

State of South Dakota Drinking Water Program Enforcement Response Policy and Enforcement Targeting Tool

Over the past few years, the State has been changing how we address non-compliant water systems. The goal is to take fair and consistent enforcement actions against public water systems to ensure compliance with South Dakota’s Drinking Water Regulations in a manner that protects health and well-being of the residents and visitors of South Dakota.

What is this New Enforcement Policy?

The State has implemented a new Enforcement Response Policy (ERP) and Enforcement Targeting Tool (ETT) designed to identify public water systems with violations that pose the greatest risk to public health or show a history of violations across multiple rules. It will also allow the State to prioritize our enforcement efforts towards public water systems that do not comply with the requirements of the Safe Drinking Water Act (SDWA).

The scoring formula is the basis for the enforcement targeting tool, that identifies public water systems having the highest total noncompliance across all rules, within a designated period of time. A higher weight is placed on violations that pose a greater risk to public health. The formula calculates a score for each water system based on open-ended violations and violations that have occurred over the past 5 years, but does not include violations that have returned to compliance or are on the "path to compliance" through a specified enforceable action.

Under the new policy, violation types are “weighted” with points being assigned for each violation type based on its threat to public health. Points for each “unaddressed” violation are added together to provide a total score for each water system. The Program considers systems with a score of "11" or higher as priority systems for enforcement, unless the Program can return the violations to compliance within six months.

Compliance Score = $\sum (S1 + S2 + S3 \dots) + n$	
10	Acute TCR MCL, Nitrate/Nitrite MCL, Turbidity MCL, Acute MRDL – ClO ₂ , Surface Water Treatment Techniques
5	Chemical MCL, Total Coliform MCL, Treatment Techniques (TT), Total Coliform M/R, Nitrate M/R, Operator Certification
1	All other violations (e.g. CCR violations, record keeping violations, PN violations, monitoring violations not mentioned above).
n	Number of years that the system’s oldest violation has not been addressed (0-5)
S	Severity of violation types incurred by a public water system.

How is my system’s compliance score calculated?

A system’s compliance score is determined using the following formula and designated points indicated in the table to the left. The compliance determination only takes into consideration those violations, which remain open on a system’s compliance history. It does not consider violations the Program has returned to compliance.

How can this policy and tool benefit my water system?

The State also intends to use the scoring tool proactively by focusing our technical assistance resources on systems that have a compliance score greater than “6”. By working with these systems to reduce their scores and returning them to compliance sooner, we hope to reduce the number of systems reaching priority status and reducing the number of formal enforcement actions required by EPA. It may also provide an added resource for the State in identifying systems in need of assistance in the areas of Capacity Development and Sustainability.

When can my violations be returned to compliance?

The following table shows common violation types public water systems incur. Once a system meets the compliance eligibility criteria, the Program will return the system's violation to compliance and the system's score will reduce accordingly.

Common Violation Types	RTC Eligibility Criteria	Points
Acute Total Coliform MCL	Six months with no similar violation types; Seasonal systems must complete a full operating season.	10
Total Coliform MCL/Repeats	Six months with no similar violation types; Seasonal systems must complete a full operating season.	5
Total Coliform M/R	Six months with no similar violation types; Seasonal systems must complete a full operating season.	1
Groundwater Trigger Samples	Samples are collected as required.	1
Nitrate & Nitrite MCL	The RAA (running annual average) is less than the MCL; or new source is less than the MCL.	10
Nitrates & Nitrite M/R	Samples are collected as required.	5
Operator Certification	System has an operator on staff and certified at the level the system is classified, or an acceptable contract is approved.	5
Public Notice	System issues the required public notice and sends copy of notice and Certificate of Public Notice Distribution to State.	1
Chemical & Radiological MCL	The RAA (running annual Average) is less than the MCL; or new source is less than the MCL.	5
Chemical & Radiological M/R	Samples are collected as required.	1
Disinfection Byproducts (DBP) MCL	The RAA (running annual average) is less than the MCL; or new source is less than the MCL.	5
Disinfection Byproducts (DBP) M/R	Chlorine/Chloramines – 1 quarter with no similar M/R violations. TTHM/HAA5 – (Quarterly Samplers) 1 quarter with no similar M/R violations or MCL violations. TTHM/HAA5 – (Annual Samplers) when next required sample is collected.	1
Lead & Copper M/R	Samples are collected as required.	1
Lead AL & Copper Exceedance	When the 90th percentile indicates levels are less than the action level (AL) for lead and the MCL for copper.	5

What is a formal enforcement action and what can I expect?

The goal of a formal enforcement action is to provide a mechanism for a water system to return to compliance with the State's drinking water regulations. A formal enforcement action will contain information on why the Program is issuing the enforcement action, an administrative order outlining specific requirements a system must take to return to compliance, and enforceable penalties should a system fail to meet the requirements of the administrative order. In extreme circumstances, the Program may refer a system to the Attorney General's Office for further legal action.

When the Program issues a formal enforcement action, the system's compliance score will fall to zero, as the system is "on the path to compliance" and will drop off the priority system list for EPA enforcement.

For those systems that are “on the path to compliance” and are installing additional treatment technologies or seeking an alternative water source, the Program may allow more flexibility or additional time to complete construction projects or system upgrades in order to come into compliance with applicable regulations.

Once the Program has determined a water system has implemented the necessary corrective actions to return the system to compliance, the formal enforcement action is closed.

How can I avoid becoming a priority system?

The easiest way, is to ensure that you collect all required monitoring samples, submit all required monitoring reports as scheduled, distribute all required public notices and consumer confidence reports, and lastly ensure all sampling plans are current and up-to-date. Carefully read all correspondence from the Program, as it typically will indicate any changes in your monitoring or reporting requirements or regulatory changes that may pertain to your individual water system.

In some cases, a water system may suddenly find itself in a non-compliant status resultant of changing regulatory policies (e.g. Arsenic Rule – 2006) or unexpected changes in a systems source water quality. The Program understands that these situations do occur and are often out of the control of an individual water system. In these instances, where changes in treatment technology or an alternative water source is required, it is most likely that a system will meet the priority system status in the very near future and a formal enforcement action would be required if those violations could not be returned to compliance within six months.

If you have questions regarding the enforcement policy, please contact:

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