

STATE OF ALASKA
Department of Environmental Conservation
Division of Environmental Health



DRINKING WATER PROGRAM
COMPLIANCE/ENFORCEMENT STRATEGY MANUAL
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Terms and Acronyms used in this document

18 AAC 80	State of Alaska Drinking Water Regulations
40 CFR 141	SDWA requirements for PWS
40 CFR 142	SDWA requirements for state primacy agency (DEC)
Admin Penalties	Administrative Penalties, 18 AAC 80.1200
AAG	Assistant Attorney General's office, State of Alaska
AL	Action Level (lead & copper, nitrate, VOCs, etc.)
ANTHC	Alaska Native Tribal Health Consortium
AREV	Advanced Revelations, old DW Program PWS database
AWRA	Alaska Rural Water Association
Bacti	Total Coliform bacteriological test
BWN	Boil Water Notice
C/E	Compliance and Enforcement
CA	Compliance Agreement
C&M Section Manager	Compliance and Monitoring Section Manager
CCR	Consumer Confidence Report Rule (Consumer Confidence Report)
CO	Compliance Order
COBC	Compliance Order by Consent
Commissioner	Commissioner of DEC
COMPACH	SDWIS program run to identify violations that have been returned to compliance
CPE	Comprehensive Performance Evaluation
DA	District Attorney
DEC	Alaska Department of Environmental Conservation
Department	Department of Environmental Conservation
Director	Director of Environmental Health
DW Program	Drinking Water Program
ECU	Environmental Crimes Unit
EE	Environmental Engineer
Enforcement Action	Post-violation contact with PWS
EPA	U.S. Environmental Protection Agency
EPS	Environmental Program Specialist
ETT	Enforcement Targeting Tool (also called Significant Non Complier (SNC) List)
Formal Enforcement	NOV, COBC, Administrative Penalties
Health Corporation	Entity providing health services to several native communities
GWUDI	Groundwater Under Direct Influence (of Surface Water)
IESWTR	Interim Enhanced Surface Water Treatment Rule
LCMR	Lead & Copper Rule Minor Revisions
LT1	Long Term 1 Enhanced Surface Water Treatment Rule

LT2	Long Term 2 Enhanced Surface Water Treatment Rule
MCL	Maximum Contaminant Level
M/R	Monitoring & Reporting
M/m	Major/minor
NOA	Notice of Assessment
NOV	Notice of Alleged Non-compliance (18 AAC 80.1200); or Notice of Violation (DEC Enforcement Manual)
PC	Program Coordinator; supervises DW Program EPS staff for a distinct area or program activity
PM	Drinking Water Program Manager
PN	Public Notice
PNR	Public Notification Rule
PWS	Public Water System
PWSS	Public Water System Supervision (grant)
Remote	For purposes of determining bacti hold times; 18 AAC 80.350(c)
RMW	Remote Maintenance Worker
RTC	Return to Compliance
RUBA	Rural Utility Business Advisor
Rural	Off the road system, or otherwise isolated, remote, and/or small communities
SDWA	Safe Drinking Water Act
SDWIS/FED	Safe Drinking Water Information System/Federal version
SDWIS/STATE	Safe Drinking Water Information System/State version; DW Program PWS database
SNC	Significant Non-complier, also called ETT
SOC/OOC	Synthetic Organic Chemical/Other Organic Chemical
SS	Sanitary Survey
Stage 1 D/DBPR	Stage 1 Disinfectants/Disinfection By-Products Rule
Stage 2 D/DBPR	Stage 2 Disinfectants/Disinfection By-Products Rule
SWTR	Surface Water Treatment Rule
TA	Technical Assistance
TCR	Total Coliform Rule
TT	Treatment Technique (includes chlorine residual and turbidity levels)
VSW	Village Safe Water, Division of Water

SECTION 1: GENERAL INFORMATION

Compliance with all Drinking Water regulations is the responsibility of the Public Water System owner and operator. This manual is guidance for Drinking Water Program staff to prioritize their workload and responses to non-compliance.

Purpose of Compliance/Enforcement (C/E) Strategy Manual

The Drinking Water Program is responsible for requiring public water systems to supply safe drinking water for public consumption that meets minimum federal health-based standards, established by the Environmental Protection Agency as required by the federal Safe Drinking Water Act. Alaska has had primary enforcement responsibility of the public water system supervision program (Safe Drinking Water Program) since 1978. The State of Alaska Public Water System Supervision (PWSS) Program seeks to address Public Water Systems (PWS) predominantly through compliance assistance and informal enforcement contacts with the PWS owner and/or operator. Owners and operators are generally notified of requirements mandated by the Alaska Drinking Water Regulations prior to the system being in violation through Departmental letters, phone calls, mass mail outs of annual monitoring schedules, regulatory notifications, and newsletters. In general, when a PWS is in violation of a regulatory requirement, the Department's response will initially follow an informal enforcement strategy. When this approach is unsuccessful in obtaining regulatory compliance from the PWS through compliance assistance and informal enforcement actions, the DW Program staff will begin the use of formal enforcement actions.

This manual outlines the Drinking Water (DW) Program's compliance and enforcement strategy to promote a fair and consistent approach to PWS compliance in the State of Alaska, and provides staff guidance in all three areas: Compliance Assistance, Informal Enforcement, and Formal Enforcement actions.

Definitions of Compliance Assistance and Enforcement

Compliance assistance generally refers to actions taken by staff to assist a PWS before violations occur. This includes explaining regulatory requirements to PWS staff, providing annual monitoring summaries to PWS, etc.

Informal enforcement is action taken by staff after a violation occurs. This may include sending a letter notifying the system of the violation and providing technical assistance to assist the PWS in returning to compliance.

Formal enforcement actions are those that include a variety of legal notices and findings that the Department may take when a PWS fails to respond to informal requests from the Department. Formal enforcement may include administrative penalties.

General guidelines that apply to Communications

Public Health First Address all acute violations as a priority. This cannot be repeated often enough. Although this manual addresses compliance assistance as the first step we generally take in assisting PWS, compliance assistance actions must always take the back seat to addressing high risk violations that represent acute public health risks.

Plain English

Oral and written contact with water system owners/operators should use plain English. Try to avoid using technical terms, acronyms, or slang. Be concise, specific, and accurate in any information provided to a PWS owner or operator.

File Documentation

All written (including email) and oral communication regarding a water system's compliance status or situation should be documented in the PWS file. Minor phone calls may be documented in the EPS's phone log.

Electronic Recordkeeping

The Safe Drinking Water Information System (SDWIS) is the electronic database the state uses to track PWS information such as inventory information, sample results, and violations. Compliance assistance and enforcement actions taken by DW Program staff are also tracked in SDWIS. Every action the DW Program staff can take, from phone calls to letters, has an associated code in SDWIS (see Appendix 1 for a complete list of SDWIS codes). Each electronic record of an action taken on a PWS should include the following: 1.) the appropriate compliance/enforcement action, 2.) the name of the DW Program staff who took the action, 3.) the date the action took place, and 4.) additional comments describing the action.

For example, a compliance phone call was placed to remind a PWS owner or operator about collecting their monthly total coliform (bacti) sample. The DW Program staff would then select PHONE-COMP as the action, enter their name, the date they spoke with the system, and in the comments section a brief description of the conversation should be noted along with whom they spoke with from the PWS.

NOTE TO READER: Throughout this document the SDWIS action code will be noted on the various compliance assistance and enforcement action tools discussed in this manual. For detailed instruction on how to enter actions into SDWIS, please see the current SDWIS Manual available on the DW Program SDWIS Intranet site http://decjnuapp/EH/dw/sdwis_final_tbl.htm or contact your supervisor.

Intra and Interagency Coordination

Staff should become acquainted with the other DEC programs and agencies that may be able to assist the PWS in their assigned area so as to be able to make appropriate referrals and to be able to ask for assistance in compliance activities. Copies of C/E letters may be sent to other organizations that may be of assistance to the water system (such as health organizations) or have an interest in providing safe water (such as a village school administrator). Appendix 2 provides a list of resource agencies, many of which may have an interest in receiving a copy of an enforcement or compliance letter to help assist the PWS owner or operator. A phone call to the local sanitarian or health corporation may also be useful for the coordination of C/E activities for a PWS in noncompliance.

Use Your Best Judgment

Selecting appropriate C/E actions is complex because PWS's, their owners, and their operators are unique. Each water system has a unique history of ownership, construction, operation, violations, etc. Judgment will always be a factor in choosing an appropriate course of action.

Identifying Responsible Parties

In general, the responsible party for the PWS is the owner of the water system, or the person legally charged with representing the PWS. A PWS may be privately owned, such as a small business, homeowners association, mobile home park or private utility; or it may be owned by a public entity such as a city or borough. Staff should take time to speak to the representatives of the water system and review the file documents (such as the Owner's Statement that comes with the water system design plans) in order to identify the PWS's responsible party.

Staff may also request the owner to identify a 'designee' for routine correspondence. Examples of such designees may be the operator, an administrator, the president of the homeowners association, public works director, or a contracted third-party. In an effort to promote a good working relationship with the owners and

operators of a PWS, DW Program staff will often speak primarily with these designees. However, at such time that any written informal or formal enforcement action is initiated, all correspondence with a certified mail requirement (see Enforcement section) should be sent directly to the owner (with a “cc” to the designee when appropriate).

SECTION 2: COMPLIANCE ASSISTANCE

INTRODUCTION TO COMPLIANCE ASSISTANCE

Routine compliance assistance (CA) is a very important tool that the DW Program staff use to inform PWS owners and operators of their regulatory requirements. The DW Program relies upon education and technical assistance to PWS owners and operators as the primary means to achieve voluntary compliance with the Safe Drinking Water Act (SDWA). Periodic reminders of upcoming deadlines are scheduled according to the time of the year, so violations can be avoided. Although routine CA may take time away from informal and formal enforcement actions, it is necessary that DW Program staff spend the time notifying systems of what is required in order to help reduce the number of future violations.

The following CA strategies are used by the DW Program. The least resource intensive methods are to be tried first. Many of these will also be appropriate during informal and formal enforcement efforts.

A few examples are:

- Ongoing, repeated voice and written contact with PWS owners and/or operators;
- Providing technical assistance; which may include monitoring schedules, data summaries, simplified or condensed regulatory explanations and training materials (See Appendix 3 for example letter);
- Identifying specific resources that could assist PWS owners and/or operators;
- Meeting face-to-face with the PWS representatives and,
- Developing an Individual Strategy for the water system.
- Encouraging water system to use Contract Lab Services - PWS that have a history of not being able to meet sampling requirements in a timely manner should be encouraged to contract with an DEC-approved private laboratory for sampling and testing services when appropriate.

DW Program staff should streamline routine CA whenever possible. Some CA-type actions may be grouped into larger projects in order to provide overall assistance to all water systems at the same time (such as seasonal reminders, or mailing of annual routine monitoring schedules).

Common Compliance Assistance Tools

Phone Calls

When? As staff time allows – phone calls are appropriate as a means of introducing ourselves to the owner or operator and/or to remind them of upcoming regulatory requirements. When calling an operator that has the need for both compliance assistance (before violation assistance) as well as informal/formal enforcement (after violations response required), it is important to document the phone call and what assistance was offered to the PWS.

Procedure? Always allow enough time for a short conversation, develop a positive relationship with the owner. In rural areas, this is a very practical way to promote open dialogue with the owner/operator and enables them to see the DW Program as a resource for information and technical assistance.

SDWIS Code: PHONE-COMP

Monitoring and Data summaries

When? Monitoring summaries should go out annually (by March 31st of the calendar year) or by request. Considerations of when to send a monitoring /data summary includes such thing as the seasonal operation of the system, change in owners or operators, and/or the system's need for general reminders of PWS requirements.

Content? Make the correspondence as short as possible and as non technical as possible to best ensure understanding.

SDWIS Code: MONSUMM (Monitoring Summary), DATADUMP (Data Summary)

****NOTE TO READER:** This is not inclusive of all compliance assistance tools, more tools will be added in a future revision and update of the manual**

When Compliance Assistance efforts alone fail and violations are generated, staff will proceed with addressing these violations through the informal and formal enforcement process outlined in this manual.

SECTION 3: VIOLATIONS

How are Violations Identified and Validated?

Identifying Violations:

For most monitoring and reporting requirements, the DW Program staff use the SDWIS/State database to track PWS compliance. Data from laboratory and operator reports are entered into the database as they are received by the Department. The EPS staff determines PWS compliance by running specific compliance reports in SDWIS.

Ideally each month, the DW Program staff runs compliance for TCR and SWTR requirements. Compliance for other rules are run quarterly, semiannually, annually, or triennially as needed. The compliance reports generate a list of the preliminary violations, which is the state's tool for identifying violators. EPS staff research the preliminary violations in order to determine whether to validate or reject the violations. Typically EPS staff compare the violations to the monthly operator reports or laboratory data to ensure a violation is valid. Another report that is often utilized is called a Candidate Compliance Achieved report (also called COMPACH) through SDWIS Add-Ons. This report identifies chemical violations that have returned to compliance (RTCd), and helps identify systems that need an RTC enforcement action entered in SDWIS.

When a System Returns to Compliance

At anytime, a PWS can come back into compliance by completing the appropriate sampling or reporting requirements. A return to compliance (RTC) enforcement action must be entered in SDWIS in order to close or address the applicable violations that have been issued to the PWS. Comments should be included with the RTC that briefly explains how it was resolved. (Example: RTC – Nitrate sample taken and public notice completed.) It is critical to include the associated violations to the RTC enforcement action.

SDWIS CODE: use either **RETURN TO COMPLIANCE** [RTC] or **ST COMPLIANCE ACHIEVED** [SOX]

File Transfers

Each quarter the DW Program is required to transfer data from our state PWS database (SDWIS/State) to EPA's federal PWS database (SDWIS/Fed). The file transfer is completed 45 days after each quarter has ended to allow state staff time to run compliance and ensure that all data has been entered (sample results, enforcement actions, etc.). The PWS data that is transferred quarterly includes; violations, enforcement actions, inventory information, site visits, and some sample data such as Lead/Copper. EPA uses this data to help states identify PWSs that are chronically in violation of the SDWA rules and will show up on the Enforcement Targeting Tool (ETT) also called the Significant Non-Complier (SNC) List.

Enforcement Targeting Tool (ETT)

Also known as the Significant Non-Complier (SNC) List

The objective of the ETT/SNC List is to assist States and Public Water System (PWS) owners and operators to focus their efforts on violations with the highest potential to impact public health. EPA assigned a point value to each violation under the Safe Drinking Water Act (SDWA) with a higher weight (point value) placed on acute violations. A score is calculated for each system based on their open violations using the enforcement targeting formula below.

$$\text{SNC Score} = (\sum S) + n$$

S=Violation Severity Factor

n= Number of years the system's oldest violation have been unaddressed (0 to 5)

S Values	Violation Types (including violation number)
10	Acute violations, TTs, and MCLs.
	Nitrate MCLs, Acute MRDL (Violation Code 13), TCR Acute (21), Turbidity TT (43, 44), SWTR TT (41).
5	Other health-based violations including non-acute TTs, MRDL, and MCLs
	Also, TCR Monitoring/ Reporting (M/R) Repeats (25), and Nitrate M/R (03)
1	Monitoring/reporting violation, or any other violation
	All M/R violations (except Nitrate monitoring and TCR Repeat samples, which are 5 points)

The list is created quarterly by EPA based on information transferred from the DW Program's SDWIS/State database. Using that information EPA generates the ETT/SNC List which includes PWS that EPA considers an enforcement priority having met the criteria of scoring 11 or more points. EPA also sets the criteria for how a system can return to compliance (RTC) and be removed from the SNC List. The criteria for each violation type are outlined in further detail in Appendix 4.

Due to the data file transfer schedule (Table 1 below) the information on the ETT/SNC List may be obsolete by the time the List is released from EPA. For example, a system may have turned in a sample shortly after the file transfer that RTCs the violation but it wouldn't be reflected on the SNC List. In order to address this issue, a comments section has been added to the ETT/SNC List where DW Program staff provide a current status update on the system.

Table 1: ETT/SNC List and Data Transfer Schedule

Quarterly ETT/SNC List	Begin Date for Data Collection	End Date for Data Collection	Date Transfer	Data Lag Issues
July List	January 1st	March 31st	May 15th	Any RTC or action entered in SDWIS after 5/15 will not reflect on the list
October List	April 1st	June 30th	August 15th	Any RTC or action entered in SDWIS after 8/15 will not reflect on the list
January List	July 1st	September 30th	November 15th	Any RTC or action entered in SDWIS after 11/15 will not reflect on the list
April List	October 1st	December 31st	February 15th	Any RTC or action entered in SDWIS after 2/15 will not reflect on the list

EPA’s Enforcement Response Policy (see Appendix 5 for full document) requires states to address PWS on the ETT/SNC List in a “timely” and “appropriate” manner. To be considered “timely” the system needs to be addressed within two calendar quarters once they appear on the SNC List. “Appropriate” methods of addressing the system are either returning their violations to compliance or through a formal enforcement action issued to the system by the state. Formal enforcement actions are defined by EPA as an action that “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.”

Prioritizing Responses to Address High Risk Violations First

OUR FIRST PRIORITY IS PUBLIC HEALTH AND SAFETY

The Drinking Water Program’s success is measured in a variety of ways and by various entities. Whether the measure is the number of boil water notices issued, the number of sanitary surveys completed, or the number of PWS violations, the common thread is public health protection through safe drinking water.

The acuteness and severity of public health risk sets the priority for compliance assistance and enforcement activities. Immediate threats to public health are not a daily occurrence. When they are identified, these threats will always take precedence over the less acute violations.

Priority Acute Violations - Due to high public health risk, staff response starts within 24 hours of discovery of a violation. A non-response by the PWS owner/operator to an acute violation will move these violations to formal enforcement at an accelerated rate.

- Waterborne disease outbreak.
- Any detected and/or confirmed coliform bacteria contamination, with *E. coli* or fecal coliform confirmation.
- Failure to post BWN in response to confirmed *E.coli*/fecal coliform results or inadequate disinfection.
- Surface water or GWUDI system known to be operating without disinfection.
- Nitrate/Nitrite MCL or AL exceedance.

- Critical deficiencies detected in Sanitary Surveys which have a high potential for introducing contamination into the water delivered to customers.
- Surface water or GWUDI system failing to monitor for disinfection.
- Coliform positive test result with failure to perform repeat samples.
- Failure to provide Tier 1 Public Notices.

Acute Violations - Due to elevated public health risk, staff response starts within 7 days of discovery of the violation.

- Surface water or GWUDI systems not reporting.
- Less acute SWTR TT (such as low chlorine or high turbidity that has been corrected).
- Nitrate M/R – for systems on increased monitoring.
- Total Coliform M/R.
- Significant Sanitary Survey Deficiencies, including those defects in a system’s design, operation, or maintenance, as well as any failure or malfunction of its treatment, storage, or distribution system, that the state determines to have the potential to cause the introduction of contamination into water delivered to customers.
- In order to reduce the number of LT1 systems that will trigger CPEs, staff may consider responding to LT1 TT violations as a high priority.
- All other Chemical, Stage 1 violations, Radiological MCLs, or Lead AL exceedances.

Chronic, Non-Acute Violations - Due to potential public health risk, staff response starts within 30 days of discovery of the violation.

- SW system disinfects but failed to install filtration within required timeframe.
- Other Chemical, Radiological, or PbCu M/R.
- Failure to Public Notice for Tier 2 or Tier 3 violations.
- Consumer Confidence Reports – prioritized systems that have known public health risk violations versus those in substantial compliance.

Competing Violations

DW Program staff will respond to violations as time and resources allow. EPS and Program Coordinators (PCs) will establish methods to prioritize their work so that the long term, complex compliance situations are addressed as well as those situations that can be readily addressed. In general, systems serving larger populations and having high public health risk violations should receive the first response from staff. High priority violations will take precedence over trying to get a violator to comply with every rule. Example: Dependent on population served, getting three systems to meet SWTR may be more beneficial to public health protection than one system achieving both SWTR and chemical monitoring compliance.

EPA-Driven Prioritization

EPA Office of Enforcement and Compliance Assurance (OECA)

OECA provides input on programmatic measures that are incorporated into the Public Water System Supervision (PWSS) grant work plan. Typically, this involves negotiating with Region 10 EPA each fiscal year to determine the number of PWS the state will address from the ETT/SNC List during the fiscal year. Occasionally, OECA will focus on specific issues like systems with a score of 50 and above on the ETT/SNC List, for example, and we may adjust our enforcement priorities during a given fiscal year to address their request.

Other Influences on Prioritization:

- Performance Partnership Agreement between EPA and DEC.
- Agreements at quarterly enforcement meetings between EPA Region 10 and DEC DW Program staff.
- The outcome of DEC Program Managers, Program Coordinators, and/or Program Engineering

- meetings.
- Age of open historical violations.
- Special projects to resolve a group of violations.
- Statewide assessment of the severity of the violations.
- State and federal budgetary processes.

