

# Enforcement Manual

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**Enforcement Manual**

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## **Foreword**

The Virginia Public Water Supplies law authorizes the Board of Health to supervise and control all water supplies and waterworks in the 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.<sup>1</sup> In doing so, the Board may promulgate regulations governing waterworks that are designed to protect public health and promote public welfare.<sup>2</sup> The Board may issue administrative orders that include civil penalties or charges against a waterworks owner who violates the law or any Board order or regulation.<sup>3</sup> A violation of a regulation or Board-issued administrative order may result in civil penalties, permit suspension or revocation, injunctive relief, and criminal punishment.<sup>4</sup>

This Enforcement Manual provides ODW staff with a methodology for carrying out compliance and enforcement actions to ensure that ODW's approach to enforcement is logical and consistent.

This manual replaces, in part, ODW Working Memos 529 (Water – Procedure – Enforcement) and 764 (Water – Procedure – Enforc Acts, Orders, Court, Log Rev, - Phase II/V Notice of Violation and Informational Notices). This manual should serve as a training tool for new staff in administering compliance and enforcement.

## **Disclaimer**

This manual provides procedural guidance to ODW staff. It only provides guidance and does not establish or affect the legal rights or obligations of the parties involved. Further, it is neither binding nor determinative of the issues addressed herein.

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<sup>1</sup> See Va. Code § 32.1-169 (“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.”).

<sup>2</sup> See Va. Code § 32.1-170 (“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...”).

<sup>3</sup> 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 of any order or regulation adopted thereto by the Board.”).

<sup>4</sup> 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 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 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... 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 § 32.1-174 (“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 this article 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.”); 12VAC5-590-320 (identifying grounds on which the Commissioner may suspend or revoke a permit, and the procedure to be followed in pursuing such an action).

**Revisions Summary**

| <b>Date</b> | <b>Description of Changes</b> |
|-------------|-------------------------------|
| 10-05-2020  | Original                      |
|             |                               |
|             |                               |
|             |                               |
|             |                               |

## **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 2.2-4033                 |
| Board        | State Board of Health  |
| BWA          | Boil water advisory  |
| CCR          | Consumer confidence report   |
| C/E          | Compliance and Enforcement   |
| CFR          | Code of Federal Regulations  |
| Commissioner | State Health Commissioner  |
| EPA          | United States Environmental Protection Agency  |
| ERP          | EPA Drinking Water Enforcement Response Policy, December 8, 2009                           |
| ETT          | Enforcement Targeting Tool   |
| ETTA         | Enforcement Tracking Tool Assistant  |
| FCAP         | ODW Financial and Construction Assistance Programs   |
| GWR          | Groundwater rule   |
| IFFP         | Informal fact finding proceeding   |
| LCR          | Lead and copper rule   |
| 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         | Office of Drinking Water                                      |
| PN          | Public notice   |
| PWSID       | Public water system identification                            |
| PWSL        | Public Water Supplies law, Va. Code § 32.1-167 <i>et seq.</i> |
| Regulations | Waterworks Regulations, 12VAC5-590-10 <i>et seq.</i>          |
| RPT         | Reporting   |
| 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                        |
| 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                                 |
| WL          | Warning letter  |

## 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 Part 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, 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.                                 |
| Consent Order               | A voluntary agreement between VDH and the waterworks owner to resolve violations of the PWSL and Regulations, setting forth corrective action to be completed and a schedule of compliance. Va. Code § 32.1-26.   |
| Enforcement Priority        | See Serious Violator.   |
| 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 rules within a 5-year period. <i>EPA Drinking Water Enforcement Response Policy</i> .                  |
| Enforcement Targeting Tool  | A tool that analyzes SDWIS/State database data and calculates a real  |



|                                  |   |
|----------------------------------|---|
| Assistant                        | time assessment of waterworks that are out of compliance, and compares this data side-by-side with the latest State data reported to 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 Fact Finding Proceeding | A proceeding in which ODW ascertains the fact basis for making a case decision. Va. Code § 2.2-4019.  |
| Intractable                      | A community or non-community waterworks that serves fewer than 1,000 individuals and the owner or operator is (i) unwilling or unable to provide safe and adequate service to those individuals; (ii) has abandoned or effectively abandoned the waterworks, as applicable; (iii) has defaulted on a financial obligation relating to the waterworks, as applicable; or (iv) fails to maintain the facilities of the waterworks. <i>EPA America's Water Infrastructure Act: Study on Intractable Water Systems.</i> |
| Letter of Agreement              | An informal enforcement action that may be used by ODW field office staff when a waterworks owner is demonstrating a good faith effort to comply with the Regulations that 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 being in compliance. In such a situation, further action is required. <i>EPA Drinking Water Enforcement Response Policy.</i>  |
| Notice of Alleged Violation      | A written statement from ODW to a waterworks owner notifying the owner that ODW has reason to believe that an alleged violation has occurred or is occurring. Notice includes the facts that form the basis for believing a   |

violation has occurred or is occurring and a legal citation of the statute or regulations allegedly violated, and may include a request for corrective action. 12VAC5-590-110.

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.*

Potential Serious Violator

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

Returned to Compliance

Following a violation, the waterworks has completed monitoring, reporting, implementation of treatment, or other activities necessary to be in compliance 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 (meaning the waterworks has at least one recent acute health-based violation, or at least two recent other non-acute health-based violations, or 11 non-health-based violations). This status may also be referred to as Enforcement Priority. *EPA Drinking Water Enforcement Response Policy.*

Special Order

An administrative order issued by the Commissioner without a waterworks owner's consent after an IFFP, compelling the owner to bring the waterworks into compliance with the Regulations. 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. *EPA Drinking Water Enforcement Response Policy.*

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. *EPA Drinking Water Enforcement Response Policy.*

Warning Letter

A written statement notifying the waterworks that ODW intends to initiate enforcement actions for the waterworks' failure to comply with state or federal regulations. ODW also uses warning letters to notify a waterworks that it is listed on the ETT. 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 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 Policy**

VDH ODW's mission is to protect public health and help ensure that all waterworks provide a safe and adequate supply of drinking water. We accomplish 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 drinking water standards. ODW strives for full compliance with these regulations and as such, encourages compliance assistance as the first step towards resolving potential issues. This manual focuses on measures that ODW may take when assistance has failed to achieve compliance.

In strategizing the best ways to assure compliance, ODW seeks to respond to compliance issues in a consistent, timely, and appropriate manner. Although each case is fact-specific, consistency means treating "like situations" similarly. ODW takes all noncompliance seriously, but prioritizes health-based violations in accordance with state and federal drinking water policies.

In cases where insufficient technical, managerial, or financial resources present a barrier to compliance, ODW provides resources to waterworks in accordance with the EPA-approved Capacity Development Strategy. If ODW is unable to achieve compliance through technical assistance, due to a lack of resources or an unwillingness to cooperate, ODW may recommend enforcement. ODW encourages a waterworks 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.

The law provides ODW with enforcement tools that enable it to compel compliance and protect public health. Enforcement tools include consensual agreements, such as letters of agreements and consent orders, which develop a schedule and corrective action plan for returning the waterworks to compliance. ODW's enforcement tools also include informal proceedings and special orders, formal hearings, civil and criminal court actions, civil penalties, and permit suspension or revocation for owners that do not return to compliance. The failure to respond to or cooperate with ODW compliance assistance may result in enforcement actions of increasing seriousness. In becoming the healthiest state in the nation and striving for full compliance, more severe measures, such as civil or criminal action, may be necessary.

## **1.2. Enforcement Authority**

In 1974, Congress passed and President Ford signed into law the Safe Drinking Water Act (SDWA), 42 USC § 300f *et seq.*, 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 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 NPDWR to carry out the mandates set forth in the SDWA. The NPDWR provide drinking water standards and treatment techniques that protect public health by limiting 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”).

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 PWSL, Va. Code 32.1-170 *et seq.*, provides the Board with authority to promulgate the Regulations, 12VAC5-590-10 *et seq.* The Regulations are at least as stringent as the federal NPDWR.

To maintain primacy, the SDWA also requires that states have mechanisms for enforcing the state and federal drinking water standards. As such, the PWSL and Regulations provide VDH with authority to compel compliance through enforcement. EPA has provided guidance on the enforcement process through the ERP (see Attachment 1).

The ERP prioritizes non-compliant waterworks by considering all violations in a comprehensive way. The policy identifies the most serious violators for enforcement response, provides a model for escalating responses, defines timely and appropriate actions, and defines what constitutes a formal action. This Manual is consistent with the ERP, in addition to state and federal laws and regulations.

### **1.3. Enforcement Workflow**

ODW consists of a central office in Richmond and six field offices in Culpeper, Lexington, Abingdon, Danville, Norfolk, and Richmond, Virginia. Central office consists of an office director, a deputy office director, and five divisions. Central office divisions include Financial and Construction Assistance Programs (FCAP); Training, Capacity Development, and Outreach (TCDO); Technical Services; Policy and Program; and Compliance and Enforcement (C/E). Each division has a division director and one or more staff. C/E consists of the director and compliance coordinator.

Field office staff, in addition to and with the support of central office staff, interact directly with waterworks owners and operators to review construction plans and permit applications, draft permits, provide monitoring and reporting surveillance, inspect waterworks, and provide technical, engineering, operational, and managerial assistance to waterworks owners and operators to help achieve and maintain compliance.

Field office staff should perform most enforcement actions due to direct interaction with the waterworks owners and operators on a daily basis, while the C/E division coordinates statewide implementation of the enforcement program to ensure consistency, fairness, and effective strategies.

The enforcement workflow starts in the field offices with the district engineer, inspector, or compliance specialist who identifies noncompliance. The district engineer or inspector may identify a potential alleged violation during a sanitary survey, through laboratory data, or other monitoring and reporting. Once field office staff identify an alleged violation, the district engineer or inspector should work with the compliance specialist to draft the notice of alleged violation, monitor corrective actions, and return the waterworks to compliance. Field office staff should consult other divisions, such as FCAP and TCDO, to provide compliance assistance and additional technical, managerial, or financial resources, as needed.

If field office staff are unable to resolve alleged violations through compliance assistance, the field office should consult with the compliance coordinator and C/E director as to whether the case should be referred for further enforcement. It is recommended that the compliance specialist be responsible for drafting documents and managing case development once a case is referred for enforcement. However, in light of varying needs and workloads across field offices, the field office director may identify appropriate staff to manage enforcement cases, and will work collaboratively with the C/E director to resolve enforcement cases in a fair, consistent, expeditious, and appropriate manner.

If the waterworks is referred for enforcement, field office staff should provide to the C/E division a list of the alleged violations, regulatory citations, and a recommended course of action that includes the appropriate steps necessary to return the waterworks to compliance. The C/E director and field office director should review enforcement options and agree on an appropriate path forward before proceeding with enforcement.

Based on the agreed upon course of action, the field office will draft the appropriate correspondence and documents. The field office will be the lead on the case once an enforcement strategy is developed. The field office should update and consult with central office as the case develops. The compliance coordinator will review the waterworks' compliance history and enforcement documents to ensure consistency and accuracy as needed, and will also assist in monitoring and tracking enforcement actions and ensuring that noncompliance is resolved as expeditiously as possible.

The C/E director will review C/E documents and provide guidance on strategy, enforceability, and other legal considerations. The C/E director, with the support of the field office and the compliance coordinator, will take the lead on enforcement matters that involve the EPA, OAG, or Commonwealth's Attorney. The C/E director will consult with and copy the office director and deputy office director on communications between the field offices and external agencies, as needed.

See Attachment 2 for work flow diagrams.

## **1.4. Important Considerations**

This section includes general guidelines to keep in mind when working with waterworks on C/E matters.

### **1.4.1. Public Health First**

Acute violations are always a priority. Although this manual suggests compliance assistance as a first step to resolving noncompliance, compliance assistance alone may be inappropriate for health-based violations that represent a high risk of harm to public health.

### **1.4.2. Plain English**

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

### **1.4.3. Written Correspondence**

Written correspondences should comply with the VDH Correspondence Handbook. It is available on the VDH internal website.

### **1.4.4. Recordkeeping**

Document communications with a waterworks regarding its compliance, including spoken, written, and email communications. The field office must document all NOAVs, formal enforcement actions, and related activities in SDWIS, in accordance with the SDWIS Manual. The record must include the appropriate C/E action, name of ODW staff who took the action, the date the action took place, and a description of the action. Document phone calls in writing; minor phone calls may be documented in a phone log.

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

### **1.4.5. Intra/Interagency Coordination**

Consider other programs, agencies, or ODW staff that may be able to assist the waterworks. ODW staff should consider providing a copy of C/E letters to other programs or agencies when those other entities may be able to assist or may have an interest in drinking water quality. This includes notifying the appropriate local health district’s Health Director and Environmental Health Manager about enforcement actions and providing them copies of enforcement correspondence. Attachment 3 includes a list of programs or agencies that may be interested in receiving copies of C/E letters.

#### **1.4.6. Best Professional Judgement**

Selecting the appropriate C/E action is complex because each situation is unique. Each waterworks has a different history of noncompliance, personality, construction, and operation. Judgement will always be a factor in choosing an appropriate course of action.

#### **1.4.7. Identifying the Responsible Party**

Direct informal or formal enforcement to the responsible party. The responsible party is usually the owner. A waterworks may be publicly or privately owned. The owner may be a city or small business, homeowner's association, or mobile home park. ODW should work with the representative of the waterworks and review documents to identify the responsible party.

ODW staff or the waterworks owner may request or designate a representative for routine correspondence, such as an operator, administrator, homeowner's association president, engineering consultant, or public works director, but any informal or formal enforcement must be directed to the owner (with a copy to the representative).

#### **Appendix**

Attachments are located at:

<https://covgov.sharepoint.com/:f:/r/sites/vdh/PHP/odw/ecm/Shared%20Documents/71%20-%20Compliance%20and%20Enforcement/General%20Information/Enforcement%20Manual?csf=1&web=1&e=JI8MhQ>

EM-C1-Attachment 1 – EPA Enforcement Response Policy

EM-C1-Attachment 2 – Enforcement Work Flow

EM-C1-Attachment 3 – List of Program and Agency Resources



## Chapter 2 – Compliance Monitoring

### Summary

This chapter outlines compliance monitoring once a violation has been issued, including how to prioritize violations, track and monitor the enforcement status, and when to proceed with an elevated enforcement response. ODW’s Field Manual<sup>5</sup> provides detailed guidance on compliance determinations, including how to determine when a waterworks has violated a rule-specific requirement, identifying and validating violations, and issuing notices of violation. ODW uses SDWIS/State database<sup>6</sup> to track and determine waterworks’ compliance. This section discusses how the compliance specialists primarily manage the status of waterworks on the ETT. For violations that ODW staff are unable to return to compliance, field and central office staff should consider referring the waterworks for enforcement.

### 2.1. Prioritizing Violations<sup>7</sup>

Compliance specialists should 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 enforcement priority than chronic violations, which present a risk of harm over time.

The follow table provides requirements for ODW’s response time depending on violation type:

| Violation Type                                   | Examples   | ODW Response Time   |
|--|--|---|
| <b>Priority Acute Violations (10 ETT Points)</b> | Nitrate MCLs (Code 01)   | <b>Within 24 hours</b> of discovery of an alleged violation. A non-response by the waterworks 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 TT - Treatment Technique exceeds 1 NTU (Code 43) or 0.3 NTU in 5% of monthly samples (Code 44) |   |
|  | SWTR TT - failure to maintain microbial treatment (Code 41)  |   |

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<sup>5</sup> The Field Manual is a compilation of policy positions derived from previously issued working memos on various field activities that staff are routinely engaged in concerning compliance determinations. As of the effective date of this manual, the Field Manual is under development, but is expected to be ready for publication in the 3<sup>rd</sup> or 4<sup>th</sup> quarter of 2020.

<sup>6</sup> 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 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.

