

Appendix E

Violation Tables for Data Management and Enforcement Purposes

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I. SAFE DRINKING WATER INFORMATION SYSTEM (SDWIS) REPORTING UNDER THE ARSENIC AND CLARIFICATIONS TO COMPLIANCE AND NEW SOURCE CONTAMINANTS MONITORING RULE

SDWIS/FED (Safe Drinking Water Information System/Federal version) is an EPA national database storing routine information about the nation's drinking water. Designed to replace the system known as FRDS (Federal Reporting Data System), SDWIS/FED stores the information EPA needs to monitor approximately 175,000 public water systems (PWSs).

States regulate the drinking water systems within their jurisdictions to ensure that each PWS meets State and EPA standards for safe drinking water.¹ The Safe Drinking Water Act (SDWA) requires States to report drinking water information periodically to EPA. This information is maintained in SDWIS/FED.

States report the following information to EPA:

- Basic information on each water system: name, ID number, number of people served, type of system (year-round or seasonal), and source of water (ground water or surface water);
- Violation information for each water system: whether it has followed established monitoring and reporting schedules, complied with mandated treatment techniques, or violated any maximum contaminant levels (MCLs);
- Enforcement information: what actions States have taken to ensure that drinking water systems return to compliance if they are in violation of a drinking water regulation; and,
- Sampling results for unregulated contaminants and for regulated contaminants when the monitoring results exceed the MCL.

EPA uses this information to determine if and when it needs to take action against non-compliant systems, oversee State drinking water programs, track contaminant levels, respond to public inquiries, and prepare national reports. EPA also uses this information to evaluate the effectiveness of its programs and regulations, and to determine whether new regulations are needed to further protect public health.

¹Throughout this document, the terms "State" or "States" are used to refer to all types of primacy agencies including U.S. territories, Indian tribes, and EPA Regions.

I.a Federally Reported Violations

Under SDWIS/FED reporting, States only report when violations occur. In the interest of reducing the reporting burden on States, EPA has limited the number and type of violations to be reported to SDWIS/FED. **However, PWSs must still keep records and report all required information to the State. Any violation of the Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring Rule (66 FR 6976), whether included in the accompanying table or not, is a basis for a State or federal enforcement action.**

Table 1 summarizes the violation and contaminant codes that will be used to report violations of the Rule to SDWIS/FED.

Table 1: SDWIS/FED Codes for Federal Reporting under the Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring Rule

Violation Code	Contaminant Code	Violation*
01	1005	MCL, Single Sample
02	1005	MCL, Average
03	1005	Failure to Monitor/Report (M&R), Regular
04	1005	Failure to Monitor/Report (M&R), Check/Repeat/Confirmation
06	1005	Failure to Provide the Appropriate Public Notice
08	1005	Variance/Exemption/Other Compliance
72	1005	Consumer Confidence Report (CCR), Inadequate Reporting

***Any violation of the Rule (66 FR 6976), whether included in Table 1 or not, is a basis for a State or federal enforcement action.**

The Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring Rule revised the arsenic MCL, moved arsenic into the standardized monitoring framework for inorganic contaminants, and made clarifications to compliance monitoring for both inorganic and organic contaminants. An editorial oversight resulted in the omission of proposed language; however, EPA intends to consistently implement compliance determinations for inorganic compounds (IOCs), synthetic organic compounds (SOCs), and volatile organic compounds (VOCs) for all community water systems (CWSs) and non-transient non-community water systems (NTNCWSs), as described in the preamble to the Final Rule (66 FR 6990).

Table 2 contains federally reportable violations for the Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring Rule in more detail. In the interest of keeping the table concise, EPA limited the number and types of violations to only include the changes and clarifications that were made by the Rule. These violations are listed by contaminant and violation type. This table includes the SDWIS/FED reporting codes, the regulatory citations, system types affected, a detailed description of the violation, and initial compliance dates. For more information on how to report arsenic violations to SDWIS/FED, please refer to Appendix H, the *State Reporting Guidance for the Arsenic Rule*.

Table 2: Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring Rule Violation Table

SDWIS Reporting Code	Regulated Contaminant	40 CFR Citation	Violation Type	System Size & Type Affected	Violation	Initial Compliance Date
01	Arsenic	141.6(g) 141.11(b)	MCL, Single Sample	CWS	Failure of a system to provide water that meets the MCL of 0.05 mg/L.	7/30/92- 1/22/06
02	Arsenic	141.6(j) 141.62(b)(16)	MCL, Average	CWS & NTNCWS	Failure of a system to provide water that meets the new arsenic MCL of 0.010 mg/L.	1/23/06
02	Inorganics listed in 141.62 ^{2,3}	141.6(k) 141.23(i)(1) ⁴	MCL, Average	CWS & NTNCWS	Failure of a system to have all sampling points in compliance with the MCL. If one sampling point is in violation of the MCL, then the entire system is in violation of the MCL. For systems monitoring more than once per year, compliance is determined by the running annual average at each sampling point.	1/22/04
	Organics listed in 141.61	141.6(k) 141.24(f)(15) 141.24(f)(15)(i) 141.24(h)(11) 141.24(h)(11)(i)				

²Inorganics listed in 141.62, excluding asbestos, nitrate, and nitrite.

