

Enforcement Manual

Version 2.0

October 9, 2025

ODW-2025-01-Enforcement Manual-10/9/2025



Enforcement Manual

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Disclaimer

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

Revisions Summary

Date	Description of Changes
10-05-2020	Original
10-09-2025	Updated and revised to reflect best practices, incorporate recommendations from the Office of the State Inspector General's June 2021 performance audit report of ODW's drinking water regulation program, and incorporate ODW's State Violation Scoring System.

List of Abbreviations

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

Regulations	Waterworks Regulations, 12VAC5-590
RTC	Return to compliance
RTCR	Revised Total Coliform Rule
SDWA	Safe Drinking Water Act, 42 U.S. C. § 300f <i>et seq.</i>
SDWIS	Safe Drinking Water Information System; ODW and EPA each maintain separate SDWIS databases (SDWIS/State, SDWIS/Fed)
SOX	An enforcement action code entered into SDWIS/State that designates a violation has been resolved
SVSS	State Violation Scoring 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

Glossary of Terms

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

	defines what constitutes a formal action. <i>EPA Drinking Water Enforcement Response Policy.</i>
Enforcement Targeting Tool	A tool that implements the ERP by assigning each violation a number of points based on the assigned threat to public health, which are then added together to provide a total score for each waterworks. The tool helps identify waterworks with the most noncompliance across all federal rules within a five-year period. <i>EPA Drinking Water Enforcement Response Policy.</i>
Enforcement Targeting Tool Assistant	A tool that analyzes violations entered in the SDWIS/State database, calculates a real time assessment of waterworks that are out of compliance, and compares this data side-by-side with the latest State data reported to the SDWIS/Fed database.
Formal Enforcement	An action that cites specific violations, requires corrective action to return to compliance, and includes an enforceable consequence if the schedule of compliance is not met. Examples include administrative orders with and without consent (<i>i.e.</i> , a consent order or special order), penalties, and civil or criminal action. <i>EPA Drinking Water Enforcement Response Policy.</i>
Informal Enforcement	Compliance and other activities leading up to, and including, an LOA, warning letter, or NOAV, as well as activities to enforce requested actions outlined in an NOAV. It includes all actions and conversations that are not formal enforcement actions that notify the owner or the owner's agent of the alleged violations or seek compliance before formal enforcement.
Informal Fact Finding Proceeding	A proceeding in which ODW ascertains the fact basis for making a case decision. Va. Code § 2.2-4019.
Letter of Agreement	An informal enforcement action that may be used by ODW staff when an owner is demonstrating a good faith effort to comply with the Regulations. An LOA sets forth a corrective action plan and schedule that may be completed in less than one year. LOAs are unenforceable.
No Action/Unaddressed	The status of a violation on the ETT when either no action has been taken to return the waterworks to compliance or the initial informal action or compliance assistance has not been successful in returning the waterworks to compliance. In such a situation, further action is required. <i>EPA Drinking Water Enforcement Response Policy.</i>

Notice of Alleged Violation	A written statement from ODW to an owner notifying the owner that ODW has reason to believe that a violation has occurred or is occurring. A Notice of Alleged Violation (NOAV) includes the facts that form the basis for the alleged violation and a legal citation to the statute or regulations allegedly violated. An NOAV may include a request for corrective action. An NOAV is not a determination that a violation has occurred or is occurring.
On Path to Compliance	The status of a violation that has been placed under a formal enforcement action to return the waterworks to compliance (meaning an enforceable consequence results if the schedule is not met). <i>EPA Drinking Water Enforcement Response Policy.</i>
Owner	An individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity, or the federal government, that supplies or proposes to supply water to any person within this Commonwealth from or by means of any waterworks. 12VAC5-590-10.
Potential Serious Violator	A waterworks with an ETT score of 5 to 10 points.
Return to Compliance	Following a violation, the waterworks has completed monitoring, reporting, implementation of treatment, or other activities necessary to comply with the Regulations. All forms of compliance assistance and informal or formal enforcement actions are appropriate means to achieve a return to compliance. <i>EPA Drinking Water Enforcement Response Policy.</i>
Serious Violator	The status of a waterworks with an ETT score greater than 10 points. This status may also be referred to as an Enforcement Priority. <i>EPA Drinking Water Enforcement Response Policy.</i>
Significant Deficiency	Any defect in a waterworks' design, operation, maintenance, or administration, as well as the failure or malfunction of any waterworks component that may cause or has the potential to cause, an unacceptable risk to health or could affect the reliable delivery of potable water to consumers.
Special Order	An administrative order issued by the Commissioner, acting on behalf of the Board, without an owner's consent after an IFFP, compelling the owner to bring the waterworks into compliance with the PWSL, the

Regulations, or an order of the Board. Va. Code § 32.1-175.01.

Unresolved

A status of a waterworks with continuing, ongoing violations, where there has been compliance assistance, and informal and/or formal enforcement response without a return to compliance. This category is for those waterworks with chronic failure to return to compliance. *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 owner that it appears the waterworks is in violation of the applicable law and regulations, and ODW may initiate enforcement actions if the alleged violations are not resolved within a specified time period. ODW also uses warning letters to notify an owner that the waterworks is a Potential Serious Violator or Serious Violator under the ETT or ETTA. The letter may schedule a compliance or enforcement meeting or request corrective action within a particular timeframe.

Waterworks

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

Chapter 1 – General Information

1.1. Enforcement Authority

In 1974, Congress passed, and President Ford signed into law, the Safe Drinking Water Act¹ to protect public health by regulating the nation’s public drinking water supply. Congress has since amended and reauthorized the SDWA on numerous occasions.

Pursuant to the SDWA, EPA promulgated the National Primary Drinking Water Regulations to carry out the mandates set forth in the SDWA. The NPDWR provide drinking water standards and treatment techniques that limit contaminants in drinking water. In addition to setting drinking water standards and treatment techniques, the SDWA allows EPA to award states with primary enforcement responsibility (*i.e.* “primacy”).²

To be awarded primacy, a state must promulgate regulations no less stringent than the federal requirements. As such, VDH developed drinking water regulations for public water systems (also known as “waterworks” in Virginia) that are at least as stringent as the federal requirements. In Virginia, the Public Water Supplies Law³ provides the Board with authority to promulgate the Waterworks Regulations⁴, which are at least as stringent as the NPDWR. On account of these steps by Virginia, EPA has granted Virginia primacy with respect to enforcement of federal drinking water requirements.

To maintain primacy, the SDWA also requires that states have mechanisms for enforcing state and federal drinking water standards.⁵ As such, the PWSL and Regulations provide VDH with authority to compel compliance through enforcement. EPA has provided guidance on the enforcement process through its Enforcement Response Policy (ERP). (See Attachment 1.) The ERP prioritizes noncompliant waterworks by considering all violations in a comprehensive way. The ERP identifies the most serious violators for enforcement response, provides a model for escalating responses, and defines timely and appropriate actions as well as what constitutes a formal action. This Manual is consistent with the ERP, in addition to state and federal laws and regulations.

1.2. Enforcement Policy

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

¹ Codified at 42 U.S.C. § 300f *et seq.*

² See 42 U.S.C. § 300g-2.

³ Va. Code §§ 32.1-167 through 32.1-176.

⁴ 12VAC5-590.

⁵ See 42 U.S.C. § 300g-2(a)(2) and 40 CFR § 142.10(b).

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

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

In cases where insufficient technical, managerial, or financial resources present a barrier to compliance, ODW provides resources to owners in accordance with the EPA-approved Capacity Development Strategy to facilitate compliance.⁶ If ODW is unable to achieve compliance through assistance, whether due to the timeline for corrective action or the owner or operator's lack of resources or unwillingness to cooperate, ODW may recommend enforcement. ODW encourages an owner to return to compliance at any time during the enforcement process; however, more serious enforcement measures may be necessary to carry out ODW's mission to protect public health.

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

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

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

- Take enforcement actions that are timely, appropriate, consistent, certain, reasonable, fair and effective;
- Bring waterworks into compliance and stop continuous or repeat violations;
- Recover civil charges where appropriate, including amounts sufficient to eliminate any economic benefit of noncompliance;
- Deter future violations;
- Conduct enforcement actions courteously and professionally;

⁶ See generally <https://www.vdh.virginia.gov/drinking-water/capacity-development/>.

- Assist the regulated community in achieving and maintaining compliance with requirements that promote the protection of public health; and
- Earn public confidence in the enforcement program.

1.3. Enforcement Procedures

To carry out regulatory oversight of waterworks across Virginia, ODW has a central office in Richmond and six field offices located in Abingdon, Culpeper, Danville, Lexington, Norfolk, and Richmond. The central office includes the ODW office director, chief of field operations, division directors, staff for four ODW divisions, and emergency services staff.

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

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

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

The enforcement coordinator will review the waterworks' compliance history and enforcement documents to ensure consistency and accuracy as needed and will assist in monitoring and tracking enforcement actions to ensure noncompliance is resolved as quickly as possible.

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

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

1.4. Important Considerations

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

1.4.1. Public Health First

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

1.4.2. Recordkeeping

Always document spoken, written, and email communications in the appropriate electronic file for the waterworks. In accordance with the SDWIS Manual, ODW staff must document all NOAVs, formal enforcement actions, and related activities in SDWIS. Documentation in the record must include the appropriate enforcement action, the name of ODW staff who initiated the action, the date the action took place, and a description of the action. ODW staff should document phone calls, emails, and meetings in writing, including in SDWIS; minor phone calls may be documented in a phone log.

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

1.4.3. Intra/Interagency Coordination

Collaboration, communication, and coordination are essential parts of a successful interaction with a waterworks during compliance efforts. ODW staff should consider other programs and ODW staff who can assist the waterworks, including DTS, TCDO, FCAP, and emergency preparedness, as well as the district and local health departments. As appropriate, ODW staff should contact other state agencies with regulatory oversight and authority over the business or facility. ODW staff should consider providing an electronic copy of enforcement letters to other programs or agencies for situational awareness or for more help. ODW staff must notify the locality's chief administrative officer, or designee, about enforcement actions, and should notify the appropriate local health district director and environmental health manager by sending electronic copies of enforcement correspondence.⁷

Attachment 7 lists programs or agencies that may want to receive electronic copies of enforcement letters.

1.4.4. Best Professional Judgement

Selecting the appropriate enforcement action is complex because each situation is unique. Each waterworks has a unique compliance history, construction, operation, and technical, managerial,

⁷ Va. Code § 32.1-175.1 (requiring notification to the appropriate "chief administrative officer or his designee of the county, city or town," upon issuance of a violation to a waterworks).

and financial capability. ODW staff should use sound judgement and collaborate to make good decisions when choosing a course of action.

1.4.5. Identifying the Responsible Party

ODW staff should direct compliance assistance and enforcement communications to the responsible party, ensuring receipt. The responsible party is usually the owner, but an operator or other administrative contact may also be copied on communications. The owner may be a local governmental entity, small business, homeowner's association, private company, or an individual.⁸ A waterworks may be publicly or privately owned. ODW should work with the representative of the waterworks and review documents to identify the responsible party.

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

Appendix

Attachments:

Attachment 1 – EPA Enforcement Response Policy

Attachment 2 – Enforcement Process Flow Snapshot

Attachment 3 – Enforcement Process Flow Referral

Attachment 4 – Enforcement Process Flow with Consent

Attachment 5 – Enforcement Process Flow without Consent

Attachment 6 – Enforcement Process Flow Other

Attachment 7 – Program and Agency Resources

⁸ See Va. Code § 32.1-167 (“‘Owner’ means an individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity, or the federal government, that supplies or proposes to supply water to any person within this Commonwealth from or by means of any waterworks.”).

Chapter 2 – Monitoring Noncompliance

2.1. Prioritizing Federal Violations

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

Table 1. Response times by violation type.

Violation Type	Examples	ODW Response Time ⁹
Priority Acute Violations (10 ETT Points)	Nitrate MCLs (Code 01)	Within 24 hours of discovery of an alleged violation. A non-response by the owner/operator to an acute violation will move these violations to formal enforcement at an accelerated rate.
	Acute MRDL (Code 13)	
	RTCR E. Coli MCL (Code 1A)	
	Turbidity Treatment Technique (TT) – exceeds 1 NTU (Code 43) or 0.3 NTU in 5% of monthly samples (Code 44)	
	SWTR / GWR TT - failure to maintain microbial treatment (Code 41)	
Non-Acute Violations (5 ETT Points)	All chemical (excluding Nitrate), radiological MCLs, or lead action level (Codes 01 and 02)	Within 7 days of discovery of the alleged violation.
	Nitrate monitoring/reporting (M/R) (Code 04) following a Code 01	
	Non-acute MRDL (Code 11)	
	Non-acute TTs (Codes 33, 37, 40, 42, 45, 46, 47, 48, 57, 58, 59, 63, 64, 65, 2A, 2B, 2C, 2D)	
	Nitrate monitoring/reporting (M/R) (Code 03)	
Chronic, Non-acute Violations (1 ETT Point)	All other monitoring/reporting, TT, and other violations	Within 30 days of discovery of the alleged violation.

⁹ Response time refers to the timeframe by which ODW must initiate appropriate action in response to an alleged violation, which may include, but is not limited to, contacting the owner, issuing an NOAV, and ordering DCLS sample kits.

2.2. Tracking Federal Violations

2.2.1. Enforcement Targeting Tool (ETT)

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

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

S = Violation Severity Factor

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

Table 2. EPA's severity value by violation type is used to calculate a waterworks' ETT score.

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

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

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

EPA's ERP requires states to address waterworks designated as serious violators in a “timely” and “appropriate” manner. (See Attachment 1.) To be considered “timely,” ODW must address violations within two calendar quarters from when EPA designates the waterworks as a serious violator. “Appropriate” methods of addressing violations means the waterworks both resolves its violations and returns to compliance or ODW proceeds with formal enforcement action. The

¹⁰ If a waterworks has an ETT score of less than 5 but also has state violations, the state violations must be considered when deciding on the appropriate compliance and enforcement response by ODW.

EPA defines formal enforcement as an action that has the intent and effect of bringing a noncompliant waterworks back into compliance by a certain time with an enforceable consequence if the schedule is not met.¹¹ Generally, formal enforcement involves administrative orders (*i.e.* consent or special orders), but it can also involve a court order. (See Chapter 4 for more information on formal enforcement actions.)

Conferring with EPA

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

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

- **Returned to Compliance** – The waterworks has completed monitoring, reporting, or implementation of treatment or other activities necessary to comply with the Regulations. All forms of compliance assistance and informal or formal enforcement actions are appropriate means to return to compliance. The appropriate action in SDWIS must be taken to show the waterworks has returned to compliance.
- **Unresolved but on the Path to Compliance** – This category includes waterworks that have an EPA or state enforceable compliance order or schedule in place to resolve violations. In these cases, formal enforcement is expected to be successful toward implementing a schedule for sampling, treatment or construction, and therefore no further enforcement is required. The state and/or EPA will continue to monitor compliance with schedules and other requirements of the order.
- **Unresolved, Chronic Failure to Return to Compliance** – Waterworks with continuing, ongoing violations that have had compliance assistance, or informal and/or formal enforcement response without a return to compliance. This category is for those waterworks with a chronic failure to return to compliance.
- **Unresolved, Intentional No Action** – Waterworks with no viable options to address violations.
- **Unresolved/Unaddressed** – Violation reported by state, with either no action by the owner to return the waterworks to compliance, or where the initial informal action(s) or

¹¹ 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>.

compliance assistance have not been successful to return the waterworks to compliance. Further action will be needed.

- **Deactivated** – Waterworks has been inactivated in SDWIS/State. This means the waterworks is no longer operating, has been consolidated with another waterworks, or no longer meets the definition of a waterworks such that it is no longer subject to regulation under the PWSL or SDWA as a distinct entity.

2.2.2. Enforcement Targeting Tool Assistant (ETTA)

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

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

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

Rather than waiting for a waterworks' ETT score to “catch up” with its ETTA score, ODW uses the ETTA score proactively as a tool to identify enforcement targets.

See Chapter 4 for more information regarding enforcement options.

2.3. Prioritizing State Violations

The Regulations include standards for the design, construction, and operation of waterworks that are not included in the NPDWR. While these “state-only violations” are not considered a federal priority under the NPDWR, addressing them is integral to ODW's mission to ensure safe and adequate drinking water that protects public health in Virginia.

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

- A waterworks operating without an operation permit;
- Constructing or modifying a waterworks without a construction permit;
- Operating a waterworks beyond the permit design capacity;
- Lacking a licensed operator for waterworks that do not provide disinfection treatment;
- Late reporting of physical, chemical, or radiological compliance monitoring results;
- Failing to submit or complete a cross-connection control program; and

- Failing to maintain conditions throughout the entirety of a waterworks in a manner that assures a high degree of reliability.

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

2.4. Tracking State Violations¹²

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

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

2.4.1 State Violation Scoring System (SVSS)

The SVSS allows ODW to focus enforcement efforts on state-only regulatory violations that pose the greatest potential to affect public health. Like the ETT does for federal violations, the SVSS assigns a point value for state-only regulatory violations. A waterworks' score under the SVSS is calculated for state-only regulatory violations by adding up the number of points assigned to each state-only violation that the waterworks has not resolved.

The SVSS alerts field office and CEP staff to waterworks with significant violations of state-only regulations. The enforcement coordinator updates the SVSS on at least a monthly basis so the SVSS score can be referred to during monthly meetings between CEP and each field office. The enforcement coordinator may update the SVSS more often than monthly. Additionally, the enforcement coordinator updates the SVSS each quarter to coincide with the latest ETT report.

The SVSS Table of Violations includes the points assigned to each violation and the timeline for issuance of NOAVs based on the number of points assigned. (See Attachment 8.)

¹² Chapter 2.4 of the Enforcement Manual cross-references with Chapter 14 of the Field Operations Manual and Section V of the ODW SDWIS Manual.

2.5. Issuing Notices of Alleged Violation¹³

When ODW has sufficient evidence that a violation has occurred or is occurring, staff must issue an NOAV to the owner. The NOAV describes ODW's observations, cites the applicable statutory and/or regulatory requirements that the waterworks is allegedly not in compliance with, cites the regulatory authority for issuing the NOAV, including how the owner may obtain "a final decision or fact finding" regarding the alleged violation¹⁴, and specifies the corrective actions necessary to return the waterworks to compliance with expected completion dates for the corrective actions.

ODW issues the required NOAV on a timeframe that complies with Table 1. ODW staff update the determination date, validation date, and the NOAV "SFJ" enforcement action code¹⁵ in SDWIS/State to match the issuance date on the NOAV letter.

NOAVs do not conclude that the waterworks is or is not in violation. Instead, the NOAV merely notifies the owner that it is alleged a violation has occurred based on ODW's observations and the applicable regulatory requirements. The observations and regulatory requirements must be cited separately within the NOAV. Observations are statements of fact about conditions at the waterworks or monitoring and reporting records that are specific to a particular owner or waterworks. The regulatory requirements set forth in the NOAV must follow the factual observations to support the basis for the belief that the owner may be operating the waterworks in violation of the law or regulations.

A waterworks owner may contact ODW after receiving an NOAV to state that they believe the NOAV is incorrect and ask ODW to rescind the NOAV. In those situations, the ODW field office contacts CEP, or vice versa, to discuss the basis for the violation and share any arguments and evidence identified by the waterworks owner to support their request that the NOAV be rescinded. ODW may also ask questions of the waterworks owner to clarify any arguments and evidence presented. If ODW determines that the NOAV is valid, ODW explains that to the waterworks owner. If ODW determines that the NOAV should be rescinded, ODW informs the waterworks owner of the decision and the field office sends a letter confirming the rescission and updates SDWIS appropriately. At any point in the process, the waterworks owner may request an IFFP.

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

¹³ Chapter 2.5 of the Enforcement Manual cross-references with Chapter 14 of the Field Operations Manual.

¹⁴ 12VAC5-590-110.A (stating, in part, that notice of a violation shall be in writing, cite the statute or regulations allegedly violated, state the facts that form the basis for believing a violation has occurred, and "include information on the process for obtaining a final decision or fact finding from [VDH] on whether or not a violation has occurred.").

¹⁵ SFJ is an enforcement action code in the SDWIS/State database that means an NOAV has been issued.

2.6. Documenting a Waterworks' Return to Compliance¹⁶

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

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

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

2.7 Monthly Compliance and Enforcement Meetings

During the monthly compliance and enforcement meeting between each field office and CEP, the attendees discuss all waterworks within the field office's jurisdiction with a combined ETTA and SVSS score of 5 or more. The compliance specialist, with assistance from other field office staff as needed, will provide an update on the waterworks' progress in returning to compliance, including any relevant timeframe for returning to compliance set forth in an NOAV. If the waterworks has not exceeded the time to return to compliance under the NOAV, then enforcement action is not necessary unless there is a clear public health threat. If the time to return to compliance under the applicable NOAV has passed, then the field office and CEP should discuss next steps to achieve compliance. If the NOAV does not provide a specific timeline for compliance, the field office should monitor whether compliance has been achieved in a timely manner under the circumstances. If the waterworks has not returned to compliance in a timely manner, then the field office and CEP discuss the need to take enforcement measures.

The compliance specialist, field director, and CEP are not limited to meeting on a monthly basis to discuss compliance and enforcement issues. Especially in the case of: (1) waterworks with acute violations for which the owner has been non-responsive (see Table 1 on page 17), and (2) waterworks with a combined ETTA and SVSS score of 11 or more that has not returned to compliance consistent with the recommendations in an NOAV, discussion of appropriate enforcement does not have to wait until the next monthly compliance and enforcement meeting and should not be delayed if there is an imminent public health threat.

¹⁶ Chapter 2.6 of the Enforcement Manual cross-references with Section V of the ODW SDWIS Manual.

In the case of acute violations that are not being appropriately addressed by the waterworks, the compliance specialist or other field office staff will notify CEP as soon as possible of the acute nature of the violation and that the waterworks is not adequately addressing the violation. A meeting will be held between the field director, compliance specialist, other necessary field office staff, the CEP division director, and the enforcement coordinator regarding appropriate enforcement action. In such a circumstance, ODW may pursue formal enforcement as an initial matter, forgoing informal enforcement.

Appendix

Attachments:

Attachment 8 – SVSS – Table of Violations

Attachment 9 – Noncompliance Team Concept

Attachment 10 – RTC Table

Chapter 3 – Referrals to Enforcement

Summary

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

Enforcement becomes necessary when a waterworks does not return to compliance in a timely manner. Ideally, the field office and CEP have communicated about the waterworks prior to a referral for enforcement. Often, field office staff and CEP will jointly agree during these communications that enforcement is necessary. The case can be referred for either informal or formal enforcement. The compliance specialist, with assistance from other field office staff as needed, should compile all information necessary to proceed with an enforcement referral. The information provided to CEP to support an enforcement referral may include:

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

The amount of information required by CEP at this stage may be greater if formal enforcement is being pursued as opposed to informal enforcement. ODW encourages coordination and communication between field office and central office staff as early as staff know a problem exists. An open dialogue allows field office staff, CEP staff, and other divisions to know and understand compliance issues before the case is referred for enforcement. In the event the owner does not resolve the subject of noncompliance or the issue resulting in noncompliance keeps recurring, early communication enables easy, cohesive progression of the case to enforcement.¹⁷ Likewise, the compliance specialist should provide updates to other field office staff as a case develops once enforcement procedures begin.

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

¹⁷ At this point, “enforcement” may include “informal enforcement” such as a warning letter or letter of agreement, or “formal enforcement” such as offering a consent order or noticing an IFFP, filing a criminal action, or requesting that the OAG file a civil lawsuit seeking an injunction and other relief as appropriate.

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

3.1. Notifying the Owner

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

3.2. Enforcement Referral

The field office may refer a waterworks to formal enforcement when the combined ETT/ETTA and SVSS score is at least 5; when a waterworks has recurring violations; when significant deficiencies are identified during a sanitary survey; for recurring violations; when a waterworks has not resolved violations in a timely manner through the compliance process; or when the corrective action requires more than 30 days to complete. A warning letter is not required prior to referring a matter to CEP for formal enforcement.

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

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

This information is conveyed by field office staff during meetings with CEP. Less information is typically needed to issue a warning letter than a proposed consent order or notice of IFFP. The compliance specialist works collaboratively with the enforcement coordinator to develop the case file to support formal enforcement.

3.2.1. Scope of Enforcement Action

Enforcement actions should address all outstanding violations and requirements for the waterworks to return to compliance. Only in limited circumstances may staff address violations individually as an enforcement strategy. For example, a waterworks may respond better to progressive requests for incremental improvement rather than a longer list of deficiencies in a single letter. Staff must consult with TCDO when considering the technical, financial, and

managerial capacity of a waterworks as it relates to the scope of the enforcement action. (See Attachment 9 for a diagram of communication and collaborative pathways.) When sending letters to owners notifying them of a single violation, it is recommended that staff consider including a reminder in the letter of whether ODW has provided notice of other violations to be resolved.

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

3.2.2. Enforcement Considerations

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

No Longer a Waterworks

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

Staff must also consider consolidation and regionalization options that would allow customers of a waterworks that is the subject of an enforcement action to become customers of another permitted waterworks.

Other permits

Some other regulatory programs require the permitted party to provide pure/potable water.¹⁸ Consequently, the existence of other permits or licenses can inform whether a system qualifies as a waterworks and complies with the appropriate waterworks permit. For example, the Department of Social Services issues licenses to operate assisted living facilities. The licenses may identify the maximum number of individuals that the facility is licensed to service. This

¹⁸ See 12VAC5-421-30 (the Food Regulations require that food establishments be connected to an approved water supply) and 12VAC5-421-2050 (the Food Regulations require that drinking water at food establishments be obtained from an approved source that is either a waterworks pursuant to the Waterworks Regulations or a private well pursuant to the Private Well Regulations (12VAC5-630)); 12VAC5-431-10 (the Sanitary Regulations for Hotels define “approved water supply” as “a waterworks that has a valid waterworks operation permit...”) and 12VAC5-431-400.A (the Sanitary Regulations for Hotels state that the water supply system serving a hotel must comply with the Waterworks Regulations or the Private Well Regulations); 12VAC5-450-80.A (the Rules and Regulations Governing Campgrounds state that all campgrounds must provide “[a]n adequate supply of safe, sanitary, potable water” from either “an approved private well or a permitted waterworks....maintained and operated in compliance with 12VAC5-590”).

number may be used to determine the population served in evaluating whether a system meets the definition of a “waterworks.”

