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State Drinking Water Administrative Penalty Programs

An Inventory Of State Practices

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EXECUTIVE SUMMARY

Approximately 200,000 public water systems are regulated under the Safe Drinking Water Act. Currently, 54 States (including territorial possessions) have primary enforcement responsibility for public water systems. A number of these States have the ability to issue administrative penalties; when an agency has this authority, it can assess fines without utilizing the court system. This report presents an overview of State enforcement practices, provides case-study descriptions of six States with administrative penalty authority, includes a comparative analysis of State programs, and discusses and provides examples of language that can be used in a legislative authority for administrative penalty assessment powers.

Of the 54 States, 43 submitted information on their drinking water enforcement programs. Of these States, 18 have the authority to assess administrative penalties and 5 additional States can issue penalties if they reach an agreement with the violator. Of the 25 responding States that do not have unilateral administrative penalty assessment authority, 11 States have tried, are in the process of trying, or intend to try to obtain authority.

Six States (California, Connecticut, Florida, Pennsylvania, South Carolina, and Washington), representing five EPA regions, were contacted for a more indepth case-study analysis. An effort was made to select States that represented all geographical areas, but this was impossible because no State having an administrative penalty program and located in the Midwest could participate in the case study. However, the six case-study States provide a good cross-section of State programs. One program matured during a 6-year period, and full administrative penalty assessment powers were granted in 1983; legislation for another State program was approved in June 1990. One State prefers using an enforcement alternative other than penalty assessments, one State uses penalties as part of a multifaceted enforcement program, and several States claim that before the authority to assess penalties was obtained, few enforcement actions took place. Although the belief that using administrative enforcement actions enhances compliance was found to be virtually universal, there are unique components in each State program. Each program (in order of implementation date) is summarized below.

South Carolina's program was fully implemented by 1983. The Department of Health and Environmental Control is responsible for the State's drinking water program, and the Bureau of Drinking Water Protection in the Department's Office of Environmental Quality Control is the lead program unit. The Bureau's Compliance Section and District personnel identify violations and try to obtain compliance; local officials are not involved. Enforcement actions are pursued by the Bureau's Enforcement Section after referral from either the Compliance Section or a District. The Enforcement Section determines a fair penalty and meets with the alleged violator. During this conference, the Enforcement Section tries to reach an agreement with the violator so a consent order can be issued. If no agreement is reached, an administrative penalty will be assessed unilaterally. During a

14-month period, the Bureau issued 113 orders of which 95 were consent orders and 18 were unilateral.

In Pennsylvania, administrative penalty authority was granted in 1984 but the program was not implemented until 1987. Pennsylvania's Department of Environmental Resources, Division of Water Supplies, is responsible for the drinking water program, and the entire field staff (over 150 people) plays a role. Local officials are also active in enforcing drinking water requirements. The Division may use several enforcement tools. Field orders that compel compliance are issued by field staff; compliance orders are issued for more serious violations. Consent orders and letter agreements are used when an agreement can be reached with the violator. Summary citations (a criminal proceeding) and formal court proceedings are used infrequently. Administrative penalties can be assessed either through negotiated settlement or unilaterally. In 1989, the Pennsylvania Division of Water Supplies took 289 enforcement actions in the form of 91 field orders, 41 compliance orders, 11 consent orders, 2 unilateral penalty assessments, 141 negotiated penalties, 2 summary citations, and 1 court case.

Connecticut's law giving the Commissioner of Health Services the authority to impose penalties was passed in 1985. However, current practice requires that a petition must be presented to the court before an assessment. Consequently, the Department of Health Services does not assess administrative penalties. Instead, the Department prefers to work with the Department of Public Utility Control and utilize joint takeover provisions. Jointly, the two departments can order the acquisition of a water company and the violating system can be assigned to another system. Connecticut has no field offices for drinking water, and local officials play a secondary support role in the program. Although the Enforcement Officer in the Department's Water Supply Section is the only full-time enforcement employee for the program, all staff members participate.

California's drinking water administrative penalty program began in 1986. The Department of Health Services, Office of Drinking Water, is responsible for its implementation. Local Health Officers are responsible for small systems and have the same enforcement authority as the State agency. Field staff identify a violation, and a letter of correction is sent to the public water system. If the violation is not corrected, a citation or compliance order is issued. (Citations are issued for short-term violations requiring inexpensive corrective actions; compliance orders are issued for violations requiring long-term expensive improvement projects.) If the violation is not corrected, a second citation containing an administrative penalty assessment is issued. If a third citation is necessary, the penalty is increased. Compliance orders may be amended, if necessary. In 1989, the Office of Drinking Water assessed $900 in administrative penalties and found that most water systems were responding to the first citation.

Washington's administrative penalty program also began in 1986, and the Department of Health is responsible for implementation. Local health agencies in some counties are

responsible for small systems. All counties have the authority to assess penalties administratively. After determining that a violation has occurred, the Department usually takes several enforcement steps before issuing an order; these may include site visits, letters, and telephone calls. All orders are signed by the Secretary of Health or designee. The first order contains the threat of a penalty. If the violation continues, an administrative penalty is assessed. If compliance is not obtained, a second penalty sometimes is assessed or a court action is initiated. In 1989, 22 orders were issued and 6 administrative penalties were assessed.

During the past 5 years, Florida's Department of Environmental Regulation has tried three times to obtain administrative penalty authority from the legislature. In June 1990, it received authority to assess noncompliance fees for reporting and monitoring violations. As a result of previous efforts, the Department learned that the term "penalty" received unfavorable reactions and that unaffected entities worried about statutory authorities that granted broad powers because a precedent could be established. Consequently, the Department proposed legislation that was specific and that focused on compliance. Assessing noncompliance fees was portrayed as a preventive program because the fees would be levied before serious environmental problems occurred.

In addition to the 6 case-study States, 17 of the other States that responded assess administrative penalties; of these States, 5 (Idaho, Ohio, Utah, Vermont, and Virginia) can assess a penalty only with the agreement of the violator.

During a hearing initiated by Georgia's Director of the Division of Environmental Protection, Department of Natural Resources, an administrative penalty can be assessed for $1,000 for noncontinuing violations and $500 per day for continuing violations. Iowa's Department of Natural Resources has established guidelines for determining penalty amounts based on economic benefit, gravity of the violation, and violator's culpability; the Department has the authority to assess penalties up to $1,000 for minor violations; failure to pay a penalty results in interest charges being assessed. The Department of Environmental Quality Engineering in Massachusetts also has a formula for determining penalty amounts; adjustments are made after consideration of the gravity of the violation, the economic benefit obtained through noncompliance, and other factors. The Massachusetts department can assess administrative penalties up to $1,000, and if there is a refusal to pay, the violator may be liable for up to three times the original amount. A Public Health Administrative Tribunal was established in New York's Department of Health with the authority to impose fines and administrative penalties up to $2,000. Oregon's Assistant Director of the State Health Division can assess penalties administratively that do not exceed $500 per day; penalties are determined by the number of people served by the water system. In Tennessee, the Commissioner of the Department of Health and Environment can assess administrative penalties up to $5,000 per day of violation.

Although Hawaii's Department of Health Director can assess administrative penalties up to $25,000 per day, the Department has been successful in gaining compliance without the use of penalties. Rhode Island's Department of Health Director can assess a maximum administrative penalty of $5,000 per day, but the State has been successful in using informal enforcement procedures and no administrative penalties have been assessed. In addition, the Rhode Island department has the option to refer complaints to the Mobile Home Commission, which can take management authority away from trailer park owners.

Of the six case-study States, three State agencies encountered no difficulties in getting the authority to assess penalties, two State agencies received opposition, and the governing board of the other State agency increased administrative penalty assessment powers over a 6-year period following passage of the authorizing law. All States link the use of administrative penalties with the ability to compel compliance, and all States prefer using administrative enforcement actions over court proceedings. In addition, most States prefer using more informal administrative actions; bilateral consent agreements are frequently issued following negotiations with a violator.

A number of State programs include provisions found in EPA's civil penalty policy, issued in 1984. Eight States specified that the seriousness of a violation is considered in the gravity component used for penalty amount determinations; three States include an economic benefit component. The Federal policy and several State programs also include the consideration of a violator's ability to pay, the history of noncompliance, and the degree of negligence and cooperation when determining a penalty amount.

Despite the similarities in their rationale for having administrative penalties, the implementation of specific procedures differs from State to State. After analyzing the programs in 23 States, the most conclusive finding is that each State is unique. Some States have adopted the policy of mitigating penalty amounts if the violator consents to the order, while others believe this is a self-defeating practice; several States provide justification for assessing low monetary penalties, while other States believe higher administrative penalties are needed; and some States still allow a system to apply the penalty toward improvements, while others have ceased using this practice. Although some States noted that the threat of an administrative penalty assessment often will result in compliance, an agency must have the reputation of being firm in its enforcement actions before these threats can be effective.

The review of State legislation showed vast differences in laws granting agencies the authority to assess penalties. Some State authorities are extremely general and allow for varying means of implementation. Other State laws are highly specific and many steps of the enforcement process are mandated by the statute. Only two State authorities (for Pennsylvania and Rhode Island) contain statutory language that is even remotely similar. One reason for the wide diversity in legislative authorities can be assumed to be that the various laws are necessary to meet specific State requirements. For example, each State agency must comply with the established administrative procedures prescribed by law. In

addition, unique characteristics, such as geographic location, the size and type of regulated water systems, departmental or agency financial resources, and the organizational structure could determine the components of a State authority.

Consequently, instead of presenting a single model law to meet all circumstances, a list of various authorities with suggested language is presented; States can review the itemized options and select the features that would be most suitable in that State. General authorities can provide an agency with overall enforcement powers over the drinking water program, the ability to enter into agreements so that penalties can be assessed in consent orders (following negotiation with a violator), and nonspecific powers to assess penalties. If more detailed legislation is required, a State can consider including the following program components: penalty limits, penalty schedules, assessment procedures, penalty amount determination, penalty payment procedures, penalty allocation, penalty nonpayment procedures, internal appeal procedures, and judicial appeal procedures.

Administrative penalties are used to obtain compliance, as a deterrent to future noncompliance, and as a valuable enforcement option that lends itself to quick and cost-effective resolutions. Several strategies stand out as primary contributors to program effectiveness. These include developing a program that is easy to implement; establishing a sound case before initiating an action; providing for flexibility in penalty assessments; establishing an agency reputation for standing firm on enforcement decisions; maintaining good communications among program staff and with water systems; and ensuring State-wide consistency. Most of these features stem from implementation of the program, but the degree of flexibility and level of consistency could depend on legislative requirements.

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INTRODUCTION

ENFORCEMENT OVERVIEW

Approximately 200,000 public water systems (PWSs) are regulated under the Safe Drinking Water Act (SDWA). Section 1413 of the SDWA provides for States to assume the primary enforcement responsibility (primacy) for PWSs if drinking water regulations that are no less stringent than the national primary drinking water regulations are adopted and enforced. U.S. Environmental Protection Agency (EPA) regulations on the implementation of national primary drinking water regulations (40 CFR Part 142) require the States to have adequate procedures for enforcing the regulations and specify that they must have statutory or regulatory enforcement authority adequate to compel compliance. This authority must include the ability to sue in courts of competent jurisdiction to enjoin any violation and to assess civil or criminal penalties for violations. Currently, 54 States have primary enforcement responsibility; in the District of Columbia, Indiana, and Wyoming the program is implemented by EPA regional offices. (As provided in the SDWA, the definition of "State" includes all territorial possessions, Indian tribes, and the District of Columbia.)

PURPOSE OF STUDY

A number of States have instituted administrative penalties as part of their enforcement responsibilities. The authority to assess penalties administratively allows a State agency to levy fines and other monetary penalties without utilizing the court system. The 1986 SDWA amendments provided EPA with administrative order authority and mandated its use. The priorities of EPA's drinking water program continue to support the goal of protecting consumer health through voluntary compliance. However, the Agency believes that voluntary compliance will increase when more PWSs realize that noncompliance carries a real risk because formal enforcement, with its accompanying penalties, is being pursued. By strengthening the enforcement component, a stronger deterrent to violation is created; thus, compliance should improve.

The purpose of this study is to inventory State enforcement activities, identify the States with administrative penalty programs, evaluate the components of these programs (their strengths and weaknesses), and present suggested statutory language for legislative administrative penalty assessment authority. This report is directed at State drinking water officials with the intent of providing sufficient information to assist them in implementing or improving their own administrative penalty programs. It contains case studies of 6 States with administrative penalty programs that describe the range of State authorities and program procedures; descriptions of 17 additional States with administrative penalty programs; and a comparative analysis of these programs.

PROCEDURES USED TO COMPILE INVENTORY OF ENFORCEMENT ACTIVITIES

Names of potential State contacts were solicited from each of the 10 EPA regional Public Water Supply Section Chiefs. The Section Chiefs were also asked if there were any specific State sensitivities that should be considered. One regional Section Chief requested that State officials in that region (Region 10) not be contacted; information on those States was provided by EPA regional personnel. A letter requesting general information on drinking water enforcement activities was sent to all of the other States with primacy. Subsequent attempts to obtain information from non-responding States also were made. Each State contact then was given the opportunity to review the information as it was presented in the draft report.

INITIAL FINDINGS OF THE INVENTORY

Table 1 lists the States that responded and those that did not respond.

TABLE 1

STATE RESPONSES TO INFORMATION REQUEST

States that responded (43)		States that did not respond (11)
Alaska (regional response)	Nebraska	Alabama
Arizona	Nevada	American Samoa
Arkansas	New Mexico	Kansas
California	New York	Maine
Colorado	North Carolina	Mississippi
Connecticut	North Dakota	Missouri
Delaware	Ohio	New Hampshire
Florida	Oklahoma	New Jersey
Georgia	Oregon (regional response)	Northern Marianas
Guam	Pennsylvania	Palau
Hawaii	Puerto Rico	Virgin Islands
Idaho (regional response)	Rhode Island	
Illinois	South Carolina	
Iowa	South Dakota	
Louisiana	Tennessee	
Kentucky	Texas	
Maryland	Utah	
Massachusetts	Vermont	
Michigan	Virginia	
Minnesota	Washington (regional response)	
Montana	West Virginia	
	Wisconsin	

Responses were received from 43 of the 54 States. The information that was submitted includes laws, regulations, policies, procedures, and statistics. A list of State contacts is provided in Appendix A; a chart of State administrative penalty program components is provided is Appendix B; and a general inventory of State drinking water enforcement activities is provided in Appendix C.

Over 50 percent of the responding States indicated that the first step in the enforcement process was to issue a formal written complaint, generally identified as a notice of violation. These notices may identify the violation, establish a schedule for compliance, and inform the recipient that a conference may be requested. Several States indicated that these notices can be bypassed if a system has a record of noncompliance. If the recipient of a notice fails to apply for a conference to discuss the violation, it is often considered an admission of guilt. Some States can include administrative penalty assessments with the initial notice; in these cases the recipient is afforded the right to a more formal administrative hearing.

Over 80 percent of the responding States provide for the issuance of administrative orders or compliance orders. Administrative or compliance orders are unilateral directives that require corrective action and in some States may include an administrative penalty assessment. Generally, such orders are the second step after a notice of violation has been sent, and are issued following a conference decision or if the violator fails to apply for a conference.

A number of States identified the use of consent orders/agreements. Consent orders or letter agreements often contain the same requirements as administrative or compliance orders. However, where administrative orders are issued unilaterally, consent orders represent an agreement that has been reached with the violator. Like administrative orders, consent orders can contain the assessment of an administrative penalty.

Penalty amounts vary depending on the type of action. Most States have a maximum administrative penalty of $5,000; however, the maximum penalty in some States is as high as $25,000. Penalties were generally assessed based on the following factors: (1) costs saved by noncompliance (i.e., economic benefit); (2) gravity of the violation; (3) culpability; (4) the maximum penalty authorized; and (5) the system's compliance record. Civil and criminal penalty amounts vary depending on the seriousness of the violation; criminal penalties are generally higher and include the possibility of imprisonment.

Appeals are conducted in accordance with administrative procedures outlined for each State. In all cases, a final appeal can be pursued through the court system when proper procedures are followed.

When reviewing the State information, which often included an assessment of the State's program, it became obvious that the concept of administrative penalty assessment

differed. Some States claimed they did not have the authority because a penalty could not be assessed in an unilateral order. Other States included consent or agreed orders in their discussions of administrative penalty assessments. For this report, summaries of administrative penalty programs have been included both for States that can assess a penalty unilaterally and for States where bilateral agreement with the violator is required. Based on that criterion, the following States were identified as having administrative penalty programs (see Table 2).

TABLE 2

STATE ADMINISTRATIVE PENALTIES

States having administrative penalty authority (23)	States that have tried, are trying, or will try to get unilateral administrative penalty authority (11)
California	Alaska
Connecticut	Arkansas
Florida	Illinois
Georgia	Louisiana
Guam	Maryland
Hawaii	Michigan
Idaho *	Montana
Iowa	North Dakota
Kentucky	Ohio
Massachusetts	Virginia
New York	Wisconsin
North Carolina	
Ohio *	
Oklahoma	
Oregon	
Pennsylvania	
Rhode Island	
South Carolina	
Tennessee	
Utah*	
Vermont*	
Virginia *	
Washington	

* Bilateral consent/agreed orders only.

Eleven of the States that responded discussed efforts to obtain administrative penalty authority. In Arkansas, administrative penalty provisions will be proposed in the 1991 legislative session; the only anticipated obstacles are political in nature. Montana and Louisiana also are hoping for legislative approval in 1991. Language is being drafted for

a proposed bill in Maryland and provisions for a "penalty order" are being developed in Virginia. In Michigan, legislation has been drafted so that administrative penalties can be used to enforce monitoring requirements. The Wisconsin Department of Natural Resources has been trying for several years to obtain authority and plans to continue its efforts. In addition, officials in Alaska and North Dakota are currently considering administrative penalty authority.

Two additional States have tried to obtain administrative penalty authority. Although Ohio's Division of Public Drinking Water can assess administrative penalties in final findings and orders that are negotiated with the violator, it has been unsuccessful in its attempts to obtain authority for unilateral assessments. Illinois also has failed to receive administrative penalty authority.

Several States discussed their reasons for not having an administrative penalty program. Colorado believes it would be difficult to convince the legislature that administrative penalties are necessary. Colorado officials noted that another program has administrative penalty authority but is under continual fire from the legislature for "picking on the little guy" or "big industry." Both Arkansas and Texas strive for voluntary compliance by providing technical assistance to water systems. In Nebraska, noncompliance results in the revocation of the public water system operating license, and officials believe that timely and effective compliance has been achieved without the use of administrative penalties.

Figure 1 depicts the geographical distribution of States in terms of the following: States without primacy, States that submitted enforcement information, States having administrative penalty programs, and State efforts to get the authority to assess penalties administratively.

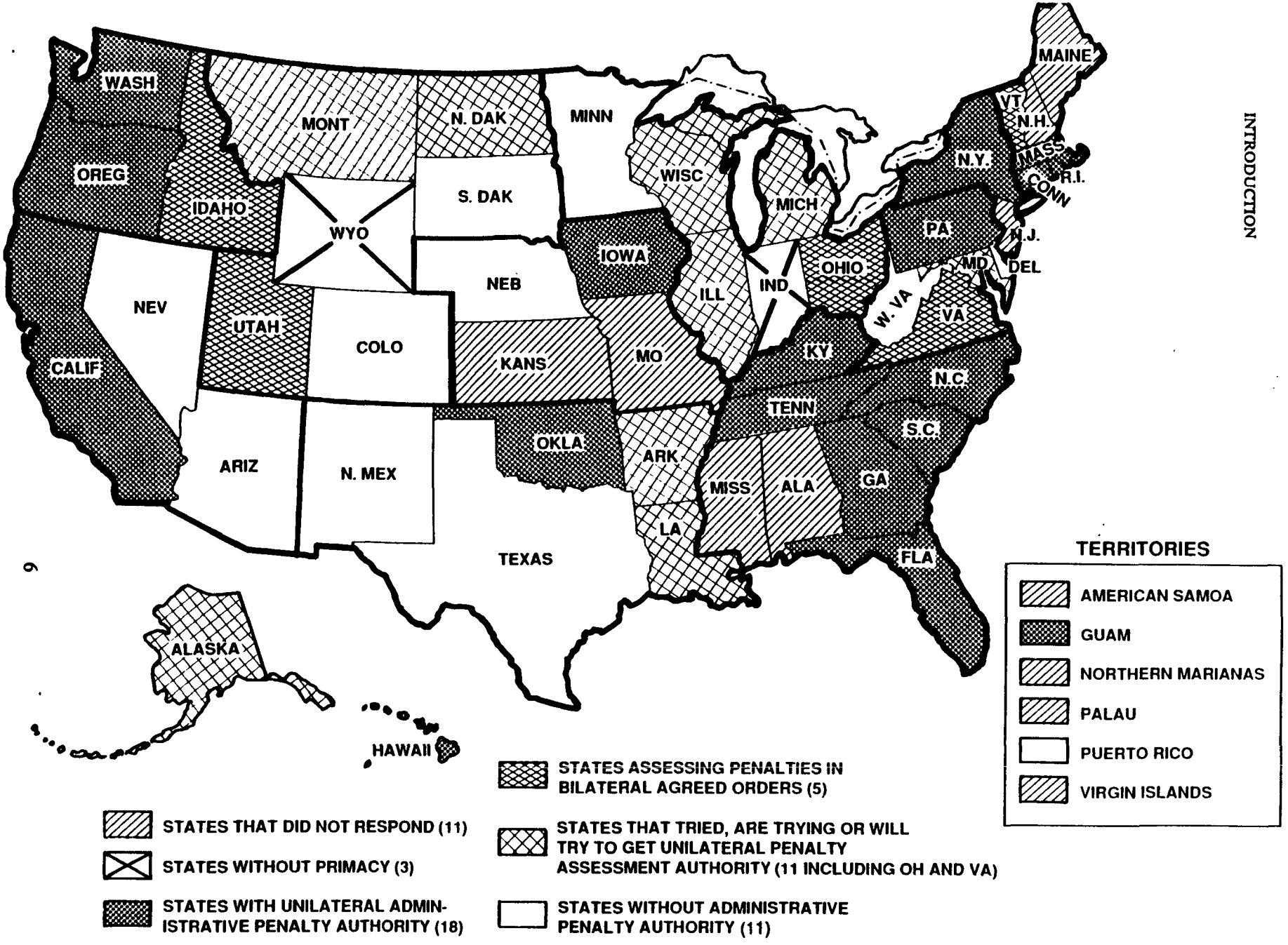


FIGURE 1

DISTRIBUTION OF STATE ENFORCMENT EFFORTS

CASE-STUDY PROCEDURES

To evaluate further State administrative penalty programs, a list of questions was developed. It was intended that the answers to these questions would provide a comprehensive profile of State programs. Questions are listed in Table 3.

TABLE 3

QUESTIONS FOR IN-DEPTH STATE ANALYSES

- What is the language of the statutory authority granting the agency administrative penalty authority?
- What agencies are involved in drinking water regulation and enforcement?
- Are there any idiosyncracies in definitions or terminology?
- How long has the administrative penalty program been in existence?
- How do administrative penalties relate to civil and criminal penalties?
- How often have administrative penalties been assessed?
- How is the administrative penalty program administered?
- How are administrative penalties enforced?
- How successful has the follow-up been?
- How many people are involved in enforcement activities?
- How labor-intensive is the follow-up?
- How is the penalty amount determined?
- Is a monetary limit established for the penalty amount?
- What is the cost to implement the administrative penalty program?
- What is the disposition of collected penalties?
- Are penalties assessed for specific violations?
- Is there any distinction between large and small systems?
- Is there any distinction for systems serving different types of populations?
- What authority do local jurisdictions/counties have in exercising administrative penalty authority?

TABLE 3 (cont.)

- How does local enforcement work?
- What difficulties were encountered in obtaining the authority to use administrative penalties?
- What is the agency's relationship with the State Attorney General's office?
- How does the appeal procedure work?
- How many have used or successfully gone through the appeal process?
- How well is the administrative penalty program working?
- What benefits have resulted from the administrative penalty program?
- What problems have there been with the administrative penalty program?
- Has any correlation between the amount of the penalty and compliance rates been noted?
- Are there any plans to change the administrative penalty program?
- Are there any plans to implement an administrative penalty program?

Preliminary answers to these questions were retrieved from the information supplied as a result of the initial request. Given time and funding limitations, it was not feasible to contact all States or even all States with administrative penalties. After systematic review of the answers to the questions, it was decided that six of the States would be contacted for more in-depth analysis. For each State selected, specific questions relating to that State's program were developed. The identified State official was contacted, a copy of the questions was forwarded, and the official identified a convenient time when a conference call could take place. Table 4 lists the States for which case-study descriptions are provided.

TABLE 4

CASE-STUDY STATES

California
Connecticut
Florida
Pennsylvania
South Carolina
Washington

STATE ADMINISTRATIVE PENALTY PROGRAMS CASE STUDIES

Six case-study States were selected to represent five EPA regions (Regions 1, 3, 4, 9, and 10). An effort was made to select States that would cover all geographical regions, but as Figure 1 indicates, few States in the Midwest have administrative penalty programs and no Midwest State was able to participate in a case study during the time frame provided. Pennsylvania was selected because it represented the only State in Region 3 that submitted information (at the time selection was made) pertaining to administrative penalties. To provide a cross-section of State administrative penalty usage, Connecticut was selected to represent Region 1 after the preliminary review indicated the State preferred using an alternative enforcement action. South Carolina had provided much information and appeared to be a long-standing program; a second State from Region 4 (Florida) was selected to provide insight into current State efforts to obtain administrative penalty authority. California was selected to represent Region 9 because Hawaii, the only other State with a program, has not used its authority to assess administrative penalties. Washington was selected for Region 10 at the suggestion of the region's Public Water Supply Section Chief. The six case-study States provide a broad spectrum of agency requirements, program procedures, and the role penalties play in overall enforcement efforts.

The following case studies provide summaries of submitted laws, regulations, policies, procedures, and letters from and telephone conversations with State officials. Although the emphasis of the case-study analyses was on administrative penalties, it was impossible to separate the assessment of penalties from the overall enforcement process. Consequently, individual State studies also include discussions on civil and criminal enforcement options. The relationships and interactions of the various enforcement components often highlight the differences between the State programs.

