We work with others to protect the health of the people of Washington State by ensuring safe and reliable drinking water.

UPDATES:
COMPLIANCE ASSURANCE & ENFORCEMENT PROGRAM
Washington State Department of Health
Office of Drinking Water
Delegated Federal Authority

ODW has primacy authority under federal Safe Drinking Water Act (SDWA).

Federal Requirements

Federal law requires Group A public systems to:

- Refrain from exceeding MCLs for various contaminants.
- Meet minimum water quality monitoring standards.
- Do appropriate reporting.
- Provide public notifications to system users.
- Hire qualified professionals to operate.
- Detect and treat for a specific set of contaminants commonly found in drinking water.

EPA directly administers SDWA where ODW lacks delegated authority (systems on certain federal tribal lands).
Violator Statistics—2016

- 4,079 Group A public water systems subject to federal requirements—July 1, 2016.
- 72+ percent (2,954 systems) incurred zero federal drinking water infractions.
- Almost 50 percent of violators (1,125 systems) were very small water systems serving fewer than 100 people.
  - These often lack sufficient financial, technical, and managerial capacity to comply consistently and effectively with regulatory requirements of operating a Group A system. Lesson = consolidation/capacity development.
Drinking Water Population Landscape—2016/17

WA Population Served by System Type

- Large Group A: 69.14%
- Small Group A: 12.60%
- Group B: 16.65%
- Private: 1.54%

All Group A Systems

- Community: 99.90%
- NTNC: 0.09%
- TNC: 0.01%
Risk-Based Compliance Assurance and Enforcement

- ODW cares about and takes action for any drinking water violation.
- ODW calibrates its compliance assurance and enforcement program to prioritize situations that present the highest public health risks.
- Consistent with the approach taken under EPA’s NPDWRs and Enforcement Response Policy (ERP).
Risk-Based Compliance Assurance and Enforcement

Compliance and Enforcement Approach:

- Prioritize high-public-health-risk situations.
- Prioritize acute contaminants (then chronic).
- Prioritize contamination (monitoring).
- Prioritize National Primary Drinking Water Regulations.
- Guided by EPA Enforcement Response Policy.
- Prioritize performance standards for system operators.
- Systems struggling with capacity.
Approach/Philosophy
Compliance Assurance and Enforcement

- Focus on protecting public health.
- Educate and inform water consumers.
- Ensure purveyors and operators understand their legal obligations.
- Allow a fair opportunity to achieve compliance.
- Support water system compliance in every reasonable way.
- Hold purveyors and operators accountable for compliance.
Approach/Philosophy
Compliance Assurance and Enforcement

Compliance assurance and enforcement broadly encompass “soft” and “hard” tools.
Approach/Philosophy
Compliance Assurance and Enforcement

Soft, typically include:

- Education—during water-system planning process and sanitary surveys.
- Technical assistance.
- Help seeking grants and low-interest loans for infrastructure projects.
- Assistance developing technical, managerial, and financial capacity to comply consistently with complex drinking water standards.
Approach/Philosophy
Compliance Assurance and Enforcement

(Continued)

- Assistance pursuing consolidation with other water systems.
- Violation letters, identifying violations/how to return to compliance (RTC).
- Final warning that formal enforcement/hard is coming if no RTC:
  - Was called Notice of Violation (NOV).
  - Under updated enforcement strategy, is called Notice to Correct Violations (NCV).
Approach/Philosophy
Compliance Assurance and Enforcement

Hard, typically include:

- Turning system’s operating permit to category “red” (and warning that civil penalties are coming if no RTC).
  - Was called Notice of Correction (NOC).
  - Under updated enforcement strategy, is called Order to Correct Violations (OCV).
- Issuing civil penalties (all purveyors and operators jointly and severally liable and subject to collections process).
- Water system operator certification—suspension or revocation.
- Coming: Ordering water systems to study themselves for consolidation with other water systems, in response to chronic violations. (American’s Water Infrastructure Act of 2018 (AWIA)).
Approach/Philosophy
Compliance Assurance and Enforcement

Hard, less typically include:

- Court-ordered water system receivership.
- Court-ordered specific performance of ODW final orders.
- Court orders to enjoin a violation or threatened violation of drinking water laws.
- Emergency order.

Always continue using soft tools, where appropriate.
Approach/Philosophy
Compliance Assurance and Enforcement

May be times ODW skips steps or moves faster to use more powerful tools first.

- See, e.g.: RCW 43.05.110; RCW 34.05.110(4); RCW 70.119A.040(9)

- Emergencies that warrant *emergency orders*, which can be coupled with civil penalties.