Another example is that the VDH Office of Environmental Health Services oversees food establishment permits, which may specify the number of restaurant seats permitted at the establishment. Food establishment permits also require an “approved” water source.¹⁹ If ODW revokes a waterworks operation permit for a water system that serves a food establishment, the failure to comply with the Regulations may also result in the local health department suspending or revoking the food establishment permit because the facility does not have an “approved” water source. Other examples of facilities that are required to have a permit from other divisions within VDH or other agencies – and that may also operate a waterworks – include marinas, campgrounds, hotels, and those holding alcohol licenses.

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

Temporary Permits

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

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

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

¹⁹ 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...”).

Receivership

Receivership is accomplished via a court order that conveys possession of the waterworks' assets and responsibility to operate the waterworks to a receiver, who will operate the waterworks in the best interests of the customers.²⁰

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

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

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

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

Once any points of discussion and input from the OAG are resolved, ODW will ask the Commissioner to find that the waterworks in question "is unable or unwilling to provide adequate and safe service for any of" six statutorily-identified reasons.²¹ The materials provided to the Commissioner for consideration should include a draft affidavit/declaration for the Commissioner's review for possible execution, which should have been finalized in consultation

²⁰ See Va. Code § 32.1-174.3.

²¹ Va. Code § 32.1-174.3.A ("1. The waterworks can no longer be depended upon to furnish pure water; 2. The waterworks has inadequate capacity to furnish pure water to its customers; 3. The owner has failed to comply with an order issued by the Commissioner; 4. The owner has abandoned the waterworks and has discontinued supplying pure water to his customers; 5. The owner is subject to a forfeiture order pursuant to § 32.1-174.1; or 6. The Commissioner has issued an emergency order because there is an imminent danger to public health and welfare resulting from the operation of the waterworks or the source of the water supply.").

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

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

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

Referrals to OAG (Civil Actions)

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

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

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

Criminal Actions

The Commonwealth's Attorney in the jurisdiction where the waterworks is located typically handles criminal actions. In consultation with the CEP division director and the OAG, field office staff may request that the Commonwealth's Attorney for the appropriate locality pursue criminal charges for an owner's failure to comply with the Regulations.²²

Field office staff should consider referring a matter for criminal action when there is evidence that strongly suggests the owner is willfully violating or refusing, failing or neglecting to comply

²² 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.").

with the Regulations or any existing order. An example of a possible criminal referral is the falsification of data.

Referrals to EPA

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

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

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

3.3. Appropriate, Timely, and Consistent Enforcement Action

Enforcement actions should be appropriate, timely, fair and consistent across Virginia. With administrative, civil, and criminal enforcement actions, ODW staff selects the most appropriate enforcement strategy for each action. Each enforcement action begins with an evaluation of the least adversarial method appropriate to resolve the noncompliance. An appropriate enforcement action addresses each violation. The enforcement response should be proportionate to the violation and the owner's current and past willingness to cooperate. An enforcement response should deter similar noncompliance at that waterworks and in the regulated community.

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

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

ODW strives to address and resolve all cases in a timely fashion, considering the nature of the case and resources available. Cases are processed in accordance with an appropriate timeline that sets forth benchmarks for responding to enforcement. Timelines may vary depending on the

complexity of issues involved. Projects requiring funding for infrastructure improvements may require more time to complete. The timeline may depend on circumstances beyond ODW's or the owner's control. Conversely, ODW should expedite resolution of emergencies or cases presenting an imminent and substantial threat to human health.

3.3.1. Decelerating/Accelerating Enforcement Cases

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

Examples of when staff may accelerate enforcement:

- Repeat or ongoing violations;
- Length of time for owner to return to compliance is greater than six months;
- New violations;
- Violation(s) that represent an acute public health risk where the owner took no action;
- Long history of noncompliance; and
- Willful or egregious violations, such as falsifying data (note: falsifying data is a criminal violation and staff should consider whether a referral to the Commonwealth's Attorney or the Department of Professional and Occupational Regulation, or to the U.S. Attorney for violations of federal law, is appropriate).

Examples of when staff may choose to decelerate enforcement:

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

Chapter 4 – Enforcement

Summary

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

Enforcement actions may be formal or informal and are generally administrative in nature (*i.e.*, non-judicial). Informal enforcement actions include warning letters and letters of agreement. Warning letters identify the outstanding violations and establish expectations for addressing the violations timely. Letters of agreement may be appropriate for owners that have demonstrated a “good faith” effort to comply with the Regulations, are not “serious violators,” and can complete the corrective actions in less than one year.

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

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

In determining the appropriate enforcement action, ODW may consider the size and type of the waterworks, the risk of harm to human health, and the willingness of the owner to cooperate. The procedures in this chapter are listed in order of increasing seriousness. While staff may begin with a consensual means of achieving compliance, compliance is not discretionary and staff should proceed as necessary to protect human health. ODW encourages cooperation and open dialogue with the owner and operator of the waterworks, field offices, and divisions in developing a plan and facilitating compliance.²³

4.1. Informal Enforcement

Informal enforcement measures seek to obtain a return to compliance by a waterworks without the need for a binding administrative order or court action. In most cases, enforcement should start with informal actions and progress to formal enforcement, as necessary. In instances of an acute threat to public health and a failure by the waterworks to quickly address the issue, or other

²³ Compliance and enforcement considerations for certain specific contexts may in some cases be found in other ODW guidance documents.

special circumstances, ODW may forego informal enforcement measures and proceed straight to formal enforcement.

4.1.1. Warning Letters

Warning letters may be appropriate when a waterworks has the technical, financial, and managerial ability to comply with the Regulations but fails to do so.²⁴ Warning letters inform the waterworks owner of unresolved violations. Warning letters identify a date by which the waterworks owner is asked to contact ODW to discuss their plan to return to compliance, and a date by which to return to compliance or else formal enforcement may occur. Warning letters prompt the waterworks to take action and can result in a return to compliance without further action by ODW.

When evaluating which waterworks should receive a warning letter with respect to federal violations, ODW staff should assess not only the waterworks' ETT score, but also its current ETТА score. For example, a waterworks with a score of 3 on the quarterly ETT but a current ETТА score of 8 should generally receive a warning letter. Conversely, a waterworks with a score of 12 on the quarterly ETT but a current ETТА score of 3 may not receive a warning letter at all.

A waterworks with an SVSS score of 5 to 10 should typically receive a warning letter. A waterworks with an SVSS score of 11 or more will almost always receive a warning letter to alert the owner to the excessive violations and need to return to compliance.

Reasons why ODW may choose not to issue a warning letter despite a high ETT/ETТА/SVSS score include the waterworks is taking action to address the outstanding violations and ODW expects the actions to be successful in the near term.

In some cases, the ETT, ETТА, and SVSS scores may all be too low by themselves to warrant a warning letter, but when they are looked at as a whole, a warning letter may be appropriate.

ODW is not limited to issuing warning letters in conjunction with the quarterly ETT and SVSS lists. Warning letters may be issued outside of the quarterly schedule as needed to address significant outstanding violations as appropriate.

If the waterworks is not responsive to the warning letter, does not respond to follow-up communication from the field office, and has not taken concrete steps to return to compliance, the matter will typically be referred for formal enforcement after passage of the timeframe for compliance set forth in the warning letter. See Attachment 11 for the general warning letter template and Attachment 12 for the warning letter template for waterworks that are "serious violators" under the ETT. See Chapter 4.2 for a discussion of formal enforcement.

4.1.2. Letters of Agreement

Letters of agreement (LOA) are appropriate when the waterworks is demonstrating a "good faith" effort to comply with the Regulations and is willing to agree to a set of corrective actions

²⁴ This determination should be based on the most recent triennial assessment of a waterworks' technical, managerial, and financial capacity.

and schedule of compliance. (See Attachment 13.) CEP does not generally recommend LOAs in cases where the corrective action and schedule is expected to take more than six months to complete. In instances where the corrective action is expected to last beyond six months, an administrative order is usually recommended. For corrective action expected to take more than one year to complete, an administrative order is required.

LOAs are informal, and less resource and time intensive, tools to encourage compliance that the field director can sign locally. LOAs also create a record of compliance efforts and agreed-upon expectations for ODW and the waterworks. However, LOAs are unenforceable, so they are not considered “formal enforcement” according to EPA’s ERP. ODW does not use LOAs for waterworks listed on the ETT as serious violators or in cases where an administrative order is required.

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

4.2. Formal Enforcement

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

EPA’s ERP defines formal enforcement as requiring specific actions for the waterworks to return to compliance, citing specific violations, and being independently enforceable without having to prove the original violation.²⁵ Formal enforcement includes administrative orders (with or without consent), and judicial actions through civil or criminal court.

ODW may pursue administrative orders with or without the owner’s consent. In most cases, ODW should offer a consent order as the first step of formal enforcement. Consent orders are appropriate when the waterworks is cooperating with ODW to resolve an issue, but informal enforcement efforts have not resulted in a return to compliance. Even in the case of a waterworks owner that has been non-compliant and non-cooperative, consent orders are often an appropriate first step of formal enforcement as such owner will often engage with ODW upon receipt of a proposed consent order when the alternative is an IFFP.

²⁵ EPA’s ERP defines “formal enforcement” as meeting the following criteria:

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

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

Unless the waterworks owner has indicated a need for other delivery methods, CEP staff may send a proposed consent order via certified mail, though email may also be used. If delivery is made via email, ODW staff may need to follow-up to confirm receipt. A final executed administrative order, whether a consent order or a special order, must be sent via certified mail to the owner, though it may also be sent via email.

Waterworks that are listed on the ETT as a “serious violator” require formal enforcement within six months of being listed unless the violation has been returned to compliance or EPA approves a longer time period. CEP discusses serious violators with EPA on a quarterly basis and may seek EPA’s approval for an alternative timeline based on the facts of an individual circumstance. Where a waterworks being classified as a “serious violator” is imminent due to the ETTA score in concert with the inability or unwillingness of a waterworks owner to come into compliance voluntarily, ODW should not wait for the waterworks to achieve “serious violator” status before proceeding with formal enforcement.

4.2.1. Consent Orders

A consent order is an administrative order issued on behalf of the Board to an owner, with the owner’s consent, requiring that the owner perform a set of actions to return the waterworks to compliance. (See Attachment 14.) Consent orders are case decisions authorized by law and enforceable in court.

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

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

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

- Consent order correctly identifies the Board and/or legal authority in the PWSL and Regulations;
- Consent order identifies a legally responsible owner and uses the proper notary block;
- Definitions in a consent order are needed, correct, used in the body of the document, and in alphabetical order;
- Statements concerning the owner are accurate;
- All violations are addressed;

- The factual observations identified in the consent order support the violations cited in the legal requirements section of the consent order;
- The factual observations and legal requirements sections support the injunctive relief in the schedule of compliance;
- Injunctive relief in the schedule of compliance leads by necessity to a waterworks' return to compliance by a date certain in all possible cases;
- Civil charge calculations, including economic benefit, are consistent with policy and with similar cases across the Commonwealth;
- Model formats have been used;
- Any changes to administrative provisions;
- Legal citations are correct; and
- Enforcement action and injunctive relief are consistent with similar consent orders across the Commonwealth.

A cover letter signifying that the proposed consent order is enclosed accompanies the proposed consent order. (See Attachment 15.)

The owner's participation and consent in arriving at a mutually agreed upon administrative order is the essence of a consent order. Consequently, the cover letter invites the owner to contact ODW to discuss the proposed consent order and its terms.²⁶ The owner is free to sign the consent order and return it to ODW as directed and without any further discussion. If the owner²⁷ is returning a signed hard copy, then the owner should have their signature notarized.

The field office must send the executed consent order to the owner via certified mail, with a cover letter stating that the consent order is executed. (See Attachment 16.) Consent orders become effective 15 days after mailing a copy to the owner by certified mail.²⁸

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

Negotiating and Executing Enforcement Actions

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

After a proposed consent order is drafted, including approval by the CEP division director, the ODW field office sends the proposed consent order to the owner for review and comment. If an

²⁶ Negotiating the terms of a consent order is discussed in more detail below.

²⁷ The "owner" may be an entity rather than an individual. If the owner is an entity, then someone with legal authority to bind the entity should execute the consent order on the owner's behalf.

²⁸ 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.").

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

Where appropriate, the owner's comments may result in ODW revising the proposed consent order. Generally, comments by the owner on the factual observations, background or context of a violation, and corrective actions in the proposed consent order may result in modification of the proposed consent order if agreeable to ODW. For example, the waterworks owner may want the proposed consent order to reflect actions the owner has taken towards returning to compliance. By contrast, changes to the proposed consent order regarding compliance and administrative provisions are typically not acceptable without approval from the OAG regarding changes to standard language. Any changes to the proposed consent order after it is sent to the owner must be reviewed and approved by the CEP division director before a revised proposed consent order is sent to the owner.

While ODW may negotiate the terms of the consent order with the owner, the Commissioner ultimately decides whether to enter into the consent order on behalf of the Board. The owner may sign and return the proposed consent order using an electronic signature service. After the consent order is signed by the owner and the Commissioner, ODW sends it to the owner by certified mail and sends a copy to the county/city/town manager, or equivalent, and to the local health district's environmental health manager and health director. If the waterworks owner holds some other permit issued by VDH, such as a restaurant or campground permit, the compliance specialist should call the local health department to discuss the consent order's terms.

Amended and Superseding Consent Orders

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

Amendments may be used to:

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

Because amendments are read together with the existing consent order, amended consent orders omit sections that would be redundant, usually “Section A: Definitions” and “Section D: Administrative Provisions.” In the amendment, Section B is renamed “Basis for Amendment.” If further definitions are necessary, staff may reinsert a “Definitions” section and modify the lettering of the sections in the rest of the amendment. Both the amended and existing consent order must be read carefully to ensure that their terms do not conflict. A model amended consent order is provided as Attachment 18.

A superseding consent order replaces the existing consent order entirely. For example, when a new NOAV or warning letter is issued to an owner with an existing consent order, the superseding consent order may address the new violations and any uncompleted requirements from the existing consent order. A model superseding consent order is provided as Attachment 19.

4.2.2. Informal Fact Finding Proceedings

If the waterworks does not resolve a violation by consent, then ODW may proceed with an informal fact finding proceeding or formal hearing for purposes of pursuing enforcement.²⁹ Field office staff should seek compliance using the least adversarial means possible; although, it may not be possible to negotiate a consent order with an owner who is uncooperative or unresponsive. In cases where a waterworks refuses to cooperate, an IFFP is appropriate.

Notice of IFFP

The APA requires that ODW provide reasonable written notice prior to an IFFP. Thirty days written notice is generally considered reasonable. The notice must include contact information (*i.e.*, name, telephone number, and government email address of the person designated by the agency to answer questions and assist the named party)³⁰, factual allegations, and the related regulations that the owner is alleged to have violated based on the factual allegations. The CEP division director may serve as the contact person for questions regarding the IFFP while the compliance specialist maintains the point of contact for technical or operational questions surrounding the waterworks. The notice must also notify the owner of their right to appear in person or to be represented by counsel or other qualified representative, to receive any contrary information that the agency may rely upon in making an adverse case decision, and for ODW to inform the owner of the factual or procedural basis for an adverse decision.³¹

²⁹ See Va. Code § 2.2-4019.A (“Agencies shall ascertain the fact basis for their decisions of cases through informal conference or consultation proceedings...”); Va. Code § 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.”).

³⁰ 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...”).

³¹ Va. Code § 2.2-4019.A.

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

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

Other documentation may include:

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

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

See Attachment 20 for the Notice of IFFP template.

Preparing for an IFFP

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

The Code allows for up to \$1,000 per day per violation in a special order.³² The civil charge worksheet breaks down this amount into categories based on the potential for harm and aggravating factors. Using the civil charge worksheet to assess civil charges for violations improves consistency and fairness. Civil charges are integral to deterring future violations and

³² Va. Code § 32.1-175.01 ("Notwithstanding any other provision of law and to the extent consistent with federal requirements, following a proceeding as provided in § 2.2-4019, the Board may issue a special order that may include a civil penalty against an owner who violates this article or any order or regulation adopted thereto by the Board."). *See also* Va. Code § 32.1-167 (defining "special order" to mean "an administrative order issued to any person to comply with: (i) the provisions of any law administered by the Board, (ii) any condition of a permit, (iii) any regulation of the Board, or (iv) any case decision...of the Board. A special order may include a civil penalty of not more than \$1,000 for each day of violation.").

creating a level playing field. The failure to cooperate represents a greater degree of culpability and thus, a greater civil charge amount for an IFFP than if the violations were resolved by consent. The length of time should also be updated to include the additional time it takes the agency to resolve the case.

Parties to an IFFP

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

The presiding officer will conduct the proceeding and hear evidence and testimony from the agency and the opposing party. The presiding officer should be an unbiased third party with knowledge and experience in the Regulations.³³ Generally, the presiding officer should be a field director or deputy field director from a different field office, or a member of ODW central office staff, who, prior to the proceeding, has no prior knowledge or involvement related to the waterworks at issue in any way.

IFFP Procedure

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

The presiding officer and agency advocate should follow IFFP guidelines to maintain order and professionalism. (See Attachment 21.) The district engineer, inspector, and any other witnesses should be prepared to answer questions during the proceeding. The agency advocate may prepare the ODW witnesses prior to the IFFP. The agency advocate should make clear to the presiding officer the relief that the agency advocate believes should be granted in a special order. This relief should, in most cases, follow the substantive relief that had been sought through a consent order.

VDH has 90 days from the date of the IFFP to issue a case decision.³⁴ This includes the time required for 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

³³ See Va. Code § 2.2-4024.1 (regarding grounds for disqualification of a presiding officer).

³⁴ 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.”).

appropriate. The presiding officer's recommendation should include whether the waterworks is or is not in violation of the law and Regulations. (See Attachment 22.)

If the presiding officer finds that the waterworks is in violation of the Regulations, then the presiding officer should recommend a special order to the Commissioner compelling action by the waterworks to return the waterworks to compliance within a specified timeframe. The Commissioner will then approve, disapprove, or modify the recommended special order based on the presiding officer's recommendation within the remaining time.

The owner will have 30 days from the date they receive the decision to appeal the IFFP decision to a formal hearing under Va. Code § 2.2-4020 or to the circuit court with jurisdiction over the matter.³⁵ If the owner chooses not to appeal the decision, then the special order becomes effective 15 days after mailing a copy by certified mail to the last known address of the owner³⁶.

Recommendation

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

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

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

³⁵ Rule 2A:2 of the Rules of the Supreme Court of Virginia ("Any party appealing from a... case decision must 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.

³⁶ Va. Code § 32.1-26.

4.2.3. Special Orders

Special orders are unilateral and typically follow an IFFP. A special order is an administrative order issued on behalf of the Board to an owner, without the owner's consent, requiring that the owner perform a set of actions to return the waterworks to compliance. (See Attachment 23.)

Special orders are considered case decisions that are authorized by law and enforceable in court. Typically, the Commissioner issues special orders on behalf of the Board pursuant to the Commissioner's authority under Va. Code § 32.1-20 to act on behalf of the Board when the Board is not in session. As the Commissioner issues special orders unilaterally without the owner's consent, an IFFP must be held before rendering a case decision and to provide a clear record that the owner has received due process, including proper notice and the opportunity to be heard.³⁷

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

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

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

³⁷ See Va. Code § 32.1-175.01 (requiring that an IFFP be held prior to the Board issuing a special order).

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

Amending and Superseding Special Orders

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

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

Enforcing the Terms of Special Orders

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

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

4.2.4. Formal Hearing

Formal hearings are appropriate in cases in which the owner and ODW have been unable to resolve the matter through an informal proceeding or the owner and ODW agree to forego an IFFP and go directly to a formal hearing. An owner may request a formal hearing because they wish to challenge a case decision resulting from an informal proceeding, for example, without seeking a court's review.³⁸

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

³⁸ Formal hearings are addressed in Va. Code § 2.2-4020 and 12VAC5-590-115.A.2.

establish the hearing procedures, manage the transcript and record of the case (including all evidence submitted and any pre- and post-hearing filings), and make a timely recommendation to the Commissioner that is communicated to all parties.

All parties will generally be required to have a pre-hearing conference with the hearing officer to identify issues and explain procedures. The hearing officer may also require all parties to the case to prepare pre-hearing statements (a.k.a. “briefs”) that may include stipulated facts, facts in dispute, a brief statement of applicable law, and other information to help with the proceeding. This is comparable to, but more formal than, the documentation for an IFFP. The CEP division director or the policy and program coordinator will prepare any required briefs with the help of the OAG³⁹. At the proceeding, the owner may be accompanied by and represented by counsel, submit oral evidence and documents, conduct cross-examination of witnesses, and offer rebuttal proof. ODW has the same rights and the CEP division director, or the policy and program coordinator, will usually represent ODW, with field office staff and others participating as witnesses. Generally, the hearing officer will not allow parties to engage in an open discussion about due process, permitting procedures, and other matters during the hearing. A court reporter is typically present and prepares a transcript of the hearing. Following the hearing, ODW and the owner may be required to file proposed findings of fact and conclusions of law that the hearing officer will consider in their recommendation to the Commissioner.

The Commissioner has 30 days following receipt of the hearing officer’s recommendation to render a decision. If the Commissioner fails to issue a decision within that period of time, then the owner may provide written notice to VDH that a decision is due. If no decision is made within 30 days of VDH’s receipt of the notice, then the decision is deemed to be in favor of the owner.⁴⁰

4.2.5. Appeal to Circuit Court

An owner may choose to appeal an agency case decision, whether following an IFFP or a formal hearing, to circuit court. The first step in actuating the right to appeal is for the owner to file a timely Notice of Appeal with the Commissioner.⁴¹

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

4.3. Collecting Civil Charges

For administrative orders that include a civil charge, the administrative order states that the civil charge payment is to be made payable to the “Treasurer of Virginia” and delivered to the Virginia Department of Health, Office of Drinking Water at the appropriate address. The owner

³⁹ Given that the OAG will handle any appeal of a case decision to court, it is advisable that the OAG be involved in the process of preparing for the formal hearing. Additionally, the CEP division director should ask that the OAG attend the formal hearing.

⁴⁰ Va. Code § 2.2-4021.C.

⁴¹ See Rule 2A:2 of the Rules of Supreme Court of Virginia.

should indicate that the payment is being made in accordance with the requirements of the administrative order for deposit into the Virginia Water Supply Assistance Grant Fund.⁴²

If the amount is not paid on time, VDH follows the Virginia Debt Collection Act.⁴³ VDH's financial management office is responsible for administering debt collection procedures in accordance with the Act. If civil charges are not paid, administrative orders may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of the administrative order by the Commissioner or their designee.⁴⁴ CEP undertakes recording ODW administrative orders upon request.

See Attachment 24 for the civil charge payment process.

4.4. Monitoring Compliance with Administrative Orders

The compliance specialist is responsible for monitoring and tracking compliance with the terms of an administrative order. The compliance specialist shall enter an administrative order compliance schedule into SDWIS to track compliance with the requirements of the order (please refer to the ODW SDWIS Manual for more information). The compliance specialist should maintain an open dialogue with the owner or operator and ODW technical staff, notifying them of upcoming deadlines. If a waterworks owner fails to comply with a requirement in an administrative order, ODW issues a letter notifying the owner of the apparent breach of the order, stating that further enforcement action will be taken if there is not timely compliance. In the event of a breach that poses an imminent threat to public health, ODW may immediately seek approval from the Commissioner to refer the matter to the OAG for enforcement in court.

The compliance specialist, with input and oversight from the field director and/or deputy field director, should identify staff or stakeholders needed to develop and assist with the waterworks' path to return to compliance. Identifying stakeholders early allows field staff and divisions to operate from a single set of information. The compliance specialist will serve as the point of contact between ODW and the owner or the owner's representative to ensure cohesive, clear, and effective oversight while the waterworks is under an enforcement action. The field office will provide technical and engineering expertise to the compliance specialist or owner as needed for the required corrective action under the applicable administrative order.

4.5. Closing Administrative Orders

ODW may close a case when the waterworks has complied with the administrative order, thereby resulting in the administrative order being terminated.⁴⁵ For compliance statuses that can change quickly (*e.g.*, monitoring/reporting violations), the compliance specialist should confirm that the waterworks has remained in compliance for a reasonable time (*e.g.*, consistently and reliably, or consistently over several monitoring periods).

⁴² See Va. Code § 32.1-176.

⁴³ See Va. Code § 2.2-4800 *et seq.*

⁴⁴ Va. Code § 2.2-4023.

⁴⁵ An administrative order should be terminated pursuant to the terms set forth in the administrative order for its termination.

The compliance specialist, with input and oversight by the field director and/or deputy field director, should inform the CEP division director and the enforcement coordinator in writing when the field office believes that an administrative order should be terminated. CEP staff will review the recommendation with the compliance specialist and the field director and/or deputy field director as needed. If the CEP division director agrees that all requirements of the administrative order have been satisfied, the compliance specialist will draft the termination letter, in consultation with the enforcement coordinator, for review by the CEP division director. The termination letter must be signed by a person authorized to terminate an administrative order under the relevant delegation of authority by the Commissioner. See Attachment 17 for the Consent Order termination letter.

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

Appendix

Attachments:

- Attachment 11 – Warning Letter
- Attachment 12 – Warning Letter, EPA Serious Violator
- Attachment 13 – Letter of Agreement
- Attachment 14 – Consent Order
- Attachment 15 – Consent Order Encl Letter
- Attachment 16 – Consent Order Exec Letter
- Attachment 17 – Consent Order Termination Letter
- Attachment 18 – Consent Order Amendment
- Attachment 19 – Consent Order Superseding
- Attachment 20 – IFFP Notice Letter
- Attachment 21 – IFFP Agency Presentation Guidelines
- Attachment 22 – IFFP Recommendation
- Attachment 23 – IFFP Special Order
- Attachment 24 – Civil Charge Payment Process

Chapter 5. Civil Charges and Civil Penalties

Summary

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

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

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

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

This guidance sets out specific criteria and procedures that ODW may use to calculate civil charges in administrative proceedings, which include orders issued by consent (civil charge)⁴⁶ and special orders issued after an IFFP (civil penalty).⁴⁷ For simplicity, civil charges and civil penalties will be referred to as civil charges hereafter, both referring to an administrative action. This guidance also may be used to estimate civil penalties in judicial proceedings.⁴⁸

The civil charge amounts calculated in accordance with this guidance represent the amount acceptable in settlement of administrative actions in the absence of other factors that serve to

⁴⁶ Va. Code § 32.1-27.D.

