

MEMORANDUM

SUBJECT: Requirement for a Public Water System Which Takes Fewer than Five Total Coliform Samples per Month to Undergo a Sanitary Survey

FROM: Robert J. Blanco, Director
Enforcement and Program Implementation Division

TO: Drinking Water/Ground Water Protection Branch Chiefs Regions I - X

Over the past few months, a number of questions have arisen on the interpretation of the requirement for public water systems which take less than five routine total coliform samples per month to undergo a sanitary survey. Specifically, the questions revolve around: (1) what type of violation should be reported if a system has been taking fewer than five samples per month and fails to have a sanitary survey conducted; (2) when does a violation begin; and (3) how such a system can return to compliance. This memorandum provides guidance on these issues.

The Total Coliform Regulation at 40 CFR 141.21(d) states:

Public water systems which do not collect five or more routine samples/month must undergo an initial sanitary Survey by June 29, 1994, for community public water systems and June 29, 1999, for non-community Water systems.

Sanitary surveys must be performed by the State or an agent approved by the State. The system is responsible for ensuring the survey takes place.

The Total Coliform Rule Implementation manual (March 1991) addressed these issues. On page 8, the manual states:

The State must report if a required Sanitary Survey to support reduced monitoring was not conducted. Please note that a contaminant code cannot be specified for this type of violation. Failure to have a Sanitary Survey conducted must be reported as summarized below:

Contaminant Code:	Not applicable - Do not report
Violation Type:	28 - Failure to have a Sanitary Survey Conducted
Begin Date:	The first day of the compliance period.
Duration:	Depends on State requirements.

Pages D-25 through D-27 of Appendix D of the Implementation Manual deals with FRDS reporting and provides detailed guidance and examples of reporting this violation. I have attached those pages for your information.

In addition, the Question and Answer Section of the Implementation Manual dealt with this topic:

Question: Which systems are subject to sanitary surveys?

Answer: Sanitary surveys must be conducted for systems which collect fewer than 5 samples/month.... Systems can monitor at a frequency of 5 samples/month to avoid sanitary surveys the rule does not require systems taking 5 or more samples per month to have sanitary surveys performed.

The survey provision has frequently been misinterpreted as requiring all smaller community water systems (those with a population of less than 4,100), and all noncommunity systems to conduct a sanitary survey. The survey requirement is not tied to system size, type, or to the number of samples that the system is required to take [as per 5141.21(a)]. Rather, the survey requirement is tied to the number of samples that the system actually collects: "public water systems which do not collect five or more routine samples/month must undergo an initial sanitary survey..." In effect, the rule offers CWSs serving fewer than 4,100 people and all NCWSs an option: a) conduct a sanitary survey, or b) increase coliform monitoring to at least 5 samples/month.

While the questions that we have been asked focus on community water systems, we want to be clear that the "option" of survey vs. sampling applies to non-community as well as community systems. The only difference between the two system types is the date by which the option must be exercised -- June 29, 1994 for CWSs and June 29, 1999 for NCWSS.

Unfortunately, the regulation is not clear on the issue of when a system which opts for increased monitoring must begin to collect 5 samples/month. A strict interpretation would be that systems should have made the choice as soon as the Total Coliform rule became effective (i.e., December 1990). While the preambles to both the proposed and final rules would seem to support this interpretation the regulation itself is not explicit. What we believe is clear in the regulation, however, is that the choice must be exercised no later than June 29, 1994 for CWSS, and June 29, 1999 for NCWSS. As of the last day of June of those respective years, the affected systems must either have had a survey conducted, or have begun taking (during the June . compliance period), and continue taking, coliform samples at a rate of 5/month. I stress the requirement to continue taking 5 samples/month because once the system makes the choice to increase its monitoring, it must monitor at that increased rate unless, or until, it undergoes a sanitary survey.

If neither of the above requirements are met the system is in violation of the regulations. Further, any system which opts for increased monitoring but falls below the minimum of 5 samples/month sometime in the future, will also be in violation of the regulations as of the month that the reduced monitoring occurred. As noted in the Total Coliform Implementation Manual,

and discussed earlier in this memo, these violations should be reported as a violation of the sanitary survey requirement at 40 CFR 141.21(d). The violation need be reported only once. There can only be one sanitary survey violation every five years for CWSs and one every ten years for NCWSS. A system which has incurred such a violation can return to compliance either by:

- having a survey conducted, or
- increasing its routine monitoring to at least 5 samples a month. [This increased monitoring would apply until a survey is conducted].

