

October 11, 2012

Nancy K. Stoner  
Acting Assistant Administrator  
Office of Water (4100T)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
*via email to ccrretrospectivereview@epa.gov*

Re: Consumer Confidence Report Electronic Delivery Options and Considerations  
Docket ID No. EPA-HQ-OW-2012-0035

Dear Ms. Stoner:

We, the undersigned environmental, government transparency, and public interest organizations and labor unions welcome the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) retrospective review of the Consumer Confidence Report (CCR) rule and draft Electronic Delivery Options and Considerations document.

The Consumer Confidence Reports (CCRs) represent landmark policy intended to provide important information to Americans served by community water systems (CWS) regulated under the Safe Drinking Water Act (SDWA). This information – including the source of the water and pollution threats to it, contaminants found, and the possible sources of those contaminants – can be vital to consumer awareness and engagement and to public health protection.

Under the Safe Drinking Water Act Amendments of 1996<sup>1</sup>, CWS are responsible for directly delivering this information to every customer. Congress recognized that access to this information is critical to enable consumers to protect their health and to encourage participation in protecting drinking water sources. EPA's review is an opportunity to update the CCR rule and guidance to better realize its statutory purpose.

We offer the following recommendations for EPA's retrospective review of the CCR rule:

1. Require CWS to post CCRs on a public website;
2. Clarify and strengthen the requirements for electronic delivery methods;
3. Encourage CWS to update their "good faith efforts" to reach non-bill paying consumers and reinforce direct delivery methods;
4. Ensure the public knows about the reports and can understand them; and

---

<sup>1</sup> P.L. 104-182.

5. Improve EPA's retrospective review activities.

## **Recommendations**

### **1. EPA should require systems to post their CCRs on a public website**

To make CCRs more accessible to consumers, EPA should expand and strengthen its requirement for CWS to post their CCRs on a public website.

Under EPA's current regulations, CWS serving 100,000 or more consumers must post the current year's CCR on a public website.<sup>2</sup> EPA has not updated this requirement since first adopting it in 1998, despite the dramatic changes in public adoption and use of the Internet since that time.

#### *Benefits of online posting*

Online posting will make it easier for Internet users to access the important information contained in the CCRs. Instant access from a public website would increase transparency and convenience for new residents, consumers such as workers who aren't bill-paying customers, and consumers who missed the CCR mailing.

Currently, CWS are required to make their CCRs available to such consumers and other members of the public upon request.<sup>3</sup> However, for many consumers, it is more timely and convenient to instantly retrieve the report from a website than to make a request in writing or by phone and wait for the system to mail a copy.

In addition, online posting would enable consumers to discover the CCR while browsing the system's website, even if the consumer had not been specifically seeking the information. Online posting also makes it easier for third parties, such as community organizations and blogs, to share the information, further increasing its audience.

#### *Require online posting*

To realize these benefits and ensure that all consumers consistently can retrieve their CCR online, EPA should require CWS to post their CCRs on a public website. Specifically, the online posting requirement should extend to *all* CWS, not just those serving 100,000 or more consumers.

---

<sup>2</sup> 40 CFR 141.155(f).

<sup>3</sup> 40 CFR 141.155(e).

While offering many benefits for consumers, extending this requirement to all CWS would be minimally burdensome. In fact, 88 percent of CWS already post their reports online and an additional eight percent plan to begin posting their reports in the near future, according to a 2012 survey by the American Water Works Association.<sup>4</sup>

To minimize burden for those few CWS that currently lack the capacity for online posting, EPA could establish a waiver process through primacy agencies for CWS serving fewer than 10,000 customers, similar to the existing process to waive the mailing requirement. As an additional alternative, EPA could permit CWS to file their reports directly to a public website maintained by the primacy agency or by EPA, to overcome any technical limitations with a system's own website.

In addition, EPA should offer guidance to systems on how to make their online CCRs the most useful for consumers. For instance, EPA should suggest that CWS include notification methods, such as email and RSS, to allow consumers to be notified when the CCR is updated.

#### *Require historical reports to be maintained*

In addition, EPA should require CWS to maintain CCRs posted online for no less than three years, rather than only the current year as in the existing rule. This will make it easier for consumers to quickly compare the system's performance to recent years. Extending this requirement would also be minimally burdensome, as CWS are already required to retain copies of their reports for no less than three years.<sup>5</sup>

#### *Require timely posting*

To ensure timely online access, EPA should require systems to post their CCRs online promptly, such as within 30 days after delivery. EPA's regulation currently does not include requirements for prompt posting.