In addition, because each State's program is different, terminology also varies. As previously mentioned, some States provided discussions of administrative penalty programs as they pertain to assessments in consent or agreed orders while others believed they did not have a program unless the penalty could be assessed in a unilateral order. In addition, some States specifically use the term "administrative penalties" when discussing penalties assessed by an administrative agency; other States refer to them as "civil penalties assessed administratively"; while still other States simply use the term "civil penalties" and imply administrative penalties through their description of the process. (Regardless of the term used by the State, an administrative penalty is a penalty assessed by an executive agency and not by a court.) The description of orders also varies. Orders that a violator agrees to are called "consent orders," "agreed orders," "bilateral consent agreements," etc., while orders that a violator does not agree to are called "administrative orders," "compliance orders," etc.

Every effort has been made in the State summaries to try and reduce the confusion resulting from different terms being used to express the same concept or action.

CALIFORNIA

INTRODUCTION

California (Region 9) has an estimated population of 29,615,500 (1990 estimate). According to information provided by EPA's Region 9, there were a total of 11,408 public water systems in 1990. The distribution of these systems (as defined by the California Safe Drinking Water Act) is shown in Table CA-1.

TABLE CA-1

CALIFORNIA'S PUBLIC WATER SYSTEMS

Large community systems*	1,403
Small community systems**	2,843
Noncommunity systems	5,489
State small systems***	1,673
TOTAL	11,408

* A large community system has 200 or more connections.

** A small community system has between 15 and 199 connections.

*** A State small system has between 5 and 14 connections.

Agency Responsibilities: The Department of Health Services, Office of Drinking Water, currently has authority over public water systems with 200 or more service connections and is responsible for the implementation of the State's drinking water program. Article 7, section 4032, of California's Health and Safety Code gives the Department the authority to issue citations and assess civil penalties. Administrative penalties for violations of a primary drinking water standard (excluding turbidity) cannot exceed $1,000 per day. Administrative penalties for failing to comply with an order or citation pertaining to violations of turbidity and secondary water standards cannot exceed $250 per day.

History of Agency Authority: The authority to assess administrative penalties was granted in 1986. The Chief of the Office of Drinking Water anticipated the need and with the help of the Legal Counsel wrote the proposed law. No difficulties were encountered in moving the law through the legislature; other State agencies had administrative penalty authority, and counties already had the right to assess penalties for drinking water violations. Before this authority was passed, real enforcement actions, such as the issuance of administrative orders, were minimal; most enforcement activities were in the form of corrective action letters, which were not very effective.

ENFORCEMENT ACTIVITIES

The Office of Drinking Water has not utilized its right to seek civil relief in the courts, always initiating administrative proceedings instead. If a violation occurred that resulted in someone becoming ill, the Office would seek criminal prosecution. Tampering with a public water system is a felony and carries a fine of $30,000. California has not had to initiate enforcement actions for this particular violation. However, if one should occur, and the violator were someone outside the public water system, the Office would question its authority to pursue any action. A case of tampering may belong under the purview of the District Attorney.

One lawyer dedicated to Office activities discusses legal questions, prepares cases for appeal, and is involved in developing regulations and implementing the law. At one point, because of the lack of funds, the Office had to compete with other offices for legal services. Now, using EPA grant money, they can again afford to have a lawyer assigned to their needs.

Procedures: First, Office of Drinking Water field staff identify a violation. A letter of correction is written that specifies the violation. If there is no response to the letter, then a citation or compliance order is issued. (If a violator has a history of noncompliance, the citation or compliance order is often issued without a letter of correction being sent first.) A citation is issued if it is a short-term violation and correction requires minimal expense, e.g., monitoring violations. A compliance order is issued if a long-term, high-cost improvement project is necessary, e.g., the construction of a treatment plant. The field staff writes the citation/compliance order, the District Engineer reviews it, and the Regional Chief signs it. Both citations and compliance orders provide the history of the violation, cite the law or regulation being violated, and contain a schedule for compliance. After a citation/compliance order is issued, a copy is sent to the Chief of Field Operations, to all District Engineers and Regional Offices, and to the in-house attorney. The attorney conducts spot checks while the Chief of Field Operations reads all citations and compliance orders.

Administrative penalties are not usually included in the first citation. If corrective action is not taken, a second citation is issued that does include an administrative penalty. If this second citation is also ignored, a third citation, containing a higher penalty, is issued. If the violator does not comply after the third citation, the issue is referred to the Attorney General (depending on a number of factors). If a violator stonewalls a compliance order, the issue may be immediately turned over to the Attorney General. The Office has used Attorneys General in Sacramento, San Francisco, and Los Angeles and has found them to be responsive and cooperative. However, use of the court system is expensive in terms of money and resources. For example, one action was in court for approximately 2 years; 2,500 hours were expended, including upwards of 50 percent of the District Engineer's time.

Presently, Local County Health Officers are responsible for systems that supply fewer than 200 service connections. Counties have the same citation and compliance order authority as the Office of Drinking Water. Some counties provide more attention to enforcement than others; local Boards of Supervisors set priorities and for some, enforcement of drinking water requirements may not be high on the list. Currently, the Office can take actions against small systems under certain conditions (if there have been violations for 90 days or if there is an imminent and substantial danger to system users). The Office has no authority over what a county does and cannot compel a Local Health Officer to pursue enforcement actions. Consequently, the Office cannot ensure that a consistent State-wide program is being implemented. However, the Office does assist local health department officials in developing and issuing citations and compliance orders until they are comfortable with the procedures.

In August 1990, legislation was passed (Assembly Bill 2158) that gives the Office of Drinking Water authority over all public water systems in July 1992. Counties will have the option of contracting with the State to manage their regulatory and enforcement programs. The law provides for a fee system that is supposed to generate funds for local programs.

For the 1988/89 fiscal year, a total of 3 person-years of field staff time was expended on enforcement matters. This total includes activities pertaining to citations and compliance orders, but it does not include the time spent for correction or field activities; the time spent for management; or the time spent by the legal counsel. The percentage of time devoted to the assessment of penalties cannot be determined.

Penalty Assessments: Since 1986, the Office has issued hundreds of citations and compliance orders to large water systems. The Office has not historically issued administrative penalties for large monetary amounts; only one or two penalties for $2,500 have been issued. In 1989, the Office assessed only $900 in administrative penalties. Usually, water systems respond to the first citation, which does not include a penalty. The Office believes it is justified in assessing penalties of low amounts because their primary goal is to get correction and the threat of fines is used more often for leverage to achieve compliance. All administrative penalties collected are deposited in the State's General Fund.

Appeals: An internal appeal process is utilized for citations. An Administrative Law Judge in the Department hears the appeal; the District Engineer files a brief and appears on behalf of the Office at the hearing. At the conclusion of the hearing, the Administrative Law Judge sends a decision to the Director of Health Services as a recommendation. The Office of Drinking Water has won most, but not all, of its appeals. The Office infrequently disagrees with the Administrative Law Judge's recommendation.

There is no administrative appeal for compliance orders. The Office believes that the compliance order has more impact because the only appeal is through the courts. Although their attorney has discussed initiating administrative appeal procedures for compliance orders, the Office believes that an internal process is not necessary because compliance orders are issued with reasonable long-term schedules. In addition, if a violator questions the reasonableness of a compliance order, an informal appeal can be made to the Regional Engineer to have the order amended.

If a water system does not accept the Department's final decision, it can go to court.

STATE'S ASSESSMENT OF PROGRAM EFFECTIVENESS

The Office of Drinking Water believes that the use of citations and compliance orders has been effective in bringing long-time recalcitrant water systems into compliance, primarily because of its ability to levy fines.

Although it often takes a tremendous toll on its resources, the Office is committed to seeing every enforcement action through to a final decision. This demonstrates to the violating water system, and to other water systems, that the Office is serious about bringing the action to a close. As word of such enforcement actions spreads, it becomes easier to obtain cooperation from other systems.

Office officials believe that the current authority provides the Office with the powers it needs, and current enforcement practices work. One official noted that an improvement could be to increase administrative penalty amounts. Now, initial penalties are between $100 and $200, which may be a deterrent for smaller systems but has little impact for larger systems. (Penalties collected in a civil action or criminal proceeding can be as high as $25,000 per day.)

CONNECTICUT

INTRODUCTION

Connecticut (Region 1) has a population of 3,107,576 (1980 census). According to State officials, a total of 670 public water systems serve more than 25 persons or have more than 15 service connections.

Agency Responsibilities: The Department of Health Services has jurisdiction over all matters concerning the purity and adequacy of any source of water. The Commissioner of Health Services has the authority to impose a civil penalty of up to $5,000 for violations of water supply plan, testing, and reporting requirements.

History of Agency Authority: Public Act 85-450 (House Bill 7601), giving the Commissioner of Health Services the power to impose civil penalties, was passed in 1985. During the public hearing, only two comments were submitted; no problems were encountered in obtaining this authority. The provisions in the bill augment the authority found in section 25-32, which is the enabling legislation providing the Department of Health Services with jurisdiction over all matters concerned with public water and requiring that the Commissioner adopt drinking water regulations.

ENFORCEMENT ACTIVITIES

Connecticut has no drinking water field offices, and the State Department of Health Services has sole responsibility for the program. The Enforcement Officer in the Water Supply Section is the only full-time enforcement employee for the drinking water program; however, the total number of people involved in enforcement actions varies depending on the type and complexity of the violation. Local health departments provide a secondary support role; they may take water samples, check for notification, and perform followups for cross-connections. All enforcement actions are based on the severity of the violation. Although there is nothing in the State statutes that results in relief for smaller systems, the Department tries to avoid formal actions, and small systems usually comply after they realize the Department has the ability and the authority to levy penalties.

Procedures: Public Act 85-450 specifies procedures that must be followed when assessing administrative penalties. The Commissioner of Health Services was directed to establish a schedule of the amounts (or ranges of amounts) of penalties that may be assessed. In establishing this schedule, the Commissioner was to consider the level of assessment necessary to ensure immediate and continued compliance, the character and degree of injury or impairment to or interference with drinking water and public health,

whether or not the system is taking steps to correct the violation, and prior violations committed by the system.

The act also specified that if the Commissioner has reason to believe that a violation had occurred, an administrative penalty could be imposed; and that the Commissioner must send a notice of violation containing references to the law or regulation allegedly being violated, a short statement regarding the matters of the case, a statement of the amount of the penalty, the initial date of the imposition of the penalty, and a statement about the system's right to a hearing.

According to the act, the penalty is payable on the date specified in the notice and for each day that the violation continues. Within 20 days after receiving a notice, a system can request a hearing to contest an adverse determination. If after the hearing, the Commissioner finds that the violation still exists (or if the water system does not request a hearing), the penalty would continue from the original date of imposition. Upon receiving notification of correction from the system, the Commissioner must determine if the violation has been corrected.

Hearings are conducted under provisions provided by law. The Commissioner is allowed to mitigate an administrative penalty under any terms and conditions determined to be proper or necessary. A final order of the Commissioner is subject to appeal after a hearing takes place. No challenges are allowed if the violator does not request an administrative appeal.

If any system fails to pay an administrative penalty, the Attorney General, upon request of the Commissioner, is authorized to bring an action in the Superior Court to obtain enforcement of the penalty by the court.

Regulations concerning administrative penalties were adopted by the Department of Health Services, Water Supplies Section, in August 1986. The regulatory requirement for calculating the amount of the total penalty assessment is to add all the applicable penalties specified and count each day the violation continues as a separate violation. Table CT-1 presents the schedules of penalties established by the Commissioner.

TABLE CT-1

SCHEDULE OF PENALTIES

Violation	Amount of penalty
MONITORING REQUIREMENTS	
Testing for bacteria	$45
Testing for all physical parameters	60
Testing for a single physical parameter	30

TABLE CT-1 (cont.)

Violation	Amount of penalty
Testing for all inorganic chemicals	480
Testing for a single inorganic chemical parameter	70
Testing for all pesticides	670
Testing for a single pesticide	145
Testing for all organic chemicals	1,000
Testing for a single organic chemical parameter	$170
Testing for all radiological parameters	900
Testing for a single radiological parameter	245
Testing for free chlorine residual	30
Testing for corrosion control chemicals	70
Reading source meter	50
Monitoring reservoir	75
Monitoring ground water source	75
Monitoring water use	75
REPORTING REQUIREMENTS	
Submitting watershed survey	$5,000
Submitting test results	10
Submitting reservoir status report	50
Submitting ground water status report	50
Submitting water use report	25
Submitting cross-connection report	5,000
Making public notice	1,000
WATER SUPPLY PLAN REQUIREMENTS	
Submitting water supply plan	$5,000
Revising water supply plan	1,000

Orders are fairly simple to issue, there is a standardized format, a draft order is given to an Attorney General who reviews it and discusses the history of the violation and the Department's case, and then the Bureau Chief signs it.

Attorneys General are consulted for legal advice and interpretation whenever the Bureau Chief's signature is required, such as for notices of violation, orders, and consent agreements.

However, in accordance with current practices, if the Department wishes to assess a penalty, it must go to a Superior Court judge and petition to have the penalty levied. Many judges place drinking water as a low priority and often tell the Department to go back to the system and discuss the violation. The Department has approached judges twice and in both cases were unsuccessful in their petition to assess the penalty.

The preferred enforcement action in cases of serious or continuing violations is to utilize joint takeover provisions with the Department of Public Utility Control. The two departments enjoy a close working relationship concerning the regulation of water systems. For example, both departments must jointly evaluate all phases of all applications for constructing or expanding community water systems; joint approval is required before a certificate of public convenience and necessity is issued.

Section 16-262o of Title 16, Chapter 283 (Department of Public Utility Control) states that the Department, in consultation with the Department of Health Services, can order the acquisition of a water company after determining that the costs of improvements to and the acquisition of the company are necessary and reasonable. In making the determination, the Department of Public Utility Control must consider the geographical proximity of the acquiring entity to the water system; whether or not the acquiring entity has the financial, managerial, and technical resources to operate the water system in a reliable and efficient manner; and any other factors deemed relevant. The water company must take immediate steps required for the transfer, and the acquiring entity must make any necessary improvements to assure the availability and potability of water.

Due process is followed closely during the entire takeover process; the water system is given every opportunity to present its case. After a water system fails to comply with an order pertaining to the availability or potability of water or the provision of water at adequate volume and pressure, the Departments of Public Utility Control and Health Services must conduct a hearing to determine what actions may be taken and the expenditures that may be required. If the decision is to take over the system, another system is located, preferably nearby, that can assume all responsibilities. The Department of Public Utility Control assigns the violating system to this new system. The Superior Court does not become involved unless a temporary receiver is appointed to supervise or manage a system. No takeover has been challenged, probably because of the close attention paid to ensuring full due process. In addition, consumers usually are in full support of takeover actions.

Penalty Assessments: No administrative penalties have been assessed in Connecticut. If money were collected, it would be deposited into the General Fund.

Appeals: A water system may petition the Commissioner for a hearing to contest a notice of violation's determination that a violation occurred, a determination that a violation has not been corrected, the initial date on which an administrative penalty was imposed, or the penalty imposition itself. This request must be made within 20 days after the notice has been sent. Appeals rarely take place. Of 50 orders issued over the past 3 to 4 years, only 2 have been appealed. This can probably be attributed to the Department having developed a sound case and establishing a thorough paper trail. Formal appeals of final orders may be made in the appropriate court.

STATE'S ASSESSMENT OF PROGRAM EFFECTIVENESS

The State has found joint takeover proceedings to be successful. The only negative incident in 4 to 5 years of use occurred when the citizens of Greenwich objected to their bills increasing $5 to $6 a year after a water company was taken over in Lebanon; this suit is still pending. Most of the systems that have been taken over are in subdivisions that were developed in the late 1950's and early 1960's and now are deteriorating. The overall policy of the "greatest good for the greatest number" appears to be working. However, the Department would like to be able to assess administrative penalties without the need to petition the court.

FLORIDA

When Florida was selected for inclusion as a case study, it was in the process of again trying to obtain administrative penalty authority through the legislature. Florida (Region 4) has an estimated population of 12,671,000 (1989 estimate) and approximately 8,000 public water systems. During the past 5 years, the Department of Environmental Regulation had tried three times to move administrative penalty authority through the legislature. The issue is highly controversial in the State and at times, an entire legislation package has been delayed because of an administrative penalty provision. As a result of their efforts, the Department made a number of observations: one was that the term "penalty" received unfavorable reactions; another was that regulated entities feared any new legislation that could set a precedent and ultimately affect them some time in the future.

With the proposal of Senate Bill 1100, the Department decided to link the issue of compliance with the ability to assess penalties. Using the fact that the foundation of the drinking water program is based on the timely and accurate submission of reports, the Department proposed legislation that would allow them to assess a "noncompliance fee" for failure to comply with reporting and monitoring requirements. The Department believed that the enforcement of these reporting and monitoring requirements was its most difficult task, and that this mechanism could make the violation of these requirements uneconomical. In addition, the Department had learned that by keeping legislation as specific as possible, there was less likelihood for opposition.

The noncompliance fee was portrayed as a preventive program with the focus on compliance. The fee would be assessed for violations that did not represent, in themselves, an environmental problem, but if not corrected could result in more serious problems.

The Department's Drinking Water Section contributed to the writing of the initial draft of the bill; the bill received industry support; and unlike the bill's proposed user fees, the noncompliance fee provision received little opposition. The bill passed in June and became effective in July 1990.

Before passage, the Department of Environmental Regulation could take administrative actions to establish liability and to require corrective action. The Department would send a notice of violation that specified the law or regulation suspected of being violated and the facts relating to the case. An order for corrective action could be included with the notice. Orders became effective after an administrative hearing or after 20 days if no hearing was requested. The order could require, in addition to corrective action, that the violator pay the State for expenses incurred during the investigation and hearing. Civil penalties, imposed by a court of competent jurisdiction, could not exceed $5,000 per day. In addition, the Department could reach an agreement with the violator; the system would

meet with the Department and using a penalty matrix, the Department would indicate what the civil penalty would be if the issue was taken to court; if the system agrees to the terms of the consent order, the penalty is often reduced and can be collected administratively through the bilateral agreement.

The Department sees its main mission as one of ensuring compliance and believes there is no need for formal enforcement actions if compliance is obtained. Even so, various departmental enforcement actions have resulted in collection of approximately $3 million in penalties.

The provisions of the new law allow the Department to assess a noncompliance fee for failure to comply with reporting requirements for microbiological, inorganic, or organic contaminants; turbidity; radionuclides; or secondary standards. For the first and second violations of the microbiological reporting requirements and for the first violation of other reporting requirements, the Department must allow the water system 30 days to comply before assessing a fee. The Department must first issue a notice of violation that contains the facts alleged to constitute the reporting violation; the specific provision of the law, rule, or order alleged to have been violated; the corrective action needed to bring the facility into compliance; and the potential penalties that may be imposed. Subsequent violations (of the same nature) do not require 30-day notices during any 36-month period.

When the Department wishes to issue a noncompliance fee, it must give the system written notice that contains the amount assessed; the specific provision of law, rule, or order alleged to be violated; the facts of the case; required corrective action(s); and the rights available under chapter 120 to challenge the assessment. The assessment is final and effective unless an administrative proceeding is requested within 20 days.

For microbiological reporting requirements, the fee cannot exceed $250; the total noncompliance fees assessed cannot exceed $1,000 per assessment for all reporting violations attributable to a specific facility during any one month. For other reporting requirements, the fee cannot exceed $50 per day of violation; the total assessed can not exceed $2,000.

Assessing a noncompliance fee is in lieu of any civil action that may be instituted by the Department in a court of competent jurisdiction. However, the Department still may initiate a civil action for nonpayment of a fee. Fees collected will be deposited in the Water Quality Assurance Trust Fund or the appropriate Public Health Unit Trust Fund.

No fee may be assessed until the Department of Environmental Regulation has adopted rules to implement the provisions of the law. The rules will establish specific procedures and assessment amounts for noncompliance fees; fees will be set on a sliding scale based on the type of violation, the degree of noncompliance, and the potential for harm. In addition, the rules will allow for adjustment factors such as good faith efforts, the

lack or degree of willfulness or negligence; the system's previous history; and the system's ability to pay.

The new law also authorizes county public health units to enforce its statutory and resulting regulatory provisions. However, after January 2, 1991, no county public health unit may be designated or approved unless it can carry out all functions of the drinking water program. The Department of Environmental Regulation will be responsible for overseeing these county activities. Fees collected by county public health units will be deposited in the appropriate Public Health Unit Trust Fund.

PENNSYLVANIA

INTRODUCTION

Pennsylvania (Region 3) has a population of 11,863,895 (1980 census).

Agency Responsibilities: The Department of Environmental Resources, Division of Water Supplies, is responsible for the implementation of the State's drinking water program. Section 13, paragraph (g) of the Pennsylvania Safe Drinking Water Act (Act 1984-43) gives the Department the authority to assess a civil penalty. The maximum administrative penalty that may be assessed is $5,000 per day for each violation. The Department works closely with the Public Utility Commission. The Commission can penalize and can also place a system under receivership. The two departments currently have an informal agreement that they intend to formalize with a Memorandum of Understanding.

History of Agency Authority: The authority to assess administrative penalties was granted in 1984 with the passage of the Safe Drinking Water Act. No administrative penalties were issued until 1987 because the Department needed time to develop an overall enforcement strategy and policy and to delegate the authority for issuing field orders. The authority to assess administrative penalties is fairly common for Pennsylvania enforcement agencies; nonenforcement agencies (e.g., Education, Health, Welfare) neither have nor need the authority.

ENFORCEMENT ACTIVITIES

The entire field staff of the Division of Water Supplies is responsible for enforcement and includes the following: 6 environmental protection managers (1 per region); 6 environmental compliance specialists (1 per region); 6 technical services section chiefs; 30 sanitary engineers with permitting responsibilities; 18 supervisors; and 90 field sanitarians.

Four counties have County Health Departments that enforce drinking water regulations. County Health Departments are essentially autonomous. They require support only in the area of permit review; permits cannot be issued by the county. In addition, the county departments may take the same enforcement actions as the Department of Environmental Resources except for unilateral administrative penalty assessments. Laws governing the Environmental Hearing Board do not recognize the county department; consequently, no mechanism for an appeal would be available for the public water system. Therefore, county departments attempt to negotiate a letter agreement where payment is in lieu of a civil penalty. Some money collected goes back to the county for training and

equipment. (Although counties have been trying to initiate direct payments, they have been unsuccessful thus far.)

There is no direct departmental relationship between the Department and the Attorney General because the Attorney General is an elected position. Departmental lawyers are under the Chief Counsel, who reports directly to the Governor. Any criminal proceeding or appeal would go to the county court with the District Attorney or County Solicitor. Civil and criminal penalties can be assessed by the courts for amounts as high as $50,000.

Most enforcement activities start at the district (regional) level. An environmental compliance specialist reviews the first draft of an order. Field orders are distributed to the litigation counsel and the Central Office. Other orders are sent on for legal concurrence. Only four people in the Central Office are authorized to initiate an action, and this happens infrequently. Usually Central Office actions concern out-of-State bottled water sellers that must be permitted. If the seller does not utilize a Pennsylvania-certified laboratory (the most common offense), an order is issued; failure to comply with the order results in the permit being revoked.

Procedures: The Department has several tools at its disposal to compel compliance. Field orders are essentially compliance orders issued by field enforcement officers. A field order is issued for violations that present a risk to the public, such as failing to notify the public or to respond to an emergency, failing to disinfect, and failing to respond to a bacterial or turbidity maximum contaminant violation. Field orders are appealable.

Compliance orders are also appealable and are final orders issued for priority violations, which if left uncorrected could have a serious result; these include reporting and managerial (permit) violations. The order generally sets forth a long-term compliance schedule.

Consent orders are used primarily to avoid a long appeal process. In most circumstances, before a compliance order is issued, the Department meets with the water system in an effort to resolve the problem. Benefits to issuing a consent order are that both parties are required to abide by the terms of the order and neither party can alter it without mutual consent. Contingency penalties are usually set at a lower amount than those that otherwise would be assessed. The order also establishes measurable goals that can be monitored.

Summary citations are considered criminal proceedings. For some staff, they may be easier to implement; however, they are now used infrequently. The staff member goes before a District Magistrate to request the issuance of a citation; issuing a summary citation is similar to issuing a traffic violation. However, this procedure is very time-intensive because the law requires that the Department must hold a pre-enforcement conference

before filing for a summary citation. In addition, hearings can be lengthy and heated. Many times the Magistrate must be educated regarding the law and the seriousness of drinking water violations. If the system is found guilty or admits to guilt, the result will be creation of a criminal record. The Department would prefer to avoid this and to keep the enforcement process in-house.

Another enforcement option available to the Department is initiation of court proceedings. The Pennsylvania court system is set up so that County Courts and Courts of Common Pleas can hear original jurisdiction, and appeals are heard first by the Superior Court and then by the Supreme Court. A Commonwealth Court was established to hear both original jurisdiction and appeals. (Any action an agency takes that can result in an administrative hearing must go to the Commonwealth Court for appeal.) The Department can go to a court of original jurisdiction, either before or after a departmental order has been issued, to have the court issue an order requiring the system to perform specified actions. The Department can also request that the system be held in contempt; the Department infrequently requests this because if a system does not comply with a court order, it is automatically in contempt. The Department goes to court primarily for sensitive cases because, for one reason, the proceeding removes the case from departmental jurisdiction.

Two categories of administrative penalties can be assessed: unilateral penalties and penalties through consent negotiation. Unilateral penalties are appealable through the Environmental Hearing Board. The Board has a good track record in supporting the Department of Environmental Resources; however, no drinking water unilateral penalty has gone to appeal. Generally, the Department negotiates with the system beforehand to avoid the appeal process.

Negotiated settlements, such as letter agreements, use a penalty matrix for determining amounts based on the seriousness of the violation, the population supplied by the system, and the culpability of the violator. Unilateral administrative penalty amounts are dependent on the same criteria; however, they are usually considerably higher than negotiated penalties (the maximum is $5,000 per day for each violation).

If the system chooses to initiate a hearing, the Department has a history of not backing down from its original assessment; consequently, many systems eventually agree to a negotiated settlement before the hearing starts. Letter agreements for negotiated penalties are not difficult to produce. The letter clearly outlines the requirements, and if the penalty amount is less than $500 (the pre-established maximum), there is no need for an attorney's pre-approval, which would be an impediment to the process.

There is no provision in an administrative penalty assessment that requires future compliance; the only incentive is that subsequent violations will result in higher penalties.