<sup>7</sup> Section 2.4 of the Enforcement Manual cross-references with Section 20 of Chapter 14 of the Field Manual.

| <b>Violation Type</b>                              | <b>Examples</b>   | <b>ODW Response Time</b>                                     |
|--|---|--|
|  | Nitrate monitoring/reporting (M/R) (Code 03)  |  |
| <b>Non-Acute Violations (5 ETT Points)</b>         | All chemical (excluding Nitrate), Radiological MCLs, or lead AL (Codes 01 and 02)                             | <b>Within 7 days</b> of discovery of the alleged violation.  |
|  | Non-acute MRDL (Code 11)  |  |
|  | Non-acute Treatment Techniques (Codes 33, 37, 40, 42, 45, 46, 47, 48, 57, 58, 59, 63, 64, 65, 2A, 2B, 2C, 2D) |  |
|  | All other M/R, Treatment Technique, and other violations  |  |
| <b>Chronic, Non-acute Violations (1 ETT Point)</b> |   | <b>Within 30 days</b> of discovery of the alleged violation. |

## **2.2. Tracking Federal Violations**

Each quarter, ODW is required to transfer data from the SDWIS/State database to the EPA’s federal SDWIS/Fed database. The transfer of data is completed 45 days after each quarter has ended to allow time for staff to run compliance reports, issue NOAVs, and ensure that all data has been entered into 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 90<sup>th</sup> percentile sample data). EPA uses this data (through the ETT that it compiles and distributes each quarter) to help states identify waterworks that are consistently violating federal rules.

Due to the data file transfer schedule (see below), the information on the ETT may be obsolete by the time the EPA releases the ETT to the states. For example, a waterworks may have submitted sample results shortly after the file transfer, resulting in a RTC<sup>8</sup> but it would not be reflected on the ETT until the following quarter.

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<sup>8</sup> RTC is an acronym used when speaking of or referring to a system that has "returned to compliance," or in other words satisfied 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 RTD’c.

| <b>Quarterly ETT</b> | <b>Begin Date for Data Collection</b> | <b>End Date for Data Collection</b> | <b>Data Transfer</b>      | <b>Data Lag Issues</b>   |
|----------------------|---------------------------------------|-------------------------------------|---------------------------|--|
| <b>July ETT</b>      | January 1 <sup>st</sup>               | March 31 <sup>st</sup>              | May 15 <sup>th</sup>      | Any RTC or action entered in SDWIS after <b>5/15</b> will not be reflected on the list.  |
| <b>October ETT</b>   | April 1 <sup>st</sup>                 | June 30 <sup>th</sup>               | August 15 <sup>th</sup>   | Any RTC or action entered in SDWIS after <b>8/15</b> will not be reflected on the list.  |
| <b>January ETT</b>   | July 1 <sup>st</sup>                  | September 30 <sup>th</sup>          | November 15 <sup>th</sup> | Any RTC or action entered in SDWIS after <b>11/15</b> will not be reflected on the list. |
| <b>April ETT</b>     | October 1 <sup>st</sup>               | December 31 <sup>st</sup>           | February 15 <sup>th</sup> | Any RTC or action entered in SDWIS after <b>2/15</b> will not be reflected on the list.  |

### 2.2.1. Enforcement Targeting Tool (ETT)

The objective of the ETT is to assist states and waterworks owners and operators in focusing their efforts on violations with the highest 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 based on the violations that have not been returned to compliance using the enforcement targeting formula below:

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

**S** = Violation Severity Factor

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

| <b>S Value</b> | <b>Violation Type (violation number)</b> |
|----------------|--|
| <b>10</b>      | <b>Acute violations, TTs, and MCLs</b>   |

|          |   |
|----------|---|
|          | Nitrate MCLs, Acute MRDL (Violation Cole 13), RTCR <i>E. Coli</i> MCL (1A), Turbidity TT (43, 44), SWTR TT (41) |
| <b>5</b> | <b>Other health-based violations, including non-acute TTs, MRDL, and MCLs</b>                                   |
|          | Also Nitrate Monitoring/Reporting (03)  |
| <b>1</b> | <b>Monitoring/reporting violations, or any other violation</b>  |
|          | All M/R violations (except Nitrate M/R)   |

EPA generates the ETT quarterly based on data reported from SDWIS/State database. Waterworks with ETT scores greater than 10 are considered “serious violators,” waterworks with ETT scores of 5-10 are considered “potential serious violators,” and the approach to waterworks with an ETT score less than 5 is discretionary. For waterworks with scores less than 5, ODW closely monitors for whether compliance assistance may help resolve the issue or if additional enforcement may be necessary. ODW staff try to respond to noncompliance proactively to prevent the waterworks from becoming a potential serious or serious violator.

EPA considers waterworks with a score greater than 10 to be an enforcement priority. EPA also sets criteria for how a waterworks can return to compliance and be removed from the ETT. The criteria for each violation type are outlined in the EPA RTC Table (Attachment 5).

EPA’s ERP requires states to address waterworks on the ETT in a “timely” and “appropriate” manner (see Attachment 1). To be considered “timely,” ODW must address the waterworks violations within two calendar quarters of their designation as a Serious Violator by EPA. “Appropriate” methods of addressing the waterworks violations are either the waterworks resolving its violations and returning to compliance, or through formal enforcement action. The EPA defines formal enforcement as an action that has the intent and effect of bringing a non-compliant waterworks back into compliance by a certain time with an enforceable consequence if the schedule is not met.<sup>9</sup> Generally, formal enforcement involves administrative orders (*i.e.* consent order or special order), but it could also involve a court order.

As a part of the ERP, and to address data lag issues, central and field office staff review all priority waterworks with an ETT Score greater than 10. Once the field office reviews the report and provide comments with details on the status of the waterworks, central office sends these responses to EPA with the current status for each waterworks. EPA then follows up with an email to schedule a call to discuss the ETT and updates on all of the priority waterworks, as well as to address any questions or concerns.

<sup>9</sup> 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>.

In the “Status of Violation” column on the ETT, the field office must choose one of the following to describe the waterworks’ status:

- **No Action/Unaddressed** – Violation reported by state, with either no action by the waterworks 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.
- **Returned to Compliance** – The waterworks has completed monitoring, reporting, or implementation of treatment or other activities necessary 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 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** – 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.

Although the ETT allows the state to monitor noncompliance and report progress to EPA to ensure compliance with the states’ primacy requirements, the ETT data lags behind real-time data. As such, ODW uses ETTA to maintain current information on waterworks compliance.

### **2.2.2. Enforcement Tracking Tool Assistance (ETTA)**

EPA created ETTA to provide states an effective tool with real time data for assessing waterworks out of compliance with federal requirements, and for comparing this data with the most recent state data that states reported to SDWIS/Fed database. States can compare ETTA to the previous ETT to identify waterworks that are no longer on the ETT or have a greater score than on the last ETT report. ETTA greatly simplifies ODW’s quarterly discussions with EPA by narrowing the focus to waterworks with the most compliance issues.

ETTA uses the same formula that EPA uses to calculate the ETT, but ETTA is able to provide a real time assessment of noncompliance because it retrieves its data from SDWIS/State database. By contrast, EPA calculates the official federal ETT score from SDWIS/Fed database. ODW updates SDWIS/State database continuously, whereas EPA only updates SDWIS/Fed database quarterly. Thus, ETTA is a real time assessment.

### **2.3. State-Only Violations<sup>10</sup>**

“State-only” violations are those that are not based on federal requirements or reported to EPA. Although EPA does not track “state-only” violations, ODW tracks and reports state violations through SDWIS/State database. State violations are tracked in SDWIS/State database the same way as federal violations.

The following are examples of state-only violations:

| <b>Type</b> | <b>Description</b>  |
|-------------|---|
| <b>A0</b>   | No waterworks operation permit  |
| <b>A1</b>   | No construction permit for modification   |
| <b>A2</b>   | Exceedance of permitted design capacity   |
| <b>A3</b>   | Operating facility beyond permit design capacity  |
| <b>A4</b>   | New waterworks or component in service without approval                                       |
| <b>B0</b>   | No BSSP or TSWMP (bacteriological sample site plan or triggered source water monitoring plan) |
| <b>B1</b>   | Failure to follow approved BSSP or TSWMP  |
| <b>B2</b>   | Lacks properly licensed operator  |
| <b>B4</b>   | No WBOP (waterworks business operation plan)  |
| <b>B5</b>   | No CCCP (cross connection control plan)   |
| <b>B6</b>   | Failure to implement CCCP   |
| <b>C1</b>   | Failure to report by 10 <sup>th</sup> day of month  |
| <b>C2</b>   | State monitoring violation  |
| <b>C3</b>   | Reliability problem   |
| <b>C4</b>   | Lack of monitoring equipment  |
| <b>C5</b>   | Failure to meter water production   |
| <b>C6</b>   | Less than 20 psi at service connection  |
| <b>C7</b>   | State MCL violation   |
| <b>C9</b>   | Failure to notify consumers   |

See Attachment 4 for a table of state violations. The table includes a description of the violation, what action ODW should take in response to the type of alleged violation, the action required of the waterworks owner to resolve the alleged violation, and enforcement options if the waterworks owner fails to resolve the alleged violation.

### **2.4. Returning a Waterworks to Compliance<sup>11</sup>**

A waterworks comes into compliance with the Regulations by completing the appropriate sampling or reporting requirements, reducing a contaminant below a MCL, or completing other corrective actions, such as milestones in a compliance schedule. EPA published a comprehensive Return to Compliance (RTC) Table (see Attachment 5), which describes federal

<sup>10</sup> Section 2.4.2 of the Enforcement Manual cross-references with Section 28 of Chapter 14 of the Enforcement Manual.

<sup>11</sup> Section 2.4.3 of the Enforcement Manual cross-references with Sections 20 and 30 of Chapter 14 of the Enforcement Manual.

violations and their corresponding RTC definitions. The RTC Table should be used to help determine when a waterworks can be returned to compliance. An RTC enforcement action (“SOX” enforcement action code in SDWIS) must be entered into SDWIS to close or address the applicable alleged violations that have been issued to the waterworks.

Field offices should make every effort to determine that a waterworks has returned to compliance as soon as possible. Delays in entering a RTC into SDWIS can negatively affect a waterworks’ ETT score. To avoid a waterworks being incorrectly listed on the ETT because a violation has not been identified as RTC, the compliance specialists should work collaboratively with field office staff to ensure that this information is current.

Compliance specialists should review the list of enforcement actions that have not been returned to compliance at least monthly to ensure that the compliance information is up to date.

### **Appendix**

Attachments are located at:

<https://covgov.sharepoint.com/:f:/r/sites/vdh/PHP/odw/ecm/Shared%20Documents/71%20-%20Compliance%20and%20Enforcement/General%20Information/Enforcement%20Manual?csf=1&web=1&e=JI8MhQ>

EM-C2-Attachment 4 – State Violation Table

EM-C2-Attachment 5 – RTC Table

## Chapter 3 – Enforcement

### Summary

This chapter provides guidance on the enforcement process and steps that staff may take to address violations when waterworks owners have been unwilling or unable to return to compliance voluntarily. Enforcement may be appropriate when compliance assistance has been unsuccessful in returning a waterworks to compliance after two calendar quarters in accordance with the EPA's ERP. The enforcement process includes (1) resolving violations with or without the waterworks owner's consent; (2) monitoring enforcement actions; 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 outline the violation and what actions the waterworks owner needs to take to return to compliance. Letters of agreement may be used for waterworks that have demonstrated a good faith effort to comply with the Regulations and are not on the ETT. Formal enforcement may include administrative orders (*i.e.* consent orders or special orders) or court actions. Formal enforcement may be required when the waterworks is listed as a "serious violator" or Enforcement Priority on the ETT (*i.e.*, it has a score greater than 10).

During the enforcement process, field office staff may continue to assist the waterworks owner with drafting public notices, boil water advisories, and action plans to enhance the waterworks' ability to return to compliance. However, for reoccurring violations, staff should consider proceeding with a binding and enforceable order to assure that the waterworks stays in compliance.

In determining what is 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 waterworks owner to cooperate. The following procedures listed in this chapter are generally 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 discussions with the owner and operator of the waterworks, field offices, and divisions in developing a plan and facilitating compliance.

### 3.1. Referrals

For waterworks that have failed to return to compliance through meetings, technical assistance, and education, field office staff should refer the case to C/E for further assistance or enforcement.

ODW encourages coordination and communication among field office staff as early as a problem is known to exist. An open dialogue will allow the district engineer, inspector, compliance



specialist, and other divisions to know and understand compliance issues before the case is referred to enforcement. Likewise, C/E staff should provide updates to field office staff as a case develops.

Once field office staff refer a case to enforcement, they have responsibility for resolving the case with the support and coordination of the C/E division. Field office staff should work with the C/E division to evaluate the facts and appropriate legal authority, develop an enforcement recommendation, and keep central office staff apprised of the case status.

### **3.1.1. Scope of Enforcement Action**

Enforcement actions should include all outstanding violations and requirements for the waterworks to return to compliance. However, in limited circumstances, it may be appropriate to address violations individually. 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 should consult with TCDO when considering the technical, financial, and managerial capacity of a waterworks as related to the scope of the enforcement action.

When sending letters to waterworks 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.

Generally, the ETT considers up to 5 years of compliance history when calculating the ETT score. This is a good rule of thumb when processing violations. Older violations may be used to demonstrate poor compliance history; however, staff should consider whether new permits have been issued, if there has been a change in owner or operation, or if the violations have been resolved such that it would make older violations irrelevant.

### **3.1.2. Enforcement Options**

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

#### **No Longer a Waterworks**

ODW staff should confirm that the facility meets the definition of a “waterworks” (*i.e.*, it serves 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 under the law. Also, consider whether the waterworks has the ability to connect to another waterworks.

#### **Other permits**

ODW staff should consider whether the waterworks has any other permits or licenses.<sup>12</sup> Other permits or licenses may be used to determine whether a system meets the regulatory definition of

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<sup>12</sup> See 12VAC5-421-30 (requires that food establishments be connected to an approved water supply); 12VAC5-421-2050 (requires that drinking water at food establishments be obtained from an approved source that is a public

a waterworks, or they may be affected by noncompliance with the waterworks permit. For example, the Department of Social Services issues licenses to operate childcare and adult nursing programs. The licenses may include the number of individuals that the facility is licensed to service. This number may be used to determine the population served in evaluating whether the system meets the definition of a waterworks.

Other program permits may require compliance with the waterworks permit. For example, the VDH Office of Environmental Health Services (OEHS) oversees food permits, which may specify the number of restaurant seats permitted. Food service permits also require an “approved” water source.<sup>13</sup> The failure to comply with the Regulations may result in revocation of the waterworks operation permit and subsequently, the food service permit. Copying the Environmental Health Manager for the local health district on correspondence with the waterworks is required so they can be aware of noncompliance. Other examples of facilities regulated by other agencies include marinas, campgrounds, motels, and those holding alcohol licenses.

### **Temporary Permits**

ODW may use temporary permits to bring newly discovered waterworks into compliance with the Regulations, or for change in ownership or system improvements at known waterworks. The intent of issuing a temporary permit for a newly discovered waterworks is to allow time for the owner to complete regulatory requirements, including water quality testing, raw water sampling to support an evaluation of whether a groundwater source is under the direct influence of surface water, as well as completing sampling plan, a lead and copper material survey, a cross connection control plan, and a waterworks business operation plan. For known waterworks, the temporary permit is to allow time for infrastructure upgrades that may be necessary to comply with the Regulations. Refer to ODW’s Permit Manual for more information and details on the use of temporary permits.

Field offices generally should not use temporary permits to address noncompliance. If the waterworks fails to comply with the Regulations or fails to complete temporary permit requirements, then the field office should take enforcement action to compel the waterworks to comply with the Regulations.

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water system or a nonpublic waster system connected, maintained, and operated according to law); 12VAC5-431-10 (defines approved water supply as a waterworks that has a valid waterworks operation permit); 12VAC5-431-400 (states that the water supply system serving hotels must comply with the waterworks regulations); 12VAC5-450-80 (states that all campgrounds must provide an adequate supply of safe, sanitary, potable water that shall be supplied from either an approved private well or a permitted waterworks maintained and operated in compliance with 12VAC5-590).

<sup>13</sup> 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...”).