#### *Improve EPA's locator tool*

Finally, EPA should improve its tool to aid consumers in locating their CCR online.<sup>6</sup> The current website lacks effective search and sort mechanisms to help consumers locate their CCR, includes

---

<sup>4</sup> Adam Carpenter and J. Alan Roberson, "CCR Electronic Delivery Cost Savings Survey," American Water Works Association, July 18, 2012.

<sup>5</sup> 40 CFR 141.155(h).

<sup>6</sup> "Where You Live: Your Drinking Water Quality Reports Online," U.S. Environmental Protection Agency, <http://cfpub.epa.gov/safewater/ccr/>

broken links, is missing links for many systems, and could benefit from other usability improvements. Improving EPA's website on CCRs was a popular topic during the online dialog.<sup>7</sup>

## **2. EPA should clarify and strengthen the requirements for electronic delivery methods**

We agree with EPA's proposal that electronic delivery methods can be appropriate for CWS to use in fulfilling their statutory obligations to deliver water quality information to consumers. Furthermore, we also agree that not all electronic delivery methods would satisfy the requirement to directly deliver the CCRs.

EPA's proposal seeks to identify those electronic delivery methods that provide direct delivery. However, EPA's proposal would provide too much flexibility in implementing electronic delivery to guarantee that those methods will be effective at informing consumers. To ensure that the regulatory purposes of the CCR rule are successfully carried out, we recommend that EPA clarify and strengthen the requirements for electronic delivery.

### *Opt-in vs. opt-out approaches*

An opt-in approach is most appropriate to meet the goals of the direct delivery requirement and to ensure appropriate consumer access to this information. Customers should continue to receive the CCRs via mail unless they opt in to electronic delivery.

Opt-in best corresponds to common practice in similar fields, such as utilities and banking. In addition, a survey of customers conducted through the Water Industry Technical Action Fund found that the largest groups of customers (49%) preferred mail delivery over any other delivery option.<sup>8</sup>

### *Printed direct URL method problematic/Suggestions for improvement*

We recommend that EPA only permit the printed direct URL method of direct delivery when used with an opt-in approach. To ensure uninterrupted public access to water quality information, customers should continue to receive a paper copy of their CCR unless they take a specific action to the contrary.

---

<sup>7</sup> Horsley Witten Group, Inc., "Idea/Question Comment Summary, U.S. EPA Consumer Confidence Report (CCR) Retrospective Review, Listening Session," March 30, 2012, p. 17.

<sup>8</sup> Adam T. Carpenter, "Results from AWWA's Surveys and Pilot Tests on Electronic Delivery of Consumer Confidence Reports (CCRs)," American Water Works Association, April 11, 2012.

Transitioning to delivery by printed direct URL by default, as EPA's proposal would allow, is problematic because one-third of American households lack broadband Internet access at home.<sup>9</sup> Delivering the CCRs by printed direct URL without the customer's opt-in would inappropriately shift the burden of obtaining access to the consumer, contrary to the statutory intent of the direct delivery requirement.

In addition, a printed direct URL is an untested method – the case studies in EPA's market research were all email-based methods – so there is little data on the method's expected efficacy. EPA should proceed with caution.

For these reasons, we prefer email methods of electronic delivery and recommend that the printed URL method be used only in conjunction with an opt-in approach. However, if EPA retains the printed direct URL as an acceptable method, EPA should provide clear standards to ensure that the printed notice is prominent and effective. We recommend that EPA require that the printed notice be on a separate piece of paper, such as a postcard or bill insert, as well as on the bill. If EPA allows the notice to be printed directly on the bill, EPA should set clear standards that the notice be prominently displayed. The notice should be included on every bill, or for greatest visibility, on each page. EPA should develop model language and design for the notice.

In addition, the URL should be short and simple, to avoid difficulties with consumers typing a long and complex URL into a web browser. In addition, the URL should remain stable and accessible throughout the year so a consumer can easily refer back to the report. On electronic bills, the URL should be a clickable hyperlink to take the customer directly to the report.

#### *Email methods require clarity*

EPA should clearly specify that email methods are only acceptable if *every* customer directly receives a copy of the CCR, whether by email or postal mail. The system must deliver the CCR by postal mail to customers for whom the system does not have an email address on file, or who otherwise prefer to receive the CCR by postal mail.

#### *Unspecified methods not appropriate*

EPA should eliminate the option for CWS to use unspecified "other" direct electronic delivery methods, as this option risks confusion that could result in a loss of public access. While a certain degree of regulatory flexibility is appropriate to accommodate varied circumstances and potential future changes, options should be meaningfully bounded and clearly defined.