⁴⁷ Va. Code §§ 32.1-167 (definition of “special order”) and 32.1-175.01.

⁴⁸ Va. Code § 32.1-176.

mitigate or exacerbate the situation. As new or better information is obtained during settlement negotiations, or if protracted negotiation unduly extends the expected duration of the violation, this “bottom line” civil charge amount should be adjusted consistent with various policy considerations set forth in this guidance.

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

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

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

5.1. Scope of Authority

5.1.1. Persuasive Authority

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

Additionally, ODW reviewed the provisions set forth in the SDWA granting EPA authority to assess civil penalties and EPA’s corresponding guidance.⁴⁹

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

- The severity of the violation(s);

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

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

These factors are listed in the civil charge worksheet to break down the statutory maximum into amounts per violation. (See Attachment 25.) Unless a violation results in significant harm warranting a departure from this guidance, ODW uses the civil charge worksheet to calculate a civil charge (or penalty). In calculating the amount for a civil charge, ODW first identifies the appropriate “Potential for Harm” classification and then works through the various categories on the civil charge worksheet to calculate a total civil charge.

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

- Failure to adequately respond to compliance assistance efforts;
- Violation of a consent order or special order without mitigating circumstances;
- Violations that are avoidable or due to negligence;
- Violations fundamental to ODW’s oversight of the drinking water regulatory program;
- Noncompliance that is continuing, or likely to continue or reoccur, absent a civil charge or penalty to serve as a deterrent;
- Knowing or willful violations; or
- Violations that result in actual harm to human health or a threat of harm to human health.

5.2. Potential for Harm Component

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

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

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

5.2.1. Serious Classification

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

- Violations that may be classified as “serious” include, but are not limited to, those that require public notice and reporting within 24 to 48 hours, including, but not limited to, E.

coli in the distribution system, violation of the primary maximum contaminant level for E. coli or nitrate/nitrite, a significant disruption to water service, and the occurrence of a waterborne disease outbreak.

5.2.2. Moderate Classification

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

- Violations that may be classified as “moderate” include, but are not limited to, all other violations of the primary maximum contaminant level and treatment technique requirements (except where Tier 1 public notice is required), failure to comply with the terms of a variance, and failure to maintain at least four-log treatment of viruses before or at the first consumer.

5.2.3. Marginal Classification

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

5.3. Aggravating Factors

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

5.3.1. Waterworks Type

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

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

5.3.2. Compliance History

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

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

- NOAVs, warning letters, or similar correspondence.
- Consent orders, special orders, judicial orders, or federal consent decrees at the same waterworks that became effective within 36 months preceding the initial violation (50%

of the current gravity-based civil charge). If there has been more than one enforcement action at the same waterworks within the 36-month period, then ODW may consider whether it is appropriate to depart from the worksheet, as described in the summary section above.

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

The evidence to establish the culpability calculation cannot be identical to the evidence used to support an adjustment to the civil charge based on compliance history. For example, an owner's compliance history may be considered for an administrative order within the past 36 months, whereas the culpability explanation may state that the owner knew or should have known of the regulatory requirements and could have prevented the violation from occurring. If the evidence is identical (*e.g.*, high culpability is based on a prior order and the compliance history factor is adjusted for a prior order), an adjustment is made for the compliance history rather than the culpability.

5.3.3. Degree of Culpability

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

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

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

5.3.4. Length of Time

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

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

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

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

5.4. Economic Benefit

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

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

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

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

- Public notifications, including printing and mailing;
- Capital equipment improvements or repairs (including engineering design, purchase, installation, and replacement);

- Failure to acquire, install, and operate required monitoring or treatment equipment; and
- Development and implementation of a source water program.

The method of calculating the economic benefit from delayed and avoided expenditures is using the EPA's BEN model. Please use the BEN User's Manual for specific information on the BEN model.⁵⁰

An owner may also enjoy an increase in profits from a failure to comply with the PWSL and/or the Regulations. For instance, an owner of a store that includes a water system that qualifies as a waterworks could open the store and begin using the water supply system prior to ODW issuing a permit. In such a case, the civil charge should acknowledge the economic benefit gained by the owner in generating business at the store prior to ODW issuing an operation permit. While the amount of profit made by the owner during the period of unpermitted operation may be difficult, or even impossible, to calculate, a daily charge that considers the size of the store and the type of business is appropriate. A small store that sells inexpensive goods would likely warrant a smaller daily profit charge than a large store selling more profitable goods. Depending on the nature of the waterworks' operation, it may not in fact have experienced an economic benefit.

5.5. Ability to Pay

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

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

To evaluate an owner's ability to pay, the owner must provide sufficient information to make the determination. ODW may use the business operation plan or EPA's ABEL, INDIPAY, or MUNIPAY computer models to determine an inability to pay.⁵¹ 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.

⁵⁰ EPA's BEN model (2024.0.0) calculates a violator's economic benefit of noncompliance from delaying or avoiding pollution control expenditures. More information is available at <https://www.epa.gov/enforcement/penalty-and-financial-models>.

⁵¹ EPA's penalty and financial models are used to analyze the financial aspects of enforcement actions. More information is available at <https://www.epa.gov/enforcement/penalty-and-financial-models>.

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

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

5.6. Adjustments in the Civil Charge

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

5.6.1. Cooperativeness and Quick Settlement

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

5.6.2. Prompt Responses and Good Faith Effort to Comply

ODW may adjust the civil charge when the waterworks takes prompt corrective action within its control and cooperates with reporting noncompliance and investigating issues. These efforts are considered on a case-by-case basis by ODW when considering whether to adjust the civil charge. Additionally, on a case-by-case basis, ODW may consider accepting in lieu of a civil charge a waterworks owner's completion of supplemental environmental projects that benefit the public health related to the waterworks.

5.6.3. Size and Sophistication of the Waterworks

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

Appendix

Attachments:

Attachment 25 – Civil Charge Worksheet

Appendix with Attachments

Attachment 1 – EPA Enforcement Response Policy
Attachment 2 – Enforcement Process Flow Snapshot
Attachment 3 – Enforcement Process Flow Referral
Attachment 4 – Enforcement Process Flow with Consent
Attachment 5 – Enforcement Process Flow without Consent
Attachment 6 – Enforcement Process Flow Other
Attachment 7 – Program and Agency Resources
Attachment 8 – SVSS Table of Violations
Attachment 9 – Noncompliance Team Concept
Attachment 10 – RTC Table
Attachment 11 – Warning Letter
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Attachment 24 – Civil Charge Payment Process
Attachment 25 – Civil Charge Worksheet



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

DEC 8 2009

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Drinking Water Enforcement Response Policy

FROM: Cynthia Giles
Assistant Administrator

TO: Regional Administrators

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

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

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

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

cc:
Peter Silva
Cynthia Dougherty
Adam Kushner

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



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

DEC 8th 2009

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

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

FROM: Mark Pollins, Director
Water Enforcement Division
Office of Civil Enforcement *[Signature]*

[Signature] Karin Koslow, Acting Director *[Signature]*
Compliance Assistance and Sector Programs Division
Office of Compliance

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

Introduction

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

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

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

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

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

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

Identification of Priority Systems for Enforcement Using the Enforcement Targeting Tool

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

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

Enforcement Targeting Formula

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

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

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

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

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

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

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

S = violation severity factor

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

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

Examples of Priority Systems for Enforcement

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

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

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

Model for Escalating Responses to Violations

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

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

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

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

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

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

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

Timely and Appropriate Response

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

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

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

Formal Enforcement

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

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

Trial and Implementation of the Enforcement Response Policy and Targeting Tool

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

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

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

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

Defining the Status of Systems on the "Targeting List"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Current SDWIS Code	Description
SFL or EFL	St or Fed AO (w/o penalty) issued
SFO	St AO (w/penalty) issued
<i>None – closest is SFK or EFK</i>	<i>St or Fed BCA signed (if meets "Formal" definition)</i>
SF& or EF&	St or Fed Crim Case referred to AG
SF9 or EF9	St or Fed Civil Case referred to AG or Fed case referred to DOJ
SFQ or EFQ	St or Fed Civil Case filed
SFV or EFV	St or Fed Crim Case filed
EF/	Fed 1431 (Emergency) Order
SF% or EF%	St or Fed Civil Case concluded
SFR or EFR	St or Fed Consent Decree/Judgment
SFW or EFW	St or Fed Criminal Case concluded
SFM	St Admin Penalty assessed 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".

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

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

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

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

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

APPENDIX

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

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

Alternate Formula:

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

Where:

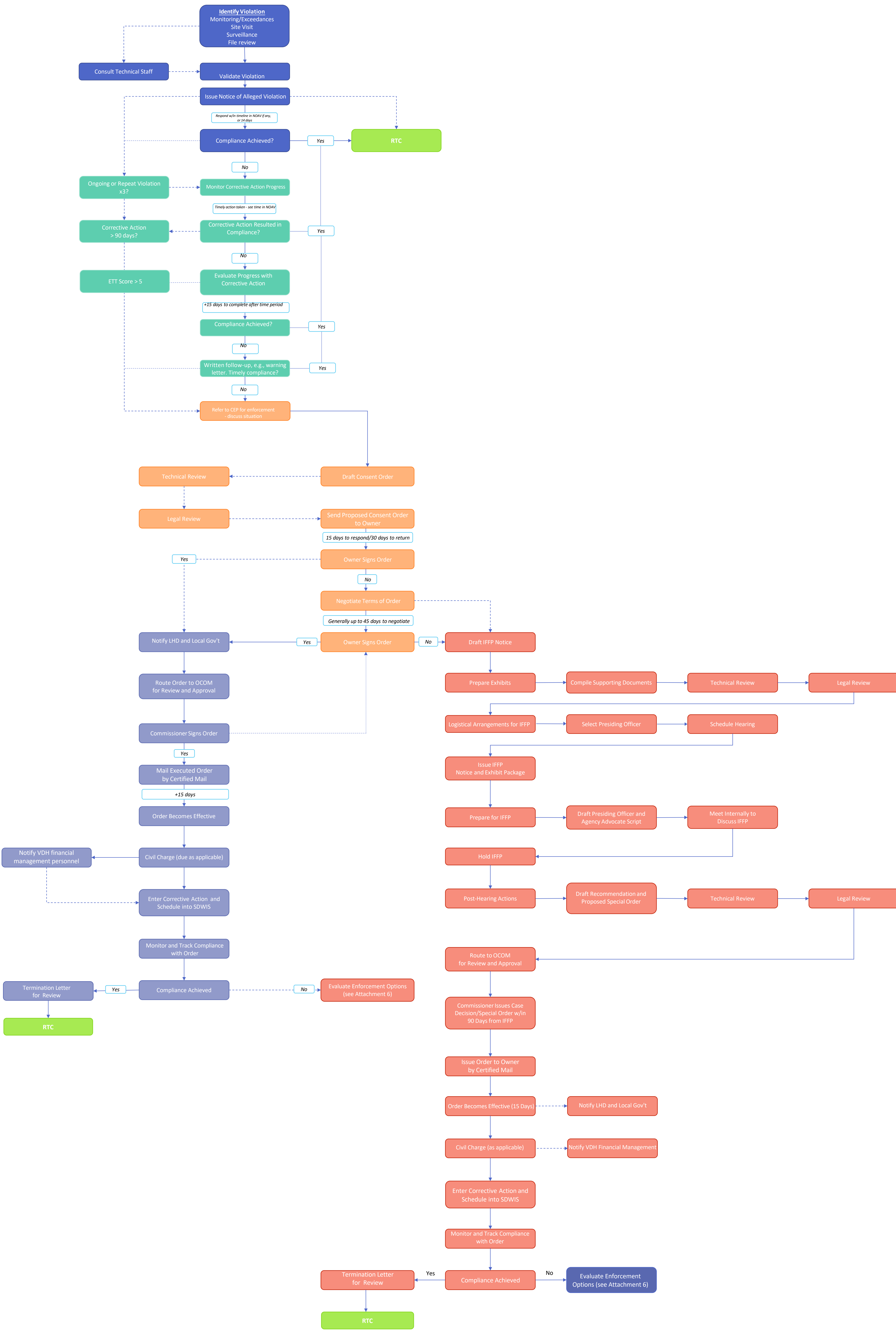
S and n = use the definitions on page 4

T = water system type factor

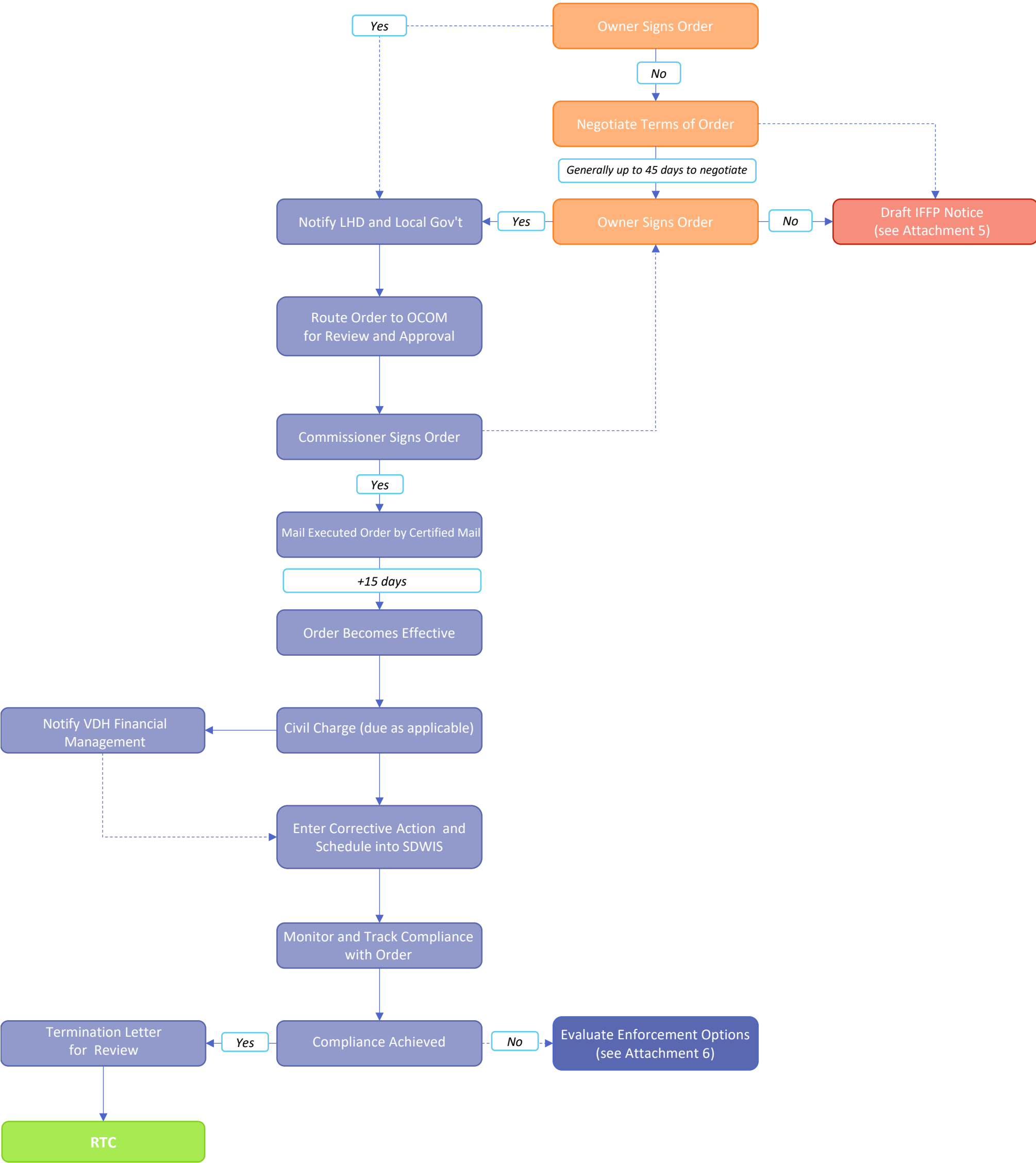
2	CWS, NTNCWS
1	TNCWS

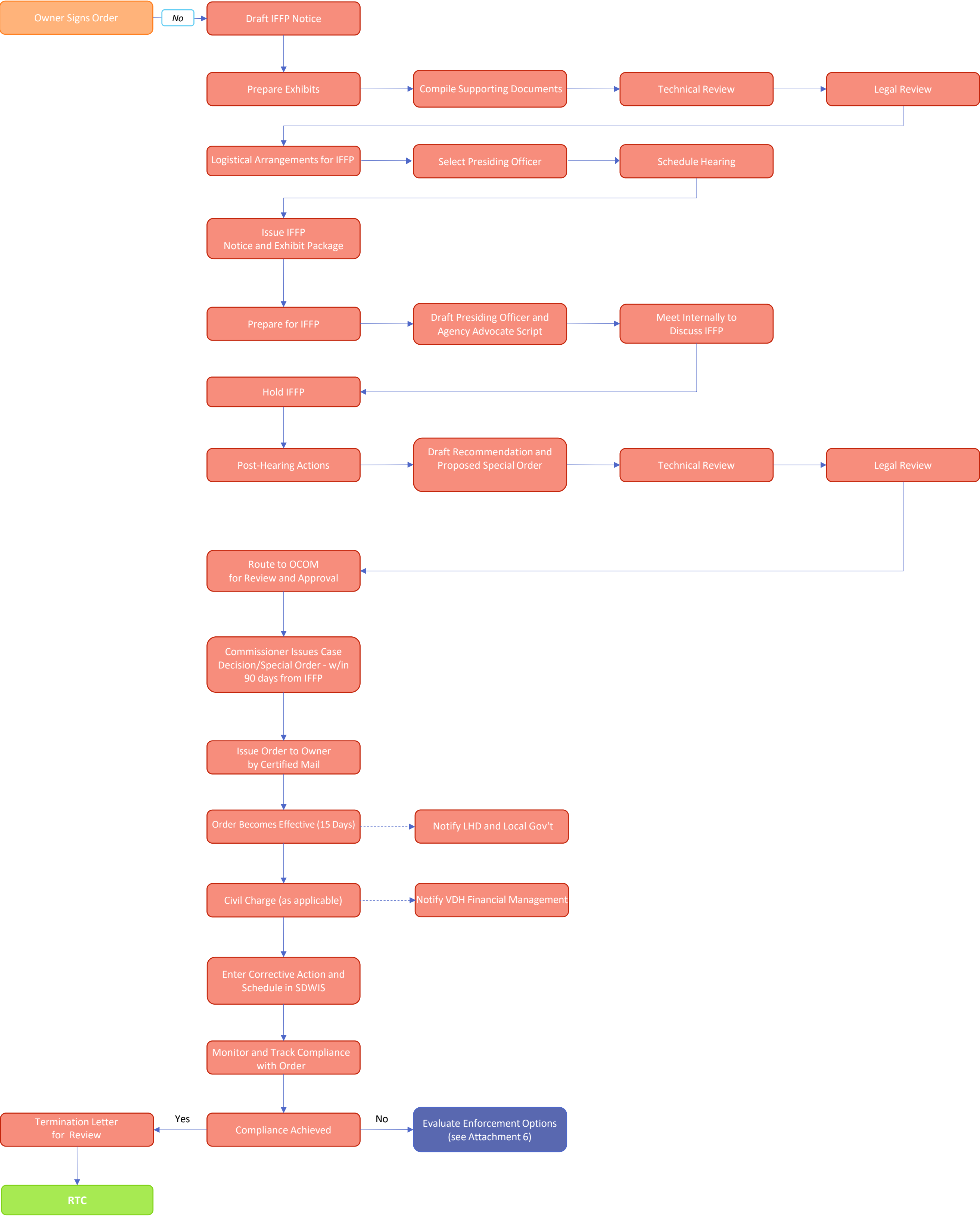
P = retail population served factor

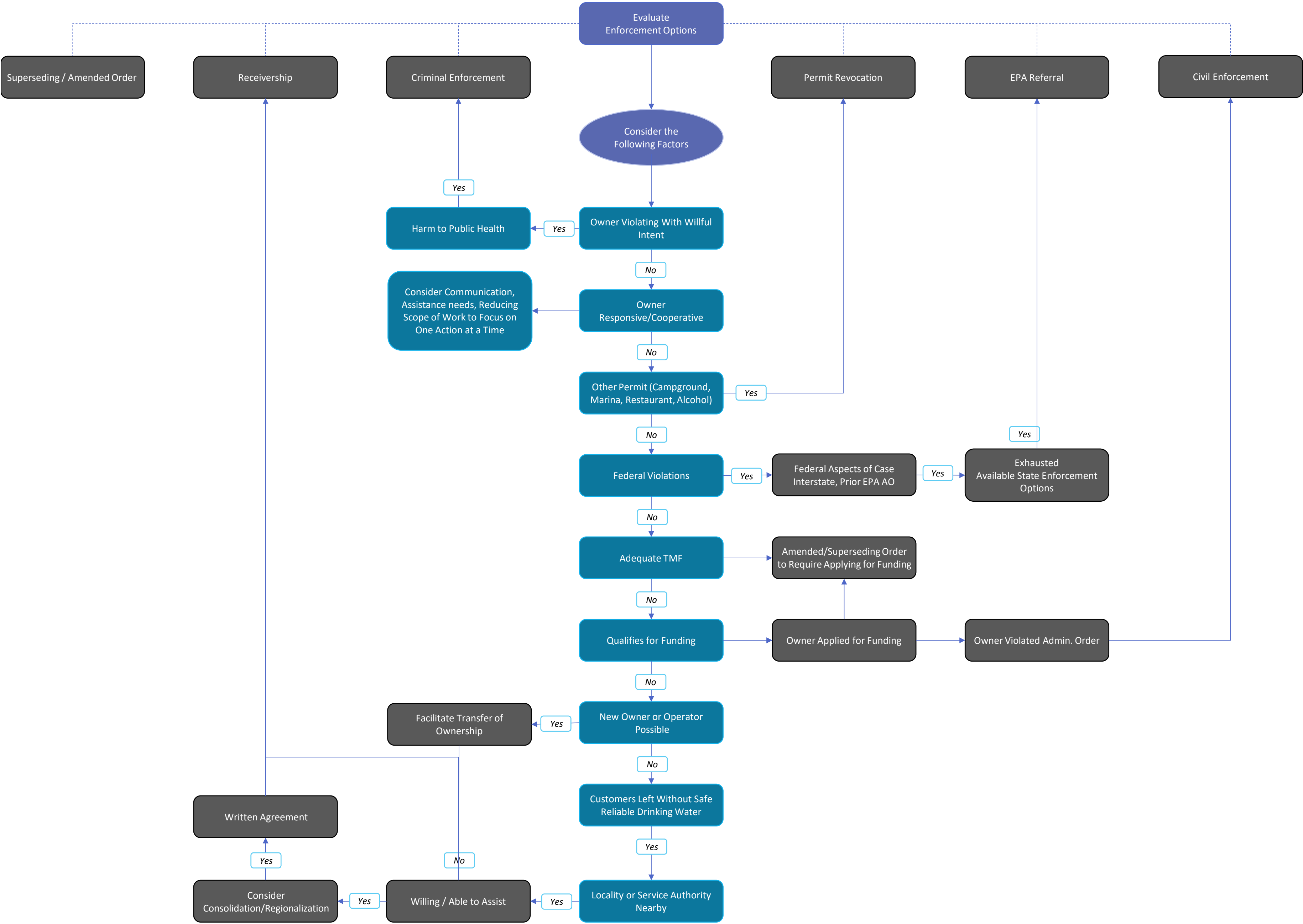
1	Very small	(less than 501)
1.5	Small	(501-3,300)
2	Medium	(3,301-10,000)
2.5	Large	(10,001-100,000)
3	Very large	(100,001...)











Program and Agency Resources

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

STATE VIOLATION SCORING SYSTEM – TABLE OF VIOLATIONS

SDWIS State Code	Approved 2021 WWs Regs	Violation Type	State NOAV Score	Specified Use
A0	12VAC5-590-190 A and E (Permits) 12VAC5-590-260 B (Issuance of the operation permit)	Acute	10	The owner does <u>not</u> have a valid Operation Permit and is serving customers.
A1	12VAC5-590-190 B and E (Permits)	Non-Acute	5	<u>Unauthorized</u> construction for which a construction permit is required.
A2	12VAC5-590-520	Chronic, Non-Acute	1	Failure to submit the required written plan to address three consecutive months of a community waterworks being above 80% of permitted capacity. Regulatory Requirement: “When water production of a <u>community</u> waterworks reaches 80% of the permitted capacity for any <u>consecutive three-month period</u> , the owner shall prepare and submit a written plan within 30 days of notification by the department to address capacity needs. This plan shall be evaluated by the department and corrective actions shall be approved by the department.”
A3	12VAC5-590-260 C	Chronic; Non-Acute	1	Use this state violation if the WWs has exceeded operating conditions established by the operation permit <or> exceeded/violated special operating requirements <or> the Waterworks Description Sheet (WDS). Regulatory Requirement: “The Commissioner shall establish the type: community (C) waterworks (WWs), Nontransient Noncommunity (NTNC), or Transient Noncommunity (TNC), classification, and permitted capacity of the WWs and specify these on the operation permit. Conditions may be included with the permit for operator, monitoring, and reporting requirements.”
A4	12VAC5-590-260 A & B	Non-Acute	5	A WWs Owner or authorized agent did <u>not</u> receive <u>approval</u> prior to <u>operating</u> new component, source, or entire waterworks. This is for a situation where there is an existing operation permit for the waterworks, a construction permit is issued and the construction is performed, but the expanded/revised waterworks is operated without an updated operation permit being issued. (Construction permit issued, no Statement of Completion, no final inspection, no satisfactory test results, etc.)