The compliance specialists are responsible for monitoring and tracking compliance with temporary permits and the timelines specified within them. A temporary operation permit compliance schedule should be entered into SDWIS and used to track compliance with permit requirements (please refer to the ODW SDWIS Manual for more information). Failure to comply with temporary permit requirements should be addressed in a timely manner by following up with the waterworks to achieve compliance or issuing an NOAV for failure to comply.

### **Receivership**

Receivership conveys possession of the waterworks' assets and responsibility to a receiver, who will operate the waterworks in the best interest of the customer.<sup>14</sup> This option is only appropriate when a court finds that conditions at the waterworks cannot be remedied, and the health and welfare of its customers are jeopardized. To initiate this action, ODW must ask the Commissioner to petition the circuit court to appoint a receiver when the Commissioner finds that the waterworks is unable or unwilling to provide adequate and safe drinking water.

In theory, receivership should be an effective tool, but when ODW has considered its use in the past, staff could not find an owner or operator with financial and technical capacity who was willing to act as a receiver for the subject waterworks.

### **Referrals to OAG**

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 in which there is a serious threat of harm to human health, an order or written agreement has been violated, or there are ongoing violations with a long history of noncompliance and ODW has been unable to achieve compliance through its administrative procedures.

If a referral is the best option, then the C/E director or other central office staff, in coordination with the field office, will prepare a referral package that includes a description of the case history and outstanding violations, as well as supporting documentation. Referrals to the OAG should be signed by the ODW office director, and routed through OCOM. The C/E director should be the point of contact on referrals to the OAG. The C/E director should include the office director and deputy office director in communications so they are apprised of major developments.

### **Criminal Actions**

Criminal matters should be handled by the Commonwealth's Attorney in the jurisdiction where the waterworks is located. In consultation with central office and the OAG, field or central

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<sup>14</sup> See Va. Code § 32.1-174.3.

office staff may request that the Commonwealth's Attorney pursue criminal charges for a waterworks owner failing to comply with the Regulations.<sup>15</sup>

Field office staff should consider referring a criminal matter for further action when there is evidence to support that the waterworks is willfully violating or refusing, failing or neglecting to comply with any Board regulations or orders. An example of a possible criminal matter is the falsification of data.

### **Referrals to EPA**

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

If a referral is the best option, then the central office, in coordination with the field office, will prepare a referral package that includes a description of the case history and outstanding violations, as well as supporting documentation. The referral package should be signed by the office director and routed through OCOM. The C/E director should be the point of contact on all referrals to EPA. The C/E director should communicate with the office director and deputy office director and copy them on communications so they are apprised of major developments.

### **3.1.3. Decelerating/Accelerating Enforcement Cases**

Examples of when staff may choose to decelerate enforcement:

- Waterworks owner or operator change;
- Late water samples;
- BWA issued and further monitoring would be duplicative (*e.g.*, a negative bacti would not reverse BWA); and
- More time is needed to see if recent enforcement action was effective (only if waterworks is demonstrating "good faith").

Examples of when staff may accelerate enforcement:

- Violation represents acute public health risk and waterworks 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

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<sup>15</sup> 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.").

Attorney, the U.S. Attorney for federal violations, or the Department of Professional and Occupational Regulation is appropriate).

### **3.1.4. Civil Charges**

The Va. Code authorizes ODW to assess by consent civil charges<sup>16</sup> (administrative) and seek civil penalties<sup>17</sup> (judicial) against any waterworks that violates any provision of the PWSL or Regulations. Civil charges and penalties are authorized to deter noncompliance and support ODW's mission to protect public health and ensure a safe and adequate supply of drinking water. Civil charges should consider the severity of the violation, extent of potential or actual harm to human health, compliance history of the waterworks, economic benefit realized from noncompliance, and the ability of the waterworks to pay.

Civil charges are not appropriate in every case. For example, consent orders requiring construction or modification of a waterworks operation, treatment, or distribution system likely should not include a civil charge due to the dedication of funds necessary to address the issue and as an incentive for the waterworks to cooperate with ODW and voluntarily agree to a schedule of compliance. On the other hand, consent orders for the failure to certify, public notice, or monitor for water quality should include a civil charge, as those violations are preventable and usually result from the waterworks owner's unwillingness to respond to compliance assistance to resolve these issues.

Informal fact finding proceedings (IFFP) that result in the issuance of a special order by the Commissioner should generally include the assessment of a civil charge if the waterworks has been unresponsive or uncooperative in responding to prior attempts to achieve compliance. An IFFP usually reflects a higher degree of culpability and therefore, a civil charge should be assessed to deter the waterworks owner from failing to comply with the Regulations in a timely manner.

ODW may assess civil charges when one or more of the following criteria applies

- Failure to adequately respond to compliance assistance;
- Violation of a consent order or special order without mitigating circumstances;

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<sup>16</sup> 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... the Board may provide, in an order issued by the Board... for the payment of civil charges for past violations ... not to exceed...” \$25,000 for each violation.)

<sup>17</sup> Va. Code § 32.1-27.C (“[A]ny person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to subsection B shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for each violation.”).

Va. Code § 32.1-175.01 states, 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.

Va. Code § 32.1-176 states, “in addition to the provisions of 32.1-176, any owner who violates any provisions of this article 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 violation.”

- Violations that are avoidable;
- Violations fundamental to the regulatory program;
- Noncompliance that is continuing or likely to recur absent a civil charge to serve as a deterrence;
- Knowing or willful violations;<sup>18</sup> or
- Violations resulting in harm to public health.

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

See Attachment 9 for how to calculate a civil charge and 9A for the civil charge worksheet.

### **3.2. 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 that are not listed on the ETT as a “serious violator.” If the waterworks has an ETT score greater than 10, consider whether formal enforcement (with or without consent) is appropriate. In most cases, enforcement should start with informal actions and progress to formal, as necessary.

#### **3.2.1. Warning Letters**

Warning letters may be appropriate when a waterworks has the financial, technical, and managerial ability to comply with the Regulations but fails to do so.<sup>19</sup> Warning letters often schedule a compliance meeting so ODW has an opportunity to discuss noncompliance face-to-face. Warning letters are sometimes effective for prompting the waterworks to take action and return to compliance without further action.

Warning letters are issued to potential serious violators and serious violators quarterly in response to the ETT, as defined in EPA’s ERP. In this case, the letter notifies the waterworks that it has been listed on the ETT. (See Attachments 6 and 7.)

Once a waterworks is listed on the ETT, ODW should notify the waterworks of its status and actions that it needs to take to return to compliance. After the C/E division reviews the ETT and reports its response to EPA, the compliance coordinator prepares the warning letters for review by the field offices. Once each field office reviews the Warning Letter and approves sending it,

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<sup>18</sup> Va. Code § 32.1-27 states, “any person willfully violating or refusing, failing or neglecting to comply with any regulation or order shall be guilty of a Class 1 misdemeanor.”

<sup>19</sup> This determination should be based on the most recent triennial assessment of waterworks technical, managerial, and financial capacity.

or provides a basis for withholding the letter, central office will send the letters to the appropriate waterworks notifying them of their status on the ETT.

When evaluating which waterworks should receive a warning letter, staff should assess not only the waterworks' ETT score, but also its current ETTA score. For example, a waterworks may have a score of 5 on the quarterly ETT but a current ETTA score of 12. Therefore, this waterworks 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.

### **3.2.2. Letters of Agreement**

Letters of agreement 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 10). LOAs are not recommended in cases where the corrective action and schedule is expected to take more than one year to complete. In instances where the corrective action is expected to last more than one year, a enforcement order is recommended.

Advantages of a LOA are that it is an informal, less resource and time intensive tool to compel compliance, and may be signed by the field director. It also creates a record of compliance efforts. Disadvantages are that they are unenforceable and so not considered “formal enforcement” according to EPA’s ERP (*i.e.* it may not be used for waterworks that are listed on the ETT as serious violators with scores greater than 10).

### **3.3. Formal Enforcement**

Formal enforcement is appropriate when ODW is required to have an enforceable, legally binding order with the waterworks or ODW believes it is unlikely to achieve compliance without one. EPA defines formal enforcement in its ERP as one that requires specific actions for the waterworks to return to compliance, cites specific violations, and is independently enforceable without having to prove the original violation.<sup>20</sup> Formal enforcement includes administrative orders (with or without penalties), and civil or criminal referrals.

Formal enforcement may be used with or without the consent of the waterworks. If the waterworks is cooperating with ODW to resolve an issue, then a consent order may be appropriate. If the waterworks is not cooperating, then ODW may need to hold an IFFP and

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<sup>20</sup> 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 non-compliant 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.

issue a special order in which the Commissioner compels compliance. Central office staff should send formal enforcement correspondences via certified mail.

Remember, most waterworks who are listed on the ETT as a “serious violator” with an ETT score greater than 10 require formal enforcement within six months of being listed (unless the violation has been returned to compliance).

### **3.3.1. 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 a waterworks, with its consent, requiring that the waterworks perform a set of actions to return the waterworks to compliance. See Attachment 11. Consent orders are considered case decisions that are authorized by statute 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; or
5. Completing repairs to the waterworks (*e.g.*, repairs to wells, pumps, tanks, and water plants).

Field office staff should develop consent orders with the concurrence of central office. The field director should review and approve the draft consent order for technical accuracy before the field office sends the draft to central office for review and approval. Collaboration among offices is essential for efficient and professional documentation that is factually correct, legally enforceable, and consistent statewide. Staff should also consider any other divisions that may need to review the corrective action set forth in the consent order, such as or FCAP or TCDO. See Attachment 8 for a checklist to consider when drafting and reviewing consent orders.

ODW staff should share the draft consent order with the waterworks owner and request that they provide comments within two weeks. Field office staff should provide the waterworks owner with an opportunity to meet and discuss the consent order at the time the draft is released. If the owner has no comments or declines to meet, then the owner may print two hardcopy originals, including a notarized signature on each original, and return both originals to the central office for the Commissioner’s signature. ODW staff should have the owner sign two originals so that we may return one signed original to the waterworks owner and keep the other for ODW records. Electronic submittals are also acceptable and may be transmitted via email.



When ODW returns a signed original to the waterworks owner, it should include a cover letter with the consent order enclosed (see Attachment 12). Consent orders become effective not less than 15 days after mailing a copy by certified mail.<sup>21</sup>

In negotiating the terms of a consent order with the waterworks owner, ODW staff may consider comments and where appropriate, incorporate them into the draft consent order. When the waterworks makes substantive comments, staff may hold a meeting or use other means to resolve the differences. Generally, the OAG has approved the administrative provisions and so may not be altered unless approved by central office.

Consent orders may include a civil charge if it is determined appropriate to deter noncompliance and facilitate quick settlement. In negotiating the terms of the consent order, ODW may offer up to a 30% reduction in the assessed civil charge amount to encourage cooperativeness, prompt response and quick settlement, and the size and sophistication of the facility. Consent orders should cover violations dating back no more than 5 years. See Attachments 9 and 9A for how to calculate a civil charge and for the civil charge worksheet.

### **3.3.2. Informal Fact Finding Proceedings**

The APA provides two ways of addressing alleged violations when the waterworks will not resolve a violation by consent – informal hearings (*i.e.* IFFPs) and formal hearings.<sup>22</sup>

Field office staff should seek compliance using the least resource-intensive means possible but in cases where the waterworks is uncooperative or unresponsive, it may not be possible to negotiate a consent order with a waterworks owner who is unwilling to agree to its terms and corrective actions. In cases where a waterworks refuses to cooperate, field office staff should recommend that ODW proceed with an IFFP.

#### **Notice of IFFP**

The APA requires that ODW provide reasonable written notice prior to an IFFP. Thirty days 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).<sup>23</sup> The C/E director may serve as the contact person for questions regarding the IFFP while field staff should respond to technical or

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<sup>21</sup> 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.”)

<sup>22</sup> 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.”).

<sup>23</sup> 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...”).

operational questions about the waterworks. The notice must also notify the party (owner) of the right to appear in person or by counsel or other qualified representative, provide any contrary information that the agency may rely upon in making an adverse case decision, and inform the party of the factual or procedural basis for an adverse decision.<sup>24</sup>

### **Preparing for an IFFP**

In preparing for an IFFP, field office staff should collaborate with the compliance coordinator, field office director, and C/E director to develop an exhibit book that contains the following: documentation to demonstrate that the waterworks meets the definition of a waterworks, the operation permit, relevant NOAVs, correspondence between ODW and the waterworks, and any other documentation that may be relied upon to form the basis of a case decision. Other documentation may include laboratory results, SDWIS data, the waterworks questionnaire, the business operations plan, or other submittals. The exhibit book should accompany the IFFP notice. If it does not, ODW must provide it to the owner prior to the IFFP, allowing sufficient time for the owner to respond with additional or contradictory information that they want to present at the proceeding. (See Attachments 13 and 14 for the Notice of IFFP and exhibit list.)

Because an IFFP requires more time and resources, and staff have already dedicated considerable time in compliance assistance efforts to return the waterworks to compliance, a civil charge is considered appropriate. The Code allows for up to \$1,000 per day per violation in a special order.<sup>25</sup> The civil charge worksheets break down this amount and may be used to assess civil charges for violations (see Attachment 9A). Civil charges are integral to deterring future violations and creating a level playing field.

### **Parties to an IFFP**

The parties to an IFFP include a presiding officer, an agency advocate, the waterworks owner and any other waterworks representatives, and any witnesses who may be relied upon for testimony. The compliance specialist for the field office or the C/E director will serve as agency advocate. The agency advocate will present the case for ODW, interview the inspector or district engineer, and recommend a course of action to the presiding officer. 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 waterworks. Generally, the presiding officer should be a field director or deputy field director from a different field office.

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<sup>24</sup> Va. Code § 2.2-4019.A.

<sup>25</sup> 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* § 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.”).

## **IFFP Procedure**

The proceeding is conducted to ensure that the waterworks owner has a fair and adequate opportunity to present information before the agency makes a case decision. The proceeding may be conducted in the field office that administers the Regulations for the waterworks or in the central office.

The presiding officer and agency advocate should follow guidelines for the proceeding to maintain order and professionalism. (Attachment 15.) The district engineer, inspector, and any other witnesses should be prepared to answer questions during the proceeding. The agency advocate may prepare the witnesses for their appearance at the IFFP.

Following the IFFP, the agency has 90 days from the date of the IFFP to issue a case decision.<sup>26</sup> This includes the time required for the agency advocate (*i.e.* the compliance specialist or C/E director) to prepare a recommendation, 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 16.)

If the presiding officer finds that the waterworks is in violation of the Regulations, then the presiding officer should provide a proposed special order to the Commissioner compelling action by the waterworks to return to compliance within a specified timeframe. (See Attachment 17.) The Commissioner will then approve, disapprove, or modify the presiding officer's recommendation within the remaining time.

The waterworks owner will have 30 days from the date they receive the decision to initiate an appeal process, which could be a request for a formal hearing under Va. Code § 2.2-4020 or a hearing in the circuit court with jurisdiction over the matter.<sup>27</sup> If the waterworks owner chooses not to appeal the decision, then the special order becomes effective not less than fifteen days after mailing a copy by certified mail to the last known address of the waterworks owner.<sup>28</sup>

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<sup>26</sup> 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.”).

<sup>27</sup> 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.

<sup>28</sup> Va. Code § 32.1-26.

### **3.3.3. 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 waterworks owner has requested, and ODW agrees, to go straight to a formal hearing. An owner may request a formal hearing because they might want to challenge a case decision resulting from an informal proceeding, for example, without seeking a court's review.<sup>29</sup>

In a formal hearing, ODW and the waterworks will have the opportunity to present evidence and arguments before a hearing officer appointed by the Executive Secretary of the Supreme Court of Virginia. The hearing officer will conduct the hearing. During a formal hearing, the waterworks owner may be represented by counsel, the parties may cross-examine witnesses, and the parties may subpoena witnesses.

The appointed hearing officer will make a recommended findings of fact and conclusion of law, submitting the recommendation to the Commissioner for review and final decision.<sup>30</sup>

### **3.4. Monitoring Enforcement Cases**

Field office staff are responsible for monitoring and tracking compliance with the terms of a consent order or special order. An administrative order compliance schedule should be entered into SDWIS to track compliance with the requirements of the order (please refer to the ODW SDWIS Manual for more information). Field office staff should maintain an open dialogue with the waterworks owner and operator and notify them of upcoming deadlines. Field office staff should issue an NOAV for the failure to comply with a requirement listed in a consent order or special order unless ODW has agreed to extend a deadline or alter the schedule of compliance.