Penalty Assessments: Since receiving primacy in early 1985, enforcement activity in the State has increased from virtually nothing in 1986 to 289 actions in 1989. These 289 actions represent 91 field orders, 41 compliance orders, 11 consent orders, 2 unilateral administrative penalty assessments, 141 negotiated administrative penalties, 2 summary citations, and 1 county court case. From 1986 to February 1990, a total of $538,059 has been collected; in 1988, an administrative penalty of $341,850 was paid by a community water system and in 1989, a $50,000 administrative penalty was paid by a chemical manufacturer. The disposition of penalties goes to the Safe Drinking Water Account, which is allocated to the Deputy Secretary. The Drinking Water Program receives a percentage of this account, which supplements funding received from the legislature and EPA grants. A summary of FY89 enforcement actions is presented in Table PA-1; the money collected in penalty assessments is shown in Table PA-2.

Appeals: A public water system charged with a penalty has 30 days to file an appeal with the Environmental Hearing Board. The last paragraph of each field and compliance order includes the procedure for requesting an appeal, the citation of the law granting the Board authority, and the telephone number and address of the Board. It is the responsibility of the individual to acquire the necessary forms and file for the appeal.

Appeals are heard by the Environmental Hearing Board, which is a quasi-independent agency; appeals have been requested for approximately 10 percent of departmental decisions.

STATE'S ASSESSMENT OF PROGRAM EFFECTIVENESS

Assessing administrative penalties is considered to be less expensive and much quicker than other enforcement options because it is handled in-house and in many cases does not require the use of an attorney. The Department considers the program to be off to a reasonable start when compared to sister programs (waste management, water quality) at the same level of development. Difficulties have occurred because the program is dealing with a large number of systems and there tends to be a lack of uniformity in penalty assessments among the various districts. In addition, some infrastructure handicaps are evident: some systems do not have the population base to raise rates for improvements; some problems are associated with private ownership; and municipal systems rarely care about making a profit and thus do not have a backup fund in case of emergencies.

Other areas of improvement could include treating municipal systems the same as other systems and assessing larger, stiffer administrative penalties to emphasize the value of water in the State.

TABLE PA-1

SUMMARY OF ENFORCEMENT ACTIONS

FREQUENCY & REASON FOR ENFORCEMENT ACTIONS
FY'89

Action	Frequency At CWS	Frequency At NCWS	Reason
Field Order	8	20	Failed to Respond-Bacti MCL
	21	21	Disinfection Failed
	15	0	No Water
	1	0	Failed to Respond-Turb MCL
	4	1	Using Water of Unknown Quality
Compliance Order	20	1	Failed to Apply for Permit
	2	0	Giardia Contamination
	0	2	Persistent Bacti MCL Violator
	1	0	Persistent Turb MCL Violator
	1	0	Failed to Respond FPPE w/ Giardia
	0	1	Failed to Continuously Disinfect
	1	0	Persistent Nitrate MCL Violator
	1	0	Iron & Manganese MCL Violator
	1	0	Manganese MCL Violator
	0	1	Barium MCL Violator
	1	0	No Emergency Response Plan
	1	0	Using Source w/o Permit
	1	0	Permit & Bacti Monitoring Violations
	1	0	Permit & Barium MCL Violations
	1	0	Low Pressure
	1	0	Failed to Treat as Required
	1	0	Failed to Issue Public Notice
	1	0	Failed to Monitor for VOC's
	1	0	Cross Connection
Consent Order and Agreement (CO/A)	2	0	Persistent Turb MCL Violator
	5	0	Giardia Contamination
	2	0	FPPE Case with Giardia contamination
	1	0	Bacti & Turbidity Monitoring Violator
	1	0	Released SOC's into source used by CWS
County Court	1	0	Failed to Apply for Permit
Unilateral Civil Penalties	1	0	Giardia & Turbidity MCL Violator
	1	0	No Water (Field Order Follow-up)
Negotiated Civil Penalties	1	74	Bacti M/R Violator - Persistent
	3	7	Bacti M/R Violator - Intermittent
	6	6	Disinfection Failed (Field Order Follow-up)
	1	1	Disinfection Failed (Only Action)
	16	0	Failed to Apply for Permit
	1	0	Using Unpermitted Source
	5	10	Bacti MCL Violator (Field Order Follow-up)
	2	4	Bacti MCL Violator (Only Action)
	3	0	No Water (Field Order Follow-up)
	1	0	Low Pressure
Summary Citations	0	1	Bacti M/R Violator
	1	0	Disinfection Failed (Field Order Follow-up)
TOTAL Number	139	150	

TABLE PA-2

PENALTY ASSESSMENTS

ENFORCEMENT ACTIONS FOR FEBRUARY 1990 AT COMMUNITY WATER SYSTEMS

REGION	ORDER[1]	FIELD ORDER	CO/A[2]	CIVIL PENALTY[3]	LETTER AGREE.[4]	SUMMARY ACTION[5]	COMMON. COURT[6]	COUNTY COURT[7]	TOTAL ACTIONS	PENALTIES COLLECTED
Norristown	1	0	0	0	0	0	0	0	1	$ 0.00
Bucks CHD	0	0	0	0	0	0	0	0	0	$ 0.00
Chester CHD	0	0	0	0	0	0	0	0	0	$ 0.00
Wilkes-Barre	0	0	0	0	1	0	0	0	1	$ 1725.00
Harrisburg	0	2	1	0	2	0	0	0	5	$ 4250.00
Williamsport	0	1	0	0	2*	0	0	0	3	$ 350.00
Pittsburgh	0	0	0	0	1	0	0	0	1	$ 288.00
Allegheny CHD	0	0	0	0	0	0	0	0	0	$ 0.00
Meadville	0	0	0	0	0	0	0	0	0	$ 0.00
Erie CHD	0	0	0	0	0	0	0	0	0	$ 0.00
TOTALS	1	3	1	0	6	0	0	0	11	$ 6613.00

ENFORCEMENT ACTIONS FOR FEBRUARY 1990 AT NONCOMMUNITY WATER SYSTEMS

REGION	ORDER	FIELD ORDER	CO/A	CIVIL PENALTY	LETTER AGREE.	SUMMARY ACTION	COMMON. COURT	COUNTY COURT	TOTAL ACTIONS	PENALTIES COLLECTED
Norristown	0	0	0	0	0	0	0	0	0	$ 0.00
Bucks CHD	0	0	0	0	0	0	0	0	0	$ 0.00
Chester CHD	0	0	0	0	0	0	0	0	0	$ 0.00
Wilkes-Barre	0	0	0	0	0	0	0	0	0	$ 0.00
Harrisburg	0	0	0	0	1	0	0	0	1	$ 100.00
Williamsport	0	0	0	0	4	0	0	0	4	$ 1925.00
Pittsburgh	0	0	0	0	3	0	0	0	3	$ 150.00
Allegheny	0	0	0	0	0	0	0	0	0	$ 0.00
Meadville	0	0	0	0	0	0	0	0	0	$ 0.00
Erie CHD	0	0	0	0	0	0	0	0	0	$ 0.00
TOTALS	0	0	0	0	8	0	0	0	8	$ 2175.00

*** ENFORCEMENT ACTIONS FOR CY 1990 - THROUGH FEBRUARY ***

SYSTEM TYPE	ORDER	FIELD ORDER	CO/A	CIVIL PENALTY	LETTER AGREE.	SUMMARY ACTION	COMMON. COURT	COUNTY COURT	TOTAL ACTIONS	PENALTIES COLLECTED
CWS	5	3	1	0	8	0	0	0	22	$ 8113.00
NCWS	0	2	0	0	9	0	0	0	11	$ 2475.00
ALL PWS's	5	10	1	0	17	0	0	0	33	$ 10588.00

*** SUMMARY OF PAST ENFORCEMENT ACTIVITY ***

YEAR/SYSTEM TYPE	ORDER	FIELD ORDER	CO/A	CIVIL PENALTY	LETTER AGREE.	SUMMARY ACTION	COMMON. COURT	COUNTY COURT	TOTAL ACTIONS	PENALTIES COLLECTED
CY 1986-ALL PWS's	1	0	0	0	0	0	0	0	1	$0.00
CY 1987-ALL PWS's	16	17	5	0	8	1	1	0	48	$6,550.00
CY 1988-ALL PWS's	24	64	7	4	126	13	1	1	240	$405,259.25
CY 1989-ALL PWS's	47	86*	7	2	135	2	0	1	280	$115,662.00

KEY

* [1] ORDER=COMPLIANCE ORDER * [2] CO/A=CONSENT ORDER & AGREEMENT * [3] CIVIL PENALTY=UNILATERAL CIVIL PENALTY ASSESSMENT *
* [4] LETTER AGREE.=NEGOTIATED CIVIL PENALTY ASSESSMENT * [5] SUMMARY ACTION=CRIMINAL CASE BEFORE DISTRICT JUSTICE *
* [6] COMMON. COURT=ORIGINAL ACTION (NOT APPEAL) TAKEN TO COMMONWEALTH COURT *
* [7] COUNTY COURT=ORIGINAL ACTION TAKEN BY COUNTY HEALTH DEPARTMENT TO COURT OF COMMON PLEAS IN THAT COUNTY *

* One letter agreement was issued to a Certified Laboratory for failing to notify DER of 3 Bacti samples above the MCL.

Overall, the State considers negotiated administrative penalty assessments (letter agreements, consent orders) a success, particularly in returning monitoring violators to long-term compliance.

SOUTH CAROLINA

INTRODUCTION

South Carolina (EPA Region 4) has a population of 3,121,833 (1980 census). According to State agency statistics compiled on June 29, 1990, the State has a total of 2,621 public water systems. The distribution of these systems is shown in Table SC-1.

TABLE SC-1

SOUTH CAROLINA'S PUBLIC WATER SYSTEMS

Community	891
Non-transient/Non-community	379
Non-community	560
State-defined*	791
TOTAL	2621

* A State-defined water system serves at least two but less than 15 service connections and less than 25 individuals.

Agency Responsibilities: The Department of Health and Environmental Control is responsible for the State's drinking water program. Section 44-55-90 of South Carolina's Safe Drinking Water Act gives the Department the authority to administer penalties. This function is performed by the Department's Office of Environmental Quality Control, Bureau of Drinking Water Protection. The Enforcement Section of the Bureau is not only responsible for issuing administrative orders and assessing penalties but also revises and drafts new regulations. The entire Office assumes the responsibility of notifying system owners of upcoming regulations, holding training sessions, and issuing a quarterly newsletter. The Department established a separate enforcement section in 1983, at the same time EPA was encouraging better State enforcement. Previously, water engineers in the Bureau handled enforcement actions in addition to their other responsibilities. Since the delegation of program responsibilities in South Carolina is diffuse, agency organizational charts are provided in Figures SC-1, SC-2, and SC-3 to illustrate the relationship between the various participants.

The governing body of the Department is the Board of Health and Environmental Quality (Board). The Board is composed of seven members; because members are appointed by the Governor for 2-year terms, the Board reflects the current mood of the State and experiences a high rate of turnover. The Board is responsible for establishing policy and approving regulations and, historically, has been supportive of the Bureau's endeavors.

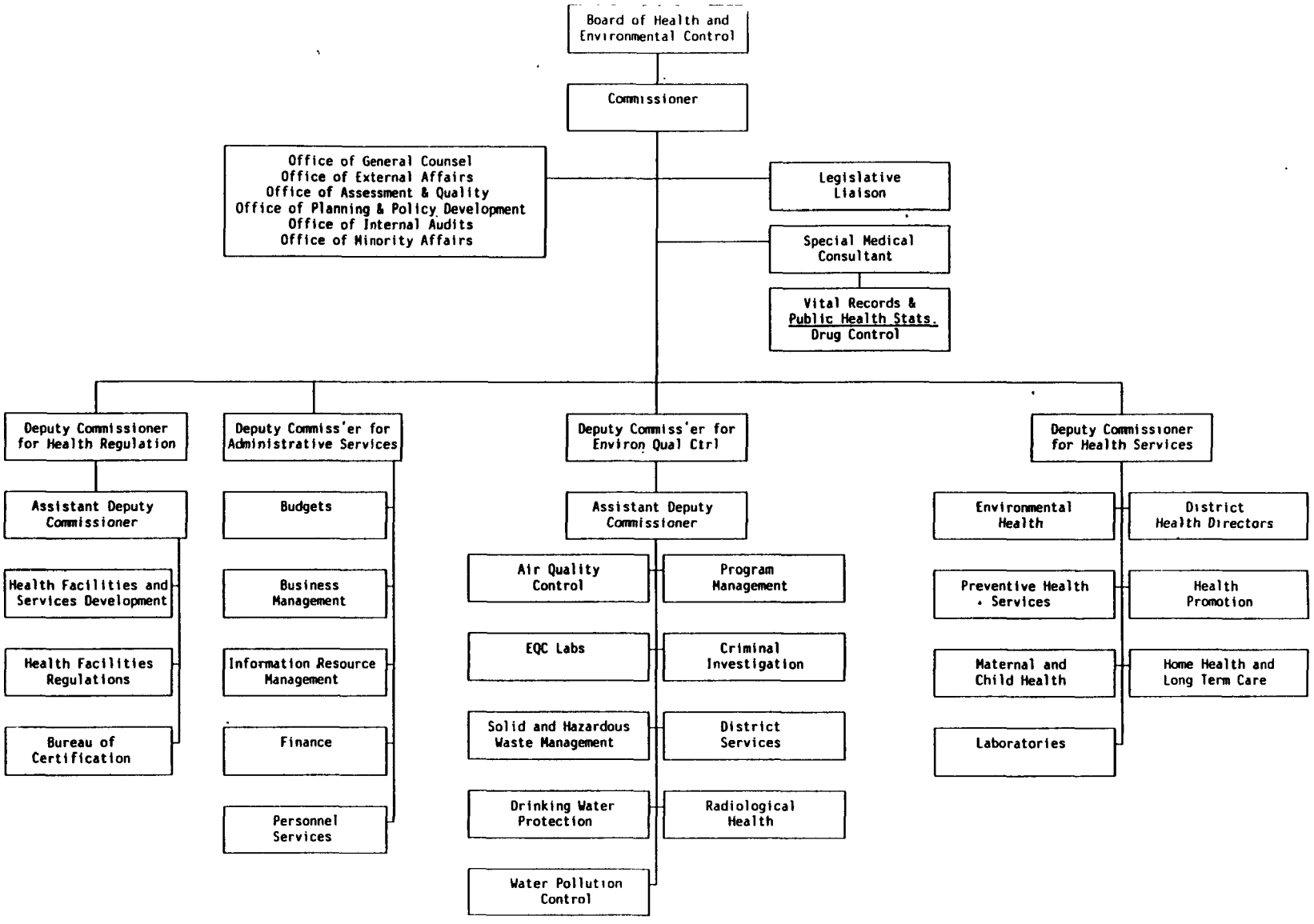


FIGURE SC-1

ORGANIZATIONAL CHART OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

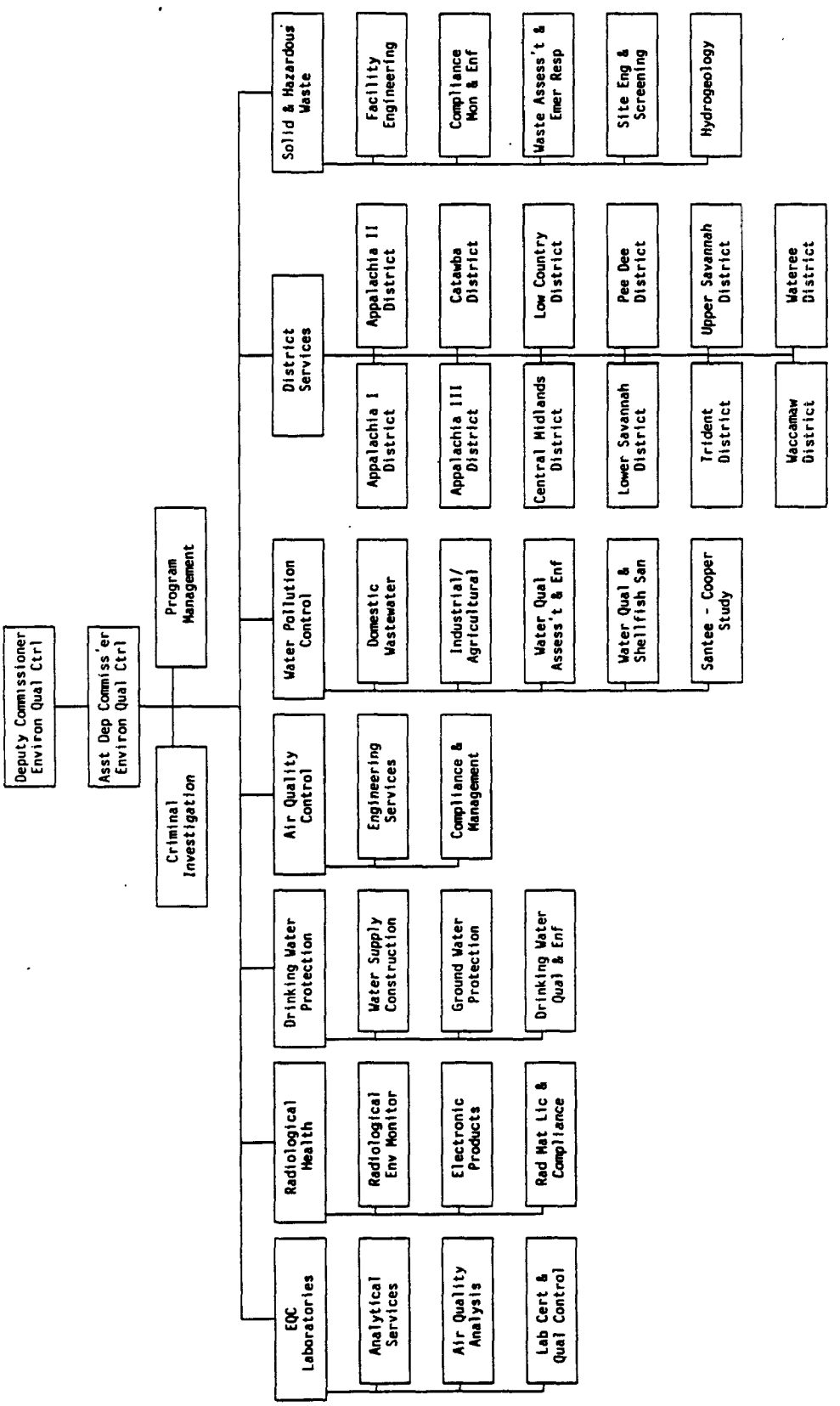


FIGURE SC-2

ORGANIZATIONAL CHART OF THE OFFICE OF ENVIRONMENTAL QUALITY CONTROL

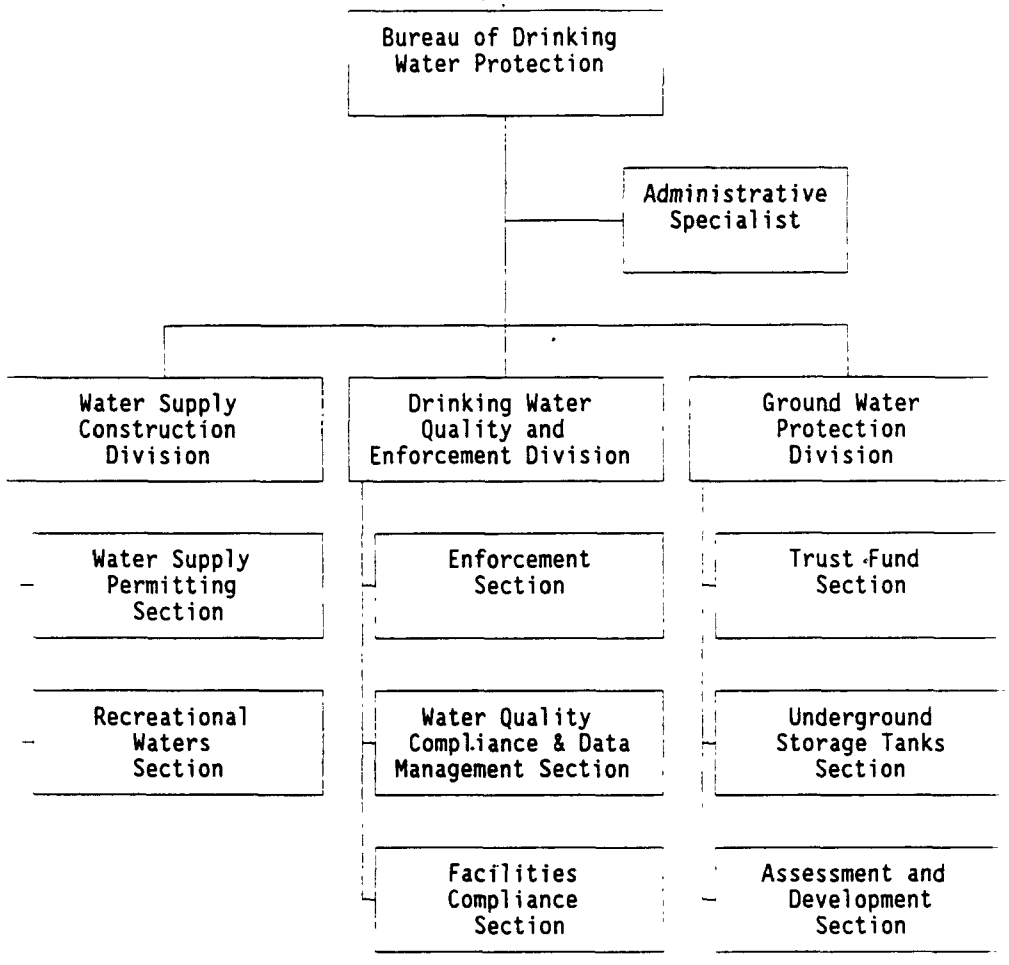


FIGURE SC-3

ORGANIZATIONAL CHART OF THE BUREAU OF DRINKING WATER PROTECTION

History of Agency Authority: South Carolina's Drinking Water Regulations became effective in June 1977. In early 1977, penalties could not be assessed administratively except with the consent of the violator or with the permission of the Board. However, in November 1977, the Board authorized the issuance of departmental orders with penalties of up to $500 per day without prior Board approval. For drinking water, consent orders could be issued but unilateral administrative orders still required Board approval. On April 24, 1980, the Board authorized departmental assessments of penalties of up to $2,000 per day not to exceed a maximum of $20,000, without Board approval. The Board approved the Uniform Enforcement Policy for the Office of Environmental Quality Control on June 24, 1982. On August 25, 1983, the Board voted to rescind penalty limitations resulting from the Uniform Enforcement Policy and authorized that departmental orders, with or without the consent of the violating party, could contain administrative penalties of any amount up to the statutory maximum. As specified in South Carolina's Safe Drinking Water Act, the full statutory limit for drinking water penalties is $5,000 per day with no set maximum.

ENFORCEMENT ACTIVITIES

South Carolina law requires that the Department follow guidelines established by the Administrative Procedures Act and exhaust all administrative remedies before taking a court action.

The Department has at its disposal an Assistant Attorney General assigned to work with the staff and seven lawyers in its Office of General Counsel. These lawyers receive their assignment by district. The Bureau rarely uses the assigned Assistant Attorney General, preferring to rely on departmental staff.

The Office of Criminal Investigation handles all criminal proceedings. The Office was established 3 to 4 years ago in hazardous waste but is now available to the Office of Environmental Quality Control. No civil actions are initiated while a criminal investigation is in process. The Enforcement Section decides if a case should be referred to the Office. Violations are considered to be misdemeanors and violators, upon conviction, are subject to fines of not more than $10,000 for each day of the violation and/or imprisonment for not more than one year. No criminal penalties have been assessed for drinking water violations in the State. Although the Enforcement Section has referred cases to the Office of Criminal Investigation, the Office has turned down these requests and has not pursued criminal prosecution. The Bureau believes that proving a criminal case is much harder, more complex, and more time-consuming.

Procedures: The drinking water program is run in-house; the Central Office schedules sampling, and the districts collect samples and run the inspection program. Individuals from local authorities are not involved in enforcement activities. It has not been necessary to use local employees, and the current practice averts the application of political

pressure from local officials. The Bureau believes that not using local authorities has worked well and has helped maintain consistency.

Administrative actions are initiated upon confirmation of a violation. District or Central Office personnel identify the problem and first try to resolve it. The Compliance Section of the Bureau of Drinking Water Protection is responsible for sending out the first letter to notify the public water system of the potential violation; the District does not send notices of violations but can send warning letters that state what must be done to avoid further enforcement action. The District Office or the Compliance Section decides if the violation should be brought to the attention of the Enforcement Section. (The District Director must approve all District referrals to Enforcement; the Enforcement Section will not proceed without this approval. Preliminary decisions made by District and Central Office staff are seldom overturned by supervisory personnel because of the communications that take place before an order is actually requested.)

After the Enforcement Section receives a referral, much internal discussion again takes place before a decision is reached; this is considered to be an essential part of the overall process. Enforcement actions and the related assessment of administrative penalties are determined by the merits of individual cases. Once a decision is made to begin an enforcement action, the goal is to negotiate a settlement and issue a consent order. An administrative penalty will not be assessed until a good case has been developed.

The Enforcement Section will forward a "Notice of Enforcement Conference" to the responsible party that indicates when the party should attend a conference to discuss why further enforcement action should not take place. Using the information obtained before the conference convenes, the Section reaches a predetermination of a fair administrative penalty and tries not to deviate much from it. The Bureau believes that it does not look good if major adjustments are made. Previously, the Bureau would agree that instead of paying a high penalty, a system could use that money to improve its system; this resulted in penalties dropping significantly. The Board did not like this practice, so it was stopped. However, if anything is said during a conference that changes the circumstances, the administrative penalty may be lowered or even rescinded.

The Bureau of Drinking Water has established its own guidelines that are intended to ensure that assessed administrative penalties are both fair and appropriate for the type of violation cited and consistent for similar violations. The assessment of administrative penalties is considered both punitive and deterrent in nature, and penalties are considered an integral part of the enforcement effort to enhance compliance. Historically, the following types of violations have been considered serious enough to justify the assessment of administrative penalties: (1) unpermitted construction, expansion, or modification of public water facilities; (2) unauthorized use of public water facilities; (3) continued unsatisfactory operation and maintenance of public water facilities; (4) failure of community water system owners to collect and analyze water samples for appropriate analyses; (5) failure of water

system owners to employ a properly certified operator; (6) failure of water system owners to satisfactorily address water quality problems; and (7) violations of departmental orders. Administrative penalties assessed by the Bureau are comparatively lower than penalties assessed by other programs in the Office of Environmental Quality Control. The Bureau believes it is justified in assessing lower penalties than those assessed for hazardous waste and wastewater violations because the Bureau's primary intention is to improve or upgrade systems that have been in existence for a long time. The State has, however, been increasing its administrative penalty amounts annually.