SDWIS State Code	Approved 2021 WWs Regs	Violation Type	State NOAV Score	Specified Use
B0				DO NOT USE
B1				DO NOT USE
B2	12VAC5-590-461 A.5-6, B.2, and C.4-5.	Non-Acute	5	This violation occurs when: 1. There is no properly licensed C or NTNC Water Operator for a WWs <u>without primary or secondary disinfection or chemical addition</u> and/or the <u>Water Operator license class does not meet WWs Class</u> requirement. (If you have a classified C or NTNC WWs with disinfection or chemical addition but no licensed operator of any class, use FED Code 12) or 2. A TNC is classified.
B3				DO NOT USE
B4	12VAC5-590-290 F (Issuance of a temporary operation permit)	Chronic; Non-Acute	1	Waterworks Business Operating Plan (WBOP) must be submitted by a WWs owner, as required. (Va. Code § 32.1-172.F, no permit shall be assigned or transferred to a new owner.)
B5	12VAC5-590-580; No Cross Connection Control Program (CCCP)	Chronic; Non-Acute	1	This violation only occurs when there is <u>NO</u> approved program at an operating WWs and does <u>not</u> apply to minor revisions of an existing CCCP.
B6	12VAC5-590-600; FAILURE TO IMPLEMENT CCCP	Chronic; Non-Acute	1	The WWs has an approved CCCP Plan, but there is no evidence that the program is being implemented appropriately. (i.e. A sanitary survey reveals there are no records of customer surveys, no inspections of devices, no installation of cross connection control devices.)
B7	12VAC5-600-50 Community 12VAC5-600-60 NTNC	Chronic; Non-Acute	1	The violation occurs when the owner fails to pay the annual Technical Assistance Fee (i.e. Waterworks Operation Fee.) (Note: It can be used as a reason to revoke an operation permit pursuant to 12VAC5-590-320.A.5.)

SDWIS State Code	Approved 2021 WWs Regs	Violation Type	State NOAV Score	Specified Use
C1	12VAC5-590-530 A 12VAC5-590-570 A STATE LATE REPORTING, INCLUDING MOR	Chronic; Non-Acute	1	Use when the WWs is late reporting during a compliance period or the WWs failed to monitor the raw water Most Probable Number(s) (MPN), failed to conduct the increased monitoring for Groundwater Under Direct Influence of Surface Water (GUDI or GUDISW) or failed to submit the Monthly Operation Report (MOR) by the 10 th of the month following the report month.
C2	12VAC5-590-370 - 379	Chronic; Non-Acute	1	Failure to sample in the compliance period, or sampling at unapproved sites or inappropriate times (State required compliance monitoring; not operational control). Applies to: "routine" raw water MPNs, increased monitoring for GUDIs.
C3	12VAC5-590-360 RELIABILITY (Incorporates all of Part II: 340 - 630)	Non-Acute	5	Use when the WWs is unable to demonstrate the ability to provide water of adequate quantity and quality. As determined by the Field Office in conjunction with Technical Services: RELIABILITY PROBLEM
C4	12VAC5-590-330; LACK OF MONITORING EQUIPMENT	Non-Acute	5	Use this state SDWIS code when an owner was notified that they needed specific monitoring equipment and have failed to install, use, and maintain it within the time period given. (Notification of the equipment needed must have been made in writing and not just given verbally.) There is <u>no specific timeframe associated with this regulation</u> and therefore ODW must set a time period in the written documentation to the waterworks. CEP suggests using a <u>minimum of 30 days to comply</u> . (The timeframe will be evaluated on a case-by-case basis.) NOTE: Required monitoring equipment is absent, inoperable, or inaccurate.
C5	12VAC5-590-700; FAILURE TO METER WATER PRODUCTION	Chronic; Non-Acute	1	Use if there is a: failure of a community waterworks to meter total water production; failure of an NTNC that provides treatment or has a design capacity of greater than 300,000 gallons per month to meter total water production; failure of a TNC that provides treatment or has a design capacity of greater than 300,000 gallons per month to meter total water production. Waterworks treatment process that results in a waste flow, including filter backwash, ion exchange regenerate, or residual solids, must be metered as part of the total source water withdrawn and finished water produced. (i.e. Issue an NOAV when a sanitary survey, other inspection, or MOR reveals no meter present and the owner does not have a metering variance for a system that meets the applicable conditions described above).

C6	12VAC5-590-510 C (Acceptable operating practices.)	Non-Acute	5	<u>All</u> waterworks shall provide a minimum working pressure of 20 psi gauge (psig) at all service connections. If ODW can demonstrate that the pressure of the WWs has been less than 20 psig at one or more service connections, then this state violation should be issued.
C7			-	NOT FOR USE
C8	12VAC5-590-570 B FAILURE TO TIMELY REPORT A LISTED INCIDENT TO VDH	Non-Acute	5	Use if the waterworks fails to timely report to VDH as required by this regulation.
C9				NOT FOR USE

SDWIS State Code	Approved 2021 WWs Regs	Violation Type	State NOAV Score	Specified Use
D1				DO NOT USE
D2				DO NOT USE

SDWIS State Code	Approved 2021 WWs Regs	Violation Type	State NOAV Score	Specified Use
E1	12VAC5-590-530 A (Reporting.)	Chronic; Non-Acute	1	Failure of a WWs owner or authorized agent to report required chemical results to the department no later than the 10th day of the month following the monitoring period . NOTE: Do not use E1 for C1 “late reporting MPN” violations.

SDWIS State Code	Approved 2021 WWs Regs	Violation Type	State NOAV Score	Specified Use
N1	12VAC5-590-540 A.4. Public Notices associated with state violations	Chronic; Non-Acute	1	Use for public notices that ODW deems necessary for a State WWs Regulation Violation. NOTE: Do not use this code with a Federal Violation. (Subsection A requires that the owner give public notice to “(i) persons served by the waterworks and (ii) the owner of a consecutive waterworks to which it sells or otherwise provides water” for violations and situations listed in Subsection A.1 through 4.)

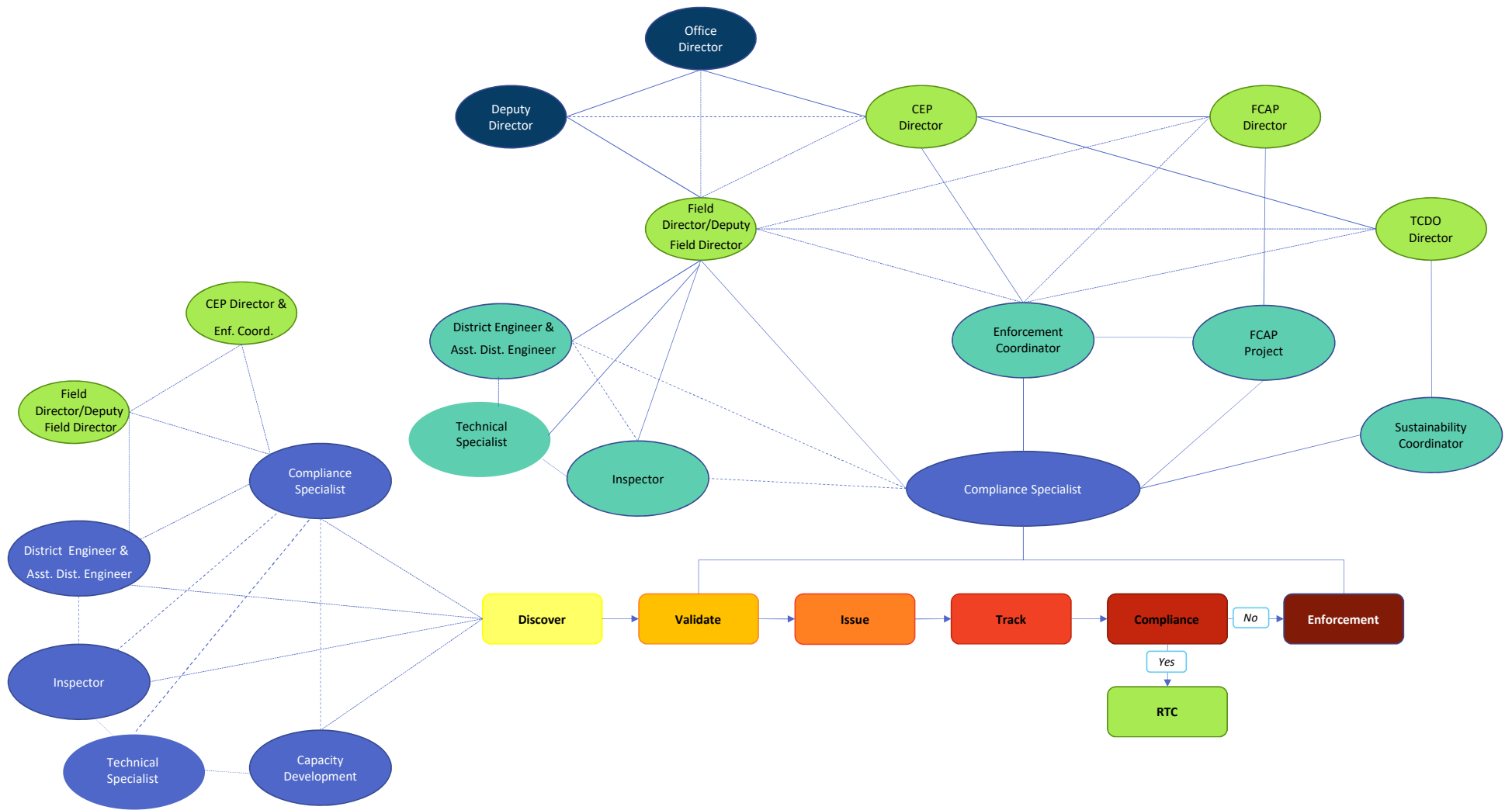
SDWIS State Code	Approved 2021 WWs Regs	Violation Type	State NOAV Score	Specified Use
Z1	Non-violation for ODW tracking info only	NA	-	-
Z2	Non-violation for ODW tracking info only	NA	-	-
Z3	Non-violation for ODW tracking info only	NA	-	-

VDH-ODW Criteria for Scoring State Violations

Violation Type ¹	Examples	ODW Response Time ²
Acute (10 Points)	A0	Within 24 hours of discovery of an alleged violation. A non-response by the owner/operator to an acute violation will move these violations to formal enforcement at an accelerated rate.
Non-Acute (5 Points)	A1, A4, B2, C3, C4, C6, & C8	Within 7 days of discovery of the alleged violation.
Chronic, Non-Acute (1 Point)	A2, A3, B4, B5, B6, B7, C1, C2, C5, E1, & N1	Within 30 days of discovery of the alleged violation.

¹ The suggested designations (Acute, Non-Acute, Chronic Non-Acute) were taken from the Federal criteria for scoring Federal violations.

² Response time refers to the timeframe by which ODW must initiate appropriate action in response to an alleged violation, which may include, but is not limited to, contacting the owner, issuing an NOAV, and ordering DCLS sample kits.



NPDWR Drinking Water Violations and RTC							
PN Rule Tier = SD - State Discretion: Violations and other situations not listed in this table (e.g., failure to prepare Consumer Confidence Reports), do not require notice, unless otherwise determined by the primacy agency. Primacy agencies may, at their option, also require a more stringent public notice tier (e.g., Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations listed in this Appendix, as authorized under §141.202(a) and §141.203(a). [Appendix A to Subpart Q - Endnote 1.] Primacy Agency (PA) includes State, Tribal, etc.							
Note - NA = Other situations as determined by the Primacy Agency							
Item #	NPDWR	SDWIS/FED Reportable Violation Code	SDWIS Contaminant Code	Violation Description with CFR Citation	Violation Type	PN Rule Tier	Violation Return To Compliance ("RTC") Criteria:
4	Radiological	02	4000, 4006, 4010, 4101	For systems monitoring more frequently than once per year, if any one sample result causes the running annual average to exceed, the system is out of compliance with the maximum contaminant level (MCL) immediately. [141.26(c)(3)(ii) and 141.66 (b)-(e)]	MCL	2	RTC is achieved when the running annual average is at or below the maximum contaminant level (MCL) at the sampling point with the exceedance.
6	Nitrates	02	1040, 1041	A system with an average of an original sample, and a confirmation sample, that exceeds the maximum contaminant levels (MCL(s)) for nitrate or nitrite. [141.23(i)(3) and 141.62(b)]	MCL	1	RTC is achieved once the system's sampling points result(s) are less than or equal to the maximum contaminant level (MCL).
7	Phase II/V	02	All Phase II/V, except nitrate, nitrite, and total cyanide	A system that exceeds an maximum contaminant level (MCL) (except nitrate, nitrite, and total cyanide) at any sampling point, based on the running annual average (RAA) calculated based on 4 consecutive quarterly samples, or fewer samples if it will cause the annual average to exceed the MCL. [141.23(i)(1), 141.24(f)(15)(ii)-(iii), and 141.24(h)(11)(ii)-(iii)]	MCL	2	RTC is achieved once the running annual average (RAA) of the system is less than or equal to the maximum contaminant level (MCL).
8	Radiological	02	4000, 4006, 4010, 4101	A system that has a running annual average at any sampling point that is greater than the maximum contaminant level (MCL) [141.26(c)(3)(i)] or if any sample will cause the running average to exceed the MCL. [141.26(c)(3)(ii) and 141.66 (b)-(e)]	MCL	2	RTC is achieved when the running annual average is at or below the maximum contaminant level (MCL) at the sampling point with the exceedance.
10	Stage 1	02	1011	A system that has a running annual average (RAA) covering any consecutive 4 quarter period that exceeds the maximum contaminant level (MCL) for bromate. [141.64(a) and 141.133(b)(2)]	MCL	2	RTC is achieved when the quarterly running annual average (RAA) at the sampling point with the exceedance is less than or equal to the maximum contaminant level (MCL).
11	Stage 1	02	1009	A system that has an arithmetic average of any three sample set, taken in the distribution system, that exceeds the maximum contaminant level (MCL) for chlorite. [141.64(a) and 141.133(b)(3)]	MCL	2	RTC is achieved after one month without additional maximum contaminant level (MCL) violations.
13	Stage 2	02	2456, 2950	A system is in violation of the maximum contaminant level (MCL) for TTHM and/or HAA5 when the locational running annual average (LRAA) exceeds the MCLs in 141.64(b)(2), calculated based on four consecutive quarters of monitoring (or the LRAA calculated based on fewer than four quarters of data if the MCL would be exceeded regardless of the monitoring results of subsequent quarters). [141.64(b)(2), 141.620(c)(7), 141.625]	MCL	2	RTC is achieved when the quarterly locational running annual average (LRAA) for TTHM and/or HAA5 are less than or equal to their maximum contaminant levels (MCLs).
18	Phase II/V	03	1005	Failure to report arsenic results to the nearest 0.001 mg/L. [141.23(i)(4)]	M&R	State Discretion	RTC is achieved when the system reports a valid arsenic result for each sampling point, to the Primacy Agency, with values reported to the nearest 0.001 mg/L.
19	Phase II/V	03	All Phase II/V	Failure of a system monitoring annually or less frequently to make the required transition to quarterly monitoring in the next quarter. [141.23(c)(7); 141.23(d)(2), (d)(3) and (e)(3), 141.24(f)(12); 141.24(h)(11)(ii); and 141.23(b)(8)]	M&R	3	RTC is achieved when the system begins quarterly monitoring at required sampling points and reports the subsequent results to the Primacy Agency.
20	Nitrates	03	1038, 1040, 1041	A public water system that fail to conduct monitoring. [141.23(d) and 141.23(e)]	M&R	3	RTC is achieved when a system samples at the sampling point in a subsequent monitoring period and reports the results to the Primacy Agency.
23	Phase II/V	03	All Phase II/V, except nitrate and nitrite	A community or non-transient, non-community system fails to monitor at each sampling point or fails to complete/report valid regular monitoring results at each sampling point during the Primacy Agency designated timeframe. [141.23(b)-(d), 141.24(f)(1)-(4), 141.24(h)(1)-(4), and 141.31]	M&R	3	RTC is achieved when a system samples for the contaminant at the sampling point in a subsequent monitoring period and reports the results to the Primacy Agency.
27	Phase II/V	03	All Phase II/V, except nitrate, nitrite, and total cyanide	A new system or system with a new source of water that fails to demonstrate compliance with the maximum contaminant level (MCL) within the time frame specified by the Primacy Agency. [141.23(c)(9), 141.24(f)(22), and 141.24(h)(20)]	M&R	3	RTC is achieved when the system demonstrates to the Primacy Agency compliance at each sampling point.
28	Phase II/V	03	1094	A system fails to monitor for asbestos during the first 3-year compliance period of each 9-year compliance cycle. [141.23(b)]	M&R	3	RTC is achieved when the system samples for asbestos and reports the result to the Primacy Agency.
30	Phase II/V	03	All Phase II/V	A system fails to ensure samples are analyzed with approved methods. [141.23(k)(1) and 141.24(e)(1)-(2)]	M&R	3	RTC is achieved when samples are analyzed in accordance with approved methods.

31	Phase II/V	03	2257, 2265	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. [141.111]	OTHER	State Discretion	RTC is achieved when the system submits the certification to the Primacy Agency.
32	Radiological	03	4000, 4006, 4010, 4101	A system that fails to conduct monitoring according to 141.26(a) and 141.26(b) and include all samples taken and analyzed under these provisions in order to determine maximum contaminant level (MCL) compliance. [141.26(a)-(b) and 141.26(c)(3)(iii)]	M&R	3	RTC is achieved once the system includes all samples taken and analyzed in order to determine maximum contaminant level (MCL) compliance and reports the results to the Primacy Agency.
33	Radiological	03	4000, 4006, 4010	A system that fails to collect and analyze quarterly samples at any sampling point where the average of the initial monitoring was above the maximum contaminant level (MCL), unless the system enters into another schedule as part of a formal compliance agreement with the Primacy Agency. [141.26(a)(2)(iv)]	M&R	3	RTC is achieved when the system collects and analyzes quarterly samples properly according to the requirements in 141.26 (a)(2)(iv) and reports the results to the Primacy Agency.
34	Radiological	03	4000, 4006, 4010	A system that fails to conduct initial monitoring in accordance with 141.26(a)(2)(i), collecting four consecutive quarterly samples at all sample points, to determine compliance with radionuclides MCLs, unless the Primacy Agency has waived the final two quarters of monitoring in accordance with 141.28(a)(2)(iii). [141.26(a) and 141.26(a)(2)(i)]	M&R	3	RTC is achieved once the system has completed monitoring at all sampling points, and reported the results to the Primacy Agency.
35	Radiological	03	4000, 4006, 4010	An existing or new 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) or (ii)]	M&R	3	RTC is achieved once the system has monitored at each entry point to the distribution system, reported the results to the Primacy Agency, and the Primacy Agency has determined that the results are representative of all sources being used under normal operating conditions.
36	Radiological	03	4100, 4101, 4102, 4174	A community water system designated by the Primacy Agency as vulnerable that fails to collect quarterly samples for beta particle 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 Primacy Agency and/or fails to continue monitoring until the Primacy Agency determines the system is no longer vulnerable. [141.26(b)(1)]	M&R	3	RTC is achieved once the system has monitored for beta particle and/or for tritium and strontium-90, at each entry point to the distribution system, and reported the results to the Primacy Agency.
37	Radiological	03	4100, 4101, 4102, 4174, 4264	A system designated by the Primacy Agency as utilizing waters contaminated by effluents from nuclear facilities in accordance with 141.26(b), that fails to sample quarterly for gross beta particle and iodine-131 and annually for tritium and strontium-90 at each entry point to the distribution system according to the manner prescribed for each contaminant in 141.26(b)(2)(i) - (iii). This also applies to systems that fail to continue monitoring until the Primacy Agency determines the system is no longer vulnerable. [141.26(b)(2)]	M&R	3	RTC is achieved once the system has conducted the monitoring quarterly for gross beta particle and iodine-131 and annually for tritium and strontium-90 at each entry point to the distribution system, and reports the results to the Primacy Agency.
38	Radiological	03	4100, 4101, 4102, 4174, 4264	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 to calculate the appropriate doses. [141.26(b)(5)]	M&R	3	RTC is achieved once the analysis is performed, the doses calculated, and the results reported to the Primacy Agency.
39	Radiological	03	4100, 4101, 4102, 4174	A system that fails to monitor monthly in accordance with 141.26(b), at the sampling point(s) which exceed the maximum contaminant level (MCL) beginning the month after the exceedance occurs. [141.26(b)(6)]	M&R	3	RTC is achieved once the system complies with the monitoring and reporting requirements.
40	Radiological	03	4100, 4101, 4102, 4174	A system that fails to continue monthly monitoring in accordance with 141.26(b). [141.26(b)(6)]	M&R	3	RTC is achieved once the system complies with the monthly monitoring and reporting requirements.
41	Radiological	03	4100, 4101, 4102, 4174	A system that fails to conduct quarterly monitoring after the system's 3-month average is below the maximum contaminant level (MCL) in accordance with 141.26(b), once the system has established that the MCL is being met. [141.26(b)(6)]	M&R	3	RTC is achieved once the system conducts the subsequent quarterly monitoring and reports the results to the Primacy Agency.
42	Radiological	03	4000, 4006, 4010, 4101	A system that fails to monitor at the time designated by the Primacy Agency in accordance with 141.26(c), during each compliance period. [141.26(c)(2)]	M&R	State Discretion	RTC is achieved once the system monitors and reports to the Primacy Agency.
43	Radiological	03	4000, 4006, 4010, 4100, 4101, 4102, 4174, 4264	A system monitoring on a reduced frequency fails to collect samples at each sampling point in accordance with 141.26. [141.26(a)(3)(i) through (iii), 141.26(b)(1)(i), and 141.26(b)(2)(iv)]	M&R	3	RTC is achieved when the system has conducted one round of monitoring and reports results for all sampling points to the Primacy Agency.

44	Radiological	03	4000, 4006, 4010, 4101	A system monitoring on a reduced frequency fails to monitor at the appropriate frequency based on results from a previous monitoring period [141.26(a)(3)(iv)-(v)].	M&R	3	RTC is achieved when the system has monitored one round of valid sample results at the correct frequency based on results from the previous monitoring period and reports the results to the Primacy Agency.
47	Nitrates	04	1040, 1041	A system that fails to collect a confirmation sample(s) within 24 hours and also fails to issue a Tier 1 public notice (PN) upon receipt of notification of the analytical result of the first sample. [141.23(f)(2)]	M&R	1	RTC is achieved once the system conducts Tier 1 public notice (PN) and takes valid confirmation samples within 2 weeks.
48	Nitrates	04	1040, 1041	A system that has failed to collect a confirmation sample(s) within 24 hours but has notified the public via Tier 1 public notice (PN) and fails to collect a confirmation sample(s) within the two week timeframe. [141.23(f)(2)]	M&R	3	RTC is achieved once the system samples and reports in subsequent monitoring periods.
49	Phase II/V	04	All Phase II/V, except nitrate and nitrite	A system, when required, fails to collect a confirmation sample(s) within the required timeframe, which is within 14 days for IOCs, and report the result(s) to the Primacy Agency by the deadline. [141.23(f), 141.23(f)(1), 141.24(f)(13), 141.24(h)(9), and 141.31]	M&R	3	RTC is achieved once the system collects and reports a routine sample(s) monitoring result(s).
50	Radiological	04	4000, 4006, 4010, 4100, 4101, 4102, 4174, 4264	A system, when required, fails to collect a confirmation sample(s) within the required timeframe, and report the result(s) to the Primacy Agency by the deadline. [141.26(c)]	M&R	3	RTC is achieved once the system collects and reports required sample(s) in the subsequent monitoring period.
51	Radiological	03	4100, 4101, 4102, 4174, 4264	A system in the vicinity of a nuclear facility using surveillance data in lieu of monitoring fails to monitor at each entry point to the distribution system following a release from the nuclear facility. [141.26(b)(1)(ii) and 141.26(b)(2)(v)]	M&R	3	RTC is achieved when the system monitors in accordance with 141.26(b) and reports the results to the Primacy Agency.
52	GWR	05	0700	A system conducting compliance monitoring that fails to notify the Primacy Agency by the end of the next business day any time the system fails to meet any Primacy Agency-specified requirements. [141.405(a)(1)]	OTHER	State Discretion	RTC is achieved once the Primacy Agency has been notified that the system has met the Primacy Agency-specified requirements.
53	GWR	05	0700	A system that fails to notify the Primacy Agency within 30 days of completing a corrective action. [141.405(a)(2)]	OTHER	State Discretion	RTC is achieved once the Primacy Agency has been notified that the system has completed its corrective action.
54	GWR	05	0700	A system conducting triggered source water monitoring that fails to provide documentation to the Primacy Agency within 30 days of the total coliform positive sample that it met the Primacy Agency criteria for exception to the triggered source water monitoring requirements. [141.405(a)(3)]	OTHER	State Discretion	RTC is achieved once the system provides documentation to the Primacy Agency that it meets the Primacy Agency criteria for exception to the triggered source water monitoring requirements.
55	Nitrates	05	1040	A non-community water system that has any one sample result that exceeds the alternate nitrate MCL of 20 mg/L (subject to Primacy Agency approval) and fails to notify the Primacy Agency within 48 hours. [141.23(o), 141.31(b), and 141.11(d)]	M&R	State Discretion	RTC is achieved once the system notifies the primacy agency.
56	Nitrates	02	1038, 1040	A non-community water system that has an average of an original sample, and any required confirmation samples, collected that exceeds the alternate MCL for nitrate (subject to Primacy Agency approval). [141.23(o) and 141.11(d)]	MCL	1	RTC is achieved once the average of the system's sampling point's original and confirmation result(s) are less than or equal to the alternate nitrate MCL.
57	Nitrates	05	1038, 1040	A non-community water system subject to the alternative MCL (subject to Primacy Agency approval) that did not collect an original sample or confirmation sample and fails to notify the Primacy Agency. [141.11(d), 141.23(o), and 141.31(b)]	M&R	State Discretion	RTC is achieved once the system notifies the Primacy Agency and takes either the original sample or, if necessary, the confirmation samples in subsequent monitoring periods.
58	All NPDWRs	05	All SDWIS Contaminant Codes	A system that fails to report non-compliance to the Primacy Agency within 48 hours. [141.31(b)]	M&R	State Discretion	RTC is achieved once the system reports a non-compliance to the Primacy Agency.
62	Phase II/V	07	2257, 2265	A system using acrylamide and epichlorohydrin exceeds the specified levels. [141.111]	TT	2	RTC is achieved when the system certifies that it does not exceed the specified level.
64	Phase II/V	08	All Phase II/V	Failure to comply with the terms and conditions of any variance or exemption in place [142.43-142.46, 142.53-142.57, 142.61-142.62, and 142.301-142.313]	OTHER	2	RTC is achieved when the system meets the variance or exemption terms and conditions.
65	Radiological	08	4000, 4006, 4010, 4100, 4101	Failure to comply with the terms and conditions of any variance or exemption in place [142.43-142.46, 142.53-142.57, 142.65, 142.301-142.313]	OTHER	2	RTC is achieved when the system meets the variance or exemption terms and conditions.
66	FBRR	09	0500	A system that fails to collect and retain on file recycle flow information required by the rule. [141.76(d)]	OTHER	3	RTC is achieved when the system notifies the Primacy Agency that recycle flow information is being retained and can be provided to the Primacy Agency; or the Primacy Agency confirms that the system has collected and retained recycle flow information for at least the following month.