---

<sup>9</sup> As of April 2012, 66% of American adults have a broadband Internet connection at home. See Pew Research Center's Internet & American Life Project, "Home Broadband Adoption," <http://pewinternet.org/Static-Pages/Trend-Data-%28Adults%29/Home-Broadband-Adoption.aspx>.

If a system wishes to use a different method than the prescribed options, it should petition EPA to amend its interpretive memo. Alternatively, CWS serving fewer than 10,000 consumers can apply to the governor of their state for a waiver.

#### *Notify customers of change in delivery method*

As suggested in the “Considerations” section of EPA's draft document, CWS should conduct public outreach to provide advance notification of any change in direct delivery methods. Direct outreach to customers will be necessary in the “opt-in” scenario. However, additional public outreach using some of the “good faith effort” strategies would result in wider customer awareness and participation in choosing the delivery method that works best for them. EPA should encourage CWS to conduct effective public outreach prior to any transition.

#### *Environmental justice considerations*

The CCR rule requires CWS to "directly deliver" the water quality reports to all customers. However, almost a third of American households are still without at-home broadband Internet access – disproportionately so in low-income urban neighborhoods and rural areas. In short, the citizens unable to easily track information about the quality of their drinking water are exactly those we would expect to be most at risk of having contaminants in their water. For instance, studies have documented that several low-income communities and communities of color lack access to clean drinking water.<sup>10</sup>

Without stronger standards in place, the proposal to deliver the CCRs online would seem to violate a key provision of the agency's own commitment to addressing issues of disparate impact. EPA needs to ensure that those experiencing disparate impact in terms of water and sanitation are not also deprived of access to information as a result of lack of Internet availability or other limitations.

#### *Engage state primacy agencies to assist with implementation*

State primacy agencies, which have primary responsibility for implementing the Safe Drinking Water Act, play a key role in compliance and technical assistance for the CCR rule. EPA should engage primacy agencies in developing an implementation plan for any transition to electronic delivery. In addition, EPA should adequately inform primacy agencies of the requirements for electronic delivery options, in order for the primacy agencies to support and oversee water systems in appropriately implementing electronic delivery.

---

<sup>10</sup> See *e.g.* Adair, B, et al. Water Quality Analysis in an Environmental Justice Community in Durham, NC. In Proceedings, 3rd National Conference on Environmental Science and Technology, Greensboro, NC, September 12 - 14, 2007. Springer, New York, NY, 55-60, (2009).

### *Review waivers of the mailing requirement*

Under the act, the governor of a state may waive the CCR mailing requirement for systems serving fewer than 10,000 customers.<sup>11</sup> This provision was intended to reduce the burden of printing and mailing costs for small systems. However, allowing electronic delivery would similarly reduce printing and mailing costs. EPA should encourage states to review existing waivers of the mailing requirement in light of the availability of electronic delivery options, in order to best inform the public about water quality without overburdening small systems.

### *Monitor outcomes*

Allowing electronic delivery of CCRs nationwide is likely to significantly increase the use of this new delivery method, but the widespread use of electronic delivery to meet the CCR rule requirements has not yet been systematically studied in practice. It is critical, then, to monitor and study the effects of using electronic delivery methods. Gathering data on the effectiveness of electronic delivery, the differences between various options or approaches employed, and the usefulness to the public of the information delivered electronically can help water systems and agencies glean important information about what works best.

Monitoring and data collection activities will be more effective if conducted consistently and uniformly. For example, at the public meeting, some water systems stated the intention to use electronic delivery capabilities to track how many customers view the report. This would certainly provide helpful information about readership, but the information is less likely to help guide policy decisions if only a fraction of water systems are consistently gathering the data. EPA and state primacy agencies should consider conducting comprehensive monitoring and data collection activities to better understand the effects of electronic delivery and determine how CCRs can be improved or made more useful to the public.

### **3. EPA should encourage CWS to update their for "good faith effort" strategies and provide guidance to States and CWS on how best to reach consumers**

The “good faith effort” requirement of CCR delivery is intended to ensure that consumers who do not receive a water bill, but who nevertheless rely on the system’s safe drinking water, have access to the CCR. These consumers include many college students, apartment renters, and workers who live outside the community, as well as others. In light of changes in the ways that consumers access information, EPA should update its guidance on the good faith effort requirement. Effective good faith effort activities will remain necessary to reinforce whichever direct delivery method is being used by a system.

---

<sup>11</sup> 42 U.S.C. 300g-3(c)(4)(C) and (D).

