

October 1, 2009 – September 30, 2011

**State/EPA Agreement
State of Washington
Department Of Health, Office of Drinking Water
and
U.S. Environmental Protection Agency**

The undersigned, for the Washington Department of Health, Office of Drinking Water (DOH), and the U.S. Environmental Protection Agency, Region 10 (EPA), enter into this Agreement to assure safe and reliable drinking water to residents and visitors in the state.

The Agreement, known as the Washington State/EPA Agreement (SEA), describes priorities, tasks, and resources of the cooperative federal and state management of the drinking water program in Washington State. This Agreement includes required work plans for the EPA program grant to Washington under provisions of the federal Safe Drinking Water Act. Attached to this State/EPA Agreement is a Compliance Assurance Agreement that lays out compliance and enforcement responsibilities of each agency.

This agreement covers the period between October 1, 2009 and September 30, 2011. The two agencies agree to cooperatively work towards achieving drinking water goals and to comply with the provisions in this agreement.

FOR THE STATE OF WASHINGTON:

Gregg Grunenfelder, Assistant Secretary
Division of Environmental Health
Washington State Department of Health

Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Michelle Pirzadeh, Acting Regional Administrator
Region 10
U.S. Environmental Protection Agency

Date

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PREFACE

This Agreement is developed every two years between the U.S. Environmental Protection Agency Region 10 (EPA) and the State of Washington Departments of Health, Office of Drinking Water (DOH) to cooperatively deliver environmental services in Washington. If you are interested in information about the drinking water program, an excellent reference would be the appropriate agreement and work plan. Further information can be obtained by contacting either the EPA - Washington Operations Office, 300 Desmond Drive SE, Lacey, Washington, 98503 or the Department of Health, Office of Drinking Water, P.O. Box 47822, Olympia, Washington, 98504-7822.

GENERAL PROVISIONS

The DOH is authorized to enter into an agreement with EPA to administer the Federal Safe Drinking Water Act. This agreement is subject to chapters 43.70 and 70.119A RCW. This Agreement covers the period between October 1, 2009 and September 30, 2011. DOH will make application for a drinking water grant from EPA annually, and develop SEA and work plans every two years.

I. Contact Persons

The EPA Regional Office Drinking Water Unit Manager and the Drinking Water Program Coordinator in the Washington Operations Office are the primary EPA officials in Washington with the authority to issue, interpret, and coordinate EPA program directives to the DOH. The Director of Washington's Office of Drinking Water is the official contact person for the DOH for purposes of this agreement.

II. Performance

Both EPA and DOH commit their best efforts to fully comply with the provisions of this Agreement. Both EPA and DOH will be held to the requirements of 40 CFR Part 30. EPA can impose appropriate sanctions under 40 CFR Part 30, including withholding of funds, and termination or annulment of grants if DOH does not fulfill provisions of this Agreement.

The tasks and expected results contained in this Agreement reflect information known at the time of its signing. Both agencies recognize that events outside their control (e.g., changes in authorizing legislation or levels of resources) may affect the ability to fulfill the Agreement. Therefore, both parties agree to review and negotiate changes as necessary. Both parties are committed to frequent communication about this Agreement.

III. Reporting

DOH agrees to satisfy the reporting requirements of the Safe Drinking Water Act and its implementing regulations.

IV. Evaluation

EPA will conduct a mid-year and annual program review in FY10 and FY11. EPA will evaluate all aspects of the SEA and work plan and provide DOH with a written report. In addition, DOH and EPA meet quarterly to discuss priorities, issues, accomplishments, and compliance and enforcement.

PROGRAM DESCRIPTION, WORK PLAN and PERFORMANCE MEASURES

Washington Drinking Water Program
October 1, 2009 – September 30, 2011

Program Description

The mission of the Washington State Department of Health (DOH) Office of Drinking Water is to protect the health of the people of Washington State by assuring safe and reliable drinking water. Drinking water protection is an essential public health program. Meeting the goal of safe and reliable water involves a cooperative effort between the Office and local health jurisdictions, as well as consumers, water utilities, local governments and other state and federal agencies.

Washington regulates public water systems under both state law and a formal agreement with the U.S. Environmental Protection Agency (EPA) for implementing and enforcing the federal Safe Drinking Water Act (SDWA) and EPA's rules under the SDWA. Over 17,100 water systems serve two or more connections in Washington State. These water systems serve more than 5.6 million of Washington's 6.4 million people. Approximately 4,200 systems are Group A systems (under the jurisdiction of the SDWA). The Office has agreements with 35 local health jurisdictions to carry out state laws for the smaller system not subject to the SDWA.

