

November 7, 2022

State Water Resources Control Board

NOTICE OF REGULATORY REQUIREMENTS FOR REPORTING DRINKING WATER MONITORING SAMPLE RESULTS

Advisory for California Public Water Systems and California Accredited Laboratories

BACKGROUND

The Division of Drinking Water (Division) has learned of instances where laboratories and public water systems (PWSs) have failed to comply with reporting requirements of the California Safe Drinking Water Act (SDWA). Specifically, the Division is aware of instances where: (1) PWS personnel directed laboratories to not report the results of compliance samples to the Division; (2) laboratories and PWSs failed to report violations of maximum contaminant levels (MCLs) for acute contaminants to the Division in a timely manner; and (3) PWS representatives and drinking water operators directed laboratories to report results only after reviewing the data days or weeks after the laboratory performed a test.

Laboratories and PWSs are required by law to report the results of monitoring samples and MCL violations in a timely manner. Furthermore, laboratories, PWSs, and system operators are required by law to be truthful and accurate in their reporting. Failure to do so could result in consumption of contaminated water for an extended period, endangering public health. It may also result in an enforcement action. This advisory provides information about the regulatory reporting requirements and the possible consequences for failure to timely report sample analyses to the Division.

Monitoring Results Must Be Reported to the Division

The SDWA and its implementing regulations require PWSs to collect and submit drinking water samples to accredited laboratories to be tested for required contaminants. (Health & Saf. Code, § 116385.) Specifically, the regulations state that “results of *all sample* analyses” must be reported no later than 10 days after the end of the calendar month the analyses were conducted. (Cal. Code Regs., title 22, § 64469, subd. (a).) PWSs may not choose which sample results collected for SDWA compliance are reported to the Division. Further, they may not direct laboratories to forgo reporting results to the Division or only report results to the PWS for required regulatory samples. The regulations also require laboratories to report results to the Division no later than 10

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days after the end of the calendar month the analysis was conducted. (Cal. Code Regs., title 22, § 64814.00, subd. (k).) Therefore, laboratories may not report required regulatory sample results only to PWSs. Laboratories must have procedures in place to ensure that they maintain “accurate records” of laboratory activities including “sample receipt, sample preparation, or data verification, and inter-laboratory transfers of samples and/or extracts.” (Cal. Code Regs., title 22, § 64814.00, subd. (n).) Laboratories may not alter the designation of a regulatory sample submitted for reporting in compliance with the SDWA.

Laboratories, PWSs, and System Operators Have Reporting and Subsequent Resampling Regulatory Requirements for Various Acute Contaminants

i. Laboratory Reporting Requirements

Laboratories must notify a PWS’s designated contact within 24 hours of confirmation of the following acute contaminants in a sample: total coliform, fecal coliform, and *E. coli*; the exceedance of the MCL for nitrate; or the exceedance of the chlorite MCL at the entry point to the distribution system. (Cal. Code Regs., title 22, §§ 64814.00, sub. (c)(1), 64432.1.) If a laboratory cannot make direct contact with a PWS’s designated contact within 24 hours, it must notify the Division. (Cal. Code Regs., title 22, §§ 64814.00, sub. (d), 64432.1.)

Laboratories must notify a PWS’s designated contact within 48 hours of confirmation of the following acute contaminants in a sample: exceedance of the perchlorate or chlorite MCL.¹ (Cal. Code Regs., title 22, §§ 64814.00, sub. (c)(2), 64537, subd. (c).) If a laboratory cannot make direct contact with a PWS’s designated contact within 48 hours, it must notify the Division. (Cal. Code Regs., title 22, §§ 64814.00, sub. (d), 64537, subd. (c).)

Laboratories must provide timely notification in order for the PWS to notify the public of acute contaminants in drinking water.

ii. System Reporting Requirements

PWSs must notify the public within 24 hours of receiving notice from a laboratory of a violation of the MCL for *E. coli*, nitrate, nitrite, nitrate plus nitrite, or chlorite MCL.² (Cal. Code Regs., title 22, § 64463.1.) PWSs also have the following reporting requirements:

- If a PWS’s treated water exceeds a primary MCL, other than a nitrate, nitrite, nitrate plus nitrite, or perchlorate MCL, the PWS shall resample the treated water

¹ Laboratories must also notify a PWS’s designated contact within 48 hours of confirmation of an exceedance of the maximum residual disinfectant level for chlorine dioxide; only a few PWSs in California use chlorine dioxide treatment. (Cal. Code Regs., title 22, § 64814.00.)

