



DEQ POLICY STATEMENT PS22-02

DRINKING WATER BUREAU NOTICE OF VIOLATION PENALTY

PURPOSE

This policy provides internal guidance to aid DEQ enforcement personnel in assessing appropriate penalties and supersedes the Drinking Water Penalty Policy, DW-03-02 (EDMS record number 2013ABI110). This policy updates and modifies the structure of penalties assessed for violations of the Idaho Rules for Public Drinking Water Systems, IDAPA 58.01.08. Specifically, the intent of this policy is to provide an updated penalty structure that addresses more severe violations by increasing the monetary penalties for violations that pose a greater potential for serious health risks.

BACKGROUND

On August 30, 2001, based on a directive to collect penalties closer to the assessed amount and to consider the ability to pay, the Drinking Water Bureau revised their penalty assessment practice by Memorandum. This practice assessed a flat penalty of \$500 plus any avoided analytical costs for systems under 10,000 population.

On May 19, 2003, the penalty policy was amended to provide a consistent framework to calculate penalties, assess penalties closer to the collected amount, provide an approach that considers the ability to pay and reduce the time spent on penalty negotiations versus time spent to discuss correction of the underlying violations.

REVISED PENALTY POLICY

The Drinking Water Protection and Finance Division management and staff amended the administrative penalty policy to update the penalty structure and address more severe violations by increasing the monetary penalties for violations that pose a greater potential for serious health risks and identifying violations that meet this greater public health risk profile. These violations include, but are not limited to, the failure to have a licensed operator, the failure to correct significant deficiencies, and the failure to provide Tier 1 (24 hour) public notification for violations with the potential to have serious adverse effects on human health. No other substantive changes were made to the penalty policy.

Violations associated with engineering requirements will continue to use the Water Quality Administrative Penalty Guidance (EDMS record number 2013AFN12).

STATEMENT OF POLICY

Under this policy, administrative penalties shall be assessed per violation and shall be based on the size of the public water system. For a Notice of Violation (NOV), Idaho Code § 39-108(3)(a)(i) specifies that the NOV shall state the amount of civil penalty claimed for each violation. This policy provides a consistent approach to the assessment of each penalty, taking into account the severity of the violation, a system's ability to pay, and a violator's compliance history. Revisions to the penalty amounts are intended to address more severe violations. Please refer to Appendix A of this policy for a detailed description of the penalty assessment structure and associated examples.

RESPONSIBILITY

DEQ's Drinking Water Bureau Chief is responsible for maintaining this policy.

IMPLEMENTATION

This policy is effective immediately and will remain in effect unless amended, replaced, or rescinded.

Dated this 24 day of May, 2022



Jess Byrne, Director

Appendix A to DEQ Policy Statement PS22-02

Drinking Water Bureau Notice of Violation – Penalty Assessment Structure

Revision – October 2021

A. Penalty Matrices

Penalties are assessed per violation based on the violation level, system size, and a violator's compliance history. Idaho Code § 39-108(3)(a)(i) states that the notice of violation (NOV) shall state the amount of civil penalty claimed for each violation. Idaho Code § 39-108(5)(a)(iii) provides the maximum amount of an individual violation or per day for continuing violations. These matrices assist staff with determining the amount of civil penalty per violation while not exceeding the maximum penalty amount allowed under Idaho Code. For monitoring violations, the avoided analytical costs are added. The analytical costs are based upon the Fees Charged by the State Laboratory, IDAPA 16.02.25, with the Department of Health and Welfare. For the failure to pay annual drinking water fees, the amount of delinquent fees are added to the corresponding Level 1 penalty matrix.

For the purposes of this policy, a repeat offender is any public drinking water system owner or operator that has either received an NOV or has been under formal enforcement such as a Consent Order within five years prior to the date of the current referral for enforcement.

Level 1 Violation: Any violation of IDAPA 58.01.08 that is not specifically identified as a Level 2 violation. The Drinking Water Protection and Finance Division Administrator may elevate Level 1 violation(s) to a Level 2 violation if it is determined to represent a significant risk to health and/or safety. Such determinations shall be made on a case-by-case basis.