The State sets minimum standards for drinking water quality based on health effects data, experience, research and application of appropriate factors of safety. Standards are also established for water system facilities and operation. The State Board of Health and DOH adopt regulations incorporating standards, which are administered by DOH and local health jurisdictions.

Funding for the Office's program is a mix of federal and state money. The 1996 Safe Drinking Water Act Amendments authorized use of the federal Drinking Water State Revolving Fund (DWSRF) monies for state drinking water program activities. Federal funds also include an annual Public Water Supply Supervision (PWSS) grant from EPA for implementing the SDWA, an annual Wellhead Protection Program grant, Counter-Terrorism funds and a one-time grant for the American Recovery and Reinvestment Act. State monies come from the state General Fund as well as fees paid by public water systems for permits, plan reviews and operator certification. The work plan incorporated into this Agreement reflects activities for the PWSS grant funding exclusively, while recognizing that activities from the PWSS grant and the various sources listed above are interdependent

Reviews of the program have identified major gaps in the program that have at least some origins in the current level and mix of funding for the program. Because of inadequate funding, the program is currently relying on SRF set-aside funding for 43% of program activities. In the absence of adequate funding, the program has been forced to prioritize its activities and direct them toward the highest public health needs. This Work Plan reflects these prioritized activities.

DOH encourages public participation through the Water Supply Advisory Committee (WSAC), publications, media contacts, and regular meetings with water industry and interest groups. The WSAC was appointed by the Governor in 1996 to provide guidance and input on policy issues from a variety of organizations having an interest in Washington's drinking water. Public information activities center on media contacts, pamphlets, fact sheets, and a quarterly newsletter. The Office also maintains a web site for drinking water information (the web address is <http://www.doh.wa.gov/ehp/dw/>).

In Washington, water suppliers contract with public and private laboratories for analytical work to satisfy monitoring requirements. State laboratory facilities support the Department's investigations into disease outbreaks, water quality concerns, and various special studies. The Washington State Department of Ecology certifies laboratories for all regulatory drinking water analyses under a Memorandum of Understanding between Ecology and DOH.

Work Plan

Office management has established eight "Critical Functions" which represent the most critical aspects of the Office's business. Ranked in order of priority, these functions guide program priority setting and resource allocation decisions. The Critical Functions are listed in the Performance Measures Table on page 5 of this Agreement.

During the period covered by this agreement, the state program will conduct the following regulatory program work as available resources allow:

- ◆ Respond to drinking water emergencies and reports of waterborne disease
- ◆ Respond to acute coliform MCL violations
- ◆ Work with Department of Ecology to certify laboratories to perform water quality tests on public water systems
- ◆ Communicate safe drinking water requirements and information to public water suppliers
- ◆ Conduct surveillance of public drinking water quality through receiving, processing, and evaluating laboratory test results and public water system operation reports
- ◆ Investigate water systems whose lab results and/or water system operation reports indicate a potential risk to health
- ◆ Conduct surveillance of public water systems through routine sanitary surveys
- ◆ Assure complete and accurate identification and reporting of public water system compliance status
- ◆ Take appropriate enforcement action against systems that violate regulatory requirements
- ◆ Administer operating permits and billing systems
- ◆ Certify public water system operators
- ◆ Ensure public water system operators have adequate and appropriate training opportunities
- ◆ Provide technical assistance to small public water systems through third-party contracts
- ◆ Adopt new regulations required under the Safe Drinking Water Act
- ◆ Review Construction Documents, Project Reports and other reports/plans for public water system modifications and ensure compliance with construction standards
- ◆ Review and approve Water System Plans and Small Water System Management Plans
- ◆ Participate in development of national drinking water regulations, guidelines, and policies
- ◆ Provide opportunities for constituent participation in state program design and regulation adoption
- ◆ Complete Primacy Program Revision processes to maintain Primacy
- ◆ Increase public awareness of safe drinking water issues
- ◆ Maintain and improve the knowledge, skills, and abilities of drinking water program staff

Performance Measures

DOH will work with EPA to achieve the goal developed as part of the National Water Program Guidance relating to drinking water:

FY 2010 National Water Program Guidance Measures Summary

U.S. Environmental Protection Agency
Office of Water: National Water Program
Appendix A: FY 2010 NPM Guidance Measures