- Violation will either directly endanger public health, pose a significant threat to human health, or cause serious harm to the public interest.

- Knowing or willful violation.
Approach/Philosophy
Compliance Assurance and Enforcement

Moving faster to more powerful tools, (continued):

- System previously violated a substantially similar requirement.
- Owner or operator has other system(s) with previous and substantially similar violations.
- System, owner, or operator has previously been notified about or was subject to enforcement for the same or similar violations.
- Violation was committed by a business that employed 50 or more employees on at least one day in each of the preceding 12 months.
U.S. EPA Oversight

- ODW has EPA’s permission (delegated authority) to implement federal Safe Drinking Water Act for U.S. EPA.
- ODW reports violations of NPDWR to EPA.
- Quarterly and annually, EPA tracks ODW’s efforts to return systems to compliance.
- EPA’s uses *Enforcement Tracking Tool (ETT)* to track water system violations and ODW’s efforts to RTC them.
- Score of 11 = “priority system.”
U.S. EPA Oversight (Continued)

- Under EPA’s **2009 Enforcement Response Policy**
  EPA gives ODW **six months** to either:
  - RTC priority/violating systems
  - Put system under an enforcement document:
    - from which civil penalties can issue
    - without having to prove the underlying violations.
    - "**EPA formal enforcement document**"/"**addressing document**"

- Roadmap to achieve this under WA Administrative Procedures Act: Send certified mail to ensure delivery, allow “exhaustion of administrative remedies” (appeal), and achieve a “**final agency order**.”
U.S. EPA Oversight (Continued)

- EPA can “over file:” pursue direct federal enforcement against a water system, if it finds it necessary to gain compliance.
- State can request that EPA over file.
U.S. EPA Oversight

The Enforcement Response Policy Targeting Tool
- PWS Ranking using Sum of $(S1 + S2 + S3 + ... + n)$ Formula -

<table>
<thead>
<tr>
<th>PWS Name</th>
<th>ETT Score</th>
<th>Sys has HB viols?</th>
<th>PWS Type</th>
<th>Pop Srvd</th>
<th>Priority Since Date</th>
<th>Repeat Violator Tool</th>
<th>Total Unresolved Points</th>
<th>On Path to Compliance</th>
<th>School or Childcare</th>
<th>Owner Type Code</th>
<th>Last Lead 90% result (mg/L)</th>
<th>Num Lead ALEs 5 yrs</th>
</tr>
</thead>
</table>

Large-spreadsheet intensive.

Note columns:
- **Priority Since Date**.
- **Repeat Violator Tool**.
- **On Path to Compliance**.
U.S. EPA Oversight

Shows detail for each violation reported to EPA for every water system.

<table>
<thead>
<tr>
<th>PWSID</th>
<th>PWS Name</th>
<th>ETT Sc</th>
<th>Pop S</th>
<th>PWS Ty</th>
<th>Violation</th>
<th>Rule Name</th>
<th>Compl Per Begin</th>
<th>Compl Per End Date</th>
<th>Sevirty Points</th>
<th>RTCon Points</th>
<th>First RTF Date</th>
<th>Forml Action Points</th>
<th>Infmnl Action Points</th>
<th>School or Childcare</th>
<th>Implnt &amp; RTC</th>
<th>Viol Conc</th>
</tr>
</thead>
<tbody>
<tr>
<td>84</td>
<td>75 NTNWCS</td>
<td>MCL</td>
<td></td>
<td></td>
<td>Nitrates</td>
<td></td>
<td>1/1/2015</td>
<td>12/31/2015</td>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>64</td>
<td>75 NTNWCS</td>
<td>MCL</td>
<td></td>
<td></td>
<td>Nitrates</td>
<td></td>
<td>7/1/2015</td>
<td>3/31/2016</td>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>84</td>
<td>75 NTNWCS</td>
<td>MCL</td>
<td></td>
<td></td>
<td>Nitrates</td>
<td></td>
<td>1/1/2015</td>
<td>3/31/2015</td>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>64</td>
<td>75 NTNWCS</td>
<td>MCL</td>
<td></td>
<td></td>
<td>Nitrates</td>
<td></td>
<td>7/1/2015</td>
<td>3/31/2016</td>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>84</td>
<td>75 NTNWCS</td>
<td>MCL</td>
<td></td>
<td></td>
<td>Nitrates</td>
<td></td>
<td>1/1/2014</td>
<td>12/31/2014</td>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>84</td>
<td>75 NTNWCS</td>
<td>MCL</td>
<td></td>
<td></td>
<td>Nitrates</td>
<td></td>
<td>1/1/2014</td>
<td>3/31/2015</td>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>61</td>
<td>34850 CWWS</td>
<td>TT</td>
<td></td>
<td></td>
<td>Long Term 2 Enhanced Surface Water Treatment Rule</td>
<td></td>
<td>1/1/2016</td>
<td>12/31/2016</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>61</td>
<td>34860 CWWS</td>
<td>TT</td>
<td></td>
<td></td>
<td>Long Term 2 Enhanced Surface Water Treatment Rule</td>
<td></td>
<td>1/1/2018</td>
<td>12/31/2018</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>61</td>
<td>34880 CWWS</td>
<td>TT</td>
<td></td>
<td></td>
<td>Long Term 2 Enhanced Surface Water Treatment Rule</td>
<td></td>
<td>1/1/2018</td>
<td>12/31/2018</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
</tbody>
</table>
U.S. EPA Oversight

