



OFFICE OF WATER

September 16, 2020

MEMORANDUM

SUBJECT: Implementation of the Public Notification Rule under the Safe Drinking Water Act

FROM: Anita Maria Thompkins, Director
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TO: Regional Water Division Directors, Regions I-X
Regional Enforcement and Compliance Assurance Division Directors, Region I-X

This memorandum provides direction to the U.S. Environmental Protection Agency (EPA) Regional Offices to ensure consistent oversight for the Public Notification (PN) rule in 40 CFR 141 Subpart Q. This memorandum articulates the reporting, record keeping, and delivery requirements under the PN rule.

In 2019, the EPA Office of Inspector General (OIG) examined whether EPA adequately ensures that drinking water systems notify the public as required by the PN rule under the Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f et seq., such as when systems identify levels of contaminants above regulatory limits. The PN rule requires owners or operators to provide public notice to persons served within a specified timeframe. EPA's and primacy agencies' oversight and enforcement responsibilities are designed to ensure that public water systems follow drinking water regulations and notify their consumers when required. Where an EPA region directly implements the drinking water program, EPA has overall responsibilities for oversight and enforcement.

In its report¹, the OIG found that some primacy agencies do not consistently fulfill their obligation to enforce drinking water PN requirements. Specifically, some primacy agencies do not consistently record violations. As a result, the OIG provided several recommendations including that EPA:

1. Ensure compliance with PN requirements of the SDWA and the PN rule where EPA directly implements SDWA; and
2. Verify that primacy agencies fully implement oversight of PN responsibilities.

Through collaboration and continual improvement, the EPA Office of Water (OW) will work with and support the regional Water Divisions, the Office of Enforcement and Compliance Assurance (OECA)

¹ US EPA Office of Inspector General. (September 25, 2019). *EPA Must Improve Oversight of Notice to the Public on Drinking Water Risks to Better Protect Human Health* [Report #19-P-0318]. <https://www.epa.gov/office-inspector-general/report-epa-must-improve-oversight-notice-public-drinking-water-risks-better>

and the regional Enforcement and Compliance Assurance Divisions to consistently improve implementation of the PN rule. In response to the OIG's recommendations, the OW is emphasizing the following reporting and record keeping requirements for primacy agencies, including EPA when the Agency has direct implementation authority, in addition to delivery timing requirements and delivery method flexibility for public water systems.

Reporting requirements for primacy agencies

Primacy agencies must report PN rule violations (e.g., initial or repeat notice, certification) to EPA quarterly² and provide³:

- Date of the PN violation.
- Link to the underlying National Primary Drinking Water Regulation (NPDWR) violation.
- If the primacy agency brought formal enforcement action, the type of action, the date it was initiated, and the date the violation was resolved.

Primacy agencies should also provide when the system has returned to compliance for the PN violation.

Record keeping requirements for primacy agencies

Each agency that has primary enforcement responsibility must maintain for three years⁴:

- Records of certifications of compliance.
- Copies of public notices received from the public water systems.
- Records of any state determinations establishing alternative PN requirements for the water systems.

PN delivery timing

Public water systems are required to provide PN within the required timeframes as follows:

- Tier 1 PN as soon as practical but no later than 24 hours after the system learns of the violation⁵.
- Tier 2 PN as soon as practical, but no later than 30 days after the system learns of the violation⁶.
- Tier 3 PN not later than one year after the public water system learns of the violation or situation or begins operating under a variance or exemption⁷.

For Tier 3 PNs, a public water system may use an annual report, such as the consumer confidence report (CCR), if it meets requirements related to content and duration of Tier 3 public notices⁸. A community water system delivering its Tier 3 PN in the CCR may follow the 2013 *Safe Drinking Water Act – Consumer Confidence Report Rule Delivery Options*⁹, which include electronic delivery, to meet CCR delivery requirements.