### **3.5. Closing Cases**

ODW may close a case when the terms of the enforcement action have been satisfied and the waterworks has returned to compliance. For compliance statuses that can change quickly (*e.g.* sampling and monitoring), field office staff should confirm that the waterworks has remained in compliance for a reasonable time (*e.g.*, over several monitoring periods).

To close a case, field office staff should document that the waterworks has satisfied the terms of the administrative order and returned to compliance, and enter the corresponding information into SDWIS. The field office should send the waterworks owner a termination letter notifying the owner that the requirements in the order have been satisfied and is hereby terminated. (See

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<sup>29</sup> Filed pursuant to Va. Code 2.2-4026; consistent with 12VAC5-590-180.

<sup>30</sup> Va. Code § 2.2-4020.C; 12VAC5-590-160.2.e. (The commissioner may designate a hearing officer or subordinate to conduct the hearing, as provided in § 9-6.14:12 of the Code of Virginia, and to make written recommended findings of fact and conclusions of law to be submitted for review and final decision by the commissioner. The final decision of the commissioner shall be reduced to writing and will contain the explicit findings of fact upon which his decision is based.)

Attachment 18.) The termination letter will be sent to the waterworks owner notifying them that the case has been closed once the information has been logged in SDWIS.

### **Appendix**

Attachments are located at:

<https://covgov.sharepoint.com/:f:/r/sites/vdh/PHP/odw/ecm/Shared%20Documents/71%20-%20Compliance%20and%20Enforcement/General%20Information/Enforcement%20Manual?csf=1&web=1&e=JI8MhQ>

EM-C3-Attachment 6 – Serious Violator Warning Letter  
EM-C3-Attachment 7 – Potential Serious Violator Warning Letter  
EM-C3-Attachment 8 – Checklist for Compliance Coordinator  
EM-C3-Attachment 9 – How to Calculate Civil Charges  
EM-C3-Attachment 9A – Civil Charge Worksheets  
EM-C3-Attachment 10 – Letter of Agreement  
EM-C3-Attachment 11 – Consent Order  
EM-C3-Attachment 12 – Consent Order Encl Letter  
EM-C3-Attachment 13 – IFFP Notice Letter  
EM-C3-Attachment 14 – IFFP Exhibit List  
EM-C3-Attachment 15 – IFFP Presiding Officer Guidelines  
EM-C3-Attachment 16 – IFFP Recommendation  
EM-C3-Attachment 17 – IFFP Special Order  
EM-C3-Attachment 18 – Case Closure Letter

## **Appendix**

### **Chapter 1**

EPA ERP  
Enforcement Work Flow  
List of Program and Agency Resources

### **Chapter 2**

RTC Table  
State Violation Table

### **Chapter 3**

Serious Violator WL  
Potential Serious Violator WL  
Checklist for Compliance Coordinator  
How to Calculate Civil Charges  
Civil Charge Worksheets  
Letter of Agreement

Consent Order  
Consent Order Encl Letter  
IFFP Notice Letter  
IFFP Exhibit List  
IFFP Presiding Officer Guidelines  
IFFP Recommendation  
IFFP Special OrderCase Closure Letter



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 8<sup>th</sup> 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  
Office of Civil Enforcement *Mj*

*fan* Karin Koslow, Acting Director *R. Farrell*  
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:

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

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.

| <b>Current SDWIS Code</b>           | <b>Description</b>  |
|-------------------------------------|---|
| 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><br>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.*

| <b>Resolving</b>  |  |  |
|---|--|--|
| 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:<br>9 Record Keeping; 12 Treatment Technique No Certif. Operator; 29 M&R Filter Profile/CPE Failure; 37 Treatment Technique State Prior Approval; <b>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:</b> 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.

|  |  |   |
|--|--|---|
| <b>INFORMAL</b>  | 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 <b>NOT</b> count for putting the system on a "path to compliance." |   |
| <b>Current SDWIS Code</b>                                      | <b>Description</b>   | <b>Examples of States Actions</b>           |
| 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:

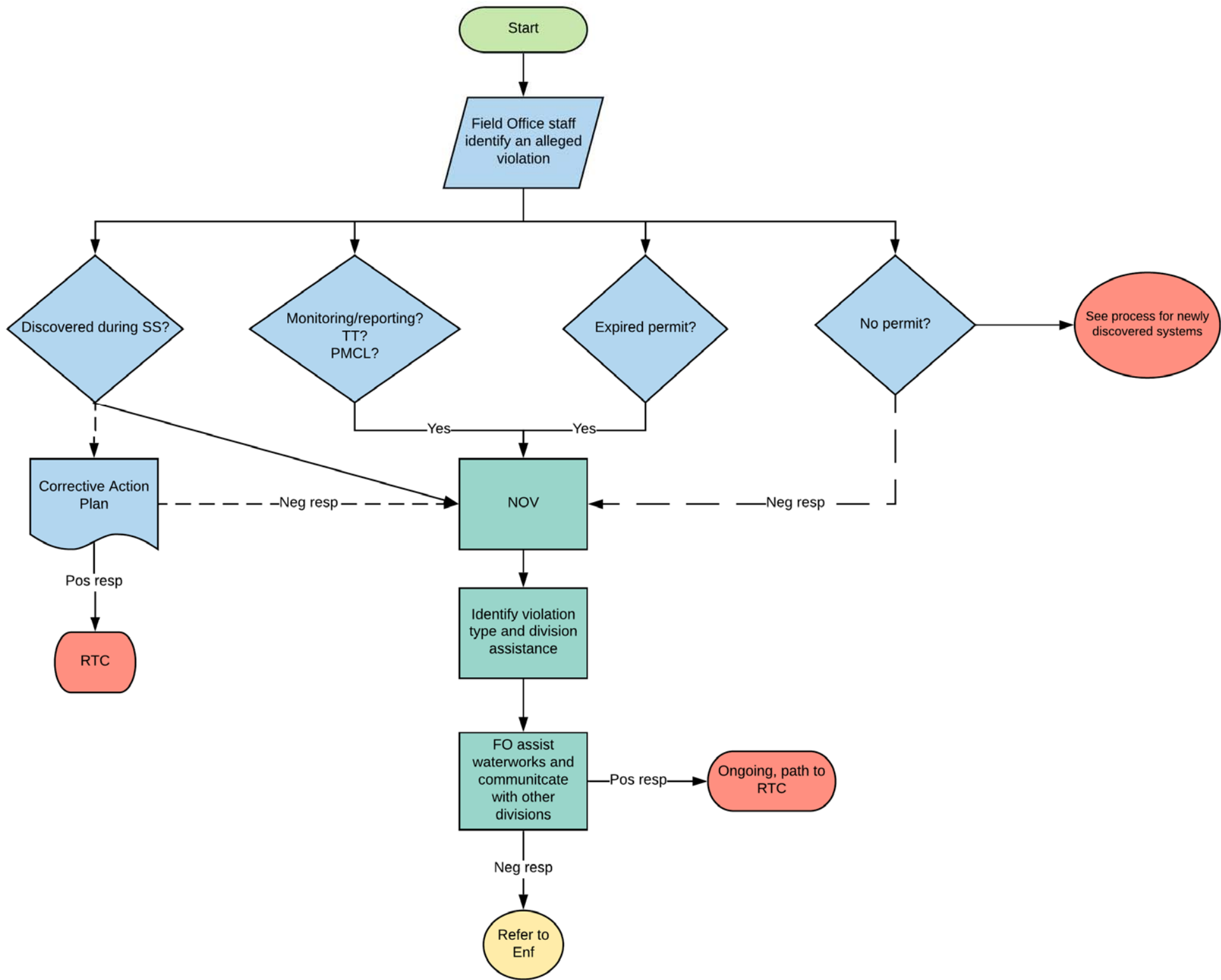
**S and n = use the definitions on page 4**

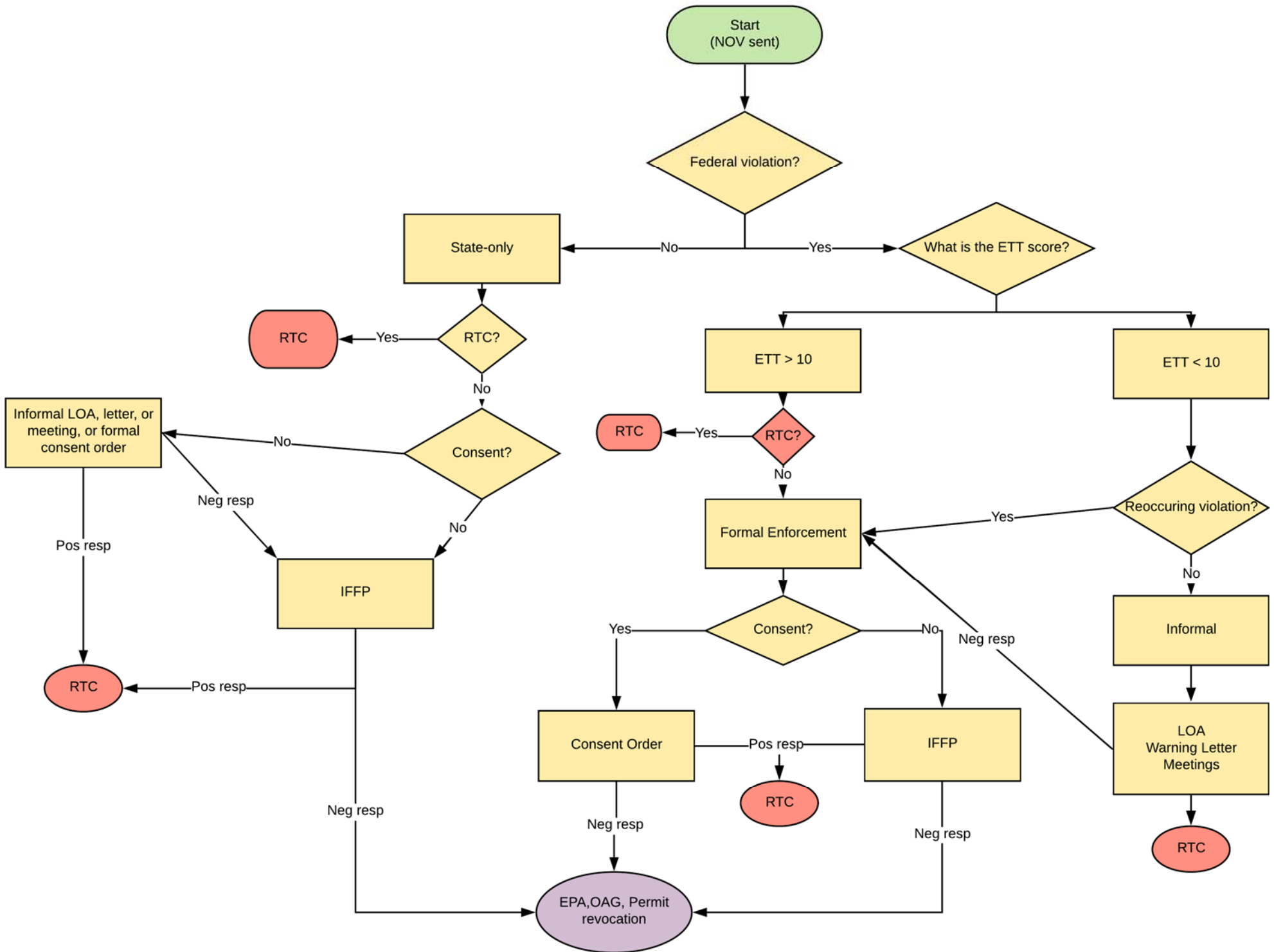
**T = water system type factor**

|   |             |
|---|-------------|
| 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...)    |







## **Compliance and Enforcement Checklist**

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- Correctly identifies the legally responsible owner or entity
- Definitions are needed, correct, in alphabetical order, and unused deleted
- Statements concerning the waterworks and waterworks type are accurate
- Addresses all violations and the length of compliance history is appropriate
- Observations support the violations cited in the legal requirements
- Observations and legal requirements support the corrective action and schedule of compliance
- Corrective action in the schedule of compliance leads by necessity to a waterworks' return to compliance by a date certain in all possible cases (if not, consider language for if the corrective action fails to return the waterworks to compliance)
- Corrective action addresses how waterworks will report to ODW and provide updates
- Template formatting has been used
- Legal citations are correct



| Type | 12 VAC                       | Description  | This Means?   | Triggering Event   | ODW Action (see note 1)  | Corrective Action by Owner   | Failure Consequences   | FO Options  |
|------|------------------------------|--|---|--|--|--|--|---|
| B4   | Code: 32.1-172 and 5-590-200 | NO COMPREHENSIVE BUSINESS PLAN (Waterworks Business Operations Plan) | WBOP has not been submitted for an existing waterworks to be owned by a first-time owner in Virginia, as required   | Discovery of ownership change, SS  | Issue an NOV outlining requirements for WBOP with deadline.  | Submit approvable WBOP by deadline   | New NOV at next SS.  | New owners: Issue Temp permit. HQ must concur if NOV is not issued. May need to refer to Enforcement.   |
| B5   | 5-590-580                    | NO CCCP  | This violation only occurs when there is NO approved program at an operating waterworks, and does not apply to minor revision of an existing CCCP. At existing waterworks, prior CCCP may be "inherited" from previous owner on change of ownership (see note 3).                         | <b>Permitted WW:</b> SS file review/ownership change<br><b>New WW:</b> Operation permit issuance process | <b>Permitted WW:</b> NOV w/ 30day deadline to present written compliance plan.<br><b>New WW:</b> Provide technical assistance as needed to develop CCCP prior to Op. permit issuance.    | Submit approvable CCCP   | <b>Permitted WW:</b> follow-up NOV(s)<br><b>New WW:</b> do not issue Op permit.  | <b>New WW:</b> If extenuating circumstances can be demonstrated by owner, issue Temp Op permit with Special Permit Requirements for CCCP.   |
| B6   | 5-590-600                    | FAILURE TO IMPLEMENT CCCP  | CCCP is approved but no evidence that the entire program is implemented; i.e, no records of surveys, inspections, corrective action taken on devices, etc.  | SS reveals failure to fully implement CCCP; as supported by owner's records (or lack thereof).           | Field Office to issue NOV immediately with response deadline of 60 days.   | Owner to provide written evidence to support that CCCP is effective and on-going.                              | Issue follow-up NOV(s).  | If no response or inadequate response after 6 months, refer to ODW Enforcement.   |
| C1   | 5-590-530                    | FAILURE TO REPORT BY 10TH DAY OF MONTH                               | This is for late reporting when monitoring was conducted in the compliance period. Failure to provide required <b>sample results or MORs</b> by the 10th day of the month following the reporting period. Applies to: "routine" raw water MPNs, increased monitoring for GUDIs, and MORs. | For results that are reported late. Sample results and/or MORs received after the reporting deadline.    | <b>Case 1:</b> For MORs and raw water MPNs that are reported late, Field Office to issue reminder letter.<br><b>Case 2:</b> For other sampling, issue NOV immediately.                   | Future sample results and /or MORs are submitted to Field Office on a timely basis.                            | <b>Case 1a</b> (MORs): 3 or more late reports in a 12 month period - Issue NOV.<br><b>Case 1b</b> (MPNs): issue reminder letter. | After 3 NOVs (case 1a & 2); i.e., over 3-year period, refer to ODW Enforcement.   |
| C2   | varies                       | STATE MONITORING VIOLATION   | Failure to sample in the compliance period, or sampling at unapproved sites or inappropriate times (State-required compliance monitoring; Not operational control). Examples: "routine" raw water MPNs, increased monitoring for GUDIs, consecutive system Stage 1 DBPs.                  | File, SS, results or MOR review, or whenever staff becomes aware.  | Issue NOV  | Owner conduct appropriate monitoring.  | Issue follow-up NOV(s)   | Refer to ODW Central for enforcement action.  |
| C3   | 5-590-360                    | RELIABILITY PROBLEM  | Waterworks is unable to demonstrate the ability to provide pure water of adequate quantity and quality. As determined by the Field Office in conjunction with Technical Services. Examples are included (but not limited to) list in Attachment 2.  | Whenever, however, staff becomes aware of it (SS or MOR surveillance, complaints, media, etc).           | Verify reliability problem with field data and/or other observations. Request owner to provide corrective action plan within 30 days. Issue NOV immediately if significant consequences. | Take immediate corrective action or submit written corrective action plan provided to field office for review. | Issue NOV for failure to provide corrective action plan or to carry out plan.  | If problem still persists, initiate discussions with owner regarding permit revocation and refer to ODW Enforcement. Written corrective action plan may not be needed under all circumstances. Plan should include timelines. |
| C4   | 5-590-330                    | LACK OF MONITORING EQUIPMENT   | Required monitoring equipment is absent, inoperable, or inaccurate.   | SS reveals the absence of the required monitoring equipment or MOR review indicates potential problem.   | Request that monitoring equipment be provided within 30 days via SS correspondence. Issue NOV immediately if significant consequences.   | Provide monitoring equipment and obtain written confirmation of its use within 30 days.                        | Issue NOV for failure to provide required monitoring equipment.  | After 3 consecutive NOVs refer to ODW Enforcement.  |