Level 2 Violation: Any violation of IDAPA 58.01.08 identified in Table 3.

Table 1. Level 1 Violation Penalty Matrix

Population Served	First Offender Penalty	Repeat Offender Penalty
<500	\$50	\$100
500 to 3,300	\$200	\$400
3,301 to 10,000	\$500	\$1,000
>10,000	\$1,000	\$2,000

Table 2. Level 2 Violation Penalty Matrix

Population Served	First Offender Penalty	Repeat Offender Penalty
<500	\$500	\$1,000
500 to 3,300	\$1,000	\$2,000
3,301 to 10,000	\$2,500	\$5,000
>10,000	\$5,000	\$10,000

Table 3. Level 2 Violations¹

National Primary Drinking Water Regulations	Violation Code ²	Contaminant Code ³	Violation Type	Description
Nitrate	01	1038, 1040, 1041	MCL	A system that has any one sample result which causes the original sample to immediately exceed the MCL.
RTCR	1A	8000	MCL	E. coli MCL. 1) EC+ routine sample with insufficient repeat sampling, 2) Combination of EC+ and TC+ between the routine and repeat samples, or 3) TC+ routine and TC+ repeat samples not tested for E. coli by lab.
Nitrate	02	1040 or 1041	MCL	A system with an average of an original sample and a confirmation sample that exceeds the MCL(s) for nitrate or nitrite.
RTCR	2B	8000	TT	Level 2 Assessment: 1) Failure to complete Level 2 Assessment or complete form, or 2) Inadequate Level 2 Assessment or insufficient content of Assessment form, or 3) Level 2 Assessor not state-approved.
RTCR	2C	8000	TT	Corrective Actions/Expedited Actions: 1) Failure to complete corrective actions within the required timeframe when a Level 1 or Level 2 assessment is triggered, 2) Failure to comply with state-required expedited/additional actions when an E. coli MCL violation happens
RTCR	3C	8000	Monitoring	Total Coliform Samples (triggered by turbidity exceedance) Monitoring. Failure to collect extra required total coliform samples due to turbidity exceedance
GWR	19	3002, 3014, 3028	M&R	A system that fails to conduct assessment source water monitoring required by the State according to State-determined requirements for such monitoring. [141.402(b)]
GWR	31	0700	M&R	A system serving greater than 3,300 people that fails to continuously monitor or report the residual disinfectant concentration or conduct grab sampling every 4 hours until continuous monitoring equipment is returned to service, using approved analytical methods [141.403(b)(3)(i)(A)], OR A system serving 3,300 or fewer people that fails to monitor or report the residual disinfectant concentration using the approved analytical methods at a State-approved sampling location [141.403(b)(3)(i)(B)], OR A system that uses membrane filtration and fails to monitor or report the membrane filtration process in accordance with all State-specified monitoring requirements [141.403(b)(3)(ii)], OR A system that places a new ground water source into service after November 30, 2009 is notified of a TC+ in the distribution system, does not notify the state that it provides 4 log treatment, and

