

# NRDC

November 12, 2020

**Via certified mail, return receipt requested**

Administrator Andrew Wheeler  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Mail Code: 1101A  
Washington, DC 20460

**Re. Notice of intent to sue under the Safe Drinking Water Act, 42 U.S.C. § 300j-8(a)(2), for failure to issue revisions to the consumer confidence report regulations under 42 U.S.C. § 300g-3(c)(4).**

Administrator Wheeler:

We write to provide you with advance notice of our intent to sue for your continuing violation of a nondiscretionary duty under the Safe Drinking Water Act.

Under the Act, community water systems must regularly issue right-to-know reports to the more than 300 million public drinking water consumers across the country. These reports, known under the statute as consumer confidence reports, must give consumers important information about the safety of their drinking water, including (among other things) the presence of certain contaminants in their tap water and any violations of national primary drinking water regulations. 42 U.S.C. § 300g-3(c)(4). EPA was required by law to issue revised rules by October 23, 2020, to make these reports more understandable and useful, and to increase reporting frequency for many consumers. *Id.* § 300g-3(c)(4)(F)(i). EPA has not published or even proposed the new rules.

Under 42 U.S.C. § 300j-8(a)(2), any person may commence a civil action against the Administrator for failure to perform a nondiscretionary duty. On behalf of the Natural Resources Defense Council (NRDC), we hereby notify you that, sixty days from your receipt of this letter, NRDC intends to file suit against EPA and you in your capacity as Administrator for failure to perform the nondiscretionary duty to issue revisions to the consumer confidence report regulations, as required by 42 U.S.C. § 300g-3(c)(4)(F)(i). We are also sending a copy of this notice letter by certified mail to the Attorney General of the United States. 40 C.F.R. § 135.11(b).

**NATURAL RESOURCES DEFENSE COUNCIL**

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**1. Consumer confidence reports are intended to provide people with timely, meaningful information about their drinking water, but often fail to do so.**

All community water systems must send their customers annual reports about the source and quality of the drinking water they provide, including information about detected contaminants, possible health risks from those contaminants, and any violations the water system may have committed. 42 U.S.C. § 300g-3(c)(4)(B). EPA regulations governing consumer confidence reports are published at 40 C.F.R. §§ 141.151 to 141.155, and at Appendix A to 40 C.F.R. Part 141, Subpart O.

But consumer confidence reports are often technical, confusing, and loaded with jargon. This undermines their intended purpose, because many people can't interpret them. The result is that public disclosure of potential risks from contaminated drinking water is often ineffective.

**2. Congress amended the Safe Drinking Water Act to require EPA to improve the usefulness of consumer confidence reports.**

Under recent amendments to the Safe Drinking Water Act – enacted through America's Water Infrastructure Act of 2018 – EPA is required to revise the regulations governing consumer confidence reports to make the reports more useful and accessible. 42 U.S.C. § 300g-3(c)(4)(F). Specifically, EPA must “issue revisions to the regulations” to increase “the readability, clarity, and understandability of the information presented in consumer confidence reports” and to increase “the accuracy of information presented, and risk communication, in consumer confidence reports.” *Id.* § 300g-3(c)(4)(F)(i)(I)(aa)-(bb). In doing so, EPA must consult with “public water systems, environmental groups, public interest groups, risk communication experts, and the States, and other interested parties.” *Id.* § 300g-3(c)(4)(F)(i) (cross-referencing § 300g-3(c)(4)(A)). EPA must also require that community water systems serving more than 10,000 customers provide consumer confidence reports at least twice a year, instead of once a year. *Id.* § 300g-3(c)(4)(F)(i)(II). The deadline for EPA to issue these revised regulations is “[n]ot later than 24 months after October 23, 2018,” or October 23, 2020. *Id.* § 300g-3(c)(4)(F)(i). That deadline has now passed.

**3. EPA has violated its nondiscretionary duty to issue revisions to the consumer confidence report regulations.**

EPA has not proposed – let alone finalized – new regulations. Nor are we aware of any steps EPA has taken to consult with public water systems, environmental groups, public interest groups, risk communication experts, States, or other interested parties, as required.

EPA's failure to issue revisions to the consumer confidence report regulations violates the law. EPA's duty to revise the regulations – after following the statutory consultation procedure – is not discretionary. Congress directed that EPA "shall issue revisions" to those regulations by a date certain, October 23, 2020, "in consultation with" the listed parties. 42 U.S.C. § 300g-3(c)(4)(F)(i). EPA has violated a non-discretionary duty.

**4. NRDC and the public are harmed by EPA's violation of the law.**

NRDC and our members are harmed by EPA's failure to comply with its nondiscretionary duty. The statute directs EPA to amend its regulations to require larger water systems to distribute consumer confidence reports – and thereby disclose drinking water violations and other meaningful information – more frequently. EPA's failure to act means NRDC members served by those water systems are deprived of more-frequent reports. In addition, the law requires EPA to amend its regulations to make consumer confidence reports more readable, clear, and accurate. NRDC members are entitled to that information, and more readable, clear, and accurate information about drinking water quality would benefit those members.

EPA's failure to comply with the law also perpetuates an existing environmental injustice. Community water systems routinely violate drinking water standards: According to a recent NRDC report, in 2015 alone there were 12,000 health-based violations of drinking water standards in some 5,000 community water systems serving 27 million people. See Kristi Pullen Fedinick et al., *Threats on Tap: Widespread Violations Highlight Need for Investment in Water Infrastructure and Protections* 4 (May 2, 2017). Moreover, drinking water protections in this country are not equally distributed: Communities of color, low-income communities, and communities that lack transportation or live under crowded housing conditions have higher rates of drinking water violations than other communities. See Kristi Pullen Fedinick et al., *Watered Down Justice* 4 (Sept. 24, 2019). To combat and mitigate this environmental injustice, the health threats and impacts of water contamination must be disclosed promptly and plainly explained. Publishing the overdue, revised regulations would help serve that purpose.

**5. Unless EPA promptly cures its violation of the law, NRDC intends to file suit.**

Pursuant to 42 U.S.C. § 300j-8(a)(2) and (b)(2), NRDC gives notice of its intent to sue to remedy your failure to perform the above-described nondiscretionary acts. If EPA fails to cure these violations within sixty days of receipt of this letter, NRDC will file suit in federal district court seeking declaratory relief, injunctive relief, and litigation costs, as appropriate.

As required by 40 C.F.R. § 135.12(b), the name, address, and telephone number of the person giving notice pursuant to this letter are as follows:

Erik D. Olson  
Natural Resources Defense Council  
1152 15th Street, NW, Suite 300  
Washington, DC 20005  
(202) 289-6868

As required by 40 C.F.R. § 135.12(c), the name, address, and telephone number of the legal counsel representing the person giving notice are as follows:

Aaron Colangelo  
Natural Resources Defense Council  
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Please do not hesitate to contact us (by email is best) if you would like to discuss this matter further.

/s/ Aaron Colangelo

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cc: Attorney General William Barr (via certified mail, return receipt requested)  
U.S. Department of Justice  
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Washington, DC 20530

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