SECTION 4: ENFORCEMENT

INTRODUCTION TO ENFORCEMENT

After a system is in violation with a regulatory requirement, all subsequent actions taken by the DW Program may be considered an *enforcement* action. Enforcement actions may be either informal or formal.

Informal enforcement actions are phone calls and general correspondence outlining the violation and what action needs to be taken by the PWS owner to return the PWS to compliance (see the **Informal Enforcement Tools** section for further discussion.) Formal enforcement actions are when the DW Program proceeds with administrative, civil or criminal enforcement. In general, the DW Program primarily uses 'administrative' or 'non-judicial' enforcement tools. These administrative tools enable the program to provide formal legal notification regarding the violation; allows for the development of compliance agreements where appropriate; and/or initiates administrative penalties when necessary (see the **Formal Enforcement Tools** section in this manual for further discussion).

In addition, while using both informal and/or formal enforcement tools to address a specific violation, EPS staff will continue to provide compliance assistance to the PWS owner or operator by assisting them with such things as drafting public notices, boil water notices, action plans, etc., in order to enhance the PWS's ability to return to compliance before additional violations are generated.

Deciding on the Scope of an Enforcement Action

Enforcement actions may either 1) take a holistic approach, listing all outstanding violations and requirements for the system to be in compliance (including engineered plan review when coordinated with program engineers), or 2) target individual contaminants or violations of concern (such as "batch letters" reminding systems of a delinquency on a single water testing requirement or a particular rule). When batch letters are sent to systems notifying them of a single violation, it is recommended that staff consider including a reminder in the letter that if the system has been previously notified of other violations, that they need to continue to work with the DW Program staff in the local area office areas to address those compliance issues too. (The purpose of sending batch letters targeted at a particular type of violation is to reach more systems with violations representing greater public health-risk significance in a timely manner.)

In addition, when staff reviews the PWS history to select the enforcement action most likely to succeed, the capacity (technical, financial, and managerial ability) of the PWS should be considered. Some owners/operators will respond better to progressive requests for incremental improvement rather than a longer list of deficiencies in a single letter.

Accelerated/Decelerated Enforcement - Special Situations

Enforcement steps may vary from this guidance. When extenuating circumstances delay escalating the enforcement response, staff need to work with their PC and thoroughly (completely) document the reason for postponing further action in both the PWS's paper and electronic files. *Lack of documentation has been noted in previous State of Alaska, DW Program Data Reliability audits by EPA. Remember: the PWS's file needs to be as complete as possible.*

Example reasons staff may choose to decelerate enforcement:

- PWS owner or operator has changed. New owners/operators need compliance assistance, and an opportunity to correct the deficiencies.
- A water sample reached the lab past the allowed holding time [Too Long in Transit (TLIT)]. In some cases enforcement may not be appropriate; however, if this is a recurring or frequent event,

then this is not a “special situation” to decelerate enforcement.

- PWS has issued a Boil Water Notice, and further monitoring during this period would only duplicate known information. (The PWS has known chronic contamination from a structural (infrastructure) cause. Until the cause is corrected, the expense of coliform sampling is unwarranted since a negative coliform bacti result would not reverse the BWN).
- More time is needed to see if a recent enforcement action had an affect; however, the system should be demonstrating a “good faith” effort to resolve the compliance issue.

Example reasons staff may choose to accelerate enforcement:

- Violation represents an acute public health risk and responsible party took no action after notification.
- PWS has a long history of non-compliance.
- Violation was willful or egregious, such as the falsification of data. (NOTE: Willful falsification of data may be considered a criminal offense and should be considered for referral to the State Attorney General’s Office)

Documentation of Enforcement Actions

As mentioned previously in the general guidelines that apply to all compliance and enforcement activities, thorough (complete) documentation is a vital part of the enforcement process. All compliance and enforcement actions (phone calls, letters, and meetings) by the DW Program staff must be entered into SDWIS and recorded appropriately in the PWS paper file. Documentation needs to be sufficient to allow a thorough chronology of PWS and DEC actions for use in court if necessary.

NOTE TO READER: The SDWIS action code will be noted on the various enforcement tools discussed in this section. For detailed instruction on how to enter actions into SDWIS, please see the current SDWIS Manual available on the DW Program SDWIS Intranet site http://decjnuapp/EH/dw/sdwis_final_tbl.htm or contact your supervisor.

INFORMAL ENFORCEMENT

The way a particular violation is addressed, and the time elapsed before taking an enforcement action, will vary with the violation’s public health-risk significance, duration, program priority, and the staffing resources available. However, unless an acute or immediate public health risk has been identified, the DW Program staff can consider the approach defined in this section to be the ‘standard’ approach used to address most routine monitoring and reporting violations. It may also be used for violations such as MCLs, ALs and TT; however, these acute types of violations often call for additional technical assistance from the EPS and accelerated enforcement may be warranted if corrective action is not taken by the responsible party after the first notification.

PWS capacity considerations: The standardized approach discussed below is particularly useful with systems that have some measure of financial, managerial and/or technical capacity. When it is apparent that ongoing non-compliance is a symptom of serious financial, technical or managerial capacity issues, DW Program staff should work with other Technical Assistance (TA) providers such as the health corporation sanitarians to develop an action plan or strategy with the community to address the underlying capacity issues inhibiting compliance. When developing such action plans and compliance strategies, staff will use a variety of the informal and formal enforcement communications described in this manual, but may not necessarily follow the sequence noted below.

Typical Informal Enforcement Sequence

The following standardized approach helps staff provide a consistent approach to the application of informal and formal enforcement strategies.

First Response - phone call or Letter 1

A letter or telephone call to the system owner/operator is appropriate as a first response. The content of the letter is not prescribed. It should be appropriate to the owner or operator being contacted, and may address one or more violations. If staff deem appropriate for circumstances, it should include the basic elements listed below. (For example of a Letter 1 see Appendix 6, Example 1)

Basic Elements in an Informal Enforcement Letter or Call

- Describe the violation(s) in the context of its potential public health significance.
- Cite the violation date, duration, and regulation.
- Offer assistance.
- List the steps for the PWS to return to compliance, and associated target dates for response or correction.
- Explain the value of complying with the regulation and the repercussions for not complying.
- Explain public notice requirement.
- If appropriate, a reminder of other outstanding compliance issues may be included/discussed.

Second Response - Letter 2 (Pre-NOV Letter)

This notice must be sent by certified mail, and will proceed a formal NOV. It gives the DW Program EPS an opportunity to summarize for the PWS owner/operator all unaddressed violations and to offer them an opportunity to provide, in writing, an action plan within a clearly defined time period, prior to the Department proceeding with formal enforcement. (For example of a Letter 2 see Appendix 6, Example 2)

At a minimum, a Letter 2 **MUST** include the basic elements listed above and the additional element listed below:

- A reminder that previous letter(s) or verbal reminders were issued. Where appropriate, staff should re-summarize all outstanding violations and non-compliance issues in letter format before proceeding to a formal enforcement action.

Examples of Letters 1 and 2:

A variety of examples of informal enforcement letter(s) are provided in Appendix 6, Examples 1 and 2. The letters' format range from an informal approach to a more formal structure dependent on the nature of the violation, the PWS's past violation history and the number of repetitive notices. Formats and approach also take into consideration such aspects as cross-cultural communication styles, changes in owner and operator, and/or changes in the requirements due to recent system modifications, etc.

Bilateral Compliance Agreement (BCA)

The BCA (see Appendix 6, Example 3) is the most formal of the compliance assistance tools and should be used appropriately. It is often a useful tool for developing action plans and strategies with a cooperative PWS owner that has agreed to address the identified deficiencies in a prescribed timeframe.

Procedure for issuance, approval and signatures for a BCA:

Approval process: EPS drafts BCA and provides it to PC for review, along with summary/chronology of related PWS compliance assistance and enforcement actions.

Signatures: After receiving approval from PC, EPS sends two copies of BCA to PWS for signature, who returns both signed copies to EPS. If delegated, EPS may sign BCA, otherwise PC signs.

Copies: Originals - one to PWS owner and other is placed in PWS file.

SDWIS Code for a BCA: Use enforcement code STATE BCA, and assign all applicable PWS violations.

Assistance commonly provided with Informal Enforcement Actions:

As indicated above, when a system is in violation of monitoring and reporting requirements, and/or has exceeded a chemical or biological MCL or AL and/or has a TT violation, DW Program staff will provide

additional compliance assistance when and where possible to the PWS owner and/or operator in order to help expedite the systems return to compliance, prioritizing their response based on an immediate public health risk assessment (see prioritizing response section, page 11). Examples of such compliance assistance includes drafting public notices, boil water notices, reviewing sampling site plans and test results in response to MCLs, as well as coordinating with other agencies (TA Providers) that can provide the PWS owners/or operators with technical assistance. Numerous State and EPA Fact Sheets and documents are available for staff when providing compliance assistance to the PWS owners/operators.

Elevating Response to Formal Enforcement

When the Department has been unsuccessful in obtaining regulatory compliance from the PWS through compliance assistance and informal enforcement actions, the DW Program staff will begin the use of formal enforcement actions.

FORMAL ENFORCEMENT

All formal enforcement action must be overseen by staff with formal enforcement training/credentials, and coordinated with the PC/CM Section Manager Compliance and Monitoring Section Manager prior to being elevated. Sometimes a PWS will not comply with a regulation despite ongoing compliance assistance and/or informal enforcement contacts by the DW Program staff. In such cases, formal enforcement actions by DEC will be used as a means to compel the PWS's return to compliance. Of all the formal enforcement tools available to the program (see Department Enforcement Manual) the DW Program generally uses administrative remedies (non-judicial) enforcement tools. Our most common formal enforcement tools are the Notice of Violation (NOV), Compliance Order by Consent (COBC), and/or the Administrative Penalties process. The use of these legal documents is further discussed in the **Formal Enforcement Tools** Section of this manual.

GENERAL GUIDELINES FOR FORMAL ENFORCEMENT

Departmental and DW Program Procedures

The information provided in this section on formal enforcement procedures are intended only to supplement the general Departmental guidelines for enforcement, described in the Department's Enforcement Manual (6th Edition, October 2005 or most current version available on the Environmental Crimes Intranet page http://decjnuapp/DAS/env_crimes/default.htm). All DW Program enforcement staff should be familiar with the contents of the Department's Enforcement Manual and review it before taking formal enforcement action and/or making site investigations.

Consider if Formal Enforcement Action is Appropriate:

Staff should consider if formal enforcement action is appropriate prior to initiating. Some general considerations include:

- Degree of public health risk;
- Prior history of noncompliance;
- Responsible Party (RP) and PWS is judged as being capable of complying (has substantial technical, managerial and/or financial capacity now, or would be able to obtain capacity with individual strategies/action plans applied); variance in capacity as it applies to each specific violation-type will be used in determining sequence or choice of legal action taken; and
- Deliberate disregard of prior DW Program notifications of non-compliance.

Addressing ETT/SNC Systems

A part of EPA's Enforcement Oversight Program is to evaluate if the State Program is addressing ETT/SNC violations in a "timely and appropriate" manner. As mentioned previously in the Section 3: Violations, "Timely" is defined as 6 months from the SNC date. "Appropriate" is defined as a PWS meeting the return to compliance criteria for the given rule or the State or EPA issuing a "formal" enforcement action addressing the SNC violations. All of the formal enforcement tools listed in the following pages are considered "formal"

by EPA, including the state of Alaska's Notice of Violation (NOV). The NOV was approved as a formal enforcement action by EPA in October 2005.

Serving legal notices

All formal enforcement notices are sent to the PWS owner by certified mail, return receipt requested. In cases where certified mail is not accepted by the PWS owner, staff may choose to have it hand delivered after PC/CM Section Manager approval [who may request that the Alaska State Troopers assist with serving, if warranted]. When a responsible party (PWS owner) cannot be identified, there are also other avenues for serving private utilities through the Commissioner of the Department of Commerce, Community & Economic Development (DCCED); however, such serving should be coordinated through the Asst. Attorney General's office, with prior notification to the PC, CMSM, PM, and Division Director.

Use of Standardized Enforcement Document Formats

The formal enforcement documents described in this manual have been standardized and have previously been reviewed by the Asst. Attorney General's office and the Department's Environmental Crimes Unit. The legal notification language contained in each document should **not be modified without written approval from these offices.**

Required Approvals and Signatures on Enforcement Documents

The DW Program has guidelines regarding who must review, approve and sign formal enforcement documents which are briefly noted for each enforcement tool listed in this section.

Tracking Formal Enforcement and Follow-up in SDWIS

The EPS who issues a formal enforcement action will track the PWS's progress closely following any formal enforcement actions issued and keep the PC/CMSM routinely updated. All formal enforcements are documented in SDWIS and reported quarterly to EPA. Staff will continue to record all phone calls and correspondence that transpire after a formal enforcement action is issued in SDWIS and the PWS's paper file. This is critical in tracking a PWS's compliance and in developing a written record of compliance/non-compliance, which will be used if the formal enforcement is elevated.

Notification to Environmental Crimes Unit (ECU) and documentation in CATS database

The Department's ECU has requested that all formal enforcement be documented in the "Complaint Automated Tracking System" (CATS). A CATS tracking number must be included on all formal enforcement actions issued to any Alaska PWS. ECU is involved as investigators for both civil and criminal enforcement activities. Those enforcement actions documented and entered into CATS are used as a DEC performance measure and reported to the Alaska legislature.

FORMAL ENFORCEMENT TOOLS

When formal enforcement is necessary and staff resources are available, the methods described in the following section will be used to resolve high priority violations. **Staff should review the Formal Enforcement General Guidelines section in this manual before proceeding with the issuance of any formal enforcement document.**

Notice of Violation (NOV)

The first formal enforcement response is often an NOV (see Appendix 7, Example 1). As required by 18 AAC 80.1210, the formal NOV notifies the PWS owner of the following:

- an activity is violating the law (include dates of violation(s), a description of the violation(s), and references the regulation, order, permit, approval, or certification allegedly violated);
- requests that the violator cease and desist in their violations (stated appropriately);

- requests a written report from the violator explaining why the violation(s) occurred and the steps that will be taken to prevent similar violations in the future;
- establishes a clear time frame (compliance schedule) for returning to compliance [see 18 AAC 80.1210(b)(3)] for basis of time frame);
- requests a written report verifying that corrective steps were taken to correct the problem if applicable;
- if the owner/operator does not have access to technical resources to correct the problems (see 18 AAC 80.1210(5) for details), allows for an offer of technical assistance from the Department that may also be included; and
- Allows for a written request for an extension to each deadline (if it does not pose an immediate public health risk) within a set time-frame. (Such a request usually results in a compliance agreement if a long-term action plan for corrective action is needed; see BCAs (discussed in the previous section) and COBCs discussed below.)

The NOV enforcement step may not required if the PWS owner has already agreed to enter into a bilateral compliance agreement or other Department accepted action plan that will returned the system to compliance in a prescribed manner and timeframe. On the other hand, staff may choose to accelerate the enforcement process and issue an NOV after just one warning letter if the system has a historical (long-term) non-compliance record and has been repeatedly unresponsive. Unlike compliance agreements that are signed by both parties, the NOV is signed only by DEC, and is considered a 'notification' to the PWS owner that if corrective action is not taken, DEC will pursue additional legal action. A NOV is a precursor for future enforcement proceedings, such as the administrative penalty.

When an NOV is issued, but the Department does not take the stated legal action contained in the NOV, the impact of future NOVs is eroded. Therefore, when an NOV is issued, DW Program staff must be prepared to dedicate future time to pursue further enforcement in the event of non-compliance. It is also critical that the deadlines noted in the NOV are closely monitored, thoroughly documented, and tracked in SDWIS.

Special Considerations in Preparing the NOV:

Compliance schedules need to have appropriate milestones and timelines for addressing the violations, etc. System may requests extensions of dates provided in an NOV if warranted. If long-term extensions are requested and warranted, staff should consider the option of a COBC.

Procedure for issuance, approval and signatures for a NOV:

Approval process: EPS drafts NOV for PC/CMSM review and approval.

Signatures: If delegated, EPS may sign NOV, otherwise PC signs.

Copies: Original NOV is sent to PWS owner, copy of NOV is placed in PWS File.

SDWIS Code for the NOV: Use the enforcement code NOV or ST FORMAL NOV ISSUED. Assign all applicable violations and assign the NOV a compliance schedule. The NOV compliance schedule in SDWIS will be based on the required actions and timeframes noted in the NOV.

Compliance Order by Consent (COBC)

A COBC, (see Appendix 7, Examples 3 and 4), may be used when it is more efficient or effective to have a prescribed, legally binding action plan or individual strategy negotiated with the PWS owner rather than to pursue an administrative penalty. COBCs are deemed to be unlikely to succeed if the PWS owner has historically demonstrated apathy or recalcitrance and should only be considered if the responsible party expresses a willingness to have a legally binding schedule for compliance. Although not required in all circumstances, COBCs allow for the stipulation of an administrative penalty (monetary fines) for missing negotiated milestones or deadline dates. The amount and type of penalty for missing a milestone must be approved by the Assistant Attorney General's (AAG's) office prior to inclusion in the COBC.

COBCs may be issued before or after a Preliminary Determination of Administrative Penalty (PDAAP) has been issued. However, in cases where a PDAAP has already been issued, the EPS should not discuss a reduction of the administrative penalties with the PWS owner until it has been discussed with and approved by the Director. That is, a COBC issued after a PDAAP or Notice of Assessment (NOA) would generally be a result of an appeal to the Director for a reduction in fines with an agreement to enter into a compliance agreement for corrective action, and must be reviewed and approved by the PM, Director, and AAG before the EPS is free to discuss it with the PWS owner.

Considerations when developing COBC milestones:

Compliance milestones and timelines in a COBC need to be progressive, but also need to consider the capacity constraints of the PWS. If the PWS needs technical or financial assistance before compliance can be achieved, the COBC needs to have specific actions the PWS owner can realistically achieve by fixed deadlines without depending on another entity. An example would include: Complete appropriate operator training by ARWA or ATTAC by June and apply for grant funds for filter plant modification design by September.

If achievement of a major milestone is beyond the sole control of the PWS owner, then a mechanism for reevaluating progress and rescheduling the milestone should be included. An example of an event beyond the systems' control would be the receipt of grant funding in a particular fiscal year. However, even in such circumstances, the required milestone can be included in the COBC with a provision for an amendment of the COBC if the grant or low interest loan is denied.

Amending a COBC milestone:

If a milestone due date is approaching and the PWS does not demonstrate good faith in attempting to perform the action, the PWS should be reminded of the upcoming compliance date. If significant amendments to a milestone are appropriate, they should be negotiated as needed and the COBC amended with the oversight of the AAG and approval of the PM and Director. If no amendment is approved, escalated enforcement action should be taken whenever major milestones are missed. Staff should seek advice from PC/CMSM and the AAG's office regarding the most appropriate course of action which will be dependent on the individual COBC and whether it included penalties and/or if it was negotiated as an alternative to the issuance of a PDAAP or NOA (from previous formal enforcement action such as a NOV).

Typical Procedure for issuance and approval of a COBC:

Approval process: EPS must have approval from PC/CMSM before initiating COBC discussions with PWS owner. After obtaining approval to proceed, EPS develops milestones and related compliance schedule for review by PC/CMSM if delegated; EPS may work directly with AAG's office to draft final COBC. Final draft is reviewed by PM/CMSM/Director.

Signatures: After receiving approval, EPS sends two copies to PWS owner for signature, who returns both signed copies to EPS. EPS sends both copies to the AAG (through PM) for the PM's and AAG's signatures. AAG returns signed copy to EPS for distribution.

Copies: Fully signed Originals - one to PWS owner, one in PWS file. Copies of signed COBC are provided to PM and AAG.

SDWIS Code: Use COBC enforcement code; assign all PWS violations and assign the appropriate schedule.

Administrative Penalties

The following two steps are detailed in 18 AAC 80.1200-1290, and staff should review those regulations before calculating penalties or issuing an assessment.

Preliminary Determination to Assess Administrative Penalty (PDAAP)

If compliance is not achieved through an NOV or COBC, or if an extension is requested but denied and/or withdrawn by the Department for failure to make progress, then the next step is to complete a Preliminary Determination to Assess an Administrative Penalty (18 AAC 80.1230). This process calculates the actual penalty that will be assessed if compliance has not been achieved. (See Appendix 7, Example 6 and 7).

Procedure for the approval and issuance of a PDAAP:

Approval process: EPS calculates penalty based on procedures outlined in 18 AAC 80.1220 and prepares updated chronology of violations, compliance assistance activities, and enforcement actions for PC/CMSM review and approval. C&M SECTION MANAGER will obtain approval to proceed from PM/Director. After approval to proceed, EPS will work directly with AAG’s office on final approval of PDAAP.

Signatures: After AAG office approval of calculated penalties, EPS may sign cover letter and send with PDAAP calculation to PWS owner.