National Primary Drinking Water Regulations	Violation Code ²	Contaminant Code ³	Violation Type	Description
				fails to conduct compliance monitoring within 30 days of placing the source in service [141.403(b)(2)].
GWR	34	3002, 3014, 3028	M&R	<p>A system that is not approved to provide 4-log treatment viruses before or at the first customer and fails to conduct triggered source water monitoring [141.402(a)],</p> <p>OR</p> <p>A system is notified of a total coliform positive sample collected under TCR that is not invalidated by the State and fails to conduct triggered source water monitoring within 24 hours of notification at each of the groundwater sources in use at the time the total coliform sample was collected [141.402(a)(2)],</p> <p>OR</p> <p>A system that is not referred to corrective action for a fecal indicator positive source water sample collected following a total coliform positive source water sample and fails to collect five additional source water samples for analysis from the same source within 24 hours of being notified of the fecal indicator-positive sample [141.402(a)(3)],</p> <p>OR</p> <p>A system that fails to collect a standard sample volume of at least 100 mL for fecal indicator analysis regardless of the fecal indicator or analytical method used [141.402(c)(1)(a)],</p> <p>OR</p> <p>A system that fails to comply with one of the approved analytical methods for ground water source sample fecal indicator analysis [141.402(c)(2)],</p> <p>OR</p> <p>A system that fails to collect another ground water source sample and analyze the new sample for the same fecal indicator according to the approved analytical methods for ground water source sample fecal indicator analysis within 24 hours of the initial sample having been invalidated by the State and analyze it [141.402(d)(2)],</p> <p>OR</p> <p>A system that fails to collect a ground water source sample at a location prior to any treatment of the ground water source unless the State approves a sampling location after treatment [141.402(e)(1)],</p> <p>OR</p> <p>A system with a new source placed into service after November 30, 2009 that fails to conduct State-required assessment source water monitoring OR fails to begin State-required monitoring before the ground water source is used to provide water to the public [141.402(f)],</p>

National Primary Drinking Water Regulations	Violation Code ²	Contaminant Code ³	Violation Type	Description
				<p>OR</p> <p>A system with discontinued 4 log treatment that fails to conduct triggered source water monitoring [141.403(c)],</p> <p>OR</p> <p>A system that fails to notify the State that it provides 4-log treatment of viruses before or at the first customer (prior to the December 1, 2009), fails to begin compliance monitoring, and does not collect a triggered source water sample after being notified of a positive Total Coliform sample collected in the distribution system [141.403(b)(1)],</p> <p>OR</p> <p>A wholesale system that receives notice from a consecutive system it serves of a total coliform positive sample result and fails to collect a sample from its ground water source(s) within 24 hours of being notified and analyze it for a fecal indicator [141.402(a)(4)(ii)(A)].</p>
GWR	41	0700	TT	<p>A system that uses membrane filtration and fails to operate the membrane filtration in accordance with all State-specified compliance requirements. [141.403(b)(3)(ii)]</p> <p>OR</p> <p>A system that uses a State-approved alternative treatment to provide 4 log treatment and fails to:</p> <ol style="list-style-type: none"> 1) monitor the alternative treatment in accordance with all State-specified monitoring requirements; [141.403(b)(3)(iii)(A)], AND 2) operate the alternative treatment in accordance with all compliance requirements that the State determines to be necessary to achieve at least 4 log treatment of viruses. [141.403(b)(3)(iii)(B)]
IESWTR / LT1	41	0300	TT	<p>Failure to install and properly operate water treatment processes which reliably achieve: (1) At least 99 percent (2-log) removal of Cryptosporidium. [141.170(a)(1) and 141.500(a)]</p>
LT2	41	0800	TT	<p>An unfiltered system using chlorine dioxide or ozone that fails to achieve required Cryptosporidium inactivation required on more than one day in the calendar month. [141.712(b) & 141.712(c)(1)]</p> <p>OR</p> <p>An unfiltered system using UV light that fails to achieve required Cryptosporidium inactivation for at least 95% of the water treated that month. [141.712(b) & 141.712(c)(2)]</p> <p>OR</p> <p>Following completion of initial round of monitoring, a system that fails to maintain the level of treatment necessary for bin classification. [141.711]</p>

