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40 CFR Ch. I (7-1-10 Edition)

§ 135.5 Service of proposed consent judgment.

(a) The citizen plaintiff in a citizen enforcement suit filed against an alleged violator under section 505(a)(1) of the Act shall serve a copy of a proposed consent judgment, signed by all parties to the lawsuit, upon the Administrator, Environmental Protection Agency, Washington, DC 20460, and the Attorney General, Department of Justice, Citizen Suit Coordinator, Room 2615, Washington, DC 20530. The plaintiff shall serve the Administrator and the Attorney General by personal service or by certified mail (return receipt requested.) The plaintiff shall also mail a copy of a proposed consent judgment at the same time to the Regional Administrator of the EPA Region in which the violations were alleged to have occurred.

(b) When the parties in an action in which the United States is not a party file or lodge a proposed consent judgment with the court, the plaintiff shall notify the court of the statutory requirement that the consent judgment shall not be entered prior to 45 days following receipt by both the Administrator and the Attorney General of a copy of the consent judgment.

(1) If the plaintiff knows the dates upon which the Administrator and the Attorney General received copies of the proposed consent judgment, the plaintiff shall so notify the court.

(2) If the plaintiff does not know the date upon which the Administrator and Attorney General received copies of the proposed consent judgment, the plaintiff shall so notify the court, but upon receiving such information regarding the dates of service of the proposed consent judgment upon the Administrator and Attorney General, the plaintiff shall so notify the court of the dates of service.

[56 FR 11515, Mar. 19, 1991]

Subpart B—Prior Notice Under the Safe Drinking Water Act

SOURCE: 54 FR 20771, May 12, 1989, unless otherwise noted.

§ 135.10 Purpose.

Section 1449 of the Safe Drinking Water Act (the Act) authorizes any person to commence a civil action to enforce the Act against an alleged violator of any requirements prescribed by or under the Act, or against the Administrator for failure to perform any duty which is not discretionary under the Act. No citizen suit may be commenced prior to sixty days after giving notice of the alleged violation to the Administrator, any alleged violator, and to the State. The purpose of this subpart is to prescribe procedures for giving the notice required by section 1449(b).

§ 135.11 Service of notice.

(a) Notice of intent to file suit pursuant to section 1449(a)(1) of the Act shall be served in the following manner upon an alleged violator of any requirement prescribed by or under the Act:

(1) If the alleged violator is an individual or corporation, service of notice shall be accomplished by certified mail, return receipt requested, addressed to, or by personal service upon, such individual or corporation. If a public water system or underground injection well is alleged to be in violation, service shall be upon the owner or operator. A copy of the notice shall be sent by certified mail, return receipt requested, to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the region in which such violation is alleged to have occurred, the chief administrative officer of the responsible state agency (if any), and the Attorney General for the State in which the violation is alleged to have occurred. If the alleged violator is a corporation, a copy of the notice shall also be sent by certified mail, return receipt requested, to the registered agent (if any) of the corporation in the State in which the violation is alleged to have occurred.

(2) If the alleged violator is a State or local agency, service of notice shall be accomplished by certified mail, return receipt requested, addressed to, or by personal service upon, the head of such agency. A copy of the notice shall

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be sent by certified mail, return receipt requested, to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the region in which the violation is alleged to have occurred, the chief administrative officer of the responsible state agency (if any), and the Attorney General for the State in which the violation is alleged to have occurred.

(3) If the alleged violator is a Federal agency, service of notice shall be accomplished by certified mail, return receipt requested, addressed to, or by personal service upon, the head of the Federal agency. A copy of the notice shall be sent by certified mail, return receipt requested, to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the region in which the violation is alleged to have occurred, the Attorney General of the United States, the chief administrative officer of the responsible state agency (if any), and the Attorney General for the State in which the violation is alleged to have occurred.

(b) Service of notice of intent to file suit pursuant to section 1449(a)(2) of the Act shall be accomplished by certified mail, return receipt requested, addressed to, or by personal service upon, the Administrator of the Environmental Protection Agency, Washington, DC 20460. A copy of the notice shall be sent by certified mail to the Attorney General of the United States.

(c) Notice given in accordance with the provisions of this subpart shall be deemed to have been given on the date of receipt of service, if served personally. If service was accomplished by mail, the date of receipt will be considered to be the date noted on the return receipt card.

§ 135.12 Contents of notice.

(a) *Violation of standard or requirement.* Notice regarding an alleged violation of any requirement prescribed by or under the Act shall include sufficient information to permit the recipient to identify the specific requirement alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of the alleged violation, and the full name, address, and telephone number of the person giving notice.

(b) *Failure to act.* Notice regarding an alleged failure of the Administrator to perform any act or duty under the Act which is not discretionary with the Administrator shall identify the provision of the Act which requires the act or creates the duty, and shall describe with reasonable specificity the action taken or not taken by the Administrator which is alleged to constitute a failure to perform such act or duty, and shall state the full name, address, and telephone number of the person giving notice.

(c) *Identification of counsel.* All notices shall include the name, address, and telephone number of the legal counsel, if any, representing the person giving notice.

§ 135.13 Timing of notice.

No action may be commenced under section 1449(a)(1) or (a)(2) until the plaintiff has given each of the appropriate parties sixty days notice of intent to file such an action. Actions concerning injection wells disposing of hazardous waste which allege jurisdiction solely under section 7002(c) of the Resource Conservation and Recovery Act may proceed immediately after notice to the appropriate parties.