Copies: Original is sent to PWS owner, copies to PWS file, CMSM, PM, Director, and AAG.

SDWIS Code for the Admin Penalty: Use ADMIN PENALTY-PRELIMINARY enforcement action code; attach all associated PWS violations; there can be a compliance schedule associated with this action.

After the PDAAP is issued:

If the owner does not request a reconsideration of the Preliminary Determination within 10 days, or the owner does not request an extension of the 10-day period for making a request for reconsideration, or if after a reconsideration, the Dept determines that the penalty should be assessed, the Department will issue a Notice of Assessment and assess the penalty. The details of this process are listed under 18 AAC 80.1230 (b) (9), (c), and (d). **NOTE: If reconsideration or extension is requested, it will go directly to the Director, Division of Environmental Health. The Director will discuss the reconsideration with the PM and CMSM and submit a response on behalf of the Department.** (See Appendix 7, Example 8)

Notice of Assessment (NOA)

The final step of the Admin Penalty process is to issue a Notice of Assessment. This section, 18 AAC 80.1240, comes with several sets of appeal processes. If no written extensions are requested or granted, and compliance has not returned within 45 days, the proposed penalty is considered a final order that is not subject to review by the superior court, and is immediately due to the Department. If a penalty is not paid within 30 days after the notice of assessment becomes a final order, the Department may bring an action to collect the penalty, interest, and full reasonable attorney fees and costs. (See Appendix 7, Example 9)

Procedure for approval and issuance of NOA:

Approval process: After approval to proceed from PC, EPS prepares NOA letter to be reviewed and approved by CMSM, PM, Director, and AAG.

Signature: After obtaining approval to proceed from AAG, NOA letter may be signed by EPS.

Copies: Original is sent to PWS owner, copies to PWS file, CMSM, PM, Director and AAG.

SDWIS Code for the NOA: Use ST ADMIN PENALTY ASSESSED enforcement code; attach all associated violations, no schedule is necessary at this time.

Other Formal Enforcement Tools:

The Department's Enforcement Manual lists additional 'judicial' enforcement actions that the State may take to enforce regulatory requirements when necessary, such as the uniform summons and/or criminal complaint. With the adoption of the Administrative Penalty Authority, DW Program staff will generally only use those 'administrative' tools described above. However, if a violation is very egregious, such as the falsification of data, and/or other actions that willfully jeopardize the public's health, the Department may consider other legal recourse as needed. Such elevated enforcement will follow the Department's Enforcement Manual and would be requested by the PC through the CMSM to the PM, and up through the Director, Commissioner, ECU, AAG and DA offices as needed.

Formal Referral to EPA

Another formal enforcement tool is referring a PWS to EPA for enforcement. This allows EPA to take the lead on enforcement and put the PWS through their enforcement process. This tool involves coordination between the DW Program field staff, the DW Program Quality Assurance and Consistency (QAC) Supervisor, and the Drinking Water Unit in the Region 10 EPA office. The roles for each agency in referral cases are outlined in the Compliance Assurance Agreement, completed June 30, 2007.

Procedure for Referral:

Determining whether referral to EPA for enforcement is appropriate is evaluated on a case by case basis with the QAC Supervisor. Typically, those PWS referred to EPA are difficult enforcement cases where the Department has exhausted all resources without resolution, lacks the resources to be effective, or believes the situation is such that federal pressure would be more, or most effective. In cases where referral is appropriate the PWS is recommended to EPA enforcement staff, at which time it is determined whether EPA will take the case.

NOVs issued to the DW Program

A PWS could also be referred to EPA in response to an NOV issued to the DW Program. EPA has the ability to issue the State of Alaska DW Program an NOV for not addressing a system's SNC violations in a timely or appropriate manner. After an NOV has been issued, the DW Program has 30 days to respond to EPA Region 10 by either referring the PWS to EPA or issuing a formal enforcement to the PWS.

After Referral has been made:

Once referred to EPA, the QAC Supervisor becomes the primary point of contact with EPA and works jointly with the PC/EPS to communicate with the PWS owner or operator regarding EPA's enforcement process. Reporting on the referred PWS case status will take place at the regularly scheduled DEC/EPA enforcement meetings.

Role of DW Program field staff regarding referred systems:

- Support EPA's lead role regarding referred systems;
- Review and provide comments on EPA-prepared draft documents as requested by QAC Supervisor;
- Routinely provide the QAC Supervisor with information regarding system status;
- Continue to provide technical and compliance assistance to PWS owner and/or operator when appropriate;
- Maintain complete files on referred systems; and
- Act as a witness as needed on cases going to trial.

'Rule Specific' Enforcement Guidance

Waterborne Disease Outbreak

Staff should alert the PC/C&M SECTION MANAGER immediately on any information regarding a waterborne disease outbreak. The PC/CMSM will evaluate the information, and contact and coordinate activities with the state epidemiologist as needed. Also see the notes below on Article 4 for response to confirmed positive coliform bacteria contamination.

18 AAC 80: Article 2 - Plan Review

Violations of Article 2 are typically a result of modification or construction of a PWS without approval to construct, or operation without an interim or final approval to operate. Without a review of record drawings, the adequacy of the system is unknown and may pose a public health risk. Compliance and enforcement staff (EPSs) are required to coordinate with the DW Program's engineering staff in their area office prior to sending enforcement correspondence to the owner or operator of a system regarding a plan review or other engineering related issues. Once the EPS and engineering staff have decided enforcement is needed, it may be addressed as a separate issue, or included as a reminder in routine correspondence to the PWS, or it may be elevated to formal enforcement (NOV, COBC, PDAAP, etc.)

18 AAC 80: Article 3 – Monitoring and Contaminant Levels (MCL)

All MCL violations in the PWS SDWIS database must have an enforcement action attached to it to indicate timely response by the department to known public health risks. If there was a delay in response, the reason for the delay should be documented in the hard copy file. In addition, the following guidelines should be followed by DW Program staff when they become aware of an MCL violation.

Nitrate and Nitrite MCLs

When nitrate exceeds 10 mg/L, or nitrite exceeds 1 mg/L, EPS staff will require an additional sample taken from the same sampling point within 24 hours of notification. If unable to resample within 24 hours, the PWS owner is required to notify consumers immediately and take the repeat sample within 14 days after notification of the original results. If the average of the two samples used to determine compliance exceeds the MCL level, or if the repeat sample is not taken, the system has an acute health risk (for infants under six months of age) and appropriate action should be taken [see 18 AAC 80.207 (d)(4)].

Other Chemical or Radiological MCL Violations

If there is an acute public health risk for a chemical or radiological MCL, consider whether it is appropriate to issue a health advisory or an emergency order.

- EPS should contact a PC.
- The PC will consult the Department of Health & Social Services (DHSS), Epidemiology Section about whether the level is high enough for health effects to occur.
- If recommended by the DHSS, Epidemiology Section, DW Program staff will takes necessary steps to limit water consumption.
- When contacting the PWS owner or operator regarding an MCL violation, be sure to include the following elements in correspondence:
 - Describe each violation in the context of its potential public health significance.
 - Cite the violation date, duration, and regulation.
 - Offer assistance.
 - List the steps for the PWS to return to compliance, and associated compliance dates.
 - Explain the value of complying with the regulation, and the regulation citation.
 - Explain the public notice requirement.
 - State the requirement that the system issue a public notice with mandatory health effects language for the MCL violation.
 - Explain the method, deadline, and need for repeat check samples required by regulation.

Staff may seek help from other agencies and state programs as needed to reach outlying communities or assess the situation. Example agencies that can help with public education and technical assistance include ANTHC, VSW, and/or the Regional Health Corporation.

18 AAC 80: Article 4 - Total Coliform Rule (TCR)

Monitoring Violations - Assistance in Collecting Samples

Water system owners/operators unsuccessful in taking water samples should be urged to contract with a private laboratory, for sampling and testing services, if available in the area. Other avenues for assistance are clinic personnel, the city office or other utility staff, or any willing and responsible person. It is particularly helpful for DW Program staff to discuss a backup contact with the operator whenever possible, in order for there to be an established alternative contact in case of hot bacti reports, etc.

When to Revoke the Quarterly TCR Monitoring Waiver

Revoke the quarterly bacti waiver [18 AAC 80.405 (c) (1)] for a Community Water System serving less than 1,000 population if a quarterly sample is missed. As required by 18 AAC 80.405, a system must have 12 months of samples with no violation; therefore 12 months compliance is required before the waiver may be reinstated.

What to do when repeat Samples Confirm Fecal or *E coli*

When repeat samples taken under 18 AAC 80.415 confirm the presence of fecal coliform or *E. coli*, staff will contact the PWS owner or operator as soon as possible on the same day the Department is notified to discuss the requirement for a boil water notice (see Article 10) and remedial measures as needed. DW Program staff should coordinate response with other organizations as needed to ensure that all concerned parties are aware of the BWN.

Issuing a Boil Water Notice

Prepare the BWN, PN, and letter;

Instruct the PWS to post the BWN and PN following regulatory guidelines. (Fax or email them a copy of the BWN and PN if they have access to a fax machine or computer);

Contact the PWS owner/operator immediately and work with him/her to identify and correct the cause of the contamination; and

Evaluate the operating conditions and compliance history of the PWS. Local Program Coordinators can provide guidance.

Notify the EH Food Service/Sanitarian staff of every Boil Water Notice, as they will send special handling instructions to food establishments, etc., that are connected to the PWS.

As needed, contact pertinent individuals who could assist the PWS, such as EH Health Officers, Village Safe Water staff (VSW), ANTHC, or Health Corporation personnel.

Note: EPS staff will generally not issue a BWN for a confirmed TC+ (when all samples are fecal negative and EC-). However, due to the fact that long transit times in Alaska have the potential to interfere with EC analysis we may issue a BWN in certain cases with just TC+ samples. Coordinate with your PC/CMSM to determine if a BWN should be issued.

What to do when a BWN is needed and you are Unable to Contact PWS Owner or Operator

If you are unable to reach the PWS's designated responsible party or someone else in the community that can post a BWN within the required 24 hours, take these steps early enough to allow the posting to occur within 24 hours:

- Inform the local PC.
- Contact Village Safe Water staff (RMW or senior-level VSW staff), ANTHC, the post office, the clinic, the city office, Village Public Safety Officer, the State Troopers, or the Regional Health Corporation as appropriate.

- Use other means to initiate contact when no PWS official is available including researching the system's area phone book or on the Internet for residents or businesses in the community.
- If absolutely no assistance can be found in the community, consider a public service announcement and/or travel to the water system to post the BWN. (Requires PC/CMSM approval.)

Other BWN Situations

There may be non-routine circumstances where a BWN is necessary; DW Program staff should contact their PC for further guidance. Examples may include loss of water pressure or inadequate chlorination of surface water.

Lifting a Boil Water Notice

Four satisfactory repeat samples taken at appropriate sample locations are necessary to rescind a BWN. If the source of the contamination has been identified, the BWN should not be lifted until the situation is corrected even if the four repeats are clean. Consult with the local Program Coordinator about the individual PWS's situation.

When lifting a BWN, remember to notify any other agency or state personnel who were notified or involved with the BWN's issuance. Thoroughly document the BWN process in the PWS SDWIS database.

Sanitary Surveys

Although third party inspectors will perform most sanitary surveys, DW Program staff will perform sanitary surveys at PWS of special concern to the Department based on past violations and current compliance status, such as overdue sanitary survey.

18 AAC 80: Article 5 - Lead and Copper Rule (LCR)

Water system owners/operators unsuccessful in taking water samples should be urged to contract with a private laboratory for sampling and testing services.

Testing for lead and copper is difficult for many PWS owners and operators. Confirm the priority of work on this Rule with the PC in situations where the initial set of tests indicated lead and copper below the action level. Lead and copper levels above the AL require that the system initiate further sampling or a corrosion control desk top study (CCDS) to establish an optimal corrosion control (OCC) program. In some cases, where it becomes clear that lead and copper sampling may not have been completed correctly or improper sampling sites were selected, additional testing is needed to confirm that the AL has actually been exceeded. In such cases, DEC has historically allowed the CCDS to be suspended until the required testing has been properly completed.

At such time that the CCDS has been required and has been initiated, routine lead & copper samples are not required until the system has had a CCDS and installed treatment as needed. The system should be placed on a compliance schedule in SDWIS to track milestones. The lead and copper monitoring frequency is eliminated until an OCC plan is in place within the required timelines. Public education of the lead exceedance is required during this time at a frequency of once every six months.

18 AAC 80: Article 6 - Surface Water Treatment Rule (SWTR)

SWTR Monitoring and Reporting violations:

Telephone calls (documented in SDWIS) to the PWS are appropriate. Encourage operators to call promptly to report high turbidity values and low disinfectant values, as required by 18 AAC 80.610(d).

SWTR Turbidity and Treatment Technique Violations

When significant, such as failure of the disinfection system or during high or long term turbidity violations.

Enforcement letter should contain the basic 6 elements. Other options include:

- If there is an acute public health risk, consider issuing a health advisory or an emergency order.
- Emphasize the public notice requirement and the appropriate health effects language.
- The EPS/EE should make a site visit when resources allow.

18 AAC 80: Article 7 – Enhanced Surface Water Treatment Rule (ESWTR)

No Guidance Developed Yet

18 AAC 80: Article 8 – Groundwater Rule (GWR)

No Guidance Developed Yet

18 AAC 80: Article 9 – Disinfectants/Disinfection By-Products Rule (D/DBP)

No Guidance Developed Yet

18 AAC 80: Article 10 - Public Notice (PN) Requirements

Notice by DEC

Generally, the Department does not issue Public Notices to the users of the water system. Even if the DW Program issues a public notice because they are unable to reach the PWS owner in an emergency, the water system owner remains obligated to issue Public Notice.

Failure to Public Notice

A PWS that does not provide Public Notice of violations is in violation of Article 10. Failure of a system to provide copies to DEC of public notice is considered a public notice violation.

Enforcement of Tier 3 Public Notice

PN for non-acute violations will be pursued only when the PWS has other violations of active concern. Remind any Community Water Systems that the violation must be reported in the annual Consumer Confidence Report (CCR). The CCR must list any federal violations by the PWS for the calendar year. The actions below can be included in the response to the violation itself:

- Include Tier 1, Tier 2, and Tier 3 Public Notice (PN) requirements in any letter, NOV, or other enforcement action.
- Include an example public notice appropriate for the violations.
- Inform PWS owner of requirement to send a PN copy to DEC along with the PN certification page, the required distribution method (newspaper, electronic media, or posting, etc), and duration of posting.

When there is an acute public health risk and the drinking water system owner/operator fails to give Public Notice:

Contact the local Program Coordinator for guidance. Staff can issue the PN on behalf of the PWS owner if unresponsive. For an imminent public health risk, use local television, radio, citizen's band, electronic media or the community health aide if appropriate. When appropriate, contact VSW, ANTHC, or the Regional Health Corporation sanitarians for assistance. Locations such as the local post office or general store may be sites for posting a health advisory in a rural area. Hand-delivery may be appropriate for small single service systems and/or small communities.

Action Name	SDWIS Code	Action Description
ADEC BOIL WATER NOTICE	BWN	ADEC ISSUED BWN
ADMIN ORDER & PENALTY	AOP	STATE ADMIN ORDER WITH PENALTY ISSUED
ADMIN PENALTY - PRELIMINARY	APP	ISSUANCE OF PRELIMINARY DETERMINATION 18 AAC 80.1230
ALASKA ELECTRONIC SANITARY SURVEY	AES	Download of PWS info in the Desktop Electronic Sanitary Survey Form.
ANNUAL WATERSHED REPORT	AWR	Use to track when systems turn in their watershed annual reports.
APPROVAL TO CONSTRUCT	ATC	System received approval to construct.
CAPACITY DEVELOPMENT ASSISTANCE	CDA	ASSIST PW WITH CAPACITY SELF ASSESSMENT
CASEDROP	DRO	STATE CASE DROPPED
CIV END	CCC	STATE CIVIL CASE CONCLUDED
CIV-DEV	CCD	STATE CIVIL CASE UNDER DEVELOPMENT
CIVIL	CCF	STATE CIVIL CASE FILED
CIVILAG	CCA	STATE CIVIL CASE REFERRED TO AG
CNSNT	CNS	STATE CONSENT DECREE/JUDGEMENT
COBC	CBC	COMPLIANCE ORDER BY CONSENT
CRDONE	CRC	STATE CRIMINAL CASE CONCLUDED
CRIMAG	CRR	STATE CRIMINAL CASE REFERRED TO AG
CRIMDA	CRF	STATE CRIMINAL CASE FILES
DATADUMP	VIO	VIOLATION PRINT OUT FOR PWS/CCR
DBP MONITORING PLAN	DMN	Plan outlining DBP monitoring requirements
DEFAULT	DEF	STATE DEFAULT JUDGEMENT
E MAIL	MLE	EMAIL SENT TO PWS
ELEVATE	RHL	referred to higher state level
EMERGENCY RESPONSE PLAN	AER	ASSIST PWS WITH EMERGENCY RESPONSE PLAN
ENFORCE LETTER 3 - GENERAL USE	LT3	
EPA REFERRAL	REF	
FINAL APPROVAL TO OPERATE	FAO	System received final approval to operate.
HA	HAI	HEALTH ADVISORY ISSUED
INJUNCT	INJ	STATE INJUNCTION
INTERIM APPROVAL TO OPERATE	IAO	System received interim approval to operate.
INTROLTR	LOI	LETTER OF INTRODUCTION
LETTER RECEIVED FROM PWS	LTR	Received correspondence that changed PWS status or compliance status.
LTR1	LT1	ENFORCEMENT LETTER #1 - GENERAL USE
LTR2	LT2	ENFORCEMENT LETTER #2 - GENERAL USE
MEETING (ENFORCEMENT)	MTG	STATE ENFORCEMENT MEETING CONDUCTED
MONSUMM	MON	MONITORING SUMMARY
NOV	NOV	NOTICE OF VIOLATION - GENERAL USE
ONSITE	TAV	SITE VISIT TECHNICAL ASSISTANCE
PHONE	PHE	PHONE CONTACT ENFORCEMENT
PHONE - COMP	PHC	COMPLIANCE PHONE/VOICE CONTACT
PUBLIC NOTICE ISSUED	PUB	PUBLIC NOTICE ISSUED BY STATE
REMINDER	REM	REMINDER LETTER GENERAL USE
RETURN TO COMPLIANCE (COMP ACHIEVED)	RTC	
SEASLET	LSE	SEASONAL LETTER
ST ADMIN PENALTY ASSESSED	SFM	State Administrative Penalty assessed. A penalty assessed by a non-judicial body in response to a violation of the regulations or failure to take actions ordered by the primacy agency to achieve compliance.
ST AO (W/O PENALTY) ISSUED	SFL	State Administrative Order/Compliance Order issued without penalty. An order issued by the Executive branch of the State government that orders the PWS to come into compliance or to undertake remedial actions. No penalty is assessed.
ST AO (W/PENALTY) ISSUED	SFO	State Administrative Order/Compliance Order issued with Penalty. An order issued by the Executive branch of the State government that orders the PWS to come into compliance or to undertake remedial actions. A penalty is assessed.
ST BCA SIGNED	SFK	State Bilateral Compliance Agreement signed. An agreement signed by both the State and the PWS that contains a schedule to return the system to compliance. The agreement should comport with OGWDW guidance on the use of BCAs.
ST BOIL WATER ORDER	SFH	State issued Boil Water Order. Order which notifies the system's customers of a deficiency that could result in an acute risk to health, and that they should boil the water before using it (for drinking, cooking, possibly bodily contact).
ST CASE APPEALED	SF3	The PWS has filed an appeal relating to the decision in or outcome of a previous State administrative, civil or criminal action.