National Primary Drinking Water Regulations	Violation Code ²	Contaminant Code ³	Violation Type	Description
SWTR	41	0200	TT	<p>A system that does not meet the residual disinfectant concentration level for longer than the specified period of time. [141.72(a)(3), 141.72(a)(4), 141.72(b)(2) and 141.72(b)(3)]</p> <p>OR</p> <p>A system using slow sand or diatomaceous earth filtration that fails to ensure the turbidity level of representative samples of a system's filtered water be less than or equal to 1 NTU in at least 95% of the measurements taken each month. [141.73(b)(1) and 141.73(c)(1)]</p> <p>OR</p> <p>An unfiltered system that fails to have (i) redundant components to ensure continuous disinfectant application or (ii) automatic shut off whenever the residual disinfectant concentration is less than 0.2 mg/L. [141.72 (a) (2)]</p> <p>OR</p> <p>A system using slow sand or diatomaceous earth filtration that exceeds 5 NTU at any time in representative samples of the system's filtered water. [141.73(b)(2) & 141.73(c)(2)]</p>
LT2	42	0800	TT	<p>A filtered system that fails to achieve treatment credit in any month by meeting the requirements in 141.716 through 141.720 for microbial toolbox options at least equal to the level of treatment required. [141.711(c)]</p> <p>OR</p> <p>Following completion of initial round of monitoring, a filtered system that fails to meet treatment requirements specified at 141.711 by the schedule in 141.713(c). [141.713(a)]</p> <p>OR</p> <p>Following completion of second round of monitoring, a filtered system that fails to meet treatment requirements specified at 141.711 by the schedule specified by the State. [141.713(d)]</p> <p>OR</p> <p>Following completion of initial round of monitoring, an unfiltered system that fails to meet Cryptosporidium inactivation requirements specified at 141.712(b)-(d) by the schedule in 141.713(c). [141.713(b)]</p> <p>OR</p> <p>Following completion of second round of monitoring, an unfiltered system whose mean Cryptosporidium level has changed and the PWS fails to meet the required level of Cryptosporidium treatment specified at 141.712 by the schedule specified by the State. [141.713(e)]</p>

National Primary Drinking Water Regulations	Violation Code ²	Contaminant Code ³	Violation Type	Description
SWTR	42	0200	TT	An unfiltered system that fails to meet any one of the criteria in 141.71(a)&(b) and/or which the State has determined that filtration is required and the system fails to install filtration by the applicable deadline. [141.71(c)(1)] OR A system not required to install filtration that has a representative sample of the source water immediately prior to the first or only point of disinfection application exceeding 5 NTU (and PWS does not meet exception criteria outlined in 141.71(a)(2)) or has been identified as the source of a waterborne disease outbreak. [141.71(c)(2)].
GWR	42	0700	TT	Failure to install treatment in response to a fecal indicator positive source water sample, including failure to satisfy Primacy Agency specified schedule. [141.404(b) and 141.404(a)(6)(iv)]
IESWTR / LT1	43	0300	TT	A conventional or direct filtration system that exceeds 1 NTU in representative samples of a system's filtered water. [141.173(a)(2) and 141.551(b)(1)] OR A system using alternative technology filtration that exceeds the standard set by the State (not to exceed 5 NTU) in representative samples of the system's filtered water. [141.173(b) and 141.551(b)(2)]
IESWTR / LT1	44	0300	TT	A conventional or direct filtration system that fails to meet the turbidity requirements in 141.173(a) and 141.551(a)(1) (must be less than or equal to 0.3 NTU in at least 95% of the measurements taken each month). [141.73(a)(3), 141.173(a), 141.550 - 141.553, 141.551(a)(1)] OR A system serving using an alternative filtration technology that fails to ensure the turbidity level of representative samples of a system's filtered water be less than or equal to the standard set by the State (not to exceed 1 NTU) in at least 95% of the measurements taken each month. [141.173(b) and 141.551(a)(2)]
GWR	45	0700	TT	A system with a significant deficiency that after 120 days of receiving written notification of the significant deficiency from the State fails to: 1) complete corrective action in accordance with any applicable State plan review processes or other State guidance and direction, or 2) be in compliance with a State approved corrective action plan and schedule.
Stage 1	46	2920	TT	A system that is required to meet Step 1 TOC removals and the value calculated under 141.135(c)(1)(iv) is less than 1.00. [141.133(d)]
GWR	48	0700	TT	A system with a fecal indicator positive sample (that has not been invalidated by the State) and after 120 days of receiving notice of the fecal indicator positive sample has failed to:

