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|  | OFFICE OF DRINKING WATER AND MUNICIPAL ASSISTANCE POLICY AND PROCEDURE | | DEPARTMENT OF ENVIRONMENTAL QUALITY |
| Original Effective Date: June 19, 1997 Revised Date: August 25, 2014 Reformatted Date: | Subject: Administrative Fines for Monitoring and Reporting Violations in Community and Noncommunity Water Supplies Division/Office and Program Names: ODWMA-Public Water System Supervision Program Number: ODWMA-399-001 | | Category: <input type="checkbox"/> Internal/Administrative <input type="checkbox"/> External/Non-Interpretive <input checked="" type="checkbox"/> External/Interpretive Type: <input type="checkbox"/> Policy <input type="checkbox"/> Procedure <input checked="" type="checkbox"/> Policy and Procedure |
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A Department of Environmental Quality (DEQ) Policy and Procedure cannot establish regulatory requirements for parties outside of the DEQ. This document provides direction to DEQ staff regarding the implementation of rules and laws administered by the DEQ. It is merely explanatory; does not affect the rights of, or procedures and practices available to, the public; and does not have the force and effect of law.

PURPOSE:

Administrative fines are a tool for the Office of Drinking Water and Municipal Assistance (ODWMA) and its authorized agents to meet regulatory enforcement responsibilities of monitoring and reporting requirements and to promote community water supply (CWS) and noncommunity water supply (NCWS) compliance with statutes and rules. This policy provides guidance for staff to implement the administrative fines authority. This policy replaces Drinking Water and Radiological Protection Division policy DWRP-03-001, Administrative Fines – Monitoring and Reporting Violations, dated June 19, 1997, Revision #3 dated September 2001.

AUTHORITY:

Safe Drinking Water Act, 1976 PA 399, as amended (Act 399), Section 7 being MCL 325.1007.

STAKEHOLDER INVOLVEMENT:

Stakeholders were engaged during the 2014 revision. Stakeholders were those affected by administrative fines including local health departments that impose fines and water supplies that receive fines. Input was incorporated, as appropriate.

DEFINITIONS:

"Contaminant group" – One of five groups of contaminants for which monitoring is required to determine compliance; microbial in Rule 602; surface water treatment in Rules 611a, 611b, and 720; lead copper in Rule 604f and 710b; disinfection in Rule 610a and 719e; and chemical radionuclide in Rules 603, 604b, 604c, 604d, and 717b of the administrative rules promulgated under Act 399. The contaminant groups are listed in the table at the end of this policy.

"Monitoring period" - The time frame during which sampling must be performed in a given year. Examples include a month, a quarter, June through September of the year due, and January 1 through September 30 of the year due.

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"Reporting event" – Delivery of the required information to the public, the ODWMA, or the local health department (LHD), or to all three by the due date using the delivery methods and the span of distribution applicable to the information.

"Sampling event" – Monitoring for one or more contaminants within a single contaminant group, at one or more sample sites, during a specific monitoring period within a given year, and submission of the result to the ODWMA or the LHD by the reporting due date.

POLICY:

1. General

Notifying public water supplies of regulatory requirements is a core activity of the public water system supervision program. The long-standing technical assistance philosophy is to encourage compliance. Technical assistance tools to notify and remind supplies of monitoring and reporting (M/R) requirements include sanitary surveys, annual monitoring schedules, reminder letters, and others. However, when a supply misses a sampling or reporting event and incurs a violation:

- a. Direct the supply to return to compliance as soon as possible.
- b. Warn the supply that fines will result after either of the following:
 - i. Future violations of the same event.
 - ii. Failing to issue the Public Notice (PN) for the current missed event.
- c. Issue an administrative fine when a water supply misses the same event a second time within the 12-month period following the failure.
- d. Issue an administrative fine when a water supply fails to issue PN.
- e. Give the water supply an opportunity to resolve a disputed fine.
- f. Void an administrative fine when circumstances warrant.

2. Violations applicable to this policy include:

- a. Failing to meet the requirements of a reporting event. Reporting events applicable to this policy include submitting monthly operation reports (MOR), issuing Consumer Confidence Reports (CCR) for CWS, issuing Annual Water Quality Reports for nontransient NCWS that are K12 schools or daycare centers, distributing Consumer Notices of Lead Results, or issuing public notice (PN) following monitoring violations (Note: failure to issue a PN following a maximum contaminant level [MCL] violation is addressed in Policy and Procedure number ODWMA-399-012 titled Administrative Fines – Violation of State Drinking Water Standards).