G/O/S	ACS Code	FY 2010 National Water Program Guidance Measure Text	Non-Commitment Indicator (Y/N)	State Grant Measure (Y/N)	FY 2010 Planning Target	National Target (FY 2010 CJ)
Goal 2: Clean and Safe Water						
Sub-objective 2.1.1: Water Safe to Drink						
2.1.1.1	2.1.1.1	Percent of the population served by community water systems that receive drinking water that meets all applicable health-based drinking water standards through approaches including effective treatment and source water protection.		Y	90%	90%
2.1.1.1	SP-1	Percent of community water systems that meet all applicable health-based standards through approaches that include effective treatment and source water protection.		Y	90%	90%
2.1.1.1	SP-4b	Percent of population served by community water systems where risk to public health is minimized through source water protection.		Y	55%	
2.1.1.1	SDW-1a	Percent of community water systems (CWSs) that have undergone a sanitary survey within the past three years (five years for outstanding performers) as required under the Interim Enhanced and Long Term I Surface Water Treatment Rules.		Y	95%	95%

The Office will work to achieve the following performance measurement goals during the two-year period of this State/EPA Agreement. Though some of the commitments reflect interdependence between sources of funding, the FTE commitments listed in this agreement are limited to those funded by the PWSS grant and required state match. The dollar figures in the "Cost" column are estimates based upon the current grant. As more specific PWSS grant financial information for the agreement period becomes available, DOH will update the figures. DOH provides a breakdown of that staffing as part of the grant application to EPA.

Performance Measures Table

Outputs/Outcomes	Commitments		FTE	Cost
	FY10	FY11		
<p>1. Respond to and handle public health “emergencies”/threats, relative to unsafe drinking water</p> <p>Outputs:</p> <ul style="list-style-type: none"> • Ensure customers of systems with confirmed Tier 1 violations receive public notification (PN) within 24 hours <p>Outcomes:</p> <ul style="list-style-type: none"> • Public health is protected as fewer consumers drink unsafe water. 	100%	100%	3.0	\$350,267
<p>2. Make important information accurate and easily accessible about drinking water topics, data, and the DW-related work DOH conducts</p> <p>Outputs:</p> <ul style="list-style-type: none"> • Enter data and submit reports to SDWIS in the appropriate format in a timely manner <p>Outcomes:</p> <ul style="list-style-type: none"> • The public knows the quality of their water and makes informed decisions. 	100%	100%	3.0	\$350,267
<p>3. Have a basic understanding of how water is being provided by all Group A public water systems in the state</p> <p>Outputs:</p> <ul style="list-style-type: none"> • Percent of Subpart H community water systems that have undergone a sanitary survey within the past three years (five years for outstanding performers) as required under the Interim Enhanced and Long-Term 1 Surface Water Treatment Rules <ul style="list-style-type: none"> ○ surface water and GWI source treatment plants ○ consecutive community systems that purchase surface or GWI water • Report to EPA a list of the Subpart H systems that have received a sanitary survey during the year (each 12 month 	95%	95%	4.0	\$467,022

Outputs/Outcomes	Commitments		FTE	Cost
	FY10	FY11		
<p>period of the grant project period)</p> <ul style="list-style-type: none"> Send Water Facilities Inventory (WFI) to Group A systems to collect accurate inventory information Achieve percent of systems with no significant deficiencies identified during field inspections. Ensure significant deficiencies addressed within 90 days (problem fixed or under a DOH-approved schedule to be fixed). <p>Outcomes:</p> <ul style="list-style-type: none"> Public health is protected as deficiencies identified during sanitary surveys are corrected. 	4,200	4,200		
<p>4. Know the basic quality of water being delivered by systems, particularly in regards to microbial and acute chemical parameters</p> <p>Outputs:</p> <ul style="list-style-type: none"> Enter water quality analytical data and make available to staff and the public within Office established deadlines Review analytical results for all samples collected to comply with the Total Coliform Rule Review analytical results for all samples collected to comply with the Nitrate monitoring requirement <p>Outcomes:</p> <ul style="list-style-type: none"> Public health is protected as fewer consumers drink unsafe water. 	100%	100%	9.0	\$1,050,800
<p>5. Make it clear to purveyors what their responsibilities are and what deficiencies they need to address</p> <p>Outputs:</p> <ul style="list-style-type: none"> Send water quality monitoring requirement report (WQMR) to all Community water systems annually Adopt Stage 2 Disinfectants and Disinfection Byproducts Rule 	2,400	2,400	6.0	\$700,533