Action Name	SDWIS Code	Action Description
ST CASE DROPPED	SF4	Civil or criminal action against the PWS has been discontinued by the primacy agency. This code should only be used where actions concerning civil or criminal cases have been reported.
ST CIVIL CASE CONCLUDED	SF%	State Civil Case concluded. State civil case resolved through verdict, pleas, injunction, etc.
ST CIVIL CASE FILED	SFQ	State Civil Case filed in State court. The action by the State Attorney General to place the civil case on the docket on the appropriate State court.
ST CIVIL CASE REFERRED TO AG	SF9	State Civil Case referred to State Attorney General. The sending of the required litigation report and other documents to the State Attorney General for the filing of a civil case in State court.
ST CIVIL CASE UNDER DEVELOPMENT	SFP	State Civil Case under development. Technical/legal staff are preparing documents to refer a civil case to the State Attorney General.
ST COMPLIANCE ACHIEVED	SOX	For M/R violations, SOX indicates that the State has determined that the system is monitoring & reporting properly. For MCL violations, SOX means that the system is now operating below the MCL. Only required for Chem/Rad violations..
ST COMPLIANCE MEETING CONDUCTED	SIB	Meeting between State officials and representatives of the PWS to discuss violation(s) and to explain the requirements for compliance. This is an informal meeting as opposed to an enforcement meeting.
ST CONSENT DECREE/JUDGEMENT	SFR	State Consent Decree or Consent Judgement. A formal agreement filed in a State court between the PWS and the primacy agency that settles a civil case and that specifies the actions that must be taken by the PWS to achieve compliance.
ST CRIM CASE CONCLUDED	SFW	State Criminal Case concluded. State criminal case resolved through verdict, pleas, injunction, etc.
ST CRIM CASE FILED	SFV	State Criminal Case filed in State court. The action by the State Attorney General to place a criminal case on the docket of the appropriate State court.
ST CRIM CASE REFERRED TO AG	SF&	State Criminal Case referred to the State Attorney General. The sending of required litigation report and other documents to the State Attorney General for the filing of a criminal case in State court.
ST DEFAULT JUDGEMENT	SFS	State Default Judgement. A State court judgment that is rendered, in accordance with State civil procedure, generally as a consequence of the non-appearance of the system owner/operator.
ST FORMAL NOV ISSUED	SFJ	State issued Formal Notice of Violation. A formal notification to a PWS that it is in violation of a drinking water regulation, that it must take some action to rectify its problem and that formal legal action may follow if they don't.
ST HOOK-UP/EXTENSION BAN	SF5	An order by the State, County, or local health agency that bans further connections to the water system, extensions of water system to serve new customers, or bans issuance of septic tank/building permit/occupancy permits.
ST INJUNCTION	SFT	State Injunction. A final order issued by the State court that directs the PWS to take certain actions (or forbids the PWS to take certain actions). An injunction usually contains penalties for violations of its terms.
ST INTENTIONAL NO-ACTION	SO6	The State has reviewed the PWS's compliance history and has decided to take no enforcement action in response to this specific violation.
ST NO ADDTL FORMAL ACTION NEEDED	SO+	Additional Formal Action unnecessary. The State has determined that no additional formal State action will be needed to bring a PWS back into compliance.
ST NO LONGER SUBJECT TO RULE	SO0	
ST OTHER	SO8	An action has been taken by the State that cannot be placed into one of the other categories. This code should rarely be used.
ST PUBLIC NOTIF ISSUED	SFG	Public notification issued by the primacy agency. It may be issued in response to violations about which the supplier did not notify the public or where the State feels there is a risk to health. May be issued with a Boil Water Order.
ST PUBLIC NOTIF RECEIVED	SIF	Public Notification received from PWS. State receipt of public notification issued by the PWS in response to a violation.
ST PUBLIC NOTIF REQUESTED	SIE	Request by the State for a PWS to give public notification that a violation of the regulations has occurred. This request can be oral or written and would generally follow the violation notice.
ST SHOW-CAUSE HEARING	SFN	A hearing held to provide opportunity for the violator to present information to the State and the public on its reasons for not complying with the State SDWA. Such hearings often result in compliance agreements or other formal actions.

Action Name	SDWIS Code	Action Description
ST SITE VISIT (ENFORCEMENT)	SID	Site visit for enforcement purposes. A visit to the PWS to attempt to confirm or discover additional regulatory violations. A site visit can be considered a preliminary step for a formal enforcement action.
ST TECH ASSISTANCE VISIT	SIC	Meeting between State and PWS to discuss the PWS's status, the requirements for M/R and operational problems. The State usually provides assistance of a technical nature to return the PWS to compliance.
ST TEMP RESTRAIN ORDER/PRELIM INJUNC	SFU	State Temporary Restraining Order/Preliminary Injunction. An immediate, non-final order issued by the State court that forbids the PWS to take certain actions, or orders the PWS to take certain actions. Often used in emergency situations.
ST TURBIDITY WAIVER ISSUED	SOZ	The issuance to the PWS by a State of a waiver that increases the allowable turbidity limit for the system, as allowed by 40 CFR 141.13.
ST UNRESOLVED	SO7	No action has been taken by the State in response to this violation. There has been no general review of the PWS's compliance history, and no decision not to proceed.
ST VARIANCE/EXEMPTION ISSUED	SOY	State Variance or Exemption issued. The issuance to a PWS by a State of a variance or an exemption as allowed by the federal SDWA.
ST VIOLATION/REMINDER NOTICE	SIA	Informal written or oral notification to PWS from State that a violation has occurred, explaining what the violation was. It may specify that PN should occur and what actions may occur if the system does not return to compliance.
STATE ADMIN W/ PENALTY	APA	STATE ADMIN WITH PENALTY ASSESSED
STATE BCA	BCA	STATE BILATERAL COMPLIANCE AGREEMENT SIGNED
STATE CCR FOLLOW-UP NOTICE	SII	Notice of Violation for PWS's failure to prepare or deliver a CCR to it's consumers
SURVEY	LSS	SAN SURVEY FOLLOW-UP LETTER TO PWS
SWTR COMP ASSIST	CAS	COMPLIANCE ASSISTANCE WITH SWTR
UNRES	UNR	STATE - UNRESOLVED
VARI-EX	VAR	STATE VARIATION/EXEMPTION
WRITOC	LOC	LETTER/FAC - COMPLAINT ONLY
WRITOTH	LOE	LETTER OF ENFORCEMENT

Resource Agencies List

State of Alaska

Rural Issues (Public Service Office)

Direct technical assistance to communities

ADEC Remote Maintenance Workers (RMW)

Serve PWS not covered by a Health Corporation.

<http://www.dec.alaska.gov/water/rmw/index.htm>

Rural Utility Business Advisors (RUBA) and Local Government Specialists (LGS)- Department of Community and Economic Development

Assist communities to learn better utility management and self-government

<http://www.commerce.state.ak.us/dca/ruba/ruba.htm>

Seafood Processing Program

May be able to withhold permits if processing water is from PWS with violations.

University of Alaska Southeast- Alaska Training and Technical Assistance Center (ATTAC)

Distributes "Resource Guide to Financial and Technical Assistance for Water & Wastewater Projects"

<http://www.uas.alaska.edu/attac/>

Village Safe Water (VSW), Facilities Construction, and Operation Division

Funding for feasibility studies and projects. Awarded annually on a point system. Training assistance for recent VSW projects,

State Department of Education

There is capital improvement money for schools through Education Department. Deadline to apply each September.

Health Corporation - See Map on Page 2

Alaska Native Tribal Health Consortium (ANTHC) <http://www.anthc.org/cs/dehe/>

Aleutian/ Privilof Island Association

Arctic Slope Native Corporation

Bristol Bay Area Health Corp.

Copper River Native Association

Kodiak Area Native Association

Norton Sound Health Corporation

SEARC - South East Alaska Regional Corporation

Southcentral Foundation

Tanana Chiefs Conference

Yukon-Kuskokwim Health Corp

Remote Maintenance Workers (RMW)

Employ remote maintenance workers - A directory is listed at: <http://www.dec.alaska.gov/water/rmw/index.htm>

Sanitarians

Assistance with testing, sampling, reporting. May perform sanitary surveys.

Village Clinic

Clinic aide may be able to assist with reminders and daily testing (requesting through Health Corporation may be appropriate)

Federal

Bureau of Indian Affairs

Offers annual class to train water resource technicians

GAP

Funding for small projects, does not cover operations and maintenance.

Job Corps in Palmer

Train people ages 16-24 in water and wastewater operation.

Military (Coast Guard, Army, Air Force, National Guard)

Employs operators qualified to be mentors.

EPA

IGAP Tribal Coordinators- can help a community plan how to do environmental improvements

Resource Agencies List

Other Technical Assistance Providers

Alaska Water and Wastewater Management Association

AWWMA sponsors conferences and instructions in subjects related to water treatment and distribution
<http://www.awwma.org/>

AITC

Alaska Inter-Tribal Council tribally-governed non-profit organization that supports of Tribal governments throughout the state

Alaska Rural Water Association (ARWA)

Provides water systems support services and solutions.
<http://www.arwa.org/>

Rural Community Assistance Corporation (RCAC)

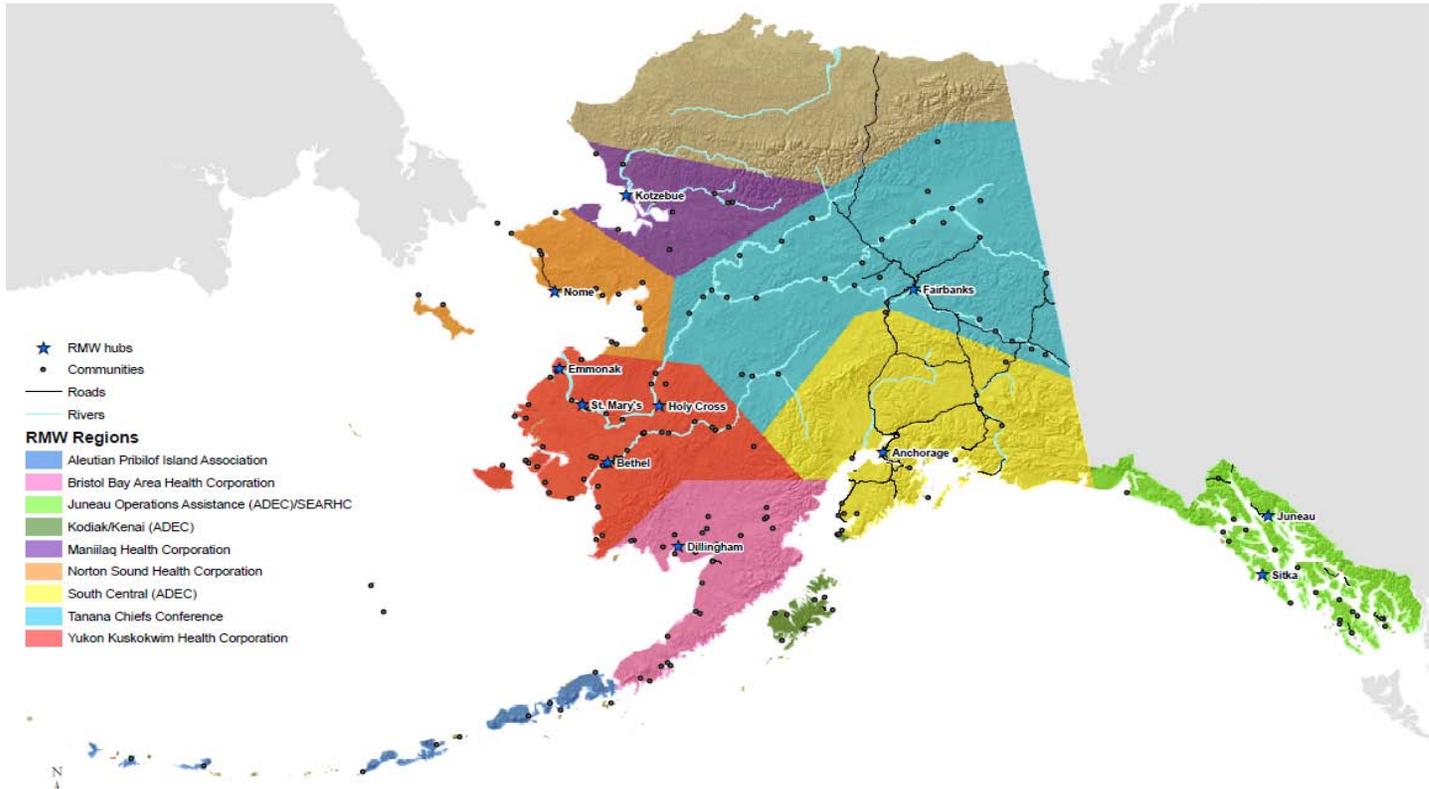
Assists rural communities by providing training, technical assistance and access to resources.

National Tribal Environmental Council (NTEC)

provides technical assistance and training to utility managers and operators in tribal community on drinking water systems.

Health Corporation by Area

[http://www.dec.alaska.gov/water/rmw/pdfs/RMW%20FY11%20Annual%20Report%20\(maps%20only\).pdf](http://www.dec.alaska.gov/water/rmw/pdfs/RMW%20FY11%20Annual%20Report%20(maps%20only).pdf)



DIVISION OF ENVIRONMENTAL HEALTH
DRINKING WATER PROGRAM

Area office address
<http://www.state.ak.us/dec/>

[date]

[Owner]
[PWS Name]
Address

RE: [PWS Name], Class B Public Water System, PWSID [#], Groundwater Source

Dear [Owner]:

This is to follow up our recent phone conversation regarding the water testing requirements for the [PWS Name] public water system. You indicated that you are the new owner and were not aware of the water testing requirements; therefore, I have summarized the requirements below for your quick reference:

Coliform bacteria – This test must be completed once each calendar quarter. The last coliform bacteria test result we have on record is from [month/year]. The next sample is due before the end of this quarter. See enclosed list of certified labs.

Nitrate: This test must be completed once each year. The last nitrate test we have on record is from [month/year]. The next sample is due before the end of this year. See enclosed list of certified labs.

Sanitary survey – This is an inspection of the water system which is due once every five years. The last survey was [date]. The next survey must be completed by a qualified sanitary surveyor in [year due]. Contact ADEC to obtain a current list of sanitary surveyors in [year due].

Public Notice: Public notice is required any time the system is in violation of the Alaska Drinking Water Regulations. Enclosed is an example public notice with instructions for you to use in providing public notice.

As we discussed, these requirements are mandated by State and federal law in order to help protect public health. They also assist you by verifying that the water you provide to the public is safe to drink. Thank you for your assistance and cooperation in maintaining compliance with the Alaska Drinking Water regulations.

If you have any questions regarding the regulatory requirements for this public water system, please feel free to call me at [phone].

[Owner]

[date]

Sincerely,

[EPS Name]
Environmental Program Specialist

Enclosures: List of Certified Labs
Public Notice and Instructions
Public Notice Certification Form

SNC Violation Point Value Charts

There are three possible point values assigned to a violation. Violations with a greater threat to public health have a higher point value.

10 Point--Acute Violations

Vio Description	Vio Type	Contaminant Name	How to RTC
EXCEEDED MAXIMUM CONTAMINANT LEVEL (MCL) [Violation Type 01]	MCL	Nitrate/1038,1040,1041	RTC is achieved when subsequent analytical results are found to be below the MCL.
EXCEEDED MAXIMUM RESIDUAL DISINFECTION LEVEL (MRDL), ACUTE (CHL.DIOXIDE) [Violation Type 13]	MRDL	STAGE 1 Chlorine Dioxide/1008	RTC is achieved when subsequent analytical results are found to be below the MRDL.
EXCEEDED MCL (TCR), ACUTE [Violation Type 21]	MCL	Total Coliform/3100	RTC is achieved when subsequent analytical results are found to be below the MCL.
FAILURE TO MAINTAIN MICROBIAL TREATMENT (SWTR/GWR) [Violation Type 41 For SWTR = Exceeding Monthly Combined Filter Effluent Turbidity or Entry Point/Distribution Chlorine Levels too low Violation Type 41 for GWR]	TT	Turbidity or Chlorine/0700, 0200	RTC is achieved once the treatment is monitored and operated in accordance with all State-specified compliance requirements.
EXCEEDED SINGLE COMBINED FLTR EFFLUENT TURBIDITY (IESWTR LT1) [Violation Type 43]	TT	Turbidity/0300	RTC is achieved one the system meets turbidity limit requirements for the next monitoring round.
EXCEEDED MONTHLY COMBINED FLTR EFFLUENT TURBIDITY (IESWTR LT1) [Violation Type 44]	TT	Turbidity/0300	RTC is achieved one the system meets turbidity limit requirements for a month.

5 Point-- Other Health Based Violations

Vio Description	Vio Type	Contaminant Name or Rule	How to RTC
EXCEEDED MCL, SINGLE SAMPLE [Violation Type 01]	MCL	All Contaminants (except Nitrate)	RTC is achieved once the system meets the MCL for the compliance period.
EXCEEDED MCL, AVERAGE [Violation Type 02]	MCL	Most Contaminants	RTC is achieved after one quarter without additional RAA MCL violations.
MONITORING, ROUTINE MAJOR or MINOR [Violation Type 03]	MON	Nitrate/1038, 1040, 1041	RTC is achieved once the groundwater system begins annual monitoring or surface water system beging quarterly monitoring.
EXCEEDED MAXIMUM RESIDUAL DISINFECTION LEVEL (MRDL) , Non- Acute [Violation Type 11]	MRDL	Stage 1/ 0999, 1006, 1008 Depends on type of disinfection	RTC is achieved after one monitoring round without additional MRDL violations.
NO CERTIFIED OPERATOR [Violation Type 12]	TT	Stage 1 (DBPR)/ 0400	RTC is achieved when a state-approved qualified operator begins operating the system.
EXCEEDED MCL (TCR), MONTHLY [Violation Type 22]	MCL	Total Coliform/ 3100	RTC is achieved when the next full round of monitoring demonstrates that no additional MCL or M&R violations occurred.
MONITORING (TCR), REPEAT MAJOR [Violation Type 25]	MON	Total Coliform/ 3100	RTC is achieved once the system collects the same number of on-special purpose samples as the number of missed repeat samples, from the required locations.

Vio Description	Vio Type	Contaminant Name	How to RTC
MONITORING (TCR), REPEAT MINOR [Violation Type 26]	MON	Total Coliform/ 3100	RTC is achieved once the total coliform positive culture medium is tested for fecal coliforms, unless the total coliform positive culture medium is no longer capable of being tested for fecal coliforms. In that case, the system should resample for each total coliform positive sample not tested for fecal coliforms.
FAILURE TO SUBMIT BIN REPORT (LT2) [Violation Type 33]	TT	LT2/ 0800	RTC is achieved once the system has submitted the applicable bin classification.
FAILURE TO FILTER (SWTR) / FAILURE TO PROVIDE TREATMENT (LT2ESWTR) [Violation Type 42]	TT	SWTR and LT2/ 0200, 0800	SWTR- RTC is achieved once filtration has been installed or the unfiltered source is abandoned./ LT2- RTC is achieved when the system meets their applicable treatment requirements.
FAILURE TO ADDRESS DEFICIENCY [Violation Type 45]	TT	IESWTR LT1, LT2, and GW Rule/ 0300, 0800, 0700	RTC is achieved once the corrective action has been completed OR the system is in compliance with a State-approved corrective action plan and schedule.
INADEQUATE DBP PRECURSOR REMOVAL [Violation Type 46]	TT	TOC/ 2920	RTC is achieved once the system meets the TOC removal value for the next full round of monitoring.
FAILURE TO COMPLETE OPTIMAL CORROSION CONTROL TREATMENT (OCCT) OR SOWT RECOMMENDATION/STUDY [Violation Type 57]	TT	Lead and Copper/ 5000	RTC is achieved when a system submits its OCCT recommendation in accordance with 141.82(a) and 141.90(c)(2); submits an "acceptable" study on time in accordance with 141.82(c) and 141.90(c)(3); and provides any additional information needed by the State to make an OCCT determination in accordance with 141.82(d)(2). RTC is achieved for systems serving ≤50,000 when they are below both action levels during 2 consecutive monitoring periods after incurring this violation.
OCCT/SOWT INSTALL DEMONSTRATION (LCR) [Violation Type 58]	TT	Lead and Copper/ 5000	RTC is achieved once the system has the State-designated treatment properly installed and operating in accordance with §141.82(e); and submit a certification of proper installation and operation in accordance with §141.90(c)(4), and demonstrates that OCCT already exists in accordance with §§141.81(b)(1)-(3) and 141.90(c)(1). Note: Systems serving ≤50,000 are RTC if they are below both action levels during 2 consecutive monitoring periods after incurring this violation.
WQP LEVEL NON-COMPLIANCE (LCR) [Violation Type 59]	TT	Lead and Copper/ 5000	RTC is achieved when in a subsequent monitoring period a system maintains OWQP minimum or ranges in accordance with 141.82(g).
MPL LEVEL NON-COMPLIANCE (LCR) [Violation Type 63]	TT	Lead and Copper/ 5000	RTC is achieved when a system meets either State-designated or approved MPL in accordance with 141.83(b)(5) and collect samples from all locations during a subsequent compliance period. Note: A system is not required to meet State-designated MPLs when it is below both action levels during the entire source water monitoring periods in effect after incurring this violation, therefore the system can be considered RTC in the aforementioned scenario.

Vio Description	Vio Type	Contaminant Name	How to RTC
LEAD SERVICE LINE REPLACEMENT (LCR) [Violation Type 64]	TT	Lead and Copper/ 5000	RTC is achieved once the system has completed the lead service line replacement requirements by replacing the required amount of lead service lines (LSLs) in accordance with 141.84(a) & (b); and reporting the required LSL information, in accordance with 141.90(e) that demonstrates that the replacement rate was met. In cases of where the system does not replace the entire LSL (i.e., "partial LSLR replacement"), by providing notice and guidance to residents to minimize their exposure to lead; collecting a tap sample after completing the partial LSLR; mailing and/or post results of the analysis to the owner and residents; and reporting information to the State that you deem necessary to assess whether the system met its partial LSLR monitoring and notification requirements. Note you can also RTC if you meet the lead AL for two consecutive monitoring periods even if you haven't replaced 7% of lead service lines that year.
PUBLIC EDUCATION (LCR) [Violation Type 65]	(TT) In SDWIS as RPT	Lead and Copper/ 5000	RTC is achieved once the system completes the public education requirements and provides a letter to the Primacy agency that the public education requirements are completed in accordance with 141.85.