³The 2001 Arsenic Rule did not revise the compliance determination provisions governing the 50 ppb MCL for arsenic found at 40 CFR 141.23(m) & (n). As a result, under the existing rules, systems would need to comply both with those provisions and 40 CFR 141.23(i) from January 22, 2004 through January 22, 2006. EPA is considering a regulatory revision to clarify its intent that systems need comply ONLY with the standardized monitoring framework beginning on January 22, 2004 for all inorganics, including arsenic. EPA intends to consistently implement compliance determinations for IOCs, SOCs, and VOCs for all CWSs and NTNCWSs, as described in the preamble to the Final Rule (66 FR 6990).

⁴An editorial oversight resulted in the omission of proposed language in 40 CFR 141.23(i)(1); however, EPA intends to consistently implement compliance determinations for IOCs, SOCs, and VOCs, as described in the preamble to the Final Rule.

SDWIS Reporting Code	Regulated Contaminant	40 CFR Citation	Violation Type	System Size & Type Affected	Violation	Initial Compliance Date
02	Inorganics listed in 141.62	141.6(k) 141.23(i)(2)	MCL, Average	CWS & NTNCWS	Failure of a system to have all sampling points in compliance with the MCL. If one sampling point is in violation of the MCL, then the entire system is in violation of the MCL. For systems monitoring annually or less, and exceeding the MCL, compliance is determined by the running annual average at the sampling point once a system begins quarterly monitoring.	1/22/04
	Organics listed in 141.61	141.6(k) 141.24(f)(15)(ii) 141.24(h)(11)(ii)				
02	Inorganics listed in 141.62	141.6(k) 141.23(i)(1)	MCL, Average	CWS & NTNCWS	A sample result that causes the annual average to exceed the MCL, or taking any one sample that causes the running annual average to exceed the MCL.	1/22/04
	Organics listed in 141.61	141.6(k) 141.24(f)(15)(iii) 141.24(h)(11)(iii)				
03	Inorganics listed in 141.62	141.6(k) 141.23(c)(9)	M&R, Regular	CWS & NTNCWS	Failure of new systems or systems that use a new source of water to demonstrate compliance at each sampling point or representative sampling point(s) within the time frame specified by the State.	1/22/04
	Organics listed in 141.61	141.6(k) 141.24(f)(22) 141.24(h)(20)				
03	Inorganics listed in 141.62	141.23(a)(1)&(2) 141.23(c)(1) 141.31(a)&(b)	M&R, Regular	CWS & NTNCWS	Failure to complete a regular round of sampling or accurately report the analytical result of a regular sample at a sampling point. Failure to report results within specified time frame. Failure to report non-compliance within time period specified by State.	Ongoing
03	Arsenic	141.6 (j) 141.23(i)(4)	M&R, Regular	CWS & NTNCWS	Failure to report arsenic results to the nearest 0.001 mg/L.	1/23/06
03	Inorganics listed in 141.62	141.23(c)(7)	M&R, Regular	CWS & NTNCWS	Failure of a system that has exceeded the MCL at a sampling point to begin quarterly monitoring.	1/22/04

SDWIS Reporting Code	Regulated Contaminant	40 CFR Citation	Violation Type	System Size & Type Affected	Violation	Initial Compliance Date
03	Inorganics listed in 141.62	141.6(k) 141.23(i)(1)&(2)	M&R, Regular	CWS & NTNCWS	Failure to collect the required number of samples. The average is based on the number of samples actually taken.	1/22/04
	Organics listed in 141.61	141.6(k) 141.24(f)(15)(iv) 141.24(h)(11)(iv)				
04	Inorganics listed in 141.62	141.6(c) 141.23(f)(1) 141.31(a)&(b)	M&R, Check/ Repeat/ Confirmation	CWS & NTNCWS	Failure to complete a check, repeat, or confirmation sample or accurately report the analytical result of a check, repeat, or confirmation sample at a sampling point, when required. Failure to report check/repeat/confirmation results within specified time frame. Failure to report non-compliance within specified time frame.	1/23/06
06	Inorganics listed in 141.62	141.6 (c) 141.31(d)	PN	CWS & NTNCWS	Failure to submit certification within specified time frame under the Public Notification Rule requirements.	1/24/75; ongoing for inorganics 1/23/06 for arsenic
06	Arsenic	141.203 141.204(a)-(c) Appendix A to Subpart Q of Part 141	PN	CWS & NTNCWS	Failure to issue proper Public Notification in the form, manner, and frequency required.	10/1/00 for those with direct implementation, 5/6/02 for those with primacy