Outputs/Outcomes	Commitments		FTE	Cost
	FY10	FY11		
<ul style="list-style-type: none"> Report to EPA data required in LT2 rule Section 142.15 (c) (6) Carry out activities of Groundwater Rule extension agreement as negotiated with EPA Region 10 Drinking Water Program Adopt Groundwater Rule Carry out activities of Lead and Copper Rule Short-Term Revisions extension agreement as negotiated with EPA Region 10 Drinking Water Program Adopt Lead and Copper Rule Short-Term Revisions <p>Outcomes:</p> <ul style="list-style-type: none"> Public health is protected as more water systems provide safe and reliable drinking water. 	<p>By 1/31/10</p> <p>100%</p> <p>100%</p>	<p>By 1/31/11</p> <p>100%</p> <p>By 10/31/10</p> <p>100%</p> <p>By 9/30/11</p>		
<p>6. Take active enforcement actions against the highest priority violations (microbial risks and acute chemical risks) and clear cases of fraudulent operation/reporting</p> <p>Outputs:</p> <ul style="list-style-type: none"> Address or resolve Public Water Systems listed on a “Fixed Base” SNC/Exceptions list or EPA’s new Enforcement Response Policy list of significant violators.. <p><i>Higher priority systems may be substituted for lower priority systems on the fixed base list.</i></p> <p>Outcomes:</p> <ul style="list-style-type: none"> Public health is protected as more water systems provide safe and reliable drinking water. 	220	*	4.0	\$467,022
<p>7. Assist water systems in future system planning and development</p> <p>Outcomes:</p> <ul style="list-style-type: none"> Public health is protected as more water systems provide safe and reliable drinking water. 			0.5	\$58,378
<p>8. Participate in long-range strategies relative to future delivery of water in the state</p> <p>Outcomes:</p> <ul style="list-style-type: none"> Public health is protected as more water 			0.5	\$58,378

Outputs/Outcomes	Commitments		FTE	Cost
	FY10	FY11		
systems provide safe and reliable drinking water.				

Notes:

* EPA Region 10 and DOH will negotiate '11 commitments once EPA HQ has established goals.

Compliance Assurance Agreement
State of Washington
Department of Health, Division of Environmental Health
Office of Drinking Water
and
U.S. Environmental Protection Agency

I. Purpose of Agreement

Achieving and maintaining a high level of compliance with environmental laws and regulations is one of the most important goals of federal and state environmental agencies, and is an essential prerequisite to realizing the benefits of our regulatory programs. While the Department of Health (DOH) has primary responsibility for assuring water system compliance and initiating enforcement actions in the State of Washington, as authorized by chapters 43.70 and 70.119A RCW and by the Environmental Protection Agency (EPA) under the provisions of Section 1413 of the Safe Drinking Water Act (SDWA) (42 USC 300f, et seq.), EPA retains responsibility for ensuring fair and effective enforcement of federal requirements.

The purpose of this Compliance Assurance Agreement (CAA) between EPA and DOH is to clearly establish roles in maintaining an effective compliance and enforcement program. This document includes a summary description of the way the state conducts its compliance/enforcement efforts, state reporting requirements, and criteria for EPA to assess the state's compliance/enforcement program and take direct enforcement.

II. State Compliance/Enforcement Strategy

The State of Washington assumed primacy from EPA for the Drinking Water Program in 1978. Since that time, DOH has been working with the public water systems to ensure compliance with state and federal rules and regulations. The state compliance strategy (Appendix A) generally describes the philosophy and process DOH follows to bring water systems with violations into compliance. DOH addresses non-compliance based on types of violations and degree of public health risk. In addition each major program will have a comprehensive implementation plan that describes in greater detail the specific compliance/enforcement process DOH will follow for that particular program.

III. Parameters of Agreement/Oversight

1. This agreement, as part of the State/EPA Agreement, is entered into by the Assistant Secretary of the Department of Health which is the lead agency for the state program and the Regional Administrator, EPA, Region 10.
2. Each of the parties to this agreement is responsible for ensuring that its obligations under the SDWA are met. DOH and EPA agree to maintain a high level of cooperation and

coordination to assure successful and effective administration of the state authorized program.