Reporting requirements not applicable to this policy include Annual Pumpage Report, Cross Connection Report, Lead and Copper Report Form, CCR Certificate of Distribution, or other reporting requirements. Those violations may be included in enforcement actions for other violations. Note that Public Education (PE) following an

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exceedence of the lead action level at the 90th percentile is not a reporting requirement, but a treatment technique violation. Fines for treatment technique violations are covered in Policy and Procedure number ODWMA-399-012.

- b. Failing to meet the requirements of a sampling event. Only a single fine applies for a single sampling event whether the supply failed to monitor, failed to submit the results of monitoring, or failed to do both. Examples of single sampling events include, but are not limited to, the following:

| Contaminant Group | Sample Sites | Monitoring Period |
|-------------------------|--|---|
| Total Coliform (TC) | Distribution locations | 1 st through last day of a month |
| TC | Distribution repeat locations and triggered source locations following a distribution TC positive result (TC+) | Within 24 hours of notification of TC+ |
| TC | 5 temporary routine distribution sites for supplies that routinely sample fewer than 5 sites | 1 st through last day of the month following TC+ |
| Chemical/Radionuclides | Entry points to the distribution system | January 1 through September 30 |
| Lead/Copper | Distribution taps for lead and copper | June 1 through September 30 |
| Lead/Copper | Distribution taps water quality parameters | A two-week period |
| Surface Water Treatment | Combined filter confluence point (turbidity) | Daily/continuous for a month |
| Surface Water Treatment | Entry points (chlorine residual) | Daily/continuous for a month |
| Disinfection | Distribution sites for disinfection byproducts | 1 st through last day of month due |
| Disinfection | Total organic carbon at source and combined filter effluent point and alkalinity at source (by-product precursors) | 1 st through last day of a month |

- c. Return to Compliance. Use the violation notice to direct the supply to return to compliance as soon as possible. For most entry point monitoring due September 30, set a new due date of December 31 to avoid a federal violation. For monitoring events that must happen during a particular time of the year, this means the next available monitoring period. For example, for disinfection byproducts annual or triennial monitoring assign a new due date of next year during the peak month; for lead and copper reduced monitoring, assign a new due date of next year between June 1 and September 30. For other requirements, assign a new due date that is timely, but gives the supply sufficient time to complete the task.

3. Notifications and Reminders of Requirements

- a. Notify water supplies of M/R requirements in writing, such as in a monitoring schedule, an annual Monitoring Reminder Letter, or in sanitary survey.
- i. For monitoring requirements, include location(s) to sample, specific parameters or groups of contaminants to analyze, and time frame or due date to complete monitoring and submit results. The notification should, but is not required to, encourage water supplies to complete required monitoring early in the monitoring period to avoid complications that could result in a violation.

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- ii. For reporting requirements, include the report type (e.g., MOR, PN), the party that must receive the information (e.g., the DEQ, customers), the delivery methods and span of distribution (e.g., mail or directly deliver to customers), and the time frame or due date to complete the reporting requirement (e.g., by July 1).
- b. Do not issue a fine for the first missed event. Include a warning in the violation letter that a second missed event in 12 months will result in a fine. Issue a fine for the a missed event that occurs within the 12-month period following the previous missed event. For missed sampling events, include a warning in the violation letter that failing to issue the PN will result in a fine.
- c. Issue a fine for failure to distribute a PN. Even though this may not be the second missed PN event in 12-months, the violation letter of the missed event outlines the PN requirements and warns the supply of a fine.

4. Administrative Fine Determinations

A table of fine amounts is on the following page. Fine amounts are based on the following:

- a. Type of missed sampling or reporting event. Violations of different sampling events result in separate fines. For example, failure to sample the distribution system for lead and copper and failure to sample the entry point for arsenic are separate sampling events and result in separate fines. Similarly, violations of different reporting events result in separate fines. Conversely, only a single fine applies whether the supply failed to meet some or all of the requirements of a single event. For example, only one fine applies if a supply collected only two of the three repeat distribution samples and none of the triggered source water samples following a distribution system TC+.
- b. Supply size. Fine amounts are greater for supplies serving more people.
- c. Missed due date. Fine amounts increase when an event is missed again or when new due dates are not met.

