

# INSIGHT

## Investor-owned water firms boast sterling SDWA record

EPA data shows private utilities are practically absent from list of serious SDWA violators

An AWI analysis of EPA data on serious violators of the federal Safe Drinking Water Act has shown that privately owned and operated water utilities – especially large investor-owned companies – have a much cleaner record than public utilities when it comes to SDWA violations and fines.

The analysis, which included data on water systems with serious violations and least 500 customers over the past three years, showed that only 13 percent of facilities with current, serious SDWA violations are run exclusively by private companies. Only one of the 1,369 serious violators in the list is a large, investor-owned water company.

The EPA defines a serious violator as “a public water system with unresolved serious, multiple, and/or continuing violations” as defined by the agency’s enforcement response policy. When the agency responds to violations, it does so with formal enforcement actions (administrative orders, consent decrees or litigation) or informal enforcement actions (verbal or written notices of noncompliance). Formal actions often carry penalties such as hefty fees or work agreements, but informal actions do not.

The one investor-owned water system in current, serious violation of the SDWA is Ohio American Water - Ashtabula. While the system has incurred a number of informal enforcement actions (Ohio American Water has had 11 filed against it), it has not faced formal enforcement or fines at any point in the past five years.

The EPA can promote water systems to the status of serious violator for a number of reasons, but many serious violators become classified as such because minor issues go uncorrected. A lack of formal enforcement actions for a serious violator typically means that the entity has been reclassified from a non-serious violator because of repeated, minor issues that are not serious enough to warrant lawsuits or fines.

Major investor-owned water companies are completely absent from the EPA’s list of current serious violators with the exception of the system mentioned above, and that system is only considered to be a serious violator because of repeated, minor infractions. That near-perfect track record is in stark contrast to small private systems not owned by investors (such as community water associations or small businesses) and public water companies.

Of the 1,369 serious violators examined, 53 percent are owned by local agencies, states or the federal government. The overwhelming majority of those (717 of the 728 strictly public facilities) are owned by states or municipalities. Thirty-four percent of the violating systems are owned and/or operated by a mix of

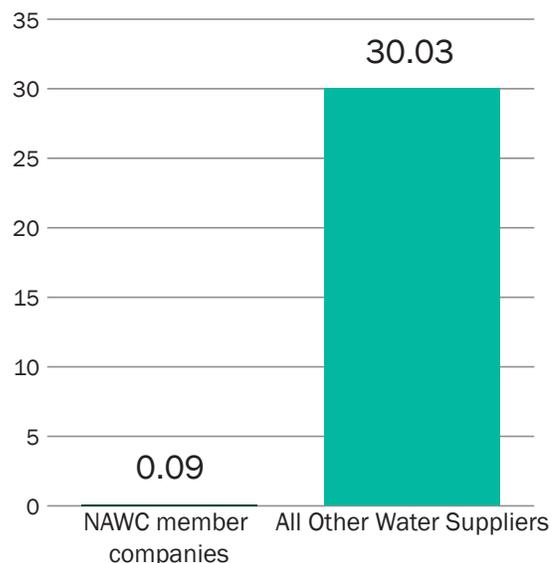
public and private entities. Several types of systems fall under the mixed private/public category, which may include state university water plants or military base water networks.

The small private water systems not managed by major private utilities included groups such as incorporated subdivisions and local water management associations. They also included companies such as property management firms whose day-to-day business involves collecting, transporting or treating water or wastewater. Compared to the government-run systems, these companies were less likely to be in violation of the SDWA. Major investor-owned companies have not been subject to any of the 70 formal enforcement actions issued against the private sector over the past five years.

Government-run water systems fared the worst of all the management types with 728 systems in serious violation of the SDWA. Over the past five years, the EPA has issued 244 formal enforcement actions to state and local governments for serious infractions, and the federal government has had one.

Because the agency’s SDWA database is in beta form, some entries for small facilities are incomplete or missing. Entries for facilities serving fewer than 500 people were omitted from