3. EPA will periodically assess the status of the DOH compliance and enforcement program for consistency with the SDWA, with this agreement, and with all applicable federal requirements and policies. .
4. EPA and DOH will periodically meet as necessary to coordinate on compliance activities. Prior to these meetings, EPA will forward to DOH the most recent SNC list generated from SDWIS data and a list of those specific instances of noncompliance, which EPA staff considers most significant and wishes to explore at the meeting.
5. DOH will advise EPA of all SNC follow-up enforcement actions by sending copies of these actions to EPA when issued.
6. EPA's primary role in enforcement and compliance monitoring is oversight. However, this document does not affect or inhibit EPA's independent authority to bring a civil action or issue an administrative order per Section 1414 of the SDWA.
7. To ensure the productive use of limited state and federal resources and an effective partnership in achieving compliance, DOH will act on all SNCs to the level as agreed in the State EPA Agreement (SEA). EPA shall take enforcement action within resource availability against violators upon DOH request and as necessary to meet EPA performance expectations which exceed DOH's level of commitment in the SEA. The process for referring non-compliant systems to EPA is Appendix B.
8. EPA and DOH will make files available to both parties for inspection and copying.

IV. DOH Reporting

A strong and well-managed compliance and enforcement program needs reliable performance information on which to judge success and identify water systems that require attention.

DOH shall report accurate PWS inventory, violation and enforcement data (via SDWIS-ODS) to EPA six weeks after the end of each quarter. DOH will report follow-up enforcement actions on a quarterly basis for water systems that are classified as federal SNCs and for water systems that have been identified by EPA and the state as requiring special attention.

V. Significant Non-compliers

DOH defines a significant non-complier (SNC) as a system that is violating or has violated department rules, and the violations may create, or have created an imminent or a significant risk to human health. Such violations include, but are not limited to, repeated violations of monitoring requirements, failure to address an exceedance of permissible levels of regulated contaminants, failure to comply with treatment technique standards or requirements, failure to comply with water works operator certification requirements, or failure to submit to a sanitary survey.

EPA defines SNCs in federal guidance and identifies a SNC definition for each program. As new rules are promulgated, new federal SNCs are defined. This federal process is currently under revision by EPA and will be an item of discussion and agreement in the future.

DOH also defines State Significant Non-compliers (SSNC). These definitions often replicate the federal SNC definition. DOH uses SSNC definitions as a prioritization tool for active compliance activity and potential change in Operating Permit color.

VI. Timely and Appropriate State Enforcement Actions

The DOH compliance strategy generally outlines actions that are pursued in response to MCL and monitoring or reporting violations. Specific follow-up activities are included in individual implementation plans developed for each of the programs. Generally, the actions include a timely notification to the water system of the violation, the need to notify the users of the water system of the violation, and the need for follow-up action. If the violation persists, additional informal and formal enforcement actions are taken.

The following enforcement responses are considered appropriate actions regardless of what type of violation caused the system to become a SNC:

- Issuance and receipt (certified mail return/receipt) of a Notice of Violation
- Finalization of a bilateral, compliance agreement (BCA) signed by both parties, which includes a compliance schedule.
- Issuance of a Departmental Order (i.e., a formal administrative/compliance order).
- Referral of a civil judicial case to the state Attorney General.
- Filing of a criminal case in an appropriate court.
- Imposition of penalties.

The Compliance Decision Matrix (see Appendix C), sets a notification process to formal compliance that is based on level of health risk. Except in the case of an acute health threat, before DOH issues any formal enforcement action beyond issuance of a Departmental Order, we will attempt to correct the violation using informal compliance efforts.

Timely and appropriate is a period defined through federal guidance as being eight months after the state becomes aware of a violation. Since it may be unreasonable to identify the actual date the state is aware of a particular violation, EPA guidance establishes the functional awareness date as the last day of the quarter in which the violation occurred.

VII. Civil Penalties

Civil penalties and other sanctions play an important role in an effective enforcement program. Civil penalties may be used, for example, when a system owner has repeated violations and refuses to make necessary water system improvements or when the violations pose a threat to public health. When calculating the amount of the penalty, the state considers the following factors:

- Public health risk.
- Water system's previous record of compliance.

- Population served by the system.

VIII. Criteria for Direct Federal Enforcement

Because DOH has primary enforcement responsibility, EPA will limit its enforcement action to the following cases:

1. DOH requests EPA action.
2. DOH enforcement is not initiated within 30 days following the issuance of an EPA Notice of Violation (NOV).
3. DOH enforcement response is not timely or appropriate.
4. Violation of EPA order or consent decree.
5. National precedents (legal or program).
6. In emergency situations, pursuant to section 1431 of the SDWA.
7. By prior agreement between DOH and EPA.

