

The Public Notification Rule:

How Effective Is This Rule and Are Changes Needed?

Recently, I have received many calls concerning the proper procedures and protocol for issuing notices to customers under the Public Notification Rule. Most if not all of these were the result of exceeding maximum contaminant levels under the Stage 2 Disinfection Byproducts Rule. Most of this article will deal with the details of issuing such notices. But first, a few comments and observations concerning the requirements of the Public Notification Rule.

Many of the systems sending out notices for Stage 2 violations recently are consecutive systems purchasing surface water from their wholesale supplier. As such, there is very little they can do to lower the levels of trihalomethanes (THM) and/or haloacetic acids (HAA5) in their water. Some of the violations have been caused due to collecting THM and HAA5 samples during a free chlorine burnout. That is basically a communication problem between supplier and purchaser that should be easily solved. But if caused due to

treatment problems, the consecutive system cannot lower THM and/or HAA5 levels by flushing extensively or any other course of action. Consequently, I am afraid that many of these consecutive systems may be issuing public notices for Stage 2 violations indefinitely. Hopefully that is not the case. But in many cases, all it takes is one very high result during warm temperature months to cause the Locational Running Annual Average (LRAA) to exceed limits the next four quarters.

Benefit, or confusion?

Notifying customers of violations is all well and good. But if customers are receiving public notices quarter after quarter for the same violations, I think the notices will eventually be ignored. In short, customers may feel overwhelmed with so many notices that the notices become irrelevant. Based on feedback I receive from water supply operators, that may already be happening. As one operator recently told me, whenever his city is required to issue a public notice, the trash can at the local Post Office is filled to overflowing with the notices.

In addition, issuing such notices can be a financial burden for many of the very small systems. There are labor, printing and mailing costs associated with every notice that is sent out. It is not uncommon for many systems to spend \$500 or more to issue such notices. Postage alone for 200 notices is roughly \$100, not to mention the costs of printing, folding and stuffing envelopes.

History of the Public Notification Rule

The purpose of public notification is to ensure that customers will always know if there is a problem with their drinking water. Reasons for systems being required to issue public notices include:

- ◆ Alert customers if there is a serious problem with their drinking water that could pose an immediate, short-term public health risk;
- ◆ Notify customers if their drinking water does not meet specific limits for various contaminants;
- ◆ Notify customers if the water system fails to monitor the drinking water for specific, required contaminants;
- ◆ If the system has been granted either a variance or exemption from any applicable regulations.

Notifying customers about violations has always been a part of the Safe Drinking Water Act. EPA originally considered it part of public health protection and consumer right-to-know provisions. The most recent revisions requiring public notification occurred in 2000 to help improve the form, manner and timing for issuing such notices. The 2000 revisions clarified the "Tier" system for defining how serious a violation may be and the protocol and timing for issuing notices. The "Tier" system is defined as follows:

- ◆ Tier 1: notices for violations with significant potential to cause serious, adverse health effects due to **short-term exposure**. This tier usually includes violations that can cause more **acute adverse health effects** and those situations that may require issuing a boil water advisory.
- ◆ Tier 2: notices for all other violations or situations with potential to cause serious health effects. This tier usually includes violations that can cause more **long-term, chronic adverse health effects**.
- ◆ Tier 3: this is the catchall for all other violations or situations not included in Tiers 1 and 2. But it usually includes violations where the water system failed to collect samples during a specific time period.

Maybe it is time for other more effective and cheaper options to be considered when issuing public notices.