1 Point-- Violations Include All Monitoring and Reporting and Other Non-Health Based Violations

Vio Description	Vio Type	Contaminant Name	How to RTC
MONITORING, ROUTINE MAJOR or MINOR [Violation Type 3]	MON	All Contaminants (except Nitrate)	RTC is achieved when the PWS collects the next full round of monitoring samples and reports results that have been analyzed.
MONITORING, CONFIRMATION/CHECK MAJOR or MINOR [Violation Type 4]	MON	All Contaminants (except Nitrate)	RTC is achieved when the system completes a check, repeat, or confirmation sample and reports the analytical result of a check repeat, or confirmation sample at a sampling point to the State.
FAILURE TO PROVIDE NOTIFICATION, STATE [Violation Type 5]	OTHER (PN)	All Contaminants	RTC is achieved once the State has been notified that the system has met the State-specified requirements.
VARIANCE/EXEMPTION/ OTHER COMPLIANCE [Violation Type 8]	V/E	All Contaminants? Arsenic, Phase II and V, RADS/ 1005, All Phase II and V, All RADS	RTC is achieved when the system meets the conditions, compliance schedule (including milestones), variance, or exemption.
RECORD KEEPING [Violation Type 9]	RPT	All Contaminants? FBRR, GWR, LT1, LT2, Stage 2, LT2/0500, 0700, 0300, 5000, 0800, 0600	RTC is achieved once the system provides the documented materials to the State.
MONITORING (TCR), ROUTINE MAJOR or MINOR [Violation Type 23]	MON	Total Coliform/ 3100	RTC is achieved once the system collects a full round of required routine monitoring samples for the following compliance period.
MONITORING, ROUTINE (DBP) [Violation Type 27]	MON	All related DBP Contaminant/0400, 1011, 2920, 2456	RTC is achieved once the system samples at the State-approved locations and has completed sampling for the next full round of compliance monitoring.
SANITARY SURVEY COOPERATION FAILURE [Violation Type 28]	SS	Total Coliform/ 3100	RTC is achieved once a sanitary survey has been performed at the system.
CPE FAILURE (EI/LT1 SWTR) or FAILURE TO PRODUCE FILTER ASSESSMENT [Violation Type 29]	MON	IESWTR LT1 Rule/ 0300	RTC is achieved when the PWS produces a filter profile and reports it to the State.

Vio Description	Vio Type	Contaminant Name	How to RTC
MONITORING, RTN/RPT (SWTR-UNFILT and GWR-UNFILT) or MONITORING, RTN/RPT (SWTR-FILTER) [Violation Type 31 and 36]	MON	SWTR Rule, GWR/ 0200, 0700 LT1?	GWR-RTC is achieved once the system begins monitoring and reporting as specified in 141.403(b)(3)(i)(A). SWTR-RTC is achieved when the PWS complies with monitoring requirements for the parameter(s) which caused the violation.
FAILURE TO SUBMIT PLANT SCHEMATIC (FBR) [Violation Type 39]	MON	FBRR	RTC is achieved when the system provides the State notification including a plant schematic and typical recycled flows.
INITIAL TAP SAMPLING (LCR) [Violation Type 51]	MON	Lead and Copper Rule/ 5000	RTC is achieved when system collects the specified number of samples for two consecutive 6-month periods using appropriate sampling procedures in accordance with 141.86(a) and (b); collects the required number of samples during the specified time frame.
FOLLOW-UP OR ROUTINE TAP M/R (LCR) [Violation Type 52]	MON	Lead and Copper Rule/ 5000	RTC is achieved when the system collects the required number of tap samples in accordance with 141.86(c) and (d)(1); using correct sampling procedures in accordance with 141.86(a) and (b); and conduct analyses using the correct procedures in accordance with 141.89(a).
WATER QUALITY PARAMETER M/R (LCR) [Violation Type 53]	MON	Lead and Copper Rule/ 5000	RTC is achieved when system monitors and reports the required number of valid lead and copper tap samples and water quality parameter results, for two consecutive 6-month periods.
INITIAL/FOLLOW-UP/ROUTINE SOWT M/R (LCR) [Violation Type 56]	MON	Lead and Copper Rule/ 5000	RTC is achieved when in a subsequent monitoring period a system collects the required number of samples in accordance with 141.88(a)(1) - (e)(3); using appropriate sampling procedures and samples are analyzed properly and reported to the State. If the case of follow-up source water monitoring a system is required to conduct two 6-month consecutive source water monitoring, in this case RTC is achieved when two 6-month consecutive source water monitoring is completed and reported to the State.
FAILURE TO REPORT CCR REPORT (CCR) [Violation Type 71]	RPT	CCR Rule/ 7000	RTC is achieved once the system produces and delivers the missed CCR report currently due to the public fulfilling the Rule's content and delivery requirements.
CCR INADEQUATE REPORT (CCR) [Violation Type 72]	RPT	CCR Rule/ 7000	RTC is achieved once the system has provided adequate information or has corrected the CCR and delivers it to the public and primacy agency.
PUBLIC NOTICE RULE LINKED TO VIOLATION or PUBLIC NOTICE RULE NOT LINKED VIOLATION [Violation Type 75 and 76]	PN	Public Notice Rule/ 7500	RTC is achieved once the public notification is distributed and submits certification to the State that it has fully complied with the public notification requirements.



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 *Cynthia Giles*

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
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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

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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
<i>SF% or EF%</i>	<i>St or Fed Civil Case concluded</i>
<i>SFR or EFR</i>	<i>St or Fed Consent Decree/Judgment</i>
<i>SFW or EFW</i>	<i>St or Fed Criminal Case concluded</i>
<i>SFM</i>	<i>St Admin Penalty assessed</i> 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".

EF-	<i>Fed Complaint for Penalty Consent Agreement/Final Order with penalty</i>
EF=	<i>Fed Complaint for Penalty Default Judgment</i>
EF<	<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...)

**DIVISION OF ENVIRONMENTAL HEALTH
DRINKING WATER PROGRAM**

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June 29, 2012

RE: Water System
PWS ID: Source Type: Population:

Dear ,

We are well into 2006, and the time has come to ensure that your water system will meet your compliance goals for the year. Enclosed you will find an annual monitoring summary outlining the required samples for 2006. We are sending this monitoring summary to assist you in submitting the required samples and reports on time. **Currently, your system is overdue for** . These samples should be submitted as noted on the monitoring summary. It is important that these samples be submitted so that we can be sure the drinking water for your community is safe.

Consumer Confidence Reports (CCR's)

The Water System is also overdue for its Consumer Confidence Reports (CCR's) for . Your 2005 CCR will be due in this office before July 1, 2006. The CCR must also be available to every consumer of your water supply. Please contact your local Health Corporation or the Alaska Rural Water Association for assistance in preparing the 2005 CCR. A "data dump" will be provided to your water system on request to assist you with completing your CCR. The "data dump" contains the information on sampling, violations, etc. which must be included in your CCR

Common Monitoring and Reporting Errors

Over the past couple of years I have noted common monitoring and reporting errors that are made by water systems. In an attempt to correct these monitoring and reporting issues I have summarized the problem and the way that the system can correct the problem. The problem categories are listed below in bold underlined text. The problem category is then followed by a table which lists the problems, the solution to those problems, and then further explanation of the problem. Please keep in mind that these are general monitoring and reporting errors and just because they are listed in this letter it does not mean that your system is specifically making these errors. I do encourage you to read through the table though in case there are any issues listed here that your water system needs to correct.

Total Coliform Bacteria Sampling:

Problem	Solution	Explanation
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Total coliform bacteria samples are either not collected or they are collected too late in the month.	Total coliform bacteria samples should be collected as early in the month as possible.	Sometimes samples are collected late in the month and they do not make it to the lab in the required amount of time for testing. There is not enough time left in the month to collect another sample, so the water system receives a violation for that month. Also, if a routine sample tests positive for bacteria, the water system must collect the 4 repeats in the same month as the positive sample. If the positive sample was collected late in the month, then the system may not have enough time to collect the repeat samples.
Total coliform bacteria samples are not collected in the appropriate location or are collected in the same location every month. Many times the location is a sink at the water system every month.	Collect samples which are representative of the water system's distribution system following the water system's DEC approved Total Coliform Bacteria Site Sampling Plan.	Total coliform bacteria samples must be representative of the entire water system's distribution system. If they are not, for example they are always collected at a sink at the treatment plant; there may be a bacteria problem which will never be detected out in the distribution system. All public water systems must have an approved total coliform site sampling plan according to 18 AAC 80.410, even if there is only one service connection. ADEC can provide water system's with a template for completion of a site sampling plan if needed.

Disinfectant Monitoring and Reporting:

Problem	Solution	Explanation
The distribution chlorine residual level is not being reported correctly. This is a very easily corrected problem, but many water systems are getting violations every month because they do not report a chlorine residual level for the same time and location as every bacteria sample.	Report a distribution chlorine residual level, measured at the same time and the same place that every total coliform bacteria sample is collected. The best way to report the distribution chlorine level is to include it on the paperwork that you send in to the lab with your bacteria sample. This ensures that there is a chlorine residual associated with every bacteria sample.	In 2004 the Stage 1 Disinfectants and Disinfection Byproducts Rule took effect. The reason that the chlorine residual is collected under this rule is to ensure that the chlorine level in the water is not too high. High chlorine residuals could result in the production of harmful disinfectant byproducts (TTHM's/HAA5's). Systems that use surface water were already required to collect distribution chlorine residuals under the Surface Water Treatment Rule to ensure that there is enough chlorine in the water to kill harmful microorganisms.

Entry point chlorine residual levels are sometimes not collected at the correct location depending on system configuration and water usage.	For those systems required to report entry point chlorine, these levels must be collected from a site that represents the treated water entering the distribution system.	Some systems measure the entry point chlorine level prior to the water entering the storage tank. In general this is not adequate, especially with systems considered to be fill and draw systems. This is because the chlorine level, though satisfactory (0.2mg/L) entering the tank, may drop to unsatisfactory levels while it is in the storage tank. To ensure that the water in the storage tank is satisfactorily disinfected, the entry point chlorine should be measured after the storage tank as the water enters the distribution system.
TTHM and HAA5 samples are not collected during the correct time period. Many systems wait until the end of December to collect their samples.	TTHM and HAA5 samples are to be collected when the water temperature is the highest from the place in the distribution system where the water sits in the lines the longest amount of time	TTHM and HAA5 samples are to be collected when the water is the warmest because that is when TTHM and HAA5 production is the greatest. TTHM and HAA5 are produced as disinfectants like chlorine interact with other compounds that naturally occur in water. For systems that heat their water, this may be in the winter time. For systems that do not heat their water, this is more likely to be in the summertime.

Surface Water Monitoring and Reporting:

Problem	Solution	Explanation
There is an insufficient number of turbidity readings reported on the monthly operator report.	Report the required number of turbidity readings on your operator report.	Turbidity must be reported when your water system is “making water”. The number of turbidity readings required can vary between systems. If you are unsure of the number of turbidity readings required for your system, please contact the DEC. Turbidity levels are checked because high turbidity levels can impair the water system’s ability to adequately disinfect the surface water. High turbidity levels could also indicate a problem with the filtration process that needs to be resolved.
There are an insufficient number of entry point chlorine residual readings reported on the monthly operator report.	Report the required number of entry point chlorine residual readings on your operator report.	Entry point chlorine residual readings must be collected every day of operation at a location where the treated water enters the distribution system (after storage tanks/contact tanks). Even if you are not “making water”, the entry point chlorine level must still be checked everyday that water is provided to consumers. Entry point chlorine is checked to ensure that disinfectant levels in the treated surface water do not drop to unsafe levels (less than 0.2 mg/L).

There are an insufficient number of distribution chlorine residual readings reported on the monthly operator report.	Report the required number of distribution chlorine residual readings on your operator report and on every bacteria sheet you send to the lab	Distribution chlorine residual levels must be checked at the same time and the same place as every total coliform bacteria sample is collected. For example, if a bacteria sample that you collect comes back positive, and you have to take repeat bacteria samples, you will also need to take chlorine residual readings at the same time and place as every bacteria sample. These reading should be reported on your operator report form along with the date collected. You should also report the chlorine level on the sheet that you send to the lab with your bacteria sample. The distribution chlorine level is checked to help ensure that there is still a trace of chlorine in the water out in the distribution system. If there is not a trace of chlorine in the distribution system then the water may be unsafe to use.
The monthly operator report is submitted late.	The operator report should be submitted such that it arrives at the DEC by the 10 th of the month following the month being reported for.	Many times operator reports are either submitted late (after the 10 th of the month) or are not submitted at all. Operator reports should be submitted directly to the DEC either by fax (907-269-7650) or by mail. When the DEC does not receive a monthly operator report, a violation is given for that month. Though the operator report may have been completed, if it was not submitted to the DEC, than it is like the report was not done. The report can be submitted late, but this causes a significant number of problems for both the DEC and the water system.
The date on the operator report conflicts with the month being reported for.	The month/date that is listed on your operator report must correspond with the month that the data was collected in.	Sometimes the DEC receives operator reports that have conflicting dates. For example, if you collect turbidity and chlorine data for the month of March, then you would label this report as your “March” operator report. Sometimes, water systems mistakenly call this their “April” operator report since they submit the report in April. Only data collected in the month being reported for should be included in that operator report.

Lead and Copper:

Problem	Solution	Explanation
Lead and copper samples are not collected at appropriate sample sites.	Lead and copper samples must be collected at the sites listed in your lead and copper sample site plan. If you don't have a sample site plan, contact the DEC for more information.	Lead and copper samples are to be collected at locations which are susceptible to high lead and/or copper concentrations. Contact the DEC for more information on how to determine how to choose lead and copper sample sites.

There are an inadequate number of lead and copper samples collected.	Collect <i>at least</i> the required number of lead and copper samples which is listed on your most current monitoring summary. If you aren't sure how many samples to collect, or believe the number on your monitoring summary is incorrect, contact the DEC.	Typically systems are required to collect a set of 5, 10, 20, or 40 samples. No system may collect less than 5 samples. The EPA considers anything less than 5 samples too few to calculate the 90 th percentile level. In the past systems with only 1 service connection were allowed to collect 1 sample. This practice is no longer allowed.
When samples which are collected late in the monitoring period exceed the action levels, there is not enough time to follow up with the additional samples which are required due to the action level exceedance	Collect your lead and copper samples early in the monitoring period, especially if your system is on a 6 month lead and copper sample schedule.	When public water systems exceed the lead or action level, they are required to take follow up actions by certain dates which include the collection of source water lead and copper samples and water quality parameter samples. If the routine lead and copper samples that exceeded the action level were collected too late in the monitoring period, the water system will not be able to collect the follow up samples within the required time frame.
Lead and copper samples do not meet the first-draw lead and copper sampling procedure requirements.	Lead and copper samples must be collected after the water in the line at the sample site has been flushed and then allowed to sit in the line for at least 6 hours . The sample should not be taken if the water has sat in the line for more than 8 hours.	If samples are not collected following first draw sampling procedure requirements, the samples are not valid and can not be used for compliance. The water system will have to spend additional monies to collect more samples. Samples are collected using this procedure to evaluate how much lead and/or copper is leaching into the water when the water sits in the line for an extended time period.

Radionuclides

The Radionuclides Rule became effective on December 8, 2003. This rule requires all Class A Community Water Systems to test for gross alpha, Radium 226, Radium 228 and Uranium between 2004 and 2007. Samples must be collected for four **consecutive** quarters. Samples may be composited by the laboratory. All samples must be collected at the entry point to the distribution system. We are requiring that samples be taken during the year in which routine gross alpha sampling is due. Please see your monitoring summary for your testing requirements. The end of 2007 will be here before we realize it, so please be sure to get your radionuclide samples collected in a timely manner.

Drinking Water Watch Website

Recently a new State website was launched called "Drinking Water Watch". This website allows water systems and the public to access a wide array of water system information like monitoring data, sample schedules, violations, current monitoring summaries, etc. Water systems that have been using this website have found it to be very helpful. If you have the opportunity and the ability, go to <http://map.dec.state.ak.us/eh/dww/index.jsp> and check out your water system information. If you

discover any incorrect information for your water system (for example contact information) please let us know so that we can correct it.

Violation Page and the SNC List

I have enclosed a violation page which lists any violations which were accrued for your water system during 2005. If you have any questions about the violations which are listed or the codes which are used please give me a call and I can provide you with more information. The accrual of violations by a water system can result in enforcement actions being taken and/or the system being placed on the Environmental Protection Agency's (EPA's) Significant Non-Complier List (SNC list). Being on the SNC list prevents communities from qualifying for much needed government funding for community upgrades. The community may not be provided any funding until they are no longer on the SNC list. The requirements for getting off the SNC List can be quite stringent, making removal from the list difficult, thus it is far better to not be placed on the list in the first place.

I look forward to another year of working with you and your water system, together helping to ensure that the water for your consumers is safe. Please feel free to contact me at _____ if you have any questions regarding your sampling requirements. You may also contact me by email at _____.

Sincerely,

Environmental Program Specialist

Encl.: Monitoring Summary
2005 Violation Page

Cc:

**DIVISION OF ENVIRONMENTAL HEALTH
DRINKING WATER PROGRAM**

RETURN ADDRESS BLOCK

CERTIFIED MAIL – RETURN RECEIPT [#]

[date]

[Owner]
[PWS Name]
Address

RE: [PWS Name], PWSID [#], Class B Public Water System; Groundwater Source
Violation of Alaska Drinking Water Regulations - Failure to monitor water quality

Dear :

A review of our records indicates that the Department did not receive a coliform bacteria test result for the [PWS name] during the [first] calendar quarter of [year]. As we have indicated in previous correspondence to you (see enclosed correspondence dated [date] and [date] it is your responsibility as the owner of the public water system to ensure that the water is tested at the frequency required by state and federal law.

The Alaska Drinking Water Regulations, 18 AAC 80, requires that a Class B public water system using a groundwater source be tested for coliform bacteria at least once each calendar quarter and nitrates once each calendar year. These required water tests are intended to help protect public health and helps you document that the water is safe to drink.

Please have the water tested for coliform bacteria before the end of this month, and continue to have the bacteria test completed every calendar quarter that this public water system is in operation.

In addition, state and federal laws require that the users of a public water system be informed if the required testing is not completed on time. Enclosed is an example public notice to use for failure to monitor for total coliform bacteria. Also, a template may be downloaded from the following web site: <http://www.epa.gov/safewater/pws/pn/templates/ncws.doc> (see template entitled “Monitoring Violation NoticeBTemplate NC-4”). Public notices must be posted as long as the violation exists or for a minimum of ten (10) days. The enclosed Certification of Public Notice must be filled out and returned to our office with a copy of the completed public notice.

Continued failure to complete the required water testing and public notice requirements will result in the Department issuing a Notice of Violation, which may result in administrative (monetary) penalties, in accordance with Alaska Statute 46.03.761(g).

In order to remember to have the water tests completed on time, you may find it beneficial to contract with a certified laboratory to send you a reminder and/or water sample bottle each time a test is required. Enclosed is a list of certified laboratories for your convenience. If you have any questions regarding the water testing requirements for this system, please feel free to call me at [phone number].

As a reminder, this system needs to be tested for nitrates before the end of the year. The sanitary survey requirement is current. The next survey is due in [date].

Thank you for your assistance and cooperation in meeting these requirements.

Sincerely,

[EPS Name]
Environmental Program Specialist

ENCLOSURES: as stated

cc:

Bilateral Compliance Agreement (BCA) Example

610 University Avenue
Fairbanks, AK 99709
Phone: (907) 451-2108
Fax: (907) 451-2188
<http://www.dec.state.ak.us/>

**DIVISION OF ENVIRONMENTAL HEALTH
DRINKING WATER PROGRAM**

File #:
Certified Mail #:

November 1, 2005

[Owner]
[PWS Name]
Address

**Re: Overdue Testing to Ensure Safety of the [] Water System
PWS ID#:[]; CLASS: A; SOURCE: Surface Water**

Dear :

The purpose of this letter is to ask that you take **immediate action** to resolve drinking water safety issues in []. Our records indicate that the [] Water System has not been submitting all of the routine samples required by the Alaska Drinking Water Regulations, 18 AAC 80. Good public health depends on a safe water supply. Water is made safe by proper filtration and disinfection. Water is then shown to be safe through routine testing. When treatment and testing is not done, the safety of the water is unknown and people consuming the water may be at risk due to contamination of the water supply.

