 connections	(×) 5 to Subtotal 1			
1,000-9,999 connections	(×) 4 to Subtotal 1			
501-999 connections	(×) 3 to Subtotal 1			
100-500 connections	(×) 2 to Subtotal 1			
< 100 connections	(×) 1 to Subtotal 1			
NTNC	(×) 1 to Subtotal 1			
TNC	(×) 0.5 to Subtotal 1			
Compliance History				
Order or decree at waterworks within 36 months? <input type="checkbox"/> YES or <input type="checkbox"/> NO	If yes, add lesser of 0.05 (×) Subtotal 1, or \$50			
Order or decree at another waterworks within 36 months? <input type="checkbox"/> YES or <input type="checkbox"/> NO	If yes, add 0.5 (×) Subtotal 1			
Degree of Culpability				
	<input type="checkbox"/> Low = Subtotal 1 × 0	<input type="checkbox"/> Moderate = Subtotal 1 × 0.5	<input type="checkbox"/> Serious = Subtotal 1 × 1	
Length of Time	days	Days Out of Compliance × \$1		
Subtotal 2:				
Subtotal 1 + Subtotal 2:				
3. Economic Benefit				
4. Ability to Pay				
TOTAL				

Civil Charge Discussion

1. Gravity-based Component

2. Aggravating Factors

3. Economic Benefit

4. Ability to Pay