In deciding whether to take direct enforcement in the above types of cases, EPA shall consider the following factors:

1. Cases specifically designated as nationally significant.
2. Significant public health damage or risk involved.
3. Significant economic benefit gained by violator.
4. Repeat patterns of violations.
5. EPA resources available.

DOH may request EPA to take enforcement action, e.g., where DOH resources are inadequate to address the SNC in a timely and appropriate manner. EPA shall follow its priorities in meeting requests for assistance considering the criteria and factors identified above. DOH will use the processes outlined in Appendix B.

If DOH's enforcement response to a federal SNC or other water system requiring special attention is not timely or appropriate, EPA shall discuss with DOH the status of its actions. If DOH is close to resolving the violation or that further deferral is otherwise appropriate, EPA will continue to defer to enable DOH to complete its action. If EPA determines that further deferral is not justified, it will proceed with its own actions at this point. EPA will encourage continued DOH participation even where EPA takes the lead.

Unless officially referred by DOH (see Appendix B), EPA will take unilateral enforcement action against a water system only after first conferring with the director of the Office of Drinking Water and providing DOH with written (except in emergencies) notification. In the case of an emergency, EPA will give oral notice to the director and may take action pursuant to section 1431 of the SDWA.

IX. Federal Facilities

DOH has primary responsibility for ensuring federal facility compliance. However, EPA will separately review federal facility compliance data provided by the state. If problems are detected, a strategy for resolving these compliance problems will be jointly developed and made a part of the state compliance strategy and thus part of this CAA.

X. Disclaimer Statement

Nothing in this agreement shall limit or modify the authorities granted to either EPA or DOH by law, or shall constitute a valid defense by regulated parties in violation of any state or federal environmental statute, regulation, or permit.

XI. Dispute Resolution

Where any conflict or disagreement occurs, EPA and DOH staff will negotiate a resolution. If the issue cannot be resolved, the issue shall be raised to appropriate levels of DOH and EPA management.

XII. Public Information

Both EPA and DOH are committed to publicly account for their compliance and enforcement programs through a variety of methods. Public information releases are one of the basic methods of conveying reports concerning enforcement activity for all media, and may enhance the deterrent potential of enforcement actions.

EPA and DOH agree to review opportunities for joint releases on enforcement actions and public accounting of both state and federal accomplishments in compliance and enforcement. To the extent possible, public information reports generated by one agency will acknowledge and give appropriate credit to relevant actions and accomplishments in enforcement/compliance by the other agency.

APPENDIX A

Compliance Strategy

The Washington State Department of Health Drinking Water Program's compliance program principles are:

1. Focus on public health, the primary reason for the state's program.
2. Enforce requirements by making system owners accountable for compliance.
3. Provide education to consumers, and notification of requirements to system owners, including the consequences of not meeting the requirements.
4. Follow through in a consistent, fair and timely manner with compliance actions that are appropriate for the particular violation.

We base our compliance strategy on these principles. We developed a Compliance Strategy Decision Matrix (See Appendix C) that ranks violations according to potential health risk. The matrix prescribes a certain level of compliance for each health risk category (high, medium and low). We use this guide to better allocate available enforcement resources.

In general, we use informal tools early in the process to assure system owners understand requirements. In situations where non-compliance does not pose an immediate risk to public health, or if purveyors seek assistance, we use training and technical assistance to achieve compliance. We may also use informal enforcement tools such directives or violation letters. Often we enter into a bilateral compliance agreement with the purveyor that lays out the steps the purveyor agrees to take to achieve compliance. In addition, we may use the water system operating permit color and subsequent local government permitting decisions to get compliance.

If informal compliance/enforcement efforts do not result in compliance, we may take formal enforcement. Staff responds with formal compliance to violations that are in the potential high health risk category on our Compliance Strategy Decision Matrix. This generally starts with a notice of violation (NOV), followed by a departmental order that directs the purveyor to bring the water system into compliance within a specified time period. If an order does not result in return to compliance, we have authority to levy civil penalties of up to \$5,000 per day per violation. We can also take systems to court for court-mandated compliance actions. A key formal enforcement action of last resort is asking the court to appoint a qualified receiver to own and/or operate a problem system. We sparingly use this authority in worse case situations where purveyors do not respond to orders and penalties and where public health is at risk

Violations that are medium or low health risk on the Decision Matrix receive a notice to correct in the form of a violation letter, directive or NOV. We may issue a red operating permit for failure to respond to the notice of violation. We also put these systems on lists for consideration of future comprehensive formal compliance action. When we do take formal enforcement action on these systems, we strive to be comprehensive, identifying and including all violations.