### *Remind CWS about good faith effort requirements*

EPA should remind CWS of their responsibility to comply with the good faith effort requirements and should emphasize their purpose: to ensure the CCRs are readily accessible to all consumers. In addition, it may be helpful to provide resources describing typical audiences for the good faith effort requirements, such as apartment renters and workers. Because good faith efforts need to be tailored to each community, facilitating understanding of their purpose and audience may help CWS to select the activities most effective for reaching their consumers.

### *Update guidance on good faith effort requirements*

While the methods described in EPA's guidance remain useful tactics, EPA should update the guidance to identify additional appropriate methods. For instance:

- CWS could partner with local libraries to help patrons retrieve their CCR. Library partnerships could be a particularly useful method given public libraries' mission to meet community information needs; 92 percent of public libraries help people understand and use government websites, according to the 2011-2012 Public Library Funding & Technology Access survey.<sup>12</sup>
- Electronic city newsletters and neighborhood email lists have become widespread and could offer an easy way to alert consumers that the CCR is available.
- Social media, such as Twitter and Facebook, can be a helpful addition to good faith effort strategies.

## **4. EPA should take steps to ensure the public knows about the reports and can understand them**

EPA should raise public awareness about the CCRs to help consumers understand why this information is important to them. Despite the fact that CCRs have been around for more than 15 years, many consumers are not aware of them as a tool for learning about their water quality. This is in part because of the infrequent opportunity most people have to review the reports. Posting the reports online will make it easier for people to review the reports on their own schedule, but that doesn't eliminate the need to make people aware of them. EPA should partner with CWS and stakeholders to raise awareness of the CCRs.

---

<sup>12</sup> Bertot, J.C., McDermott, A., Lincoln, R., Real, B., & Peterson, K. (2012). *2011-2012 Public Library Funding & Technology Access Survey: Survey Findings & Report*. College Park, MD: Information Policy & Access Center, University of Maryland College Park. Available at <http://www.plinternetsurvey.org>.



Another hurdle to greater use of the CCRs is the difficulty most consumers have understanding the data presented in them. To ensure the public can understand the CCRs, EPA should update its guidance and template for the design of CCRs. Much of the information included in CCRs is highly technical. Professors Archon Fung, Mary Graham, and David Weil write that the complex design of the reports "impairs public health" and "undermines one of democracy's central tenets – that citizens can trust their government as a source of reliable, timely information."<sup>13</sup> Several commenters in the online dialog also noted problems with public understanding of the reports.<sup>14</sup>

Yet EPA has taken few steps to help the public to make sense of this complex information. Water systems have expansive flexibility in the appearance of their CCRs. Currently, EPA offers less than one page of guidance to CWS on design issues, out of a 98-page document.<sup>15</sup>

#### *Update and strengthen guidance*

EPA should update its guidance on the CCR rule to provide stronger and more detailed recommendations to CWS on how best to design their reports. The guidance should provide practical information on readability, plain language, and other design elements that support consumer understanding of the reports.

#### *Design a highly-effective template*

EPA should develop a new template CCR designed to maximize understanding of the reports. The design process should involve substantial testing with the general public to ensure consumers can easily comprehend the information contained in the reports.<sup>16</sup>

The template should include at-a-glance visual indicators to quickly summarize the system's water quality and alert the consumer to any major issues. Such straightforward indicators facilitate a better understanding of complex information. EPA has developed such tools before, such as:

- The Air Quality Index, which provides color-coded warnings of air quality conditions;

---

<sup>13</sup> Archon Fung, Mary Graham, and David Weil, *Full Disclosure: The Perils and Promise of Transparency*, Cambridge University Press, 2007, p. 10.

<sup>14</sup> Horsley Witten Group, pp. 14-16.

<sup>15</sup> "Preparing Your Drinking Water Consumer Confidence Report: Guidance for Water Suppliers," U.S. Environmental Protection Agency, April 2010.

[http://www.epa.gov/safewater/ccr/pdfs/guide\\_ccr\\_forwatersuppliers.pdf](http://www.epa.gov/safewater/ccr/pdfs/guide_ccr_forwatersuppliers.pdf).

<sup>16</sup> The Consumer Financial Protection Bureau's "Know Before You Owe" efforts to develop template disclosures for mortgages, credit cards, and student loans, could serve as an effective model for this design process. See *e.g.* <http://www.consumerfinance.gov/knowbeforeyouowe/>.

- The vehicle fuel economy label, jointly developed with the Departments of Energy and Transportation, which provides miles-per-gallon ratings and key data on a vehicle's environmental performance; and
- The Energy Star label, jointly developed with the Department of Energy, which identifies energy-efficient consumer products.

