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

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Guidance for Safe Drinking Water Act Primacy Agencies on How to Enter Resolving Action Codes into SDWIS for Past Public Notice Violations and Clarification on How to Address Public Notification Violations in Certain Circumstances

FROM: Mark Pollins, Director
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TO: Drinking Water Enforcement Managers, Regions 1-10

This memorandum provides primacy agencies guidance on entering resolving action codes into SDWIS indicating that a past violation of public notice (PN) requirements has been appropriately resolved and no further enforcement action is warranted. This memorandum also provides additional clarification on properly addressing PN violations in certain circumstances.

Entry of Resolving Action Codes into SDWIS

The December 8, 2009 Drinking Water Enforcement Response Policy establishes enforcement priorities for those public water systems (PWSs) with the most serious and/or repeated violations. The Enforcement Targeting Tool (ETT) is used to assign a point value for each SDWIS violation and to produce a quarterly aggregate score for each noncomplying PWS. A PWS's ETT score allows noncomplying systems to be ranked according to the seriousness of their violations. Old PN violations that remain coded as unresolved in SDWIS years after their occurrence (either because they were not acted on, or because they were resolved but not recorded as such) continue to contribute to a PWS's quarterly ETT score. In many instances, the points for unresolved PN violations are responsible for pushing a PWS's ETT score past the threshold for designating it as a priority system. Left unresolved in SDWIS, PN violations can inflate a PWS's score, often creating the misleading appearance of serious noncompliance even though the underlying violations that gave rise to the notice requirement have long since been addressed and returned to compliance.

With this guidance, EPA is providing primacy agencies an opportunity to help ensure that the ETT generates scores that accurately reflect the seriousness of their PWSs' current noncompliance. To accomplish this goal, during the period from April 1, 2011 to September 30, 2011, primacy agencies can enter resolving codes into SDWIS for older PN violations as follows:

1. PN violations with a compliance period begin date **prior to January 1, 2006** are more than five years old, and the statute of limitation for those violations has run. For these violations, the primacy agency can enter the resolving action codes SO6 (State Intentional No Action) or EO6 (Federal Intentional No Action) into SDWIS to indicate that no further enforcement response is warranted.

2. If PN violations have a compliance period begin date **between January 1, 2006 and December 31, 2009**, the primacy agency can enter the resolving action codes SO6 or EO6 for those violations, but only if the underlying violation that triggered the requirement for public notice has been addressed or returned to compliance. If the underlying violation has not been addressed or returned to compliance, the points associated with the PN violation remain part of the system's ETT score, and the primacy agency will be expected to address the PN violation or return it to compliance in accordance with the ERP.

3. If PN violations have a compliance period begin date of **January 1, 2010 or later**, the points associated with the PWS's PN violations will be included in its ETT score, and the primacy agency is expected to address the PN violation or return it to compliance in accordance with the ERP. The primacy agency will ensure that the information reported to SDWIS accurately represents the PWS's compliance status with respect to its PN violations.

Clarification on How to Address PN Violations in Certain Circumstances

A number of questions have been posed to EPA about the proper way to address PN violations in specific circumstances. We would like to take this opportunity to provide the following clarifications:

1. If a PWS fails to provide required public notice but the primacy agency provides the public notice on behalf of the owner and operator of the PWS, the notice requirements under the regulation have been met. After providing such notice, the primacy agency may enter the resolving code SOX (State Compliance Achieved) or EOX (Federal Compliance Achieved) into SDWIS for that violation (*see* 40 CFR § 141.210).

2. Community Water Systems (CWS) are not required to provide stand alone public notice of Tier 3 violations if the CWS includes the appropriate notification of the Tier 3 violation in a Consumer Confidence Report (CCR) and the violations took place during the period covered by the CCR (*see* 40 CFR § 141.204(d)). Additionally, if a CWS

includes a past due PN in a current CCR, the CWS meets the criteria for returning the PN violations to compliance, and the primacy agency can enter SOX or EOX into SDWIS for those PN violations, indicating that no further enforcement response is warranted. The following two examples illustrate how CCRs can be used to satisfy PN requirements and how they should be coded into SDWIS:

- CWSs can use their CCRs to avoid PN violations. CWSs are required to issue a CCR every year on July 1 covering the period between January 1 to December 31 of the preceding calendar year (i.e., a CCR issued on July 1, 2010 covers the period from January 1, 2009 to December 31, 2009). The CWS can use its CCR to fulfill the public notice requirement for Tier 3 violations, provided the CWS includes the required public notice in a CCR that issues no later than one year from the date the system learns of the violation or situation. Therefore, if a CWS uses its CCR to provide Tier 3 public notice for violations that have occurred since July 1 of the previous year, timely public notice has been provided, and there is no PN violation.
- CWSs can use their CCRs to resolve PN violations. For example, a CWS failed to monitor for nitrate in November of 2008, so it was required to issue a Tier 3 notice within twelve months of that failure to monitor. The CWS failed to produce PN about the violation during the next twelve months, and it also failed to provide notice of the November 2008 violation in its July 1, 2009 CCR (covering the period January 1, 2008 through December 31, 2008). Because the CWS did not provide PN or include the violation in the CCR, two violations should be entered into SDWIS: one under violation code 75 for the CWS's failure to provide Tier 3 public notice, and one under violation code 72 for its issuance of an incomplete CCR. If the PWS includes the appropriate PN text (following the PN content requirements in 40 CFR § 141.205) for its November 2008 failure to monitor violation in a subsequent CCR, the CWS addresses and resolves both violations, and the primacy agency can enter the enforcement response code of SOX or EOX into SDWIS indicating that the violations have been returned to compliance. Points associated with those violations will no longer be included the CWS's ETT score.

We appreciate your attention to this guidance and help in resolving the identified data issues. It is our hope that initiating these actions will help the ETT function better and further enhance our shared responsibility to establish informed enforcement priorities. If you have any questions, please contact Ben Bahk at 202-564-4293 or Joyce Chandler at 202-564-7073.