Both Regional Office and Headquarters compliance staff are involved in identifying violators, providing notification to the water systems and when necessary conducting appropriate compliance activities, as prescribed in the compliance matrix. Headquarters compliance staff is primarily responsible for identifying water quality monitoring and reporting violations (excluding coliform) and Operator Certification compliance issues. Regional office compliance staff focuses their efforts on other areas including coliform, chemical water quality, SWTR treatment technique violations and other day-to-day operational compliance issues. These combined efforts require coordinated teamwork between headquarters and the regions to assure a successful compliance program.

APPENDIX B

Referrals to EPA

General Principles

1. There needs to be an interactive partnership between the two agencies.
2. It is important to establish a written agreement on the roles and responsibilities of both agencies in the referral process. The agreement should be included as part of the DOH/EPA Compliance Assurance Agreement (CAA).
3. Individual action plans should be developed jointly for each system referred to EPA. The action plan should lay out steps that each agency agrees/plans to take to attain compliance. The action plan should be dynamic and allow for periodic adjustment as circumstances warrant.
4. Reporting on case status and reevaluation of action plans should take place at the regularly scheduled State/EPA quarterly meetings.

DOH Referral Criteria

- Known water quality problem/exceedance;
- Not responsive to the Department, but might respond to federal pressure; and
- The Department has pursued compliance with the system up through the penalty process; the system is six months late for payment of fines and receivership is a possibility.
- All systems are eligible for referral regardless of size or ownership type. If a publicly owned system is a candidate, staff should get concurrence from the Office Director or designee before considering for referral.

Expectations of DOH Staff Regarding Referred Systems:

- Work with EPA to develop a mutually agreed upon action plan for each case referred.
- Understand, agree on and honor our role as partner in specific referrals as set out in our mutually agreed upon action plan.
- Meet obligations set out in mutually agreed action plan.
- Support EPA's lead role regarding referred systems.
- Maintain regular contact with EPA staff.
- Maintain complete files on referred systems
- Act as a witness as needed on cases going to trial.
- Supply technical assistance and training to EPA staff as needed so they can answer utility questions and requests.
- Provide EPA with information on system status.

Expectations of EPA Staff:

- Work with DOH to develop a mutually agreed upon action plan for each case referred.

- Understand, agree on and honor our role as partner in specific referrals as set out in our mutually agreed upon action plan.
- Take the lead and work in partnership with DOH on referrals. This includes monitoring action plans, calling progress meetings when appropriate, developing enforcement actions, and performing activities associated with litigation as needed for cases going to trial. In this context, lead is defined as taking responsibility for initiating activities and being the main point of contact for the system on issues dealing with the enforcement action.
- Consult with DOH throughout the process on the status of cases, press releases, written communications, etc.
- Consider meeting with owners and operators of systems if requested to discuss compliance actions, and offer DOH an opportunity to participate in meetings if they desire.
- Once a case is initiated, carry the action through to the resolution. The resolution of the case means through adjudication (decision by a judge), settlement (consent decree), or compliance, and may include any other issues related to continued compliance such as obtaining funding to complete improvements to bring the system into compliance.
- Provide copies to DOH of all written communication with systems.
- Report to DOH the status of each referred system at least quarterly.

Outline of Action Plan

The referral criteria DOH will use to refer a system for EPA action is outlined above. After a system has been referred to EPA the following steps need to be followed.

1. DOH will notify the water system that they are being referred to EPA for formal enforcement action. DOH will remind the system that they must still comply with local/state requirements.
2. DOH will provide EPA with all documents needed to initiate an enforcement action.
3. DOH will develop a draft action plan within two - four weeks of referral and provide EPA an opportunity to comment. The length of time will depend on the complexity of the case and other work commitments. A final action plan will be developed within one - two weeks of consultation between agencies.
4. DOH will take the lead in developing the action plan and will solicit comments from EPA. The action plan should contain the following information; much of the information is available in Sentry.
 - System name
 - PWS number
 - Number of connections
 - Number of people served
 - Type of system
 - System owner/operator of primacy contact
 - EPA contact
 - DOH contact
 - Summary of major violations that will be included in enforcement action broken down by Federal/State with citations

- DOH recommendation of type of action EPA should pursue
- Anticipated DOH assistance needed in case

5. EPA will provide a final Administrative Order (AO) to DOH prior to sending to the system and notify DOH in advance of any press release or other communication with the press.

