

Targeted Watersheds Grant Web site at <http://www.epa.gov/twg>.

Dated: August 22, 2006.

Bonnie Thie,

Acting Director, Office of Wetlands, Oceans and Watersheds.

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ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2006-0748; FRL-8213-1]

Notice of Intent To Provide Internet Publication of Proposed Penalties under the Clean Water Act and Safe Drinking Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) intends to issue notices of proposed penalty orders issued under the Clean Water Act and the Safe Drinking Water Act via the Internet. EPA is encouraging the Regions to use the Internet as a more effective and efficient means to provide such notice.

FOR FURTHER INFORMATION CONTACT:

Kelly Kaczka Brantner, Office of Enforcement and Compliance Assurance, Office of Civil Enforcement, Water Enforcement Division, Mail Code 2243A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: 202-564-9933; fax number: 202-564-0018; e-mail address: Brantner.Kelly@epa.gov.

SUPPLEMENTARY INFORMATION: Both the Clean Water Act and the Safe Drinking Water Act authorize the U.S. Environmental Protection Agency (EPA) to assess administrative penalties for specified violations of the Act. See sections 309(g) and 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. 1319(g) and 33 U.S.C. 1321(b)(6) and section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300h-2(c). These provisions require EPA to provide public notice of any civil penalty order before issuing any such order.

For such administrative actions, EPA's *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties*, 40 CFR Part 22, require notice to the public "by a method reasonably calculated to provide notice." 40 CFR 22.45(b)(2). Typically, notice is provided through publication in newspapers of general circulation.

The Part 22 rules and the Clean Water Act do not define what methods of notice are reasonable. Courts have recognized that the Internet may be one method reasonably calculated to provide public notice. Thus, for example in discussing service of process by e-mail, the United States Court of Appeals for the Ninth Circuit has recently described in broad language a court's authority to adapt its procedures to meet technological advances as follows:

"In proper circumstances, this broad constitutional principle [*i.e.*, that the selected method of service must be reasonably calculated to provide notice and an opportunity to respond] unshackles the federal courts from anachronistic methods of service and permits them entry into the technological renaissance." *Rio Properties, Inc. v. Rio International Interlink*. 284 F.3d 1007, 1017 (9th Cir. 2002)

Given the wide accessibility of the Internet among the population, the Office of Enforcement and Compliance Assurance has concluded, in consultation with the Office of General Counsel, that publication through such means is reasonably calculated to apprise the public of such proposed orders. Thus, Internet notice would meet the requirements of the CWA, SDWA, and EPA regulations.

Using the Agency's Internet site to provide notice of proposed actions makes the notice available to the public during the entirety of the comment period rather than on the one day that the notice is published in the local newspaper. The Internet provides a cost effective means of providing access to a larger number of notices, in one place, for a longer period of time.

Additionally, while the Agency tries to provide notice to those most likely to be affected by an action by publishing notice in local newspapers, in using the Internet, the Agency can reach a broader audience. This will enable those interested persons beyond the finite distribution areas of local newspapers to be made aware of pending agency actions.

EPA Headquarters is encouraging the Regions to use the Agency's Internet site to provide notice of proposed CWA and SDWA actions. To ensure wide public acceptance of public notice provided through the Internet, the Office of Enforcement and Compliance Assurance is recommending procedures designed with two objectives in mind: Making the public aware that notices will be available on the website for the Region issuing the order, and providing easy access to the notices. We suggest consideration of the following practices for Web based notices:

- The Region's homepage should include a link entitled "Public Notices Under Sections 309(g) and 311(b)(6) of the Clean Water Act and Section 1423(c) of the Safe Drinking Water Act." (Public Notice).
- The Public Notice Web page should provide a link to the actual notices as well as the docket number, the date the notice is posted, the Respondent's name, the state where they are located, and the proposed penalty.
- The notice should be accessible from the Public Notice Web page in html format or as a PDF file which includes all the information required under 40 CFR 22.45(b)(2).
- The Public Notice Web page should list the actions that are being noticed in chronological order.
- The Public Notice Web page may list notices for which the agency is currently accepting comment more prominently than those which have expired. However, public notices should remain on the Web site for a reasonable time once the comment period has expired.
- The Web page should also include a link to download Adobe Acrobat with easily understood instructions for doing so.

We recognize that not all members of the public may have ready access to the Internet, however due to the general availability of the Internet through schools, offices and libraries, we believe that Internet notice will likely reach a larger audience than has the past practice of publishing a notice in a newspaper provided that the above practices are followed. Because there may be circumstances in which the lack of access to computers in low-income communities may raise environmental justice issues, Regions may consider providing supplemental notice.

In particular instances where the Regions find that additional notice may be helpful, newspaper notice, press release or other forms of communication may supplement the Internet notice.

Mark Pollins,

Director, Water Enforcement Division, Office of Civil Enforcement, Office of Enforcement & Compliance Assurance.

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OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Notice of meeting.