



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

WSG# 216

Date Signed: December 18, 2020

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MEMORANDUM

SUBJECT: Changes to Enforcement Targeting Tool Point Assessments for Safe Drinking Water Act Public Notification Rule Violations that are More than Five Years Old

FROM: Mark Pollins, Director
Water Enforcement Division
Office of Enforcement and Compliance Assurance

Nathan Mark Pollins
Digitally signed by Nathan Mark Pollins
Date: 2020.12.18 11:31:23 -05'00'

Martha Segall, Acting Director
Monitoring Assistance and Media Programs Division
Office of Enforcement and Compliance Assurance

Segall, Martha
Digitally signed by Segall, Martha
Date: 2020.12.18 10:39:47 -05'00'

Anita Thompkins, Director
Drinking Water Protection Division
Office of Water

ANITA THOMPKINS
Digitally signed by ANITA THOMPKINS
Date: 2020.12.18 11:26:09 -05'00'

TO: Enforcement and Compliance Assurance Division Directors
Water Division Directors
Regions 1-10

This memorandum announces a change to how the Office of Enforcement and Compliance Assurance's (OECA) Drinking Water Enforcement Response Policy (ERP) will assign points to violations of the Safe Drinking Water Act's (SDWA) Public Notification (PN) Rule.¹ We are making this change as part of our response to the Office of the Inspector General's September 2019 report titled, "EPA Must Improve Oversight of Notice to the Public on Drinking Water Risks to Better Protect Human Health" (19-P-0318). The OIG recommended that OECA and the Office of Water (OW) "implement a strategy and internal controls to improve the consistency of public notice violation data." With the change discussed below, OECA's enforcement data will more accurately reflect the relative risk of different SDWA violations. A public water system (PWS) will no longer be designated a serious violator because of an old PN violation that may present little current risk to its customers.

¹ See 40 CFR 141, Subpart Q.

The ERP incorporates an Enforcement Targeting Tool (ETT), which serves as a program management tool. The ETT prioritizes PWSs for enforcement by assigning a point value to each unaddressed violation of a National Primary Drinking Water Regulation. The ETT assigns one, five, or ten points to each of a PWS's violations to reflect the violation's relative severity. The ETT assigns one additional point for each year the PWS's oldest violation remains unaddressed, up to a ceiling of five points. Points for unaddressed violations are totaled to get an ETT score for the PWS. By generating a quarterly score for each PWS, the ETT allows EPA to rank noncomplying systems according to the relative seriousness of their violations. Because the ETT is intended to focus enforcement attention on PWSs whose violations present the greatest potential risk to public health, the tool does not assign points to violations that have been reported resolved, that have already been addressed by a formal enforcement action, or if the compliance period end date for the violation is more than five years old.

The PN rule requires a PWS to notify its customers of SDWA violations to give consumers information they need to take actions appropriate for the health risks presented by the violations. Deadlines for required notification, within 24 hours, 30 days, or 12 months, reflect the relative health risk associated with the violation, and were used in establishing the categories of violations for which the ETT assigns one, five, or ten points. Because the ETT has already assigned violation points to reflect the severity of the violation that triggered the notification requirement, the ETT assigns just one point for each PN violation.

Most drinking water standards indicate a PWS has a violation during the interval between a defined compliance period begin and end date. Violations like this "sunset" and stop contributing points to a PWS's ETT score five years after the violation's compliance period ends. One exception to sunseting is a PN violation, that begins when the PWS misses a deadline for providing required notification and continues until the notification is provided. Because PN violations have no end date, the ETT does not stop assigning points to them after the passage of five years. For this reason, an unresolved PN violation is often a PWS's oldest violation. If it is the PWS's oldest violation, then the ETT will continue to assign one point to this "legacy" PN violation, and one additional point, up to a ceiling of five points, for each year the PN violation has remained unresolved and unaddressed.

By remaining unresolved for more than five years, a legacy PN violation that initially contributed just one point to the PWS's ETT score can contribute six points to a PWS's ETT score, potentially pushing the PWS's score past the threshold for serious violator status. A legacy PN violation will continue to be assigned six ETT points long after the ETT stops assigning points to the violation that triggered the notification requirement, and long after the required information would be useful to the public. Assigning six points to a legacy PN violation can misstate the relative severity of a PWS's current noncompliance, and may cause enforcement resources to be focused on a PWS with a legacy PN violation instead of on a PWS whose violations may pose greater potential risks to public health.

To help ensure a PWS's ETT score more accurately reflects the seriousness of its current noncompliance, EPA is amending the ETT. A PN violation will no longer be assigned violation points if its compliance period begin date is more than five years old. The ETT

points assigned to PN violations will now “sunset” on a five-year schedule similar to other types of violations. Before sunset, an unaddressed PN violation will contribute one point to a PWS’s ETT score. If the PN violation becomes the oldest unaddressed violation at the PWS before its five-year sunset date, it will contribute one point to the PWS’s score plus one additional point for each calendar year the PN violation has been unaddressed. The change ensures that ETT scores assigned to PWSs will be based on their more current violations, allowing EPA and our co-regulators in states, territories, and Indian Country to refocus enforcement resources on other PWSs whose noncompliance may present a greater risk to public health.

EPA expects to implement this change in January 2021 when we next update the quarterly ETT. If you have any questions regarding OECA’s ERP or ETT, please contact Carol King at king.carol@epa.gov, or Ken Harmon at harmon.kenneth@epa.gov. If you have questions regarding PN Rule implementation, please contact Sarah Bradbury at bradbury.sarah@epa.gov.