



# Water and Wastewater Regulatory Compliance Corner

## The Public Notification Rule

Published October 13, 2021

### Background

#### Drinking Water Regulation in America

The Safe Drinking Water Act (SDWA) was originally passed by Congress in 1974 to protect public health by regulating the nation's public drinking water supply. The law was amended in 1986 and 1996 and requires many actions to protect drinking water and its sources—rivers, lakes, reservoirs, springs, and ground water wells.

SDWA authorizes the United States Environmental Protection Agency (EPA) to set national health-based standards for drinking water to protect against both naturally occurring and synthetic contaminants that may be found in drinking water. EPA, Tribal Nations, states, and water systems then work together to make sure that these standards are met.

#### Introduction to Regulation

To protect public health, the EPA has issued specific regulations and rules that water utility systems must follow to make sure they are providing safe drinking water to customers. The Public Notification (PN) Rule is part of the Safe Drinking Water Act. The PN Rule ensures that consumers are notified that there is a problem with their drinking water. These notices alert consumers if there is risk to public health. Notifications also inform customers:

- if the water does not meet drinking water standards;
- if the water system fails to test its water;
- if the system has been granted a variance (use of less costly technology);
- if the system has been granted an exemption (more time to comply with a new regulation); or
- if there is an emergency affecting the drinking water posing a risk to public health.

In 2000, the Environmental Protection Agency (EPA) revised the existing Public Notification Rule to match the form, manner, and timing of the notices to the relative risk to human health; and to make notification easier and more effective for both water systems and their customers.

#### Timeline of Regulation

2000: May 4 – The Public Notification Rule (PN) was revised. The revision requires faster notice in emergencies and fewer notices overall. The revised notices provide better communication of potential health risks from drinking water violations.

2013: February 13 – The PN Rule was once again updated with any amendment and technical corrections since the rule was promulgated.

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### Why is this important?

The PN Rule is designed to act as a warning system when there has been an issue with the public water supply. The Public Notification outline the cause of the notice, as well as actions consumers should take, any health risks, and to which population that risk is directed. Further, it will outline the steps that the PWS is taking to alleviate the issue, who the public can contact, and the estimated date when the situation will be resolved. Lastly, it Customers would get the public notification of a public health issue and would then be able to distribute to other affected customers.

Local water systems can better target notices to their customers and to better convey the seriousness of the risk. The notice revisions from 2000 are easier for consumers to read and understand. Each time a new drinking water regulation is promulgated the PN Rule is updated to reflect the requirements for each regulation.

### Requirements of the Rule

Water systems test regularly for approximately 90 contaminants. The monitoring ensures identification of regulated contaminants at levels which may pose a risk to human health.

Unfortunately, water quality can sometimes change. Despite the efforts of water suppliers, problems with drinking water can and do occur. When problems arise, consumers have a right to know what happened and what they need to do. The public notice requirements of the SDWA require water suppliers to provide this notice to customers.

### Public Notifications: Notification Tiers

<b>Tier 1</b>	Notice required within 24 hours	Violations and situations with significant potential for serious adverse impacts on human health from short-term exposure
<b>Tier 2</b>	Notice required within 30 days or as soon as possible	Violations with potential to have serious, but not immediate, adverse effects on human health
<b>Tier 3</b>	Notice required within 12 months of the violation, and may be part of a single annual report, including the annual Consumer Confidence Report (CCR)	Violations not included in Tier 1 and Tier 2

### Tier 1 Public Notification

Tier 1 Public Notification is required to be issued as soon as practical but no later than 24 hours after the PWS learns of the violation or situation including:

- Distribution system sample violation when fecal coliform or E. coli are present; failure to test for fecal coliform or E. coli after initial total coliform distribution system sample tests positive.
- Nitrate, nitrite, or total nitrate and nitrite maximum contaminant level (MCL) violation; failure to take confirmation sample.