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| Table of Fines for Monitoring And Reporting Violations for Public Water Supplies | | |
|---|-------------------|------------------------------|
| Sampling Events (collect samples and report results to the ODWMA or LHD) | Serves ≤10,000 | Serves >10,000 |
| 1. A violation of a sampling event results in a written warning (for example a violation letter) but no fine. | \$0 | \$0 |
| 2. The second violation of a sampling event from the same contaminant group within 12 months of the previous violation results in a fine. | \$200 | \$1,000 per day ² |
| 3. Each additional violation of the sampling event from the same contaminant group within 12 months of the previous violation results in a fine. The total amount of the fines for consecutive violations of a sampling event from the same contaminant group shall not exceed the maximum fine. ¹ | \$400 | \$1,000 per day ² |
| Reporting Events, except Public Notification (includes MOR, CCR, Annual Water Quality Reports for K-12 and daycare centers, and Consumer Notices of Lead Results): | | |
| 1. A violation of a reporting event results in a written warning (for example a violation letter) but no fine. | \$0 | \$0 |
| 2. The second violation of a reporting event of the same report within 12 months of the previous violation results in a fine. | \$200 | \$1,000 per day ² |
| 3. Each additional violation of the reporting event of the same report within 12 months of the previous violation results in a fine. The total amount of the fines for consecutive violations of a reporting event of the same report shall not exceed the maximum fine. ¹ | \$400 | \$1,000 per day ² |
| Public Notification Reporting Events: The monitoring violation letter directs the supply to issue a PN. | | |
| 1. A violation of a PN reporting event results in a fine. | \$200 | \$1,000 |
| 2. A violation of a PN reporting event by the new due date, and each subsequent due date until the PN is completed, results in a fine. The total amount of the fines for the missed PN and all subsequent missed new due dates shall not exceed the maximum fine. ¹ | \$400 | \$1,000 per day ² |
| | | |
| ¹ Maximum fine | \$2,000 | \$10,000 |
| ² From most recent due date | | |

5. Dispute Administrative Fines

When administrative fines are assessed but disputed by the water supply, give the water supply an opportunity to resolve the dispute. If the case is not resolved through informal means, the ODWMA or LHD or its authorized agent will schedule a hearing to resolve the case as outlined in the Administrative Procedures Act, 1969 PA 306, as amended.

6. Ongoing Monitoring or Reporting Violations

The desired outcome of this policy is to achieve and maintain compliance. When a supply does not maintain compliance, but repeatedly violates monitoring and reporting requirements, pursue escalated enforcement actions while continuing to levy administrative fines under this policy.

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7. Voiding a Fine

A fine may be voided before or after a requested hearing, with supporting documentation, under one or more of the following circumstances:

- a. The water supply provides supporting documentation that the report was submitted when required, such as providing a certified mail receipt.
- b. The sample was collected but could not be accurately analyzed due to either a sample transit problem or laboratory error.
- c. Due to a change in ownership, the new owner was not notified of the requirements.
- d. The water supply was unable to meet the monitoring or reporting requirements due to compelling reasons or extenuating circumstances beyond the reasonable control of the water supply, for which documentation is provided to the ODWMA or LHD and found to be satisfactory to the Field Operations Section Chief for CWS or the Environmental Health Section Chief in consultation with the appropriate LHD Environmental Health Director for NCWS.

PROCEDURES:

| Who | Does What |
|--|--|
| ODWMA staff for CWS, or the LHD staff for the NCWS | <p>Notifies the supply, in writing, of the M/R requirements.</p> <p>Issues violations and directs public notification, if notification is required. Warns supplies that future missed events will result in administrative fines. Assigns new due date to complete the requirement, if appropriate.</p> <p>Issues fine. For CWS violations, ODWMA staff forwards the request for fine to the Lansing Central Office CWS program staff for approval. Lansing Central Office CWS program staff approves and sends to Administration Section for invoice. For NCWS LHD forwards citation including fine to supply. Forwards copy to Administration Section.</p> <p>Recommends voiding a fine requiring supervisor approval.</p> |
| Administration Section | <p>For CWS, creates the invoice for the administrative fine and mails it to the water supply. For NCWS, creates file in anticipation of payment of fine.</p> |

