

DATE: November 26, 2002

TO: Division of Drinking Water Staff

FROM: Robert B. Taylor, P.E., Director
Division of Drinking Water

SUBJECT: Water – Procedure – Public Notification Rule Implementation

This guidance is not intended to provide detailed information on every aspect of the implementation procedures, but is intended to address the major components and provide a framework for implementation. Further details will be provided as the need arises.

Rule Applicability

All public waterworks must satisfy the new public notification (PN) requirements for violations that the owner is informed of on or after May 6, 2002, regardless of when the violation actually occurred. PN instructions and draft notices provided to owners prior to that date do not have to be changed to meet the new requirements, unless the draft notice has to be modified or re-issued for some other reason.

Enforcement Authority

Until Virginia revises its own PN regulations, EPA will have ultimate enforcement authority. The state is operating under a two-year extension agreement with EPA that allows the state to implement the new rule on behalf of EPA. Our enforcement authority for the underlying violations remains intact since the PN rule changes only the PN requirements and not how or when violations are determined.

Virginia Regulations

It is anticipated that the state regulations will become effective in 2003, well ahead of the two-year extension deadline. The streamlined APA procedure will be used since the state regulations will be written to be as nearly identical to the federal rule as possible.

DDW Assistance to Waterworks

Upon learning of a violation or situation that requires PN, the field office staff will issue a timely NOV that contains the appropriate instructions and a draft PN in order to allow the waterworks owner to deliver the PN within the rule-specified time. Tier 1 violations are our highest priority. For Tier 1 violations or situations, the NOV and draft PN will be forwarded to the owner by the fastest available means, typically by fax or e-mail. Pick-up by the owner and delivery by the

field office personnel are also viable options. Nothing prevents the waterworks owner from voluntarily initiating PN. In all cases involving Tier 1 violations or situations, the waterworks owner will be notified immediately (same day as received) by DDW.

See additional technical assistance information under the heading “24-hour consultation”.

NOV Form Letters and Draft PNs

Forms have been posted on the OWP share drive for field office use. The content and format of the forms may be modified slightly as needed based on field office preferences. Since the determination of MCL/TT and monitoring violations is not affected by the PN rule, we do not have to change our NOV's for the underlying violations to Informational Notices. However, our “notification” to the owner for a PN violation will have to be called an “Informational Notice”, until Virginia obtains primacy for the PN rule.

See discussion under “PN Compliance” for addition information.

Boil Water Advisories for Tier 1

Regardless of what the EPA PN templates may imply about boil water advisories for acute violations involving microorganisms, field offices will continue to follow DDW boil water policy as established in WM 844.

PN Clock

We will continue to hold to our standard practice that the PN clock starts at the time the owner is notified of a violation by the field office. However, the federal rule was written clearly to indicate that the owner is responsible for knowing when a violation occurs without any help from the state. Actions by the field office staff must be accomplished to allow the owner to meet the rule-specified deadlines. This is particularly critical for protecting public health in Tier 1 violations and situations.

Delivery Methods and Deadlines

All three tiers of PN must be distributed in a manner that is “reasonably calculated” to reach all persons served. This distribution requirement is interpreted to be more stringent than the good faith effort distribution requirement in the CCR rule, and, therefore, a single delivery method may not be sufficient. The owner should utilize at least two delivery methods mentioned by EPA in the federal rule (and listed below); except in those cases where it is clear that a single delivery method is sufficient. For Tier 1 violations or situations, the field office staff may have to immediately distribute the PN if the owner refuses to do so.

Delivery methods mentioned by EPA include:

- Radio
- TV
- Mail
- Posting
- Hand delivery
- Newspaper
- Newsletter
- Internet
- E-mail
- Multiple copies provided to apartment owners or large private employers
- Delivery to community organizations

Distribution of the PN should be completed within the rule-specified time; however, DDW will consider the owner to have satisfied the requirements as long as the primary delivery method is completed and any secondary method(s) initiated within the allotted time. Although the federal rule allows the state to extend the PN deadlines for Tiers 2 and 3, DDW has decided that no extensions will be granted.

24-hour Consultation

The federal rule requires waterworks owners to consult with the state within 24 hours of learning of a Tier 1 violation or situation, including an exceedance of the single sample turbidity limit specified by the SWTR and IESWTR. The purpose of the consultation is for the state to help determine the necessary corrective actions and to establish repeat PN requirements. In most, if not all of these situations, the owner should have some prior warning of a possible violation that will allow him to take action to avoid the violation, and thereby avoiding the need for the 24-hour consultation after the violation occurs.

To ensure that the state provides a high degree of technical assistance to waterworks owners in (i) addressing potential and real public health problems and (ii) promptly notifying consumers of problems, the field office must implement some or all of the actions listed below in general order of high priority to low priority:

- Provide to owners detailed technical assistance designed to correct problems and avoid violations prior to and during incidents.
- Encourage owners to immediately notify the field office upon becoming aware of sample results, operating problems, or other circumstances that indicate a potential Tier 1 violation or turbidity exceedance.
- Assist waterworks owners in developing standard and emergency operating procedures to address acute public health problems.