National Primary Drinking Water Regulations	Violation Code ²	Contaminant Code ³	Violation Type	Description
				1) complete corrective action in accordance with any applicable State plan review processes or other State guidance and direction. [141.404(b)(1)], or 2) be in compliance with a State approved corrective action plan and schedule. [141.404(b)(2)]
LCR	57	5000	TT	For an Optimal Corrosion Control Treatment (OCCT) Study/Recommendation violation, failure to meet any of the following: 1) Submit an OCCT recommendation on time in accordance with 141.82(a) and 141.90(c)(2); 2) Submit an “acceptable” study on time in accordance with 141.82(c) and 141.90(c)(3); or 3) Provide additional information needed by the State to make an OCCT determination in accordance with 141.82(d)(2). [141.82(a), (c) & (d)(2); & 141.90(c)(2), (c)(3)] OR For a Source Water Treatment (SOWT) Recommendation violation, failure to submit a SOWT recommendation no later than 180 days after the end of the monitoring period during which the lead or copper action level was exceeded. [141.83(a)(1) & 141.90(d)(1)]
LCR	58	5000	TT	For an OCCT Installation violation, failure to meet any of the following: have the State-designated treatment properly installed and operating in accordance with 141.82(e); submit a certification of proper installation and operation in accordance with 141.90(c)(4), or demonstrate that OCCT already exists. [141.81(b)(1)-(3), 141.82(e) and 141.90(c)(1)] OR Failure to properly install and operate source water treatment in accordance with 141.83(b)(3) & (5) and submit certification to the State of proper SOWT installation and operation. [141.83(b)(3) & (5), & 141.90(d)(2)] OR A system which exceeds the lead or copper action level and fails to implement applicable source water treatment requirements specified in 141.83. [141.80(e) and 141.83] OR Failure by a system with a full or partial monitoring waiver under 141.86(g) to notify the State and get State approval of an upcoming long-term change in treatment or addition of a new source before implementing the change. [141.86(g)(4)(iii) & 141.90(a)(3)]
LCR	59	5000	TT	Failure to: Maintain Optimal Water Quality Parameter (OWQP) minimum or ranges in accordance with 141.82(g). Also, If you adopted the OWQP compliance method from the LCR Minor Revisions, the violation definition also includes failure to: Meet daily values for more than 9 days in a 6-month monitoring period. [141.82(g)]

National Primary Drinking Water Regulations	Violation Code ²	Contaminant Code ³	Violation Type	Description
LCR	65	5000	TT	Failure to meet any of the following public education provisions: 1) include all applicable content requirements in 40 CFR 141.85(a); 2) meet the delivery requirements of 40 CFR 141.85(b); or 3) report all required public education information to the State on time,
PN	75	7500	Other	A system required to provide Tier 1 public notice that fails to distribute a Tier 1 notice as soon as practical but no later than 24 hours after the system learns of the violation.
				A system that fails to notify the public via Tier 1 PN after failing to collect a valid check, repeat, or confirmation sample(s) within 24 hours.
PN	76	7500	Other	A system required to provide Tier 1 public notice that fails to do so within 24 hours of learning of the violation or without providing a notice in form and manner reasonably calculated to reach all persons served.
				A system required to provide Tier 1 public notice that fails to comply with additional public notification requirements that are established as a result of consulting with the primacy agency.
—	OP	—	TT	Failure of a community or nontransient noncommunity public drinking water systems or any surface water system to place the direct supervision of their drinking water system, including each treatment facility and distribution system, under the responsible charge of a properly licensed operator.

