

Subject:	Enforcement Procedure for Field Personnel	Created:	11/15/2018
Unit:	DWS: BD, CL, KS	Revised:	4.30.19
Purpose & Scope: This procedure is meant to inform Technical Services staff and partners about accepted practices for creating compliance schedules, referring matters for formal enforcement and standard DWS practices for issuing formal enforcement.			

## Introduction

Drinking Water Services DWS practices progressive enforcement and employs the least aggressive tools necessary to achieve compliance. To this end, regulators are encouraged to promote compliance through direct communication, technical assistance and financial assistance; crafting informal, initial responses to violations when necessary to supplement other means of communication. Generally, enforcement is necessary when violations exist such that a water system is designated as a priority non-complier (PNC) or when a situation presents an immediate risk to public health (for example, unaddressed nitrate above the MCL or confirmed *E. coli*). A PNC designation is established when a water systems violation score is 11 points or higher. EPA requires states to be engaged in formal enforcement with a water system that has been a PNC for 6 months. Water systems designated as a PNC will be addressed with formal enforcement (either a bilateral compliance agreement or an administrative order) by six-months at PNC status.

Formal enforcement actions will be taken based on the priorities listed at the end of this procedure. If regulators or DWS managers desire to refer a specific water system for formal enforcement or elevate the priority of one system over others awaiting enforcement action, there must be consensus between DWS managers that the specific case warrants enforcement action outside of the normal, systematic enforcement process.

## Enforcement Process

### A. Informal Enforcement

1. Referring to the flowchart at the end of this procedure, regulators should contact the water suppliers monthly as violations are issued, or as situations are discovered that requires correction. Ideally, contact should take place as soon as the situation or violation is recognized or at the discretion of the individual regulator. Some situations that pose an immediate risk to public health may result in DWS taking immediate formal enforcement action against a water supplier; including but not limited to: treatment system failure, nitrate over the MCL, violating the MCL for *E. coli* or any contaminant at concentrations that present an unreasonable risk to health.

Please note that water supplier, in this context, means the owner, operator, Home Owners Association (HOA) officer, park manager, administrative contact or anyone else responsible for the water system. If more than one person is responsible for water system operations, contact a couple people if possible, especially if one person isn't always reliable. This initial conversation is hopefully all that is necessary to resolve the situation, especially if the water supplier is cooperative. A contact report should be written documenting the conversation.

2. The Data Management, Compliance and Enforcement unit has created auto-generated informal compliance letters to address the following situations:
  - chemical contaminants exceeding the MCL,
  - lead or copper exceeding the action level,
  - confirmed *E. coli* in a groundwater source and
  - Coliform investigations and repeated coliform investigations that trigger the need for residual maintenance.

For these situations, the letter is automatically mailed to the PWS contact with a copy sent to the regulator. A compliance schedule is entered and viewable on the Compliance & Enforcement page at data online. The regulator should also contact the water system operator to answer any questions they may have and make sure they understand what's required and possible consequences for failing to comply.

3. If you are writing an informal enforcement letter to address violations, make sure to include an action plan that outlines milestones and due dates for informal compliance schedules. Action plans and milestone are typically scheduled out 30-60 days apart, with an overall length of the informal schedule not to extend beyond six months (unless approved by DWS). This helps prevent overlapping of multiple enforcement schedules for the same situation.
  - a. Send a pdf copy of the letter and any additional information about the compliance schedule to [compliance.dw@state.or.us](mailto:compliance.dw@state.or.us). DMCE staff will create a compliance schedule which will be displayed on the data online webpage for Compliance & Enforcement.

If the situation can't be resolved in six months, the regulator can refer the situation to DWS enforcement personnel.

Health-based violations or situations of an emergency nature should be addressed as quickly as possible and action required no more than 30 days after the date of the violation or the date when the situation is reported. These situations can be addressed with informal compliance schedules or formal enforcement; in either case, coordinate

with DWS enforcement and county oversight personnel to determine the most appropriate action.