### SDWA ENFORCEMENT ACTIONS PER MILLION CUSTOMERS (FY2001-2011)



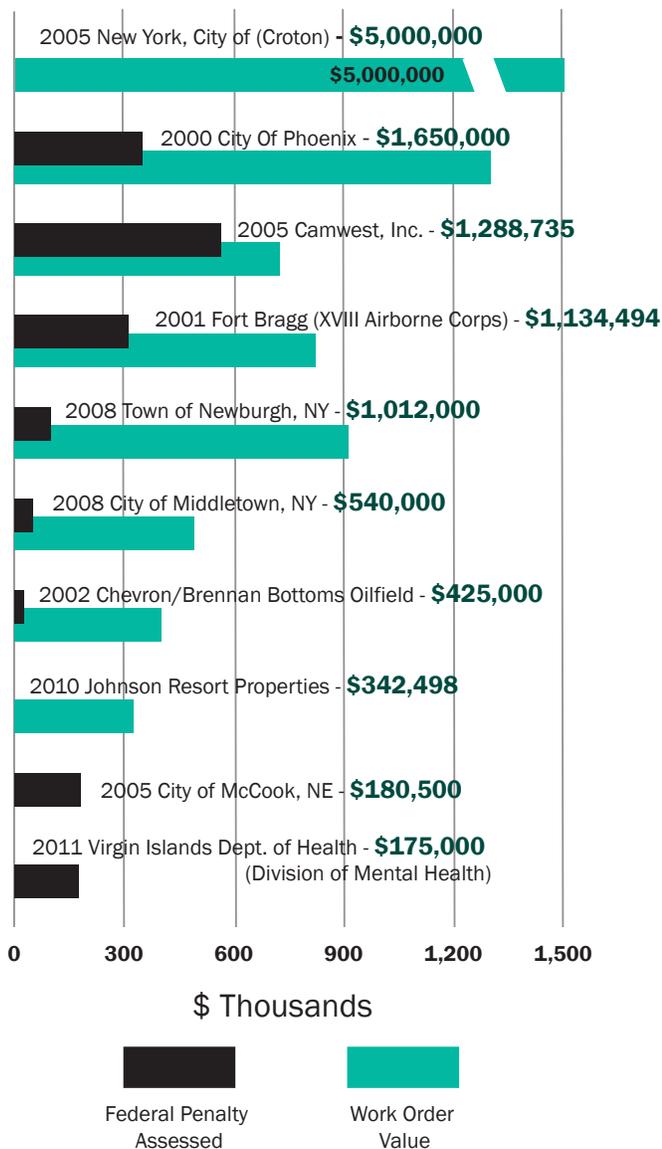
Source: EPA and AWI research

AWI's research to maintain accuracy. The EPA updates its information every quarter. AWI assembled its database by querying the EPA's data for each type of management entity and combining the results. The query result for the total number of entries is slightly different when no management type is specified, indicating that there are some entries for which management data are incomplete or missing. The EPA acknowledges that its data may be incomplete.

When it comes to staying in compliance with the SDWA, major private utilities have long proven to have fewer violations and fines. In addition to SDWA serious violator data, AWI also collected and analyzed data on all completed SDWA enforcement actions since FY2001. According to that list, investor-owned utilities have been far less likely to face enforcement, fines or work orders.

In fact, no major investor-owned water company has been fined by the EPA for SDWA violations, according to EPA records. SDWA enforcements have cost private companies more than

### 10 LARGEST SDWA SETTLEMENTS (2001-2011)



Source: EPA

## EPA data reporting rules inflate one state's violation numbers

On paper, Mississippi is a chronic violator of the Safe Drinking Water Act. The state has 709 facilities with serious violations on record for the past three years – 52 percent of all the SDWA's serious violators nationwide for that span of time. In reality, however, the numbers say little about the state's water standards and a great deal about EPA requirements for water data reporting.

Mississippi's numbers have been hugely inflated because of the way the EPA accepts data. The EPA must qualify states to submit data, and the agency will not accept state data if it is not confident in the reports. The 2000 Revised Radionuclides Rule introduced new SDWA data and testing requirements, and Mississippi's state labs have been catching up since losing their testing certification in 2008.

"Mississippi state law requires that systems pay the state for analysis of their radiological samples," the EPA wrote. "However, MS Department of Health's (DOH) laboratory lost its certification for radiological analyses in 2008 and was unable to perform the required analyses; thus, the results were not reported to EPA."

Rescheduled meetings with the EPA have forced back Mississippi's certification process, which has led to a lack of acceptable radionuclide data from the state. Failure to report data is considered a reporting violation even if the EPA knows a water system has not been agency qualified.

Over time, minor SDWA violations become re-listed as serious if they are not resolved. Mississippi is in serious non-compliance with EPA mandates because it cannot report its data, and it cannot report its data until the EPA grants certification. Because of the impasse, the state has been subject to more than 29,000 informal enforcement actions in the past five years. Those informal actions, however, are often simple notices of noncompliance and do not carry fines or work orders.

Liz Charlot, communications director for the Mississippi State Department of Health, said the state's SDWA record does not reflect the quality of its drinking water.

"Yes, we do test. Yes, we do report the information to our water supplies. At this point, we have no certification," Charlot said. "We're kind of at the mercy of the EPA."

The EPA was scheduled to meet with state officials in July, but that meeting has been pushed back to November, Charlot said.

However, not all the state's violations are due to missing reports. The state has faced 40 formal SDWA enforcement actions over the past five years, indicating that its systems have their share of SDWA-related problems.