- Make prior arrangements with the owner and/or laboratory to obtain necessary results and information, related to potential or actual violations, during non-routine business hours.
- Assist owners in developing the capability to effectively implement public notification to satisfy the federal requirements (preparation of a PN action plan), especially for Tier 1 violations.

DDW has established a toll free number as described in the attached Fact Sheet.

Elevating Violations from One Tier to Another Tier

The rule allows violations to be elevated from one tier to another based on potential health impacts and persistence of the violation. The following across-the-board tier elevations are established as a matter of DDW policy:

- Tier 2 to Tier 1 – Exceedance of the single sample turbidity limit as described in the SWTR and IESWTR where the exceedance is indicative of an acute public health risk (this situation is specifically addressed in the rule);
- Tier 3 to Tier 2 – Failure to collect any coliform repeat samples during the compliance period following a fecal positive routine sample;
- Tier 3 to Tier 2 – Failure to collect any routine coliform samples in two consecutive compliance periods (the first is a Tier 3 and the second is a Tier 2).

No other tier elevations are anticipated at this time; however, additional elevations may be made in unusual situations on a case-by-case basis after consultation with the Technical Services Administrator.

PN Compliance

All appropriate violation information for the underlying Tier 1, Tier 2, and Tier 3 violations will be entered into SDWIS at the appropriate time. (This is no change from what we are currently doing even though we are not calling them Tier 1, 2, or 3.) The field offices will track and report compliance with Tier 1 and Tier 2 PN requirements, but DDW has decided that tracking of compliance for Tier 3 PN is low priority and will not normally be carried out. If necessary, each field office will develop and maintain a simple tracking system that meets its needs until such time as a division-wide system (SDWIS) can be developed. Tier 1 violations are our highest priority.

Tier 1 and Tier 2 PN compliance will be tracked and determined in three areas: (1) timeliness, (2) manner of distribution to reach all consumers, and (3) submittal of a signed certification form. The 3 areas apply to both the initial PN and repeat PN. DDW staff should exercise careful discretion before deciding that a single delivery method is not sufficient. The PN certification form will be the focal point to determine if the timeliness and distribution requirements have been met. A signed certification form is required within 10 days of completing the PN. Missing

the Tier 2 PN delivery date or the Tier 2 certification form submittal date by a few days (no more than 5) will not normally be considered a violation. The existing certification form appears to be acceptable.

Non-compliance in the 3 areas mentioned above will result in a NOV (Informational Notice until primacy is granted) being issued to the owner within 30 days of the certification deadline (initial PN and repeat PN). Even though the rule requires the owner to send a copy of the actual PN with the signed certification, DDW will not consider failure to submit a copy of a Tier 2 PN as a violation since, in almost all cases, we would have prepared the draft PN and, in almost all cases, the owner uses our draft. Failure to provide a copy of a Tier 1 PN is a violation.

Data on violations, enforcement actions, and compliance will be reported in SDWIS in accordance with standard SDWIS instructions or as otherwise specified by CIST.

RBT/kew

c: Robert W. Hicks, Director, Office of Environmental Health Services

FACT SHEET

Reference: Virginia Department of Health, Division of Drinking Water Emergency Call Number

1-800-608-3212

The Division of Drinking Water (DDW) has established the Emergency Contact Call Number for use after normal working hours. The call number will allow a message to be delivered to a beeper unit. A Virginia Department of Health (VDH) staff person will return your call immediately and transmit your needs directly to the appropriate DDW Field Office employee for assistance.

The Emergency Contact Call Number should be used:

- Only on weekends, state holidays, and after normal working hours on Monday through Friday (8:00 AM to 5:00PM);
- To report natural disaster impacts;
- To report water outages within the system;
- To report terrorist/security breaches;
- To consult with the commissioner within 24 hours after the owner learns of the violation of the Surface Water Treatment Rule (SWTR) or Interim Enhanced Surface Water Treatment rule (IESWTR) treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit of 1 NTU.
- To Report:
 - a. Violation of the PMCL for total coliforms when fecal coliform or E. coli are present in the distribution system;
 - b. Failure to test for fecal coliforms or E. coli when any repeat sample tests positive for coliform;
 - c. Violation of the PMCL for nitrate, nitrite, or total nitrate and nitrite,
 - d. Failure to take a confirmation sample within 24 hours of the waterworks receipt of the first sample showing an exceedance of the nitrate or nitrite PMCL;
 - e. Exceedance of the nitrate PMCL by non-community waterworks, where the commissioner has permitted the waterworks to exceed the PMCL;
 - f. Violation of the MRDL for chlorine dioxide when one or more samples taken in the distribution system the day following an exceedance of the MRDL at the entry point of the distribution system exceed the MRDL;
 - g. Failure to monitor chlorine dioxide residuals in the distribution system;
 - h. Occurrence of a waterborne disease outbreak or other waterborne emergency (such as a failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination);
 - i. Other violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure. Public notification requirements will be determined by the commissioner.