SDWIS Reporting Code	Regulated Contaminant	40 CFR Citation	Violation Type	System Size & Type Affected	Violation	Initial Compliance Date
06	Inorganics listed in 141.62	141.6(c) 141.32(a) 141.201 141.204(a) & (b) 141.205(b) 141.206 Appendix A to Subpart Q of Part 141	PN	CWS & NTNCWS	Failure to send adequate, timely, and repeat public notice for failure to comply with any schedule prescribed pursuant to a variance or exemption, or timely and adequate notice after the granting of a variance or exemption.	5/4/00 for inorganics, 1/23/06 for arsenic
08	Inorganics listed in 141.62, Organics listed in 141.61	142.53 142.55 142.57 142.62(c), (f), (g) & (h) 142.307	Variance/Exemption/Other compliance	CWS & NTNCWS	Failure of a system to meet the conditions, compliance schedule (including milestones), variance, or exemption.	8/14/98 for inorganics, 1/23/06 for arsenic
72	Arsenic	141.154(b) 141.154(b)(1)	CCR	CWS	Failure of a system that detects more than 0.005 mg/L and up to and including 0.010 mg/L of arsenic to include an informational statement.	2/22/02
72	Arsenic	141.154(f)	CCR	CWS	Failure of a system that detects more than 0.010 mg/L of arsenic to include the health effects language prescribed by Appendix A to Subpart O.	2/22/02
72	Inorganics listed in 141.62, Organics listed in 141.61	141.152 141.153(c)(2) 141.153(f)(7) 141.153(g)	CCR	CWSs	Failure to provide adequate information about a variance or exemption in CCR for those systems operating under a variance or an exemption.	9/18/98 for inorganics, 1/23/06 for arsenic

II. ARSENIC AND CLARIFICATIONS TO COMPLIANCE AND NEW SOURCE CONTAMINANTS MONITORING RULE – SNC DEFINITION

Significant non-compliers (SNCs) are CWSs, NTNCWSs, and transient non-community water systems that have more serious, frequent, or persistent violations. The criteria which designate a system as a SNC vary by contaminant. Once a system is designated as a SNC, it is subject to EPA's timely and appropriate policy. SNCs that have not returned to compliance or are not addressed in a timely and appropriate manner are called Exceptions. Timeliness for SNCs is eight months after the system became a SNC. (Two months for the State to determine, and become aware of, the system's SNC status and six months in which to complete the follow-up/enforcement action.) The types of actions considered appropriate include the issuance of a formal State or federal administrative or compliance order, a civil or criminal referral to the State's Attorney General or Department of Justice, or a State bilateral compliance agreement signed by both the State and the violator. The following is the SNC definition for the Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring Rule.

A system can be designated as a SNC when it has either (1) an MCL exceedance at any sampling point, or (2) commits an M&R violation. The SNC framework is designed to assist States and EPA with prioritizing compliance efforts and providing consistent enforcement.

EPA's Office of Enforcement and Compliance Assurance (OECA) is in the process of developing new guidance to update its SNC definitions. At this time, EPA is using the following definitions to remain consistent with the Radionuclides Rule and OECA's draft guidance:

1. MCL violation:

If EPA has not established an unreasonable risk to health (URTH) level, then a system is generally characterized as a SNC if it has an analytical result twice the MCL. For arsenic, this will be 0.020 mg/L (20 ppb) based on a running annual average on or after January 23, 2006.⁵

⁵The January 23, 2006, compliance date for the revised arsenic MCL and the January 22, 2004 effective date for complying with clarifications to monitoring requirements, impact the SNC definition. From 2002 to January 22, 2004, one analytical result that is twice the MCL (2 X 0.05 mg/L or 0.100 mg/L) constitutes a SNC. On January 22, 2004, the clarifications to compliance requirements move arsenic into the standardized monitoring framework; by doing so, compliance is based on a running annual average. Therefore, from January 22, 2004 to January 23, 2006, a running annual average that exceeds 2X the MCL (2 X 0.05 mg/L or 0.100 mg/L) constitutes a SNC. After January 23, 2006, a running annual average that exceeds 2X the revised MCL (2 X 0.010 mg/L or 0.020 mg/L) constitutes a SNC.

2. Monitoring and reporting violation:

A system that monitors once a year or more frequently, is characterized as a SNC if it fails to monitor or report arsenic analytical results for two consecutive compliance periods. A system monitoring less than once a year (e.g., a ground water system monitoring once every three years), is characterized as an SNC if it fails to monitor or report arsenic analytical results for one compliance period.

III. ARSENIC RULE REPORTING GUIDANCE

EPA has developed a *State Reporting Guidance for the Arsenic Rule*. This manual includes examples and instruction on determining proper violations and violation codes for the requirements of the Rule and is included in Appendix H.

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