[] Water System uses a surface water as its source of drinking water and is required to filter and disinfect at all times. 18 AAC 80.600.

When testing is not done, or reports are not submitted, violations are created by the ADEC Drinking Water Program. These violations are tracked by the US Environmental Protection Agency (USEPA). If the violations are not addressed in a timely manner, the Public Water System is added to the USEPA Significant Non-Complier List (SNC). **Please note that your system is on the EPA Significant Non-Complier Exceptions List.** This means that the ADEC Drinking Water Program **will** initiate formal enforcement and administrative penalties if your system does not make an effort to return to compliance. This will also adversely affect your community's ability to obtain funding for Capital Improvement Projects. Public Water Systems are not eligible for grant or loan funding if they are on the EPA SNC Exceptions List.

[] Water System continues to be on the EPA SNC List due to lack of monitoring for total coliform bacteria, arsenic, and insufficient operator testing and reporting. This is a serious problem because without this information we are unable to determine the overall quality and safety of the treated water. **In order to return to compliance with the Drinking Water Regulations and be removed from the EPA SNC List, you will need to submit all of the required microbiological and chemical samples immediately and you will need to work with the Drinking Water Treatment Plant Operator to ensure that the proper operator testing is done. These tests are done by the operator and must be reported to the ADEC by the 10th of each month. Reports can be either mailed or faxed to this office.** 18 AAC 80.670. We have not received any operator reports for your system since June 2005. [

] Water System receives multiple violations every month because operator reports are not submitted as required. You begin sending the required operator reports to the [Appropriate field office] ADEC Office immediately to avoid further enforcement action.

The following Operator Tests are required for your system:

Turbidity – Surface water systems are required to test their water every day whenever water is being filtered. Turbidity tests are important to determine the quality of the filtered water. If turbidity is too high, it could interfere with the disinfection process and harmful organisms present in surface water could pass into the treated water supply. All operators should be properly trained to use and calibrate the turbidimeter. Results of the tests need to be recorded immediately on the monthly operator report form. If turbidity results exceed 2 NTU's, the operator should contact ADEC immediately. 18 AAC 80.655.

Entry Point Chlorine Residual – Testing is required every day at the point where the treated water leaves the storage tank and enters the distribution system. The chlorine residual cannot fall below 0.2 mg/L. It is important that proper chlorine residual levels are maintained at all times to ensure the safety of the treated drinking water. If the residual is too low, there is a possibility that pathogenic organisms could be present in the drinking water. Pathogenic organisms, such as bacteria and viruses, can cause disease in people drinking the water. Chlorination is done to prevent these organisms from making people ill. All operators should be aware of the necessity of proper disinfection of the water. Chlorine residual results should be recorded immediately on the monthly operator reports. If chlorine residual levels fall below 0.2 mg/L, the operator should notify ADEC immediately. 18 AAC 80.655.

Distribution System Chlorine Residual – Testing is required monthly. The chlorine residual should be measured at the same place and time as the monthly total coliform bacteria sample is taken. This test is important to make sure that there is detectable chlorine residual in the distribution system and that the water remains safe as it travels through the distribution system. The results of the test should be recorded on the monthly operator reports. The result can also be noted on the total coliform bacteria laboratory sheet. 18 AAC 80.655.

Fluoride – Testing is required everyday that fluoride is added to the water. Fill and draw systems can reduce the testing to once per week after the fluoride has been added. It is very important that the levels of fluoride in the water be monitored closely. If too much fluoride is added to the water, it can be harmful. All operators must be trained to do the fluoride test properly. The results of the tests should be recorded immediately on the monthly operator reports. If fluoride levels exceed 2.0 mg/L, the operator should notify ADEC immediately. 18 AAC 80.315(f).

I have enclosed a current monitoring summary for your water system. The summary lists the dates your last samples were taken as well as when the next samples are due. **Please note that your system is overdue for Total Coliform Bacteria and Arsenic.** Please make arrangements with your laboratory to have the proper sampling containers shipped to you for sampling immediately.

Total Coliform Bacteria – Due to the population served by your water system, you are required to sample monthly for total coliform bacteria. This group of bacteria is used as an indicator of the potential presence of pathogenic bacteria in your system. Pathogenic bacteria are bacteria which can cause disease or make people sick, especially children and the elderly. Therefore, it is

very important that you submit these samples monthly. **We have not received results for total coliform testing since July 2005. We are aware of the transportation problems that you may have in getting these samples to the lab on time. It is important for the operator to sample early in the month so that if the samples don't make it to the lab on time, a resample can be submitted. It also helps to sample on either Mondays or Tuesdays so that the samples do not get held in the mail or by courier over weekends. It is very important that you submit a sample for total coliform immediately and to make arrangements for continued monthly testing.** [] Water System is required to submit samples monthly in order to be removed from the EPA SNC list and avoid further regulatory actions. 18 AAC 80.405.

Arsenic - The regulations require that a sample be analyzed every year. Arsenic levels above the Maximum Contaminant Level (MCL) of 10 mg/L may be harmful to people drinking the water. **No results have been received since April 2002. It is very important that you submit a sample for arsenic analysis immediately.** 18 AAC 80.315(d).

Please contact me at 1-800-770-2137, before November 15, 2005 to discuss the steps necessary to return to compliance with the Drinking Water Regulations. If we do not hear from you before that date, we will begin the process of formal enforcement against your system. A Notice of Violation will be issued before November 30, 2005 and your system could be assessed Administrative Penalties of \$100 per day per violation.

Safe drinking water is one of the most important assets of your community. Your water treatment plant operator is the first line of defense against waterborne disease and he requires the support of the entire community. Your current situation is very serious and requires your immediate attention.

Sincerely,

[EPS Name]
Environmental Program Specialist

Enclosures: Monitoring Summary

cc: [],
[]

If it is your intent to comply with the safe drinking water laws and regulations in the manner specified, please sign this document and return it to the attention of [EPS Name], Environmental Program Specialist, ADEC Drinking Water Program at the address listed on this letterhead. This should be done before November 15, 2005. Your signature is not considered an admission of guilt, only an indication of your intention to address the violations noted. Please retain a copy of the signed document for your records. If you have any questions concerning this letter, please call [] at [].

[], Owner

Date

**DIVISION OF ENVIRONMENTAL HEALTH
DRINKING WATER PROGRAM**

RETURN ADDRESS BLOCK

CERTIFIED MAIL – RETURN RECEIPT [#]

[date]

[Owner]
[PWS Name]
Address

RE: [PWS Name], PWSID [#], Class B Public Water System; Groundwater Source
Violation of Alaska Drinking Water Regulations - Failure to monitor water quality

Dear :

A review of our records indicates that the Department did not receive a coliform bacteria test result for the [PWS name] during the [first] calendar quarter of [year]. As we have indicated in previous correspondence to you (see enclosed correspondence dated [date] and [date] it is your responsibility as the owner of the public water system to ensure that the water is tested at the frequency required by state and federal law.

The Alaska Drinking Water Regulations, 18 AAC 80, requires that a Class B public water system using a groundwater source be tested for coliform bacteria at least once each calendar quarter and nitrates once each calendar year. These required water tests are intended to help protect public health and helps you document that the water is safe to drink.

Please have the water tested for coliform bacteria before the end of this month, and continue to have the bacteria test completed every calendar quarter that this public water system is in operation.

In addition, state and federal laws require that the users of a public water system be informed if the required testing is not completed on time. Enclosed is an example public notice to use for failure to monitor for total coliform bacteria. Also, a template may be downloaded from the following web site: <http://www.epa.gov/safewater/pws/pn/templates/ncws.doc> (see template entitled “Monitoring Violation NoticeBTemplate NC-4”). Public notices must be posted as long as the violation exists or for a minimum of ten (10) days. The enclosed Certification of Public Notice must be filled out and returned to our office with a copy of the completed public notice.

Continued failure to complete the required water testing and public notice requirements will result in the Department issuing a Notice of Violation, which may result in administrative (monetary) penalties, in accordance with Alaska Statute 46.03.761(g).

In order to remember to have the water tests completed on time, you may find it beneficial to contract with a certified laboratory to send you a reminder and/or water sample bottle each time a test is required. Enclosed is a list of certified laboratories for your convenience. If you have any questions regarding the water testing requirements for this system, please feel free to call me at [phone number].

As a reminder, this system needs to be tested for nitrates before the end of the year. The sanitary survey requirement is current. The next survey is due in [date].

Thank you for your assistance and cooperation in meeting these requirements.

Sincerely,

[EPS Name]
Environmental Program Specialist

ENCLOSURES: as stated
cc:

Bilateral Compliance Agreement (BCA) Example

610 University Avenue
Fairbanks, AK 99709
Phone: (907) 451-2108
Fax: (907) 451-2188
<http://www.dec.state.ak.us/>

**DIVISION OF ENVIRONMENTAL HEALTH
DRINKING WATER PROGRAM**

File #:
Certified Mail #:

November 1, 2005

[Owner]
[PWS Name]
Address

**Re: Overdue Testing to Ensure Safety of the [] Water System
PWS ID#[] ; CLASS: A; SOURCE: Surface Water**

Dear :

The purpose of this letter is to ask that you take **immediate action** to resolve drinking water safety issues in []. Our records indicate that the [] Water System has not been submitting all of the routine samples required by the Alaska Drinking Water Regulations, 18 AAC 80. Good public health depends on a safe water supply. Water is made safe by proper filtration and disinfection. Water is then shown to be safe through routine testing. When treatment and testing is not done, the safety of the water is unknown and people consuming the water may be at risk due to contamination of the water supply.

[] Water System uses a surface water as its source of drinking water and is required to filter and disinfect at all times. 18 AAC 80.600.

When testing is not done, or reports are not submitted, violations are created by the ADEC Drinking Water Program. These violations are tracked by the US Environmental Protection Agency (USEPA). If the violations are not addressed in a timely manner, the Public Water System is added to the USEPA Significant Non-Complier List (SNC). **Please note that your system is on the EPA Significant Non-Complier Exceptions List.** This means that the ADEC Drinking Water Program **will** initiate formal enforcement and administrative penalties if your system does not make an effort to return to compliance. This will also adversely affect your community's ability to obtain funding for Capital Improvement Projects. Public Water Systems are not eligible for grant or loan funding if they are on the EPA SNC Exceptions List.

[] Water System continues to be on the EPA SNC List due to lack of monitoring for total coliform bacteria, arsenic, and insufficient operator testing and reporting. This is a serious problem because without this information we are unable to determine the overall quality and safety of the treated water. **In order to return to compliance with the Drinking Water Regulations and be removed from the EPA SNC List, you will need to submit all of the required microbiological and chemical samples immediately and you will need to work with the Drinking Water Treatment Plant Operator to ensure that the proper operator testing is done. These tests are done by the operator and must be reported to the ADEC by the 10th of each month. Reports can be either mailed or faxed to this office.** 18 AAC 80.670. We have not received any operator reports for your system since June 2005. [

] Water System receives multiple violations every month because operator reports are not submitted as required. You begin sending the required operator reports to the [Appropriate field office] ADEC Office immediately to avoid further enforcement action.

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Please contact me at 1-800-770-2137, before November 15, 2005 to discuss the steps necessary to return to compliance with the Drinking Water Regulations. If we do not hear from you before that date, we will begin the process of formal enforcement against your system. A Notice of Violation will be issued before November 30, 2005 and your system could be assessed Administrative Penalties of \$100 per day per violation.

Safe drinking water is one of the most important assets of your community. Your water treatment plant operator is the first line of defense against waterborne disease and he requires the support of the entire community. Your current situation is very serious and requires your immediate attention.

Sincerely,

[EPS Name]
Environmental Program Specialist

Enclosures: Monitoring Summary

cc: [],
[]

If it is your intent to comply with the safe drinking water laws and regulations in the manner specified, please sign this document and return it to the attention of [EPS Name], Environmental Program Specialist, ADEC Drinking Water Program at the address listed on this letterhead. This should be done before November 15, 2005. Your signature is not considered an admission of guilt, only an indication of your intention to address the violations noted. Please retain a copy of the signed document for your records. If you have any questions concerning this letter, please call [] at [].

[], Owner

Date

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE OF ALASKA**

NOTICE OF VIOLATION

[Insert brief description of violation and cite to relevant statute or regulation here.
E.g.: Failure to Obtain I/M Inspection under 18 AAC 52.005]

To:

**Name of Facility or Person
Company Name (If Applicable
Street or Mailing Address
City, State, and Zip Code**

Enforcement Tracking No. 00-0000-40-00000

File No. _____

[Choose a modification of the following 2 paragraphs to suite the situation.]

The Department alleges that on or about [date], at [location], Alaska, [Name of facility or person] did unlawfully [briefly describe the violation(s)]. Such actions are in violation of [here cite permit number, and/or reg., statute, etc. Make sure to get these cites right.]

[Add a paragraph here outlining you factual basis for the NOV, such as site visit, citizen complaint, sampling results, etc. Make it as complete as necessary to establish the violation(s).]

To address the violation(s) described above, the Department requests that you do the following: [list required corrective actions, including deadlines.]

Penalties for violation of state statutes and regulations can be quite serious. In a civil action, a person who violates or causes or permits to be violated a provision of this regulation [NOTE: We can modify this for violations or orders, permits, ADEC approval, etc.], may be liable to the State for Substantial monetary damages under AS 46.03.760. Depending on the nature of the violation, you may also be liable for the state's response costs under AS 46.03.822, for spill penalties under AS 46.03.758-759, for administrative penalties under AS 46.03.761, or for other kinds of damages or penalties under other statutes.

In a criminal violation, a person who acts with criminal negligence may be guilty of a Class A misdemeanor. AS 46.03.790. Upon conviction, a defendant who is not an organization may be sentenced to pay a fine not exceeding \$10,000.00 and/or sentenced to a definite term of

imprisonment of not more than one year. Upon conviction, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of \$200,000.00 or an amount which is three times the pecuniary damage or loss caused by the defendant to another or property of another. AS 12.55.035. Each day of violation may be considered a separate violation. Alaska laws allow the State to pursue both civil and criminal actions concurrently.

Nothing in this Notice shall be construed as a waiver of the State's authority or as an agreement on the part of the State to forego judicial or administrative enforcement of the above-described violation(s) or to seek recovery of damages, cost and penalties as prescribed by law. In addition, nothing herein shall be construed as a waiver of enforcement for past, present, or future violations not specifically set forth herein.

Full Name, Enforcement Officer
Credential No. R-0____, Expires [date]

- Personally Served**
- Sent by Certified Mail**

on the ____ day of _____, 200__.

**DIVISION OF ENVIRONMENTAL HEALTH
DRINKING WATER PROGRAM**

555 Cordova
Anchorage, AK 99501
PHONE: (907) 269-7517
FAX: (907) 269-7650
<http://www.dec.state.ak.us/>

Enforcement Tracking Number: 12-0921-10

May 02, 2012

CERTIFIED MAIL, RETURN RECEIPT REQUESTED # 7003 2260 0004 1153 7119

Owner
The Water System
P.O. Box 55555
Chugiak, AK 99567-0508

**Re: Notice of Violation for Failure to Comply With:
Synthetic Organic Chemicals Monitoring and Reporting Requirements and
Consumer Confidence Reporting Requirements
POPULATION: 99 Regular
PWS ID# 222222; Community; SOURCE: Groundwater**

Dear Mr. Owner,

Our records indicate that The Water System has failed to submit sample results for Synthetic Organic Chemicals for the period 2008 and 2010 and failed to comply with the Consumer Confidence Reporting (CCR) requirements for the year 2007, 2008, 2009, and 2010 as required by the Alaska Drinking Water Regulations, 18 AAC 80. The purpose of this letter is to ask that you take immediate action to resolve these violations. This is the first step in a formal enforcement action which could result in Administrative Penalties being assessed for The Water System if the system does not come into full compliance with the Alaska Drinking Water Regulations, 18 AAC 80.

Good public health depends on a safe water supply, and drinking water is shown to be safe through annual reporting. Without this information the state is unable to determine the overall quality and safety of the drinking water your system is providing to your customers.

When testing is not done, or reports are not submitted, violations are created by the Department of Environmental Conservation (DEC) Drinking Water Program. These violations are tracked by the US Environmental Protection Agency (USEPA). If the violations are not addressed in a timely manner, the Public Water System is added to the USEPA Significant Non-Complier (SNC) List. **Please note that your system is on the EPA Significant Non-Complier List.** This means that DEC or EPA could impose further regulatory action or fines if your system does not return to compliance. The Water System is on the EPA's SNC List for failing to comply with the Synthetic Organic Chemical Rules and Consumer Confidence Reporting requirements. Due to

[Type text]

the serious nature of these violations, a Notice of Violation (NOV) is being issued to The Water System.

In order to return to compliance with Drinking Water Regulations, your water system must fulfill the requirements as stated in the enclosed NOV. Please be aware that you must submit to DEC the required Consumers Confidence Report and the Certification form and sample results of Synthetic Organic Chemicals by June 05, 2012. Administrative penalties may be assessed or The Water System may be referred to U.S. EPA and U.S. Department of Justice for enforcement if you don't comply with this NOV letter.

Thank you for your assistance in resolving these matters. If you have any questions, please call me at 907-XXX-XXXX or email at leticia.tadina@alaska.gov.

Sincerely,

Leticia Tadina
Environmental Program Specialist
DEC Drinking Water Program

Enclosures: Notice of Violation

Cc: Heather Newman, South-central DW Program area Coordinator DEC



**STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

NOTICE OF VIOLATION

Failure to comply with Consumer Confidence Reporting Requirements of 18 AAC 80.1040
Failure to comply with Synthetic Organic Chemical sampling requirements of 18 AAC 80.320

To:

**Owner
The Water System
P.O. Box 555555
Chugiak, AK 99567-0508**

Enforcement Tracking No. 12-0921-10

The Department alleges that the respondent, The Water System did unlawfully fail to comply with the Synthetic Organic Chemical sampling requirements and fail to comply with Consumer Confidence Reporting Requirements for Community Water System which is owned and operated by the Respondent. Such actions are in violations of 18 AAC 80. Consumer Confidence Reports (CCR's) are required annually for all community water systems. Sampling for SOC's is required during each monitoring period. In lieu of sampling, a public water system may submit an SOC Waiver application during each monitoring period. The current monitoring period for SOC contaminants is 2011 – 2013.

To address the violation(s) described above, the Department requests that you do the following:

- *By June 05, 2012, the 2011 Consumer Confidence Report for The Water System must be made available to its consumers as required by - 18 AAC 80.1040.*
- *By June 05, 2012, a copy of the Consumer Confidence Report and a signed Certification Page must be submitted to DEC as required by - 18 AAC 80.1040.*
- *By June 05, 2012, submit analytical results for SOC or apply for SOC waiver to DEC as required by 18 AAC 80.320*

Penalties for violation of state statutes and regulations can be quite serious. In a civil action, a person who violates or causes or permits to be violated a provision of state law may be liable to the State for substantial monetary damages under AS 46.03.760. Depending on the nature of the violation, you may also be liable for the state's response costs under AS 46.03.822, for

administrative penalties under AS 46.03.761, or for other kinds of damages or penalties under other statutes.

In a criminal violation, a person who acts with criminal negligence may be guilty of a Class A misdemeanor. AS 46.03.790. Upon conviction, a defendant who is not an organization may be sentenced to pay a fine not exceeding \$5000.00 and/or sentenced to a definite term of imprisonment of not more than one year. Upon conviction, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of \$200,000.00 or an amount which is three times the pecuniary damage or loss caused by the defendant to another or property of another. AS 12.55.035. Each day of violation may be considered a separate violation. Alaska laws allow the State to pursue both civil and criminal actions concurrently.

Failure to comply with the above deadlines may result in a preliminary penalty determination as required by 18 AAC 80.1200, and followed by a final penalty assessment should the system fail to return to compliance for the above stated requirements.

Nothing in this Notice shall be construed as a waiver of the State's authority or as an agreement on the part of the State to forego judicial or administrative enforcement of the above-described violation(s) or to seek recovery of damages, cost and penalties as prescribed by law.

Leticia Tadina
Environmental Program Specialist
DEC Drinking Water Program

Process Server
 Sent by Certified Mail

on the 2nd of May, 2012

**BEFORE THE STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the matter of:

STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

18 AAC 52.005

Complainant,

vs.

Name of Facility or Individual

Respondent.

Consent Order No. 99-256-50-1330

File #: 900.53.006

COMPLIANCE ORDER BY CONSENT

WHEREAS, the State of Alaska, Department of Environmental Conservation (ADEC or the Department) and the Army Air Force Exchange Service, Alaska area (AAFES or Respondent) desire to resolve a matter and to avoid the uncertainty and expense of formal enforcement proceedings, it is hereby covenanted and agreed as follows:

1. Findings and Conclusions

- A. The Alaska area AAFES manages and operates a vehicle fleet of approximately 60 vehicles within the State of Alaska, primarily located at, but not limited to, Ft. Wainwright, Ft. Richardson, Eielson Air Force Base, and Elmendorf Air Force Base.
- B. The above military posts and bases are located within State of Alaska Inspection/Maintenance (I/M) areas of the Fairbanks North Star Borough and the Municipality of Anchorage.
- C. As owner and operator of the vehicles, AAFES is required to obtain biennial emission inspections (I/M tests) on each AAFES vehicle subject to 18 AAC 52.005.
- D. During an August 20, 1999 conversation with AAFES staff it was acknowledged that

none of the approximately 60 Alaska AAFES fleet vehicles had received an I/M test as of that date.