Spreadsheet tracks quarterly scores and ODW's activity for priority systems.

<table>
<thead>
<tr>
<th>ODW Status &amp; Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>System has RTC'd on 7/20/17 Approved Treatment installed. As for 11/15/17, Sentry shows no nitrate MCL exceedances after June 30, 17.</td>
</tr>
</tbody>
</table>

**HISTORICAL:** The nitrate MCL was under 15.15 BCA to install new facilities. The system was complete by the 3/31/17, and ODW had no issue with the RTC. The system then missed both deadlines in 9/16/17 to install facilities and continue quarterly monitoring. Based on communication with system, ODW had updated the BCA with a new date for installing treatment. 12/16/16. In October 16, ETT review, ODW anticipated there would be no problems with making the new deadline. Awaiting permits. By March 17, the weather had not cooperated. We said that the ERO needed to update the BCA again, for issue an NDC with a new weather-dependent date and that the ERO was working with the consultant engineer to install the system. Determining the best time to install the BCA in NDC. As of June 17, this was still not done. However, as of June 30, 2017, the consultant engineer has reported the ERO that the system has a nitrate treatment system in place and that it is still off-limits to the chlorine system needed to be installed after treatment. The engineer stated that he had recently received a chlorine equipment proposal for him to review and approve, which would be the same in the process of doing. The ERO believes the system should be able to get the chlorine equipment installed soon and then bring the system online. Therefore, at this time the ERO is waiting and seeing without updating the compliance documents.

<table>
<thead>
<tr>
<th>ODW Status &amp; Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>System has RTC'd on 7/20/17 Approved Treatment installed. As for 11/15/17, Sentry shows no nitrate MCL exceedances after June 30, 17.</td>
</tr>
</tbody>
</table>

**DATA:** Double check, do we have a way to make sure the RTC from July 2017 is reported to EPA?

System has RTC'd on 7/20/17 Approved Treatment installed. As for 11/15/17, Sentry shows no nitrate MCL exceedances after June 30, 17.

**HISTORICAL:** The nitrate MCL was under 15.15 BCA to install new facilities. The system was complete by the 3/31/17, and ODW had no issue with the RTC. The system then missed both deadlines in 9/16/17 to install facilities and continue quarterly monitoring. Based on communication with system, ODW had updated the BCA with a new date for installing treatment. 12/16/16. In October 16, ETT review, ODW anticipated there would be no problems with making the new deadline. Awaiting permits. By March 17, the weather had not cooperated. We said that the ERO needed to update the BCA again, for issue an NDC with a new weather-dependent date and that the ERO was working with the consultant engineer to install the system. Determining the best time to install the BCA in NDC. As of June 17, this was still not done. However, as of June 30, 2017, the consultant engineer has reported the ERO that the system has a nitrate treatment system in place and that it is still off-limits to the chlorine system needed to be installed after treatment. The engineer stated that he had recently received a chlorine equipment proposal for him to review and approve, which would be the same in the process of doing. The ERO believes the system should be able to get the chlorine equipment installed soon and then bring the system online. Therefore, at this time the ERO is waiting and seeing without updating the compliance documents.