² 40 CFR 142.15(a)(1)

³ EPA Revised State Implementation Guide for the Public Notification (PN) Rule, March 2010, EPA 816-R-09-012, <https://nepis.epa.gov/Exec/ZyPDF.cgi?Dockey=P1006RJ8.txt>

⁴ 40 CFR 142.14(f)

⁵ 40 CFR 141.202(b)(1)

⁶ 40 CFR 141.203(b)(1). Primacy agencies may allow alternative delivery timing for initial and repeat notices, see 141.203.

⁷ 40 CFR 141.204(b)(1)

⁸ 40 CFR 141.204(d)

⁹ US EPA. (January 3, 2013). *Safe Drinking Water Act – Consumer Confidence Report Rule Delivery Options*. <https://www.epa.gov/ccr/how-water-utilities-can-electronically-delivery-their-ccr>

PN delivery method flexibility for public water systems and primacy agencies

The OIG recommended that EPA identify acceptable methods and conditions under which the systems could use electronic delivery of Tier 2 and 3 PNs. Delivery requirements are as follows:

- Community water systems must provide PN in a form and manner reasonably calculated to reach persons served in the required time period. It may vary based on the specific situation but must meet minimum requirements – mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the PWS AND any other method reasonably calculated to reach other persons served by the system (e.g. renters, nursing home patients, prison inmates)¹⁰.
- Non-community water systems must provide PN by posting the notice in conspicuous locations throughout the distribution system frequented by persons served, or by mail or direct delivery to each customer and service connection (where known) AND any other manner reasonably calculated to reach persons served by the system if they would not normally be reached by posting, mail or direct delivery¹¹.

The PN rule includes posting on the internet for community water systems¹² or sending an e-mail for non-community water systems¹³ as example supplemental delivery methods in addition to direct delivery. EPA strongly encourages systems to use supplemental delivery methods, for example, social media or other forms of electronic communications, in addition to their primary delivery methods, to widely distribute the PN.

Under special primacy requirements in 40 CFR 142.16(a)(2), a primacy agency may set alternate notification requirements with respect to the form and content of PN. The alternative requirements must provide the same type and amount of information required under 40 CFR 141 Subpart Q. This special primacy requirement addresses state flexibility to approve in writing the use of a substitute delivery method not already listed in the PN rule. EPA recognizes the need to tailor any additional methods of delivery used to the specific situation. Primacy agencies may make this determination in writing on a case-by-case basis¹⁴. Primacy agencies were required to establish enforceable requirements and procedures for adding to or changing the form and manner of delivery requirements for Tier 1, 2, and 3 public notices in their PN regulations¹⁵. A primacy agency also has the option of establishing by rule, after notice and comment, alternate PN form and manner requirements that provide the same type and amount of information required under EPA's PN regulations¹⁶.

Consistent implementation of PN is critical to ensuring public water system customers can make informed health decisions. As described in the updated Annual Program Evaluation Elements (attached), oversight of primacy agencies by EPA regions should include reviews under 40 CFR 142 and implementation of 40 CFR subpart Q.

¹⁰ 40 CFR 141.203(c)(1) and 40 CFR 141.204(c)(1)

¹¹ 40 CFR 141.203(c)(2) and 40 CFR 141.204(c)(2)

¹² 40 CFR 141.203(c)(1)(ii) and 40 CFR 141.204(c)(1)(ii)

¹³ 40 CFR 141.203(c)(2)(ii) and 40 CFR 141.204(c)(2)(ii)

¹⁴ 40 CFR 141.202(c)(4), 141.203(c)(1) and (2), and 141.204(c)(1) and (2)

¹⁵ 40 CFR 142.16(a)(2)(v)

¹⁶ 40 CFR 142.16(a)(1)

Please share this memorandum with your drinking water staff. Questions may be directed to Cathy Davis at Davis.CatherineM@epa.gov or at (202) 564-2703.

Attachment

cc: Mark Pollins, Director, Water Enforcement Division, OECA
Martha Segall, Director, Monitoring Assistance and Media Programs Division, OECA