Finally, when the definition of significant noncompliance (SNC) for the total coliform rule was established, there was no provision made for an SNC for a sanitary survey violation since the date of violation was so far in the future. Now that the June 1994 deadline is upon us, I would like your opinion on whether we should establish SNC criteria for a sanitary survey violation. As I see it, establishing an SNC definition for this type of violation would clearly demonstrate that EPA (and the States) believe in the importance of sanitary surveys. However, I recognize the competing demands of implementing and enforcing the program. I would like your opinions on this issue and, if you support the creation of an SNC definition for this type of violation, what that definition should be. Please send your comments on this issue by June 17 to Betsy Devlin, who can be reached at (202) 260-5550 [telephone] or (202) 260-4656 [fax].

I hope that this clarifies the interpretation of this regulation. Should you have Any questions, please contact Betsy Devlin at (202) 260-5550 or Ray Enyeart at (202) 260-5551.

Attachment

cc: PWSS Section Chiefs
PWSS Enforcement Coordinators
FRDS Coordinators

C. Sanitary Survey M&R Violations

A sanitary survey M&R violation is issued to PWSs that fail to have a sanitary survey conducted at the required frequency.

1. FRDS-II Input Format

When reporting to FRDS in DTF format, the primacy agency must provide the following data:

=====Data Element=====			
No.	Name	Description	Comment/ Value
C101	PWS-ID	The PWS ID number	
C1101	VIO-ID	An ID for the violation	
C1105	VIO-TYPE	The violation type	28
C1107	VIO-COMP-PERIOD-BEGIN-DATE (See note #1, page D-26)	The date the compliance period began	mmddy
C1111	VIO-COMP-PERIOD-MONTHS	The duration of the compliance period in months	42, 50, 102, 120 (See note #2 page D-26)

The primacy agency may optionally report the following data:

=====Data Element=====			
No.	Name	Description	Comment/Value
	Instead of reporting C1111, VIO-COMP-PERIOD-MONTHS, Report:		
C1109	VIO-COMP-PERIOD-END-DATE	The date the compliance period ended	mmddy

Figure 17 illustrates a completed FRDS-II data capture form for reporting a sanitary survey monitoring and reporting violation. Figure 18 illustrates the FRDS-II DTF transactions which equate to the completed data capture form. Refer to FRDS-II Data Entry Instructions documentation for further details.

Notes:

- 1 - For purposes of illustration, the scenario and example below assumes that the State has adopted the NPDWR sampling dates, frequencies, etc. by reference. Of course, if the State chooses, they can adopt more stringent requirements.

To illustrate what must be reported to FRDS for the compliance period begin date, consider the following:

A PWS collecting fewer than 5 routine samples per month must undergo an initial sanitary survey by June 29, 1994 (for CWSS), or by June 29, 1999 (for NCWSS). Thereafter, the system must undergo another sanitary survey every five years (ten years for NCWSs using only protected and disinfected groundwater) after the initial sanitary survey.

A community PWS that regularly collects 3 routine samples per month (a system that serves between 2,501 and 3,300 persons) has an initial sanitary survey conducted on May 31, 1992. Its next sanitary survey must be conducted by no later than May 30, 1997 (within 5 years of the date of the initial sanitary survey).

If we assume that the systems second sanitary survey was not conducted by May 30, 1997, a sanitary survey M&R violation must be reported to FRDS with a compliance period begin date of June 1, 1992. This is one day after the initial sanitary survey was conducted, and it is the first day of the compliance period for which a sanitary survey was not conducted. The violation would be given a compliance period duration of 60 months.

- 2- Since the effective date of the TCR regulation is January, 1991, the community PWS deadline of June 29, 1994, is 42 months after the effective date of the rule, and the non-community water system deadline of June 29, 1999, is 102 months after the effective date.¹

Therefore, for systems that fail to have the initial sanitary survey conducted, the compliance period duration would be a maximum of 42¹ months for community PWSs, or a maximum of 102¹ months for non-community PWSs.

¹ At State discretion, more stringent requirements can be adopted. If a State adopts more stringent requirements, the compliance period durations of 42, 102, 60, and/or 120 months would be replaced, as appropriate, with the more stringent State specific values.

For systems that fail to have a subsequent sanitary survey conducted (after the initial sanitary survey period), the compliance period duration would be 60¹ months (120¹ months for NCWSs using only protected and disinfected groundwater).