



# Drinking Water Enforcement Process

331-639 • 12/10/2019

**We updated our enforcement process, so water systems will more quickly resolve violations of drinking water laws.**

## Why this change?

The Office of Drinking Water (ODW) reviewed its enforcement activities and found it was not meeting timelines driven by the United States Environmental Protection Agency (EPA). ODW updated its process to meet these deadlines, and remain in good standing with EPA. ODW began implementing the new process in November 2019.

## Background

### You may know:

- ◆ ODW implements and enforces the federal Safe Drinking Water Act on behalf of EPA.
- ◆ EPA oversees ODW's work.
- ◆ ODW reports to EPA Group A drinking water violations in Washington.
- ◆ ODW assures water systems know the drinking water laws and helps them return-to-compliance when their water quality or operations violate these laws.
- ◆ If EPA is unsatisfied with ODW's progress in returning any one system to compliance, EPA can "over file" and conduct direct federal enforcement. ODW may also request that EPA over file.

### You may also know:

- ◆ EPA regularly tracks ODW's efforts to return systems to compliance and has a point system to prioritize water systems for enforcement.
- ◆ EPA designates systems with a certain number of points as "priority systems" for enforcement.
- ◆ EPA gives ODW 6 months to ensure "priority systems" return-to-compliance.
- ◆ Alternatively, EPA allows ODW, within 6 months of a system reaching priority status, to issue a "formal enforcement document" from which ODW can issue civil penalties without having to *prove the underlying violations*.
- ◆ Under the Washington Administrative Procedure Act (the law that governs state enforcement activities, in part), only a "final agency order" can serve as a "formal enforcement document." ODW creates a "final agency order" by ensuring a water system receives an enforcement document and has an opportunity to appeal the document. Once an appeal deadline passes or any appeal concludes, the enforcement document becomes a "final agency order" and an EPA "formal enforcement document."

## What has changed?

**ODW will send enforcement documents to more people affiliated with water systems.**

- ◆ Water systems will return-to-compliance sooner if more people know there is a problem sooner.

- ◆ Therefore, ODW will send all enforcement documents, including violation letters, to the owner (this could include all members of an association, such as a homeowner's association), operator, primary contact, and certified operator (the operator might simply receive a copy, depending on whether the operator has culpability for the violations).

### **Violation Letters are largely the same as before.**

- ◆ The letters now state that they satisfy Washington's Technical Assistance Programs statute, RCW 43.05.030 and RCW 43.05.100, so that formal enforcement can begin if a system does not follow the letter's directives and deadlines.

### **Key documents are renamed and revamped.**

- ◆ ODW now issues Notices to Correct Violation (NCV), in place of Notices of Violation.
- ◆ ODW now issues Orders to Correct Violation (OCV), in place of Notices of Correction.

### **NCV and OCV compare and contrast:**

- ◆ Both are EPA formal enforcement documents, and initial agency "orders" that convert to final orders when the appeal opportunity ends.
- ◆ ODW sends both in a manner to ensure delivery and allow for an appeal.
- ◆ NCV warns that ODW will categorize the system's operating permit as "red" for failure to return-to-compliance and warns that ODW could issue a civil penalty for continued non-compliance, depending on the situation.
- ◆ OCV notifies system that ODW turned its operating permit "red." There may be times this notification comes as a Red Operating Permit Order (ROPO), which ODW issues just before or just after issuing an OCV.
- ◆ OCV also warns that ODW will issue a civil penalty for continued non-compliance.

### **A Formal Compliance Agreement (FCA) replaces the Bilateral Compliance Agreement.**

- ◆ An FCA is an EPA formal enforcement document.
- ◆ It is not appealable; the system waives its right to appeal, and is a final agency order.
- ◆ It is a contract that specifies the consequences of breach, including civil penalties.
- ◆ It can substitute for an NCV, but not an OCV, providing an incentive for early cooperation.

Civil Penalty Orders are largely the same as before.

### **For more information**

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