## B. Formal Enforcement

1. If a water supplier is uncooperative and informal enforcement isn't effective or if resolution will take longer than 6 months, refer the situation to DWS enforcement personnel by sending an email message with the pertinent information to [compliance.dw@state.or.us](mailto:compliance.dw@state.or.us).
2. DWS will assess the situation and determine the appropriate enforcement tool which may be a warning letter (if the PNC exists before the six-month deadline), an administrative order or a bilateral compliance agreement (if the PNC still exists at six months). Enforcement documents and compliance schedules can be viewed at the data online webpage for Compliance & Enforcement. Formal enforcement, whether administrative orders or bilateral compliance agreements, are prioritized based on the threat to public health represented by the situation and length of time the situation has persisted. A list of enforcement priorities is revised every month.

## C. Follow-up

1. Once an informal or formal compliance schedule is written, it is the regulator's responsibility to provide updates to [compliance.dw@state.or.us](mailto:compliance.dw@state.or.us) with new information related to required actions and deadlines.
2. When a water supplier completes a required action, the regulator must send an email to [compliance.dw@state.or.us](mailto:compliance.dw@state.or.us) with the name and ID of the water system, clearly stating what action was completed so that the compliance schedule can be updated correctly. This can be completed by checking "Enforcement" as the Assistance Type when creating a contact report via the web form.
3. An email will automatically be sent to the regulator two weeks prior to any compliance schedule deadline not met. The regulator needs to contact the water system contact or operator to follow up on the progress and ensure they are aware of the required action and deadline. A contact report needs to be written within six days documenting this conversation.
  - a. For formal enforcement, if an update is not received by DWS from the regulator prior to the deadline, DWS enforcement personnel will follow up directly with the water system contact or operator.
  - b. If an extension is needed, determine whether the final compliance deadline will be affected and discuss the matter with the DWS enforcement personnel. Regulators must not offer an extension before consulting with DWS because depending on the situation, DWS may escalate enforcement rather than extend the existing compliance schedule.

If a representative for the water system can't be contacted or doesn't return telephone calls, refer the situation to DWS enforcement personnel for escalation.

## **Enforcement Priorities**

- **Class I - High Priority** (those that constitute an immediate health hazard)

[333-061-0032](#): Lack of, inadequate or ineffective surface water treatment;  
[333-061-0030\(4\)](#): Exceeding the MCL for *E. coli*;  
[333-061-0030\(1\)](#): Exceeding the MCL for nitrate; and  
[333-061-0030](#): Exceeding the MCL for any regulated contaminant at acute concentrations or that represent an immediate risk to public health.

- **Class II - Medium Priority**

[333-061-0030](#): Exceeding the MCL for any regulated contaminant at a non-acute concentration;  
[333-061-0030](#): Exceeding the action level for lead or copper;  
[333-061-0032\(6\)](#): Failure to resolve confirmed *E. coli* contamination in a groundwater source;  
[333-061-0076\(6\)](#): Failure to correct significant deficiencies (considered a direct pathway for contamination) following a sanitary survey;  
[333-061-0034](#): Failure to properly operate corrosion control;  
[333-061-0031](#): Exceeding a maximum residual disinfectant level; and  
[333-061-0032\(6\) and 333-061-0078](#): Failing to maintain a disinfectant residual following repeated coliform investigations or failing to correct sanitary defects;  
[333-061-0036\(11\)](#) failure to meet 4.0-log treatment minimum value  
[333-061-0032](#) failure to meet required disinfection CT's

- **Class III - Low-Priority** (those that do not constitute a known health hazard)

[333-061-0036](#): Failure to meet monitoring or reporting requirements;  
[333-061-0050](#): Failure to ensure water system components or facilities meet construction standards;  
[333-061-0076\(6\)](#): Failure to correct other significant deficiencies following a sanitary survey;  
[333-061-0042](#): Failure to publish public notice;  
[333-061-0232](#): Failure to fulfill the responsibilities of a water system operator (for an individual operator);  
[333-061-0060](#): Failure to obtain or complete plan review;  
[333-061-0225](#): Failure by a water supplier to utilize a certified operator; and  
[333-061-0040](#): Failure to report properly collected sampling results.

# ENFORCEMENT FLOWCHART