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- Special notice for noncommunity water systems (NCWSs) with nitrate exceedances between 10 mg/L and 20 mg/L, where system is allowed to exceed 10 mg/L by primacy agency.
- Chlorine dioxide maximum residual disinfectant level (MRDL) violation when one or more of the samples taken in the distribution system exceeds the MRDL on the day after a chlorine dioxide measurement taken at the entrance to the distribution system exceeds the MRDL, or when required samples are not taken in the distribution system.
- Exceedance of maximum allowable turbidity level, if elevated to a Tier 1 notice by primacy agency.
- Waterborne disease outbreak or other waterborne emergency.
- Detection of E. coli, enterococci, or coliphage in a ground water source sample.
- Other violations or situations determined by the primacy agency.

### Tier 2 Public Notification

Tier 2 Public Notification is required to be issued as soon as practical or within 30 days. Repeat notice every 3 months until violation or situation is resolved.

- All MCL, MRDL, and treatment technique violations, except where Tier 1 notice is required.
- Monitoring violations, if elevated to Tier 2 notice by primacy agency.
- Failure to comply with variance and exemption conditions.
- For ground water systems providing 4-log treatment and conducting Ground Water Rule (GWR) compliance monitoring, failure to maintain required treatment for more than 4 hours.
- Failure to take any required corrective action or be in compliance with a corrective action plan for a fecal indicator-positive ground water source sample.
- Failure to take any required corrective action or be in compliance with a corrective action plan for a significant deficiency under the GWR.
- Special public notice for repeated failure to conduct monitoring for Cryptosporidium.
- Turbidity consultation is required when a PWS has a treatment technique violation resulting from a single exceedance of the maximum allowable turbidity limit or an MCL violation resulting from an exceedance of the 2-day turbidity limit. The PWS must consult their primacy agency within 24 hours. Primacy agencies will then determine whether a Tier 1 PN is necessary. If consultation does not occur within 24 hours, violations are automatically elevated to require Tier 1 PN.

### Tier 3 Public Notification

Tier 3 Public Notification is required to be issued within 12 months and repeated annually for unresolved violations.

- All monitoring or testing procedure violations, unless primacy agency elevates to Tier 2, including failure to conduct benchmarking and profiling (surface water systems) and failure to develop a monitoring plan (disinfecting systems).
- Operating under a variance and exemption.

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- Special public notice for availability of unregulated contaminant monitoring results.
- Special public notice for fluoride secondary maximum contaminant level (SMCL) exceedance.

### Required Elements of the Rule

There are 10 required elements of a Public Notice for a Public Water System.

Unless otherwise specified in the regulations, each notice must contain:

1. Description of the violation or situation, including the contaminant(s) of concern, and (as applicable) the contaminant level(s).
2. When the violation or situation occurred (i.e., date the sample was collected or was supposed to be collected).
3. Any potential adverse health effects from drinking the water and standard language regarding the violation or situation. (For MCL, MRDL, treatment technique violations, or violations of the conditions of a variance or exemption, use health effects language from Appendix B of the PN Rule. For monitoring and testing procedure violations, use the standard monitoring language below.)
4. The population at risk, including subpopulations that may be particularly vulnerable if exposed to the contaminant in their drinking water.
5. Whether alternate water supplies should be used.
6. Actions consumers should take, including when they should seek medical help, if known.
7. What the PWS is doing to correct the violation or situation.
8. When the PWS expects to return to compliance or resolve the situation.
9. The name, business address, and phone number or those of a designee of the PWS as a source of additional information concerning the notice.
10. A statement (see standard distribution language below) encouraging notice recipients to distribute the notice to others, where applicable.

Note: These elements do not apply to notices for fluoride SMCL exceedances, availability of unregulated contaminant monitoring data, and operation under a variance or exemption. Content requirements for these notices are specified in the PN Rule.

### Standard Language

**Standard Monitoring Language:** Each Notice should contain a version of the information presented below. The PWS will fill out the required information as noted in the italicized details described in between the brackets [] as shown in the sample language below.