1: EC+ - E. coli positive; GWR – Ground Water Rule; IESWTR/LT1—Interim Enhanced Surface Water Treatment Rule/Long-term 1 Surface Water Treatment Rule; LCR – Lead and Copper Rule; LT2—Long-term 2 Surface Water Treatment Rule; M&R—Monitoring and Reporting; MCL – Maximum Contaminant Level; OP—Operator; PN – Public Notification Rule; ; RTCR-- Revised Total Coliform Rule; Stage 1—Stage 1 Disinfection Byproduct Rule; SWTR—Surface Water Treatment Rule; TC+ - Total Coliform positive; TCR—Total Coliform Rule; TOC—Total Organic Carbon; TT – Treatment Technique

2 – Violation Code is a number that identifies the specific violation within DEQ’s Safe Drinking Water Information System database

3 – Contaminant Code identifies the specific contaminant within DEQ’s Safe Drinking Water Information System database

B. Examples of Penalty Matrix Use

Example 1: A non-transient non-community system with 10 connections serving 75 people is referred for the following violations: lead/copper initial tap sample missed monitoring from the prior year, missed nitrate monitoring for the previous year, one Revised Total Coliform Rule monitoring violation in the past year, failure to provide a copy of the Tier 3 public notification and certification for both public notifications that should have been issued for the monitoring violations from previous years. The system does not have a certified operator, failed to correct three significant deficiencies within 120 days (or in accordance with an approved schedule), and did not submit their annual fees for the past two years. The system has not had a Compliance Agreement Schedule, Notice of Violation, or Consent Order in the past five years. See Table 4 for penalty calculations associated with this example.

Example 2: A community water system with 800 connections serving 2,000 people is referred for the following violations (same as example #1): lead/copper initial tap sample monitoring violation from the previous year, nitrate monitoring violation from the previous year, one Revised Total Coliform Rule monitoring violation in the past year, failure to provide a copy of the Tier 3 public notification and certification for both public notifications that should have been issued for the monitoring violations from previous years. The system does not have a certified operator, failed to correct three significant deficiencies within 120 days (or in accordance with an approved schedule), and did not submit their annual fees for the past two years. The system has not had a Compliance Agreement Schedule, Notice of Violation, or Consent Order in the past five years. See Table 4 for penalty calculations associated with this example.

Example 3: A community water system with 2,000 connections serving 5,000 people is referred for the following violations (same as example #1): lead/copper initial tap sample monitoring violation from the previous year, nitrate monitoring violation from the previous year, one Revised Total Coliform Rule failure to monitor violation within the past year, failure to provide a copy of the Tier 3 public notification and certification for both public notifications that should have been issued for the monitoring violations from previous years. The system does not have a certified operator, failed to correct three significant deficiencies within 120 days (or in accordance with an approved schedule), and did not submit their annual fees for the past two years. The system has not had a Compliance Agreement Schedule, Notice of Violation, or Consent Order in the past five years. See Table 4 for penalty calculations associated with this example.

Example 4: The same system in example #1; however, this system was issued a Notice of Violation within the past five years. The violations are the same as in example #1, but the Repeat Offender Penalty now applies. See Table 4 for penalty calculations associated with this example.

Table 4. Penalties associated with the examples of penalty matrix use¹.

Violation Type	Example 1 <500 people	Example 2 >500 and <3,300 people	Example 3 >3,300 and <10,000 people	Example 4 <500 people and repeat offender
Pb and Cu Initial Tap (\$9.50 /ea Pb, \$9.50 /ea Cu)	\$145	\$295	\$595	\$195
NO ₃ FTM (\$19)	\$69	\$219	\$519	\$119
Public Notification for Pb/Cu FTM	\$50	\$200	\$500	\$100
Public Notification for Nitrate FTM	\$50	\$200	\$500	\$100
RTCR FTM (\$18)	\$68	\$218	\$518	\$118
Operator Certification	\$500	\$1,000	\$2,500	\$1,000
Significant Deficiencies (3)	\$1,500	\$3,000	\$7,500	\$3,000
Missed Fees (+violation)	\$300	\$6,800	\$17,000	\$400
Total:	\$2,631	\$11,731	\$29,631	\$5,031

Notes: Pb – lead; Cu – copper; NO₃ – nitrate; RTCR – revised total coliform rule; FTM – failure to monitor

1 – Lab analysis prices are subject to change, these examples are based on prices at the time of last update and may not be reflective of the current prices used to calculate penalties for enforcement actions taken after this appendix was last updated.