



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Guidance on How to Enter Resolving Action Codes for Certain Past Violations of the Consumer Confidence Reports Rule

FROM: Mark Pollins, Director
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TO: Drinking Water Enforcement Managers, Regions 1-10

The purpose of this memorandum is to provide guidance on how primacy agencies implementing the Safe Drinking Water Act can enter resolving action codes for a subset of unresolved violations of the Consumer Confidence Reports Rule (CCR Rule). The guidance conveyed by this memorandum specifically targets unresolved violations related to Consumer Confidence Reports (CCRs) required to be delivered on or before July 1, 2008. Primacy agencies are provided a one-time opportunity to enter resolving codes for those violations according to the criteria set forth below. This memorandum also affirms that violations related to CCRs required after July 1, 2008 must be addressed in accordance with the guidelines provided in the December 8, 2009 Drinking Water Enforcement Response Policy (ERP).

Since December of 2009, the dedicated efforts of primacy agencies to implement the ERP and update the data in the Safe Drinking Water Information System/Federal version (SDWIS/FED) have reduced the number of priority systems by approximately 65%. As we focus on the remaining priority systems (and on all public water system's (PWS) with unresolved violations), we see instances where unresolved violations related to a CCR required on or before July 1, 2008 (specifically, violation code 71 for "CCR complete failure to report" and violation code 72 for "CCR inadequate reporting") contribute to the increase of a PWS enforcement targeting tool (ETT) score. CCR Rule violations are considered "open ended", *i.e.*, the violations remain ongoing until corrected. For example, if a PWS failed to produce a CCR in 2001 and it has never provided that year's required information to its customers, that CCR Rule violation from 2001 remains "open", and the ETT includes points assessed for that 2001 violation in the PWS's current ETT score.

States have requested EPA's authorization to resolve older CCR Rule violations so that they can focus their resources on ensuring that the public receives the compliance information that is missing from more recent CCRs and that PWSs comply fully with CCR Rule requirements going forward. EPA believes it has found a balanced approach that provides states some relief from the burden of addressing older CCR Rule violations while ensuring that the public receives the compliance information PWS's are required to keep and report to them in the more recent annual CCRs.

This guidance provides primacy agencies an opportunity, within parameters described below, to enter resolving actions for violations related to all CCRs that PWSs were required to deliver on or before July 1, 2008 if the PWS either has no more recent CCR Rule violations or its more recent CCR Rule violations have been corrected. The ETT will recognize the resolving action codes entered for these older violations and remove the points associated with these violations from the ETT score of an affected PWS. Please note that the ETT will not remove points if the resolving action code is entered for a CCR Rule violation that is more recent. Primacy agencies should continue to work toward achieving a demonstrated return to compliance for all violations related to CCRs that PWSs were required to deliver after July 1, 2008.

This one-time opportunity for primacy agencies to enter resolving action codes for older unresolved CCR Rule violations will be of short duration.¹ Until July 31, 2013, primacy agencies will be able to enter resolving codes for violations related to CCRs that PWSs were required to deliver on or before July 1, 2008. Per the instructions that follow, the applicability of the ERP to all violations related to CCRs due after July 1, 2008 remains unchanged; those violations will continue to be regarded as open-ended violations, and will continue to contribute points to a priority PWS's ETT score until either the PWS provides the required CCR information to its consumers (thereby returning the violation to compliance), or a formal enforcement action is issued to address the violation. Please note that PWSs with CCR Rule violations related to CCRs delivered after July 1, 2008 will have an opportunity to correct those violations by providing the missing compliance information to their customers in their next CCR, delivered not later than July 1, 2013. As always, primacy agencies are expected to ensure that all information reported to SDWIS/FED accurately represents a PWS's compliance status.

Instructions for Entering Resolving Action Codes

For all violations related to CCRs that were required to be delivered not later than July 1, 2008 (*i.e.*, Type 71 violations with a compliance period begin date on or before July 1, 2008 or Type 72 violations with a compliance period begin date on or before October 1, 2008), the primacy agency has the option of entering either SO6 or EO6 (State or Federal Intentional No-Action), as appropriate, if, by July 31, 2013, all subsequent CCR Rule violations at the public water system have been returned to compliance (*i.e.*, for every CCR it was required to distribute after July 1, 2008, the PWS has provided its customers with all annual water quality information required by the CCR Rule for the calendar years at issue). All CCR Rule violations related to CCRs required to be delivered after July 1, 2008 must be addressed in accordance with the guidance provided in the ERP.

¹ The primacy agency will have the discretion to enter the resolving codes, but is not required to do so.

If you have any questions, please contact Ben Bahk at 202-564-4293, or Ken Harmon at 202-564-7049.

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