*We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not our drinking water meets health standards. During [period] we [did not monitor or test/did not complete all monitoring or testing] for [contaminant(s)], and therefore cannot be sure of the quality of the drinking water during that time.*

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**Standard Distribution Language:** The bottom of the Notice should contain a version of the information presented below to ensure the widest distribution of the Notice.

*Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.*

**Multilingual Requirements:** Where the PWS serves a large proportion of non-English speakers, the PWS must provide information in the appropriate language(s) on the importance of the notice or on how to get assistance or a translated copy.

**Presentation and Distribution:** The Tier 1 Public Notice must be issued via radio, TV, hand delivery, posting, or other method specified by the primacy agency to reach all persons served. PWSs must also initiate consultation with the primacy agency within 24 hours. Primacy agency may establish additional requirements during consultation.

The Tier 2 and Tier 3 Public Notices must be issued by Community Water Systems (CWSs) via mail or direct delivery and by NCWSs via posting, direct delivery, or mail. Primacy agencies may permit alternate methods. All PWSs must use additional delivery methods reasonably calculated to reach other consumers not notified by the first method.

Notices for individual violations can be combined into an annual notice (including the Consumer Confidence Report [CCR], if PN requirements can still be met).

Each PN:

- Must be displayed in a conspicuous way.
- Must not include overly technical language or very small print.
- Must not be formatted in a way that defeats the purpose of the notice.
- Must not include language that nullifies the purpose of the notice.
- If the notice is posted, it must remain in place for as long as the violation or situation persists, but in no case for less than seven days, even if the violation or situation is resolved.

Note: PWSs should check with their primacy agency to determine the most appropriate delivery methods.

**Notice to New Customers:** All new billing units and customers must be notified of ongoing violations or situations requiring a Public Notice.

**Reporting and Recordkeeping:** PWSs have 10 days to send a certification of compliance and a copy of the completed notice to the primacy agency. PWSs and the primacy agency must keep notices on file for 3 years.

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Below is an example of a Public Notice for a Coliform violation that shows the required elements of a Public Notice.

### IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER

#### Tests Showed Presence of Coliform Bacteria

The Jonesville Water System routinely monitors for coliform bacteria. During the month of July, 7 percent of our samples tested positive. The standard is that no more than 5 percent of samples may test positive.

#### What should I do?

- **You do not need to boil your water or take other corrective actions.** However, if you have specific health concerns, consult your doctor.
- You do not need to use an alternate (e.g., bottled) water supply.
- People with severely compromised immune systems, infants, pregnant women, and some elderly may be at increased risk. These people should seek advice about drinking water from their health care providers. General guidelines on ways to lessen the risk of infection by microbes are available from EPA's Safe Drinking Water Hotline at 1-800-426-4791.

#### What does this mean?

This is not an emergency. If it had been, you would have been notified immediately. Coliform bacteria are generally not harmful themselves. *Coliforms are bacteria which are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.*

Usually, coliforms are a sign that there could be a problem with the system's treatment or distribution system (pipes). Whenever we detect coliform bacteria in any sample, we do follow-up testing to see if other bacteria of greater concern, such as fecal coliform or *E. coli*, are present. We did not find any of these bacteria in our subsequent testing.

#### What was done?

We took additional samples for coliform bacteria which all came back negative. As an added precaution, we chlorinated and flushed the pipes in the distribution system to make sure bacteria were eliminated. This situation is now resolved.

For more information, or to learn more about protecting your drinking water please contact John Jones at (502) 555-1212.

*Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.*

This is being sent by the Jonesville Water System.

State Water System ID#1234567. Date Distributed: 8/8/09

- ① Description of the violation
- ② When the violation occurred
- ③ Potential adverse health effects
- ④ The population at risk
- ⑤ Should alternate water supplies be used
- ⑥ Actions consumers should take
- ⑦ What is being done to correct the violation or situation
- ⑧ When the system expects to return to compliance
- ⑨ Phone number for more information
- ⑩ Required distribution language

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