67	GWR	09	0700	A system that fails to document and maintain records as indicated in 141.405(b).	OTHER	State Discretion	RTC is achieved when the public water system (PWS) reports that it has begun proper recordkeeping as specified in 141.405(b), or Primacy Agency verifies that the PWS is maintaining records or the system submits the required report.
68	SWTR, IESWTR, LT1	09	0200, 0300	A system that fails to meet reporting and recordkeeping requirements. [141.75, 141.175, 141.503(g), 141.570, and 141.571]	OTHER	State Discretion	RTC is achieved when the public water system (PWS) reports that it has begun proper recordkeeping as specified in 141.75, 141.175, 141.503(g), 141.570, and 141.571, or Primacy Agency verifies that the PWS is maintaining records, or the system submits the required report.
69	LCR	09	5000	A system that does not retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, Primacy Agency determinations, and any other information for no fewer than 12 years. [141.80(j) and 141.91]	OTHER	State Discretion	RTC is achieved when the public water system (PWS) reports that it has begun proper recordkeeping as specified in 141.91, or Primacy Agency verifies that the PWS is maintaining records, or the system submits the required report.
70	LT2	09	0800	A system that fails to maintain records as required by 141.722. [141.722(a)-(c)]	OTHER	State Discretion	RTC is achieved when the public water system (PWS) reports that it has begun proper recordkeeping as specified in 141.722(a)-(c), or Primacy Agency verifies that the PWS is maintaining records, or the system submits the required report.
71	Stage 2	09	0600	Fails to retain subpart V monitoring plans and subpart V monitoring results as required by 141.33. [141.629(b)]	OTHER	3	RTC is achieved when the public water system (PWS) reports that it has begun proper recordkeeping as specified in 141.629(b) and 141.33, or Primacy Agency verifies that the PWS is maintaining records, or the system submits the required report.
72	Stage 1	11	0999, 1006	A system is out of compliance with the chlorine and/or chloramine Maximum Residual Disinfectant Level (MRDL) if during the first year of monitoring under 141.132, any individual quarter's average will cause the running annual average (RAA) to exceed the MRDL. [141.65(a), 141.133(a)(3)].	MRDL	2	RTC is achieved after the subsequent quarter without additional Maximum Residual Disinfectant Level (MRDL) violations.
73	Stage 1	11	1008	A system is out of compliance with the chlorine dioxide Maximum Residual Disinfectant Level (MRDL) if any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution samples taken are below the MRDL. [141.65(a) and 141.133(c)(2)(ii)]	MRDL	2	RTC is achieved after one month without Chlorine Dioxide Maximum Residual Disinfectant Level (MRDL) violations.
74	Stage 1	11	1008	Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide Maximum Residual Disinfectant Level (MRDL) at the entrance to the distribution system is a non-acute MRDL violation. [141.65(a) and 141.133(c)(2)(ii)]	MRDL	2	RTC is achieved after appropriate sampling is completed and reported to the Primacy Agency.
75	Stage 1	11	0999, 1006	A system is in violation of the chlorine and/or chloramine Maximum Residual Disinfectant Level (MRDL) if the running annual average (RAA) of any consecutive four-quarter period exceeds the MRDL. [141.133(c)(1)]	MRDL	2	RTC is achieved after one quarter with the running annual average (RAA) below the Maximum Residual Disinfectant Level (MRDL).
76	Stage 1	12	0400	A system that is not operated by an approved qualified operator. [141.130(c)]	TT	State Discretion	RTC is achieved when a Primacy Agency-approved qualified operator begins operating the system.
77	Stage 1	13	1008	A system is in violation of the chlorine dioxide Maximum Residual Disinfectant Level (MRDL) if any daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one (or more) of the three samples taken in the distribution system exceed the MRDL. [141.65(a) and 141.133(c)(2)(i)]	MRDL	1	RTC is achieved after one month without additional Maximum Residual Disinfectant Level (MRDL) violations.
78	Stage 1	13	1008	Failure to take chlorine dioxide samples in the distribution system the day following an exceedance of the chlorine dioxide Maximum Residual Disinfectant Level (MRDL) at the entrance to the distribution system is an acute MRDL violation. [141.65(a) and 141.133(c)(2)(i)]	MRDL	1	RTC is achieved after three distribution system samples are taken, and reported to the Primacy Agency.
79	GWR	19	3002, 3014, 3028	A system that fails to conduct assessment source water monitoring required by the Primacy Agency according to Primacy Agency-determined requirements for such monitoring. [141.402(b)]	M&R	3	RTC is achieved once assessment source water monitoring is conducted according to the requirements specified in 141.402(b) and by the Primacy Agency.

80	GWR	20	0700	A system that fails to consult with the Primacy Agency within 30 days regarding notice from the Primacy Agency 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	State Discretion	RTC is achieved once the system consults with the Primacy Agency.
81	LT2	20	0800	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)]	OTHER	State Discretion	RTC is achieved when the system responds in writing to EPA.
95	Stage 1	27	0999, 1011, 2920, 1006, 1008, 1009, 2456, 2950	A system that fails to comply with monitoring and reporting (M&R) requirements according to 141.132 and 141.134. [141.132 and 141.134]	M&R	3	RTC is achieved after one monitoring period without additional monitoring and reporting (M&R) violations.
96	Stage 2	27	2456, 2950	A system that fails to report to the Primacy Agency as required by 141.629(a)(1)-(2). [141.629]	M&R	3	RTC is achieved when a system reports to the Primacy Agency with all required data elements.
97	GWR	28	0700	A system that fails to provide the Primacy Agency, at the Primacy Agency's request, any existing information that may enable the Primacy Agency to conduct a sanitary survey. [141.401]	OTHER	State Discretion	RTC is achieved once the system provides the documentation requested by the Primacy Agency.
99	IESWTR	29	0300	For filtered systems serving 10,000 people or more: 1) Failure to have a Comprehensive Performance Evaluation (CPE) conducted by the Primacy Agency 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 Primacy Agency no later than 90 days following the exceedance. [141.175(b)(4)].	M&R	State Discretion	RTC is achieved, for filtered systems serving 10,000 people or more, when the Comprehensive Performance Evaluation (CPE) is conducted at the system and reported to the Primacy Agency (unless the Primacy Agency conducts the CPE).
100	IESWTR	29	0300	A system serving 10,000 people or more, that fails to produce and/or report to Primacy Agency 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	3	RTC is achieved, for filtered systems serving 10,000 people or more, when the system produces a filter profile and reports it to the Primacy Agency. RTC would also be achieved if the system reports the obvious reason for the exceedance.
101	IESWTR, LT1	29	0300	A system that fails to conduct and/or report to the Primacy Agency 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	3 (Failure to conduct); State Discretion (Failure to report)	RTC is achieved when the public water system (PWS) produces a filter profile and reports it to the Primacy Agency.
102	LT1	29	0300	A system serving less than 10,000 people, fails to report to the Primacy Agency 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	3	RTC is achieved when the public water system (PWS) reports to the Primacy Agency the filter number(s), corresponding date(s), turbidity value(s) which exceeded 1.0 NTU and the cause, if known.
103	IESWTR	29	0300	A system serving 10,000 or more people, fails to produce and/or report to Primacy Agency 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	State Discretion	RTC is achieved when the system reports to the Primacy Agency the filter number(s), turbidity value(s), date(s), and that a profile(s) has been produced or the reason(s) for the exceedance.
104	LT1	29	0300	For subpart H systems serving less than 10,000: 1) Failure to have a Comprehensive Performance Evaluation (CPE) conducted by the Primacy Agency 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 Primacy Agency no later than 120 days following the exceedance [141.563(c)].	M&R	3	RTC is achieved when a Comprehensive Performance Evaluation (CPE) has been conducted at the system and submitted to the Primacy Agency or the Primacy Agency and public water system (PWS) are participating in Comprehensive Technical Assistance (CTA).
105	Stage 2	27	2456, 2950	A system that fails to monitor at the approved locations and/or frequencies as required under 141.621 or 141.623.	M&R	3	RTC is achieved after one monitoring period without additional monitoring violations.
106	Stage 2	30	2456, 2950	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] Note: This violation type is no longer applicable and is no longer reportable after 7/1/2010.	M&R	3	RTC is achieved when a system submits its report with appropriate monitoring data.

107	Stage 2	30	0600	Failure to submit or have available 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)] Note: This violation type is no longer applicable and is no longer reportable after 7/1/2010.	M&R	3	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.
108	GWR	31	0700	A system serving greater than 3,300 people that fails to continuously monitor and record 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	3	RTC is achieved once the system begins monitoring and reporting as specified in 141.403(b)(3)(i)(A).
109	GWR	31	0700	A system serving 3,300 or fewer people fails to maintain and record the Primacy Agency determined residual disinfectant concentration and take a daily grab sample during the hour of peak flow, unless the Primacy Agency has specified another time, or fails to take follow-up samples every four hours if any daily grab sample measurement falls below the Primacy Agency-determined residual disinfectant concentration. [141.403(b)(3)(i)(B)]	M&R	3	RTC is achieved once the system begins monitoring and reporting as specified in 141.403(b)(3)(i)(B).
110	GWR	31	0700	A system that uses membrane filtration or Primacy Agency-approved alternative treatment, and fails to monitor or report the membrane filtration process or alternative treatment in accordance with all Primacy Agency-specified monitoring requirements. [141.403(b)(3)(ii) and 141.403(b)(3)(iii)]	M&R	3	RTC is achieved once the membrane filtration process or Primacy-Agency approved alternative treatment is monitored and operated in accordance with all Primacy Agency-specified compliance requirements.
111	GWR	31	0700	A ground water system that places a new ground water source in service, fails to notify the Primacy Agency that it provides 4-log treatment of viruses at or before the first customer, fails to conduct compliance monitoring within 30 days of placing the source in service, and fails to conduct triggered source water monitoring at or before the first customer if the system discontinues 4-log treatment of viruses. [141.403(b)(2)(i)-(iii)]	M&R	3	RTC is achieved once the system notifies the Primacy Agency that it provides 4-log treatment and submits the subsequent compliance monitoring results.
112	SWTR	31	0200	A system that fails to collect and report required 1) fecal or total coliform samples; 2) turbidity samples; 3) contact time (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	3	RTC is achieved when the public water system (PWS) complies with monitoring requirements for the parameter(s) which caused the violation, during the next month of operation.
113	LT2	31	0800	An unfiltered system that has not been approved by the Primacy Agency to certify operation within required parameters for treatment credit and fails to report to the Primacy Agency in accordance with 141.721(f) any microbial toolbox options used to comply with the treatment requirements under 141.712. [141.721(f)]	M&R	State Discretion	RTC is achieved once the system has been approved by the Primacy Agency for the specified treatment credit and reports the microbial toolbox options certification data to the Primacy Agency.
114	LT2	32	0100, 3014, 3015	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	3	RTC is achieved once the system complies with the sampling plan (schedule, location, analytical method, and approved lab usage) and reporting requirements.
115	LT2	32	0100, 3014, 3015	A system that requested grandfathering of some or all data, fails to conduct additional monitoring to replace rejected data on a schedule the Primacy Agency approves. [141.707(h)]	M&R	3	RTC is achieved when the system has conducted additional monitoring to replace rejected data on a Primacy Agency-approved schedule.
116	LT2	32	0800	A system that fails to submit a complete source water monitoring plan, including a sampling schedule and description of sampling location. [141.702(a) and 141.703(f)]	M&R	3	RTC is achieved when the system submits a complete source water monitoring plan.
117	LT2	33	0800	A filtered system that fails to report their initial bin classification to the Primacy Agency 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) and (e)(2)]	TT	2	RTC is achieved once the system has submitted the applicable bin classification.
118	LT2	33	0800	An unfiltered system that fails to calculate and report the arithmetic mean of all Cryptosporidium 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	2	RTC is achieved once the system calculates and reports the value.

119	GWR	34	3002, 3014, 3028	A system that is not approved to provide 4-log treatment viruses before or at the first customer and is notified of a total coliform sample collected under the Revised Total Coliform Rule (RTCR) that is not invalidated by the Primacy Agency, and has failed to conduct triggered source water monitoring. [141.402(a)]	M&R	3	RTC is achieved once the system has conducted triggered source water monitoring and reports the results to the Primacy Agency.
120	GWR	34	3002, 3014, 3028	A system that is notified of a total coliform positive sample collected under the Revised Total Coliform Rule (RTCR) that is not invalidated by the Primacy Agency, 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	3	RTC is achieved once the system conducts triggered source water monitoring of each of the groundwater sources in use at the time of the total coliform positive sample collected under the Revised Total Coliform Rule (RTCR).
121	GWR	34	3002, 3014, 3028	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	3	RTC is achieved once the system collects the 5 additional source water samples and completes the fecal indicator analysis.
122	GWR	34	3002, 3014, 3028	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)]	M&R	3	RTC is achieved once a sample of at least 100 mL is taken for analysis.
123	GWR	34	3002, 3014, 3028	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	3	RTC is achieved when samples are analyzed according to the approved analytical methods.
124	GWR	34	3002, 3014, 3028	A system that fails to collect and analyze a new ground water source sample for the same fecal indicator, according to the approved analytical methods for ground water source samples, within 24 hours of the initial sample being invalidated by the Primacy Agency. [141.402(d)(2)]	M&R	3	RTC is achieved once the sample is retaken and analyzed.
125	GWR	34	3002, 3014, 3028	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 Primacy Agency has approved a sampling location after treatment. [141.402(e)(1)]	M&R	3	RTC is achieved once the system collects the source sample at the Primacy Agency-approved location.
126	GWR	34	3002, 3014, 3028	A system with a new source placed into service that fails to conduct Primacy Agency-required assessment source water monitoring OR fails to begin Primacy Agency-required monitoring before the ground water source is used to provide water to the public. [141.402(f)]	M&R	3	RTC is achieved once the new source conducts assessment source water monitoring and begins Primacy Agency-required monitoring before the source is used to provide water to the public.
127	GWR	34	3002, 3014, 3028	A system with Primacy Agency-approved discontinued 4-log treatment of viruses that fails to conduct triggered source water monitoring. [141.403(c)]	M&R	3	RTC is achieved once the system conducts triggered source water monitoring.
128	GWR	34	3002, 3014, 3028	A system that fails to notify the Primacy Agency that it provides 4-log treatment of viruses before or at the first customer prior to the December 1, 2009, and/or fails to conduct triggered source water monitoring if the system discontinues 4-log treatment of viruses (using inactivation, removal, or a Primacy Agency approved combination of 4-log virus inactivation and removal) before or at the first customer [141.403(b)(1)]	M&R	3	RTC is achieved when the system notifies the Primacy Agency of the 4-log treatment of viruses and begins conducting compliance monitoring and submit the results to the Primacy Agency; or the system conducts triggered source water monitoring and reports the results to the Primacy Agency.
129	GWR	34	3002, 3014, 3028	A wholesale system receives notice of a total coliform positive result under the Revised Total Coliform Rule (RTCR) from a consecutive system it serves and the wholesale system fails to collect and have analyzed a sample from its active ground water source(s) within 24 hours of being notified. [141.402(a)(4)(ii)(A)]	M&R	3	RTC is achieved once the sample is collected from its active ground water source(s) and analyzed for fecal indicators.
130	Stage 2	35	2456, 2950	A system that exceeds the operational evaluation level (OEL) and fails to conduct an operational evaluation, including all of the required elements, and/or fails submit a written report of the evaluation to the Primacy Agency no later than 90 days after being notified of the analytical result that caused the system to exceed the OEL. [141.626]	M&R	3	RTC is achieved once the operational evaluation level (OEL) report is submitted with all required elements.
131	Stage 2	35	0600	A system that fails to submit a Subpart V monitoring plan, or submitted plan is found to be missing required elements. [141.601(c)(1-4), 141.602(b)(1-6), 141.605, and 141.622]	M&R	3	RTC is achieved when a system submits its Subpart V monitoring plan, or resubmitted plan found to be adequate with required elements.

132	SWTR	36	0200	A system that fails 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	3	RTC is achieved when the public water system (PWS) complies with monitoring requirements for the parameter(s) which caused the violation, during the next month of operation.
133	LT2	36	0800	A filtered system that has not been approved by the Primacy Agency to certify operation within required parameters for treatment credit, and fails to report to the Primacy Agency in accordance with 141.721(f) any microbial toolbox options used to comply with the treatment requirements under 141.711. [141.721(f)]	M&R	State Discretion	RTC is achieved once the system has been approved by the Primacy Agency for the specified treatment credit and reports the microbial toolbox options certification data to the Primacy Agency.
134	IESWTR, LT1	37	0300	A system that fails to profile or consult with the Primacy Agency before making a significant change to a disinfection practice if required to develop a disinfection profile. [141.172(c), 141.530, 141.532, 141.536, 141.540, and 141.542]	TT	2	RTC is achieved once the system has consulted with the Primacy Agency regarding the treatment change.
135	LT2	37	0800	A system that fails to submit proposal for treatment change to the Primacy Agency before making a significant disinfection change. [141.708(a)]	TT	2	RTC is achieved once the system submits a treatment change proposal to the Primacy Agency and approval is provided by the Primacy Agency.
136	IESWTR, LT1	38	0300	A system that fails to report that it has exceeded 1 NTU (or maximum set by Primacy Agency) in representative samples by end of next business day for systems serving 10,000 or more people and by the 10th day of the month following the compliance period for systems serving fewer than 10,000 people. [141.175(c) and 141.570(a)(3)]	M&R	State Discretion	RTC is achieved when the system reports the exceedance to the Primacy Agency.
137	IESWTR, LT1	38	0300	A system that fails to collect and/or report the required combined filter effluent turbidity samples, including the compliance with the 95th percent limit and maximum turbidity value. [141.173, 141.550-141.553, 141.175(a), or 141.570(a)]	M&R	3 (Failure to collect); State Discretion (Failure to report)	RTC is achieved once the system collects and reports combined filter effluent turbidity samples.
138	IESWTR, LT1	38	0300	A system that fails to report that it has conducted all individual filter turbidity monitoring to Primacy Agency within 10 days after the end of the month. [141.175(b) or 141.570(b)]	M&R	State Discretion	RTC is achieved when the system reports that it has conducted monitoring.
139	FBRR	39	0500	A system that fails to notify the Primacy Agency 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)] Note: This violation type should no longer be reported after December 8, 2003.	M&R	3	RTC is achieved when the system provides the Primacy Agency notification including a plant schematic and typical recycled flows.
140	FBRR	40	0500	A system that fails to meet treatment technique requirements. [141.76(c)]	TT	2	RTC is achieved when the system returns recycled streams to an approved location, or finalization of the required capital improvements.
141	GWR	41	0700	A system that uses membrane filtration and fails to monitor and operate the membrane filtration in accordance with all Primacy Agency-specified compliance requirements. [141.403(b)(3)(ii)]	TT	2	RTC is achieved once the membrane filtration process is monitored and operated in accordance with all Primacy Agency-specified compliance requirements.
142	GWR	41	0700	A system that uses a Primacy Agency-approved alternative treatment to provide 4-log treatment of viruses and fails to: 1) monitor the alternative treatment in accordance with all Primacy Agency-specified monitoring requirements; AND [141.403(b)(3)(iii)(A)]	TT	2	RTC is achieved once the alternative treatment is monitored and operated in accordance with all Primacy Agency-specified compliance requirements.
143	GWR	41	0700	A system that uses a Primacy Agency-approved alternative treatment to provide 4-log treatment of viruses and fails to: 2) operate the alternative treatment in accordance with all compliance requirements that the Primacy Agency determines to be necessary to achieve at least 4-log treatment of viruses. [141.403(b)(3)(iii)(B)]	TT	2	RTC is achieved once the alternative treatment is monitored and operated in accordance with all Primacy Agency-specified compliance requirements.
144	GWR	41	0700	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	2	RTC is achieved once the system has corrected the deficiency and 4-log treatment of viruses is regained.

145	IESWTR, LT1	41	0300	A system that fails 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	2	RTC is achieved when the system installs and properly operates water treatment processes which reliably achieves requirements.
146	LT2	41	0800	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) and 141.712(c)(1)]	TT	2	RTC is achieved after the public water system (PWS) meets Cryptosporidium inactivation requirements for one month.
147	LT2	41	0800	An unfiltered system using ultraviolet (UV) light that fails to achieve required Cryptosporidium inactivation for at least 95% of the water treated that month. [141.712(b) and 141.712(c)(2)]	TT	2	RTC is achieved after the public water system (PWS) meets Cryptosporidium inactivation requirements for one month.
148	SWTR	41	0200	A surface water or groundwater under the influence of surface water (GWUDI) system that fails to ensure water treatment processes achieve 99.9% (3-log) inactivation and/or removal of Giardia and at least 99.99% (4-log) inactivation and/or removal of viruses as determined by the Primacy Agency. [141.70(a)(1) and (2), and 141.72(b)(1)]	TT	2	RTC is achieved when the public water system (PWS) meets the disinfection treatment levels determined by the Primacy Agency.
149	SWTR	41	0200	A public water system using a surface water source or a ground water source under the direct influence of surface water (GWUDI) that fails to be operated by qualified personnel who meet the requirements specified by the Primacy Agency. [141.70(c)]	TT	2	RTC is achieved when the system is operated by an operator who is determined by the Primacy Agency to be qualified to operate the water system.
151	SWTR	41	0200	A system that fails to maintain the residual disinfectant concentration level (0.2 mg/L) entering the distribution system for more than 4 hours, or more than 5% undetectable residual samples. [141.72(a)(3), 141.72(a)(4), 141.72(b)(2) and 141.72(b)(3)]	TT	2	RTC is achieved once the system has complied with the disinfectant residual requirements entering the distribution system and/or less than 5% of samples are non-detect the next round of monitoring.
152	SWTR	41	0200	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	2	RTC is achieved when the system meets turbidity limit requirements for the next month of monitoring.
153	SWTR	41	0200	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	2	RTC is achieved when the system installs necessary components and reports the changes to the Primacy Agency.
154	SWTR	41	0200	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) and 141.73(c)(2)]	TT	2, 1 [See Subpart Q, Appendix A, Footnote 6]	RTC is achieved when the system meets turbidity limit requirements for the next month of monitoring.
155	LT2	42	0800	A system in any month that fails to achieve treatment credit 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	2	RTC is achieved once the system maintains the level of treatment necessary for bin classification.
156	LT2	42	0800	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	2	RTC is achieved when the system meets its applicable treatment requirements.
157	LT2	42	0800	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 Primacy Agency. [141.713(d)]	TT	2	RTC is achieved when the system meets its applicable treatment requirements.
158	LT2	42	0800	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	2	RTC is achieved when the system meets its Cryptosporidium inactivation requirements.
159	LT2	42	0800	Following completion of second round of monitoring, an unfiltered system whose mean Cryptosporidium level has changed and the system fails to meet the required level of Cryptosporidium treatment specified at 141.712 by the schedule specified by the Primacy Agency. [141.713(e)]	TT	2	RTC is achieved when the system meets its applicable treatment requirements.
160	SWTR	42	0200	An unfiltered system that fails to meet any one of the criteria in 141.71(a) and (b) and/or which the Primacy Agency has determined that filtration is required and the system fails to install filtration by the applicable deadline. [141.71(c)(1)]	TT	2, 1 [See Subpart Q, Appendix A, Footnote 6]	RTC is achieved once the system has installed filtration or abandoned the unfiltered source.

161	SWTR	42	0200	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 the system 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	2, 1 [See Subpart Q, Appendix A, Footnote 6]	RTC is achieved once the system has installed filtration or abandoned the unfiltered source.
162	GWR	42	0700	Failure to provide treatment that reliably achieves at least 4-log treatment of viruses before or at the first customer for the ground water source in response to a fecal indicator positive source water sample, including failure to comply with or complete a corrective action plan in accordance with any applicable primacy agency specified schedule.	TT	2	RTC is achieved once the system reliably achieves at least 4-log treatment of viruses before or at the first customer for the ground water source has installed treatment has been installed or the system has completed or is complying with the corrective action plan in accordance with any applicable primacy agency specified schedule. the Primacy Agency-specified schedule.
163	IESWTR, LT1	43	0300	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	2, 1 [See Subpart Q, Appendix A, Footnote 6]	RTC is achieved when the system meets the turbidity requirements for the next month of monitoring.
164	IESWTR, LT1	43	0300	A system using alternative technology filtration that exceeds the standard set by the Primacy Agency (not to exceed 5 NTU) in representative samples of the system's filtered water. [141.173(b), 141.551(b)(2), 141.13(a), and 141.13(b)]	TT	2, 1 [See Subpart Q, Appendix A, Footnote 6]	RTC is achieved when the system meets the turbidity requirements for the next month of monitoring.
165	IESWTR, LT1	44	0300	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, and 141.551(a)(1)]	TT	2, 1 [See Subpart Q, Appendix A]	RTC is achieved when the system meets turbidity limit requirements (must be less than or equal to 0.3 NTU in at least 95% of the measurements taken each month) for the month.
166	IESWTR, LT1	44	0300	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 Primacy Agency (not to exceed 1 NTU) in at least 95% of the measurements taken each month. [141.173(b) and 141.551(a)(2)]	TT	2, 1 [See Subpart Q, Appendix A]	RTC is achieved when the system meets the applicable turbidity limit in 95% of the measurements for a month.
167	LT2	45	0800	For a sanitary survey performed by EPA, a system that fails to meet EPA's approved corrective action schedule, or the schedule contained in public water system (PWS) response to EPA. [141.723(d)]	TT	State Discretion	RTC is achieved when the system has achieved all corrective actions in schedule or place on a Primacy Agency-approved schedule to correct actions.
168	GWR	45	0700	A system with a significant deficiency that after 120 days, or earlier if directed by the Primacy Agency, of receiving written notification of the significant deficiency from the Primacy Agency fails to: 1) complete the corrective action in accordance with any applicable Primacy Agency plan review processes or other Primacy Agency guidance and direction; or 2) be in compliance with a Primacy Agency-approved corrective action plan and schedule. [141.404(a)(1)-(2)]	TT	2	RTC is achieved once the system has completed the corrective action or the system is in compliance with a Primacy Agency-approved corrective action plan and schedule.
170	Stage 1	46	2920	A system that is required to achieve total organic carbon (TOC) removals under 141.135(a)(1) that fails to maintain a running annual average for TOC removal (precursor achieved removal ratio, or PARR) greater than 1.00 as calculated under 141.135(c)(v), and is not employing an alternate method of TOC removal under 141.135(b)(4). [141.133(d)]	TT	2	RTC is achieved once the system meets total organic carbon removal requirements for the next monitoring period and reports to the Primacy Agency as required.
171	IESWTR, LT1	47	0300	A system that begins construction of uncovered finished water storage facilities on or after February 16, 1999. [141.170(c)]	TT	2	RTC is achieved when the system ceases construction of a new uncovered reservoir.
172	IESWTR, LT1	47	0300	A system that fails to cover any uncovered finished water reservoir that began construction on or after March 15, 2002 as described in 141.510 and 141.511. [141.503(a)]	TT	2	RTC is achieved when the system ceases construction of a new uncovered reservoir.
173	LT2	47	0800	A system that uses an uncovered finished water storage facility that fails to notify the Primacy Agency of the use of each facility by the April 1, 2008 deadline. [141.714(b)]	TT	2	RTC is achieved when the system notifies the Primacy Agency of the use of each uncovered finished water storage facility.