In 2012, EPA conducted a review of the Consumer Confidence Report Rule to see if electronic delivery of CCRs might be a more effective means of informing customers about the quality of their drinking water. As a result of that review, EPA now allows electronic delivery of CCRs and many water systems across the country have taken advantage of that option. Not only is there a cost savings for the water system, it may also be a more effective tool at getting water quality information out to consumers. Especially in this day and age when most people have computers, laptops, smart-phones, etc., why not take advantage of modern technology and issue not only CCRs, but also public notices electronically? Another option might be to have the local media, including newspapers, radio and television stations, either print or broadcast information concerning public notice violations. Another

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option could use public access television stations/channels that surprisingly, many small communities have. All of these options would be more cost-effective, more informative and reach a broader audience when alerting customers and others about MCL and other violations. In fact under the existing Public Notification Rule, most Tier 1 public notices are issued via the media as notification must be made quickly to customers as Tier 1 violations are those violations with significant potential to cause serious, adverse health effects due to short-term exposure. It makes sense to expand this option to allow for disseminating all public notices either electronically or via the media.

Tier 1 Public Notices

In situations where human health may be immediately impacted due to impaired water quality, water systems are required to issue a Tier 1 public notice within 24-hours. In such cases, using a mailing is usually not practical, as information cannot be provided in a timely manner. Consequently, water systems must use the media, including newspapers, radio and television, to notify the public. Notices can also be personally delivered to each customer, but this option is usually impractical unless a very, very small system. The 24-hour limit starts once the water system is officially notified of the violation. Such water systems are also required to consult with KDHE within 24 hours. Systems can contact either the Bureau of Water in Topeka or their respective KDHE District Office. Failure to consult with KDHE can be a violation of the Public Notification Rule. The purpose of such consultations is to review all requirements associated with issuing the public notice and to discuss how to return the system's water to compliance with all applicable

What are the Tiers?

- ❖ **Tier 1:** notices for violations that can cause potential adverse health effects due to short-term exposure. These usually include more acute adverse health effects
- ❖ **Tier 2:** notices for violations that can cause potential adverse health effects due to long-term exposure. These usually include more chronic adverse health effects
- ❖ **Tier 3:** notices for all other violations not included in Tiers 1 and 2. Usually includes violations for failing to monitor for a specific contaminant

Must provide proof to KDHE, within 10 days of issuance that the notice has been issued to all customers. Must provide:

1. A copy of the notice issued to your customers
2. A completed Certificate of Delivery form
3. Your system is not compliant until both documents have been submitted to KDHE



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regulations and limits. The following situations require Tier 1 notices:

- ✓ Fecal coliform MCL violations under the Total Coliform Rule or failure to test for fecal coliform after having a positive total coliform test.
- ✓ Nitrate MCL violations (greater than 10 mg/L) or failure to collect nitrate confirmation samples.
- ✓ Exceeding the maximum allowed turbidity level resulting in either an MCL or treatment technique violation. KDHE has some discretion when deciding whether

to require the water system to issue a Tier 1 notice in this situation.

- ✓ Waterborne disease outbreaks or other waterborne emergencies
- ✓ All other violations or situations determined by KDHE.

Tier 2 Public Notices

Tier 2 notices deal primarily with violations that can have adverse health impacts over a longer period of time, such as a lifetime of drinking such water. For example, those notices required for exceeding the THM or HAA5 MCLs under the Stage 2 Rule, are considered Tier 2 notices. Tier 2

notices are required to be issued as soon as possible, but within 30 days. If the violation continues, repeat notices are then required on a quarterly basis until resolved. Tier 2 notices can be issued via a direct mailing to each customer, but KDHE has discretion in permitting other delivery methods. Systems are also required to notify all persons served, not just customers. For example, in the case of an apartment complex that does not have separate water billings for each rental unit, the water system is required to not only notify the owner, but also all renters within the apartment complex. The following situations require Tier 2 public notices:

- ✓ All other MCL and treatment technique (TT) violations not identified as Tier 1 notices, including:
 - ✓ Exceeding any chemical MCLs, including THM and HAA5 limits
 - ✓ Exceeding any radiological MCLs
 - ✓ Exceeding the fluoride MCL of 4.0 mg/L
 - ✓ Failure to install corrosion control treatment system under the Lead and Copper Rule
 - ✓ Any monitoring or testing procedure violations, when KDHE decides to require a Tier 2 notice rather than a Tier 3 notice
 - ✓ Failure to comply with variances or exemptions if such has been granted. Variances allow eligible systems to provide drinking water that does not meet primary standards even though the system has installed specific treatment technology attempting to meet those standards. Exemptions allow eligible systems additional time to achieve compliance with standards and/or other regulations, while continuing to provide acceptable levels of protection. KDHE issues very few of these.