| Type | 12 VAC    | Description                            | This Means?  | Triggering Event  | ODW Action (see note 1)  | Corrective Action by Owner  | Failure Consequences   | FO Options   |
|------|-----------|--|--|---|--|---|--|--|
| C5   | 5-590-700 | FAILURE TO METER WATER PRODUCTION      | Failure to meter and/or report readings: 1 -Not having an operable meter in place to accurately measure production or 2 -failure to read meter or 3- failure to report results to ODW  | SS reveals no meter present (and owner does not have a metering variance) or MOR review indicates potential problem.  | Require meter installation/repair within 90 days.  | Install or repair meter within 90 days. Start reading meter and reporting results to ODW within 30 days thereafter. | Issue NOV for failure to accurately meter production.                              | After 3 consecutive NOVs refer to ODW Enforcement.   |
| C6   | 5-590-510 | LESS THAN 20 PSI AT SERVICE CONNECTION | 20 psi is not provided at all service connections under all conditions of flow. Water main breaks and natural disaster incidents are excluded.   | Complaint or report verified by ODW or other event (SS or MOR review) that ODW becomes aware of. Field Verification supported by chart recorder or pressure gauge.                        | Issue NOV  | Owner to submit a corrective action plan within 30 days or show proof that problem has been resolved.               | Issue NOV for failure to submit plan within 30 days. Cc: building official on NOV. | Require fire hydrants to be bagged or removed, deny waterline extensions, Initiate discussion regarding permit revocation. |
| C7   |           | STATE MCL VIOLATION                    | A DBP or MRDL violation has occurred in a consecutive system.  | A DBP or MRDL violation has occurred in a consecutive system.   | Follow procedures for the equivalent federal violation   | Follow procedures for the equivalent federal violation  | Follow procedures for the equivalent federal violation                             | Follow procedures for the equivalent federal violation   |
| C8   |           | TURBIDITY PERFORMANCE, SW ONLY         | <i>DO NOT USE.</i>   | <i>DO NOT USE.</i>  | <i>DO NOT USE.</i>   | <i>DO NOT USE.</i>  | <i>DO NOT USE.</i>   | <i>DO NOT USE.</i>   |
| C9   |           | FAILURE TO NOTIFY CONSUMERS            | Failure to issue Special Notices not linked to an MCL or TT: Do Not Drink / Do Not Use / Boil Water Advisory (WM 844) or Commissioner's Order<br><br>Consecutive system Stage 1 DBPR: DBP violation or Maximum Residual Disinfectant Level (MRDL ) | Failure to provide the appropriate public notification completion statement (or to sustain the notification level).<br><br>DBP / MRDL violation - System did not submit completion report | Issue a Special Notice for acute situations.<br>Issue an NOV for failure to perform public notice. | Provide public notification for non-acute situations within the required time                                       | Warning letter from ODW Enforcement if Commissioner's Order violated               | Worse case: initiate Enforcement discussion  |

**NOTES**

- 1 Assess risk to human health and notify HQ and LHD of any immediate risk, take corrective action (issue BWN) immediately, if necessary
- 2 New owner must submit in writing that he is adopting the previous plan as is or with changes noted.
- 3 C3: Refer to Attachment 2 for examples.
- 4 C9: Public Notifications for Variances & Exemptions (12VAC5-590-540.) are not included here

|   |   |
|---|---|
| <p>NPDWR Drinking Water Violations and RTC Definitions - Nov 25, 2014 (revised violations 2A, 2B, &amp; 4A March 7, 2016)<br/> <b>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.</b></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> |
|---|---|

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:  |
|--------------|---------------------------------------|--|--------|---|----------------|--|
| 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><b>NPDWR Drinking Water Violations and RTC Definitions - Nov 25, 2014 (revised violations 2A, 2B, &amp; 4A March 7, 2016)</b><br/> <b>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.</b></p> | <p><b>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.</b></p> |
|--|--|

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:   |
|--------------|---------------------------------------|------------------------|--------|--|----------------|---|
| 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.                  |

| NPDWR Drinking Water Violations and RTC Definitions - Nov 25, 2014 (revised violations 2A, 2B, & 4A March 7, 2016)<br>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  | 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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|--------------|---------------------------------------|------------------------|--------|--|----------------|---|
| 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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|--------------|---------------------------------------|------------------|--------|---|----------------|---|
| 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/confirm/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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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:  |
|-------|---------------------------------------|------------------|--------|---|----------------|--|
| 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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| 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:   |
|---------|---------------------------------------|--|--------|---|----------------|---|
| 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.  |

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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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| 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:   |
|---------|---------------------------------------|------------------|--------|--|----------------|---|
| 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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|-------|---------------------------------------|------------------|--------|---|----------------|---|
| 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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| 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:   |
|-------------|---------------------------------------|------------------|--------|---|----------------|---|
| 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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| 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 | 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:<br>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:<br>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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| 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 | 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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|-------------|---------------------------------------|------------------|--------|--|----------------|--|
| 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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|-------------|---------------------------------------|------------------|--------|---|----------------|---|
| 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:<br>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:<br>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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| 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:<br>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:<br>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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| <p>NPDWR Drinking Water Violations and RTC Definitions - Nov 25, 2014 (revised violations 2A, 2B, &amp; 4A March 7, 2016)<br/> <b>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.</b></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:   |
|-------|---------------------------------------|------------------|--------|--|----------------|---|
| 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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| <p>NPDWR Drinking Water Violations and RTC Definitions - Nov 25, 2014 (revised violations 2A, 2B, &amp; 4A March 7, 2016)<br/> 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:   |
|-------|---------------------------------------|------------------|--------|--|----------------|---|
| 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,<br>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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| 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  | 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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| <p><b>NPDWR Drinking Water Violations and RTC Definitions - Nov 25, 2014 (revised violations 2A, 2B, &amp; 4A March 7, 2016)</b><br/> <b>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.</b></p> | <p><b>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.</b></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:  |
|-------|---------------------------------------|------------------|--------|--|----------------|--|
| 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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| 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             | 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 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    | 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    | <b>E. coli MCL (Violation Code 1A)</b><br><b>Plain language:</b><br><b>1) EC+ routine with insufficient repeat samples, or</b><br><b>2) Combination of EC+ and TC+ results between the routine and repeat samples, or</b><br><b>3) TC+ routine with TC+ repeat sample not tested for <i>E. coli</i> by lab</b> | 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 that is designated 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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| 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  |                                       |                  |        | <b>Combination of EC+ and TC+ results between the routine and repeat samples</b>  |                |   |
| 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  |                                       |                  |        | <b>TC+ routine with TC+ repeat sample not tested for E. coli by lab</b>   |                |   |
| 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  |                                       |                  |        | <b>Level 1 Assessment/Assessment Form Treatment Technique (Violation Code 2A)</b><br><b>Plain language:</b><br><b>1) Failure to conduct L1 assessment, <del>or or complete form, or</del></b><br><b>2) Inadequate L1 assessment, or insufficient content of assessment form.</b>                                    |                |   |
| RTCR  |                                       |                  |        | <b>Failure to conduct L1 assessment or <del>corrective action(s) or complete form-</del></b>  |                |   |

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|-------|---------------------------------------|------------------|--------|--|----------------|---|
| 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    | <p><b>Level 2 Assessment/Assessment Form Treatment Technique (Violation Code 2B)</b><br/> Plain language:<br/> <b>1) Failure to conduct L2 assessment, <del>or complete form,</del> or</b><br/> <b>2) Inadequate L2 assessment, or Insufficient content of assessment form, or</b><br/> <b>3) L2 Assessor not State-approved</b></p>   | 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  |                                       |                  |        | <p><b>Failure to conduct L2 assessment</b></p>   |                |  |
| RTCR  |                                       |                  |        | <p>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 <del>or assessment form</del> 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)</p> |                |  |
| RTCR  |                                       |                  |        | <p><b>Inadequate L2 assessment or insufficient content of assessment form</b></p>  |                |  |
| RTCR  |                                       |                  |        | <p>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)</p>   |                |  |
| RTCR  |                                       |                  |        | <p>A system, that triggers a Level 2 assessment, fails to ensure that the assessor evaluates the minimum elements outlined in 141.859(b)(2).</p>   |                |  |
| RTCR  |                                       |                  |        | <p>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)</p>   |                |  |

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| <p>NPDWR Drinking Water Violations and RTC Definitions - Nov 25, 2014 (<b>revised violations 2A, 2B, &amp; 4A March 7, 2016</b>)<br/> <b>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.</b></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  |                                       |                  |        | <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.<br/>           141.859(b)(4)(i) 141.860(b)(1) <b>141.859(c)</b></p>   |                |  |
| RTCR  |                                       |                  |        | <p><b>L2 Assessor not State-approved</b></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.<br/>           141.859(b)(1) 141.860(b)(1)</p>   |                |  |
| RTCR  | 2C                                    | 8000             | 247    | <p><b>Corrective Actions/Expedited Actions Treatment Technique (Violation Code 2C)</b><br/> <b>Plain language:</b><br/> <b>1) Failure to complete corrective actions within the required timeframe when a Level 1 or Level 2 assessment is triggered</b><br/> <b>2) Failure to comply with State-required expedited/additional actions when an E. coli MCL happens</b></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><b>Failure to complete corrective actions within the required timeframe when a Level 1 or Level 2 assessment is triggered</b></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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| 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  |                                       |                  |        | <b>Failure to comply with State-required expedited/additional actions when an <i>E. coli</i> MCL happens</b>   |                |   |
| 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    | <b>Start-up Procedures Treatment Technique Violation (Violation Code 2D)</b><br>Plain language:<br><b>Failure to complete seasonal system start-up procedures</b>  | 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  |                                       |                  |        | <b>Routine Monitoring Violation (Violation Code 3A)</b><br>Plain language:<br><b>1) Failure to collect routine samples at appropriate site/frequency</b><br><b>2) Failure to collect replacement samples when State or lab invalidates one or more routine samples</b>   |                |   |
| RTCR  |                                       |                  |        | <b>Failure to collect routine samples at appropriate site/frequency</b>  |                |   |
| 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><b>Additional Routine Monitoring Violation (Violation Code 3B)</b><br/> <b>Plain language:</b><br/> <b>Failure to collect additional routine samples required the next month after any TC+ happens</b><br/> <b>* Only applicable when PWS's baseline RTCR monitoring frequency is not monthly</b></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><b>TC Samples (triggered by turbidity exceedance) Monitoring (Violation Code 3C)</b><br/> <b>Plain Language:</b><br/> <b>Failure to collect required extra total coliform samples due to turbidity exceedance</b><br/> <b>* Only applicable to Subpart H systems avoiding filtration</b></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 <b>each day</b> 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><b>Monitoring Violation due to Lab and/or Analytical Method Errors (Violation Code 3D)</b><br/> <b>Plain Language:</b><br/> <b>1) Failure to use the required/approved analytical methods, or to follow holding times, or sample preparation or collection methods</b><br/> <b>2) Failure to use certified and/or State-approved laboratory</b></p>  |                |  |
| RTCR  |                                       |                  |        | <p><b>Failure to use the required/approved analytical methods, or to follow holding times, or sample preparation or collection methods</b></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  |                                       |                  |        | <b>Failure to use certified and/or State-approved laboratory</b>   |                |   |
| 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  |                                       |                  |        | <b>Failure to collect replacement samples when State or lab invalidates one or more routine samples</b>  |                |   |

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|-------|---------------------------------------|------------------|--------|--|----------------|---|
| 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><b>Assessment Forms Reporting Violation (Violation Code 4A)</b><br/> <b>Plain Language:</b><br/> <b>Failure to timely submit a completed assessment form. *Assessment and assessment form is complete and adequate, only the delivery of the form is late.</b></p>  | Reporting      | <p>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.</p> |
| RTCR  |                                       |                  |        | <p><del>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.</del> 141.860(d)(1) 141.861(a)(3)</p>  |                |   |

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| RTCR  | 4B                                    | 8000             | 254    | <p><b>Sample Results Reporting Violation (Violation Code 4B)</b><br/> <b>Plain Language:</b><br/> <b>1) Failure to provide sample results information to the State</b><br/> <b>2) Failure to provide notification to the State that a monitoring violation happened</b></p>  | Reporting      | <p>RTC is achieved when the sample result information is entered and validated in the database of record.</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  |                                       |                  |        | <p>When a PWS properly conducts monitoring and fails to submit the monitoring report in a timely manner. 141.860(d)(1)</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>   |                |   |
| RTCR  | 4C                                    | 8000             | 255    | <p><b>Certification Form (for Start-up Procedures) Reporting Violation (Violation Code 4C)</b><br/> <b>Plain Language:</b><br/> <b>Failure to provide the certificate that confirms seasonal system start-up procedures have been completed</b><br/> <b>*Start-up procedures were complete on time and adequate, only the delivery of the certificate is late.</b></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><b>EC+ Notification Reporting (Violation Code 4D)</b><br/> <b>Plain Language:</b><br/> <b>Failure to notify the State within 24 hours about an EC+ compliance sample result</b><br/> <b>*Applies to any PWS each time it has an EC+ result, even if there is no E. coli MCL violation.</b></p>  |                | <p>A new violation ID is generated for each instance the PWS fails to report the EC+</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    | <b>E. coli MCL Reporting (Violation Code 4E)</b><br><b>Plain Language:</b><br><b>Failure to provide notification to the State that an E. coli MCL violation happened</b>  | 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    | <b>Assessments, Assessment Forms, Corrective/Expedited Actions Reporting (Violation Code 4F)</b><br><b>Plain Language:</b><br><b>Failure to provide notification to the State that violations related to Level 1 and 2 assessments, assessment forms, and corrective actions have happened.</b>   | 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, &amp; 4A March 7, 2016)<br/> 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    | <b>Errors with Sample Siting Plan (Violation Code 5A)</b><br><b>Plain Language:</b><br><b>Failure to develop sample siting plan or to revise sample siting plan to include:</b><br><b>1) a sample collection schedule, and/or</b><br><b>2) sample sites or the SOP describing how the sample sites will be chosen</b>  | OTHER          | RTC is achieved when the State approves the revised sample siting plan or approves the sample siting plan that is developed.  |
| RTCR  |                                       |                  |        | <b>Inadequate Sample Collection Schedule</b>   |                |   |
| 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  |                                       |                  |        | <b>Failure to describe routine, repeat, dual GWR / RTCR monitoring locations in accordance to regulations.</b>   |                |   |
| 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)   |                |   |

|  |   |
|--|---|
| <p>NPDWR Drinking Water Violations and RTC Definitions - Nov 25, 2014 (revised violations 2A, 2B, &amp; 4A March 7, 2016)<br/> 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  |                                       |                  |        | <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><b>RCTR Recordkeeping Violations (Violation code 5B)</b><br/> <b>Plain Language:</b><br/> <b>1) Failure to keep records for Level 1 and Level 2 assessments and corrective/expedited actions for 5 years.</b><br/> <b>2) Failure to keep records for 1 year on repeat sample results that the State approved and extended the timeframe for sample collection</b></p>  |                |   |



|  |   |
|--|---|
| <p>NPDWR Drinking Water Violations and RTC Definitions - Nov 25, 2014 (revised violations 2A, 2B, &amp; 4A March 7, 2016)<br/> 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)   |                |   |



COMMONWEALTH of VIRGINIA

Department of Health
P O BOX 2448
RICHMOND, VA 23218

M. Norman Oliver, MD, MA
State Health Commissioner

TTY 7-1-1 OR
1-800-828-1120

WARNING LETTER

<<Date>>

<<AddrBlockBegin>>
<<Company>>
<<Street>>
<<ADDRBlockEnd>>

The letter should be addressed to the owner of the waterworks, or the most appropriate contact.