Since enforcement actions are based on the merits of each case, some consideration is given to small systems. If there are benefits to either reducing or eliminating an administrative penalty so that it can be used to improve a water system and these potential benefits outweigh the need for consistency and the punitive aspect of the penalty, the predetermined penalty may be less than it would have been if the system were larger. Under no circumstances, however, will corrective action requirements be waived.

If an agreement cannot be reached at the conference, an order may be issued without the party's consent. However, the Bureau has found that unilaterally assessed penalties are often more difficult to collect and require more effort than administrative penalties assessed by consent. (Consent orders are usually paid.) In addition, the Bureau has not had much success with using the court system to collect payment; until recently, courts have not been very supportive of this bill collection effort.

Usually consent orders and administrative orders with penalties contain the same penalty amount. Again, reiterating its position of maintaining consistency, the Bureau does not believe it is a good practice to increase an administrative penalty just because the alleged violator has not signed a consent order. It believes that if the penalty was fair when the conference started, it is still fair even though an agreement was not reached as a result of the conference. However, the Department may add an administrative penalty to an order that did not originally contain a penalty if the system violates the order's agreed-upon requirements.

If an administrative penalty is not appealed, it is due and payable to the Department within the time frame established by the administrative action. If the penalty is not paid, the Department's Bureau of Finance transmits an invoice for payment. In addition, the Bureau issues a notice of violation of the order. Payments of administrative penalties are tracked in-house. If no action is received after these two actions, the matter is referred to the Department's Office of General Counsel for action in the appropriate court of law.

Although it is not clear by the language of the law, all monies collected by the Bureau are placed in the General Fund of the State of South Carolina. Although changes to this practice have been discussed, it is believed that the likelihood of stiffer administrative penalties would be greater if the Bureau received the compensation.

Penalty Assessments: During the period January 1, 1988, through February 28, 1990, the Bureau issued 113 orders (18 administrative and 95 consent) for drinking water violations; approximately 90 percent of departmental orders issued are consent orders. It is difficult to determine the number of administrative penalties assessed compared to the number of violations committed because of District and Compliance Section efforts to eradicate problems and eliminate the need for enforcement actions.

During the same period (January 1, 1988, through February 28, 1990), 43 orders were issued with administrative penalties, totaling approximately $45,000. Approximately $30,000 has been collected. The remaining $15,000 is either due, under appeal, or has been waived. In a recent report for EPA, South Carolina identified that for a 9-month period, 68 orders were issued and 48 contained administrative penalties.

The Bureau of Drinking Water Protection considers signed orders (administrative consent orders) to be valuable commodities. As discussed previously, the Bureau makes an attempt in all enforcement cases to negotiate a settlement of documented violations. The Bureau has found that it is better to negotiate a consent order than to issue an administrative order, which is subject to appeal, because the costs associated with an appeal are significant when charged against the operational budget of the Bureau. In addition, violations of consent orders are easy to justify in court because the responsible party has agreed to the requirement(s). As indicated by the fact that 90 percent of its orders are consent, the Bureau has achieved a high success rate in reaching an agreement with violators.

Appeals: Once the Enforcement Section reaches a decision, the Bureau's policy is to stand firm and let disputes go to appeal. The Bureau has decided that it is too difficult to evaluate special requests, so if an appeal is desired, the agency allows the party to pursue the adjudicatory process. Only one appeal process is used for all actions, and any decision or order can be appealed. Requests for an adjudicatory hearing must be served on the Board of Health and Environmental Control within 15 days following a final administrative decision by the Department. The Bureau receives from two to five requests for hearings per year. (The low number of adjudicatory hearings also reflects the success the Bureau has had in reaching consent orders.)

A Hearing Examiner is appointed by the Commissioner of the Department with the assistance of the Legal Office. Hearing Examiners are selected from a list of volunteers, most of whom are lawyers; the Bureau has found that having a lawyer as a Hearing Examiner is important. Since no time frame is provided for the Hearing Examiner to reach a decision, the Bureau has, on occasion, become disenchanted with a particular individual who takes too long to decide and has asked that the individual no longer be considered as a Hearing Examiner.

Once a Hearing Examiner is selected, a written pleading to present the case commences the hearing process. Any party (usually the Department) submits, to the Hearing Examiner, an answer to the pleading within 10 days. If it is shown that an answer to the initial pleading cannot be made based on the written allegations, a motion to make the pleading more definite may be filed.

The Hearing Examiner must notify all involved parties within 10 days of the time and location of the hearing. The rules of evidence used by the Court of Common Pleas are observed, with the exception of hearsay evidence. The Hearing Officer may request general, technical, or scientific facts; has the right to issue subpoenas; and may order testimony of a witness be taken by deposition, in accordance with specified procedures. All testimony is given under oath. The Hearing Examiner may cross-examine any witness and make requests concerning evidence. All proceedings are recorded. A party has the right, before the close of a hearing, to argue orally. Briefs may be filed before, during, or after the course of a hearing, if served within 10 days after the hearing has concluded. Prior to the Hearing Examiner submitting a decision, any party may move that the hearing be reopened to receive new evidence or the Hearing Examiner may make a motion to reopen the hearing.

The Hearing Examiner may issue an initial statement to the Board, in the form of a recommendation, or may refer record of the hearing to the Board without a recommendation. Appeals may be resolved by informal disposition, agreed settlement, consent orders (with or without penalties), or default. Hearing Examiners infrequently overturn Bureau decisions; this may be attributed to the policy of not pursuing an enforcement action until a good case has been prepared, and of following proper procedures. Any party may object to the Hearing Examiner's recommendation and apply to the Board for review within 15 days of the determination.

Based on the complete record of proceedings, testimony, and evidence of the hearing, the Board makes a final decision that affirms, modifies, or sets aside the recommendation of the Hearing Examiner. Any person aggrieved by a final decision of the Board may appeal the decision to the proper court pursuant to section 24 of Act 671 and section 23 of the Pollution Control Act.

STATE'S ASSESSMENT OF PROGRAM EFFECTIVENESS

The Department is proud of its success in addressing environmental problems in the State and thinks that part of this success can be attributed to the threat of administrative penalty assessments by the Department. Assessing administrative penalties is a small but integral part of the entire enforcement program; not much time is spent on penalty assessments and no one person is responsible for the implementation of this portion of the program. It is, however, a vital part of the Bureau's effort. The Bureau believes it is

working effectively, and has had no trouble taking strong enforcement actions. Since the Office of Environmental Quality Control has adopted this strong enforcement position on environmental issues, the Bureau believes that further environmental problems can be prevented.

A major component of the enforcement effort is communication and negotiation. The Bureau attributes part of their success to the degree of flexibility they are allowed; this assures that enforcement actions, including administrative penalty assessments, are both fair and dependent upon the circumstances in each individual case.

It is believed that the enforcement program could be improved if it were isolated further from political interference. Since the Bureau's activities are funded by the State legislature and legislators have constituents, there is bound to be pressure. This is one additional reason why the Bureau adopts the policy of using the appeal process rather than extensive negotiations to settle disputes.

Better legal response is also desired. Even with seven lawyers, there is still much competition for their time, and Bureau requests for legal action must be prioritized with other agency demands.

WASHINGTON

INTRODUCTION

Washington (Region 10) has a population of 4,132,156 (1980 census). Currently the State has 13,000 regulated water systems. Of these systems, 4,500 are considered to be within Group A under EPA guidelines (serving more than 25 individuals or with more than 15 connections).

Agency Responsibilities: The Department of Health (formerly part of the Department of Social and Health Services) is responsible for implementation of the State's drinking water program. The Revised Code of Washington section 70.119A.030 gives the Department the authority to impose penalties. Failure to comply with an order of the Department or of an authorized local Board of Health concerning construction, elimination of cross-connections, or violation of a regulation may result in an administrative penalty not to exceed $5,000 per day for each violation.

History of Agency Authority: A legislator, outside the usual legislative process, sponsored the bill that proposed administrative penalties for the drinking water program. A current incident was used to illustrate the need for administrative penalty authority: a tank had fallen, the court system was the only enforcement option available, and before any corrective action could be taken a house burned down because of lack of water. In addition, the Attorney General's office conducted a study on Washington's drinking water enforcement program and recommended, as the number one priority, establishing administrative penalty authority for the Department. Some direct-service departmental programs already had State-wide authority, and counties also had administrative penalty authority; the bill subsequently passed in 1986.

ENFORCEMENT ACTIVITIES

Administrative procedures are pursued before civil actions are taken. Formal enforcement is not a simple process because of the numerous filing requirements, and it is used only as a last resort. The courts are used infrequently, generally only if a penalty cannot be collected. When used, however, the court system has responded fairly fast, and there have been no incidents of drinking water being considered a low priority. Most court appearances are for show-cause hearings where the Department is pursuing a judgment or injunction. The Department does not pursue criminal actions because the Assistant Attorney General does not have the authority. However, county prosecutors have been used.

Administrative orders are used only for repeat offenders, and penalties are assessed in only the most difficult cases. The Attorney General, assigned to the Department of Health, reviews and signs all orders and gives advice on developing agreements. The Attorney General becomes formally involved when a violator fails to pay an assessed penalty and in other civil actions. Approximately 10 percent of the Attorney General's time is devoted to drinking water enforcement actions.

Local health agencies are responsible in some counties for systems with fewer than 100 connections and may assume responsibility for systems with between 100 and 200 connections. All counties are authorized to enforce drinking water regulations and to impose administrative penalties.

Counties differ in their approach to and involvement in enforcement. One county sees its primary role as being one of reviewing and approving water system plans. Although they monitor small public water systems and receive sampling reports, site visits may occur as infrequently as once every 5 years. This county is trying to become more active in enforcement.

One health district (covering 2 counties, 2 major cities, and 12 other cities) assumes a very active role in enforcement. This district takes advantage of local agencies' right to issue requirements that are as stringent or more stringent than State rules. The district office issues notices of violation but tries to achieve voluntary compliance. In the past 3 years, it has not assessed any administrative penalties and has not found it necessary to go to court. However, the district has threatened injunctive action, which is used frequently in other programs. Water systems appear to know the district has the authority and willingness to use this action; consequently, the threat is often sufficient to obtain compliance. If necessary, this district would go to court rather than assess a penalty administratively. Failure to comply with a court order would result in a criminal penalty and possible jail sentence. In addition, the office has the leverage of being able to rescind a system's operating permit if its water supply plan is not approved.

Procedures: Enforcement procedures are conducted according to a manual, created in-house, that contains forms; outlines enforcement actions; provides examples of orders and penalties; and provides the authority language. If a situation does not merit emergency attention, the Department begins the enforcement by contacting the system by letter or telephone. An automatic letter generation system goes into effect when a system misses a reporting deadline. Often an engineer can simply state that an order is needed and soon after basic forms are supplied, the order is issued. Working with the field engineers, the Public Health Advisor writes all legal documents. Orders are signed by the Secretary of Health or designee.

Orders are issued to each owner/operator of the water system; and the Department has found that one of the most complicated tasks in enforcement is determining who these individuals are. Utilizing the post office and licensing departments has proven to be helpful for identifying and locating the responsible parties.

If the system fails to initiate action, an administrative order will be issued. A threat of a penalty assessment is included in the order. There is no formal appeal for these orders, but a State official to contact is identified if the system has any questions. If the system continues to remain in noncompliance, an administrative penalty will be issued. The Department has developed the following formula for calculating penalty amounts:

PUBLIC HEALTH RISK x NUMBER OF PEOPLE AFFECTED x PREVIOUS RECORD OF COMPLIANCE

The public health risk is assigned values (ranging from 2 to 4) for specific violations (e.g., 2 for planning document, report, and paperwork violations; 3 for organic contaminant violations; and 4 for MCL, bacteria violations). The three variables are multiplied together and then multiplied by the amount of the penalty per violation. Although the statutory maximum is $5,000, the calculation often is stopped when a total of $1,000 is reached.

If a system fails to comply with an order and penalty payment, a second administrative penalty is assessed. The Department's aim is to gain compliance, and it will reduce a penalty if the system signs an agreed order. The Department also considers having the system use money for repairs; however, this practice may change.

An average case involves primarily the Public Health Advisor, an engineer, an attorney, and a secretary. Flowcharts are presented for Washington's formal enforcement procedures in Figure WA-1 and for State compliance strategies in Figures WA-2 and WA-3. An example of a printout from the Department's enforcement tracking program is provided in Table WA-1.

Penalty Assessments: Administrative penalties have been assessed for approximately 6 years. The Department issues 20 to 25 compliance orders per year, but penalties are included in only a small percentage of the orders. The Department's primary goal is to obtain compliance; it does not see itself as being in the business of collecting money. Of 20 orders issued in 1987, 6 administrative penalties were issued and 15 systems have achieved full compliance. In 1988, 15 orders were issued and 10 systems have achieved compliance; of the remaining 5, 1 has started construction, 2 are in partial compliance with a compliance schedule, 1 is going to court, and 1 is finishing work following a hearing with the Department. The status of 1989 actions is provided in Table WA-2.

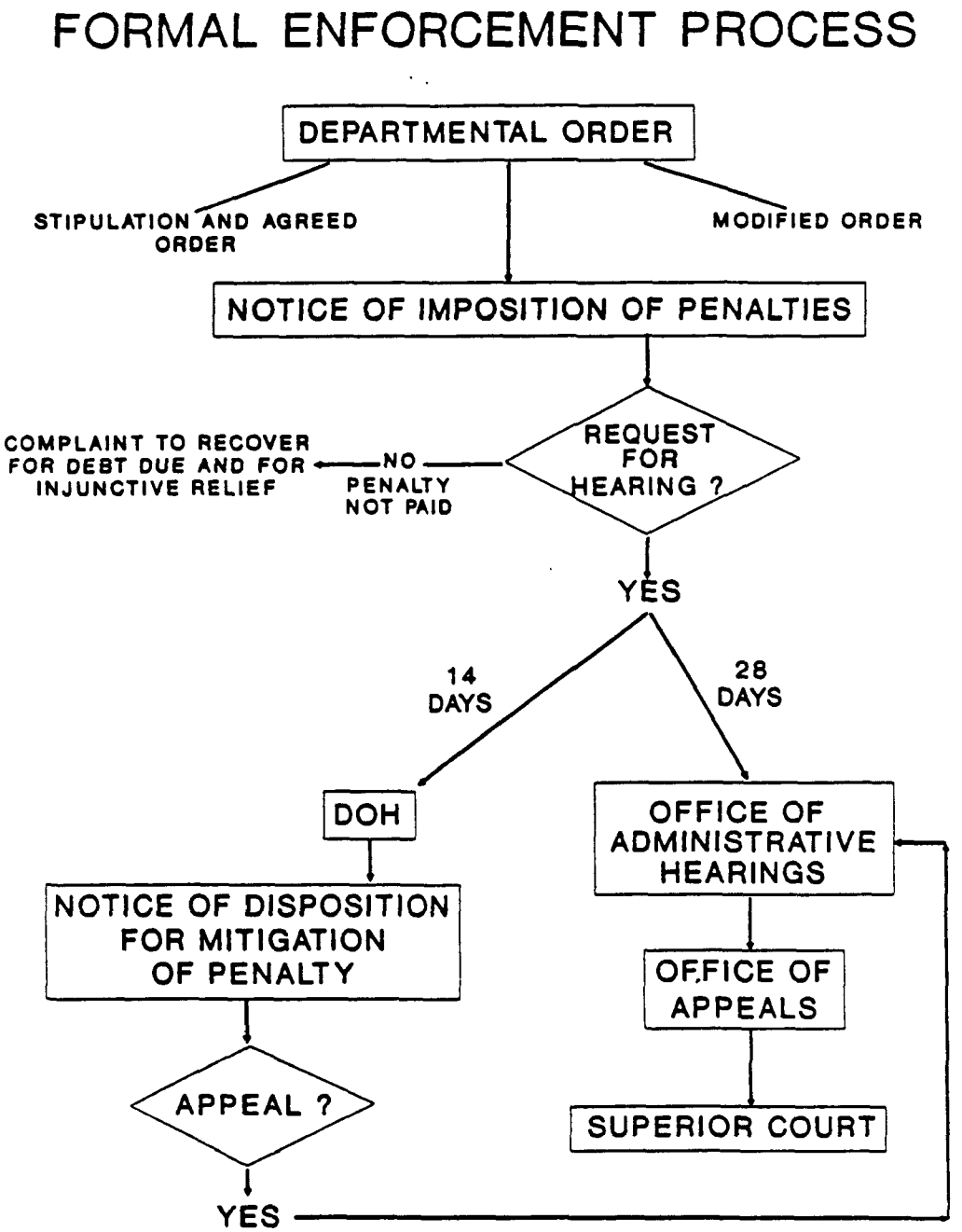


FIGURE WA-1

FLOWCHART OF FORMAL ENFORCEMENT PROCESS

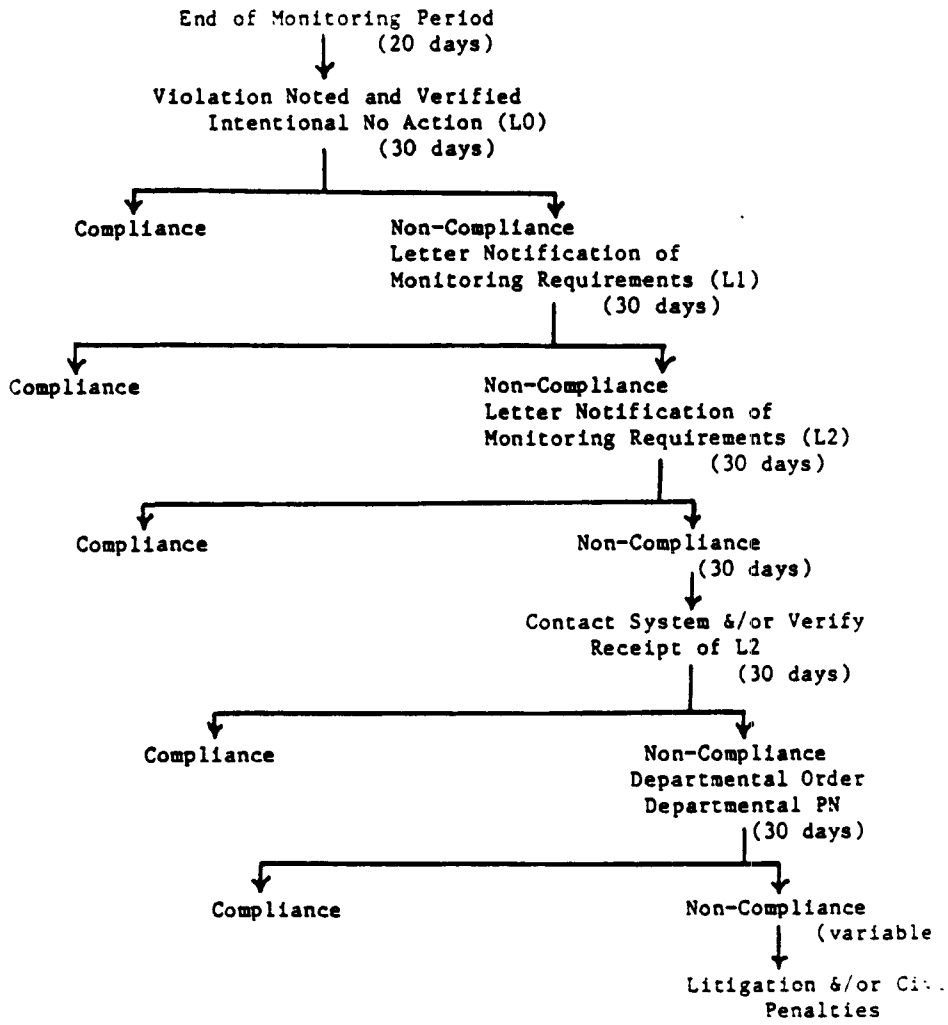


FIGURE WA-2

FLOWCHART OF COMPLIANCE STRATEGY
ENFORCEMENT PROCESS FOR BACTERIOLOGICAL MONITORING VIOLATIONS

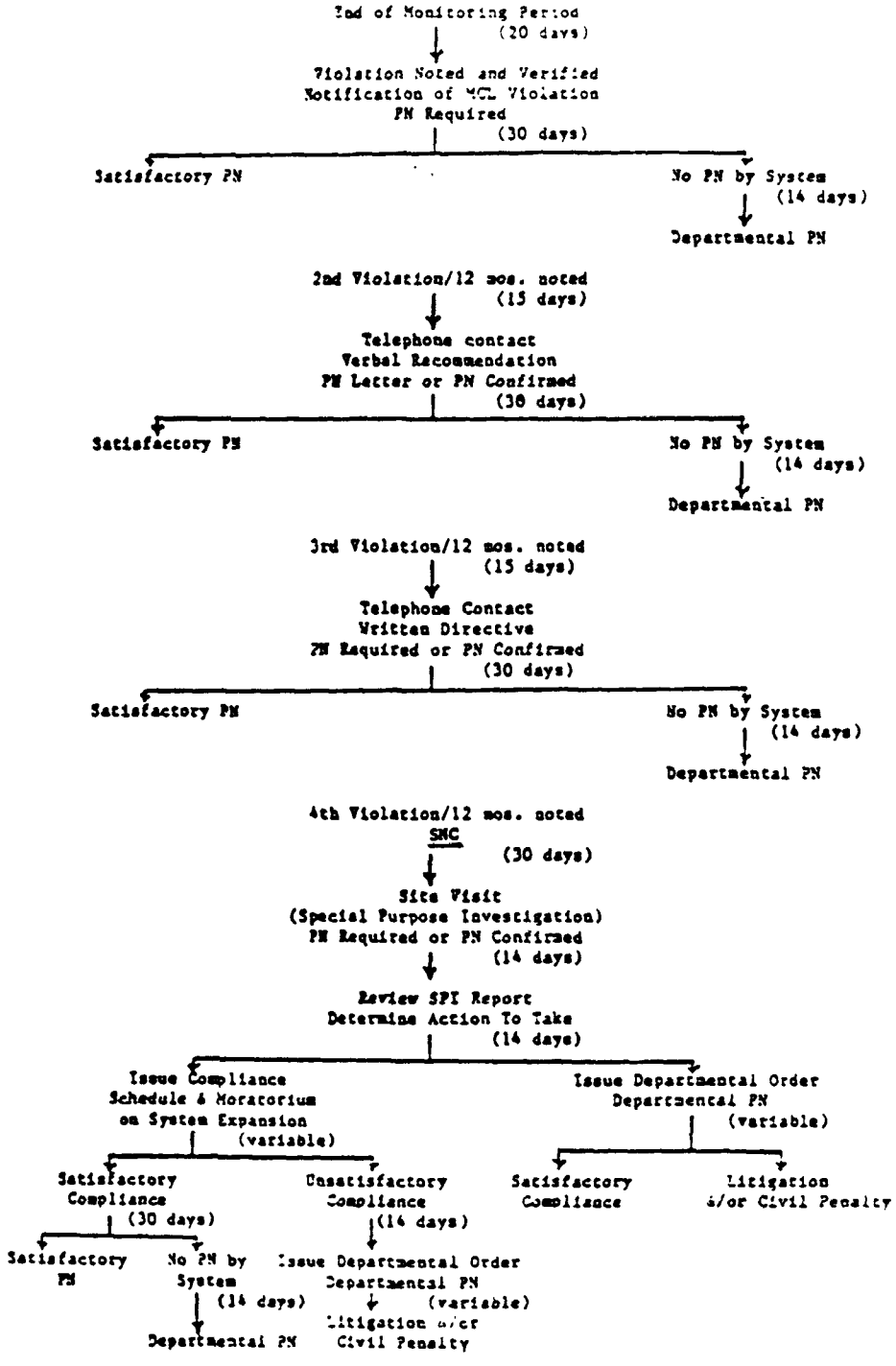


FIGURE WA-3

FLOWCHART OF COMPLIANCE STRATEGY ENFORCEMENT PROCESS FOR BACTERIOLOGICAL MCL VIOLATIONS

TABLE WA-1

ENFORCEMENT TRACKING PRINTOUT

OFFICE OF ENVIRONMENTAL HEALTH PROGRAMS -- ENFORCEMENT TRACKING

REGION = OLY

05/07/90

PRG	ENF TYP	ST	VIOLATION TYPE	SYSTEM NAME	BCON.	ID # LIC #	ISSUED TO	COUNTY	DOCKET#	DATE ISS DATE REC.	NOW ISSUED	PM	COMPL DATES	COMMENTS
OW	DO	A	PM, BACTI MON	ARCADIA ESTATES ASSOCIATION	30	020572	FREED, JAMES R.	MASON	90-010	01/08/90 02/13/90	PERS		03/13/90	SAMPLED BACTI JAN TO MAR 90
OW	FAO	A	RAD, BACTI MON	CEDAR GROVE MOBILE PARK	23	36036C	WALKHOFF, BOB	CLALLAM	EPA8	07/06/89	CERT		07/26/89	APR TO NOV 89, FEB & MAR 90 BACTI OK NO BACTI DEC 89 JAN 90 MCL:SAMPLED RAD.
OW	DO	A	ICHEM MON, UNAPPROVED WELLS	EAST GLEN ADDITION	47	211000	BELL, KEITH	THURSTON	89-026	09/25/89 10/23/89	PERS		11/13/89 11/23/89 12/23/89	60 DAYS FOR ICHEM, SMALL WATER SYS MANAGEMENT PROG, SOURCE INFORMATION, CONSTRUCTION DOCUMENTS. REFRAIN FROM USING WELL 83 SEE NIP
OW	NIP	A	ICHEM MON, UNAPPROVED WELLS	EAST GLEN ADDITION	47	211000	BELL, KEITH	THURSTON	89-026	01/08/90 01/25/90	PERS			$8,400 FINE. SEE 2ND FINE MET WITH ATTORNEY FOR BELL
OW	NIP	A	ICHEM MON, UNAPPROVED WELLS	EAST GLEN ADDITION	47	211000	BELL, KEITH	THURSTON	89-026	04/16/90	PERS			2ND $8,400 FINE WILL FINE A THIRD TIME IF NO COMPLIANCE. COMPLAINT FOR DEBT DUE AND FOR INJUNCTION AND SUMMONS FILED IN COURT.
OW	DO	A	BACTI/ICHEM MON; FACIL	ENFIELD-RACE	19	23455M	SHINTAFFER, MAUREL	THURSTON	89-024	08/28/89 09/07/89	PERS		10/07/89 11/07/89	NEED SMALL WATER SYSTEM MAN PROGRAM W/SPECIFIC ITEMS SOURCE PROTECTION A PROBLEM NO BACTI AUG 88 TO MAR 90 NO ICHEM. SEE NIP
OW	NIP	A	BACTI/ICHEM MON; FACIL	ENFIELD-RACE	19	23455M	SHINTAFFER, MAUREL	THURSTON	89-024	01/25/90	CERT			$3,200 FINE. DID NOT APPEAL. OFR INVESTIGATING ASSETS
OW	DO	A	BACTI MON	LEBAN WTR. DIST 82	21	46550E	MANAGER	PACIFIC	85-016	03/01/85	CERT.		09/01/89	ORDER OF MAN. INJ. 2/3/86 LET RECD 8/1/89 GIVES 30 DAYS TO COMPLY BACTI OK SEP TO NOV 89 NO BACTI DEC 89 TO MAR 90
OW	DO	A	FACIL	PACIFIC BEACH WATER	329	053500	VEHRS, NORMAN	GRAYS HARBOR	85-003	09/10/85	CERT.			IN COMPL W/MON SEE CIVIL PENALTY LIST AGREED COURT ORDER 7/30/86
OW	DO	A	CERT OP	PACIFIC BEACH WATER	306	653506	VEHRS, NORMAN	GRAYS HARBOR	87-111	06/12/87 06/17/87			07/02/87 07/07/87	NIP SENT 8/25/87
OW	NIP	A	CERT OP	PACIFIC BEACH WATER	308	653506	VEHRS, NORMAN	GRAYS HARBOR	87-111	08/11/87 08/25/87	PERS			$19,800 FINE. COURT APPOINTED RECEIVER 8/22/88
OW	DO	A	CERT OP FACILITY	PACIFIC BEACH WATER	300	053500	VEHRS,NORMAN	GRAYS HARBOR	88-107	07/28/88 08/02/88	CERT		08/13/88	RECEIVER APPOINTED BY COURT UTC DENIED RATE INC MAY NEED TO FIND NEW RECEIVER WATER DISTRICT OFFERING TO BUY SYSTEM
OW	DO	A	FACIL	SKOOKUMCHUCK MOBILE MANOR	32	790356	FOX, WILLIAM & MIRIAM	THURSTON	89-012	04/14/89 04/14/89	PERS		07/14/89	12 REPORTED CASED OF HEPATITIS A LINKED TO WATER SYSTEM RAW WATER HAS FECAL COLIFORM NEW WELL ON LINE NO REVISED DEADLINES