174	LT2	47	0800	A system that fails to cover any uncovered finished water facility or fails to treat the discharge from an uncovered finished water facility to achieve 4- log virus, 3-log Giardia and 2-log Cryptosporidium treatment by April 1, 2009 or a system that fails to be in compliance with a Primacy Agency-approved schedule to meet one of those requirements by April 1, 2009 using a protocol approved by the Primacy Agency. 141.714 (c)(1) and 141.714(c)(2).	TT	2	RTC is achieved when the system notifies the Primacy Agency that uncovered finished water storage facility is covered or when the required treatment is provided.
175	GWR	48	0700	A system with a fecal indicator positive sample that has not been invalidated by the Primacy Agency, and after 120 days, or earlier if directed by the Primacy Agency, of receiving notice of the fecal indicator-positive sample has failed to: 1) complete the corrective action in accordance with any applicable Primacy Agency plan review processes or other Primacy Agency guidance and direction; or 2) be in compliance with a Primacy Agency approved corrective action plan and schedule. [141.404(b)(1) and (2)]	TT	2	RTC is achieved once the system has completed its corrective action or the system is in compliance with a Primacy Agency-approved corrective action plan and schedule.
177	LCR	51	5000	A system that fails to collect and report required number of initial lead and copper tap samples using appropriate sampling procedures and analysis methods. [141.86(a) - (d), 141.89(a), and 140.90(a)]	M&R	3	RTC is achieved when the system collects and reports the required samples for the 6-month period using appropriate sampling procedures and analysis methods.
179	LCR	52	5000	For situations where Primacy Agencies that have chosen to calculate the 90th percentile for the system, failure of the water system to ensure all sample results are provided on time for the Primacy Agency to perform 90th percentile calculation. [141.90(h)]	M&R	State Discretion	RTC is achieved when the Primacy Agency receives all of the sampling results to perform the 90th percentile calculation as outlined in 141.90(h) with all required monitoring information is submitted in accordance with 141.90(a).
181	LCR	52	5000	A system that fails to submit written documentation to the Primacy Agency prior to the addition of a new source or any long-term change in water treatment, describing the change or addition. This applies to a water system deemed to have optimized corrosion control under 141.81(b)(3), a water system subject to reduced monitoring pursuant to 141.86(d)(4), or a water system subject to a monitoring waiver pursuant to 141.86(g). [141.90(a)(3)]	Other	State Discretion	RTC is achieved when the system notifies the Primacy Agency of the long-term change in treatment, and/or the addition of a new source.
182	LCR	52	5000	A system that fails to collect and report the required number of lead and copper tap samples using appropriate sampling procedures and analysis methods, or to replace invalidated samples if needed to meet minimum sampling requirements. [141.86(a)-(d), 141.86(f)(4), 141.89(a), and 140.90(a)]	M&R	3	RTC is achieved when the system collects and reports the required number of samples using appropriate sampling procedures and analysis methods during two consecutive 6-month rounds (for systems on 6-month monitoring) OR during a subsequent round conducted in Primacy Agency-designated monitoring period (for systems on reduced monitoring or that have a monitoring waiver).
183	LCR	53	5000	A system that fails to collect and report the required number of water quality parameter samples using appropriate sampling procedures and analysis methods. [141.87(a)-(e), 141.89(a), and 141.90(a)]	M&R	3	RTC is achieved if in the subsequent monitoring period or Primacy Agency-designated period the system collects and reports the required number of water quality parameter samples using appropriate sampling procedures and analysis methods.
185	LCR	53	5000	A groundwater system that fails to provide information on selected sites prior to monitoring and/or fails to collect water quality parameters at the selected representative entry point locations. [141.87(c)(1)(iii) and (c)(3) (Note: (c)(3) applies to GW systems only)]	M&R	3	RTC is achieved if in the subsequent monitoring period or Primacy Agency-designated period, the system provides information on selected entry points and/or collects water quality parameters at these representative entry point locations.
186	LCR	53	5000	A new large system (i.e., a small or medium system that becomes a large system) that fails to collect and report the required number of water quality parameters samples using appropriate sampling procedures and analysis methods. [141.87(a)-(e), 141.89(a) and 141.90(a)]	M&R	3	RTC is achieved if in the subsequent monitoring period or Primacy Agency-designated period the system collects and reports the required number of water quality parameter samples using correct sampling procedures and conducts analysis using the correct procedures.
187	LCR	56	5000	A system required to conduct source water sampling and the Primacy Agency has not waived source water monitoring under 141.88(b)(1), that fails to collect and report the required number of source water samples using appropriate sampling procedures and analysis methods. [141.88(a)(1) - (e)(3), 141.89(a) and 141.90(b)(1)-(2)]	M&R	3	RTC is achieved when the system collects and reports the required samples using appropriate sampling procedures and analysis methods. Or for source water monitoring, after installation of water treatment, RTC is achieved when the system collects and reports the results for two consecutive 6-month monitoring periods [141.88(c).

189	LCR	57	5000	A system that fails to submit an optimal corrosion control treatment (OCCT) recommendation on time [141.81(e), 141.82(a) and 141.90(c)(2)]; submit study that meets performance requirements and deadline [141.81(e), 141.82(c) and 141.90(c)(3)]; or provide additional information needed by the Primacy Agency to make an OCCT determination in accordance with 141.82(d)(2).	TT	2	RTC is achieved when the system submits its optimal corrosion control treatment (OCCT) recommendation or study and provides any additional information needed by the Primacy Agency to make an OCCT determination. Systems without previously installed corrosion control treatment (CCT) that serve fewer than 50,000, may also achieve RTC when the system is below both action levels (ALs) during two consecutive six-month monitoring periods after incurring this violation. See Appendix B of the LCRM State Implementation Guidance for recommended reporting procedures under this RTC scenario.
190	LCR	57	5000	A system that fails to submit a source water treatment (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) and (b)(1), and 141.90(d)(1)]	TT	2	RTC is achieved when the system submits a source water treatment (SOWT) recommendation. [141.83(a)(1) and (b)(1) & 141.90(d)(1)]
191	LCR	58	5000	A system required to complete corrosion control treatment steps [141.81(a)] that fails to properly install and operate Primacy Agency-designated treatment [141.82(e)] by the required deadline [(141.81(e)(5)].	TT	2	RTC is achieved once the system has the Primacy Agency-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 optimal corrosion control treatment (OCCT) already exists in accordance with §141.81(b)(1)-(3) and 141.90(c)(1).
192	LCR	58	5000	A system required to install source water treatment (SOWT) that fails to properly install and operate the Primacy Agency-determined SOWT by the required deadline. [141.83(a)(2) and (a)(3), (b)(3) and (b)(5)]	TT	2	RTC is achieved once the system installs treatment, and submits proof of proper installation and operation in accordance with 141.90(d)(2).
195	LCR	59	5000	A system that fails to maintain optimal water quality parameters (OWQP) minimum or ranges. A water system is out of compliance with these requirements for a six-month period if it has excursions for any Primacy Agency-specified parameter on more than nine days during the period in accordance with 141.82(g).	TT	2	RTC is achieved when the system completes all optimal water quality parameters (OWQP) monitoring at all locations for the entire next monitoring period (e.g., quarterly, 6-month, annual, etc.) and meets all ranges and/or limits.
196	LCR	63	1022, 1030	A system for which the Primacy Agency has designated maximum permissible source water levels (MPLs) is out of compliance if the level of lead or copper at any sampling point is greater than these MPLs. [141.83(b)(4) & (5)]	TT	2	RTC is achieved when the system collects samples from all locations during a subsequent monitoring period or Primacy Agency-designated period and meets the designated maximum permissible levels (MPLs) in accordance with 141.83(b)(5). Alternatively, RTC may be achieved when the system meets the action level (AL) for the specific contaminant in tap water samples during the entire source water monitoring period applicable to the system in accordance with 141.83(d)(2).
197	LCR	64	5000	A system which exceeds the lead action level (AL) after implementation of applicable corrosion control and/or source water treatment requirements (whichever sampling occurs later) and fails to replace the required number of lead service lines (LSLs) [141.84(a) – (c)] and/or meet partial lead service line replacement (LSLR) requirements. [141.84(d)]	TT	2	RTC is achieved when the system corrects the reason for non-compliance by meeting the set replacement rate, fulfilling its partial lead service line replacement (LSLR) requirements, and/or reporting all required information to the Primacy Agency required in 141.90(e). Alternatively, RTC may be achieved when the system no longer exceeds the lead action level (AL) for two consecutive monitoring periods (even if the system has not replaced 7% of its lead service lines (LSLs) that year) in accordance with 141.84(f). See Appendix B of the LCRM State Implementation Guidance for recommended reporting procedures under this RTC scenario.
198	LCR	65	5000	A system that exceeds the lead action level that fails to meet timing, content, and/or delivery requirements for public education (PE). [141.85(a) and (b)].	TT	2	RTC is achieved when the system delivers one round of public education (PE) materials or corrects the deficiencies which resulted in the violation and completes reporting requirements to the Primacy Agency in 141.90(f)(1).

200	LCR	66	5000	A system that fails to meet timing, content, delivery and/or Primacy Agency-reporting requirements for the consumer notice of individual tap results. [141.85(d) and 141.90(f)(3)]	M&R	State Discretion	RTC is achieved when the system provides a sample copy of the consumer notification of tap results and a certification the notification has been distributed in manner consistent with the requirements in 141.85(d) the content and delivery requirements for notice of individual tap results and/or reporting all required information to the Primacy Agency. [141.90(d)(3)]
201	CCR	71	7000	Failure to produce and deliver a copy of the Consumer Confidence Report (CCR) to the public and appropriate regulatory agency(-ies) by July 1. [141.151(a), 141.152(b), 141.155(c), and 141.155(d)]	OTHER	State Discretion	RTC is achieved once the system produces, with the correct information that is consistent with monitoring data previously submitted to EPA and/or the Primacy Agency, and delivers the missed consumer confidence report to the customers, the Primacy Agency, and other agencies identified by the Primacy Agency, along with required certification, fulfilling the Rule's content and delivery requirements.
202	CCR	71	7000	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	State Discretion	RTC is achieved once the system produces, with the correct information that is consistent with monitoring data previously submitted to the Primacy Agency, and delivers the missed consumer confidence report to the public and to the appropriate regulatory agency(-ies), along with required certification, fulfilling the Rule's content and delivery requirements.
204	CCR	71	7000	A new Community water system (CWS) that fails to produce and deliver a consumer confidence report by July 1 of the year after its first full calendar year in operation. [141.152(c)]	OTHER	State Discretion	RTC is achieved once the system produces and delivers the missed consumer confidence report to the public fulfilling the Rule's content and delivery requirements.
205	CCR	71	7000	A community water system (CWS) that sells water to another CWS and fails to deliver consumer confidence report (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	State Discretion	RTC is achieved once the system delivers the contents of the consumer confidence report (CCR) currently due to the buyer.
206	CCR	72	7000	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	State Discretion	RTC is achieved when the system includes an Arsenic informational statement in the consumer confidence report (CCR).
208	CCR	72	7000	A system that fails to provide adequate information about a variance or exemption in the consumer confidence report (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	State Discretion	RTC is achieved when the system provides adequate information about a variance or exemption in the consumer confidence report (CCR) for those systems operating under a variance or an exemption.
209	CCR	72	7000	Delivery of a consumer confidence report that is significantly deficient in content to the extent that the consumer confidence report does not meet the requirements of the SDWA and the Federal regulations. [141.153 and 141.154]	OTHER	State Discretion	RTC is achieved once the system corrects all significantly deficient content in the consumer confidence report, as directed by the Primacy Agency and/or EPA, and delivers it to the public and Primacy Agency.
211	CCR	72	7000	A system that fails to provide the consumer confidence report to any other agency or clearinghouse identified by the Primacy Agency. [141.155(d)]	OTHER	State Discretion	RTC is achieved once the system provides the consumer confidence report to the specific party or parties identified by the Primacy Agency.
212	CCR	72	7000	A system serving 100,000 or more persons that fails to post its current consumer confidence report to a publicly-accessible site on the Internet. [141.155(f)]	OTHER	State Discretion	RTC is achieved once the system has posted the missed consumer confidence report on a publicly-accessible site on the Internet.
213	CCR	72	7000	A system that fails to inform customers of any uncorrected significant deficiency or any fecal indicator-positive ground water source sample in the next consumer confidence report. [141.153(h)(6) and 141.403(a)(7)]	OTHER	State Discretion	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.
216	GWR	73	0700	A consecutive system that has a total coliform-positive sample collected under the Revised Total Coliform Rule (RTCR) and failed to notify their wholesale system(s), within 24 hours of being notified of the total coliform-positive sample or a wholesale system that is notified of a total coliform-positive sample and collects and analyzes a sample for fecal indicator and if that sample is positive for fecal indicator and fails to notify all consecutive system(s). [141.402(a)(4)(i) and 141.402(a)(4)(ii)(B)]	OTHER	State Discretion	RTC is achieved once the consecutive system notifies the wholesale system(s) OR once the wholesale system notifies the consecutive system(s).

217	PN	75	7500	The system that fails to issue proper public notification in the form, manner, and frequency required (related to NPDWRs). [141.203, 141.204(a)-(c) Appendix A to Subpart Q of Part 141]	OTHER	State Discretion	RTC is achieved when the system issues proper public notification in the form, manner, and frequency required.
220	PN	75	7500	A wholesale system required to provide public notification fails to provide the notice to its consecutive system(s). [141.201(c)(1)]	OTHER	State Discretion	RTC is achieved once the wholesale system provides the public notice to its consecutive system(s).
221	PN	75	7500	A system required to provide public notification that fails to provide a copy of the certification and notice to the Primacy Agency. [141.31(d) and 141.201(c)(3)]	OTHER	State Discretion	RTC is achieved once the system provides a copy of the notice with certification form to the Primacy Agency.
222	PN	75	7500	A system required to monitor under 141.701 that fails to notify the 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	State Discretion	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.
223	PN	75	7500	A system required to determine bin classification under 141.710 or to determine mean Cryptosporidium level under 141.712 and fails to notify the 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	State Discretion	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.
224	PN	75	7500	A system required to provide Tier 1 public notification that fails to provide a notice in a form and manner reasonably calculated to reach all persons served within 24 hours of learning of the violation. [141.202(b)(1) and 141.202(c)]	OTHER	State Discretion	RTC is achieved once the system distributes a public notice in a form and manner reasonably calculated to reach all persons served.
225	PN	75	7500	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	State Discretion	RTC is achieved once the system initiates consultation with the Primacy Agency.
226	PN	75	7500	A system required to provide Tier 2 public notification that fails to provide a notice in form and manner reasonably calculated to reach all persons served within 30 days after the system learns of the violation. [141.203(b)(1) and 141.203(c)]	OTHER	State Discretion	RTC is achieved once the system provides the public notice in a form and manner reasonably calculated to reach all persons served.
227	PN	75	7500	A system required to provide Tier 2 public notification that fails to repeat the notice every three months while the violation or situation persists. [141.203(b)(2)]	OTHER	State Discretion	RTC is achieved once the system provides the Tier 2 public notice and repeats the notice every three months while the violation/situation persists.
228	PN	75	7500	A system required to provide Tier 3 public notification that fails providing a notice in form and manner reasonably calculated to reach all persons served to do so within one year of learning about the violation. [141.204(b)(1) and 141.204(c)]	OTHER	State Discretion	RTC is achieved once the system provides the public notice in a form and manner reasonably calculated to reach all persons served.
229	PN	75	7500	A system that fails to provide public notification under 141.203 for Ground Water Rule treatment technique violations. [141.404(d)]	OTHER	State Discretion	RTC is achieved once the system provides the public notice in a form and manner reasonably calculated to reach all persons served.
230	PN	75	7500	A system that fails to provide public notification under 141.204 for Ground Water Rule monitoring violations. [141.402(h) and 141.403(d)]	OTHER	State Discretion	RTC is achieved once the system provides the public notice in a form and manner reasonably calculated to reach all persons served.
231	PN	75	7500	A system required to provide Tier 1 public notification that fails to notify the public after failing to collect a repeat or confirmation sample(s) within 24 hours. [141.23(f)(2)]	OTHER	State Discretion	RTC is achieved once the public notification is distributed.
232	PN	76	7500	A system that failed to submit certification and copy of each type of notice distributed, published, posted, and made available within 10 days of completing the public notice (PN) requirement to the Primacy Agency. [141.31(d)]	OTHER	State Discretion	RTC is achieved when the system submits certification to the Primacy Agency that it has fully complied with the public notification requirements.
233	PN	76	7500	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	State Discretion	RTC is achieved once the system distributes the Tier 1 public notice in a form and manner reasonably calculated to reach all persons served.
234	PN	76	7500	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	State Discretion	RTC is achieved once the system fully complies with additional public notification requirements established by the Primacy Agency.

235	PN	76	7500	A system that fails to include all required elements of a public notice [141.205(a)] including standard language that must be included. [141.205(d)]	OTHER	State Discretion	RTC is achieved once the system provides the public notice that includes all required elements and standard language of a public notice.
236	PN	76	7500	A community water system that fails 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	State Discretion	RTC is achieved once the system provides the copy of the most recent public notice to the new billing units/customers.
237	PN	76	7500	A non-community water system that fails 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	State Discretion	RTC is achieved once the system has re-posted the public notice in conspicuous locations for the duration of a compliance period.
238	PN	76	7500	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	State Discretion	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.
239	PN	76	7500	A community water system (CWS) that fails to comply with the requirements for issuing special notice for exceedance of secondary maximum contaminant level (SMCL) for fluoride. [141.208]	OTHER	State Discretion	RTC is achieved once the community water system (CWS) provides the special notice to the public in a form and manner consistent with the requirements of a Tier 3 public notice.
240	PN	76	7500	A non-community water system (NCWS) granted permission to exceed the maximum contaminant level (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	State Discretion	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).
242	PN	76	7500	A system that failed to issue proper public notification in the form, manner, and frequency required, including notice for variances and exemptions, special notices, or if the Primacy Agency requires it. (NOT related to NPDWRs). [141.203, 141.204(a)-(c) Appendix A to Subpart Q of Part 141]	OTHER	State Discretion	RTC is achieved when the system issues proper public notification in the form, manner, and frequency required.
243	PN	76	7500	A system that fails 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), 141.201, 141.204(a) and (b), 141.205(b), 141.206 and Appendix A to Subpart Q of Part 141]	OTHER	State Discretion	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.
245	PN	76	7500	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	State Discretion	RTC is achieved once system distributes the public notification.
246	RTCR	1A	8000	A system that has an <i>E.coli</i> -positive (EC+) routine sample and is approved for dual purpose Groundwater Rule (GWR)/Revised Total Coliform Rule (RTCR) sampling, fails to have an associated sample taken at the groundwater (GW) source that is designated as the dual purpose GWR triggered source/RTCR repeat sample site. NOTE: This will result in one maximum contaminant level (MCL) violation issued to the RTCR and one monitoring and reporting (M/R) violation issued to the GWR. See GWR RTC sections for guidance on the GWR M/R violation. [141.860(a)(3) and 141.402(a)(2)]	MCL	1	RTC is achieved in the month when the system completes a round of monitoring is done using approved analytical methods/laboratories and includes ALL required samples (i.e., 1) all required routine samples, 2) repeat sampling conducted as required and approved, 3) any additional, expedited, corrective action monitoring required by the Primacy Agency) collected in accordance with the Primacy Agency-approved sample siting plan and there are no Revised Total Coliform Rule (RTCR) monitoring violations or additional <i>E. coli</i> maximum contaminant level (MCL) violations.
247	RTCR	1A	8000	A system that has an <i>E.coli</i> -positive (EC+) routine sample and is approved for dual purpose Groundwater Rule (GWR)/Revised Total Coliform Rule (RTCR) sampling, fails to have the designated dual purpose sample tested for <i>E. coli</i> by the laboratory. NOTE: This will result in one maximum contaminant level (MCL) violation issued to the RTCR and one monitoring and reporting (M/R) violation issued to the GWR. See GWR RTC sections for guidance on the GWR M/R violation. [141.860(a)(4) and 141.402(a)(2)]	MCL	1	RTC is achieved in the month when the system completes a round of monitoring is done using approved analytical methods/laboratories and includes ALL required samples (i.e., 1) all required routine samples, 2) repeat sampling conducted as required and approved, 3) any additional, expedited, corrective action monitoring required by the Primacy Agency) collected in accordance with the Primacy Agency-approved sample siting plan and there are no Revised Total Coliform Rule (RTCR) monitoring violations or additional <i>E. coli</i> maximum contaminant level (MCL) violations.

248	RTCR	1A	8000	For each routine <i>E.coli</i> -positive (EC+) sample, when a system with a single service connection is required and approved by the Primacy Agency fails to: 1) take three repeat samples within a three day period, or 2) fails to take a total volume repeat sample of at least 300 mL. NOTE: This will result in one maximum contaminant level (MCL) violation issued to the Revised Total Coliform Rule (RTCR) and one monitoring and reporting (M/R) violation issued to the groundwater rule (GWR). See GWR RTC sections for guidance on the GWR M/R violation. [141.858(a)(2)]	MCL	1	RTC is achieved in the month when the system completes round of monitoring is done using approved analytical methods/laboratories and includes ALL required samples (i.e., 1) all required routine samples, 2) repeat sampling conducted as required and approved, 3) any additional, expedited, corrective action monitoring required by the Primacy Agency) collected in accordance with the Primacy Agency-approved sample siting plan and there are no RTCR monitoring violations or additional <i>E. coli</i> maximum contaminant level (MCL) violations.
249	RTCR	1A	8000	A system that has an routine <i>E.coli</i> -positive (EC+) sample and fails to collect all the required repeat samples. [141.860(a)(3)]	MCL	1	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) repeat sampling conducted as required and approved, 3) any additional, expedited, corrective action monitoring required by the Primacy Agency) collected in accordance with the Primacy Agency-approved sample siting plan and there are no RTCR monitoring violations or additional <i>E. coli</i> maximum contaminant level (MCL) violations.
250	RTCR	1A	8000	A system that has a routine total coliform-positive sample with an associated repeat <i>E.coli</i> -positive (EC+) sample taken at the groundwater (GW) source that is designated dual purpose as an Revised Total Coliform Rule (RTCR) repeat and Groundwater Rule (GWR) triggered source water sample when the system is eligible and approved for dual purpose GWR/RTCR sampling. [141.853a(5)(ii)(A), 141.860(a)(1), and 141.402(a)(2)(iii)-(iv)]	MCL	1	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) repeat sampling conducted as required and approved, 3) any additional, expedited, corrective action monitoring required by the Primacy Agency) collected in accordance with the Primacy Agency-approved sample siting plan and there are no RTCR monitoring violations or additional <i>E. coli</i> maximum contaminant level (MCL) violations.
251	RTCR	1A	8000	A system that has a routine total coliform-positive (TC+) sample with an associated <i>E.coli</i> -positive (EC+) repeat sample from the distribution system. [141.860(a)(1) and 141.853(a)(5)(ii)(c)]	MCL	1	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) repeat sampling conducted as required and approved, 3) any additional, expedited, corrective action monitoring required by the Primacy Agency) collected in accordance with the Primacy Agency-approved sample siting plan and there are no RTCR monitoring violations or additional <i>E. coli</i> maximum contaminant level (MCL) violations.
252	RTCR	1A	8000	A system that has an <i>E.coli</i> -positive (EC+) routine sample with an associated total coliform-positive (TC+) repeat sample. [141.860(a)(2)]	MCL	1	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) repeat sampling conducted as required and approved, 3) any additional, expedited, corrective action monitoring required by the Primacy Agency) collected in accordance with the Primacy Agency-approved sample siting plan and there are no RTCR monitoring violations or additional <i>E. coli</i> maximum contaminant level (MCL) violations.
253	RTCR	1A	8000	A system that has a total coliform-positive (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)]	MCL	1	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) repeat sampling conducted as required and approved, 3) any additional, expedited, corrective action monitoring required by the Primacy Agency) collected in accordance with the Primacy Agency-approved sample siting plan and there are no RTCR monitoring violations or additional <i>E. coli</i> maximum contaminant level (MCL) violations.

254	RTCR	2A	8000	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 acceptable to the Primacy Agency within the agreed-upon schedule, not to exceed 30 days, after the initial assessment has been deemed insufficient by the Primacy Agency and the Primacy Agency and system have consulted with each other. [141.859(a)(1)(i)-(iii), 141.859(b)(3)(i)-(iii), and 141.860(b)(1)]	TT	2	RTC is achieved when the system completes a Level 1 assessment according to Primacy Agency requirements, (including 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. Completion of a 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.
255	RTCR	2A	8000	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) and 141.860(b)(1)]	TT	2	RTC is achieved when the system completes a Level 1 assessment according to Primacy Agency requirements, (including 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. Completion of a 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.
256	RTCR	2A	8000	A system that triggered a Level 1 assessment fails to ensure the assessment is consistent with any Primacy Agency requirements. [141.859(b)(2)-(3) and 141.860(b)(1)]	TT	2	RTC is achieved when the system completes a Level 1 assessment according to Primacy Agency requirements, (including 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. Completion of a 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.
257	RTCR	2A	8000	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). [141.860(b)(1)]	TT	2	RTC is achieved when the system completes a Level 1 assessment according to Primacy Agency requirements, (including 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. Completion of a 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.
258	RTCR	2A	8000	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), 141.859(c), and 141.860(b)(1)]	TT	2	RTC is achieved when the system completes a Level 1 assessment according to Primacy Agency requirements, (including 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. Completion of a 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.
259	RTCR	2B	8000	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 acceptable to the Primacy Agency within the agreed-upon schedule, not to exceed 30 days, after the initial assessment has been deemed insufficient by the Primacy Agency and the Primacy Agency and system have consulted with each other. [141.859(a)(2)(i) - (iii) and 141.860(b)(1)]	TT	2	RTC is achieved when the system completes a Level 2 assessment according to Primacy Agency requirements (including 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.
260	RTCR	2B	8000	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. [141.859(b) and 141.860(b)(1)]	TT	2	RTC is achieved when the system completes a Level 2 assessment according to Primacy Agency 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.