The letter should be addressed to the owner of the waterworks, or the most appropriate contact.

Re: <<Subj1>>
Serious Violator – Environmental Protection Agency

Dear <<Greeting>>:

Virginia Department of Health (VDH), Office of Drinking Water (ODW) records indicate that you appear to be operating the <<Wsysname>> waterworks in violation of state and federal laws and regulations. ODW reports these alleged violations to the Environmental Protection Agency (EPA), and EPA tracks non-compliance using the Enforcement Targeting Tool (ETT). As indicated below, VDH has previously provided you notice of the alleged violations and requested corrective actions for you to resolve the issues. These notices set forth VDH’s observations and legal requirements only and do not constitute “case decisions” as that term is defined in Va. Code § 2.2-4001.

Alleged Violations

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

All unresolved violations will be listed here.

<<MemoViolationBlock>>

Using the Enforcement Targeting Tool (ETT), EPA has now identified the <<Wsysname>> waterworks as a “Serious Violator” under its Enforcement Response Policy. A Serious Violator is a waterworks with an ETT score equal to or greater than 11. The <<Wsysname>> waterworks’ current ETT score is equal to <<ETT Score>>. The score is based on unresolved serious, multiple, and/or continuing alleged violations of health-based drinking water standards,

Attachment 6 - Serious Violator WL

monitoring and reporting requirements, public notice requirements, and/or other requirements in the Safe Drinking Water Act and associated regulations, including the Waterworks Regulations.

EPA's Enforcement Response Policy requires waterworks identified as Serious Violators return to compliance or be addressed by a formal enforcement action within six months of being listed. The EPA designates Serious Violators so the waterworks and the primacy agency, in this case VDH, will act quickly to resolve the most significant drinking water violations.

The present situation presents a potential threat to public health and VDH requests that you take immediate action to resolve this matter. If you have additional facts that you believe bear on this situation and you would like to schedule a meeting to discuss the basis for this warning, please contact me, at 804-864-7498 within fifteen (15) business days of the receipt of this notice. The failure to respond to this warning in a timely manner may result in formal enforcement action to include, but not limited to, administrative orders, civil penalties, and criminal proceedings.

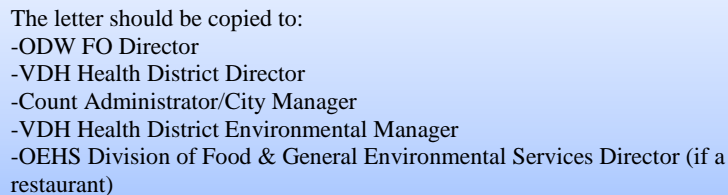
If you have any technical questions about how to resolve specific violations identified in this letter or any other questions regarding operation of your waterworks, please contact «DE», District Engineer at the VDH «FieldOffice» Field Office, at «FieldOfficePhone», or the Compliance Specialist at «FieldOfficePhone».

Sincerely,

Jennifer Coleman  
Director of Compliance and Enforcement

JC:mw

cc: «FDirector», Director, VDH ODW «FieldOffice» Field Office  
\_\_\_\_\_, MD, MPH, District Director, \_\_\_\_\_ Health District  
\_\_\_\_\_, County Administrator, \_\_\_\_\_ County  
\_\_\_\_\_, Environmental Health Manager, \_\_\_\_\_ Health District



The letter should be copied to:  
-ODW FO Director  
-VDH Health District Director  
-Count Administrator/City Manager  
-VDH Health District Environmental Manager  
-OEHS Division of Food & General Environmental Services Director (if a restaurant)



COMMONWEALTH of VIRGINIA

Department of Health
P O BOX 2448
RICHMOND, VA 23218

M. Norman Oliver, MD, MA
State Health Commissioner

TTY 7-1-1 OR
1-800-828-1120

WARNING LETTER

<<Date>>

<<AddrBlockBegin>
<<Company>
<<Street>
<<Street2>
<<ADDRBlockEnd>

The letter should be addressed to the owner of the waterworks, or the most appropriate contact.

The waterworks name and PWSID will appear here. This also identifies the waterworks violator type.

Re: <<Subj1>
Potential Serious Violator – Environmental Protection Agency

Dear <<Greeting>:

Virginia Department of Health (VDH), Office of Drinking Water (ODW) records indicate that you appear to be operating the <<Wsysname> waterworks in violation of state and federal laws and regulations. ODW reports these alleged violations to the Environmental Protection Agency (EPA), and EPA tracks non-compliance using the Enforcement Targeting Tool (ETT). As indicated below, VDH has previously provided you notice of the alleged violations and requested corrective actions for you to resolve the issues. These notices set forth VDH’s observations and legal requirements only and do not constitute “case decisions” as that term is defined in Va. Code § 2.2-4001.

Alleged Violations

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

All unresolved violations will be listed here.

<<MemoViolationBlock>

Using the Enforcement Targeting Tool (ETT), EPA has now identified the <<Wsysname> waterworks as a “potential Serious Violator” under its Enforcement Response Policy. A potential Serious Violator is a waterworks with an ETT score equal to or less than 10. <<Wsysname> waterworks’ current ETT score is equal to <<ETT>>. The score is based on unresolved and/or continuing violations of health-based drinking water standards, monitoring and reporting requirements, public notice requirements, and/or other requirements in the Waterworks Regulations. By identifying potential Serious Violators, VDH intends to work with waterworks

Attachment 7 - Potential Serious Violator WL

to resolve issues before they become Serious Violators, triggering EPA's requirement to return to compliance or be addressed by a formal enforcement action within six months of being listed.

The present situation presents a potential threat to public health and VDH requests that you take immediate action to resolve this matter. If you have additional facts that you believe bear on this situation and you would like to schedule a meeting to discuss the basis for this warning, please contact me, at 804-864-7498 within fifteen (15) business days of the receipt of this notice. The failure to respond to this warning in a timely manner may result in formal enforcement action to include, but not limited to, administrative orders, civil penalties, and criminal proceedings.

If you have any technical questions about how to resolve specific violations identified in this letter or any other questions regarding operation of your waterworks, please contact «DE», District Engineer at the VDH «FieldOffice» Field Office, at «FieldOfficePhone», or the Compliance Specialist at «FieldOfficePhone».

Sincerely,

Jennifer Coleman  
Director of Compliance and Enforcement

JC:mw

cc: «FDirector», Director, VDH ODW «FieldOffice» Field Office  
\_\_\_\_\_, MD, MPH, District Director, \_\_\_\_\_ Health District  
\_\_\_\_\_, County Administrator, \_\_\_\_\_ County  
\_\_\_\_\_, Environmental Health Manager, \_\_\_\_\_ Health District



The letter should be copied to:

- ODW FO Director
- VDH Health District Director
- Count Administrator/City Manager
- VDH Health District Environmental Manager
- OEHS Division of Food & General Environmental Services Director (if a restaurant)

## **Compliance and Enforcement Checklist**

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- Correctly identifies the legally responsible owner or entity
- Definitions are needed, correct, in alphabetical order, and unused deleted
- Statements concerning the waterworks and waterworks type are accurate
- Addresses all violations and the length of compliance history is appropriate
- Observations support the violations cited in the legal requirements
- Observations and legal requirements support the corrective action and schedule of compliance
- Corrective action in the schedule of compliance leads by necessity to a waterworks' return to compliance by a date certain in all possible cases (if not, consider language for if the corrective action fails to return the waterworks to compliance)
- Corrective action addresses how waterworks will report to ODW and provide updates
- Template formatting has been used
- Legal citations are correct

**How to Calculate Civil Charges and Civil Penalties**

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## Chapter 1 – Introduction

The Virginia 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 Public Water Supplies law and the Waterworks Regulations. Civil charges and civil penalties deter noncompliance and support ODW’s mission to protect public health by ensuring a safe and adequate supply of drinking water. The calculation considers the gravity of harm to public health, aggravating factors, ability to pay, and the economic benefits realized by the owner for noncompliance.

This guidance sets out specific criteria and procedures that ODW may use to calculate civil charges in administrative proceedings, which includes orders issued by consent (civil charge)<sup>1</sup> and special orders issued after an informal fact finding proceeding (civil penalty).<sup>2</sup> This guidance also may be used to estimate civil penalties in judicial proceedings.

ODW may depart from the recommended calculations in this guidance to seek civil charges up to the maximum amounts authorized by law where the interests of equity, deterrence, and justice require. While uncommon, such departures may be appropriate in significant instances of noncompliance such as, but not limited to:

- 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;
- 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 specific facts of the violation warrant the civil charge recommended.

This guidance provides the scope for ODW authority, how to calculate the civil charges and penalties, and the worksheets for calculating them.

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<sup>1</sup> Va. Code § 32.1-26.

<sup>2</sup> Va. Code § 32.1-175.



## Chapter 2 – Scope of Authority

### 1. Statutory Authority to Seek or Impose a Civil Charge

The Public Water Supplies law authorizes the Board to adopt and enforce regulations that exercise supervision and control over all water supplies and waterworks in the Commonwealth in order to protect public health and welfare.<sup>3</sup> Pursuant to this law, the Board adopted the Waterworks Regulations, which govern the design, maintenance, and operation of waterworks in Virginia, and implement the federal Safe Drinking Water Act (SDWA) and the National Primary Drinking Water Regulations (NPDWR).<sup>4</sup>

The Board may seek enforcement of the Public Water Supplies law and the Waterworks Regulations through the issuance of orders<sup>5</sup>, and the Board or Commissioner may seek relief through a civil action<sup>6</sup> or the filing of criminal charges<sup>7</sup>.

“With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board or [State Health] 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.<sup>8</sup> Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Va. Code § 32.1-27.C.

In addition to the civil penalty in Va. Code § 32.1-27.C, the Public Water Supplies law (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.”<sup>9</sup> 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 on behalf of the Commonwealth.<sup>10</sup>

Finally, 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

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<sup>3</sup> Va. Code §§ 32.1-12 32.1-169, and 32.1-170.

<sup>4</sup> 42 U.S.C. § 300f *et seq.* Safe Drinking Water Act. 40 C.F.R. Part 141. NPDWR.

<sup>5</sup> Va. Code §§ 32.1-26 and 32.1-175.01.

<sup>6</sup> 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 may be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for each violation).

<sup>7</sup> 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.”).

<sup>8</sup> Va. Code § 32.1-27.D.

<sup>9</sup> Va. Code § 32.1-176.

<sup>10</sup> Va. Code § 32.1-176.

thereto by the Board.<sup>11</sup> The “special order may include a civil penalty of not more than \$1,000 for each day of violation.”<sup>12</sup>

## **2. Basis for Determining Civil Charge**

Title 32.1 of the Va. Code does not require that the Board develop guidelines and procedures that contain specific criteria for calculating the appropriate civil charge or penalty for violating or failing, neglecting or refusing to obey any regulation or order of the Board or Commissioner. Without specific requirements applicable to the Board and VDH, ODW looked to other 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 or penalty for each violation.

the factors set forth in other Code sections and applying them 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 calculation may be based on the following factors:

- The severity of the violation(s);
- The extent of any potential or actual harm to public health;
- The compliance history of the facility or person;
- Any economic benefit realized from the noncompliance; and
- The ability of the person to pay the penalty.

These factors are listed in the civil charge worksheet (see Attachment 9A) 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 these worksheets to calculate a civil charge or penalty. In calculating the amount for a civil charge or penalty, ODW first identifies the appropriate “Potential for Harm” classification and then works through the various statutory categories on the Worksheet to calculate a total civil charge or penalty.

Civil charges or penalties 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 of a fundamental to ODW’s oversight of the drinking water regulatory program;
- Noncompliance that is continuing or likely to continue to reoccur absent a civil charge or penalty to serve as a deterrent;

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<sup>11</sup> Va. Code § 32.1-175.01

<sup>12</sup> Va. Code § 32.1-167 (defining “special order” to include setting forth the \$1,000 civil penalty cap per day of violation).

- Knowing or willful violations; or
- Violations that result in actual harm to human health or a threat of harm to human health.

### **3. Severity of Violation and Potential for Harm Classification (“Gravity”)**

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 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.

#### **3.1. Serious Classification – Tier 1**

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

- 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.

#### **3.2. Moderate Classification – Tier 2**

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 has or may have some adverse effect on human health.

- 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 the failure to maintain at least four-log treatment of viruses before or at the first consumer.

#### **3.3. Marginal Classification – Tier 3**

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.

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.

#### **4. Aggravating Factors**

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

##### **4.1. Waterworks Type**

This section on the civil charge worksheet considers the type and size of the waterworks. The larger the facility, and the more regularly the waterworks serves its customers, the greater the risk of harm to the public and thus the greater the 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 factors increase from 1 to 5 depending on the size of the residential population.

##### **4.2. Compliance History**

ODW evaluates the waterworks owners' compliance history to determine if an increase in the civil charge or penalty is warranted. This factor is not used to reduce a civil charge or penalty when a waterworks 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:

- 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 or penalty). 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 Introduction.
- Consent orders, special orders, judicial orders, or federal consent decrees at any other commonly owned waterworks that became effective within 36 months preceding the initial violation (5% of the current gravity-based civil charge or penalty or \$500, whichever is less).

The evidence to establish culpability cannot be identical to the evidence used to support an adjustment based on compliance history. If the evidence is identical, an adjustment is made for compliance history rather than culpability.

##### **4.3. Degree of Culpability**

ODW assesses the waterworks owner's culpability based on the facts and circumstances of the case and may add a multiplying factor to the amounts for one, a subset, or all violations, depending on the assessment. The owner's culpability may be rated as low (0%), moderate (50%), or high (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 be rated low. Evidence used to establish culpability cannot be identical to that used to adjust compliance history. If evidence is identical, then the compliance history should be adjusted rather than culpability. 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 Notices of Alleged Violation 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 particular 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 or penalty.

#### **4.4. 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 charge begins on the day the violation began. The number of days is multiplied by \$1 per day of violation.

The time span ends on the date the source corrects the deficiency addressed by the civil charge or the date the source agrees in principle to a set of corrective actions designed to achieve compliance with the regulatory requirement for which the charge was assessed. The length of time is not to exceed five years.

#### **5. Economic Benefit**

Economic benefit is considered to remove any competitive advantage of noncompliance. An economic benefit may be gained when the owner avoids or delays costs required to comply with

a legal requirement or generates profit from a competitive advantage gained through noncompliance. Each enforcement action is considered on a case-by-case basis using best professional judgement when preliminarily determining that an economic benefit exists.

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

- Sampling and analytical costs for monitoring;
- Disconnecting or failing to properly operate and maintain existing treatment equipment, storage facilities, or the distribution equipment; 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 law and regulations. Examples include:

- Capital equipment improvements or repairs (including engineering design, purchase, installation, and replacement);
- Failure to effect process changes needed to meet regulatory requirements for drinking water quality; and
- Failure to acquire, install, and operate required monitoring equipment.

## **6. Ability to Pay**

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

If a waterworks owner wants to assert that they are unable to pay a civil charge or penalty, the owner must provide sufficient documentation of an inability to pay before a consent order or special 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 waterworks owner.

To evaluate an owner's ability to pay, the owner must provide sufficient information to Capacity Development to make such a determination. ODW may use the business operation plan or the Environmental Protection Agency's ABEL, INDIPAY, MUNIPAY computer models to determine an inability to pay. 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 or penalty.