## TOP TEN SERIOUS VIOLATORS (FORMAL ACTIONS)

Facility Name	Pop. Served	Informal Enforcement Actions	Formal Enforcement Actions	Management Entity
Sequoyah State Park Lodge, OK	1,030	50	19	State or Local Government
Tipton, OK	916	47	13	State or Local Government
Cedro Arriba, PR	12,356	1	11	State or Local Government
Cubuy Maizales, PR	616	1	10	State or Local Government
Pittsburg Co. RWD #14, OK	1,150	44	9	State or Local Government
Riviera West Mutual Water Co., CA	550	0	7	Private
Isabela, PR	68,820	3	7	State or Local Government
Metropolitano, PR	1,339,328	2	7	State or Local Government
Caguas Norte, PR	158,064	9	6	State or Local Government
Gurabo Urbano, PR	35,608	7	6	State or Local Government

Source : EPA

\$19 million since FY2001, and major private firms such as American Water and United Water have not a paid a cent of that amount. Though no comprehensive data exist regarding private water utilities, the National Association of Water Companies (NAWC) represents about 150 large water firms across the U.S. AWI assembled a database of all SDWA enforcement actions since FY2001 and searched for each NAWC member to see if those companies had been censured by the EPA. Only six NAWC members with a total of 13 enforcement actions appeared in the list of roughly 8,000 entries. Eleven subsidiaries of American Water along with Aqua Pennsylvania and Aquarion Water Company of Sea Cliff have all been the subject of official SDWA-related enforcement, but none of them incurred any fines as a result.

NAWC Executive Director Michael Deane attributes that near-perfect record to several key differences between NAWC members and their counterparts in other sectors.

“Investor-owned water companies often have access to experience and expertise across multiple utility operations within their company,” Deane said, adding that private firms’ knowledge and ability to share information quickly “can make the difference between perfect compliance and an unfortunate violation.”

Figures vary on the number of Americans served by investor-owned water companies, but the NAWC estimates that up to 73 million people are served by the private sector and that about 39 million of those customers are served by investor-owned companies. AWI’s own estimate of roughly 46 million is based on the combined numbers of 15 of the largest investor-owned utilities.

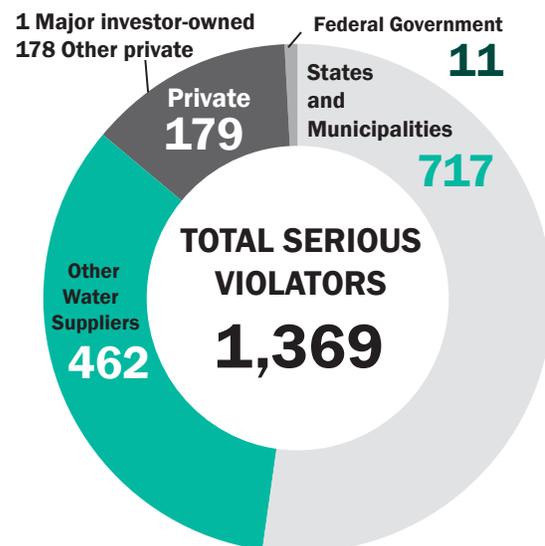
This tendency to stay within SDWA regulations has potentially saved water investors millions over the years. Most of the serious violators did not receive formal enforcement actions, but such measures can be costly when the EPA decides to take them. In 1999, the EPA issued a consent decree under the SDWA and Clean Water Act to BP Exploration (Alaska) Inc. that cost the company \$22 million. Phoenix faced a \$350,000 fee and a \$1.3 million work agreement in 2000. The most costly settlement due strictly to the SDWA was a 2005 case against Croton, N.Y. that cost the \$5 million. The agency has taken 344 formal enforcement actions against serious SDWA violators in the last five years.

On the whole, publicly-owned utilities are responsible for many

more SDWA violations and incur more fines. However, that is due mostly to the fact that the U.S. has so many more public water systems than private ones. Serious violators are clustered in states and U.S. territories with many ongoing water projects. Puerto Rico has 62 facilities with serious violations, which is largely due to the island’s hundreds of off-the-grid water systems in rural areas. Florida is home to 25 serious violators, and Louisiana has 26. Texas has the second highest number of violators at 97. The state with the highest number of facilities with serious SDWA violations is Mississippi, but that state’s record has been heavily skewed by data reporting issues (see story on p.16).

The facilities with the highest number of formal violations are not always the ones that have received the most warnings from the EPA. The Town of Aberdeen, Miss., has had 231 informal actions taken against it over the past five years, but the EPA has never brought the municipality to court. The Riviera West Mutual Water Company in Kelseyville, Calif., meanwhile, has been the target of seven formal actions and zero informal ones.

## SYSTEMS WITH SERIOUS SDWA VIOLATIONS BY OWNER/OPERATOR TYPE



Source : EPA