² A PWS that uses chlorine dioxide must notify the public within 24 hours of receiving notice from a laboratory of a violation of the maximum residual disinfectant level for chlorine dioxide. (Cal. Code Regs., title 22, § 64463.1.)

to confirm the result and report the initial result to the Division within 48 hours of receipt of the result. (Cal. Code Regs., title 22, § 64432.8, subd. (a).)

- If a perchlorate, nitrate, nitrite, or nitrate plus nitrite MCL exceedance occurs in a PWS's groundwater or approved surface water, the PWS must collect and analyze a confirmation sample and, if the average of the two sample results exceeds the MCL, must report the result to the State Board within 48 hours for perchlorate or 24 hours for nitrate. (Cal. Code Regs., title 22, §§ 64432.1, 64432.3, subd. (d).) If the PWS is unable to resample within the required time, the PWS is required to issue a Tier 1 notice to its consumers and collect and analyze a confirmation sample within two weeks of notification of the results of the first sample. (Cal. Code Regs., title 22, §§ 64432.1, subd. (a)(1)(C), 64432.3, subd. (d)(3), 64463.1, subd. (a).)
- If a PWS is in violation of the *E. coli* MCL, the PWS must notify the Division by the end of the day on which the violation is determined. (Cal. Code Regs., title 22, § 64426.1, subd. (c).)

While the above-listed bullet points represent major reporting requirements for PWSs, this is not a comprehensive list and PWSs should be cognizant of regulations that contain reporting requirements for additional acute contaminants.

iii. Operator Reporting Requirements

PWSs are required to employ or utilize certified operators (except transient noncommunity water systems without treatment) that have been certified by the State Water Board at the appropriate grade, as well as comply with the Division of Financial Assistance's operator certification program. (Health & Saf. Code, §§ 106875, 116555 subd. (a)(4)-(5).) The State Water Board may discipline operators for "any reasonable grounds," including: using fraud or deception in the course of operating a water treatment or distribution system; failing to use reasonable care or judgment in the operation of a water treatment or distribution system; or conducting willful or negligent acts that result in the violation of the SDWA or the regulations and standards adopted thereunder. (Health & Saf. Code, § 106877, subs. (a)(3)-(4), (6); (b)(3)-(4), (6).) Failing to adhere to the reporting requirements, reporting false information, and failing to use reasonable care in the process of sampling and reporting may be the grounds for an enforcement action for certified operators, including administrative civil liabilities, reprimands, suspension and revocation of certificates.

Consequences for Failing to Report Within the Established Regulatory Time Frame

Failure to report results of monitoring samples in a timely manner is a violation of the SDWA, the Environmental Laboratory Accreditation Act (ELAA), and their implementing regulations. The Division may issue a citation or penalties to PWSs and laboratories for such violations. (Health & Saf. Code, §§ 116650, 100880.) The Division may also suspend or revoke a laboratory's accreditation for such violations. (Health & Saf. Code, § 100905.) Any person who knowingly makes a false statement or representation in a

record used for compliance with the ELAA may also be held liable by a court for civil penalties. (Health & Saf. Code, § 100890, subd. (a).) Furthermore, if a PWS's operator's certificate is suspended, revoked, or denied, the PWS may be subject to enforcement for failing to employ a certified operator in violation of the SDWA. (Health & Saf. Code, § 116555, subd. (a)(4)-(5).)

The Division has already suspended the accreditation of multiple laboratories for not reporting monitoring results. Some of these failures occurred at the direction of PWS representatives or drinking water operators to not report results. Some may have arisen from incomplete or inaccurate chains of custody (COC), leading to ambiguity with the required reporting timeframes. Regardless, a failure to report is subject to enforcement.

Laboratory and Operator Oversight Is Your Responsibility

Laboratories, operators, and PWSs are partners and have shared responsibilities. Whether a laboratory is in-house or a commercial laboratory contracted by a PWS to perform sample analysis, the laboratory should follow best practices and have adequate sample intake procedures in place that ensure the COCs are as complete and accurate as possible. As stated above, laboratories are required to have procedures in place to report the results of drinking water samples electronically, within 10 days of the end of the calendar month the analyses were conducted. (Cal. Code Regs., title 22, § 64814.00, subd. (k).) It is fundamental that all PWSs, accredited environmental laboratories, and certified operators ensure that sampling and reporting requirements for drinking water systems are strictly adhered to for the protection of public health.



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11/7/2022

Date