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Texas Commission on Environmental Quality

Protecting Texas by Reducing and Preventing Pollution

June 10, 2011

TO: Drinking Water Advisory Work Group (DWAAG)

Re: **EPA's New Enforcement Response Policy for the Public Water System Supervision (PWSS) Program under the Safe Drinking Water Act and Implementation of the Enforcement Targeting Tool**

In January 2011, the United States Environmental Protection Agency (EPA) implemented a new compliance strategy under the Safe Drinking Water Act (SDWA) for public water systems. As part of this effort, EPA is requiring the Texas Commission on Environmental Quality (TCEQ) to adopt the EPA's new approach for enforcement targeting. It is designed to identify public water systems with violations that rise to the level of significant non-compliance by focusing on those systems with health-based violations and those that show a history of violations across multiple rules. Previously, the EPA used the Significant Non-complier (SNC) status to target enforcement efforts and reflected a system's failure to comply with individual drinking water rules.

The new approach includes a revised Enforcement Response Policy (ERP). The ERP will supersede TCEQ's existing guidance for escalating responses to violations for public water systems. This new system-based approach uses an Enforcement Targeting Tool (ETT) that enables the prioritization of public water systems by assigning each violation a "weight" or number of points based on the assigned threat to public health. Points for each violation at a public water system are added together to provide a total score for that public water system.

The ETT will evaluate and rank public water systems' non-compliance across all drinking water rules. The ETT consists of a formula to rank public water systems based on the severity of the violations and the number of years since the first unaddressed violation. The formula will incorporate all open-ended violations and any other violations that have occurred in the past five years. EPA notified TCEQ that any unaddressed violations with a score greater than or equal to eleven points will require that TCEQ take formal enforcement action within six months of the ranking. As a result, EPA's new enforcement policy accelerates enforcement timeframes. The formula only considers violations that are federally-regulated contaminants. State specific violations are not included in determining the system's ETT score. In addition, it will not include violations that have returned to compliance or that are covered under a formal enforcement action and are deemed on the "path to compliance."

The "path to compliance" is the status of a public water system that has been placed under an enforceable action to return it to compliance. Once a public water system is identified as a priority system for an enforcement response, a return to compliance or an appropriate formal enforcement action will be required within six months (two calendar quarters) to be considered "timely." If compliance is not achieved, EPA will expect a formal enforceable action to return such systems to compliance.

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Currently, Texas has primary enforcement responsibility, and EPA retains independent enforcement authority under the SDWA. In some cases, based on the new policy, EPA may initiate formal enforcement action against a public water system to compel the system to return to compliance in the shortest time possible.

The majority of enforcement actions used by TCEQ to resolve violations are formal agreements in the form of agreed orders and informal agreements in the form of compliance agreements (CAs). As indicated, the ERP requires a "formal" enforcement action if the system cannot be returned to compliance within six months. At this time, EPA does not consider Texas' CAs to be formal enforcement actions. Under the ERP, EPA may initiate its own formal enforcement action against a public water system that has negotiated a CA in good faith with the TCEQ. The TCEQ is vigorously working with EPA to recognize that Texas carries out both formal and informal enforcement and compliance assistance activities and acknowledge CAs as formal enforcement actions.

In addition, EPA has instructed TCEQ to conduct a review of the public water systems that have unaddressed violations based upon the new ERP. EPA has notified TCEQ that they will prioritize their enforcement efforts on the public water systems for schools, day-care centers, and the systems with the highest ranking ETT scores. TCEQ did not initiate this new enforcement process, but we are responding to this new EPA initiative. TCEQ is adding new resources to help with EPA's new enforcement process.

The TCEQ appreciates your assistance in this matter. Additional information regarding the ERP and related issues is available at TCEQ's website <http://tceq.texas.gov/goto/erp/> as well as EPA's website http://www.epa.gov/compliance/resources/policies/civil/sdwa/drinking_water_erp_2009.pdf

If you have questions concerning the ERP or ETT, please contact John Schildwachter at 512/239-2355 or PDWS@tceq.texas.gov. You may also access our database Texas Drinking Water Watch to obtain information concerning compliance activities and related data used by TCEQ at <http://dww.tceq.texas.gov/DWW/>.

Sincerely,



Linda Brookins, Director
Water Supply Division
Texas Commission on Environmental Quality

cc: TCEQ Randy Ammons – Region 2
TCEQ Ramiro Garcia – MC-172
TCEQ Donna Phillips – Region 12
TCEQ Brian Christian – MC 112
TCEQ Bryan Sinclair – MC 219
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