TABLE WA-2

STATUS OF DRINKING WATER ENFORCEMENT ACTIONS FOR 1989

Name	Date	County	Action	Violation
1	1/3	Yakima	Direct Order	Certified Operator
2	1/20	Kitsap	Direct Order	Facility; Bacti MCL; ICHEM, Rad, & Bacti Mon.
3	3/9	Yakima	Direct Order	Inad. pressure, Bacti Mon.
4	3/10	Pierce	Direct Order	Facility, Bacti Mon.
5	4/3	Pierce	Direct Order	Mn MCL, Rad. Mon.
6	4/14	Thurston	Direct Order	Facility
7	4/18	King	Direct Order	Bacti Mon., MCL
8	5/16	Whatcom	Direct Order	Bacti Mon., MCL
9	6/7	Whatcom	Direct Order	Bacti Mon., Nitrate MCL
10	6/7	Whatcom	Direct Order	Nitrate MCL, Unapproved well
11	6/7	Chelan	Direct Order	Bacti Mon., MCL Facility
12	6/20	Island	Direct Order	Bacti Mon., MCL
13	7/10	King	Direct Order	Bacti Mon., MCL
14	7/18	Challam	Direct Order	Cert. Op., Chlorine/turbidity reports
15	8/3	Pierce	Direct Order	Lack of water system plan
16	8/28	Thurston	Direct Order	Bacti, ICHEM Mon., Facility
17	9/21	King	Direct Order	Bacti, ICHEM, Rad. Mon., Facil.
18	9/21	Yakima	Direct Order	Water system plan, as-builts required
19	9/25	Thurston	Direct Order	ICHEM Mon., Unapproved wells
20	10/25	Benton	Direct Order	Facility, Inad. pressure
21	11/21	Grant	Direct Order	Inad. and unapproved source for large concerts
22	12/11	Pierce	Direct Order	Manganese MCL

Name	Date	County	Action	Amount	Comments
1	2/24	Whatcom	Penalty	$1,200	Requested hearing, remiss/mit. Denied remiss/mit. due to failure to meet revised deadlines
2	2/24	Pierce	Penalty	$1,000	Inadequate pressure. Applied for remiss/mit. May remit fine if revised plan due 12/89 is ok.
3	3/24	Pierce	Penalty	$1,000	Applied for remiss/mit. Fine not remitted. Administrative hearing held 11/21/89.
4	4/7	Island	Penalty	$1,000	In compliance.
5	8/8	Yakima	Penalty	$2,400	In compliance.
6	10/25	Stevens	Penalty	$1,000	Did not pay or apply for hearing. Need to collect.

Name	Date	County	Action	Comments
1	2/22		Attorney General action; Agreed Order of Dismissal	In compliance. Fines were paid.
2	5/23		Modified Order	12 hepatitis A cases previously reported. New well is supplying water.

TABLE WA-2 (cont.)

Name	Date	County	Action	Comments
3	6/21		Notice of Disposition for Remission or Mitigation of Penalty	Will remit fine if terms of agreed order are met.
4	6/26		Stipulation and Agreed Orders	Will remit fine if bacti, 1CHEM mon. and repairs are made by specified deadlines. (System is in compliance.)
5	6/27		Notice of Disposition for Remission or Mitigation of Penalty	$1,000 penalty previously imposed is affirmed.
6	8/3		Attorney General action; Stipulation and Agreed Order	$4,200 fine mitigated to $2,000 providing terms are met. Received 6 payments of $300
7	11/20		Attorney General action: Department's Hearing Memorandum	Administrative Hearing held 11/21/89.
8	11/29		Attorney General action: Stipulation re Agreed Order	Penalty dismissed. Will reimpose if does not cooperate.
9	11/30		Notice of Disposition for Remission or Mitigation of Penalty	$1200 fine previously imposed is affirmed.

The Department enjoys much flexibility in reaching agreements with violators, and as mentioned previously, the Attorney General provides advice on the best approach. In one case, an administrative penalty of $4,000 was reduced to $600, but $2,000 was placed in an escrow account and will go directly to the Department if the system fails to meet the requirements in the agreed order. Another agreement allowed for installment payments of $150 per month. All administrative penalties collected are deposited in the State Treasury.

Appeals: A system has 14 days to apply for mitigation of an administrative penalty and 28 days to apply for an adjudicatory hearing. If an application is made for mitigation, the system may still apply for a hearing after the Department gives its decision on mitigation.

If the system applies for mitigation, the Department sends a letter explaining why the penalty was assessed. The system has 2 weeks to submit information that refutes the allegation. The Department can then mitigate the penalty, sign an agreement with the system, or affirm the penalty. Previously, an administrative penalty could be completely repealed; however, recent legislation prohibits the Department from mitigating a penalty below $500.

Following an effort at mitigation, a system still has 28 days to request a hearing. Hearings are governed by the Administrative Procedures Act, and an Administrative Law Judge in the Office of Hearings (an independent agency) presides. The hearing is similar to a court proceeding, but it is less formal and hearsay evidence is allowed. If the decision of the Administrative Law Judge is appealed, the case goes to a Review Judge (currently in the Department of Social and Health Services until the Department of Health gets its own). If the Review Judge's decision is appealed, the case goes to court. Only two cases have gone to administrative hearing, and only one has been appealed to a Review Judge; seven applications for appeal were dropped.

STATE'S ASSESSMENT OF PROGRAM EFFECTIVENESS

The program receives a high grade from the Department; enforcement activities were not achieving desired results before receiving administrative penalty authority. Administrative penalties, although not always successful, are considered the Department's best tool. However, it is believed that having other tools would strengthen the enforcement program even more. These tools include having a stronger receivership law, being able to obtain money for willing receivers, having the ability to issue operating permits, and having lien authority.

STATE ADMINISTRATIVE PENALTY PROGRAMS
OTHER STATE INFORMATION

This chapter summarizes the information submitted by the 17 States that have administrative penalties as an enforcement option but that were not included in the in-depth case-study analysis. Although five of these States (Idaho, Ohio, Utah, Vermont, and Virginia) cannot assess administrative penalties unilaterally, they can assess penalties in bilateral agreements or consent orders. A brief summary of each State's enforcement procedures is provided. However, laws and regulations often provide only the foundation on which a program is built, and actual practices may differ significantly from strict interpretations of legal or regulatory requirements. The following information is provided to supplement the case studies, and it is emphasized that it does not represent a comprehensive description of how each program works.

GEORGIA

Section 5, paragraph 8 of the Georgia Safe Drinking Water Act of 1977 (Act No. 231) gives the Director of the Division of Environmental Protection, Department of Natural Resources, the authority to issue orders. Section 15 states that when the Director believes that a violation has occurred, an attempt must be made to obtain compliance through conference, conciliation, or persuasion, if appropriate. If this effort fails, the Director may order the violator to take any corrective action deemed necessary to obtain compliance. Any order issued by the Director is final unless a written request for a hearing is submitted within 30 days. Anyone who has exhausted all administrative remedies may request judicial review by a superior court. Section 19, paragraph b, states that when it is believed that a person has violated the act or has failed to comply with an order, the Director may initiate a hearing. In its initial decision, the hearing officer may impose a civil penalty. Penalties for violations can be up to $1,000 plus an additional $500 per day; for willful violations, the penalty can be $5,000 per day.

All enforcement actions are conducted in accordance with the Georgia Administrative Procedures Act. Hearings and judicial reviews of final orders are conducted in accordance with the provisions in section 17(a) of the Executive Reorganization Act of 1972.

GUAM

A notice of violation is initially issued specifying the violation. An administrative order then may be issued requiring that a violation be stopped, that a civil penalty be paid, or that the violator appeal before the administrator. The maximum administrative penalty is $5,000 per day per violation. A hearing must be requested within 10 days, or the order becomes final.

The Administrator of the Guam Environmental Protection Agency may also institute a civil action to enforce orders or for injunctive relief. Criminal proceedings carry a maximum penalty of $5,000 per day per violation.

HAWAII

Section 340E-8 of Hawaii's Safe Drinking Water Act allows the Director of the Department of Health to enforce drinking water regulations, either administratively or judicially. Administratively, if the Director determines that a violation has occurred, a notice of violation and an order may be issued. The notice specifies the alleged violation; the order lists what the system is required to do, which may include payment of a civil penalty. Administrative penalty assessments may not exceed $25,000 per day of violation. The order becomes final in 20 days unless a hearing is requested. In addition, the Director may choose to initiate a civil action for injunctive relief or for the enforcement of an administrative order.

The Division has been most successful in gaining compliance through enforcement activities not involving the assessment of administrative penalties. One example was cited in which a water system procured several million dollars through Congress to plan, design, and construct a treatment facility within 15 months after discovering a trichloroethylene violation; if formal enforcement action had taken place, the effort probably would have been delayed in litigation. Another example concerned a county water department that expended more than $20 million for capital improvement projects without administrative penalties being assessed. However, the Department had issued administrative orders containing strict compliance schedules and if the water company had not complied, administrative penalties would have been assessed.

IDAHO

On July 1, 1986, legislation was signed that allowed the use of administrative penalties. Section 39-108, paragraph 3 of the Idaho Code states that the Director of the Department of Health and Welfare may initiate civil or administrative enforcement actions.

The Director may start an administrative enforcement action by issuing a written notice of violation that identifies the violation, specifies the requirement being violated, and states the amount of civil penalty claimed. The notice of violation must also provide information regarding the opportunity for a compliance conference. The alleged violator has 15 days to respond to the notice. If the alleged violator responds, a compliance conference is scheduled within 20 days (from the receipt of the notice). A compliance conference provides the alleged violator with the opportunity to explain the circumstances of the violation and to present a proposal that will remedy damage and assure future compliance.

If the alleged violator and the Director agree on a plan for damage correction and future compliance, they may enter into a consent order that formalizes the agreement. A consent order may include a provision for the payment of any agreed penalty. A consent order is effective immediately and precludes any formal civil enforcement action for the same violation. If a party does not comply with the terms of the consent order, the Director may seek and obtain specific performance of the order or other form of relief in an appropriate district court.

If the parties cannot reach agreement on a consent order within 60 days after the receipt of the notice of violation or if the recipient does not request a compliance conference, the Director may then initiate a civil enforcement action through the Attorney General.

Any person determined in a civil enforcement action to have committed a violation is liable for a civil penalty that cannot exceed $10,000 per violation or $1,000 per day of a continuing violation, whichever is greater. Collected penalties are paid into the State's General Fund.

Penalties are rarely assessed because most of the violating water systems are very small. When used, penalties are effective but followups, appeals, etc., are extremely time-consuming.

IOWA

Iowa's Department of Natural Resources is responsible for drinking water enforcement. Section 455B.109 of the Code of Iowa states that a schedule or range of civil penalties that may be administratively assessed for minor violations can be established. This schedule must provide procedures and criteria for the administrative assessment of penalties. In addition, a screening process for determining which cases are appropriate for administrative penalty assessments must be developed. Chapter 567-10 of Iowa's Administrative Code became effective in September 1985 and contains the criteria for screening and assessing administrative penalties.

All formal enforcement actions are processed through the Legal Services Bureau of the Department. The legal staff screens each case to determine the most equitable and efficient means of redressing and abating the violation. In evaluating a violation to determine which cases may be appropriate for the administrative assessment of penalties and for determining the amount of an administrative penalty, the department considers, among other relevant factors, the following:

- The costs saved or likely to be saved by the violator's noncompliance. (If the violator realizes an economic benefit through the violation or by not taking timely compliance or corrective measures, the Department takes enforcement actions including the assessment of a penalty that, at a minimum, offsets the economic benefit. Reasonable estimates of economic benefits are made when clear data are not available.)

- The gravity of the violation, including the actual or threatened harm to the environment or public health and safety; involvement of toxic or hazardous substances or potential long-term effects of the violation; the degree to which ambient or source-specific standards are exceeded; Federal program priorities; size of the facility; whether or not the violation is repeated; if there is a violation of an administrative or court order; if the type of violation threatens the integrity of a regulatory program; and expenses or efforts by the government in detecting, documenting, or responding to a violation.

- Culpability, including the degree of intent or negligence; whether or not the case involves false reporting of required information or tampering with monitoring devices; and if the violator has taken remedial measures or mitigated the harm caused by the violation.

- The maximum penalty authorized for that violation. (The Department considers the maximum daily penalty provided and the cumulative maximum allowed.)

- Whether or not the assessment of administrative penalties appears to be the only or most appropriate way to defer future violations, either by the person involved or by others in similar situations.

Except for operator discipline, which is governed under a different law, administrative penalties are assessed through the issuance of an administrative order that includes the facts of the case, the legal requirements that may have been violated, and a general rationale for the prescribed penalty. The order may include cumulative penalties up to $1,000 for multiple violations. No penalty may be assessed unless the cumulative amount is $50 or more.

The amount of the penalty for each day of violation is determined after evaluating all factors. An actual or reasonably estimated economic benefit is always assessed. An additional amount up to $300 is assessed depending on the gravity factors, and an additional amount of up to $300 is assessed depending on the culpability factor. The penalty may also be increased or decreased up to $100 for aggravating or mitigating factors. However, the statutory limit cannot be exceeded. Tables IA-1 and IA-2 provide summaries of administrative penalty assessments.

Penalties may be assessed only after the alleged violator has had the opportunity to attend a contested case hearing. Penalties must be paid within 30 days of the date the order becomes final. An order will not become final until all judicial review processes are complete; additional judicial review may not be sought after an order becomes final.

Failure to pay an administrative penalty will result in interest charges at the rate of 1½ percent for each month the penalty remains unpaid. The Attorney General institutes, at the request of the Department, summary proceedings to recover the penalty and accrued interest. In addition, nothing precludes the Department from referring any case to the Attorney General or from seeking a remedy in the courts before pursuing administrative action. All administrative penalties (and interest) are deposited in Iowa's General Fund.

The Department believes that the program is successful because it is fairly easy to issue an administrative penalty; the process used is similar to traffic citation procedures.

TABLE IA-1

ADMINISTRATIVE PENALTY ASSESSMENTS: FY86-90

ADMINISTRATIVE PENALTY SUMMARY 10-01-89

The table below summarizes administrative penalty assessments through September, 1989. The first column of this table is a rough breakdown of the environmental program and violation types for which penalties have been assessed. The next five columns state the dollar amounts collected during the stated time periods, and the number of cases in parentheses. The last column states similar data for cases still pending as of October 1, 1989 (penalties appealed, delinquent or assessed but not yet due).

Violation Type	FY 86	FY 87	FY-88	FY-89	FY-90 1st QTR	PENDING
WW Discharge	$ 1,400 (2)	$12,950 (18)	$ 9,900 (18)	$ 7,355 (07)	$ 1,700 (02)	$ 5,000 (05)
WW Monitoring	815 (3)	1,610 (5)	4,892 (11)	4,450 (09)	---	1,000 (01)
WW Other	---	2,500 (3)	5,950 (11)	4,172 (07)	---	3,600 (04)
SW Permit	1,500 (4)	6,100 (11)	8,598 (12)	1,800 (03)	2,427 (04)	2,000 (02)
SW Open Dumping	1,250 (2)	4,000 (7)	4,175 (10)	2,958 (09)	1,403 (02)	6,391 (12)
Air Permit	2,600 (3)	3,950 (6)	9,275 (14)	3,500 (08)	1,900 (04)	2,400 (03)
Air Open Burning	625 (2)	3,650 (7)	5,250 (10)	5,134 (12)	600 (02)	4,000 (06)
WS Monitoring	1,859 (20)	7,178 (58)	11,186 (75)	15,804 (102)	1,735 (12)	4,117 (07)
WS Permit	598 (2)	---	3,225 (7)	2,100 (08)	---	2,100 (03)
Flood Plain	---	150 (1)	1,200 (2)	800 (01)	836 (02)	3,100 (05)
HC Notice	---	600 (1)	3,750 (7)	600 (01)	500 (01)	---
Water Use	---	---	150 (2)	---	3,000 (03)	---
Construction Permit	---	100 (1)	---	150 (01)	---	700 (01)
Underground Tanks	---	---	---	500 (01)	---	5,000 (05)
TOTALS	$10,647 (38)	$42,788 (118)	$67,551 (179)	$ 49,323(169)	$ 14,101 (32)	$39,408 (64)

A:MPM-310.2/rg

TABLE IA-2

ADMINISTRATIVE PENALTY ASSESSMENTS: FY89-90

ADMINISTRATIVE PENALTY SUMMARY 01-01-90

The table below summarizes administrative penalty assessments since July, 1988. The first column of this table is a rough breakdown of the environmental program and violation types for which penalties have been assessed. The middle columns state the dollar amounts collected during the stated time periods, and the number of cases in parentheses. The last column states similar data for cases still pending as of January, 1990 (penalties appealed, delinquent or assessed but not yet due).

Violation Type	FY-89	FY-90 2nd Qtr	TOTAL FY90	PENDING
WW Discharge	$ 7,355 (07)	$ 2,900 (04)	$ 4,600 (06)	$ 4,000 (04)
WW Monitoring	4,450 (09)	---	---	1,000 (01)
WW Other	4,172 (07)	---	---	2,600 (03)
SW Permit	1,800 (03)	1,000 (01)	3,427 (05)	3,600 (04)
SW Open Dumping	2,958 (09)	516 (01)	1,919 (03)	7,735 (15)
Air Permit	3,500 (08)	2,050 (04)	3,950 (08)	3,400 (05)
Air Open Burning	5,134 (12)	1,000 (02)	1,600 (04)	7,000 (08)
WS Monitoring	15,804 (102)	2,122 (14)	3,857 (26)	3,317 (11)
WS Permit	2,100 (08)	---	---	3,800 (06)
Flood Plain	800 (01)	400 (02)	1,236 (04)	2,600 (04)
HC Notice	600 (01)	---	500 (01)	---
Water Use	---	---	3,000 (03)	---
Construction Permit	150 (01)	---	---	700 (01)
Underground Tanks	500 (01)	---	---	5,000 (05)
TOTALS	$49,323 (169)	$ 9,988 (28)	$24,089 (60)	$ 44,752 (67)

MPM-1.004/rg

KENTUCKY

The Natural Resources and Environmental Protection Cabinet receives its administrative penalty authority from sections 224.032, 224.994, and 224.995 of the Kentucky Revised Statutes. Section 224.032 states that the Cabinet must enforce adopted rules and regulations, section 224.994 provides for civil penalties up to $25,000 per day, and section 224.995 states that penalties may be recovered in an action brought by a departmental counsel in the name of the Commonwealth. Administrative penalties may be assessed in a "demand letter," an agreed order, or an order of the Secretary.

Assessing administrative penalties through agreed orders with the violator is the preferred option. The water system and the Cabinet agree to the terms of the order, including any penalty amount. The Secretary of the Cabinet executes the order that is enforceable in Franklin Circuit Court. Since the penalty amount is negotiated and agreed to by the water system, there is rarely any need for appeal. If an agreement is not reached at the informal negotiation phase, the matter is referred to the Cabinet's Department of Law for legal action. This involves the filing of an Administrative Complaint and holding a formal hearing before a Cabinet-appointed Hearing Officer. If no settlement is reached with the violator during the hearing, the Hearing Officer will recommend the terms of an order to the Cabinet Secretary. An order by the Secretary may be appealed in Franklin Circuit Court. For most cases, the Cabinet has been able to reach an agreement on penalty amounts in agreed orders. Letters of Demand for Remedial Action and Civil Penalty, or demand letters, are also a means of assessing civil penalties, although agreed orders are the most frequently used tool. Enforcement personnel maintain tracking of all violations, either resolved or unresolved, and have found that the Cabinet's legal staff, while now being enlarged, has not previously had the resources to address all cases. Consequently, negotiated settlements have been an important means of avoiding clogged case dockets at the Department of Law.

MASSACHUSETTS

The Commissioner of the Department of Environmental Quality Engineering, pursuant to the authority granted by General Laws, Chapter 21A, section 16, may assess a civil administrative penalty.

Departmental administrative penalty regulations are contained in Title 310, section 5.00, of the Code of Massachusetts Regulations and became effective in September 1986. The purpose of the regulations is to protect public health, ensure fair and lawful assessments, and enhance the Department's ability to administer programs and enforce regulatory requirements. An administrative penalty may be assessed for a violation of a law, regulation, order, or license. This violation must have been the previous subject of a noncompliance notice, part of a pattern of noncompliance, a willful violation and not the result of an error, the cause of a significant impact on public health or environment, or a failure to notify the Department of an unauthorized release or discharge of hazardous materials or hazardous waste into the environment.

A notice of noncompliance is issued that notifies the system of a violation and specifies a deadline for the system to come into compliance or submit a written proposal of how and when compliance will be obtained. An administrative penalty is assessed if the requirements of the notice are not met. The Department does, however, consider the history of past violations (and efforts to correct them) before assessing a penalty.

An administrative penalty may be assessed without prior issuance of a notice of noncompliance if the violation is part of a pattern of noncompliance. The following factors are considered when determining a pattern of noncompliance: if the violation occurred previously within a 5-year period; if, on two different occasions over a 4-year period, a different violation had occurred; if violations have occurred at the same facility; and if the history of violations is a threat to the public safety or environment or interferes with the Department's ability to enforce requirements and programs. Additional criteria considered include how quickly the person comes into compliance, the mitigation of damages, and the actual damages suffered.

In addition, an administrative penalty may be assessed without first issuing a notice of noncompliance if the violation was willful and not the result of error; if the violation resulted in a significant impact on the environment or public health, safety, or welfare; and if the violator failed to notify the Department of any unauthorized release or discharge of hazardous materials or hazardous waste. A region must confer with the Division of Water Supply before finalizing a penalty.

When an administrative penalty is assessed, a penalty assessment notice containing a statement concerning the violation, a citation of the legal requirement being violated, the amount to be assessed, a statement concerning the right to an adjudicatory hearing, a statement on requirements that must be met, and a statement on how and when the penalty must be paid is sent to the violating system.

The Department of Environmental Quality Engineering has issued guidance for calculating amounts of administrative penalties. The purpose of the policy is to ensure that penalties are calculated fairly, consistently, and in accordance with the law and regulations; that penalties are appropriate; that economic incentives for noncompliance are eliminated; and that there is a deterrence for noncompliance so that compliance can be achieved. The guidance includes procedures for distinguishing between separate and different violations; for assessing multi-day penalties; for determining the gravity-based component of the penalty; for determining the economic benefit resulting from noncompliance (e.g., the impacts of delaying or avoiding costs and the profits gained from unlawful activities); and for making penalty adjustments for special circumstances.

The minimum administrative penalty that can be assessed is $100. For drinking water violations, the maximum administrative penalty is $1,000 per day. The following factors are considered when determining a penalty amount: impact on public health and the environment, damages suffered and costs incurred, steps taken to prevent the violation, steps taken toward compliance, steps taken to remedy or mitigate the harm done, regulatory history (past violations, etc.), making compliance less costly than violations, deterring future noncompliance by both the violating system and other systems, financial condition of the system, public interest, and any other related factors.

To supplement the departmental guidance, the Division of Water Supply has developed a classification system consisting of three categories of violations. The system is intended to assist those who cite violations and assess administrative penalties and to promote clarity and consistency in the assessment.

The classification system establishes an administrative penalty assessment range as well as an average amount (the BASE NUMBER) to use when determining the penalty. The base number is adjusted after the number of violations, the extent of the violations, and the impact of the violations are considered. This adjusted number is called the GRAVITY-BASED NUMBER. Table MA-1 contains the penalty ranges and base numbers for the three categories of violation.

TABLE MA-1

CLASSIFICATION OF DRINKING WATER VIOLATIONS

Categories*	Remark	Range/day	Base Amt
I	Violations/Noncompliance having a direct impact on public health. (Violations/noncompliance which are determined to be: a) an unauthorized release or disposal into the environment, b) operating without the required license or approval, c) failure to report an unauthorized release or disposal as defined by MGL Chapter 21 C or 21E.) The penalties for these noncompliance violations range up to $25,000.	$100-$1000	$500
II	Violations/Noncompliance having a direct impact on public health but are mainly related to noncompliance with technical safeguards.	$100-$1000	$500
III	Violations/Noncompliance having an indirect impact on public health and are generally related to poor record keeping.	$100-$1000	$500

* Violation of a Department order is a separate and additional violation from the violation or violations which give rise to the issuance of the order, and is given a Base Number of $1,000. No distinction should be made between a unilateral order and a consent order for the purpose of assessing administrative penalties.