261	RTCR	2B	8000	A system that triggers a Level 2 assessment, fails to ensure that the assessor evaluates the minimum elements outlined in 141.859(b)(2). [141.860(b)(1)]	TT	2	RTC is achieved when the system completes a Level 2 assessment according to Primacy Agency 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.
262	RTCR	2B	8000	A system that triggers a Level 2 assessment, fails to ensure the Level 2 assessment is consistent with any Primacy Agency directives. [141.859(b)(2), 141.859(b)(4), and 141.860(b)(1)]	TT	2	RTC is achieved when the system completes a Level 2 assessment according to Primacy Agency 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.
263	RTCR	2B	8000	A system that triggers a Level 2 assessment, fails to describe in the assessment form the detected sanitary defect(s), corrective action(s) completed, and/or a timetable for any corrective actions not already completed in the event that a sanitary defect is identified. [141.859(b)(4)(i), 141.859(c), and 141.860(b)(1)]	TT	2	RTC is achieved when the system completes a Level 2 assessment according to Primacy Agency 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.
264	RTCR	2B	8000	A system that triggers a Level 2 assessment, fails to ensure that a Level 2 assessment is conducted by the Primacy Agency or a party approved by the Primacy Agency. [141.859(b)(1), 141.859(b)(4)(i), and 141.860(b)(1)]	TT	2	RTC is achieved when the system completes a Level 2 assessment according to Primacy Agency 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.
265	RTCR	2C	8000	A system that triggers a Level 1 assessment, fails to correct the sanitary defect(s) found through a Level 1 assessment and/or fails to complete a corrective action specified in the assessment form within 30 days from when the system learns of the trigger or according to a schedule approved by the Primacy Agency. [141.859(b)(3)(i) and 141.860(b)(1)]	TT	2	RTC is achieved when the system completes all required corrective action(s), including any expedited or additional actions required by the Primacy Agency. This is an open-ended violation until each corrective action associated with this violation ID is corrected.
266	RTCR	2C	8000	A system that triggers a Level 2 assessment, fails to correct the sanitary defect(s) found through a Level 2 assessment and/or fails to complete a corrective action specified in the assessment form within 30 days from when system learns of the trigger or according to a schedule approved by the Primacy Agency. [141.860(b)(1), 141.859(a)(2)(i), 141.859(a)(2)(ii), and 141.859(a)(2)(iii)]	TT	2	RTC is achieved when the system completes all required corrective action(s), including any expedited or additional actions required by the Primacy Agency. This is an open-ended violation until each corrective action associated with this violation ID is corrected.
267	RTCR	2C	8000	A system with an <i>E. coli</i> maximum contaminant level (MCL) violation, fails to comply with any expedited actions or additional actions required by the Primacy Agency. [141.859(b)(4) and 141.860(b)(1)]	TT	2	RTC is achieved when the system completes all required corrective action(s), including any expedited or additional actions required by the Primacy Agency. This is an open-ended violation until each corrective action associated with this violation ID is corrected.

268	RTCR	2D	8000	A seasonal water system that is not operated on a year-round basis and starts up and shuts down, fails to complete Primacy Agency-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), and 141.860(b)(2)]	TT	2	RTC is achieved when the system completes the Primacy Agency-approved start-up procedure(s) and/or completes any associated Primacy Agency directives or corrective actions related to start-up procedures and submits the start-up procedures certification. This is an open-ended violation until the startup procedure, and any associated Primacy Agency directives or corrective actions related to start-up procedures are conducted. Completion of seasonal system start-up and/or any associated Primacy Agency directives will return to compliance all previous violations with this violation code.
269	RTCR	3A	8000	A system fails to collect routine or additional 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)-(5), 141.854(j), 141.855(f), and 141.860(c)]	Monitoring	3	RTC is achieved 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 Primacy Agency) in accordance with the Primacy Agency approved sample siting plan and the system has no monitoring violations.
270	RTCR	3A	8000	A system that takes more than the minimum number of required routine samples in accordance with the existing sample siting plan and representative of water throughout the distribution, fails to include the results in determining the exceedance of the coliform treatment technique trigger. [141.853(a)(4) and 141.859(a)(1)(i) and (ii)]	Monitoring	3	If the system 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 Primacy Agency) in accordance with the Primacy Agency approved sample siting plan and the system has no monitoring violations. If the system monitors less than monthly, then 1) RTC is achieved at the end of the monitoring period when the system monitors (including: a) all required routine samples, b) all required repeat samples, c) any additional, expedited, corrective action monitoring required by the Primacy Agency) in accordance to the Primacy Agency 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 system routine monitoring frequency is changed to monthly and the PWS has no monitoring violations.
271	RTCR	3A	8000	A system that fails to conduct the required routine monitoring, as specified in the sample siting plan per the general monitoring requirements for all public water systems (PWS) [141.853(a), and the routine monitoring requirements for PWSs serving more than 1000 people [141.857.(b)] when the PWS meets any of the criteria which requires monthly monitoring.	Monitoring	3	If the system 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 Primacy Agency) in accordance with the Primacy Agency approved sample siting plan and the system has no monitoring violations.
272	RTCR	3A	8000	A system using groundwater (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 141.855(b) and according to the approved sample siting plan as listed in 141.853(a) and 141.854(c)(2).	Monitoring	3	If the system monitors less than monthly, then 1) RTC is achieved at the end of the monitoring period when the system monitors (including: a) all required routine samples, b) all required repeat samples, c) any additional, expedited, corrective action monitoring required by the Primacy Agency) in accordance to the Primacy Agency 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 routine monitoring frequency is changed to monthly and the system has no monitoring violations.
273	RTCR	3B	8000	A PWS that is on a reduced monitoring frequency (e.g., quarterly or annually), fails to collect at least 3 routine samples in the month following one or more routine or repeat samples are total coliform-positive (TC+) and does NOT meet all the criteria described to be exempt by the Primacy Agency from additional routine monitoring. [141.854(j)(1),(2), or (3) and 141.855(f)(1)(2), or (3)]	Monitoring	3	RTC is achieved when the system collects 3 additional routine samples the next month following the failure, or when the baseline routine monitoring frequency is changed permanently to monthly in the Primacy Agency database of record and the system has collected all required samples (e.g. baseline and additional routines).

274	RTCR	3C	8000	A system that uses groundwater under the influence of surface water (GWUDI), surface water (SW), or GWUDI/SW blended sources and that does not practice filtration in compliance with Subparts H, P, T and W has a monitoring violation when it fails to collect at least one total coliform sample near the first service connection each day the turbidity level of the source water exceeds 1 NTU, where turbidity is measured as specified in 141.74(b)(2). The system must collect this total coliform sample within 24 hours of the turbidity exceedance unless approved by the Primacy Agency to collect the sample on an alternative sample collection schedule when the Primacy Agency determines that the system, for logistical reasons outside the system's control, cannot have the sample analyzed within 30 hours of collection. [141.857(c)]	Monitoring	3	RTC is achieved when the system collects a total coliform sample for each sample that was originally missed, 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 Primacy Agency) in accordance with the Primacy Agency approved sample siting plan and the system has no monitoring violations.
275	RTCR	3D	8000	A system that fails to analyze for <i>E. coli</i> when there is a total coliform-positive routine sample. [141.860(c)(2)]	Monitoring	3	RTC is achieved in the monitoring period when the system monitors using the approved laboratory and analytical method, and reports the results to the Primacy Agency.
276	RTCR	3D	8000	A system that fails to use the 100mL standard sample volume required for analysis, regardless of analytical method used for a routine sample. [141.852(a)(1)]	Monitoring	State Discretion	RTC is achieved in the monitoring period when the system monitors using the approved laboratory and analytical method, and reports the results to the Primacy Agency.
277	RTCR	3D	8000	A system that fails to determine the presence or absence of total coliforms and <i>E. coli</i> for a routine sample. [141.852(a)(2)]	Monitoring	State Discretion	RTC is achieved in the monitoring period when the system monitors using the approved laboratory and analytical method, and reports the results to the Primacy Agency.
278	RTCR	3D	8000	A system that fails to keep the time from sample collection to initiation of test medium incubation to 30 hours or less for all samples. [141.852(a)(3)]	Monitoring	State Discretion	RTC is achieved in the monitoring period when the system monitors using the approved laboratory and analytical method, and reports the results to the Primacy Agency.
279	RTCR	3D	8000	A system that provides chlorination, fails 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 all samples. [141.852(a)(4)]	Monitoring	State Discretion	RTC is achieved in the monitoring period when the system monitors using the approved laboratory and analytical method, and reports the results to the Primacy Agency.
280	RTCR	3D	8000	A system that 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 all samples. [141.852(a)(5)]	Monitoring	State Discretion	RTC is achieved in the monitoring period when the system monitors using the approved laboratory and analytical method, and reports the results to the Primacy Agency.
281	RTCR	3D	8000	A system that fails to have all compliance samples, required under the Revised Total Coliform Rule (RTCR), analyzed by a laboratory certified by EPA or a Primacy Agency to analyze drinking water samples. The laboratory used by the system must be certified for each method and associated contaminants used for compliance monitoring analyses. [141.852(b)]	Monitoring	State Discretion	RTC is achieved in the monitoring period when the system monitors using the approved laboratory and analytical method, and reports the results to the Primacy Agency.
282	RTCR	3D	8000	A system that 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 Primacy Agency may waive the 24 hour time limit on a case by case basis. Alternatively, the Primacy Agency may implement criteria for waiving the 24 hour time limit to use in lieu of case by case extensions. [141.853(a)(3), 141.853(c), 141.853(c)(2), and 141.860(c)]	Monitoring	3	RTC is achieved in the monitoring period when the system monitors using the approved laboratory and analytical method and reports results to the Primacy Agency.

283	RTCR	3D	8000	A system that fails to collect replacement routine samples to meet the minimum monitoring requirements of the Revised Total Coliform Rule (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 Primacy Agency determines the total coliform-positive sample resulted from a domestic or other nondistribution system plumbing problem. The Primacy Agency 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), and 141.853(c)(1)(i-iii)]	Monitoring	3	RTC is achieved in the monitoring period when the PWS monitors using the approved laboratory and analytical method and submits the results to the Primacy Agency.
284	RTCR	4A	8000	A system that fails to submit a completed assessment form after a system properly conducts assessment in a timely manner within 30 days. [141.860(d)(1) and 141.861(a)(3)]	Reporting	3	RTC is achieved when the system submits the assessment form acceptable to the Primacy Agency. Submission of the assessment form will return to compliance all previous violations with this description.
285	RTCR	4B	8000	A system that properly conducts monitoring, but fails to submit the monitoring report in a timely manner. [141.860(d)(1)]	Reporting	3	RTC is achieved when the sample result information is provided to the Primacy Agency.
286	RTCR	4B	8000	A system that fails to notify the Primacy Agency within 10 days about the monitoring violation after the system fails to comply with a coliform monitoring requirement, in which case the system must notify public in accordance with Subpart Q of Part 141. [141.861(a)(4)]	Reporting	3	RTC is achieved when the system notifies the Primacy Agency of the monitoring violation or when the Primacy Agency issues the monitoring violation.
287	RTCR	4C	8000	A system that conducts seasonal system start-up procedures, but fails to submit certification of completion of Primacy Agency-approved start-up procedures or certify prior to serving water to the public that it has complied with the Primacy Agency-approved start-up procedures. [141.860(d)(3) and 141.861(a)(5)]	Reporting	3	RTC is achieved when the seasonal system certifies that the start-up procedures were conducted according to Primacy Agency requirements and the Primacy Agency receives 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.
288	RTCR	4D	8000	A system that has an <i>E. coli</i> -positive routine or repeat sample, fails to notify the Primacy Agency 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 Primacy Agency office is closed and the Primacy Agency does not have either an after-hours phone line or alternative notification procedure, in which case the system must notify the Primacy Agency before the end of the next business day as specified in 141.861(a)(1)(ii). [141.858(b)(1) and 141.860(d)(2)]	Reporting	3	RTC is achieved when the system notifies the Primacy Agency of the <i>E. coli</i> -positive result sample and notifies the public according to subpart Q of this part. Note: Reporting Violations will require a Tier 3 public notice per 141.204
289	RTCR	4E	8000	A system that fails to notify the Primacy Agency 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 Primacy Agency office is closed and the Primacy Agency does not have either an after hours phone line or an alternative notification procedure, in which case the system must notify the Primacy Agency before the end of the next business day. [141.861(a)(1)(i)]	Reporting	3	RTC is achieved when the system notifies the Primacy Agency of the <i>E. coli</i> -positive result sample and notifies the public according to subpart Q of this part. Note: Reporting Violations will require a Tier 3 public notice per 141.204
290	RTCR	4F	8000	A system that fails to notify the Primacy Agency by the end of the next business day when the system incurs a Revised Total Coliform Rule (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)]	Reporting	3	RTC is achieved when the system notifies the Primacy Agency of Treatment Technique violations or when the Primacy Agency enters and issues treatment technique violation(s) related to failure to complete corrective action and/or failure to conduct assessment(s)/assessment form(s) according to Primacy Agency requirements.
291	RTCR	4F	8000	A system that fails to notify the Primacy Agency 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 in accordance with 141.859(c). [141.859(c) and 141.861(a)(3)]	Reporting	3	RTC is achieved when the system notifies the Primacy Agency that the corrective action is completed according to Primacy Agency requirements.

292	RTCR	5A	8000	A system that 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. 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 fails to demonstrate that the Sample Siting Plan locations remains representative of the water quality in the distribution system. [141.853(a)(1)-(2) and 141.853(a)(5)-(6)]	OTHER	State Discretion	RTC is achieved when the system develops their sample siting plan and, where required, approved by the Primacy Agency.
293	RTCR	5A	8000	A system that fails to revise their sample siting plan, including any required alternative monitoring locations or standard operating procedures (SOPs), in accordance with Primacy Agency directive. [141.853(a)(1) and 141.853(a)(5)]	OTHER	State Discretion	RTC is achieved when the system revises their sample siting plan and, where required, approved by the Primacy Agency.
294	RTCR	5A	8000	A system that fails to include routine and repeat sample sites and any sampling points necessary to meet the requirements of Subpart 5 (i.e., Groundwater Rule (GWR) dual sampling site) in the sample siting plan. [141.853(a)(1) and 141.853(a)(5)]	OTHER	State Discretion	RTC is achieved when the system revises their sample siting plan and, where required, approved by the Primacy Agency.
295	RTCR	5A	8000	A system that 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 Primacy Agency, the system 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. [141.853(a)(5)]	OTHER	State Discretion	RTC is achieved when the system revises their sample siting plan and, where required, approved by the Primacy Agency.
296	RTCR	5A	8000	When allowed by the Primacy Agency, a system that 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 (SOP) 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)(i)]	OTHER	State Discretion	RTC is achieved when the system revises their sample siting plan and, where required, approved by the Primacy Agency.
297	RTCR	5A	8000	For a groundwater (GW) system serving 1,000 or fewer persons with a single well with written Primacy Agency approval, the system that 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) and 141.853(a)(5)(ii)]	OTHER	State Discretion	RTC is achieved when the system revises their sample siting plan and, where required, approved by the Primacy Agency.
298	RTCR	5B	8000	A system that fails to maintain all assessment forms, regardless of who conducts the assessment; documentation of corrective actions completed as a result of any assessments; and/or documentation of other available summary documentation of the sanitary defects and corrective actions taken under 141.859 for Primacy Agency review. These 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	State Discretion	RTC is achieved when the system reports that it has begun recordkeeping, subject to Primacy Agency verification or when the Primacy Agency enters and validates in the database of record that the system has met recordkeeping requirements.
299	RTCR	5B	8000	A system that fails to maintain a record of any routine or repeat sample results, including repeat samples taken that meets the Primacy Agency 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 1 year. [141.861(b)(2); 142.14(a)(1)(iii); and 141.33(a)]	OTHER	State Discretion	RTC is achieved when the system reports that it has begun recordkeeping, subject to Primacy Agency verification or when the Primacy Agency enters and validates in the database of record that the system has met recordkeeping requirements.
300	RTCR	5B	8000	When the system 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)]	OTHER	State Discretion	RTC is achieved when the system reports that it has begun recordkeeping, subject to Primacy Agency verification or when the Primacy Agency enters and validates in the database of record that the system has met recordkeeping requirements.

301	LCRR	2E	5200	A system that fails to complete the initial lead service line inventory by October 16, 2024. [141.80(f)(3) and 141.84(a)]	TT	2	RTC is achieved once the system completes and submits an initial inventory that meets requirements of 141.84(a) to the Primacy Agency.
302	LCRR	2E	5200	A system that fails to update the inventory in accordance with 141.84(a)(6).	TT	2	RTC is achieved once the system completes and submits an updated inventory that meets requirements of 141.84(a)(6) to the Primacy Agency.
303	LCRR	2E	5200	A system that fails to make the inventory publicly accessible in accordance with 141.84(a)(8) or if the water system has no lead, galvanized requiring replacement (GRR), or lead status unknown (LSU) service lines failure to issue a written statement declaring the distribution system has no lead service lines in accordance with the requirements of 141.84(a)(9).	TT	2	RTC is achieved once the system provides evidence to the Primacy Agency that the inventory is public, either by link or other methods meeting the requirements of 141.84(a)(8). Systems reporting no lead must submit a statement to the Primacy Agency declaring there are no lead, galvanized requiring replacement (GRR), or lead status unknown (LSU) service lines with the general description of sources used to make this determination in accordance with 141.84(a)(9).
304	CCR	72	7000	A system that fails to include a statement that a service line inventory has been prepared with instructions on how to access the inventory in the consumer confidence report (CCR). [141.84(a)(10) and Subpart O]	Other	State Discretion	RTC is achieved once the system has corrected the consumer confidence report (CCR) and delivers it to the public and Primacy Agency.
305	LCRR	4G	5200	A system that fails to submit an initial inventory of service lines to the Primacy Agency by October 16, 2024. [141.90(e)(1)]	M&R	3	RTC is achieved once the system submits the inventory to the Primacy Agency.
306	LCRR	4G	5200	A system that has lead, galvanized requiring replacement (GRR), or lead status unknown (LSU) service lines fails to submit updated inventories in accordance with tap sampling monitoring periods in accordance with 141.86(d) but no more frequently than annually within 30 days of the end of each tap sampling period. [141.90(e)(3)]	M&R	3	RTC is achieved when the system submits an updated inventory to the Primacy Agency.
307	LCRR	66	5000	A system with lead service lines (LSLs) that fails to annually certify that they have completed customer notification as required in 141.85(e). [141.90(f)(3)]	M&R	3	RTC is achieved when the system submits its certification to the Primacy Agency.
308	LCRR	4G	5200	A system without any lead, galvanized requiring replacement (GRR), or lead status unknown (LSU) service lines, fails to notify the Primacy Agency within 30 days upon discovery of any service lines requiring replacement and preparing an updated inventory that meets 141.84 on a schedule agreed-upon by the Primacy Agency. [141.90(e)(3)(iii)]	M&R	3	RTC is achieved once the system submits notification and meets schedule agreed upon by the Primacy Agency to prepare and submit inventory that meets the requirements of 141.84.
309	LCRR	4H	5200	A system with lead, galvanized requiring replacement (GRR), or lead status unknown (LSU) service lines, fails to demonstrate to the Primacy Agency annually by July 1 that it delivered information to affected consumers with a lead, GRR, or LSU service line in accordance with § 141.85(e) for the previous calendar year. [141.90(f)(4)]	M&R	3	RTC is achieved once the system submits information demonstrating notices were sent and copies of the notices to the Primacy Agency.
310	PN	77	7500	A system required to provide Tier 1 public notice (PN) that fails to distribute the PN as soon as practical but no later than 24 hours of learning of the lead action level exceedance or without providing a notice in a form and manner reasonably calculated to reach all persons served. [141.202(b)(1) and 141.202(c)]	OTHER	State Discretion	RTC is achieved once the system distributes a Tier 1 public notice in a form and manner reasonably calculated to reach all persons served.
311	PN	77	7500	A system required to provide Tier 1 public notice following a lead action level exceedance 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	State Discretion	RTC is achieved once the system initiates consultation with the Primacy Agency.
312	PN	77	7500	A system required to provide Tier 1 public notice following a lead action level exceedance 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	State Discretion	RTC is achieved once the system fully complies with additional public notification requirements established by the Primacy Agency.
313	PN	77	7500	A system fails to provide a copy of the Tier 1 notice for a lead action level exceedance to EPA and/or the Primacy Agency as soon as practicable, but not later than 24 hours after the public water system learns of the exceedance. [141.31(d)(2)]	OTHER	State Discretion	RTC is achieved when the system provides a copy of the Tier 1 notice for a lead action level exceedance to EPA and/or the Primacy Agency.
314	PN	77	7500	A system required to provide Tier 1 public notice following a lead action level exceedance that fails to include all required elements of a public notice [141.205(a)] including standard language. [141.205(d)]	OTHER	State Discretion	RTC is achieved once the system provides the public notice that includes all required elements and standard language of a public notice.

315	PN	77	7500	A system required to provide Tier 1 public notice (PN) following a lead action level exceedance that fails to provide the certification to the Primacy Agency within 10 days of completing the PN requirements. [141.31(d) and 141.201(c)(3)]	OTHER	State Discretion	RTC is achieved once the system provides the certification form to the Primacy Agency.
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NPDWR	Rule	Analyte Code	Contaminant Name
Phase II/V	IOC	1005	ARSENIC
Phase II/V	IOC	1010	BARIUM
Phase II/V	IOC	1015	CADMIUM
Phase II/V	IOC	1020	CHROMIUM
Phase II/V	IOC	1024	CYANIDE
Phase II/V	IOC	1097	CYANIDE, FREE
Phase II/V	IOC	1098	CYANIDE, TOTAL
Phase II/V	IOC	1025	FLUORIDE
Phase II/V	IOC	1035	MERCURY
Phase II/V	IOC	1036	NICKEL
Phase II/V	IOC	1045	SELENIUM
Phase II/V	IOC	1052	SODIUM
Phase II/V	IOC	1074	ANTIMONY, TOTAL
Phase II/V	IOC	1075	BERYLLIUM, TOTAL
Phase II/V	IOC	1085	THALLIUM, TOTAL
ASBESTOS	IOC	1094	ASBESTOS
Phase II/V	SOC	2005	ENDRIN
Phase II/V	SOC	2010	BHC-GAMMA
Phase II/V	SOC	2015	METHOXYCHLOR
Phase II/V	SOC	2020	TOXAPHENE
Phase II/V	SOC	2031	DALAPON
Phase II/V	SOC	2032	DIQUAT
Phase II/V	SOC	2033	ENDOTHALL
Phase II/V	SOC	2034	GLYPHOSATE
Phase II/V	SOC	2035	DI(2-ETHYLHEXYL) ADIPATE
Phase II/V	SOC	2036	OXAMYL
Phase II/V	SOC	2037	SIMAZINE
Phase II/V	SOC	2040	PICLORAM
Phase II/V	SOC	2041	DINOSEB
Phase II/V	SOC	2042	HEXACHLOROCYCLOPENTADIENE
Phase II/V	SOC	2046	CARBOFURAN
Phase II/V	SOC	2050	ATRAZINE
Phase II/V	SOC	2051	LASSO
Phase II/V	SOC	2063	2,3,7,8-TCDD
Phase II/V	SOC	2065	HEPTACHLOR
Phase II/V	SOC	2067	HEPTACHLOR EPOXIDE
Phase II/V	SOC	2105	2,4-D
Phase II/V	SOC	2110	2,4,5-TP
Phase II/V	SOC	2274	HEXACHLOROBENZENE
Phase II/V	SOC	2306	BENZO(A)PYRENE
Phase II/V	SOC	2326	PENTACHLOROPHENOL
Phase II/V	SOC	2383	TOTAL POLYCHLORINATED BIPHENYLS (PCB)
Phase II/V	SOC	2388	AROCLOR 1016
Phase II/V	SOC	2390	AROCLOR 1221
Phase II/V	SOC	2392	AROCLOR 1232
Phase II/V	SOC	2394	AROCLOR 1242
Phase II/V	SOC	2396	AROCLOR 1248
Phase II/V	SOC	2398	AROCLOR 1254
Phase II/V	SOC	2400	AROCLOR 1260
Phase II/V	SOC	2931	1,2-DIBROMO-3-CHLOROPROPANE
Phase II/V	SOC	2946	ETHYLENE DIBROMIDE
Phase II/V	SOC	2959	CHLORDANE
Phase II/V	SOC	2298	BIS(2-ETHYLHEXYL) PHTHALATE
Phase II/V	SOC	2039	DI(2-ETHYLHEXYL) ADIPATE
Phase II/V	VOC	2378	1,2,4-TRICHLOROBENZENE
Phase II/V	VOC	2380	CIS-1,2-DICHLOROETHYLENE
Phase II/V	VOC	2955	XYLENES, TOTAL
Phase II/V	VOC	2964	DICHLOROMETHANE
Phase II/V	VOC	2968	O-DICHLOROBENZENE
Phase II/V	VOC	2969	P-DICHLOROBENZENE
Phase II/V	VOC	2976	VINYL CHLORIDE
Phase II/V	VOC	2977	1,1-DICHLOROETHYLENE
Phase II/V	VOC	2979	TRANS-1,2-DICHLOROETHYLENE
Phase II/V	VOC	2980	1,2-DICHLOROETHANE
Phase II/V	VOC	2981	1,1,1-TRICHLOROETHANE
Phase II/V	VOC	2982	CARBON TETRACHLORIDE
Phase II/V	VOC	2983	1,2-DICHLOROPROPANE
Phase II/V	VOC	2984	TRICHLOROETHYLENE
Phase II/V	VOC	2985	1,1,2-TRICHLOROETHANE

EPA is discontinuing analyte code 1024, replacing with codes 1097 (free cyanide method) and 1098 (total cyanide method)

Phase II/V	VOC	2987	TETRACHLOROETHYLENE
Phase II/V	VOC	2989	CHLOROBENZENE
Phase II/V	VOC	2990	BENZENE
Phase II/V	VOC	2991	TOLUENE
Phase II/V	VOC	2992	ETHYLBENZENE
Phase II/V	VOC	2996	STYRENE
RADS	RADS	4000	GROSS ALPHA, EXCL RADON & U
RADS	RADS	4010	COMBINED RADIUM (-226 & -228)
RADS	RADS	4020	RADIUM-226
RADS	RADS	4030	RADIUM-229
RADS	RADS	4044	POTASSIUM-40, TOTAL
RADS	RADS	4101	MAN-MADE BETA PARTICLE & PHOTON EMITTERS
RADS	RADS	4006	COMBINED URANIUM
RADS	RADS	4102	TRITIUM
RADS	RADS	4174	38-STRYPTIUM-90
RADS	RADS	4100	GROSS BETA PARTICLE ACTIVITY
RADS	RADS	4264	53-IODINE-131
Stage 2	D/DBP	2950	TTHM
Stage 2	D/DBP	2456	HAA5
Stage 1	D/DBP	1009	CHLORITE
Stage 1	D/DBP	1011	BROMATE
Stage 1	D/DBP	1008	CHLORINE DIOXIDE
Stage 1	D/DBP	2920	TOTAL ORGANIC CARBON
Stage 1	D/DBP	1927	ALKALINITY
Stage 1	D/DBP	0999	CHLORINE
Stage 1	D/DBP	1006	CHLORAMINE
Nitrate/Nitrite	Nitrate/Nitrite	1038	NITRATE/NITRITE
Nitrate/Nitrite	Nitrate	1040	NITRATE
Nitrate/Nitrite	Nitrite	1041	NITRITE
SWTR	SWTR	0200	SURFACE WATER TREATMENT RULE
SWTR	SWTR	0300	INTERIM ENHANCED SURFACE WATER TREATMENT RULE
SWTR	SWTR	0800	LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE
SWTR	SWTR	0100	TURBIDITY
SWTR	SWTR	3014	E. COLI
SWTR	SWTR	3015	CRYPTOSPORIDIUM
LCR	LCR	5000	LEAD AND COPPER RULE
LCR	LCR	1030	LEAD
LCR	LCR	1022	COPPER
PN	PN	7500	PUBLIC NOTICE RULE
CCR	CCR	7000	CONSUMER CONFIDENCE RULE
GWR	GWR	0700	GROUNDWATER RULE
RTCR	RTCR	8000	REVISED TOTAL COLIFORM RULE
RTCR	RTCR	3014	E. COLI
RTCR	RTCR	3100	TOTAL COLIFORM RULE
LCRR	LCRR	5200	LEAD AND COPPER RULE REVISIONS

USE CENTRAL OFFICE LETTERHEAD

WARNING LETTER

Date

Owner

Via Email: Address

Address

Response Requested by 4:00 P.M. on Month Day, 202X

**Re: Compliance Advisory of Unresolved Alleged Violations
Waterworks (Locality) PWSID # VAXXXXXXX**

Dear [Name]:

The Virginia Department of Health (VDH), Office of Drinking Water's (ODW) records show that [Waterworks name] waterworks has the following unresolved alleged violations of Virginia's Waterworks Regulations:

Unresolved Alleged Violation(s)*	Violation Issued

*The Notice(s) of Alleged Violation (NOAV) match(es) the unresolved allegations in the table above and is/are attached for your reference.