To facilitate consumer understanding and ensure that key information is successfully communicated, EPA should develop a similarly easy-to-use measure of water quality to be included in a new CCR template.

### *Ensure multilingual access*

We also urge EPA to review and improve the requirements and guidance for ensuring that non-English speakers and those who speak English as a second language have access to the reports.

## **5. EPA should improve its retrospective review activities**

### *Goals of the retrospective review process*

EPA initiated its review of the CCR rule in response to President Obama's Executive Order 13563, which requires agencies to develop plans for conducting periodic retrospective reviews of existing regulations.<sup>17</sup> EPA included the CCR rule in its retrospective review plan in order to "explore ways to promote greater transparency and public participation in protecting the Nation's drinking water."<sup>18</sup> The plan indicated that EPA would "look for opportunities to improve the effectiveness of communicating drinking water information to the public, while lowering the burden of water systems and states."

While E.O. 13563 supports reducing regulatory burdens where consistent with achieving regulatory objectives, it does not designate burden reduction as the sole or priority consideration in conducting retrospective reviews. Specifically, it directs each agency to "periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, *expanded*, or repealed so as to make the agency's regulatory program *more effective* or less burdensome in achieving the regulatory objectives." (emphasis added) Retrospective reviews that focus disproportionately on reducing burdens and cutting costs miss the opportunity to make rules more effective by expanding or modifying them.

---

<sup>17</sup> Barack Obama, Executive Order 13563, "Improving Regulation and Regulatory Review," January 18, 2011.

<sup>18</sup> U.S. Environmental Protection Agency, "Improving our Regulations: Final Plan for Periodic Retrospective Reviews of Existing Regulations," August 2011, pp. 37-38.

To date, EPA's review of the CCR rule has prioritized burden reduction as its goal and has focused almost exclusively on electronic delivery as the means to reduce burdens. Such a priority ignores the Executive Order's directive to consider whether rules should be modified or expanded to make the regulatory program more effective. EPA's review should include a thorough examination of ways to make the CCRs more effective at achieving their statutory purpose of communicating important water quality information to the public. We urge the agency to explore the various approaches, including rulemaking, that can be taken to improve the reports and not focus only on those options intended to reduce burdens on water systems.

### *Transparency and participation in retrospective reviews*

EPA should take steps to improve transparency and participation in the retrospective review process.

EPA should provide sufficient time for public participation. The Ideascale online dialog on the CCR retrospective review lasted only two weeks.<sup>19</sup> Such a short time-frame makes participation challenging for anyone but established interests.

In addition, EPA should ensure that proposals adequately explain their basis and that regulatory dockets are complete with relevant information. President Obama in his scientific integrity memorandum directed agencies to "make available to the public the scientific or technological findings or conclusions considered or relied on in policy decisions."<sup>20</sup> Furthermore, in E.O. 13563, President Obama stated that "retrospective analyses, including supporting data, should be released online whenever possible."

A market research document prepared for EPA's retrospective review of the CCR rule, dated April 20, was not added to the online docket until October 3 – only eight days prior to the comment deadline on the draft electronic delivery document.<sup>21</sup> Other supporting documents were not added until October 9. Without timely access to supporting documents, it is difficult for the public to understand the merits and potential impacts of a proposal in order to effectively participate.

### **Conclusion**

We appreciate the opportunity to comment on EPA's retrospective review of the Consumer Confidence Report rule. We hope you take our recommendations into consideration. If you have questions about our comments or want to discuss the issues further, please feel free to contact us.

---

<sup>19</sup> See <http://ccrretrospectivereview.ideascale.com/>

<sup>20</sup> Barack Obama, Presidential Memorandum, "Scientific Integrity," March 9, 2009.

<sup>21</sup> Horsley Witten Group, Inc., "Market Research for the Retrospective Review of the Consumer Confidence Report (CCR) Rule," April 20, 2012.

Questions about these comments can be directed to Gavin Baker, Federal Information Policy Analyst at OMB Watch, (202) 234-8494.

Sincerely,

Center for Environmental Health

Clean Water Action

Clean Water Network

Communications Workers of America

Edgemont Neighborhood Coalition of Dayton

Food & Water Watch

Midwest Environmental Advocates

National Consumer Law Center, on behalf of its low-income clients

National Lawyers Guild Environmental Justice Committee

Natural Resources Defense Council

New York Environmental Law and Justice Project

OMB Watch

OpenTheGovernment.org

Sierra Club Environmental Justice & Community Partnerships Program

Union of Concerned Scientists