**DATA:** Double check, do we have a way to make sure the RTC from July 2017 is reported to EPA?
### U.S. EPA Oversight

**Violator Statistics for Annual Report—2018**

#### 2018 Violations

<table>
<thead>
<tr>
<th>Violation Category</th>
<th>Rule Group</th>
<th>Rule Name</th>
<th>Number of Viols</th>
<th>Number of Systems with Violation Type</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Maximum Contaminant Level Violation</strong></td>
<td>disinfectants and disinfection byproducts rule</td>
<td>Arsenic</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td><strong>Maximum Contaminant Level Violation</strong></td>
<td>chemicals</td>
<td>Nitrates</td>
<td>37</td>
<td></td>
</tr>
<tr>
<td><strong>Maximum Contaminant Level Violation</strong></td>
<td>disinfectants and disinfection byproducts rule</td>
<td>Stage 2 disinfectants and disinfection byproducts rule</td>
<td>26</td>
<td></td>
</tr>
<tr>
<td><strong>Maximum Contaminant Level Violation</strong></td>
<td>subtotal</td>
<td></td>
<td>77</td>
<td></td>
</tr>
<tr>
<td>Monitoring and Reporting</td>
<td>chemicals</td>
<td>Lead and copper rule</td>
<td>33</td>
<td></td>
</tr>
<tr>
<td>Monitoring and Reporting</td>
<td>chemicals</td>
<td>Nitrates</td>
<td>291</td>
<td></td>
</tr>
<tr>
<td>Monitoring and Reporting</td>
<td>chemicals</td>
<td>Synthetic organic chemicals</td>
<td>318</td>
<td>15</td>
</tr>
<tr>
<td>Monitoring and Reporting</td>
<td>chemicals</td>
<td>Volatile organic chemicals</td>
<td>500</td>
<td>21</td>
</tr>
<tr>
<td>Monitoring and Reporting</td>
<td>disinfectants and disinfection byproducts rule</td>
<td>Stage 2 disinfectants and disinfection byproducts rule</td>
<td>100</td>
<td>52</td>
</tr>
<tr>
<td>Monitoring and Reporting</td>
<td>Microbials</td>
<td>Revised total coliform rule</td>
<td>18</td>
<td>15</td>
</tr>
<tr>
<td>Monitoring and Reporting</td>
<td>subtotal</td>
<td></td>
<td>1260</td>
<td>404</td>
</tr>
<tr>
<td>Other Violation</td>
<td>Other</td>
<td>Consumer confidence rule</td>
<td>206</td>
<td>201</td>
</tr>
<tr>
<td>Other Violation</td>
<td>subtotal</td>
<td></td>
<td>206</td>
<td>201</td>
</tr>
<tr>
<td>Treatment Technique Violation</td>
<td>Microbials</td>
<td>Long term 2 enhanced surface water treatment rule</td>
<td>12</td>
<td>1</td>
</tr>
<tr>
<td>Treatment Technique Violation</td>
<td>Microbials</td>
<td>Revised total coliform rule</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Treatment Technique Violation</td>
<td>Microbials</td>
<td>Surface water treatment rule</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>Treatment Technique Violation</td>
<td>subtotal</td>
<td></td>
<td>25</td>
<td>9</td>
</tr>
<tr>
<td><strong>total</strong></td>
<td></td>
<td></td>
<td><strong>1568</strong></td>
<td><strong>648</strong></td>
</tr>
</tbody>
</table>

As reported by EPA based on state reporting (imperfect due to reporting errors).
U.S. EPA Oversight

- EPA Inspector General—March 22, 2016, report:

  "Drinking water: EPA Needs to Take Additional Steps to Ensure Small Community Water Systems Designated as Serious Violators Achieve Compliance."

- Reviewed how quickly EPA/states RTC’d small systems.

- Findings:
  - Many systems not RTC’d for exceedingly long periods of time.
  - Where serious noncompliance persists, EPA and states need to engage in a long-term, system-specific approach to bring about compliance.
U.S. EPA Oversight (Continued)

Report #16-P-0108, March 22, 2016, available at:


and

U.S. EPA Oversight

EPA then:

- In 2016, re-invigorated its six-month RTC requirement from its longstanding ERP.
- In 2018, began a nationwide *Health Based Violations* Initiative, details of which are still developing and emerging.

Congressional 2018 action:

- American’s Water Infrastructure Act of 2018 (AWIA) – brought numerous provisions, including:
  - State ability to *order* water systems to study themselves for consolidation with other water systems, in response to chronic violations.
U.S. EPA Oversight

EPA then, in 2019, finalized a policy:

- To enhance effective partnerships with states in civil enforcement and compliance assurance work.
- Describes procedures and practices for effective coordination between EPA and states to carry out shared responsibilities.
U.S. EPA Oversight

EPA then, in 2019, finalized a policy (continued):

Three sections:

1. Details requirements for joint planning and regular communication between EPA/states to promote enhanced, shared accountability.