If Capacity Development determines that the owner is unable to pay a civil charge or penalty, 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 or penalty to pursue based on ability to pay considerations, the waterworks owner is responsible for complying with the applicable law, regulations, orders, permit conditions, and any corrective action.

### **7. 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.

#### **7.1. 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.

#### **7.2. 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.

#### **7.3. 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.

## **Chapter 3 – General Use of Guidance for Calculating Civil Charge and Civil Penalties**

ODW should follow these basic procedures when using this guidance:

1. Field and central office staff should determine the nature of the enforcement action and whether it should include a civil charge (consent order) or penalty (special order or judicial proceeding).
2. Field and central office staff should classify the violations in the appropriate categories, and evaluate and document the factors required to complete the Worksheet.
3. Once charges or penalties have been calculated, central office staff should total the calculated amount and compare to the statutory maximum that may be assessed in an enforcement action. The maximum amounts are as follows:
  - a. Each violation associated with a consent order may not exceed \$25,000;
  - b. Each day of violation may not exceed \$1,000 in the cases of a special order;

- c. Each day of violation may not exceed \$5,000 for a civil action brought by the Attorney General.
- 4. A reduction in the civil charge by up to 30% may be considered for cooperativeness and quick settlement, prompt responses and good faith effort to comply, and the size and sophistication of the waterworks.



## CIVIL CHARGE WORKSHEET

|   |  |   |  |               |
|---|--|---|--|---------------|
| <b>Waterworks Name:</b>   | <b>Permit No.:</b><br>VA                           | <b>NOV Date:</b>  |  |               |
|   | <b>Potential for Harm</b>                          |   |  |               |
|   | Serious  | Moderate  | Marginal   | <b>Amount</b> |
| <b>1. Gravity-based Component</b>   |  |   |  |               |
| (a) PMCL exceedance   | \$100 × __   | \$75 × __   | \$50 × __  |               |
| (b) Failure to monitor or submit  | \$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 × __  |               |
|   |  |   |  |               |
| <b>Subtotal 1:</b>  |  |   |  |               |
| <b>2. Aggravating Factors</b>   |  |   |  |               |
| <b>Waterworks Type</b>  |  |   |  |               |
| 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                              |   |  |               |
| <b>Compliance History</b>   |  |   |  |               |
| 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                     |   |  |               |
| <b>Degree of Culpability</b>  |  |   |  |               |
|   | <input type="checkbox"/> Low<br>= Subtotal 1 × 0   | <input type="checkbox"/> Moderate<br>= Subtotal 1 × 0.5 | <input type="checkbox"/> Serious<br>= Subtotal 1 × 1 |               |

Attachment 9A - Civil Charge Worksheet

|                            |            |                              |                                 |
|----------------------------|------------|------------------------------|---------------------------------|
| <b>Length of Time</b>      | _____ days | Days Out of Compliance × \$1 |                                 |
|                            |            |                              | <b>Subtotal 2:</b>              |
|                            |            |                              | <b>Subtotal 1 + Subtotal 2:</b> |
| <b>3. Economic Benefit</b> |            |                              |                                 |
| <b>4. Ability to Pay</b>   |            |                              |                                 |
|                            |            |                              | <b>TOTAL</b>                    |

**Civil Charge Discussion**

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|                                   |
|-----------------------------------|
| <b>1. Gravity-based Component</b> |
|                                   |
| <b>2. Aggravating Factors</b>     |
|                                   |
|                                   |
|                                   |
| <b>3. Economic Benefit</b>        |
|                                   |
| <b>4. Ability to Pay</b>          |
|                                   |



COMMONWEALTH of VIRGINIA

M. Norman Oliver, MD, MA  
State Health Commissioner

Department of Health  
P O BOX 2448  
RICHMOND, VA 23218

TTY 7-1-1 OR  
1-800-828-1120

**[Date]**

**[Waterworks Owner]**  
**[Address]**  
**[City, State, Zip Code]**

**LETTER OF AGREEMENT**

Re: **[Waterworks name]**  
**Public Water Supply Identification [VA0000000]**

Dear **[Waterworks Owner]**:

This Letter of Agreement between you and the Office of Drinking Water (ODW), **[Name]** Field Office, sets forth actions necessary to address alleged violations of the Public Water Supplies law and the Waterworks Regulations. By signing and dating this letter, and returning it to this office by **[date]**, you agree to the terms of this Letter of Agreement. Please keep a copy of the signed letter for your records.

**Background**

Very briefly describe the observations, legal requirements, and the dates of inspections, NOVs, 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, the **[Waterworks owner]** and ODW, **[Name]** Field Office, agree that the **[Waterworks owner]** shall:

1. By **[date]**, complete **[requirement]** in accordance with **[legal citation]**.
2. By **[date]**, complete **[requirement]** in accordance with **[legal citation]**.

Use numbered paragraphs to describe each action the RP agrees to take and provide a definite date for completion of each. Complete implementation of the corrective action must be scheduled within 12 months.

ODW expects that these items be completed according to the schedule set forth in this agreement. ODW may take other enforcement action as necessary in the event **[Waterworks name]** does not act in accordance with this agreement, or new information or circumstances suggest that other measures may be required to ensure compliance with the law and the Regulations to protect public health. If **[Waterworks name]** determines that it will not be able to complete the above actions by the agreed upon date(s), **[Waterworks name]** should notify ODW immediately. This Letter of Agreement becomes effective upon your signing, dating, and returning the original letter by the date specified. This Letter of Agreement automatically terminates 12 months after you sign the letter.

Please note that this Letter of Agreement is neither a case decision nor a fact finding under the Virginia Administrative Process Act, Va. Code § 2.2-4000 *et seq.*

Thank you for your cooperation. Please return the signed and dated original to ODW by the date noted above. You can address any questions about this Letter of Agreement to **[Staff]** at **[number]** or **[email]**.

Sincerely,

**[ODW Field Office Staff]**  
**[Title]**

Cc: Case File

Seen and agreed by **[Waterworks name]**:

\_\_\_\_\_

Date

\_\_\_\_\_

Name

\_\_\_\_\_

Title



COMMONWEALTH of VIRGINIA

Department of Health
P O BOX 2448
RICHMOND, VA 23218

M. Norman Oliver, MD, MA
State Health Commissioner

Be sure to make sure
letterhead information is
correct.

TTY 7-1-1 OR
1-800-828-1120

STATE BOARD OF HEALTH
ORDER BY CONSENT
ISSUED TO
[Waterworks Owner]
FOR
[Waterworks Name] Waterworks
PWSID NO. VA[XXXXXXX]

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.

Section A. Definitions

Put in alphabetical order; delete unused definitions; add commonly used acronyms as needed.

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

- 1. "[AFO]" means the [County] Field Office located in [County], Virginia.
2. "Board" means the State Board of Health, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code § 32.1-15.
3. "Department" or "VDH" means the Department of Health, an agency of the Commonwealth of Virginia, as described in Va. Code § 32.1-16.
4. "Commissioner" means the Commissioner of the State Department of Health, as described in Va. Code §§ 32.1-16 and 17.
5. "Notice of Violation" or "NOV" 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 § 2.2-4001, of the Board or Commissioner.
8. “Permit” means the Waterworks Operation Permit [VA0000000], which VDH ODW issued to [Waterworks owner] under the Public Water Supplies law and Regulations on [date].
9. “Public Water Supplies Law” or “PWSL” means Article 2, Chapter 6, Title 32.1 of the Va. Code.
10. “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.
11. “PWSID” means Public Water System Identification.
12. “Regulations” means the Waterworks Regulations, 12VAC5-590-10, *et seq.*
13. “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.
14. “[Waterworks Name]” means [Full waterworks name] located at [Street Address] in [County] County, Virginia, which serves piped water for human consumption to [X] services connections or [X] individuals for at least 60 days out of the year.
15. “[Waterworks Owner]” means [Full waterworks owner name], 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.
16. “Va. Code” means the Code of Virginia (1950), as amended.
17. “VAC” means the Virginia Administrative Code.

The waterworks owner should be consistent with the permit and registered with the SCC. If the name is not registered with the SCC, then the order should be issued to an individual.

*The Findings of Fact and Conclusions of Law set out the jurisdictional, factual, and legal basis for the Order. No one structure fits every case. Most sections, however, have four parts. The first part identifies the waterworks owner, its relationship to the waterworks, and a description. The second part is a chronological narration of facts – inspections, reports, data, etc. This part includes the observations, the applicable legal requirements, and the NOAVs (NOVs or WLs). Cite the correct authority in the order (check those cited in the NOV or WL). The legal requirements are often set out in separate paragraphs after the observations to assure that the distinction is clear. The third part is a conclusion that the Waterworks has violated the applicable legal requirements. The fourth part may not fit the facts of every case and is discretionary. It describes the events occurring after NOV and may include written responses, meetings, submissions to correct the violations, etc. This fourth part, if included, should address all violations, either reciting resolution of them in Section C or addressing them through the Schedule of Compliance. The following facts are by way of example.*

## Section B. Findings of Fact and Conclusions of Law

1. **[Waterworks owner]** owns and operates **[Waterworks Name]** located in **[County]** County, Virginia. The waterworks consists of **[insert description]**.
2. On **[date]**, the ODW issued to **[Waterworks owner]** Waterworks Operation Permit No. **[VA0000000]** to operate the Waterworks in compliance with the Regulations.
3. On **[date]**, ODW staff conducted a sanitary survey of the Waterworks and observed that:
  - a. The **[Waterworks Business Operation Plan]** had not been developed and submitted as required.
  - b. The **[Cross Connection Control Plan]** had not been developed and submitted as required.
  - c. **[Waterworks name]** failed to collect and report bacteriological samples for the **[month]**, **[month]**, and **[month]** **[year]** monitoring periods.
4. **[12VAC5-590-545]** of the Regulations
5. **[12VAC5-590-580]** of the Regulations
6. **[Va. Code § 32.1-172 B]** states that the Board may require the submission of a business plan detailing the technical, managerial, and financial commitments to be made by the owner in order to assure that system performance requirements for providing the water supply will be met over the long term.
7. ODW issued to **[Waterworks owner]** NOVs for the above-mentioned violations as follows: NOV No. **[EA Number]**, dated **[date]**; NOV No. **[EA Number]**, dated **[date]**; and NOV No. **[EA Number]**, dated **[date]**.
8. Va. Code § 32.1-172 and 12VAC5-590-190 of the Regulations state that no owner shall establish, construct, or operate any waterworks or water supply in the Commonwealth without a written permit from the Commissioner, that conditions may be imposed on the issuance of any permit, and no waterworks may be operated in violation of these conditions.
9. Pursuant to Va. Code § 32.1-26, the may to issue orders requiring compliance with any law or regulation administered by the Board.

and deadlines certain. If the schedule depends on submissions, approvals, and dates that are subject to change, it is encouraged to have the waterworks submit a Schedule of Compliance and incorporate into the Order by reference to avoid extending deadlines, which must be approved by the Commissioner.

10. Based on the sanitary survey conducted on **[date]** and ODW records, the Board concludes that **[Waterworks owner]** has violated its Permit and **[cite regulations]** of the Regulations by operating a waterworks in violation of the Regulations, as described in paragraphs B**[X]** through B**[X]**, above.

### **Section C. Agreement and Order**

In order for **[Waterworks owner]** to return to compliance, and continually be operated in compliance with the Regulations, ODW staff and representatives of **[Waterworks name]** have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

### **Section D. Administrative Provisions**

Change pronouns as necessary (depending on if individual vs. entity).

1. This Order does not suspend, minimize, or otherwise alter **[Waterworks 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.
2. To the fullest extent allowed by law, this Order is binding on **[Waterworks owner]**, its agents and legal representatives, heirs, devisees, executors, administrators, and successors in interest, jointly and severally as applicable.
3. This Order shall become effective on the 15<sup>th</sup> day after a copy is mailed to **[Waterworks owner]**. Va. Code § 32.1-26. Any request for modification of this Order shall be submitted to VDH in writing to be considered for approval by the Board or its designee. The Board may revoke this Order in its discretion upon 30 days written notice to **[Waterworks owner]**.
4. The **[Waterworks]** waives its rights to further hearings or challenges, whether civil or administrative, on this Order and specifically waives its right to a hearing under Va. Code §§ 2.2-4019 or 2.2-4020 as a predicate for this Order. **[Waterworks]** consents to the issuance of the Order freely, voluntarily, and after an opportunity to consult counsel of its choice.
5. 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.
6. Failure to **[Waterworks Owner]** to comply with any terms of this Order shall constitute a violation of this Order. Nothing herein shall waive the initiation of appropriate



enforcement action or issuance of additional orders as appropriate by VDH because of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

- 7. This Order shall remain in effect until the Commissioner or his designee terminates the Order after **[Waterworks owner]** has completed all of the requirements of the Order, or the Commissioner or Board terminates the Order in their sole discretion upon 30 days written notice of **[Waterworks owner]**.
- 8. Termination of this Order, or any obligation imposed in it, shall not relieve **[Waterworks owner]** from its obligation to comply with any statute, regulation, permit condition, other agreement, certificate, certification, standard, or requirement otherwise applicable.

It is SO ORDERED this \_\_\_\_\_ day of **[Month]**, **[year]**.

STATE BOARD OF HEALTH  
Commonwealth of Virginia

\_\_\_\_\_  
M. Norman Oliver, MD, MA  
State Health Commissioner

**[Waterworks owner full name]** voluntarily agrees to the issuance of this Order.

Date: \_\_\_\_\_ By: \_\_\_\_\_, \_\_\_\_\_  
(person) (title)  
**[Waterworks owner full name]**

Commonwealth of Virginia  
City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ who is \_\_\_\_\_ of **[Waterworks owner full name]** on behalf of the **[corporation/limited liability company/municipality]**.

\_\_\_\_\_  
Notary Public

---

Registration No.

My commission expires: \_\_\_\_\_

Notary seal:

### **Appendix A**

**[Waterworks owner]** shall:

- a. Within 30 days of the effective date of this Order, submit to VDH ODW for review and approval **[a waterworks business operation plan]**.
- b. Within 60 days of the effective date of this Order, submit to VDH ODW for review and approval a corrective action plan that describes actions that **[waterworks owner]** has taken or plans to take to comply consistently with the **[monitoring and reporting]** **[primary maximum contaminant levels]** set forth in Sections **[insert regulatory citations]** of the Regulations.
- c. Mail all submittals and reports required by this Appendix A to:

**[Field Director]**

**[Field Office]**

**[Address]**



COMMONWEALTH of VIRGINIA

M. Norman Oliver, MD, MA  
State Health Commissioner

Department of Health  
P O BOX 2448  
RICHMOND, VA 23218

TTY 7-1-1 OR  
1-800-828-1120

**[Date]**

VIA EMAIL: **[Insert email address]**

**[Waterworks Owner]**  
**[Address]**  
**[Address]**

Re: **[Waterworks Owner] [Waterworks Name] ([County] County)**  
**Public Water System Identification [VA0000000]**  
**Order by Consent – Effective [Date]**

Dear **[Waterworks Owner]**:

Please find enclosed a copy of the Order by Consent (Order) that you entered into with the State Board of Health pursuant to Va. Code § 32.1-26 concerning the **[Waterworks name]**. The Order becomes effective on **[date]**, which is 15 days after mailing to you a copy by certified mail. The Order sets forth a schedule of compliance to address ongoing issues with **[brief description of Order requirements]**.

Thank you for your cooperation in this matter. If you have questions, please contact me at **[phone number]** or **[email]**.