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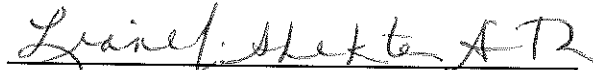
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| Who | Does What |
|---|---|
| Field Operations Section Chief for CWS or Environmental Health Section Chief in consultation with the LHD Environmental Health Director for NCWS | Reviews and approves voiding a fine. |
| ODWMA staff for CWS program, or the LHD staff for the NCWS Program | Resolves issue if supply believes the fine is in error or should not be issued. Holds an informal meeting among affected staff; the supply and a reviewing officer to provide an opportunity for the supply to show compliance. |
| Reviewing Officer | Hears both positions presented at the informal meeting. Writes memo to ODWMA Chief with recommendations. Drafts letter for ODWMA Chief's signature to the supply with findings. |

ATTACHMENT:

Contaminant Groups

OFFICE CHIEF APPROVAL:



Liane J. Shekter Smith, P.E., Chief
Office of Drinking Water and Municipal Assistance

DEPUTY DIRECTOR APPROVAL:



Jim Sygo, Deputy Director

**Policy and Procedure ODWMA-399-001
Attachment**

Five Contaminant Groups for Public Water Supply Compliance with R 325.10101 (Rule 101) et al.

1. Microbial Group in Rule 602

Total coliform
Fecal coliform
E. Coli

2. Surface Water Treatment Group in Rules 611a, 611b and 720

Turbidity at individual filters
Turbidity at filter confluence
Chlorine residual at entry point
"C*T" Calculation

3. Lead/Copper Group in Rules 604f and 710b

Lead
Copper
pH
Alkalinity
Calcium
Conductivity
Temperature
Orthophosphate
Silica

4. Disinfection Group in Rules 610, 610a, and 719e

Chlorine
Chloramines
Chlorine Dioxide
Total Trihalomethanes (TTHM)
Haloacetic Acids (HAA5)
Bromate
Chlorite
Total Organic Carbons (TOC)
Alkalinity

5. Chemical / Radionuclide Group

Radionuclides in Rule 603

Gross alpha
Radium-226
Radium-228
Gross beta
Tritium
Strontium-90
Uranium

Inorganics in Rule 604c

Partial Chemistry

Fluoride
Nitrate
Nitrite
Total nitrate & nitrite
Sodium in Rule 717b

Metals

Antimony
Arsenic
Asbestos
Barium
Beryllium
Cadmium
Chromium
Cyanide
Mercury
Nickel
Selenium
Thallium

Synthetic Organic Chemicals (SOC) in Rule 604d

Carbamates
Aldicarb
Aldicarb sulfoxide
Aldicarb sulfone
Carbofuran
Oxamyl (vydate)

Pesticides
Alachlor
Atrazine
Chlordane
Endrin
Heptachlor
Heptachlor epoxide
Hexachlorobenzene
Hexachlorocyclopentadiene
Lindane
Methoxychlor
Polychlorinated biphenols
Simazine
Toxaphene

Herbicides

Dinoseb
Pentachlorophenol
Picloram
2,4-D
2,4,5-TP silvex

Polynuclear Aromatics

Benzo(a)pyrene
Di(2-ethylhexyl)adipate
Di(2-ethylhexyl)phthalate

(SOCs continued)

Dioxin
2,3,7,8-TCDD

Expanded SOC
Dalapon
Dibromochloropropane (DBCP)
Diquat
Endothall
Ethylene dibromide (EDB)
Glyphosate

Volatile Organic Chemicals (VOC) in Rule 604b

Benzene
Carbon tetrachloride
o-dichlorobenzene
Para-dichlorobenzene
1,2-dichloroethane
1,1-dichloroethylene
Cis-1,2-dichloroethylene
Trans-1,2-dichloroethylene
Dichloromethane
1,2-dichloropropane
Ethylbenzene
Monochlorobenzene
Styrene
Tetrachloroethylene
Toluene
1,2,4-trichlorobenzene
1,1,1-trichloroethane
1,1,2-trichloroethane
Trichloroethylene
Xylenes (total)
Vinyl chloride