Activities occurring after an EPA action is initiated and prior to compliance

1. DOH and EPA will keep the other agency aware of correspondence received and responses made. DOH will provide courtesy copies to EPA of all correspondence to the system. If the correspondence relates to the enforcement action, EPA will be given the opportunity for comment/coordination.
2. DOH will never speak for EPA concerning the requirements of the order
3. EPA and DOH will communicate at least quarterly at scheduled State/EPA meetings on the status of compliance, assure that correspondence have been shared as necessary, and that responses to major inquires are coordinated.
4. EPA will communicate regularly with the system point of contact to determine the status of compliance and answer any questions from the system,
5. In cases where EPA cannot answer the systems questions, EPA will inform DOH immediately if they have referred a question from the system to DOH.
6. EPA will consult with DOH prior to moving to a more severe action such as a penalty or referral to the Justice Department.
7. DOH will provide support in any court proceeding related to the enforcement action including making staff available to testify and providing any needed documentation.
8. DOH will attempt to provide staff to meet with the system if requested by EPA.
9. DOH will work to assist a system to obtain funding via the State Revolving Fund to upgrade the system.

Prescribed activities after systems comply with the EPA action.

1. EPA and DOH will agree that a system is in compliance or substantial compliance with the EPA action prior to notifying the system.
2. EPA will issue a letter to the system indicating they are in compliance with the order and they need to continue to comply with all State/Federal requirements or EPA may take further action.
3. Once a system is in compliance or substantial compliance, DOH will take the lead for the system.
4. DOH/EPA will discuss the status of the system at the quarterly meetings.

APPENDIX C
Compliance Strategy Decision Matrix based on PUBLIC HEALTH RISK

*Certain violations where high health risk is imminent may go directly to a state health order and bypass the NOV process

**These violations may lead to a yellow (conditional) operating permit if not resolved.

Low Health Risk Violation	Medium Health Risk Violation	High Health Risk Violation
<u>Prescribed Compliance Process</u> Notification – Violation letters ⇒ “Targeting” to Active Enforcement	<u>Prescribed Compliance Process</u> Notification, Violation letter ⇒ NOV; will offer “Bilateral Compliance Agreement”(BCA) ⇒ State Significant Non-complier (SSNC) ⇒ Red Operating Permit ⇒ Targeting to Active Enforcement	<u>Prescribed Compliance Process</u> Notification, Violation letter ⇒ *NOV, will offer BCA ⇒ SSNC ⇒ Red Operating Permit ⇒ Active Enforcement (Orders, Penalties and Receivership)
Examples: Lack of documents and other low health risk violations.	Examples: Chronic Contaminants and other problems affecting the safety and/or reliability of the system	Examples: Microbial risk Acute chemical risk Fraudulent operation and reporting Operator Certification Issues
<ul style="list-style-type: none"> • Secondary contaminant maximum contaminant level (MCL) violation • Failure to have a Wellhead Protection Plan • Lack of Consumer Confidence Report • Failure to Have a Cross-Connection Control (CCC) Plan • **Lack of Water System Plan –where appropriate • Lack of Small Water System Management Program – where appropriate • Failure to retain a Satellite Management Agency, when required • **Failure to have approved engineering documents, where applicable 	<ul style="list-style-type: none"> • Lead and/or Copper action level exceedance • Lead Public Education violation • Lead and Copper Monitoring and Reporting (M/R) • Chronic chemical MCL violation • Source Monitoring M/R • Failure to provide CCC protection to high risk premises (Table IX) in accordance with written requirement • Failure to submit to a Sanitary Survey (will include increased coliform monitoring) • Failure to provide disinfection (CT6) when source determined to be hydraulically connected to surface water • Monitoring and Reporting for Disinfection Requirements 	<ul style="list-style-type: none"> • Coliform monitoring violations • Coliform MCL (acute and non-acute) violations • Nitrate MCL violations • Nitrate M/R violations • Surface Water Treatment Rule (SWTR) and confirmed Ground Water Under the Influence of a SW (GWI) M/R violations • SWTR/GWI Treatment Technique Violations (TTV) • Confirmed backflow incident • High Public Health Risk (HPHR) Sanitary Survey findings that go uncorrected • Chronic water outages (no SSNC - RO discretion to be used) • Failure to complete GWI determination • ***Failure by system to meet Operator Certification requirements • Construction without DOH approval that poses an imminent health threat. • PN Rule – Tier 1 violations

***The department will also pursue formal enforcement against certified operators for documented inadequate operations and management