- E. **Alleged Violation:** The Respondent has failed to properly obtain vehicle emission tests for its vehicle fleet as required by 18 AAC 52.005.

2. Settlement of Alleged Violations

Provided Respondent complies with each and every term of this Compliance Order By Consent (COBC) to the satisfaction of the Department, the Department shall not institute any administrative, civil or criminal action against Respondent for the violation outlined in Section 1.

3. Schedule of Actions

The Respondent agrees to perform the following actions:

- A. Submit to ADEC prior to October 15, 1999 an electronic copy of the current inventory of the Alaska Area AAFES vehicle fleet which includes the following for each vehicle:
- Government license plate number
 - Vehicle Identification Number (VIN)
 - Make and model
 - Model year
 - Assigned location
 - Date of most recent I/M test
 - Note if any vehicles are over 12,001 pounds unladen weight (I/M not required)
 - Note if any vehicles have diesel engines (I/M not required)
- B. Obtain I/M tests for all AAFES fleet vehicles subject to the I/M test requirement that are located on Ft. Wainwright, Ft. Richardson, Eielson Air Force Base, and Elmendorf Air Force Base prior to November 1, 1999. If AAFES vehicles located on Ft. Greely are operated within the Fairbanks North Star Borough more than 30 days in a two year period, those vehicles also need to be I/M tested by the same date.
- C. Provide a copy of correspondence informing appropriate AAFES fleet staff of the need to comply with the state requirement for biennial I/M inspections contained in 18AAC52.005(c) and (e)(3).
- D. Provide an update of the AAFES fleet vehicle inventory to ADEC by October 1, 2000, and yearly afterwards by October 1, during the term of the compliance order. The update

should indicate those vehicles that have been located to another site, those vehicles that have been sold, and include those vehicles that have been added to the AAFES fleet inventory. The yearly inventory updates shall be submitted to the following address:

Alaska Department of Environmental Conservation
 Division of Air and Water Quality
 Attention: Cindy Heil
 555 Cordova Avenue
 Anchorage, AK 99501-2617

4. Existing or Future Obligations

Nothing in this Compliance Order shall be construed as altering AAFES' existing or future obligations to monitor, record, or report information required under applicable environmental laws, statutes, regulations, or permits, or to allow ADEC's access to such information. Nothing in this Compliance Order shall alter ADEC's authority to request and receive any relevant information under applicable environmental laws or in administrative or judicial proceedings. Nothing in this Compliance Order shall be construed as limiting AAFES' rights to administrative or judicial review of the applicability or enforcement of the Alaska Emissions Inspections and Maintenance Requirements for Motor Vehicles.

5. Force Majeure

- A. If any event occurs which causes delay and effectively precludes compliance with the terms of this Compliance Order, AAFES shall promptly notify ADEC orally and shall, within seven days of oral notification to ADEC, notify ADEC in writing of the anticipated length and cause of the delay, the measures taken and to be taken by AAFES to prevent or minimize the delay, and the timetable by which AAFES intends to implement these measures.
- B. If ADEC determines, in its discretion, that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control and despite the due diligence of AAFES, the time for performance hereunder shall be excused or extended for a period equal to the delay resulting from such circumstances.
- C. Force Majeure shall not include increased costs of performance of the terms and conditions of the Compliance Order, or changed economic circumstances.

6. Breach

Time is of the essence in this Compliance Order. AAFES understands that any deviation from the terms or deadlines set forth herein, other than short term violations or violations caused by Force Majeure, may at ADEC's option be deemed a breach of this Compliance Order and may result in prompt legal action to enforce the terms and deadlines of this Compliance Order as well as all other applicable legal and regulatory requirements.

7. Modifications

ADEC may, with AAFES' consent, modify the requirements contained in this Compliance Order and all documents incorporated into it. If ADEC finds that a modification is necessary to achieve the goals of this Compliance Order, but AAFES is not willing to agree to that modification, ADEC will request the modification in writing, stating the reasons therefore. If the parties are unable to reach an agreement, the modification will take effect and the provisions of section 19 will apply.

8. State not a Party

The State of Alaska shall not be held as a party to any contract entered into by AAFES related to activities conducted pursuant to this Compliance Order.

9. Other Legal Obligations

The requirements, duties, and obligations set forth in this Compliance Order are in addition to any requirements, duties, or obligations contained in any permit which ADEC has issued or may issue to AAFES. This Compliance Order does not relieve AAFES from the duty to comply with requirements contained in any such permit or with otherwise applicable state and federal laws, including federal time limitations or handling requirements.

10. Reservation of Rights

- A. The execution of this Compliance Order is not an admission of liability by AAFES on any issue dealt within this Compliance Order. In signing this Compliance Order, AAFES and ADEC do not admit, and reserve the right to controvert in any subsequent proceedings, the validity of, or responsibility for, any of the factual or legal determinations made herein; provided, however, that AAFES shall not controvert or challenge, in any subsequent proceedings initiated by the State of Alaska, the validity of this Compliance Order or the authority of ADEC to issue and enforce this Compliance Order.
- B. ADEC expressly reserves the right to initiate administrative or legal proceedings related to any violation not described in this Compliance Order. In addition, ADEC and the Department of Law expressly reserve the right to initiate administrative or legal proceedings related to violations described in this Compliance Order if AAFES breaches this Compliance Order or if, in ADEC's opinion, subsequently discovered events or conditions constitute an immediate threat to public health, public safety, or the environment whether or not ADEC may have been able to discover the event or condition prior to entering into the Compliance Order. ADEC expressly reserves the right to initiate administrative or legal proceedings if AAFES does not comply with the provisions set forth herein to the satisfaction of ADEC.

11. Covenant Not to Sue

Subject to the provisions of sections 7 and 11, and provided AAFES complies with the terms of this Compliance Order to the satisfaction of ADEC, the ADEC shall not institute any action against AAFES, whether civil, criminal, administrative, penalty, or cost recovery, for the

potential violations described in Section 1.

12. Property Transfer

If AAFES transfers, sells, or leases the property described in Section 1 to another party prior to AAFES fulfillment of the provisions of this Compliance Order, AAFES shall incorporate a copy of this Compliance Order into the documents of transfer or lease, and shall provide in those documents that the new owners or lessees shall take or lease subject to the provisions of this Compliance Order.

13. STATE Order

AAFES acknowledges and agrees that this Compliance Order constitutes an order of the ADEC for the purposes of AS 46.03.760, AS 46.03.765, AS 46.03.790, AS 46.03.850 and for all other purposes.

14. Periodic Reports & Briefings

At the request of ADEC, the AAFES shall schedule and conduct additional periodic briefings at a location approved by ADEC concerning the status of activities conducted pursuant to this Compliance Order.

15. Parties Bound

This Compliance Order shall apply and be binding upon ADEC and AAFES, their agents, successors, and assigns and upon all persons, contractors, and consultants acting on behalf of ADEC or AAFES.

16. Copies

Upon retention, AAFES shall provide a copy of this Compliance Order to all contractors, subcontractors, and consultants retained to conduct any portion of the work performed pursuant to this Compliance Order.

17. AAFES Representative

AAFES shall designate a representative who shall be empowered on behalf of AAFES to communicate with, and to receive and comply with, all communications and orders of ADEC.

18. Dispute Resolution

- A. If AAFES objects to an ADEC rejection or modification made pursuant to this Compliance Order, AAFES shall notify ADEC in writing within seven calendar days of receipt of the rejection or modification. ADEC and AAFES shall then have an additional seven calendar days from the date of receipt by ADEC of the notification of

objection to reach agreement. That period can be extended by mutual agreement of AAFES and ADEC.

- B. If ADEC and AAFES cannot reach agreement on the disputed matter within seven days after receipt by ADEC of the Notice of Objection, or within any agreed extension of that period, ADEC shall provide a written statement of its decision to AAFES. ADEC's written decision shall constitute a final agency action for purposes of judicial review pursuant to Alaska Rules of Appellate Procedure 602(a)(2). The parties agree that ADEC's decision shall remain in effect pending resolution of the appeal unless a stay is granted by the court on appeal. The parties agree that the appeal process shall be expedited wherever possible.
- C. ADEC and AAFES agree that the dispute resolution process shall only be invoked for those disputes which AAFES can demonstrate involve acts or omissions which, if performed, involve direct monetary expenditures by AAFES of \$10,000 or more. The dispute resolution process shall not be invoked by AAFES for purposes of delay.

19. Effective Dates

The effective date of this Compliance Order shall be the date the Compliance Order is executed by both AAFES and the ADEC. This Compliance Order shall terminate on September 30, 2001, if at that time, a Memorandum of Understanding (MOU) has been entered into between AAFES and ADEC which guarantees that the AAFES vehicle fleet has been and will continue to be properly I/M inspected. Otherwise, the COBC shall continue in effect until such time that all AAFES vehicles requiring an I/M inspection are in compliance with 18 AAC 52 and a MOU has been signed.

20. Severability

It is the intent of the parties hereto that the clauses of this Compliance Order are severable and should any part of it be declared by a court of law to be invalid and unenforceable, the other clauses shall remain in full force and effect.

21. Waiver

A failure to enforce any provision of this Compliance Order in no way implies a waiver of ADEC's right to insist upon strict performance of the same or other provisions in the future.

Department of Environmental Conservation

By: Tom Chapple
 Director
 Division Of Air and Water Quality

Date: _____

ASSENT OF COUNSEL

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: _____
Cameron Leonard
Assistant Attorney General

Army Air Force Exchange Service

By: _____
Amy Birmingham
AAFES Area Manager

Date: _____

I, _____, hereby certify that I am the _____
_____ of the Army Air Force Exchange Service and that I have the authority to
enter into agreements on behalf of the Army Air Force Exchange Service, Alaska Area, and to otherwise
legally bind the Army Air Force Exchange Service. I hereby acknowledge that I have freely and
voluntarily entered into this agreement with the State of Alaska on behalf of the Army Air Force Exchange
Service after obtaining advice of counsel.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 1999.

Notary Public in and for Alaska
My commission expires: _____

**BEFORE THE STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the matter of:

STATE OF ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION)
)

18 AAC 80.80.305

Complainant,)

Water System, LLC)
P.O. Box XXXXX)
Anchorage, AK 99510-0124)

Respondent.)

Enforcement Tracking # 09-0101-10
File Name: Public Water System

COMPLIANCE ORDER BY CONSENT

WHEREAS, the State of Alaska, Department of Environmental Conservation (DEC or the Department) and Water System, LLC (Respondent) desire to resolve a matter and to avoid expense of formal enforcement proceedings, it is hereby covenanted and agreed as follows:

I. Findings and Conclusions

- A. Water System, LLC, PWS ID 211821 serves residences within the Subdivision located within the Municipality of Anchorage.
- B. Water System, LLC is a Community Water System.
- C. Water System, LLC is located within the State of Alaska Department of Environmental Conservation, Drinking Water Program, Anchorage office area.
- D. Water System, LLC, the Respondent is required to be in compliance with the State of Alaska Drinking Water Regulations, 18 AAC 80.

- E. Alleged Violation: The Respondent has failed to comply with the State of Alaska Drinking Water Regulations, 18 AAC 80.305. Violations include failure to meet the requirements of a Community Water System for primary maximum contaminant level (MCL) for Arsenic.

II. Settlement of Alleged Violations

Provided the Respondent complies with each and every term of this Compliance Order By Consent (COBC) to the satisfaction of the Department, the Department shall not institute any administrative, civil or criminal action against the Respondent for the violations outlined in Section I.

III. Schedule of Actions

The Respondent agrees to perform the following actions:

- A. By June 30, 2011, the Respondent will submit to DEC Water Division Municipal Grants and Loan Program loan application to connect Water Systems, LLC to Anchorage Water & Wastewater Utilities if the legislative change is made to allow small RCA Provisionally Certified Water systems to apply for the EPA DWRSF funds through the DEC Municipal Grants and Loans program.
- B. By December 31, 2011, the Respondent will submit to the DEC Drinking Water Program engineer for construction approval engineered design drawings of the Water System, LLC modifications for connection to Anchorage Water & Wastewater Utilities (AWWU).
- C. Starting no later than December 31, 2010 and at least once every year thereafter, prior to connection to AWWU, monitor Arsenic by providing a drinking water sample to a State certified laboratory for analysis.
- D. Starting no later than October 31, 2010, provide public notification to the Water System, LLC consumers outlining the Arsenic MCL exceedance in accordance with 18 AAC 80.1000, and continuing the public notification on a quarterly basis (January, April, July and October) until the arsenic treatment plant receives approval to operate under paragraph III.E.
- E. By December 2013, obtain a certificate for Approval to Operate the Water System, LLC/AWWU Intertie.

IV. Stipulated Penalties

- A. Subject to the provisions of Paragraphs VI. B. & C., the Respondent shall timely comply with the deadlines set forth in this COBC. The Respondent shall pay, at

DEC's discretion, to DEC a stipulated penalty of \$100 per calendar day, per violation in the event that the Respondent fails to meet any of the deadlines established in this COBC. The penalties imposed under this section shall be cumulative.

- B. A violation that does not exceed 30 days is a short term violation. Subject to Paragraph VI. B and C only, any violations of the deadlines or conditions of this COBC which exceed 30 days, may, at DEC's option, constitute a breach of this COBC.
- C. If the Respondent breaches this COBC, DEC may assess the stipulated penalty provided under Paragraph IV. A, and in addition may, at its option, elect to pursue any remedies or sanctions which may be available to DEC as a result of any breach by the Respondent of this Compliance Order By Consent, or the Respondent's failure to comply with state statutes and regulations.

V. Existing or Future Obligations

Nothing in this COBC shall be construed as: (1) altering the Respondent's existing or future obligations to monitor, record, or report information required under applicable environmental laws, statutes, regulations, or permits, or to allow DEC's access to such information; (2) altering DEC's authority to request and receive any relevant information under applicable environmental laws or in administrative or judicial proceedings; or (3) limiting the Respondent's rights to administrative or judicial review of the applicability or enforcement of the State of Alaska Drinking Water Regulations.

VI. Deadline Extensions

- A. If any event occurs which causes delay and effectively precludes compliance with the terms of this COBC, the Respondent shall promptly notify DEC orally and shall, within seven days of oral notification to DEC, notify DEC in writing of: (1) the anticipated length and cause of the delay; (2) the measures taken and to be taken by the Respondent to prevent or minimize the delay; and (3) the timetable by which the Respondent intends to implement these measures.
- B. If DEC determines, in its discretion, that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control and despite the due diligence of the Respondent, the time for performance under this COBC shall be extended for a period equal to the delay resulting from such circumstances. Delays or anticipated delays that have been or will be caused by circumstances beyond the reasonable control and despite the due diligence of the Respondent include war, riots, acts of God, but do not include increased costs of performance of the terms and conditions of the compliance Order by consent, or changed economic circumstances.

- C. DEC may, in its discretion, extend deadlines for reasons other than those in Paragraph VI.B., without penalty, or with the stipulated penalties in Section IV. A. until the Respondent comes into compliance with the requirements of this order.

VII. Breach

Time is of the essence in this COBC. The Respondent understands that any deviation from or noncompliance with the terms or deadlines set forth herein, other than short term violations or violations caused by delays described in Paragraph VI.B., may at DEC's option be deemed a breach of this COBC and may result in prompt legal action to (1) enforce the terms and deadlines of this COBC as well as all other applicable legal and regulatory requirements; and (2) institute any administrative, civil or criminal action against the Respondent for the violations outlined in Section I.

VIII. Modifications

DEC may, with the Respondent's consent, modify the requirements contained in this COBC and all the documents incorporated into it. If DEC finds that a modification is necessary to achieve the goals of this COBC, but the Respondent is not willing to agree to that modification, DEC will request the modification in writing, stating the reasons therefore. If the parties are unable to reach an agreement, the modification will take effect and the provisions of Section XIX will apply.

DEC understand that, at the date of this COBC, the EPA DWSRF funding for the project to connect to AWWU is not accessible to Water System, LLC due to application restrictions set forth by Alaska State Statute. Work is being done to change this statute in the 2011 Legislative Session; to allow small RCA Provisionally Certified Water systems to apply for the EPA DWRSF funds through the DEC Municipal Grants and Loans program. At present this is the only potential funding available to complete this project. If this statute change is not achieved during the 2011 session, there will need to be substantial date and /or content changes made to the terms and actions set forth in this COBC.

IX. State not a Party

The State of Alaska shall not be held as a party to any contract entered into by the Respondent related to activities conducted pursuant to this COBC.

X. Other Legal Obligations

The requirements, duties, and obligations set forth in this COBC are in addition to any requirements, duties, or obligations contained in any permit which DEC has issued or may issue to the Respondent. This COBC does not relieve the Respondent from the duty to

comply with requirements contained in any such permit or with otherwise applicable state and federal laws, including time limitations or handling requirements.

XI. Reservation of Rights

- A. The execution of this COBC is not an admission of liability by the Respondent on any issue dealt with in this COBC. In signing this COBC, the Respondent and DEC do not admit, and reserve the right to controvert in any subsequent proceedings, the validity of, or responsibility for, any of the factual or legal determinations made herein; provided, however, that the Respondent shall not controvert or challenge, in any subsequent proceedings initiated by the State of Alaska, the validity of this COBC or the authority of DEC to issue and enforce this COBC.
- B. DEC and the Department of Law expressly reserve the right to initiate administrative or legal proceedings (1) related to any violation not described in this COBC; (2) related to violations described in this COBC if the Respondent breaches this COBC; and (3) related to violations described in this COBC if, in DEC's opinion, subsequently discovered events or conditions constitute an immediate threat to public health, public safety, or the environment whether or not DEC may have been able to discover the event or condition prior to entering into the COBC.

XII. Covenant Not to Sue

Subject to the provisions of Paragraphs VII, X, and XI, and provided the Respondent complies with the terms of this COBC to the satisfaction of DEC, the DEC shall not institute any action against the Respondent, whether civil, criminal, administrative, penalty, or cost recovery, for the violations described in Paragraph I.

XIII. Property Transfer

If the Respondent transfers, sells, or leases the PWS described in Paragraph I to another party prior to the Respondent's fulfillment of the provisions of this COBC, the Respondent shall incorporate a copy of this COBC into the documents of transfer or lease, and shall provide in those documents that the new owners or lessees shall take or lease subject to the provisions of this COBC.

XIV. State Order

The Respondent acknowledges and agrees that this COBC constitutes an order of the DEC for the purposes of AS 46.03.760, AS 46.03.761, AS 46.03.765, AS 46.03.790, AS 46.03.850 and for all other purposes.

XV. Periodic Reports & Briefings

At the request of DEC, the Respondent shall schedule and conduct periodic briefings at a location and in a manner approved by DEC concerning the status of activities

conducted pursuant to this COBC.

XVI. Parties Bound

This COBC shall apply and be binding upon DEC and the Respondent, their agents, successors, and assigns and upon all persons, contractors, and consultants acting on behalf of DEC or the Respondent.

XVII. Copies

Upon retention, the Respondent shall provide a copy of this COBC to all contractors, subcontractors, and consultants retained to conduct any portion of the work performed pursuant to this COBC.

XVIII. Representative

The Respondent shall, at the signing of this COBC designate in writing, a representative who shall be empowered on behalf of the Respondent to communicate with, and to receive and comply with all communications and orders of DEC. If the Respondent changes its designated representative, the Respondent shall do so in writing to DEC.

XIX. Dispute Resolution

- A. If the Respondent objects to a DEC modification made under Paragraph VIII, the Respondent shall notify DEC in writing within seven calendar days of receipt of the modification. DEC and the Respondent shall then have an additional seven calendar days from the date of receipt by DEC of the notification of objection to reach agreement. That period can be extended by mutual agreement of the Respondent and DEC.
- B. If DEC and the Respondent cannot reach agreement on the disputed matter within seven days after receipt by DEC of the Notice of Objection, or within any agreed extension of that period, DEC shall provide a written statement of its decision to the Respondent. DEC's written decision shall constitute a final agency action for purposes of judicial review pursuant to Alaska Rules of Appellate Procedure 602(a)(2). The parties agree that DEC's decision shall remain in effect pending resolution of the appeal unless a stay is granted by the court on appeal. The parties agree that the appeal process shall be expedited wherever possible.
- C. DEC and the Respondent agree that the dispute resolution process shall only be invoked for those disputes which the Respondent can demonstrate involve acts or omissions which, if performed, involve direct monetary expenditures by the Respondent of \$10,000 or more. The dispute resolution process shall not be invoked by the Respondent for purposes of delay.