To calculate the actual administrative penalty, the GRAVITY-BASED NUMBER is multiplied by the number of days the violation continues (or the number of violating incidents or the number of days late in meeting a compliance schedule). The resulting number can then be increased by as much as 50 percent for either the violator's lack of good faith efforts to prevent noncompliance or to mitigate/remedy harm, or the violator's history of noncompliance, or both.

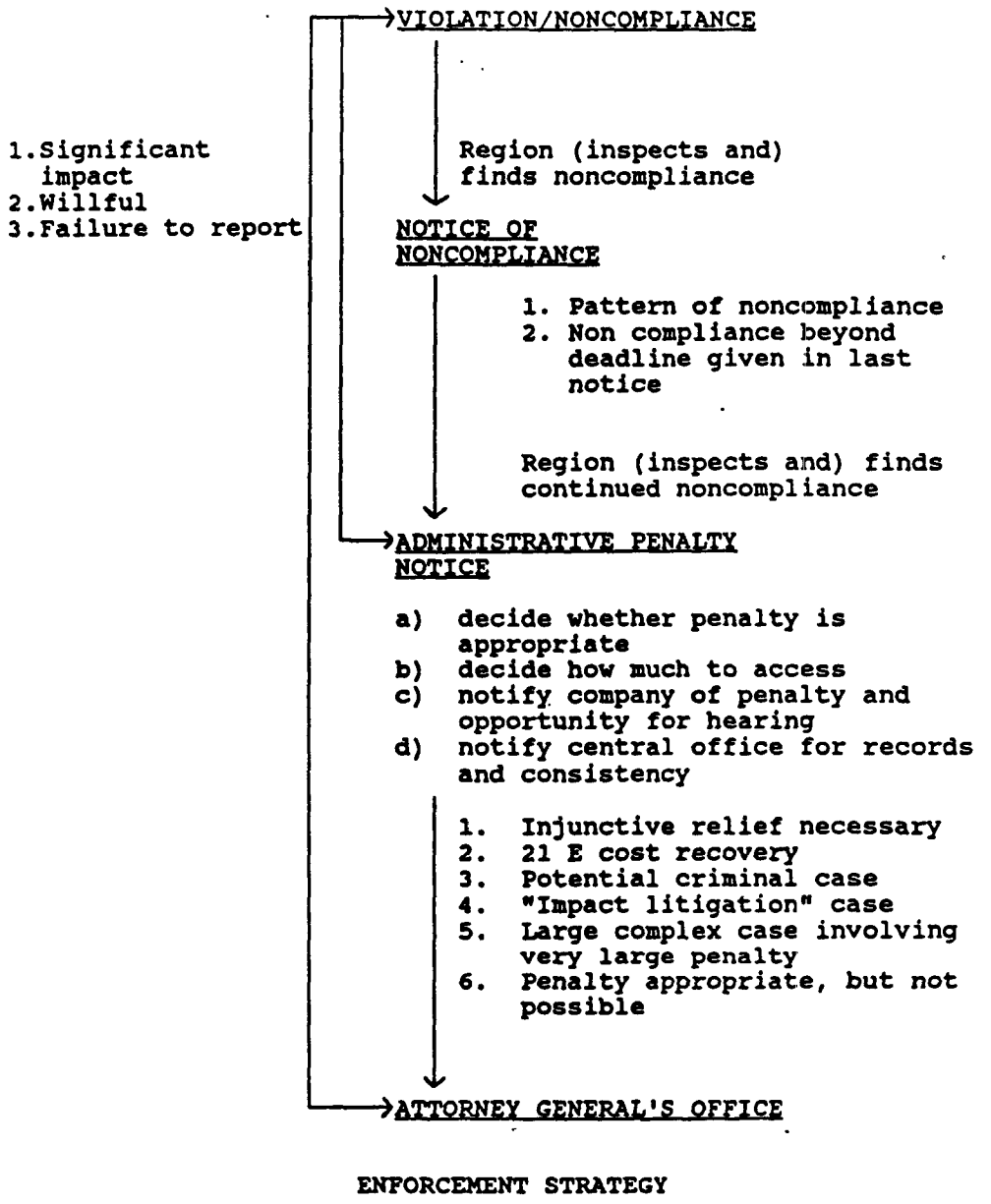
This new amount can be adjusted further to account for the economic benefit gained through noncompliance, the financial condition of the system, public interest, and other special circumstances. (Both the system's financial condition and public interest can result in separate adjustments of ±50 percent.)

The system has 21 days to request an adjudicatory hearing with the Department. During the hearing, the Department must adequately discount every objection; nondisputed allegations are accepted as fact. Adjudicatory hearings are conducted in accordance with prescribed procedures. If the system waives the right to the hearing, the administrative penalty is immediately deemed final. If a penalty is assessed at the conclusion of the hearing, it becomes final after 30 days if no judicial review is requested. If the system requests action for judicial review, the amount of the final penalty assessed must be placed

in an interest-bearing escrow account. Specific requirements detail the proper procedure for depositing into and final disposition of this account.

A system that fails to pay an administrative penalty can be liable for up to 3 times the amount plus additional costs incurred, interest, and attorney fees.

Figures MA-1 through MA-5 outline the procedures used in Massachusetts to assess administrative penalties in various circumstances.



ENFORCEMENT STRATEGY

FIGURE MA-1

FLOWCHART OF ADMINISTRATIVE PENALTIES - GENERAL

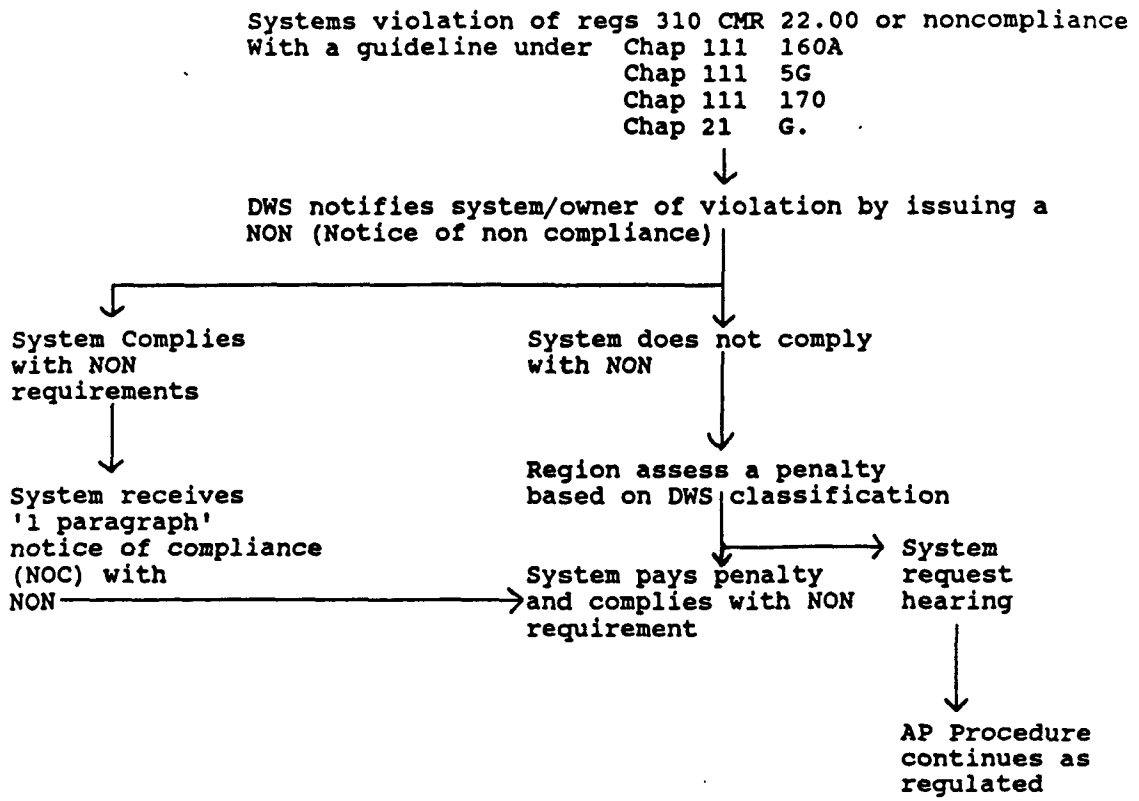


FIGURE MA-2

FLOWCHART OF DRINKING WATER ADMINISTRATIVE PENALTIES - GENERAL

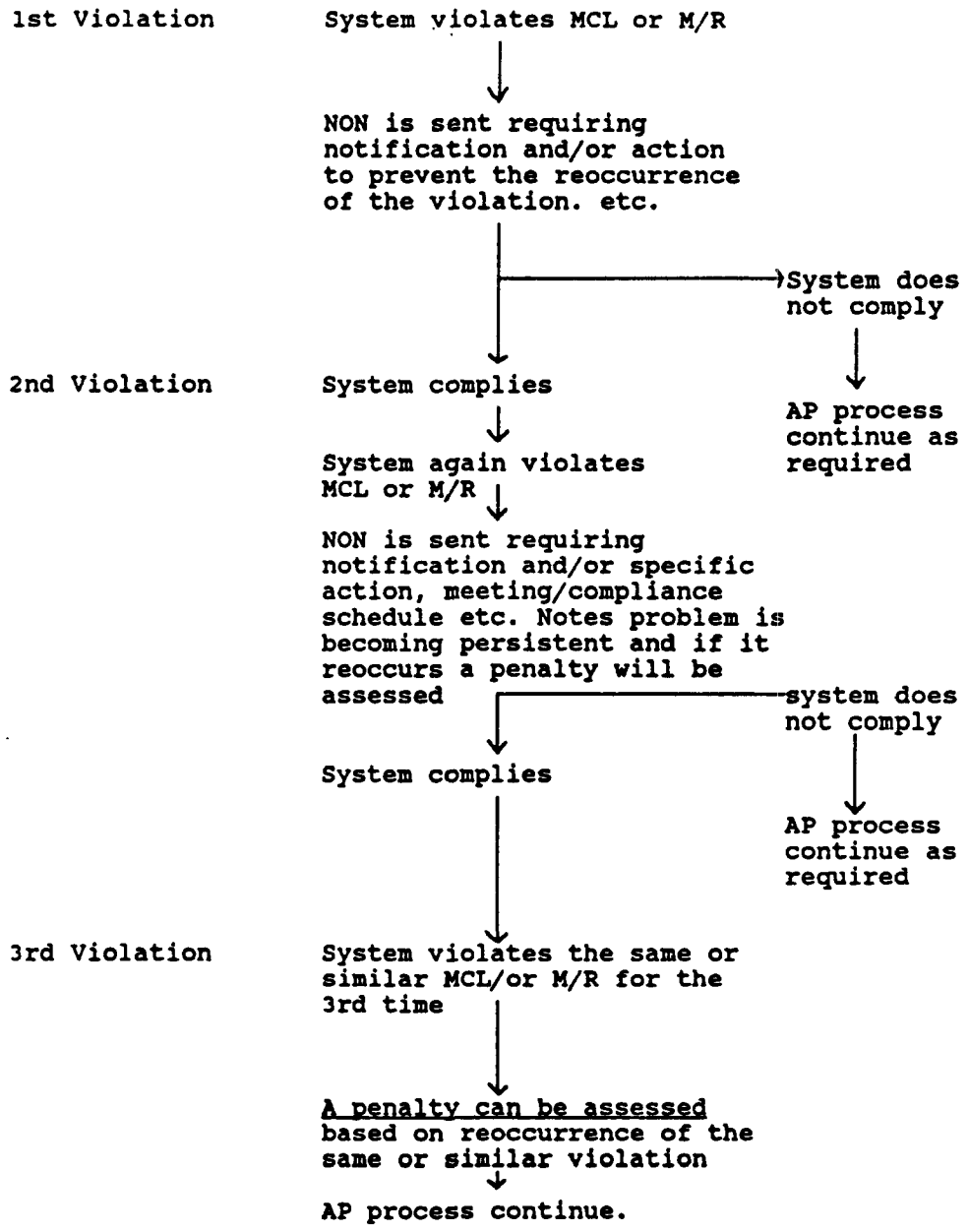


FIGURE MA-3

FLOWCHART OF DRINKING WATER ADMINISTRATIVE PENALTIES - MCL

Survey performed

1. Appropriate parts of the official DWS sanitary survey report form filled out, including recommendation/comment page

No violation of regs noted no noncompliance with DWS technical guidelines noted

↓

Assume system is in compliance

↓

Copy of sanitary survey report form sent to water supplier/ Boston office

Violation of regs and/or noncompliance with DWS technical guidance noted (non-compliance with guidelines must result in an estimateable significant risk to the health of consumers to use the statutes of the General Laws).

↓

Copy of sanitary survey report form is sent along with an NON or ORDER if any non-compliance is noted*

↓

AP process continue as required and necessary

* By sending out the sanitary survey form and NON together, one step of the procedure is removed therefore simplifying the process and meeting the purpose of the Administrative Penalties Law. Please note that the time given for response can reflect the workload of the region thereby extending the period.

FIGURE MA-4

FLOWCHART OF DRINKING WATER ADMINISTRATIVE PENALTIES - SANITARY SURVEYS

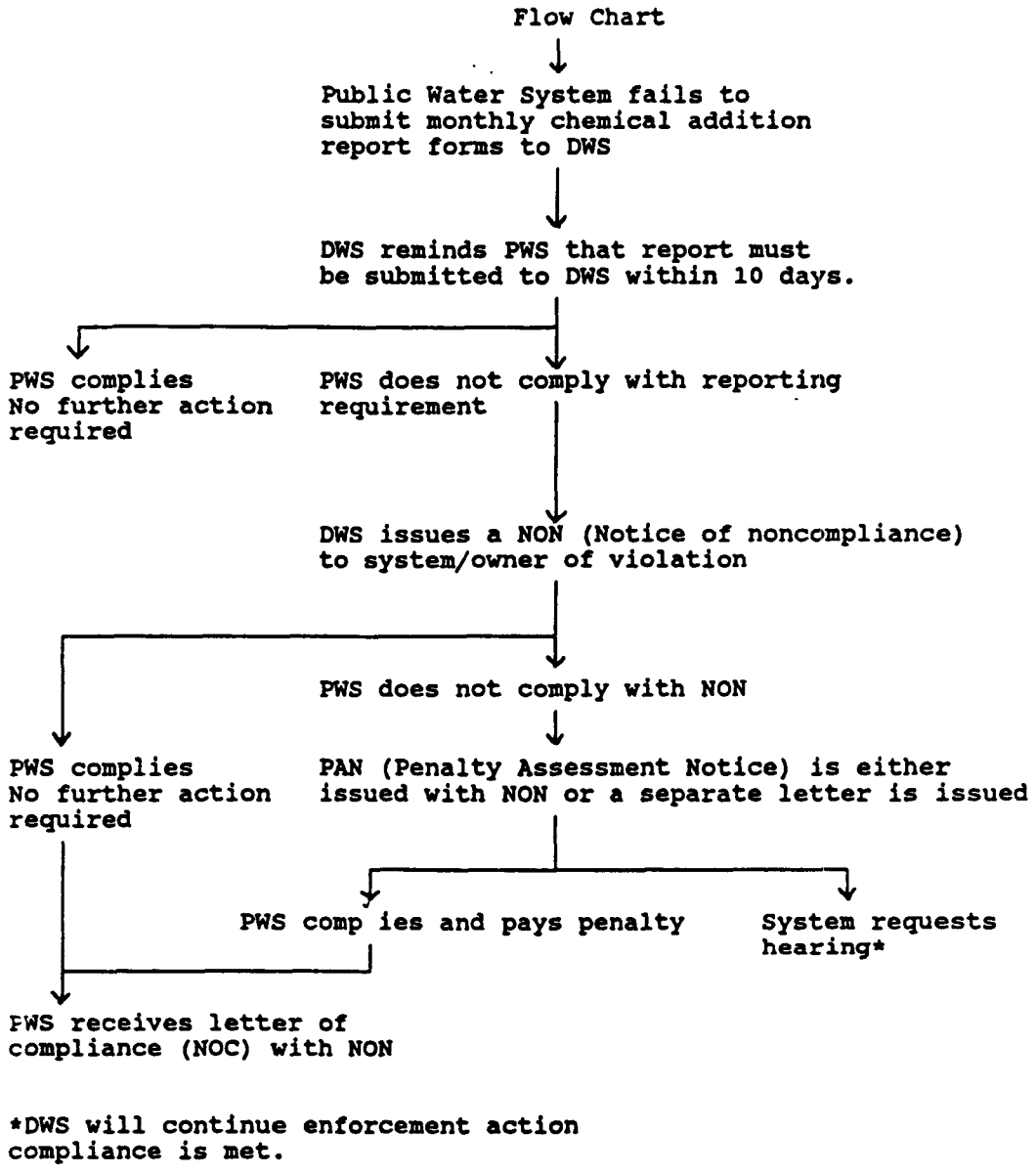


FIGURE MA-5

FLOWCHART OF DRINKING WATER ADMINISTRATIVE PENALTIES - CHEMICAL REPORT

NEW YORK

Under the authority of New York's Public Health Law, sections 10, 12-a, and 206, and the State Administrative Procedures Act, Articles 2 and 3, a Public Health Administrative Tribunal was established in the State Department of Health with the authority to impose fines and penalties.

A regulatory proceeding begins with a finding of violation issued by a Department Inspector. The finding of violation contains a history of the violation, citations of the laws and regulations being violated, information that enables the violator to calculate the potential maximum penalty, notification of a hearing, and information on proceeding procedures.

The alleged violator has 7 days to respond to a finding of violation. The violator can contest or admit to the allegations. If the violator contests, a hearing will be held in which a tribunal or tribunal representative presides. Each party has the right to be represented by counsel, to present evidence, and to question witnesses. A written decision sustaining or dismissing the finding of violation is given by the tribunal representative promptly after the hearing concludes. The decision contains the findings of facts, any orders issued, and any administrative penalties assessed. The respondent has the right to appeal the decision within 15 days, and the tribunal has 30 days to respond. Final orders and determinations of the tribunal are subject to further review.

If the violator admits to the charges or does not respond to a finding of violation, the right to a hearing is waived. In addition, hearings can be waived if a stipulation is reached between the respondent and the Department; stipulations may include the assessment of a penalty.

The department may impose penalties up to $2,000 for violations relating to a permanent source of violation. Following prosecution for a misdemeanor, violations relating to temporary sources of contamination may result in fines not exceeding $2,000 for each violation and/or imprisonment for up to 1 year.

NORTH CAROLINA

The Secretary of Environment, Health and Natural Resources or designee has the authority to assess administrative penalties and to institute legal action for injunctive relief for violations of the North Carolina Drinking Water Act or rules adopted thereunder.

A notice of monitoring violation is issued upon determination that a violation has occurred; the notice specifies the violation and the action required for compliance. Informal agreements for compliance action and/or schedules may be used prior to formal action by penalty or civil suit. Generally, a notice of penalty assessment is issued rather than a compliance order.

North Carolina General Statutes § 130A-22(b) provides the legislative authority for penalty assessment. The maximum administrative penalty is $25,000 per day that a violation continues. If an administrative appeal of a penalty is requested, a hearing before an independent administrative law judge would be held. A final agency decision resulting from the hearing is subject to judicial review.

Action for injunctive relief may be instituted by the Secretary or a designee. Civil action may also be instituted to collect penalties assessed by the agency. A violation of the laws or regulations constitutes a misdemeanor. Willful or wanton tampering with, contamination of, or damaging a public water system constitutes a felony.

OHIO

Ohio's Environmental Protection Agency has the authority to enforce provisions of the State's Safe Drinking Water Act. Section 6109.04, paragraph (7) gives the Director the authority to issue, modify, and revoke orders. The Division of Public Drinking Water's Enforcement and Policy Development Section has the ability to issue the Director's final findings and orders and to collect civil penalties. These penalties must be negotiated between the Division and the public water system; if no bilateral agreement is reached on the amount of a penalty, the Division must then go through the court system. The Attorney General, at the request of the Agency's Director, can bring an action for a civil penalty, not to exceed $10,000 per violation. All paid penalties are credited to the State's General Fund.

In the past, the Division has attempted to draft legislation to obtain statutory authority for the unilateral assessment of administrative penalties but has been unsuccessful in getting the legislation passed.

OKLAHOMA

The Oklahoma State Department of Health has the statutory power to issue orders requiring compliance with all drinking water regulations. Administrative penalty proceedings are initiated by a written notice of violation that identifies the alleged violation. Within 15 days after service of the notice of violation, unless otherwise specified, an administrative order requiring the respondent to comply within a specific period may be issued by the Commissioner. Each order specifies an administrative penalty, not to exceed $10,000 per day of noncompliance, to be assessed if the respondent fails to comply with the order within the prescribed time. In determining the penalty, the Department considers the seriousness of the violation and any efforts to comply with the applicable requirements. The respondent may request a hearing within 30 days. If the hearing extends beyond the compliance deadline specified in the order, administrative penalties levied in the order will continue to accrue during the hearing process.

After the administrative order is issued and after the hearing, if any, the hearing examiner retains jurisdiction. If, at any time, the Department believes the order has been violated, an application alleging the period of noncompliance and the amount of the administrative penalty that has accrued is filed with the hearing examiner. A copy of the application also must be provided to the respondent. The respondent may request a hearing within 5 days of receiving notice of the Department's application. An Assessment Order is issued by the Hearing Examiner on behalf of the Commissioner of Health following determination of the application. The order must state the nature of the violation, the period of the violation, whether or not the violation continues, and a computation of the amount of the administrative penalty levied by the order. The penalty is due and payable immediately upon issuance of the order. A copy of the order is provided to the respondent. If the Department believes that violations of the administrative order are continuing after the issuance of the assessment order, the Department may, at any time, apply for the issuance of additional assessment orders to cover periods during which the violation continues but were not covered by the issuance of the previous assessment orders. The Department may apply for the issuance of an assessment order whether or not the original administrative order is being appealed, for as long as the administrative order remains in effect.

OREGON

Oregon Revised Statutes, section 448.285, gives the Assistant Director of the Oregon State Health Division the authority to impose a penalty not to exceed $500 per day. An administrative penalty cannot be imposed until the person incurring the penalty has received 5 days of advance notice from the Division. In imposing an administrative penalty, the following factors are taken into consideration: individual's history in correcting violations, prior violations, and the economic or financial condition of the individual.

An individual has 20 days upon receiving a penalty notice to apply for a hearing before the Division. Hearings are conducted in accordance with the provisions of Oregon Revised Statutes, sections 183.310-183.550. An order may be issued after the hearing. Unless the penalty is paid within 10 days after an order becomes final, the order will constitute a judgment and can be treated in the same manner as a judgment from a court of record. Administrative penalties are paid into the State Treasury and credited to the General Fund.

Section 331-61-090, paragraph 5, of the Oregon Administrative Rules establishes penalties based on the population served by the water system (see Table OR-1).

TABLE OR-1

MAXIMUM PENALTIES BY POPULATION SIZE

Daily population served	Maximum civil penalty
10-100	$ 50/day
101-300	$100/day
301-1,500	$250/day
over 1,500	$500/day

The Oregon State Health Division encountered no obstacles in obtaining the authority to impose administrative penalties. Administrative penalties have been used for monitoring requirements, and there have been no appeals. The Division has found that issuing a notice stating that a penalty may be assessed is usually effective in getting a system to monitor. Systems that fail to monitor, even after receiving a notice, often have many reasons for not complying and may not monitor consistently, even after paying a penalty. The Division estimates only 50 percent of the systems that have paid administrative penalties consistently monitor after payment.

RHODE ISLAND

Title 46, Chapter 13 (Public Drinking Water Supply), section 16, paragraph c of Rhode Island's laws gives the Director of the Department of Health the authority to assess a maximum penalty of $5,000 per day per violation. The person charged with an administrative penalty has 30 days to pay the penalty in full or file for an appeal with the Director. Failure to appeal within 30 days results in a waiver of all legal rights to contest the violation or amount of the penalty. Administrative penalties collected are paid into the Water Development Fund.

Rhode Island has been successful using informal enforcement procedures; of 35 notices of violation issued, only 3 compliance agreements and 1 compliance order were necessary. No administrative penalties have been assessed.

As an alternative enforcement action, specific complaints can be referred to the Mobile Home Commission. This commission can, and has, taken management authority away from trailer park owners for reasons such as inadequate water and sewer services. A flowchart of Rhode Island's enforcement policy is provided in Figure RI-1.

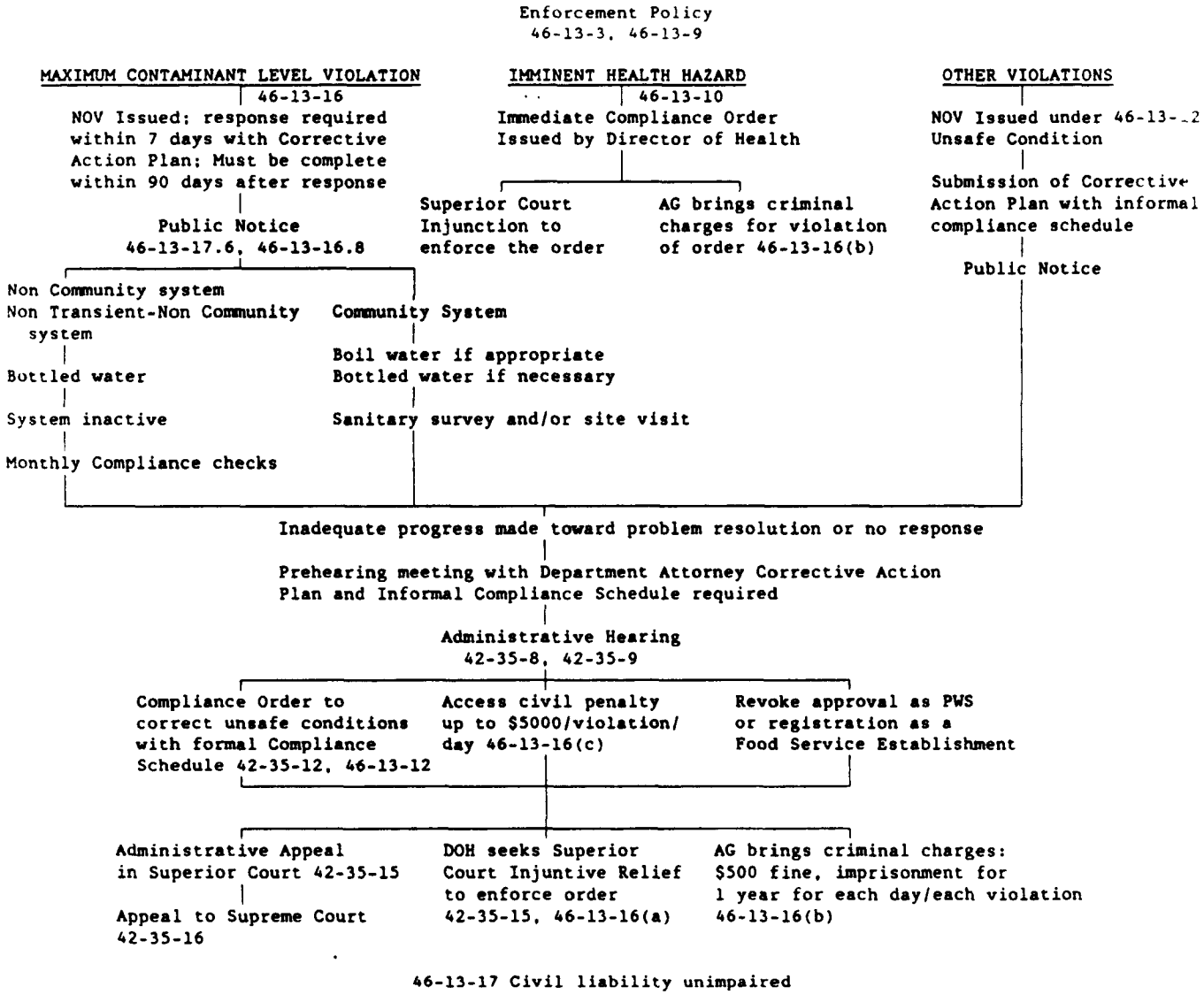


FIGURE RI-1

FLOWCHART OF RHODE ISLAND'S ENFORCEMENT POLICY

TENNESSEE

Section 68-13-705, paragraph (9) of the Tennessee Safe Drinking Water Act provides the Commissioner of the Tennessee Department of Health and Environment with the authority to assess civil penalties. Administrative penalties may not be less than $50 or more than $5,000 per day for each day of violation.