It is the responsibility of the owner to address the alleged violations shown in the table by (End of the Quarter Date) or earlier. Please contact the ODW <Name> Field Office by <DATE> at 4:00 p.m., to discuss your plan to return to compliance. If the alleged violation(s) is/are unresolved then VDH ODW may pursue a formal enforcement action. Formal enforcement may include one or more of the following: administrative orders that may include civil penalties up to \$1,000 per day of violation and permit revocation; a civil court action; or a criminal court action. VDH considers operating a waterworks in violation of state and federal requirements to present a serious risk of harm to public health and enforcement action may be necessary to protect public health.

If there are any questions regarding this letter, please contact [Name of Compliance Specialist], Compliance Specialist, at [phone] or [email]. If you disagree with the alleged violations stated in this letter and would like to request an informal conference in accordance with Code of Virginia § 2.2-4019, please contact the ODW Director of Compliance, Enforcement and Policy by telephone or email at [phone] or [email].

We look forward to working with you to resolve this matter as quickly as possible.

Sincerely,

[Name]
ODW Director of Compliance, Enforcement, and
Policy

Enclosure(s): Copy/Copies of Notices of Alleged Violation - # Notice(s) Attached

ec:

Name, Credentials, Field Director/Deputy Field Director, VDH-ODW Name Field Office;
[email address](#)

Name, Enforcement Coordinator, VDH-ODW Central Office; [email address](#)

Name, Credentials, CS, DE, Name Field Office; [email address](#)

Name, Credentials, District Health Director, Name Health District; [email address](#)

Name, Environmental Health Manager, Sr., Name Health District; [email address](#)

Name, Credentials, Director, Division of Food and General Environmental Services, VDH
OEHS; [email address](#)

If needed add the following VDACS information: Virginia Department of Agriculture and
Consumer Services; foodsafety@vdacs.virginia.gov

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

[_____ County/City of _____/Town of _____]; [email address](#)

USE CENTRAL OFFICE LETTERHEAD

WARNING LETTER

Date

Owner
Via Email: Address
Address

Response Requested by 4:00 P.M. on Month Day, 202X

**Re: Compliance Advisory of Unresolved Alleged Violations
«Subj1»**

Dear [Name]:

The Virginia Department of Health (VDH), Office of Drinking Water's (ODW) records show that [Waterworks name] waterworks has the following unresolved alleged violations of Virginia's Waterworks Regulations. Due to non-compliance, it is imperative you take immediate action to prevent future enforcement.

Unresolved Alleged Violation(s)*	Violation Issued

*The Notice(s) of Alleged Violation (NOAV) match(es) the unresolved allegations in the table above and is/are attached for your reference.

It is the responsibility of the owner(s) to address the alleged violations shown in the table. Contact the ODW <Name> Field Office by <DATE> by 4:00 p.m., to discuss your plan to return to compliance. If the alleged violation(s) is/are not resolved by [End of Quarter DATE], then VDH ODW will pursue a formal enforcement action. Formal enforcement may include one or more of the following: administrative orders that may include civil penalties up to \$1,000 per day of violation and permit revocation; a civil court action; or a criminal court action.

«Greeting»

Date

Page 2 of 2

VDH considers operating a waterworks in violation of state and federal requirements to present a serious risk of harm to public health and enforcement action may be necessary to protect public health.

If there are any questions regarding this letter, please contact [Name of Compliance Specialist], Compliance Specialist, at [phone] or [email] as soon as possible. If you disagree with the unresolved alleged violations stated in this letter and would like to request an informal conference in accordance with Code of Virginia § 2.2-4019, contact the ODW Director of Compliance, Enforcement and Policy by telephone or email at [phone] or [email].

We look forward to working with you to resolve this matter as quickly as possible.

Sincerely,

[Name]
ODW Director of Compliance, Enforcement and
Policy

Enclosures: Copy/Copies of Notice(s) of Alleged Violation - # Notice(s) Attached

cc: Name, Credentials, Field Director/Deputy Field Director, VDH-ODW Name Field Office;
[email address](#)

Name, Enforcement Coordinator, VDH-ODW Central Office; [email address](#)

Name, Credentials, CS, DE, Name Field Office; [email address](#)

Name, Credentials, District Health Director, Name Health District; [email address](#)

Name, Environmental Health Manager, Sr., Name Health District; [email address](#)

Name, Credentials, Director, Division of Food and General Environmental Services, VDH
OEHS; [email address](#)

If needed add the following VDACS information: Virginia Department of Agriculture and
Consumer Services; foodsafety@vdacs.virginia.gov

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

[_____ County/City of _____/Town of _____]; [email address](#)



www.vdh.virginia.gov/drinking-water

[Insert Field Office Letterhead]

Date

Waterworks Owner
Waterworks Company
Address
City, State, Zip

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

Letter of Agreement

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

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

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

Background

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

Agreed Actions

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

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

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

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

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

Sincerely,

[Name]
Field Director
[Field Office]

ec: _____, Director of Division of Compliance, Enforcement, and Policy, VDH-ODW Central Office; email
_____, Enforcement Coordinator, VDH-ODW Central Office; email
_____, Compliance Specialist, VDH-ODW «FieldOffice» Field Office; email
_____, MD, MPH, District Director, _____ Health District; email
_____, Environmental Health Manager, _____ Health District; email
_____, [County Administrator/City Manager/Town Manager], [_____
County or City of _____ or Town of _____]; email
If needed add the following VDACS information: Virginia Department of Agriculture and Consumer Services; foodsafety@vdacs.virginia.gov

Waterworks Name
Date of Letter
Page # of Total

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

Date: _____ **Signature:** _____

STATE LETTERHEAD

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

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

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

Section A. Definitions

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

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

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

Section B. Findings of Fact and Conclusions of Law

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

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

Section C. Agreement and Order

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

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

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

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

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

Section D. Administrative Provisions

1. This Order addresses and resolves only those violations specifically identified in Section B of this Order. This Order shall not preclude VDH from taking any action authorized by law, including but not limited to taking any action authorized by law regarding additional, subsequent, or subsequently discovered violations or taking subsequent action to enforce this Order.
2. This Order does not suspend, minimize, or otherwise alter the Owner's obligation to comply with federal, state, and local laws and regulations. The Board does not waive any lawful means of enforcing the laws it administers, the regulations it has adopted, or this Order.
3. The Owner agrees that it has received fair and due process under the Administrative Process Act (Va. Code § 2.2-4000, et seq.) and waives its right to further hearings or challenges, whether civil or administrative, regarding the terms, conditions, or issuance of this Order and specifically waives its rights to a hearing under Va. Code §§ 2.2-4019 or 2.2-4020 as a predicate for issuance of this Order. The Owner consents to the issuance of this Order freely, voluntarily, and after an opportunity to consult counsel of its choice.
4. Any plans, reports, schedules, or specifications submitted by the Owner and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

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

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

11. This Order shall become effective on the 15th day after a copy of it is mailed to the Owner by certified mail. Va. Code § 32.1-26.
12. This Order shall continue in effect until:
 - a. The Commissioner or the Commissioner's designee terminates the Order after the Owner has completed all of the requirements of this Order;
 - b. The Commissioner or the Commissioner's designee terminates the Order after finding that the circumstances that led to the Order's issuance no longer exist, and that the Order is no longer needed to enforce the PWSL and Regulations to protect the public health;
 - c. The Owner petitions the Commissioner or the Commissioner's designee to terminate the Order after the Owner has completed all of the requirements of the Order and the Commissioner or the Commissioner's designee approves the termination of the Order; or
 - d. The Commissioner or the Commissioner's designee, or the Board, in their sole discretion, terminates the Order upon 30 days written notice to the Owner. Termination of the Order pursuant to this authority without the Owner having satisfied all terms of the Order may result in VDH pursuing further enforcement related to the violations identified in the Order.
13. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Owner from its obligation to comply with any statute, regulation, permit condition, other order, certificate, standard, or requirement otherwise applicable.
14. The undersigned representative of the Owner certifies that they are a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Owner to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Owner.
15. By its signature below, the Owner voluntarily agrees to the issuance of this Order.

It is SO ORDERED this day, _____.

STATE BOARD OF HEALTH
Commonwealth of Virginia

XXXXX, MD, XX
State Health Commissioner

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

Name Title

Date Signature

State of _____

City/County of _____

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

_____, 202X, by _____ who is

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

Notary Public

Registration No.

My commission expires: _____

Notary seal:

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

Appendix A

Corrective Action Plan and Schedule for Compliance

[Waterworks Owner] shall:

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

VDH – Office of Drinking Water – [Field Office Name]
c/o Compliance Specialist
Street Address
City, Virginia Zip Code
Office phone number:
Email address: [use field office's email address]

(If the Owner does not send the original documents, it must file the original documents appropriately so if asked to produce the documents they are easy to access.)

Add the State Letterhead

Date

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

Owner, Title
Waterworks Company
Address 1
Address 2

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

Dear [Owner]:

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

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

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

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

Sincerely,

[Field Director Name]
Field Director

Attachment 15 – Proposed Consent Order Enclosure Letter

VDH-ODW _____ Field Office

Enclosure

cc: Case File

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

_____, Enforcement Coordinator, VDH-ODW Central Office; email

_____, Compliance Specialist, VDH-ODW _____ Field Office;
email

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

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

_____, MD, MPH, District Director, _____ Health District; email

_____, Environmental Health Manager, _____ Health District;

email

If needed add the following VDACS information: Virginia Department of Agriculture and
Consumer Services; foodsafety@vdacs.virginia.gov

Add State Letterhead

Date

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

Owner, Title
Waterworks Company
Address 1
Address 2

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

Dear [Owner]:

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

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

Sincerely,

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

Enclosure

cc: Case File
_____, Director of the Division of Compliance, Enforcement, and Policy,
VDH-ODW Central Office; email
_____, Enforcement Coordinator, VDH-ODW Central Office; email
_____, Compliance Specialist, VDH-ODW _____ Field Office;
email

_____, [County Administrator/City Manager/Town Manager],
[_____ County/City of _____/Town of _____]; email
_____, MD, MPH, District Director, _____ Health District; email
_____, Environmental Health Manager, _____ Health District;
email

If needed add the following VDACS information: Virginia Department of Agriculture and
Consumer Services; foodsafety@vdacs.virginia.gov

Add State Letterhead

Date

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

Owner, Title
Waterworks Company
Address 1
Address 2

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

Dear [Owner]:

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

The Order requires that [Owner] _____.

According to the Virginia Department of Health’s records, the [Owner] has completed the requirements of the Order. Section [D.12] of the Order states that the State Health Commissioner or his designee may terminate the Order upon [Owner] completing all the requirements of the Order. Therefore, this letter gives notice that the Order is hereby terminated.

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

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

Sincerely,

[State Health Commissioner or designee –
revise as appropriate]

ec: _____, Field Director, VDH-ODW [] Field Office; email
_____, Director of Division of Compliance, Enforcement, and
Policy, VDH-ODW Central Office; email
_____, Enforcement Coordinator, VDH-ODW Central Office;
email
_____, Compliance Specialist, VDH-ODW [] Field Office;
email
_____, MD, [other credentials], Health Director, _____ Health
District; email
_____, Environmental Health Manager, _____ Health
District; email
_____, [County Administrator/City Manager/Town Manager],
[_____ County/City of _____/Town of _____]; email
If needed add the following VDACS information: Virginia Department of Agriculture
and Consumer Services; foodsafety@vdacs.virginia.gov

ADD STATE LETTERHEAD

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

Section A. Purpose

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

Section B. Basis for Amendment

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

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

Section C. Agreement and Order

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

It is SO ORDERED this day, _____.

STATE BOARD OF HEALTH
Commonwealth of Virginia

XXXX, MD, XX
State Health Commissioner

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

_____ Name	_____ Title
_____ Date	_____ Signature

State of _____
City/County of _____

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

Notary Public

Registration No.

My commission expires: _____

Notary seal:

Appendix A

Corrective Action Plan and Schedule for Compliance

[Waterworks Owner] shall:

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

ADD STATE LETTERHEAD

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

Section A. Purpose

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

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

Add State Letterhead

Date

Owner, Title
Waterworks Company Name
Address 1
Address 2

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

NOTICE OF INFORMAL FACT FINDING PROCEEDING

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

Dear [Owner]:

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

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

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

Observations and Legal Requirements

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

2. On [date], the VDH Office of Drinking Water (ODW) issued Waterworks Operation Permit No. _____ to Owner to operate the Waterworks in compliance with the law and regulations.

3. On _____, ODW staff [describe basis for obtaining the facts alleged, e.g., through conducting a sanitary survey]. Based on [reference the information in the prior sentence, such as the sanitary survey] and a review of ODW records, the following describe staff's factual observations and applicable legal requirements:

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

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

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

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

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

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

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

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

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

Procedures

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

Enforcement Authority

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

Waterworks Owner

Date

Page 4 of Total

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

Future Actions

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

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

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

Sincerely,

[Name]

ODW Director of Compliance, Enforcement, and Policy

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

If needed add the following VDACS information: Virginia Department of Agriculture and Consumer Services; foodsafety@vdacs.virginia.gov

VDH ODW Presentation of Data, Argument, and Proof

Informal Fact Finding Proceeding

Date, at Time

Location

Re: Waterworks Owner

Waterworks Name – PWSID No. _____ (_____ County)

Presiding Officer: Name, Title, Office

Agency Advocate: Name, Title, Office

Agency Witnesses: Name, Title, Office

Waterworks Reps: Waterworks Owner, Waterworks Company Name

Introduction

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

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

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

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

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

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

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

Are there any procedural issues to be addressed?

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

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

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

Agency Advocate:

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

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

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

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

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

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

District Engineer:

My name is [Name] and I am the District Engineer for the _____ Field Office. I have been with ODW for about _____ years. In my capacity as District Engineer, I review plans, issue permits, and determine compliance with the regulations.

Agency Advocate:

Are you familiar with the Waterworks, and if so, could you please describe how you are familiar and tell us about the waterworks?

District Engineer:

[Site Visit, Permit, Sanitary Survey, File Review]

Agency Advocate:

I would like to ask that you please introduce Exhibit ____ and describe your observations of conditions at the waterworks as described in Exhibit ____.

District Engineer:

[Describe conditions relevant to the proceeding today.]

Agency Advocate:

To your knowledge, has ODW provided Owner with notice of the conditions at this site prior to this hearing?

District Engineer:

Yes.

Agency Advocate:

I would now like to ask [Inspector] Name to introduce her/himself, including your name, title, and experience at ODW.

Inspector:

[Describe roles and responsibilities as inspector.]

Agency Advocate:

Can you please describe how you are familiar with the Waterworks?

Inspector:

[Site visit, sanitary survey, review of ODW records]

Agency Advocate:

Can you please describe your observations as set forth in Exhibit ____?

Inspector:

[Describe conditions relevant to the proceeding today.]

Agency Advocate:

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

Compliance Specialist:

[Describe roles and responsibilities as compliance specialist.]

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

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

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

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

Presiding Officer: [May ask questions for clarification.]

Presiding Officer: Owner, would you like to proceed?

Waterworks Owner: Presents case.

Presiding Officer: [May ask questions for clarification.]

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

Agency Advocate: [Adds information, if any.]

Presiding Officer: [May ask questions for clarification.]

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

Waterworks Owner: [Adds information, if any.]

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

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

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

Waterworks Owner: [Gives closing remarks.]

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

VIRGINIA

IN THE DEPARTMENT OF HEALTH OFFICE OF DRINKING WATER

IN RE: Waterworks Owner

Waterworks Name (PWSID No. _____)

RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Preliminary Statement

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

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

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

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

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

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

II. Findings of Fact

Jurisdiction and Venue

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

Presentation of Data, Argument, and Proof

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

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

7. The Owner presented...

Regulatory Requirements

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

III. Conclusions of Law

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

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

VI. Recommended Relief

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

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

Respectfully submitted,

Name, Director

Field Office
VDH Office of Drinking Water

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

ADD STATE LETTERHEAD

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

Section A. Purpose

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

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

Section B. Definitions

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

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

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

Section C. Findings of Fact and Conclusions of Law

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

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

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

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

Section D. Order for Compliance

Accordingly, by virtue of the authority granted in Va. Code §§ 32.1-26 and 32.1-175.01, the Board orders the Owner to:

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

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

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

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

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

Section E. Administrative Provisions

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

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

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

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

10. This Special Order shall become effective on the 15th day after a copy of it is mailed to the Owner. Va. Code § 32.1-26.

11. This Special Order shall continue in effect until:

- a. The Commissioner or the Commissioner's designee terminates this Special Order after the Owner has completed all of the requirements of this Special Order;
- b. The Commissioner or the Commissioner's designee terminates this Special Order after finding that the circumstances that led to this Special Order's issuance no longer exist, and that this Special Order is no longer needed to enforce the PWSL and Regulations to protect the public health;
- c. The Owner petitions the Commissioner or the Commissioner's designee to terminate this Special Order after the Owner has completed all of the requirements of this Special Order and the Commissioner or the Commissioner's designee approves the termination of this Special Order; or
- d. The Commissioner or Board, in their sole discretion, terminates this Special Order upon 30 days written notice to the Owner. Termination of this Special Order pursuant to this authority without the Owner having satisfied all terms of the Special Order may result in VDH pursuing further enforcement related to the violations identified in this Special Order.

12. Termination of this Special Order, or any obligation imposed in this Special Order, shall not operate to relieve the Owner from its obligation to comply with any statute,

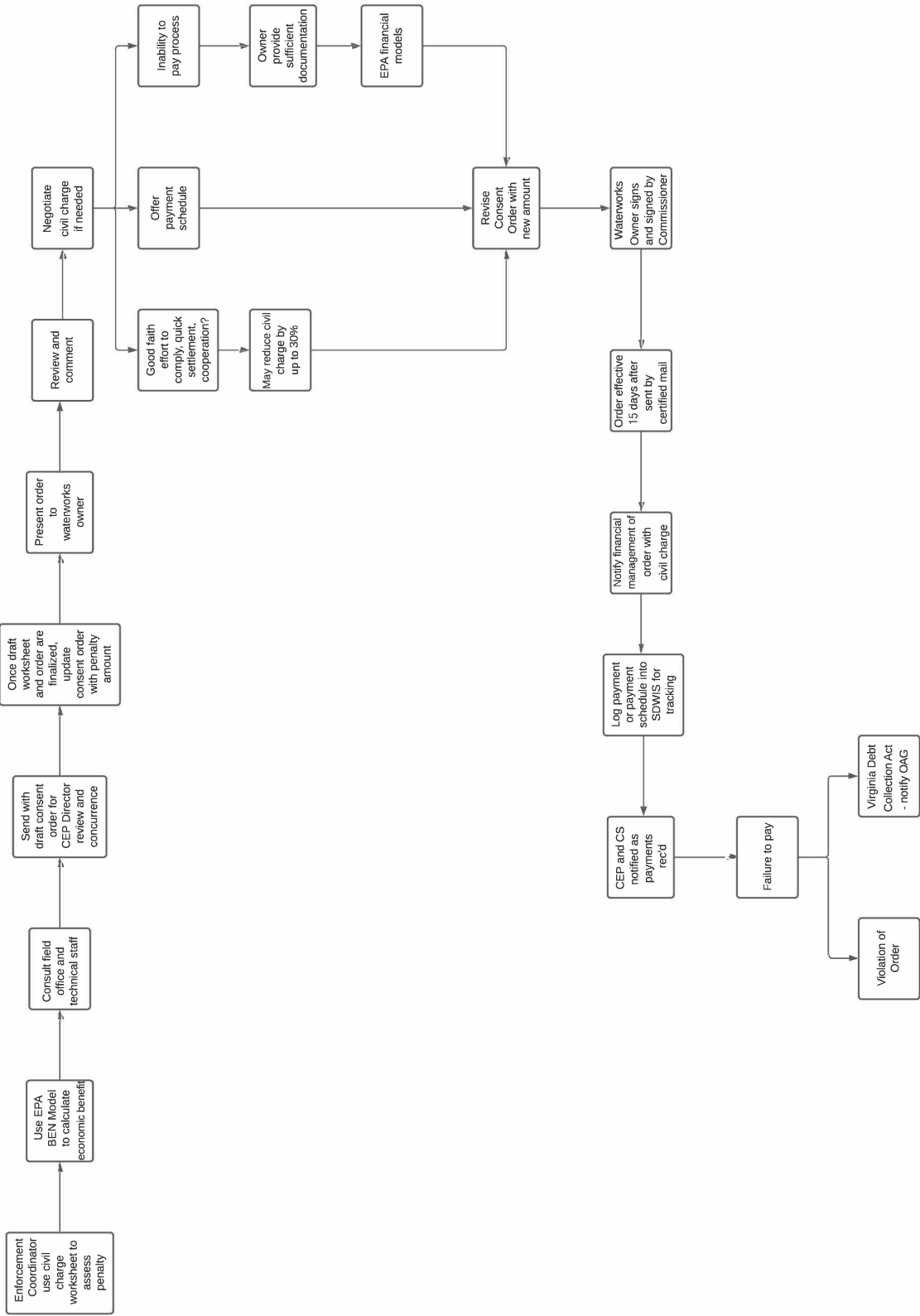
regulation, permit condition, other order, certificate, standard, or requirement otherwise applicable.

13. The Owner has the right to appeal this decision by requesting a formal hearing pursuant to, and in conformance with, *Code of Virginia* § 2.2-4020. Any request for an adjudicatory hearing must be in writing and received by the Office of the State Health Commissioner no later than 30 days from receipt of the Special Order. SP Investment Properties, LLC, may also appeal this decision directly to the jurisdictional circuit court in accordance with Article 5 of the Administrative Process Act, *Code of Virginia* § 2.2-4000, *et seq.*, and Rule 2A:2 of the Rules of the Supreme Court of Virginia. Rule 2A:2 of the Rules of the Supreme Court of Virginia states, in part, “Any party appealing from a regulation or case decision must file with the agency secretary, within 30 days after adoption of the regulation or after service of the final order in the case decision, a notice of appeal signed by the appealing party or that party's counsel. With respect to appeal from a regulation, the date of adoption or readoption is the date of publication in the Register of Regulations. In the event that a case decision is required by § 2.2-4023 or by any other provision of law to be served by mail upon a party, 3 days will be added to the 30-day period for that party. Service under this Rule is sufficient if sent by registered or certified mail to the party's last address known to the agency.”

It is SO ORDERED this _____ day of _____.

STATE BOARD OF HEALTH
Commonwealth of Virginia

XXXX, MD,
State Health Commissioner



CIVIL CHARGE WORKSHEET

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

Civil Charge Discussion

1. Gravity-based Component
2. Aggravating Factors
3. Economic Benefit
4. Ability to Pay