XX. Effective Dates

The effective date of this COBC shall be the date the COBC is executed by both the Respondent and the DEC. This COBC shall terminate on December 31, 2012 unless the deadline dates in Section III have been extended by DEC beyond that date in accordance with the terms of this agreement.

XXI. Severability

The parties agree that the clauses of this COBC are severable and should any part of the COBC be declared by a court of law to be invalid and unenforceable, the other clauses shall remain in full force and effect.

XXII. Waiver

A failure to enforce any provision of this COBC in no way implies a waiver of DEC's right to insist upon strict performance of the same or other provisions in the future.

Department of Environmental Conservation

By: James Weise
Program Manager
Drinking Water Program, Anchorage Office

Date: _____

ASSENT OF COUNSEL

Daniel S. Sullivan

ATTORNEY GENERAL

By: _____
Mary Ann Lundquist
Senior Assistant Attorney General

Water System, LLC

By: _____
Owner, single member, Water system, LLC

Date: _____

I, _____, hereby certify that I am the _____
_____ of the Water System, LLC and that I have the authority to enter into
agreements on behalf of the Water System, LLC and to otherwise legally bind the Water System, LLC. I
hereby acknowledge that I have freely and voluntarily entered into this agreement with the State of
Alaska on behalf of the Water System, LLC.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2010.

Notary Public in and for Alaska
My commission expires: _____

**DIVISION OF ENVIRONMENTAL HEALTH
DRINKING WATER PROGRAM**

610 University Avenue
Fairbanks, Alaska 99709
PHONE: (907) 451-2108
FAX: (907) 451-2188
<http://www.state.ak.us/dec/>

[Date]

File Number: _____

[Owner]
[PWS Name]
[Address]

Certified Mail - Return Receipt Requested [#]

**Notice of Preliminary Determination to Assess an
Administrative Penalty**

The Department of Environmental Conservation alleges that [Owner], owner; [PWS Name], PWSID [#] (referred to as "Respondent"), did unlawfully fail to resolve or correct the following deficiency. This deficiency was noted in the Notice of Alleged Noncompliance issued by the Department on October 7, 2004 and received by mail by [Owner], on October 13, 2004. The following item was not completed as of November 30, 2004:

- [Owner] or other responsible party failed to provide annual Consumer Confidence Reports to the tenants of [PWS Name] from 1998 through 2003. This public water system is in violation of 18 AAC80.1040.

The department is issuing this preliminary determination to collect an administrative penalty, because the above stated deficiency has not been resolved.

The department has calculated a preliminary determination which represents a daily penalty for each deficiency/violation. This penalty calculation resulted in a **penalty of \$71,018**. Enclosed is the preliminary penalty worksheet used to calculate the administrative penalty.

The attached calculation shows a penalty in excess of \$71,000. *Alaska Statute 46.03.761 (g)*, however states that the Department may not exceed a penalty of \$100 per day per violation for water systems serving 1,000 or fewer persons. With the above noted violations and periods of noncompliance, your water system is being assessed a preliminary determination **penalty of \$33,000**.

You may within 10 days after receipt of this notice of preliminary determination or within the period allowed in any extension granted by the department make a written request for reconsideration to the Director of the Department (see contact below). The department shall reconsider the preliminary determination and may affirm or modify the preliminary determination.

The respondent, if asking for a reconsideration, must provide information regarding the extent to which the violations have been abated or partially abated, provide information whether noncompliance was out of the entity's control, including information regarding the unavailability of professional or technical personnel or of materials and equipment and other relevant information that was not initially available or overlooked by the department.

Kristin Ryan
Director Division of Environmental Health
Department of Environmental Conservation
555 Cordova Street
Anchorage, Alaska 99501

The respondent may also seek an extension to the 10-day reconsideration period by making a written request to Kristin Ryan, Director Department of Environmental Conservation. The department will extend the 10-day period for making a request if the entity requests an extension within the 10-day period and the department determines that the extension is not sought for purposes of delay, there is good cause shown, and the public is adequately protected.

If the department does not receive a timely written request for reconsideration or if after reconsideration the department determines that the penalty should be assessed, the department will issue a written notice of assessment by personal service or certified mail return receipt.

Sincerely,

[EPS Name]
Environmental Program Specialist
Drinking Water Program

Administrative Penalty Calculation Worksheet

PWS Name _____
7/17/2012

Administrative Penalty Calculation Worksheet for Calculation of Penalty

Name of Water System or entity: [PWS Name, PWSID #]

Date of Entity's receipt of the Notice of Alleged Noncompliance under 18 AAC 80.1210:(mm/dd/yyyy)

10/13/2004

Date of correction of the noncompliance:(mm/dd/yyyy)

1 2 3 4 5 6 7

7

12/7/2004 12/7/2004 12/7/2004 12/7/2004 12/7/2004 12/7/2004

Violations noted by section and brief description:

Section violated	Description of Violation
1 18AAC80.1040	1998 CCR
2 18AAC80.1040	1999 CCR
3 18AAC80.1040	2000 CCR
4 18AAC80.1040	2001 CCR
5 18AAC80.1040	2002 CCR
6 18AAC80.1040	2003 CCR
7	

Name and position title of person completing this form **Linda Grantham**
Draft

Date 12/7/2004

Calculation of Penalty

Penalty shall be calculated as (A*B*C* \$10)+D

where:

A=point value assigned in section A below;

B=point value assigned in section B below;

C=point value assigned in section C below;

D=the number determined under the formula set out in (e) of this section.

Total Calculated Penalty	\$71,018
---------------------------------	-----------------

Section A--Choose all which apply to the notice of violation

(1) for the following violations that have a minor effect on the public health:

- (A) failure to comply with 18 AAC 80.1040 (Consumer Confidence Reports): one point;
- (B) failure to meet a secondary MCL required under 18 AAC 80.300(c)-(d): one point;
- (C) a violation of the requirements under this chapter that the department determines to have a minor effect on the public health: one point;

1 2 3 4 5 6 7

1 1 1 1 1 1

(2) for the following violations that prevent the department's assessment of safety:

- (A) failure to submit to the department information required by this chapter: two points;
- (B) failure to submit documentation sealed by a registered engineer if required by this chapter: two points;
- (C) failure to perform routine sampling and analysis as required under 18 AAC 80.310(a), other than a failure described in (4)(A) or (4)(B) of this subsection: two points;
- (D) failure to correct, within the department's specified timeframe, deficiencies found during a sanitary survey, other than significant deficiencies: two points;
- (E) a violation of the requirements under this chapter that the department determines to prevent the department's assessment of safety: two points;

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PWS Name _____ 7/17/2012

(3) for the following violations that could prevent the public water system from supplying drinking water to the public:

[Redacted area for section 3]

- (A) construction, installation, alteration, renovation, or improvement of a public water system without approval as required under 18 AAC 80.200(b): three points;
- (B) failure to operate with a certified operator in accordance with 18 AAC 80.007: three points;
- (C) failure to obtain a sanitary survey in accordance with 18 AAC 80.430: three points;
- (D) failure to meet the separation distance requirements of 18 AAC 80.020 without a waiver under that section: three points;
- (E) a violation of the requirements under this chapter that the department determines could prevent the public water system from supplying drinking water to the public: three points;

(4) for the following violations in which a known, specific health concern exists:

[Redacted area for section 4]

- (A) failure to perform routine sampling and analysis as required under 18 AAC 80.310(a) to determine compliance with a treatment technique requirement under 18 AAC 80.655 - 18 AAC 80.665: four points;
- (B) failure to monitor for coliform bacteria, as required under 18 AAC 80.405, or to conduct nitrate and nitrite monitoring as required by 18 AAC 80.315(d)-(e): four points;
- (C) failure to install filtration or provide filtration treatment, if required under 18 AAC 80.650: four points;
- (D) failure to cover a reservoir if required under 40 C.F.R. 141.170(c), adopted by reference in 18 AAC 80.010(a): four points;
- (E) failure to meet the MCL for a contaminant in 18 AAC 80.300 other than nitrate, nitrite, or total nitrate and nitrite as set out in 18 AAC 80.300(b)(1), and other than total coliform bacteria as set out in 18 AAC 80.300(b)(5): four points;
- (F) failure to perform public education or public notice, if required under 18 AAC 80.540 or under 18 AAC 80.1000 - 18 AAC 80.1030, other than a failure described in (6)(l) of this subsection: four points;
- (G) a violation of the requirements under this chapter for which the department determines that a known, specific health concern exists: four points;

(5) for the following violations that could result in an unapproved or deficient public water system in use:

[Redacted area for section 5]

- (A) operation of a public water system without a valid final or interim approval to operate as required under 18 AAC 80.200(b) and 18 AAC 80.210(g) and (j): five points;
- (B) failure to make physical modifications as required by the department under 18 AAC 80.200(e): five points;
- (C) failure to correct, within the department's specified timeframe, significant deficiencies found during a sanitary survey: five points;
- (D) a violation of the prohibition of cross-connections under 18 AAC 80.025(a), or failure to install, maintain, or test a backflow prevention device as required under 18 AAC 80.025(b): five points;
- (E) a violation of the requirements under this chapter that the department determines could result in an unapproved or deficient public water system in use: five points;

(6) for the following violations that could result in an immediate threat to the public health:

[Redacted area for section 6]

- (A) failure to perform repeat monitoring if required under this chapter: six points;
- (B) failure to monitor fluoridation as required under 18 AAC 80.315 and

Administrative Penalty Calculation Worksheet

PWS Name _____
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- 18 AAC 80.340: six points;
- (C) failure to meet the turbidity MCL set out in 18 AAC 80.300(b)(3): six points;
- (D) failure to comply with a treatment technique requirement: six points;
- (E) failure to meet the monthly coliform MCL set out in 18 AAC 80.300(b)(5): six points;
- (F) failure to disinfect a newly constructed or reworked well as required under 18 AAC 80.015(b)(6): six points;
- (G) failure to use a certified laboratory: six points;
- (H) failure to meet the MCL for nitrate, nitrite, or total nitrate and nitrite, as set out in 18 AAC 80.300(b)(1) and determined according to 18 AAC 80.305(b): six points;
- (I) failure to provide public notice, as required under 18 AAC 80.1000(b), for a violation of the of the MCL for a contaminant or the MRDL for a disinfectant that might pose an acute risk to human health: six points;
- (J) failure to meet the monitoring requirements of 18 AAC 80.660 for a Class A or Class B public water system that uses a surface water source or a GWUDISW source and that does not provide filtration treatment: six points;
- (K) a violation of the requirements under this chapter that the department determines could result in an immediate threat to the public health: six points.

Subtotal A	1	1	1	1	1	1	0
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Section B--For the amount "B" in the penalty formula at the top of this form, the department will assign to the violation a point value reflecting the entity's previous record of compliance under this chapter, as follows: (choose one of the 3 options)

- (1) if, within five years before the date when the department issues a preliminary determination under 18 AAC 80.1230, a notice of violation has been issued under AS 46.03.850 for a violation under Section A above, parts (4)-(6) by this entity: **seven points**
- (2) if, within one year before the date when the department issues a preliminary determination under 18 AAC 80.1230, a notice of violation has been issued under AS 46.03.850 for a violation under Section A above, parts (4)-(6) by this entity: **three points**
- (3) if the entity's compliance history does not include circumstances described in (1) or (2) of this subsection: **one point.**

Subtotal B	7	7	7	7	7	7	7
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Section C--(d) For the amount "C" in the penalty formula in (a) of this section, the department will assign to the violation a point value reflecting the population that the entity serves, as follows: (choose only one)

- (1) for a transient non-community water system: **one point;**
- (2) for a non-transient non-community water system, or for a community water system with fewer than 100 service connections: **two points;**
- (3) for a community water system with 100 - 500 service connections: **three points;**
- (4) for a community water system with 501 - 999 service connections: **four points;**
- (5) for a community water system with 1,000 - 9,999 service connections: **five points;**

Administrative Penalty Calculation Worksheet

PWS Name _____
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(6) for a community water system with 10,000 or more service connections: **six points.**

Subtotal C	3	3	3	3	3	3	0
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Section D--For the amount "D" in the penalty formula on the top of this form, the department will assign a number calculated in accordance with the following formula:

$$D = (\text{economic savings} + \text{department's reasonable costs}) \div \text{number of days of noncompliance}$$

(2) "economic savings" means the sum that an entity would have been required to expend for the planning, acquisition, construction, installation, and operation of a facility necessary to ensure compliance with the standard violated;

	Cost of each factor for each violation														
	1	2	3	4	5	6	7								
Planning															
Acquisition	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00									
Construction															
Installation															
Operation															
	Total Economic Savings							\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$ -

(1) "department's reasonable costs" means the following costs that can reasonably be attributed to the violation:

(A) the number of hours, multiplied by \$72, that department employees worked in the detection, investigation, investigation, and attempted correction of the violation;

Number of employees' work hours						
1	2	3	4	5	6	7
0.5	0.5	0.5	0.5	0.5	0.5	

	\$ 36.00	\$ 36.00	\$ 36.00	\$ 36.00	\$ 36.00	\$ 36.00	\$ -							
(B) administrative costs;	\$ 0.25	\$ 0.25	\$ 0.25	\$ 0.25	\$ 0.25	\$ 0.25								
(C) travel costs;														
(D) the cost of collecting, transporting, and analyzing samples paid for or performed by the department;														
(E) the cost of contracted services related to the detection, investigation, and attempted correction of the violation;														
	Total Department's Reasonable Costs							\$ 36.25	\$ 36.25	\$ 36.25	\$ 36.25	\$ 36.25	\$ 36.25	\$ -

(5) "number of days of noncompliance" means the number of days between the entity's receipt of the notice of alleged noncompliance under 18 AAC 80.1210 and the date

(A) of correction of the noncompliance; or

(B) on which the department issues a notice of preliminary determination under 18 AAC 80.1230, if the noncompliance has not yet been corrected.
(estimate the dates [yyymmdd] for purposes of calculation)

Administrative Penalty Calculation Worksheet

PWS Name _____
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Number of Days of Noncompliance	55	55	55	55	55	55	55
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D = (economic savings + department's reasonable costs) ÷ number of days of noncompliance

D =	\$ 5.20	\$ 5.20	\$ 5.20	\$ 5.20	\$ 5.20	\$ 5.20	\$ -
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Calculation of Penalty per Day

Penalty shall be calculated as (A*B*C* \$10)+D	\$ 215.20	\$ 215.20	\$ 215.20	\$ 215.20	\$ 215.20	\$ 215.20	\$ -
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Total Penalty per Violation							
\$ 11,836.25	\$11,836.25	\$ 11,836.25	\$ 11,836.25	\$11,836.25	\$11,836.25	\$ 11,836.25	\$ -

10-day extension request approval - example

**DIVISION OF ENVIRONMENTAL HEALTH
DRINKING WATER PROGRAM**

555 Cordova Street
Anchorage, Alaska 99501
PHONE: (907) 269-7644
FAX: (907) 269-7654
<http://www.state.ak.us/dec/>

[date]

File Number: _____

[Owner]
[PWS Name]
[Address]

Certified Mail - Return Receipt Requested #

Dear [Owner],

I have received your letter dated [date] requesting a 10-day extension of the reconsideration period for the Notice of Preliminary Determination to Assess an Administrative Penalty for the [PWS Name]. In your letter you state that you have contracted the services of [third party contractor] to prepare a Consumer Confidence Report. The 10-day extension of the reconsideration period is being requested to allow you time to finalize and distribute the Consumer Confidence Report to the residents using [PWS Name].

Your request for a 10-day extension of the reconsideration period is hereby granted. The 10-day extension of the reconsideration period is effective [date]. In order to request a reconsideration of the Administrative Penalty, you must provide information regarding the extent to which the violations have been abated or partially abated, provide information whether noncompliance was out of the entity's control, including information regarding the unavailability of professional or technical personnel or of materials and equipment and other relevant information that was not initially available or overlooked by the department on or before [date]. Please submit your request for reconsideration to:

Kristin Ryan
Director Division of Environmental Health
Department of Environmental Conservation
555 Cordova Street
Anchorage, Alaska 99501

If the department does not receive a timely written request for reconsideration or if after reconsideration the department determines that the penalty should be assessed, the department will issue a written notice of assessment by personal service or certified mail return receipt.

Sincerely,

Kristin Ryan
Director Division of Environmental Health

555 Cordova Street
Anchorage, Alaska 99501
PHONE: (907) 269-XXXX
FAX: (907) 269-7654
<http://www.state.ak.us/dec/>

**DIVISION OF ENVIRONMENTAL HEALTH
DRINKING WATER PROGRAM**

February 24, 2005

[Owner]
[PWS Name]
[Address]

Certified Mail - Return Receipt Requested #

Re: Request for Reconsideration for [] Water System, PWS # XXXXXXX
Notice of Assessment

Dear [],

I have received your letter dated February 2, 2005 requesting a reconsideration of the Notice of Preliminary Determination to Assess an Administrative Penalty for the [] Water system. In your request for reconsideration, you indicate that the required Lead and Copper samples were not collected during the July – December 2004 compliance period because of an oversight on the part of you and your staff. Drinking Water Program staff contacted your system (name of person) on December 9, 2004 and reminded them that the Lead and Copper samples were due before December 31, 2004.

The Notice of Preliminary Determination to Assess an Administrative Penalty received by you on February 1, 2005 set the preliminary determination of penalty at \$2,600. Based on the additional information you have provided, the Drinking Water Program will reconsider the administrative penalty.

According to 18 AAC 80.1220 (f) the Department may increase or decrease the penalty assessed based on the following factors:

- (1) whether the violation prevented the entity from supplying drinking water to the public;
- (2) the extent to which the violation reduced the quality of water being provided to the public;
- (3) the extent to which the violation negatively impacted the integrity of the source;
- (4) the likelihood that the penalty will deter future violations of this chapter by the entity subject to the penalty;
- (5) whether the entity achieved compliance with the violated requirement within the shortest feasible time, taking into consideration
 - (A) the cost of compliance;
 - (B) the availability of professional or technical personnel;
 - (C) the availability of materials and equipment; and

- (D) the extent to which major construction or alteration of facilities was needed to bring the public water system into compliance with applicable statutes and this chapter;
- (6) whether the expenditures that would have prevented or minimized the violation are relatively small in comparison to the overall investment in infrastructure by the public water system;
- (7) whether any delay in compliance was out of the control of the entity; for the purposes of this paragraph, a delay out of the control of the entity includes a delay
 - (A) because parts or chemicals that had been timely ordered by the entity were on back order or delayed in transit;
 - (B) due to circumstances beyond the entity's reasonable control and ability to foresee, and despite due diligence of the entity; for purposes of this subparagraph, circumstances beyond the entity's reasonable control and ability to foresee
 - (i) include wars, riots, and acts of God; and
 - (ii) do not include increased costs of compliance with this chapter, or reasonably foreseeable seasonal fluctuations in the weather conditions of the region; and
 - (C) due to the timing of regular flights or other freight transportation into the community where the public water system is located;
- (8) whether the entity knowingly violated the regulations, order, permit, approval or certificate of the department.

The department finds the following with regard to the failure of the entity to collect the required Lead and Copper samples between the July – December 2004 compliance period:

- (1) the violation **did not** prevent the entity from supplying drinking water to the public;
- (2) without the required Lead and Copper data, **we are unable to determine** if the violation reduced the quality of the water being served to the public;
- (3) the violation **did not** negatively impact the integrity of the source;
- (4) the entity **did not** take steps to resolve the violation in the shortest feasible time;
- (5) delaying compliance **was** in control of entity, the system could have collected the required samples between December 9 and 31, 2005;
- (6) the entity **did** knowingly violate the Drinking Water Regulations, 18 AAC 80.

The Alaska State Statutes, Section 46.03.761 (h) lists the factors that may affect the determination of the final amount of a penalty assessed under this section. The department may have considered forgoing the penalty completely; however that will not be done in this case. A Notice of Violation was issued on March 24, 2004. The Notice of Violation set a deadline of December 31, 2004 for the entity to collect samples for Lead and Copper analysis. [] Water system staff were reminded by Drinking Water Program staff of the deadline for collecting Lead and Copper samples on December 9, 2004. This deadline was not met. **Based on these factors, and in order to deter future violations, the department will assess a penalty of \$2600.**

Any person who disagrees with this decision may request an adjudicatory hearing in accordance with 18 AAC 15.195- 18 AAC 15.340 or an informal review by the Division Director in accordance with 18 AAC 15.185. **Informal review requests** must be delivered to the Division Director, Alaska Department of Environmental Conservation, 555 Cordova Street, Anchorage, AK 99501 within 15

July 17, 2012

days of the permit decision. **Adjudicatory hearing requests** must be delivered to the Commissioner of the Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, Juneau, Alaska 99801, within 45 days of the permit decision. If a hearing is not requested within 45 days, the right to appeal is waived.

Sincerely,

Kristin Ryan
Director Division of Environmental Health