A written petition requesting a hearing before the Water Quality Control Board may be filed with the Commission by any person against whom an assessment has been issued. If a petition is not filed within 30 days, the assessment becomes final.

The Commissioner, through the Attorney General, may initiate proceedings for assessment in the appropriate chancery court.

In assessing an administrative penalty, the following factors may be considered: harm to the public or the environment, the economic deterrent, the economic benefit, any efforts put forth toward compliance, enforcement costs incurred, and the amount of penalty set by the Board for specific categories of violations.

Administrative penalties collected are earmarked for use by the Division of Water Supply.

UTAH

Section 26-12-5 of the Utah Safe Drinking Water Act provides the Utah Drinking Water Committee with the authority to enter into agreements. The Department of Health enters into bilateral consent agreements that may include penalties with noncomplying systems as an alternative to court action. Agreements are signed by both parties and by a State Judge. The Department does not have the authority to assess unilateral administrative penalties.

Enforcement actions are generally initiated with the issuance of a notice of violation. Bilateral consent agreements are a preferred method of obtaining compliance. An order requiring corrective action will be issued if the situation cannot be resolved. The recipient of a notice has 30 days to request a hearing before the Committee. The recipient also has 30 days to secure judicial review of the Committee decision.

Civil proceedings carry a maximum civil penalty of $1,000 per day per violation. A maximum penalty for willful violation is $5,000 per day per violation.

In addition, a water system may be downgraded to "not approved." This may result in a system becoming ineligible for federally insured home loans (e.g., FHA, VA).

VERMONT

The Commissioner of the Department of Health has the authority to issue Assurances of Discontinuance, which are documents signed by both parties. These documents may include a fine for violations of schedules included in the document. The Department waives the ability to press charges for past violations and the water system waives its appeal for contesting the agreed-upon compliance schedule. The Department does not have the authority to assess unilateral administrative penalties.

Enforcement actions are initiated with a notification of violation. The Commissioner may issue an order requiring corrective action within 30 days. A recipient has 30 days to appeal to the Board of Health for a hearing.

Civil proceedings can carry a maximum penalty of $10,000 per day per violation.

VIRGINIA

Whenever there is a reason to believe a violation has occurred, a notice of violation (NOV) citing the regulation and/or law allegedly violated, the requirement for providing public notice, and a draft notice for the owner's use is sent to the suspected violator. An order requiring corrective action may be issued following an emergency that invokes § 32.1-175 of the Virginia Code (an imminent threat of health), the owner agrees to enter into a consent order and thus waives the right to an administrative hearing, or a hearing conducted in accordance with Virginia's Administrative Procedures Act is held. When a violation occurs, it is placed in one of four categories.

Category I violations are subject to formal enforcement actions in which an informal hearing is scheduled with the owner(s) and a consent order is negotiated. If the owner fails to sign an order, formal action from the State or EPA will follow.

Category II violations receive a letter from the Central Office requesting an explanation from the owner with a plan for compliance.

Category III violations receive a letter from the Regional Director(s) requesting an explanation.

Category IV violations are placed on a "Watch List." Formal enforcement action, such as a civil action, criminal action, administrative action, or penalty order (currently being developed) may result if the owner fails to respond satisfactorily.

Civil penalties of not more than $5,000 per day may be recovered in a civil action brought by the Attorney General. In addition, paragraph (D) of section 32-1-27 of Virginia's Health Laws states that with the consent of the violator, the State Board of Health may include provisions for the payment of penalties in an order. These penalties are in lieu of civil penalties imposed by a court but have the same maximum of $10,000 per day for failing to obey an order. Penalties are paid into the State's General Fund.

In the Department of Health's Division of Water Supply Engineering, consent orders signed by the water system and the State Health Commissioner are regularly issued but none has included a penalty assessment.

COMPARATIVE ANALYSIS OF ADMINISTRATIVE PENALTY PROGRAMS

FEDERAL PROGRAM COMPONENTS

On June 19, 1986, Congress amended the Safe Drinking Water Act (SDWA) by adding a new provision, section 1414(g). This section provides the EPA Administrator with the authority to issue compliance orders to violators of Part B (applicable to public water suppliers) or section 1445 of the SDWA (applicable to public water suppliers and underground injectors), and to enforce such orders administratively.

Under section 1414(g), any civil penalty that does not exceed $5,000 can be assessed by the Administrator after a notice is issued and the violator is given the opportunity for a hearing. The U.S. Environmental Protection Agency is currently in the process of finalizing regulations for penalties assessed for SDWA violations that will conform to existing procedures contained in 40 CFR Part 22 (Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits). These rules currently govern adjudicatory proceedings for other Federal acts, including the Clean Air Act, Solid Waste Disposal Act, and Toxic Substances Control Act.

EPA's civil penalty policy, issued in 1984, lists the policy objectives for penalty assessments in EPA administrative and judicial enforcement actions as follows:

- deterrence;
- fair and equitable treatment of the regulated community; and
- swift resolution of environmental problems.

The violator and the general public must be convinced that the penalty places the violator in a worse position than those who complied in a timely fashion. Penalties should, at a minimum, remove any significant economic benefits resulting from failure to comply (economic benefit component of the penalty). The penalty also should include an additional amount that reflects the seriousness of the violation (gravity component of the penalty).

Penalties must display both consistency and flexibility. All preliminary deterrence amounts should be increased or mitigated for the following factors to account for differences between cases:

- degree of willingness and/or negligence;
- history of noncompliance;
- ability to pay;
- degree of cooperation/noncooperation; and
- other unique factors specific to the violator or the case.

The Agency has two basic approaches for promoting quick settlements:

- To provide incentives for settling and instituting prompt remedial action, such as considering the reduction of the gravity component of the penalty when the violator institutes expeditious remedies and the mitigation of the penalty for additional environmental cleanup.

- To provide disincentives for delaying compliance by notifying the violator that the penalty will increase if the violation continues beyond the expected duration.

A number of the State programs analyzed encompass these features. For example, from the information received, it was found that eight States (Connecticut, Florida, Iowa, Massachusetts, Pennsylvania, South Carolina, Tennessee, Washington) include a gravity component in their determination of a penalty amount, and three States (Iowa, Massachusetts, Tennessee) specified having an economic component. One State law (Connecticut) called for an administrative penalty schedule that would ensure immediate and continued compliance. Another State policy (Massachusetts) required penalties to achieve the goals of protecting public health and deterring noncompliance in a fair and lawful manner. Five States (Connecticut, Florida, Massachusetts, Oregon, Washington) consider the violator's noncompliance history, and four States (Florida, Massachusetts, Oregon, South Carolina) consider the ability to pay when determining the penalty amount. Three States (Florida, Iowa, Pennsylvania) consider the degree of negligence, and five States (Connecticut, Florida, Massachusetts, Oregon, Tennessee) consider the system's efforts to mitigate damages and to achieve compliance. In addition to considerations provided in the Federal guidelines, three States (Oregon, Pennsylvania, Washington) also consider the population affected by a violation when determining the penalty amount.

STATE PROGRAM COMPARISONS

Of the six case studies, agencies in three States (California, Connecticut, Pennsylvania) had no difficulty obtaining the legislative authority to assess administrative penalties, two States (Florida, Washington) received some opposition, while one State (South Carolina) received its authority in phases. Restrictions placed on South Carolina's authority were imposed by the governing board of the Department and were not legislatively imposed limits; consequently, eventual changes required no legislative amendment.

South Carolina's Bureau of Drinking Water Protection could assess penalties with the consent of the violator or approval from the Board of Health and Environmental Control in 1977, but could not assess unilateral penalties for the full statutory amount of $5,000 per day until 1983. Pennsylvania's Division of Water Supplies received its authority in 1984 but did not implement its program until 1987. Connecticut's Department of Health Services was

granted the authority in 1985, but current practices still require it to submit a petition to the court before a penalty can be assessed. Programs in Washington's Department of Health and California's Office of Drinking Water began in 1986 and legislation granting Florida's Department of Environmental Regulation authority to assess noncompliance fees passed in June 1990.

Florida is the only State that believed it was necessary to avoid usage of the term "penalty" and uses "noncompliance fee" to relate compliance with the enforcement action and to avoid possible negative connotations.

Legislative authorities identify what actions a State agency must initiate and other discretionary actions it is allowed to take. The program requirements that are specified in authorizing legislation as being mandatory vary. No State authority reviewed requires an agency to assess administrative penalties. However, laws in Oregon and Tennessee require that a schedule of penalties be established. Laws in Connecticut and Iowa mandate that specific requirements be met if a penalty schedule is established, and laws in Connecticut, Massachusetts, and Oregon include factors the agency must consider when assessing administrative penalties. In Connecticut, Hawaii, and Massachusetts, laws provide procedures that must be followed during the administrative penalty assessment process. The authority language used in Pennsylvania and Rhode Island is almost identical, while South Carolina's authority is unique in its simplicity.

Four of the case-study States (Connecticut, Pennsylvania, South Carolina, Washington) have maximum administrative penalties of $5,000; $1,000 per day is the maximum in California, and $2,000 is the maximum in Florida. Three of the States that responded (Kentucky, North Carolina and Hawaii) have penalty maximums of $25,000. Several States provide justifications for keeping administrative penalties low, while other States believe that penalty assessments would be more effective if amounts were higher. States also differ on the issue of penalty mitigation. Some States rely on the ability to reduce administrative penalties as an incentive for obtaining quick compliance, while other States believe reducing a pre-established penalty hurts the Agency's image of being equitable and willing to take strong enforcement actions. The policy of allowing systems to apply penalty money toward system improvements also varies; while this practice was used frequently in the past, there appears to be a trend toward maintaining the punitive aspect of the administrative penalty, and many States have eliminated this as an option. No direct correlation between the amount of an administrative penalty and the ability to obtain compliance was found.

Eleven of the States (California, Connecticut, Delaware, Hawaii, Idaho, Iowa, Ohio, Oregon, South Carolina, Virginia, Washington) are required to deposit collected penalties into the State's General Fund. In Florida, compliance fees will be deposited into a trust fund; Pennsylvania's Division of Water Supplies gets a percentage of the penalties deposited into the Safe Drinking Water account; and special accounts exist for penalties collected in

Rhode Island and Tennessee. Some States believe that having penalty money allocated directly to the drinking water program would result in stiffer administrative penalties being assessed and may indirectly affect the State agency's ability to assess fair amounts; however, Rhode Island's agency assesses no administrative penalties even though funds collected would be deposited into a special program account.

Providing an economic incentive for timely payment is a basic component of many programs. To force payment of an administratively assessed penalty, State agencies must obtain a court order. However, in Iowa, nonpayment of a penalty can result in the assessment of interest payments, and in Massachusetts, a violator who neglects to pay a penalty could be liable for as much as three times the original amount, in addition to interest and other costs. California increases a penalty if it is not paid, and Washington will assess a second penalty.

Obtaining enforcement consistency throughout the State is essential. South Carolina achieves this by retaining central control, and other States have found it necessary to promulgate legislation that requires some form of centralization. In four of the case-study States (California, Florida, Pennsylvania, Washington), local officials assume an active role in drinking water enforcement. Counties in California and Washington had the right to assess administrative penalties before the State agency was granted the same authority. Local officials are not involved in South Carolina's program, and local authorities play a secondary support role in Connecticut's program. In California, local officials have been responsible for systems with fewer than 200 service connections and have the same enforcement authority as the State Office. The State Office had no authority over local officials; however, a new law providing this authority should improve enforcement consistency throughout the State. Similarly, in Florida, a recently passed bill requires local public health units to be able to carry out all functions of the drinking water program under the oversight of the Department of Environmental Regulation; local authorities previously reported to one of two agencies, depending on the function.

The reliance placed on field personnel for identifying violations, encouraging compliance, and initiating enforcement actions is apparent. There are no drinking water field offices in Connecticut, but the other four case-study States with existing programs (California, Pennsylvania, South Carolina, Washington) rely on field staff to initiate most actions. In Pennsylvania, field orders may be issued directly for violations that present a risk to the public. In California, field staff write the citation or compliance order and a Regional Chief signs it. In Washington, field engineers can request that an order be issued, and the Secretary of Health or designee signs.

The number of people involved in drinking water enforcement actions is widely divergent. In California, for the 1988/89 fiscal year, 3 person-years of field staff time were expended specifically on issuing and following up on compliance orders and citations. In Connecticut, although the Water Supply Section has only one full-time enforcement officer,

the total number of people involved in enforcement varies. The entire field staff (over 150 people) plays a role in enforcement in Pennsylvania. Enforcement actions in Washington usually involve a field engineer, the Public Health Advisor, an attorney, and a secretary.

In most States, the use of attorneys is informal, and good working relationships exist between the agency and legal counsel; in most cases, lawyers do not hinder administrative enforcement actions. The use of lawyers by the five case-study States with existing programs, although similar, varies. Three States (Connecticut, South Carolina, Washington) have Attorneys General assigned to the Department, and three States (California, Pennsylvania, South Carolina) utilize in-house attorneys. California has a lawyer dedicated to the Office who conducts spot checks of citations and compliance orders; cases involving noncooperative violators are referred to the Attorney General. In Connecticut, an Attorney General is consulted whenever the Bureau Chief's signature is required. The Attorney General is an elected official in Pennsylvania, so departmental lawyers are used. In South Carolina, an Assistant Attorney General is assigned to the staff but the Bureau of Drinking Water Protection prefers to use the seven lawyers in the Department's Office of General Counsel. The Assistant Attorney General assigned to Washington's Department of Health reviews and signs the more complex orders and gets more formally involved for civil actions and if there is a failure to pay.

Although the overall enforcement philosophy is highly similar, the actual procedures followed for assessing administrative penalties are specific to each State. No State assesses a penalty before the water system has an opportunity to come into compliance. Informal efforts to obtain compliance are pursued before more formal administrative actions are taken. In California, a letter of correction is sent followed by a citation that does not contain an administrative penalty; a second citation would contain a penalty assessment; and if a third citation were necessary, a higher penalty would be imposed. In Florida, a notice of violation will be issued, in some cases a second notice will also be required, and then the noncompliance fee can be assessed. South Carolina's organization of having separate compliance, enforcement, and criminal investigation sections did not appear to be utilized in any other State. In South Carolina, the Central Office issues the notice of enforcement conference; once the Enforcement Section decides to act on a referral, it will send a Notice of Enforcement Conference and meet with the alleged violator; if an agreement on a consent order cannot be reached, a unilateral order may be issued. Washington's process begins with informal enforcement steps that may include site visits to, letters to, and telephone calls with the alleged violator. Orders are issued if these multiple attempts fail to compel compliance. If a system continues to be in noncompliance, then an administrative penalty will be issued; a second penalty may be assessed if the violator continues to fail to comply. These procedures emphasize State beliefs that the primary goal of their drinking water programs is to obtain compliance; much effort is expended to achieve this without the need for formal enforcement action.

The emphasis placed on compliance is also indicated by the fact that States do not often utilize the provision to pursue criminal prosecution for drinking water violations, but it will be considered for serious cases. Taking criminal action is considered more difficult, requiring much more proof. In addition, some drinking water violations are not considered criminal acts, and therefore pursuing criminal prosecution is not an option. Washington has never pursued criminal prosecution for a drinking water violation. In South Carolina, a few cases have been referred to the Office of Criminal Investigation, but its requests have been denied and no criminal proceeding has taken place. California's Office of Drinking Water would seek criminal prosecution if someone became ill as a result of a violation. Pennsylvania usually initiates court proceedings only for sensitive cases, but it can also request that the court issue a summary citation; of the 289 enforcement actions taken in 1989, only three were criminal proceedings.

State administrative procedures acts require an internal appeal process for agency decisions. The implementation of internal hearings is fairly similar among the case-study States. In California, an Administrative Law Judge from the Department presides over citation appeals. However, there is no internal appeal process for compliance orders; California's Office of Drinking Water believes this gives the order more impact. In Washington, the presiding Administrative Law Judge is from the Office of Hearings, an independent agency; appeals of the Administrative Law Judge's decision go to a departmental Review Judge. In Pennsylvania, a quasi-independent agency, the Environmental Hearing Board, presides. A Hearing Examiner is appointed by South Carolina's Commissioner of Health and Environmental Control to preside over adjudicatory hearings. In all cases, a water system has the option to take a dispute to court, usually after all administrative appeals have been exhausted. Most States have few appeals and credit this to their efforts to establish a good case and impose fair penalties.

Connecticut is the only case-study State that prefers not to use administrative penalties. Instead, the Department of Health Services works with the Department of Public Utility Control to utilize the provisions allowing for the joint takeover of violating water systems. Similarly, Rhode Island has the enforcement option of referring specific complaints to the Mobile Home Commission, which can, and will, take management authority away from trailer park owners. Pennsylvania's Department of Environmental Resources also has a close relationship with another agency; the Public Utility Commission can place a system under receivership. Other States also indicated that unilaterally assessing penalties was not a preferred enforcement alternative. Pennsylvania, South Carolina, and Washington stated that assessing a penalty through negotiation is more efficient, less costly, and more likely to result in compliance.

South Carolina's program, with its tiering process and detailed research, appears to be working in that State. On the other hand, the relative ease of Iowa's program (it is similar to issuing traffic citations) is a main reason for its success. The enforcement

philosophy varies from State to State and each program has unique procedures; however, all States expressed the belief that their administrative enforcement actions are effective.

Conversely, all case-study States also believed some improvements could be made in their administrative penalty program. The ability to assess larger penalties was cited by some officials, and in Connecticut, officials would like to have the ability to assess a penalty without having to first petition the court. Other suggested improvements were to isolate further the program from political interference; to strengthen other aspects of the enforcement program; and to streamline the process.

The analysis of State programs revealed basic components of a successful program. An administrative penalty program should be easy to implement (this is a primary objective). Although a degree of flexibility for penalty assessments should be provided, State-wide consistency must be maintained. Good communications, background research, and establishing a reputation of remaining firm in enforcement actions also contribute to developing an effective administrative penalty program.

MODEL STATE LEGISLATION

An administrative agency is a governmental body that is neither a court nor a legislature but that has authority to affect the rights of private persons, groups, and businesses. Administrative agencies do not fit neatly into one of the three branches of government (executive, legislative, judicial), but their functions reach into all three areas. One of the reasons for creating administrative agencies was the belief that combining the three governmental functions into a single entity would result in the ability to address problems more efficiently.

Often, the statute that creates an agency and/or defines the agency's powers does so in general terms allowing for broad discretion. However, agency actions are scrutinized and courts will invalidate a law that appears to grant too much legislative or judicial power to an agency. For example, due process (guaranteeing the right to life, liberty, and property) requirements and the right to a jury trial for criminal proceedings restrict the scope of agency actions, and agencies cannot be given the power to determine criminal guilt and to impose criminal penalties. However, agencies can impose fines or assess administrative penalties.

As a general rule, administrative agencies do not follow the civil procedures established for courts; actions and decisionmaking efforts are more informal. Over the years, however, procedures have been established to govern how agencies take action; as a result, a body of administrative law has been produced. In 1946, the Administrative Procedures Act (*5 U.S.C.A. § 551 et seq.*) was enacted to make the methods used by Federal agencies fair and consistent. In 1961, the National Conference of Commissioners on Uniform State Laws promulgated a revised Model State Administrative Procedures Act. Over three-quarters of the States have general legislation governing procedures. Specific provisions, however, vary from State to State and from agency to agency.

In drafting legislation to grant an agency the authority to assess administrative penalties, the first step must be to review the State law pertaining to administrative procedures. All proposed administrative actions must fall within the scope of that law and comply with the requirements. In addition, the agency should consider and decide in advance the extent of power desired. The authority should be broad enough to enable the agency to achieve its intended goal, yet narrow enough to avoid opposition (legislative, judicial, and public reaction).

In reviewing the various State administrative penalty programs, it was observed that each program contains unique features. The reason a particular procedure is initiated can be because it is mandated by other State statutes, such as the Administrative Procedures Act, or because of specific State characteristics, such as financial resources, organizational

structure, geography, types of water systems regulated, etc. Although it is unlikely that a single law could meet the needs of all States, or even a majority of States, there are specific requirements that States should consider when preparing to implement an administrative penalty program.

Therefore, instead of presenting one model legislation that satisfies all circumstances, several options are provided for consideration. The actual authority giving an agency the power to issue administrative penalties can stand alone, as it does in South Carolina, or it can be accompanied with various restrictions or procedures that the legislature either mandates or suggests. In addition, laws granting an agency general enforcement powers or the authority to enter agreements may also be interpreted to include the authority to issue administrative penalties. The following sections provide examples of legislative language used in general authorities. All examples for proposed requirements are taken from existing laws. Several options are provided to give a broad range of possible provisions and wording options. Where appropriate, specific features of the provision are listed.

GENERAL AUTHORITY: To provide for broad enforcement powers.

- The director may perform any and all acts necessary to carry out the purposes and requirements of this chapter.

  The Director shall have and may exercise the following powers and duties: To exercise all incidental powers necessary to carry out the purposes of this Act.

  To carry out the provisions of this subtitle and in addition to the powers set forth elsewhere in this subtitle, the Secretary may perform any act necessary to carry out the provisions of this subtitle that relate to adopting and enforcing State primacy drinking water regulations.

  The department shall have the power and its duties shall be to issue such orders and initiate such proceedings as may be necessary and appropriate for the enforcement of drinking water standards, any other provisions of law notwithstanding.

GENERAL AUTHORITY: To enter into agreements, which could include consent orders or agreed orders.

To carry out the provisions and purposes of this article, the Department is authorized and empowered to enter into agreements, under such terms and conditions as it deems appropriate, with other state, federal or interstate agencies, municipalities, educational institutions, local health departments or other organizations and individuals.

The director may enter into agreements, contracts, or cooperative agreements with any person.

The Director of the Agency is authorized to enter into such contracts and agreements as may be necessary, and as expeditiously as necessary, to carry out the Agency's duties under this subsection.

With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board or Commissioner or any provision of this title, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in § 32.1-27.1 and subsection C of this section.

[FEATURES: consent order specific]

GENERAL AUTHORITY: To assess administrative penalties either for all drinking water violations or for specific violations.

If, upon review, investigation or inspection, the commissioner of health services determines that a water company has violated any provision of section 25-32d of the general statutes or any regulation adopted thereunder or any regulation in the public health code relating to the testing of water supplies or any report of such testing he may impose a civil penalty not to exceed five thousand dollars upon such water company.

[FEATURES: includes penalty maximum]

In addition to proceeding under any other remedy available at law or in equity for a violation of any provision of this act, any rule or regulation of the department or order of the department or any term or condition of any permit issued by the department, the department may assess a civil penalty upon a person for such violation.

The department may administer penalties as otherwise provided herein for violations of this article, including any other permit, regulation or standard.

If the director determines that any person is violating any provision of this part, any rule adopted thereunder, or any variance, exemption, permit, or other written authorization issued pursuant thereto, the director may have that person served with a notice of violation and an order. The order may require that the alleged violator do any or all of the following: cease and desist from the violation, pay a civil penalty as specified in the order and answer the charges complained of.

[FEATURES: assessment is included in order]

The Commissioner shall have the following powers, duties, and responsibilities: To assess civil penalties for violation of any provision of this chapter, or any rule, regulation, standard adopted or order issued by the board or commissioner pursuant to this part.

If a general authority is insufficient and additional provisions are required, the following components of an administrative penalty program can be considered for inclusion. Each program component is followed by language used in existing programs. No judgment regarding the effectiveness of specific options is provided; each statutory provision should be equally successful if used in the appropriate situation. The options are provided so a State can select the language that would best meet its requirements; comply with established administrative procedures; cause the least disruption for existing enforcement activities; and be received most favorably by the legislature, industry, and the public in that State. A State

can determine which components should be added to the proposed law and then choose to use wording that has worked elsewhere; modify existing verbiage, as necessary; or compose its own requirement.

PROGRAM COMPONENT: Penalty maximums and minimums (per day, per violation, or cumulative).

The maximum civil penalty which may be assessed pursuant to this section is $5,000 per day for each violation.
[FEATURES: daily maximum]

No civil penalty shall exceed $500 per day.
[FEATURES: daily maximum]

No civil administrative penalty assessed hereunder shall be less than one hundred dollars.
[FEATURES: penalty minimum]

Any person who fails to comply with or otherwise violates the provisions of chapter one hundred and eleven F enforceable by the department shall be liable for a civil administrative penalty not to exceed two hundred and fifty dollars per day for each day that such violation continues and the department shall follow the procedures set forth herein in assessing such penalty. For any other failure to comply with any regulation, order, license or approval issued or adopted by the department, or any law which the department has authority or responsibility to enforce, the civil administrative penalty for each failure to comply shall not exceed one thousand dollars.
[FEATURES: maximums set per day or per violation depending on the infraction]

PROGRAM COMPONENT: The option or requirement to establish a schedule of penalties and the considerations that may or must be observed during its development.