Tier 3 Public Notices

Tier 3 notices mostly include violations for having failed to monitor. For example, should the water system's operator forget to collect bacteriological samples or VOC samples during a

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specific time period, those are Tier 3 violations. While failing to sample does not directly affect the quality of water delivery to customers, sufficient sampling has not been conducted to assure there are no problems. Tier 3 notices must be issued with 12 months of the system being informed of the violation and then repeated annually for unresolved violations. If a water system has several Tier 3 violations, they can be combined into a single notice. And if the timing is correct, water systems can use their yearly Consumer Confidence Report to issue Tier 3 notices. Tier 3 notices are typically issued using the mail or direct delivery. Again, notices must be given not just to customers, but all individuals who drink the water. The following situations require that a Tier 3 notice be issued:

- ✓ Failing to monitor as required by each specific rule
- ✓ Exceeding the fluoride Secondary Maximum Contaminant Level of 2.0 mg/L
- ✓ If operating under a variance or exemption.

Required contents of all public notices

Whenever a water system has a violation that requires issuing a public notice, KDHE provides both a letter of explanation and an example public notice that can be used to notify customers. In the example public notices provided by KDHE, there typically are a few blanks that must be filled in such as what action is being taken to solve the noncompliance issue and whom to contact if the customer has additional questions. But otherwise, it can be used as written for the system's public notice. Also, if you have questions about wording of public notices, I would suggest checking the KDHE Web site under the Public Water Supply Section, "Survival Guides for Drinking Water Rules and Regulations." These guides are provided based on specific rules and are very helpful. They can be found at: <http://www.kdheks.gov/pws/survival.html>

All notices must include a clear and easily understood explanation of the violation or situation.

The Public Notification Rule requires that all notices require specific elements and in some cases, specific language about health effects. All notices must include a clear and easily understood explanation of the violation or situation. The following ten elements must be included in all notices:

- ✓ A description of the violation or situation including the name of the contaminant of concern and the applicable level of that contaminant;
- ✓ When the violation or situation occurred;
- ✓ Any potential adverse health effects caused by the violation or situation, using standard, required language provided in the Public Notification Rule;
- ✓ Identification of the population at risk if the water is consumed, including subpopulations particularly vulnerable;
- ✓ Whether alternative water supplies should be used;
- ✓ What actions consumers should take, including when to seek medical help (if known);
- ✓ What the water system is doing to correct the violation or situation;
- ✓ When the water system expects to return to compliance;
- ✓ Contact information for the water system including the name, address and phone number of a contact (owner, operator, clerk, etc.) that can provide additional information concerning the violation or situation;
- ✓ A statement encouraging recipients of the notice to distribute the notice to other persons served, but who may not have received a copy of

the public notice. Again, the Public Notification Rule provides standard language that must be used for this element.

Water systems are free to add additional comments in the notice if desired. However, those comments cannot nullify the original intent of the notice.

Required reporting and recordkeeping

Finally, once the public notice has been issued, the water system is required to notify KDHE about the notice within ten days. Typically, water systems are required to submit a copy of the notice that was issued to customers plus a completed Certificate of Delivery. The Certificate of Delivery basically lets KDHE know how the notice was distributed (mailing, directly delivery, posting, etc.) and on what date. A sample copy of the Certificate of Delivery form can be found on the KDHE Web site under the Public Notification Rule Survival Guide. All such documentation concerning issued public notices must be kept on file for three years.

I realize this rule requires a lot of attention to detail. It also has flaws, but still provides information to those customers concerned with the quality of their drinking water. Hopefully the rule can be revised in the near future to make notices more effect and less expensive and complicated for all water systems. If you ever have questions or comments concerning the Public Notification Rule, please feel free to contact me at jeff@krwa.net or 913-850-8822.

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