Sincerely,

**[Name]**

Enclosure

cc: Case File  
**[Field Office Director]**  
**[Compliance Specialist]**  
**[Environmental Health Manager, LHD]**  
**[County Administrator]**

[Date]

**Via U. S. Mail – Certified, Return Receipt Requested**

Name

Title

Business / Waterworks

Address

County, State Zip

**NOTICE OF INFORMAL FACT FINDING PROCEEDING**

**Re: Waterworks Name – County  
Public Water System Identification No. XXXXXXXX  
Informal Fact Finding Proceeding Scheduled – Day DD, YYYY at 10:00 a.m.**

Dear Waterworks Owner:

The Virginia Department of Health (VDH) requests your presence at an informal fact finding proceeding (IFFP or proceeding) 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 (the Waterworks) in County, Virginia. VDH will conduct the IFFP on **Day, Month DD, YYYY at 10:00 a.m.** at the **VDH Office of Drinking Water Central Office** located at **109 Governor Street, Richmond, VA 23219.**

The purpose of the proceeding is to (i) receive and review evidence from you and VDH regarding the alleged violations; (ii) to make a finding that you are or are 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

[NAME]

[DATE]

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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**

According to VDH records, [Waterworks Owner] (Abbrev.) owns and operates the [Waterworks Name] waterworks (Waterworks) located on [Address] in [County], Virginia. On [date], ODW issued [Waterworks Owner] Standard Operation Permit No. [number] to operate a [type] waterworks. The Waterworks consists of one active drilled well, a well house, chlorine disinfection treatment, storage, and a distribution system. The population and number of connections vary, but most recent records indicate that the [Waterworks] serves an estimated population of [XX] residents. The Waterworks appears to have approximately [94] connections.

On [date], ODW staff conducted a sanitary survey. The following describe staff's factual observations and identify the applicable legal requirements:

1. Observation: ODW does not have records indicating a sample type sample was collected for the Month, Year monitoring period. A Notice of Violation for the failure to collect sample type sample was issued on date for the [month, year] monitoring period.

Legal Requirements: 12VAC5-590-340 of the Regulations state, “[EXACT WORDING IN QUOTES OR PARAPHRASE AND TAKE OUT QUOTATION MARKS].”

2. Observation: ODW does not have records indicating a [SAMPLE] sample was collected for the [MONTH/YEAR], [MONTH/YEAR], and [MONTH/YEAR] monitoring periods. ODW issued Notices of Violation on [DATE], [DATE], and [DATE] for the [MONTH/YEAR] monitoring period.

[INCLUDE ANY OTHER INFORMATION REGARDING COMPLIANCE HISTORY OR TECHNICAL ASSISTANCE.]

### **Procedures**

[Waterworks Owner] has the right to appear at the IFFP in person, by counsel, or by other qualified representative, pursuant to Va. Code § 2.2-4019. At the proceeding, waterworks 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 Commissioner for review. The Commissioner may then issue a decision on this matter.

[NAME]

[DATE]

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### **Enforcement Authority**

VDH considers operating a waterworks in violation of the Public Water Supply law and Regulations to be a serious risk to public health and further enforcement action may be necessary to ensure that Waterworks is providing a safe and adequate supply of drinking water. 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 refusing, failing or neglecting to comply with any regulation of the Board or Commissioner or any provision of this title (Title 32.1. Health) shall be guilty of a Class 1 misdemeanor.

### **Future Actions**

During the scheduled IFFP, counsel may accompany you to assist you with the informal presentation of factual data, arguments, or proof germane to this case. Additionally, you are entitled to receive advance notice of any facts, documents, or information VDH possesses and potentially relies upon in making an adverse determination (see enclosed).

As stated above, one purpose of the IFFP is to receive evidence. VDH has enclosed copies of records relevant to this proceeding. If you wish to provide records or information to support, contradict, or otherwise supplement VDH records, please provide copies to me **on or before Date**. I will forward copies of any records or information you provide to the presiding officer. If you are unable to provide copies of documents in advance, VDH recommends that you bring three (3) copies of each document to the IFFP. The IFFP will not be recorded or transcribed so you may also provide a written statement that will be added to the record of the proceeding.

After reviewing this letter, **please contact me no later than date**, to confirm your intent to meet on date, at 10:00 a.m. Bear in mind should you 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.).

You may contact me regarding the contents of this letter by telephone or email at 804-864-7498 or [Jennifer.Coleman@vdh.virginia.gov](mailto:Jennifer.Coleman@vdh.virginia.gov). Please direct any technical questions to [field office staff] at [name] or [First.Last@vdh.virginia.gov](mailto:First.Last@vdh.virginia.gov). I look forward to working with you to resolve this matter.

Sincerely,

Name

[NAME]

[DATE]

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Title  
Office of Drinking Water

cc: Field Director  
LHD  
County Administrator  
Central Office  
Registered Agent

**INFORMAL FACT FINDING PROCEEDING FOR  
[WATERWORKS NAME] WATERWORKS  
PWSID No. VA[XXXXXX]**

**Exhibit List**

1. SCC information for [Waterworks]
2. Waterworks questionnaire and permit ([date])
3. Sanitary survey ([date])
4. Request for compliance action ([date])
5. Notice of violation ([date])
6. Warning letter ([date])
7. Notice of informal fact finding proceeding



**PRESIDING OFFICER IFFP SCRIPT**

**Presiding Officer:** Name, Field Director, Field Office

**Agency Advocate:** Name, Title

**Agency Witnesses:** District Engineer  
Environmental Specialist

**Waterworks Reps:** Name, Title  
Name, Title

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**PRESIDING OFFICER:** Good morning, my name is [name] and I am the Field Director in the [Name] Field Office for the Virginia Department of Health Office of Drinking Water. 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.

This is an informal fact finding proceeding, or IFFP, conducted pursuant to Va. Code § 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 laws or regulations at the time, a named party as a matter of past or present fact, either is, is not, or may or may not be in violation of such law or regulation.” Restated, this proceeding will result in the making of findings of fact and conclusions of law that the waterworks serving the [Waterworks Name] 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 the [Waterworks Name] and as the owner or operator of the waterworks serving Waterworks 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 notice of IFFP and supporting documentation was sent on [date]. ODW received a confirmation receipt on [date].

As such, following the proceeding, I will review the record in this matter and then make a recommendation to the State Health Commissioner, Dr. Norman Oliver. 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 or the Waterworks Regulations, which may include corrective actions or a civil penalty.

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 he or she thinks necessary to help resolve this matter. This proceeding is not subject to cross-examination of the parties. If

## Attachment 15 - IFFP Presiding Officer Guidelines

you have a question for clarification, please direct that question to me and I will ask the appropriate person to answer.

I would like to begin by having all participants sign in and introduce themselves with their title.

**PRESIDING OFFICER:** Are there any procedural issues to be addressed?

**PRESIDING OFFICER:** [Name], 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 copies to you 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 PRESENTS WITNESSES AND OTHER EVIDENCE.**

**PRESIDING OFFICER:** [May ask questions for clarification.]

**PRESIDING OFFICER:** [Name], would you like to proceed?

### **WATERWORKS ADVOCATE PRESENTS THEIR CASE**

**PRESIDING OFFICER:** [May ask questions for clarification.]

**PRESIDING OFFICER:** I will ask ODW if there is any additional information to be added.

**AGENCY ADVOCATE:** [NO] or [Yes, and presents additional information.]

**PRESIDING OFFICER:** [May ask question for clarification.]

**PRESIDING OFFICER:** [Name], do you have any additional information to add.

**WATERWORKS:** [NO] or [Yes, and presents additional information.]

**AGENCY ADVOCATE:** Gives closing argument using conclusions of law to support the testimony of witnesses.

**WATERWORKS:** Gives closing arguments.

**PRESIDING OFFICER:** Thank you for attending this proceeding. This proceeding is now concluded. I will make a recommendation to the Commissioner. He will review the record and issue a decision and/or Order within 90 days of the date of this proceeding. The decision will be mailed to you.



COMMONWEALTH of VIRGINIA

M. Norman Oliver, MD, MA  
State Health Commissioner

Department of Health  
P O BOX 2448  
RICHMOND, VA 23218

TTY 7-1-1 OR  
1-800-828-1120

**RECOMMENDATION**

**Informal Fact-Finding Proceeding**

**For**

**[Waterworks Name] Waterworks**

**PWSID No. Va[Xxxxx]**

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 (Title 32.1, Chapter 6, Article 2 of the Code) or any order or regulation adopted by the Board following an informal fact finding 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) for the Name waterworks in County pursuant to Va. Code § 2.2-4019. The Proceeding was held to determine whether Waterworks violated certain provisions of the Public Water Supplies law and the Waterworks Regulations, 12VAC5-590, *et seq.*, and to recommend an appropriate course of action for addressing the alleged violations.

The Proceeding took place at the ODW [NAME] Field Office (XFO) located at Address in [LOCATION], Virginia. [ABRV NAME] did not participate in the Proceeding nor was it represented by counsel. [ABRV NAME] was provided with a copy of the Notice of Informal Fact-Finding Proceeding and copies of all ODW exhibits before the Proceeding. [NAME], ODW [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 [ABRV NAME] is in violation of the Public Water Supplies law and the Regulations. As such, I recommend that the Commissioner, on behalf of the Board, issue [ABRV NAME] a Special Order, attached, requiring that [ABRV NAME] comply with the requirements of the law and Regulations.

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[NAME]

[TITLE]

[NAME] Field Office

Office of Drinking Water

Virginia Department of Health



*COMMONWEALTH of VIRGINIA*

M. Norman Oliver, MD, MA  
State Health Commissioner

*Department of Health*  
P O BOX 2448  
RICHMOND, VA 23218

TTY 7-1-1 OR  
1-800-828-1120

**STATE BOARD OF HEALTH  
SPECIAL ORDER  
ISSUED TO  
[Waterworks Owner]  
FOR  
[Waterworks Name] Waterworks  
PWSID NO. VA[XXXXXXX]**

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 for the purpose of resolving certain violations of the Public Water Supplies Law and Waterworks Regulations.

**Section A. Definitions**

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

1. “[**AFO**]” means the [**County**] Field Office located in [**County**], Virginia.
2. “Board” means the State Board of Health, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code § 32.1-15.
3. “Department” or “VDH” means the State Department of Health, an agency of the Commonwealth of Virginia, as described in Va. Code § 32.1-16.
4. “Commissioner” means the State Health Commissioner, as described in Va. Code §§ 32.1-16 and 17.
5. “Notice of Violation” or “NOV” 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 “Special Order”, which the Board is authorized to issue, pursuant to Va. Code § 32.1-175.01, to require any person to comply with the provisions of any law administered by the Board, any condition of a permit, or any regulations of the Board, or any case decision, as defined in § 2.2-4001, of the Board or Commissioner. A special order may include a civil penalty of not more than \$1,000 for each day of violation.
8. “Permit” means the Waterworks Operation Permit [VA0000000], which VDH ODW issued to [Waterworks owner] under the Public Water Supplies Law and Regulations on [date].
9. “Public Water Supplies Law” or “PWSL” means Article 2, Chapter 6 of Title 32.1 of the Va. Code.
10. “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.
11. “PWSID” means Public Water System Identification.
12. “Regulations” means the Waterworks Regulations, 12VAC5-590-10, *et seq.*
13. “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.
14. “[Waterworks Name]” means [Full waterworks name] located at [Street Address] in [County] County, Virginia, which serves piped water for human consumption to [X] services connections or [X] individuals for at least 60 days out of the year.
15. “[Waterworks Owner]” means [Full waterworks owner name], 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.
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. **[Waterworks owner]** owns and operates **[Waterworks Name]** located at **[Address]** in **[County]** County, Virginia.
2. **[Waterworks name]** is subject to the Regulations because it serves more than 25 individuals for at least 60 days out of the year.
3. The ODW **[Field Office]** administers the Regulations for waterworks located in **[County]** County.
4. On **[date]**, the ODW issued to **[Waterworks owner]** the Permit to operate the Waterworks in compliance with the Regulations. The Permit allows **[Waterworks owner]** to operate a **[transient, noncommunity / nontransient, noncommunity / community]** waterworks consisting of **[insert description]**. **(Exhibit A.)**
5. **[Insert any relevant background information]**
6. On **[date]**, ODW staff conducted a sanitary survey of the Waterworks and observed that:
  - a. The **[Waterworks Business Operation Plan]** had not been developed and submitted as required.
  - b. The **[Cross Connection Control Plan]** had not been developed and submitted as required.
  - c. **[Waterworks name]** failed to collect and report bacteriological samples for the **[month]**, **[month]**, and **[month]** **[year]** monitoring periods.
7. **[12VAC5-590-545]** of the Regulations
8. **[12VAC5-590-580]** of the Regulations
9. **[Va. Code § 32.1-172 B]** states that the Board may require the submission of a business plan detailing the technical, managerial, and financial commitments to be made by the owner in order to assure that system performance requirements for providing the water supply will be met over the long term.
10. ODW issued to **[Waterworks owner]** NOVs for the above-mentioned violations as follows: NOV No. **[EA Number]**, dated **[date]**; NOV No. **[EA Number]**, dated **[date]**; and NOV No. **[EA Number]**, dated **[date]**.

11. Va. Code § 32.1-172 and 12VAC5-590-190 of the Regulations state that no owner shall establish, construct, or operate any waterworks or water supply in the Commonwealth of Virginia without a written permit from the Commissioner, that conditions may be imposed on the issuance of any permit, and no waterworks may be operated in violation of these conditions.
12. Pursuant to Va. Code § 32.1-175.01, the Board may issue special orders against an owner who violates the law or any order or regulation adopted by the Board, and may require compliance with any such law, regulation, or order administered by the Board. Additionally, a special order may include a civil penalty.
13. Based on the sanitary survey conducted on **[date]** and ODW records, the Board concludes that **[Waterworks owner]** has violated its Permit and **[cite regulations]** of the Regulations by operating a waterworks in violation of the Regulations, as described in paragraphs B**[X]** through B**[X]**, above.

### **Section C. Order for Compliance**

In order for **[Waterworks owner]** to return to compliance, and continually be operated in compliance with the Regulations, the Board orders **[Waterworks owner]** to:

### **Section D. Administrative Provisions**

1. The Order does not suspend, minimize, or otherwise alter **[Waterworks 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.
2. To the fullest extent allowed by law, this Order is binding on **[Waterworks owner]**, its agents and legal representatives, heirs, devisees, executors, administrators, and successors in interest, jointly and severally as applicable.
3. This Order shall become effective on the 15<sup>th</sup> day after mailing a copy of it to **[Waterworks owner]**. Va. Code § 32.1-26. Any request for modification of this Order shall be submitted to VDH in writing to be considered for approval by the Board or its designee. The Board may revoke this Order in its discretion upon 30 days written notice to **[Waterworks owner]**.
4. 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.



5. Failure by **[Waterworks Owner]** to comply with any terms of this Order shall constitute a violation of this Order. Nothing herein shall waive the initiation of appropriate enforcement action or issuance of additional orders as appropriate by VDH because of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. This Order shall remain in effect until the Commissioner or his designee terminates the Order after **[Waterworks owner]** has completed all of the requirements of the Order, or the Commissioner or Board terminates the Order in their sole discretion upon 30 days written notice of **[Waterworks owner]**.
7. Termination of this Order, or any obligation imposed in it, shall not relieve **[Waterworks owner]** from its obligation to comply with any statute, regulation, permit condition, other agreement, certificate, certification, standard, or requirement otherwise applicable.
8. **[Waterworks owner]** has the right to appeal this decision by requesting a formal hearing pursuant to Va. Code § 2.2-4020 or, in accordance with Article 5 of the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, seeking direct review thereof by an appropriate and timely court action in a manner provided by the Rules of the Supreme Court of Virginia.

It is SO ORDERED this \_\_\_\_ day of **[Month]**, **[year]**.

STATE BOARD OF HEALTH  
Commonwealth of Virginia

---

M. Norman Oliver, MD, MA  
State Health Commissioner

[date]

[RP Contact] [Title]  
[RP Name]  
[RP Address]  
[City, State, Zip Code]

Re: Waterworks Name – PWSID No.  
**Termination of Consent Order of [effective date or order]**

Dear [RP Contact]:

The **State Board of Health** issued a Consent Order (Order) to [Waterworks] on [date]. The Order required that [insert description].

According to our information, [Waterworks] has completed the requirements of the Order. [Section E.11] of the Order states that the State Health Commissioner may terminate the Order upon completing all the requirements of the Order. Therefore, this letter gives notice that the Order is hereby terminated.

Termination of this Order does not relieve [Waterworks] 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 [Contact], [Title], at [(xxx) xxx-xxxx] or [\[Contact.Name\]@vdh.virginia.gov](mailto:[Contact.Name]@vdh.virginia.gov).

Sincerely,

[Field Director]  
Field Director