2. Provides greater detail on EPA/state roles and responsibilities.

3. Provides a process to evaluate and resolve issues.

Link to EPA web page about policy:

epa.gov/compliance/enhancing-effective-partnerships-between-epa-and-states-civil-enforcement-and-compliance
ODW Strategy/Process Update

ODW updated its statewide compliance assurance and enforcement strategy/process/procedures to:

- Respond to EPA’s 2016 and ongoing action.
- Better align ODW process with state technical assistance law re: NOV/NOC.
- Simplify confusing wording in enforcement documents (e.g. part of NOC is appealable but part of it is not).

Upshot: will issue an EPA “formal enforcement document”/“addressing document” much faster (hope to meet 6-month EPA from-time-of-priority-status ERP deadline).
ODW Strategy Update
Crosswalk from Old to New

- Violation Letters = largely the same.
  - Added language: This is an NOV under RCW 43.05.030 or NOC under RCW 43.05.100.
  - Will send to more people in the water system (owner, operator, primary contact, and certified operator if duty is operator’s to perform).
    - Rational is that RTC will come sooner if more/key people know sooner that there is a problem.
ODW Strategy Update
Crosswalk from Old to New

- Notice of Violation (NOV)
  = Notice to Correct Violation (NCV)

- Notice of Correction (NOC)
  = Order to Correct Violation (OCV)
  - Both are EPA “formal enforcement documents”
    /“addressing documents.”
  - Both are initial agency “orders” under RCW
    70.119A.020(9) and RCW 34.05.010(11).
  - Both sent *certified mail* to ensure delivery, allow
    “exhaustion of administrative remedies” (appeal), and
    achieve a “final agency order.”
IN GENERAL

- NCV and OCV:
  - Will send to more people in the water system (owner, operator, primary contact, and certified operator if duty is operator’s to perform).
  - NCV warns of “red” status.
  - OCV turns system “red” category and warns of civil penalty.
# System Categories—Red Status Does What?

<table>
<thead>
<tr>
<th>Category</th>
<th>System is:</th>
<th>We view this system as:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Green</td>
<td>Substantially <em>in compliance</em> with regulations.</td>
<td><em>Adequate</em> for existing uses and for additional service connections up to the number of approved connections.</td>
</tr>
<tr>
<td>Yellow</td>
<td>Substantially <em>in compliance</em> with all requirements. But it: • Was notified to submit a legally compliant water system plan and has not satisfied this planning requirement. • Is under a compliance agreement to address the system’s status as a state significant non-complier and is also acting in accordance with that agreement.</td>
<td><em>Adequate</em> for existing uses and for additional service connections up to the number approved by the Department in a water system plan or modified by the Department in a compliance document.</td>
</tr>
<tr>
<td>Blue</td>
<td>Substantially <em>in compliance</em> with requirements. However, the system does not have a Department-approved water system design or is no longer operating consistently with that design, or the system has exceeded the number of Department-approved connections.</td>
<td><em>Adequate</em> for existing uses, but not adequate for adding new connections.</td>
</tr>
<tr>
<td>Red</td>
<td>Substantially <em>out of compliance</em> with requirements.</td>
<td><em>Inadequate</em> for existing uses and no additional connections are allowed. This may result in denial of home loans, building permits, on-site sewage disposal permits, food service permits, liquor licenses, and other permits or licenses for properties the system serves.</td>
</tr>
</tbody>
</table>
ODW Strategy Update
Crosswalk from Old to New

- Bilateral Compliance Agreement (BCA)
  = Formal Compliance Agreement (FCA).
  - Is an EPA formal enforcement/addressing document.
  - Not appealable; system waives right to appeal. This is a Final Agency Order when issued.
  - A contract, it specifies consequences of breach, including civil penalty issuance.
  - Can enter as a substitute for NCV, not OCV.
  - Can be used by Attorney General to settle appeal of any initial agency order, including OCV.

- Civil Penalty Order = same.
Subject: Sample Action Combining System and Certified Operator

Dear [Name],

On April 4, 2019, you were issued a Notice of Correction (NOC) to install treatment, approved in ODW Project [Project Name] by June 14, 2019. We have not received verification the treatment was installed as required.

We are authorize to impose civil penalties under chapter 70.119A RCW and revoke or suspend your operator certification under chapter 246-292 WAC, due to the failure to follow ODW directives and deadlines.

We intend to move forward with issuance of civil penalties of ($10,800) if the disinfection treatment is not installed by August 30, 2019.

We will also recommend to the operator certification program that proceedings be initiated to suspend or revoke your waterworks operator certification.

If you have any questions, please contact me at [Contact Information].
Call for Assistance

Jacqui Brown Miller

Jacqui.BrownMiller@doh.wa.gov

360.236.3100