The assistant director of the division shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation.
[FEATURES: schedule is mandated]

The commissioner of health services shall adopt regulations in accordance with the provisions of chapter 54 of the general statutes, establishing a schedule or schedules of the amounts, or the ranges of amounts, of civil penalties which may be imposed under this section. In adopting such regulations, the commissioner shall consider the level of assessment necessary to insure immediate and continued compliance with such provision, and the character and degree of injury or impairment to or interference with or threat thereof to: (1) the purity of drinking water supplies; (2) the adequacy of drinking water supplies and (3) the public health, safety or welfare.
[FEATURES: schedule is mandated; considerations for insuring compliance and regarding the seriousness of the violation may be made]

The commission may establish, by rule, a schedule or range of civil penalties which may be administratively assessed. The schedule shall provide procedures and criteria for the administrative assessment of penalties of not more than one thousand dollars for minor violations of this chapter or rules, permits or orders adopted or issued under this chapter. In adopting a schedule or range of penalties and in proposing or assessing a penalty, the commission and director shall consider among other relevant factors the following: (a) the costs saved or likely to be saved by noncompliance by the violator; (b) the gravity of the violation; (c) the degree of culpability of the violator; and (d) the maximum penalty authorized for that violation under this chapter.

[FEATURES: schedule not mandated but considerations of economic and gravity components, culpability, and the maximum penalty allowed are required]

Such regulations may provide for: a schedule of the amount of civil penalty which can be assessed by the commissioner for certain specific violations or categories of violations.

[FEATURES: schedule not mandated]

PROGRAM COMPONENT: Procedures for when and how an administrative penalty may be assessed.

Penalties may be administratively assessed only after an opportunity for a contested case hearing which may be combined with a hearing on the merits of the alleged violation.

[FEATURES: requires hearing opportunity]

The Department may assess a civil administrative penalty on a person who fails to comply with any provision of any regulation, order, license or approval issued or adopted by the department, or of any law which the department has the authority or responsibility to enforce; provided, however, that such noncompliance occurred after the department had given such person written notice of such noncompliance, and after reasonable time, as determined by the department and stated in said notice, had elapsed for coming into compliance; and provided, further, that the department may assess such penalty without providing such written notice if such failure to comply: (1) was part of a pattern of noncompliance and not an isolated instance, or (2) was willful and not the result of error, or (3) resulted in significant impact on public health, safety, welfare or the environment, or (4) consisted of failure to promptly report to the department.

[FEATURES: requires notice but includes provisions for when a notice is not required]

If the commissioner has reason to believe that a violation has occurred, he may impose a penalty if compliance is not achieved by a specific date and send to the violator, by certified mail, return receipt requested, or personal service, a notice which shall include: (1) a reference to the sections of the statute or regulation involved; (2) a short and plain statement of the matters asserted or charged; (3) a statement of the amount of the civil penalty or penalties to be imposed; (4) the initial date of the imposition of the penalty; and (5) a statement of the party's right to a hearing.

[FEATURES: requires notice as well as the notice's contents]

When the department assesses a civil penalty, it shall inform the person of the amount of the penalty. The person charged with the penalty shall then have 30 days to pay the penalty in full

or, if the person wishes to contest either the amount of the penalty or the fact of the violation, the person shall within the 30-day period, file an appeal of the action with the Environmental Hearing Board.

[FEATURES: requires notice and opportunity for a hearing]

PROGRAM COMPONENT: Considerations that must be made or that are allowed to be made when determining the amount of a penalty in an individual case.

In imposing a penalty pursuant to the schedule or schedules adopted pursuant to this section, the assistant director shall consider the following factors: (a) the past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation; (b) any prior violations of statutes, rules, orders and permits pertaining to the water system; and (c) the economic and financial conditions of the person incurring the penalty.

[FEATURES: requires consideration of violator's past efforts to comply, noncompliance history, violator's financial conditions]

The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the division considers proper and consistent with the public health and safety.

[FEATURES: allows discretionary mitigation]

In assessing a civil penalty the following factors may be considered: (1) the harm done to the public health or the environment; (2) whether the civil penalty imposed will be substantial economic deterrent to the illegal activity; (3) the economic benefit gained by the violator; (4) the amount of effort put forth by the violator to remedy this violation; (5) any unusual or extraordinary enforcement costs incurred by the commissioner; and (6) the amount of penalty set by the board for specific categories of violations.

[FEATURES: allows consideration of economic and gravity components, violator efforts to comply, agency costs, maximum penalty allowed]

In setting a civil penalty in a particular case, the commissioner shall consider factors which he deems relevant, including, but not limited to, the following: (1) the amount of assessment necessary to insure immediate and continued compliance with such provision; (2) the character and degree of impact of the violation on the purity and adequacy of drinking water supplies; (3) whether the water company incurring the civil penalty is taking all feasible steps or procedures necessary or appropriate to comply with such provisions or to correct the violation; (4) any prior violations by such water company of statutes, regulations, orders or permits administered, adopted or issued by the commissioner; (5) the character and degree of injury to, or interference with, public health, safety or welfare which has been or may be caused by such violation.

[FEATURES: requires consideration of gravity component, violator efforts to comply, noncompliance history; allows other considerations]

In determining the amount of each civil penalty, the department shall include, but not be limited to, the following in its considerations: the actual and potential impact on public health, safety and welfare and the environment of the failure to comply; the actual and potential

damages suffered, and actual or potential costs incurred, by the commonwealth, or by any other person; whether the person being assessed the civil administrative penalty took steps to prevent noncompliance, to promptly come into compliance and to remedy and mitigate whatever harm might have been done as a result of such noncompliance; whether the person being assessed the civil administrative penalty has previously failed to comply with any regulation, order, license or approval issued or adopted by the department, or any law which the department has the authority or responsibility to enforce; making compliance less costly than noncompliance; deterring future noncompliance; the financial condition of the person being assessed the civil administrative penalty; and the public interest.

[FEATURES: requires consideration of gravity and economic components, violator efforts to comply, noncompliance history, violator's financial status, public interest; allows other considerations]

PROGRAM COMPONENT: A time limit for penalty payment.

A penalty shall be paid within thirty days of the date the order assessing the penalty becomes final.

[FEATURES: provides a specified period of time]

Any civil penalty imposed under ORS 448.285 shall become due and payable when the person incurring the penalty receives a notice in writing from the assistant director of the division.

[FEATURES: due upon receipt of notice]

PROGRAM COMPONENT: A provision for the disposition of money collected from penalty assessments.

All amounts recovered under this section shall be paid into the State Treasury and credited to the General Fund.

[FEATURES: pay to State Treasury]

All civil penalties assessed by the department and interest on the penalties shall be deposited in the general fund of the state.

[FEATURES: deposit in General Fund]

All fines and penalties collected under the penalty provisions of this act and all fees shall be paid into the State Treasury into a special restricted receipt account in the General Fund known as the Safe Drinking Water Account administered by the department for use in protecting the public from the hazards of unsafe drinking water and which funds are hereby appropriated to the department for such purposes as are authorized in this act.

[FEATURES: paid into a Safe Drinking Water Account in the General Fund]

A small water systems fund is established in the department of environmental quality. The fund consists of monies appropriated by the legislature and monies obtained as civil penalties imposed under § 49-354. Monies in the fund are exempt from lapsing under § 35-190. Interest earned on monies in the fund shall be credited to the fund.

[FEATURES: Small Water Systems Fund]

All fines and penalties collected under the penalty provisions of this act and all fees shall be paid into the water development fund pursuant to § 46-15-24.

[FEATURES: Water Development Fund; references other requirements]

PROGRAM COMPONENT: Provisions for nonpayment of penalties.

A person who fails to timely pay a civil penalty assessed by a final order of the department shall pay, in addition, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid. The attorney general shall institute, at the request of the department, summary proceedings to recover the penalty and any accrued interest.

[FEATURES: requires interest payment; Attorney General involvement]

If any water company fails to pay any civil penalty, the attorney general, upon request of the commissioner of health services, may bring an action in the superior court for the judicial district of Hartford-New Britain to obtain enforcement of the penalty by the court. All actions brought by the attorney general pursuant to the provisions of this section shall have precedence in the order of trial as provided in section 52-191 of the general statutes.

[FEATURES: allows Attorney General involvement]

Each person who fails to pay a civil administrative penalty on time, and each person who issues a bond pursuant to this section and who fails to pay to the commonwealth on time the amount required hereunder, shall be liable to the commonwealth for up to three times the amount of civil administrative penalty, together with costs, plus interest from the time the civil administrative penalty became final and attorneys' fees, including all costs and attorneys' fees incurred directly in the collection thereof. The rate of interest shall be the rate set forth in section six C of chapter two hundred and thirty-one.

[FEATURES: allows penalty to be tripled; requires payment of costs, interest, and attorney's fees]

Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

[FEATURES: requires treatment equivalent to court judgment; references other requirements]

PROGRAM COMPONENT: Internal appeal procedures.

Whenever the department seeks to assess a civil administrative penalty on any person, such person shall have the right to an adjudicatory hearing under chapter thirty A whose provisions shall apply except when they are inconsistent with the provisions of this section.

[FEATURES: references other requirements]

The civil penalty shall be payable for noncompliance on the date specified in subsection (c) of this section and for each day thereafter until the water company against whom the penalty was issued notifies the commissioner that the violation has been corrected. Upon receipt of such

notification, the commissioner shall determine whether or not the violation has been corrected and shall notify the water company, in writing, of such determination. The water company may, within twenty days after such notice is sent by the commissioner, request a hearing to contest an adverse determination. If, after such hearing, the commissioner finds that the violation still exists, or if the water company fails to request a hearing, the penalty shall continue in force from the original date of imposition. The water company to whom the notice is addressed shall have twenty days from the date of mailing of the notice to make written application to the commissioner for a hearing to contest the imposition of the penalty. All hearings under this section shall be conducted pursuant to sections 4-177 to 4-184, inclusive, or the general statutes.

[FEATURES: mandates several steps; references other requirements]

The person to whom the notice is addressed shall have 20 days from the date of mailing to the notice in which to make written application from a hearing before the division. All hearings shall be conducted pursuant to the provisions of ORS 183.310 to 183.550 applicable to a contested cases.

[FEATURES: references other requirements]

The director shall afford to the alleged violator an opportunity for a fair hearing before the department under the Administrative Procedure Act.

[FEATURES: general requirement but references other requirements]

PROGRAM COMPONENT: Final or judicial appeals and restrictions on when a court appeal will not be allowed.

Any person who institutes proceedings for judicial review of the final assessment of a civil administrative penalty shall place the full amount of the final assessment in an interest-bearing escrow account in the custody of the clerk/magistrate of the reviewing court.

[FEATURES: requires assessed penalty to be deposited in an escrow account before judicial review allowed]

A person aggrieved by a rule, standard, or order adopted or issued pursuant to this part may appeal to the district court. While the appeal is pending, the rule, standard, or order is in force.

[FEATURES: order stands through court appeal]

A final order of the commissioner assessing a civil penalty shall be subject to appeal as set forth in section 4-183 of the general statutes after a hearing before the commissioner pursuant to subsection (e) of this section, except that any such appeal shall be taken to the superior court for the judicial district of Hartford-New Britain and shall have precedence in the order of trial as provided in section 52-191 of the general statutes. Such final order shall not be subject to appeal under any other provision of the general statutes. No challenge to any such final order shall be allowed as to any issue which could have been raised by an appeal of an earlier order, notice, permit, denial or other final decision by the commissioner.

[FEATURES: judicial relief disallowed if administrative hearing opportunities not pursued first]

Any party aggrieved by a final judgment of the superior court may, within thirty (30) days from the date of entry of the judgment, petition the supreme court for a writ of certiorari to review

any questions of law. The petition shall set forth the errors claimed. Upon the filing of the petition with the clerk of the supreme court, the supreme court may, if it sees fit, issue its writ of certiorari.

[FEATURES: procedures for petitioning the Supreme Court]

Additional judicial review may not be sought after the order becomes final.

[FEATURES: restricts judicial review]

In addition to general authorities that can provide for administrative penalty assessments and legislative requirements pertaining to specific program components, a State agency must be sure that adequate regulatory promulgation and responsibility delegation powers are provided. Some States may also want to include provisions for local authority responsibilities. However, it must be stressed that the effectiveness of a drinking water enforcement program lies more in its interpretation and implementation than in the language of the law itself.

CONCLUSION

The most conclusive finding is that unique provisions tailored to each State are necessary to make a drinking water administrative penalty program effective. Because information on enforcement programs in 11 States was not received and the amount and types of information submitted by the other 43 States were not uniform, this study was limited by data availability. However, the information reviewed left no doubt that implementation of administrative penalty programs varies.

The wide diversity among State procedures can probably be attributed to requirements found in individual administrative procedures acts. In most cases, this act was not submitted with the State's information on drinking water enforcement; therefore, it was not possible to determine which provisions are mandated for all State agencies and which are unique to the drinking water program.

Although it was observed that geographic location played some role in State enforcement efforts, definitive conclusions could not be drawn. Comprehensive analyses of the size and type of water systems and unique problems or benefits associated with specific weather patterns and terrain were not conducted during this study. Consequently, judgments on a number of factors that may influence the selection of one enforcement option over another have not been presented.

This study did find that most States prefer to use their authority as leverage to compel compliance rather than to assess an administrative penalty. On the other hand, if a public water system does not believe the agency will follow through, the threat of a penalty is ineffectual. Consequently, agencies must establish a history of strong enforcement actions so that when a program matures and the agency's reputation spreads, the likelihood of violating systems coming into compliance (without the need to assess administrative penalties) will increase.

The option of reaching a consent order with a violator was also more preferable in many States than unilaterally assessing a penalty; if it is necessary to go to court to obtain compliance with an order, it is much easier if the violator had previously agreed with the order's requirements. In addition, if an agreed order can be issued, the appeal process is avoided. Some States consider assessing lower penalties in consent orders as one incentive for reaching an agreement; however, other States believe this practice could hurt an agency's reputation for being equitable and fair.

Administrative actions are preferred over court actions. Although the agency relationships with the courts vary, court actions are viewed as being more costly in terms of time and money.

CONCLUSION

The study's analyses indicate that implementation of certain procedures and policies contributes to effective programs. The primary goal is to develop a program that is easy to implement and that avoids lengthy and costly court proceedings. One procedure that should be fundamental in all programs is good communication. Whereas, various people have enforcement responsibilities, the exchange of information and ideas is essential. In addition, communication with the water system during the enforcement process has been effective in obtaining compliance without the need for formal enforcement actions. A program also should allow some degree of flexibility for administrative penalty assessments. However, the ability to consider special circumstances of individual violations must be balanced with the need to have a policy that mandates consistency. The need for State-wide uniformity is supported by the fact that in States where local authorities assume an active role in enforcement, providing a degree of centralization is now a primary concern. Implementing a policy that requires comprehensive research before an action can be initiated and establishing a reputation for being fair but firm in enforcement also can contribute to a program's success.

Administrative penalty programs are established to obtain compliance, as a deterrent for future noncompliance, and as a valuable enforcement option that lends itself to quick and cost-effective resolutions. Existing policies and procedures vary considerably and reflect the uniqueness of States; however, the State's willingness to enforce against noncompliance plus the methods used to implement the various program components provide the best indication of success in assuring compliance.

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APPENDIX B

SUMMARY CHART OF STATE ADMINISTRATIVE PENALTY PROGRAM COMPONENTS

The following chart provides the administrative penalty program components for the 23 States analyzed during this study. States are listed alphabetically and the lead agency for the State's drinking water enforcement program is identified. Citations for the legislative authority and regulations pertaining to administrative penalties are provided. Enforcement actions (initial and subsequent) that are usually taken before the assessment of a penalty are listed followed by the penalty assessment procedures. Maximum and minimum administrative penalty amounts and the allocation of collected penalties are also provided. Administrative and or judicial hearings and appeals are identified as well as additional information on the State's administrative penalty program. By reviewing this chart, the highlights of each program can be identified and similarities and differences can be noted. The chart is based on the information supplied by each State and consequently the level of detail may differ among the States. In addition, the specific terminology used by each State is reflected in the explanation of its program.

AGENCY	LEGISLATIVE AUTHORITY	REGULATIONS	INITIAL ACTION	SUBSEQUENT ACTIONS	PENALTY ASSESSMENT	PENALTY AMOUNTS	PENALTY ALLOCATION	APPEALS	OTHER INFORMATION
CALIFORNIA Department of Health Services, Office of Drinking Water	Article 7, section 4032 of California Health and Safety Code	Regulations concerning administrative penalties not provided.	Written letter of correction specifying the violation.	Citation or compliance order is issued. Second and third citations are issued if necessary.	Penalties are usually included in the second citation.	Maximum penalty: $1,000 per day per violation. Minimum penalty: $250 per day per violation.	General Fund	Citations may be appealed before an Administrative Law Judge.	If a violator does not comply following a third citation, the issue may be referred to the Attorney General.
CONNECTICUT Department of Health Services, Water Supplies Section	Public Act 85-450 (House Bill 7601) passed in 1985	Department of Health Services, Water Supply Section - Regulations Concerning Civil Penalties (compilation)	Notice of Violation issued specifying violation.	Order specifying action is issued.	Although administrative penalty authority has been approved, the Department must petition a Superior Court judge to have a penalty levied.	Maximum penalty: $5,000 per day per violation.	General Fund	A system may petition the Commission for a hearing within 20 days after a notice is sent. Appeals of final orders may be made in the appropriate court.	Joint takeover proceedings with the Department of Public Utility Control have been used in cases of serious or continuing violations.

AGENCY	LEGISLATIVE AUTHORITY	REGULATIONS	INITIAL ACTION	SUBSEQUENT ACTIONS	PENALTY ASSESSMENT	PENALTY AMOUNTS	PENALTY ALLOCATION	APPEALS	OTHER INFORMATION
FLORIDA Department of Environmental Regulation, Drinking Water Section	Section 403.860, Florida Statutes	Regulations specific to this study have not yet been promulgated.	Notice of Violation outlines the violation.	An order for corrective action may be included in the Notice of Violation but is not effective until after the opportunity for an administrative hearing is given. Consent orders may be negotiated.	The Department must allow 30 days for compliance before assessing a noncompliance fee for violation of reporting requirements of secondary standards. Consent orders may also contain penalties.	For microbiological reporting requirements, the noncompliance fee cannot exceed $1,000 per month per facility. For other reporting requirements, the total penalty cannot exceed $2,000.	Water Quality Assurance Trust Fund or the appropriate Public Health Trust Fund	An administrative hearing must be requested within 20 days.	
GEORGIA Department of Natural Resources, Division of Environmental Protection	Section 19 of the Georgia Safe Drinking Water Act (Act No. 231)	Section 391-3-5-.36 of the Rules for Safe Drinking Water	The Board of Natural Resources may issue orders to enforce compliance.	The Director may cause a hearing to be conducted before a hearing officer appointed by the Board.	A hearing officer may issue a decision imposing a civil penalty.	Maximum penalty: $1,000 per violation and an additional $500 per day per violation. $5,000 per day for willful violations.	Information not provided.	A request for a hearing with the Director must be requested within 30 days. Hearings are conducted in accordance with section 17(a) of the Executive Reorganization Act of 1972.	
GUAM Environmental Protection Agency	Public Law 14-90	Chapter 40 - Guam Primary Safe Drinking Water Regulations	A Notice of Violation is issued specifying violation.	An order requiring compliance may be issued.	An order may require a civil penalty be paid.	Maximum penalty: $5,000 per day per violation.	Information not provided.	A hearing may be requested within 10 days of the order becoming final.	

AGENCY	LEGISLATIVE AUTHORITY	REGULATIONS	INITIAL ACTION	SUBSEQUENT ACTIONS	PENALTY ASSESSMENT	PENALTY AMOUNTS	PENALTY ALLOCATION	APPEALS	OTHER INFORMATION
HAWAII Department of Health, Environmental Management Division, Safe Drinking Water Branch	Section 340E-8 of Hawaii's Safe Drinking Water Act	Title 11: Department of Health, Chapter 20: Potable Water Systems, Section 32: Penalties and Remedies	The Director may issue a Notice of Violation specifying the violation and an order requiring a compliance action.	Information not provided.	An order may require payment of a penalty.	Maximum penalty: $25,000 per day per violation.	General Fund	An order becomes final unless a hearing with the Department is requested within 20 days.	Enforcement activities not involving the assessment of penalties have been most successful in gaining compliance.
IDAHO Department of Health and Welfare	Section 39-108, paragraph 3 of the Idaho Code	Regulations specific to this study were not submitted by the State.	Notice of Violation issued specifies the violation.	Recipient has 15 days to request a compliance conference.	A consent order which may include a provision providing for the payment of a penalty may be negotiated.	In civil enforcement actions, the maximum penalty is $10,000 per violation or $1,000 per day of a continuing violation, whichever is greater.	General Fund	Information not provided.	Penalties are rarely used because most of the violating water systems are small. When used, penalties have been effective.

AGENCY	LEGISLATIVE AUTHORITY	REGULATIONS	INITIAL ACTION	SUBSEQUENT ACTIONS	PENALTY ASSESSMENT	PENALTY AMOUNTS	PENALTY ALLOCATION	APPEALS	OTHER INFORMATION
IOWA Department of Natural Resources, Water Supply Section	Section 455B.109 of the Code of Iowa	Department of Natural Resources, Chapter 10: Administrative Penalties	The Director may issue an order requiring compliance.	Information not provided.	Penalties may only be assessed after the alleged violator has had the opportunity to attend a contested case hearing.	Maximum penalty: depends on severity of the violation.	General Fund	Information not provided.	The program has been successful because it is fairly easy to issue an administrative penalty. Nonpayment of a penalty can result in interest charges of 1½ percent.
KENTUCKY Department of Environmental Protection, Division of Water	Kentucky Revised Statutes, sections 224.032, 224.994, and 224.995	Regulations specific to this study were not submitted by the State.	A notification of violation or "Demand Letter" is issued specifying the violation.	An agreed order may be negotiated. If an agreement cannot be reached, an Order of the Secretary may be issued.	Penalties may be assessed in "Demand Letters" and Orders of the Secretary. Agreed orders are the preferable method of enforcement.	Maximum penalty: $25,000 per day.	Information not provided.	A hearing before a Cabinet-appointed hearing officer may be requested. An Order of the Secretary may be appealed in Franklin Circuit Court.	

AGENCY	LEGISLATIVE AUTHORITY	REGULATIONS	INITIAL ACTION	SUBSEQUENT ACTIONS	PENALTY ASSESSMENT	PENALTY AMOUNTS	PENALTY ALLOCATION	APPEALS	OTHER INFORMATION
MASSACHUSETTS Department of Environmental Quality Engineering, Division of Water Supply	General Laws, Chapter 21A, section 16	310 CMR 5.00: Administrative Penalty Regulations	Notice of Noncompliance is issued specifying the violation.	A Penalty Assessment Notice is issued outlining the violation, amount assessed, and the violator's right to a hearing.	If a system waives the right to a hearing, the penalty is deemed final immediately. If a penalty is assessed following a hearing, it becomes final after 30 days, if no judicial review is requested.	Maximum penalty: $1,000 per day. Minimum penalty: $100.	Information not provided.	The recipient of a penalty assessment notice has 21 days to request an adjudicatory hearing. Following a hearing, a system may request action for judicial review.	An individual who fails to pay a penalty can be liable for up to 3 times the amount of the penalty plus additional costs incurred, interest, and attorney fees.
NEW YORK State Department of Health, Bureau of Public Water Supply Protection	Public Health Law, sections 10, 12-a, 206, and the State Administrative Procedures Act, Articles 2 and 3	Chapter II: Administrative Rules and Regulations, Part 76: Public Health Administrative Tribunal	Finding of Violation issued by Department Inspector.	The recipient of a notice has 7 days to request a hearing in which a tribunal or tribunal representative presides.	A written decision by the tribunal representative may contain a penalty. Hearings can be waived if a stipulation, which may include a penalty, is reached between the respondent and the Department.	Maximum penalty: $2,000 per violation.	Information not provided.	The respondent may appeal a decision within 15 days and the tribunal has 30 days to respond. Final orders and determinations of the tribunal are subject to further review.	

AGENCY	LEGISLATIVE AUTHORITY	REGULATIONS	INITIAL ACTION	SUBSEQUENT ACTIONS	PENALTY ASSESSMENT	PENALTY AMOUNTS	PENALTY ALLOCATION	APPEALS	OTHER INFORMATION
NORTH CAROLINA Department of Environment, Health, and Welfare	North Carolina General Statutes section 130A-22(b)	Regulations specific to this study were not submitted by the State.	Notice of monitoring violation is issued.	Notice of penalty assessment is issued.	Secretary or designee may assess administrative penalties.	Maximum penalty: $25,000 per day per violation.	Information not provided.	Administrative appeal of a penalty in a hearing before an independent law judge may be requested. A final agency decision resulting from a hearing is subject to judicial review.	
OHIO Environmental Protection Agency, Division of Public Drinking Water	Section 6109.04 of the Ohio Revised Code	Regulations specific to this study were not submitted by the State.	The Director issues final findings and orders.	Information not provided.	Penalties may be negotiated between the Division and the system. The agency cannot assess penalties unilaterally.	Maximum penalty in civil actions is $10,000 per violation.	General Fund	Information not provided.	The State has attempted to obtain statutory authority for unilateral penalty assessments.
OKLAHOMA Department of Health	Applicable laws were not submitted by the State for this study.	Rules of Practice Before the Oklahoma State Department of Health	Notice of Violation is issued specifying the violation.	An administrative order requiring compliance may be issued.	An order may assess a penalty. Consent orders may be negotiated.	Maximum penalty: $10,000 per day per violation.	Information not provided.	A recipient may request a hearing within 30 days.	

AGENCY	LEGISLATIVE AUTHORITY	REGULATIONS	INITIAL ACTION	SUBSEQUENT ACTIONS	PENALTY ASSESSMENT	PENALTY AMOUNTS	PENALTY ALLOCATION	APPEALS	OTHER INFORMATION
OREGON State Health Division	Oregon Revised Statutes, section 448.280	Section 331-61-090, Oregon Administrative Rules	A penalty notice is issued.	The recipient has 20 days to apply for a hearing upon receiving a penalty notice. An order may be issued following the hearing.	The Assistant Director may assess a penalty.	Maximum penalty: $500 per day.	General Fund	Hearings are conducted in accordance with the provisions of Oregon Revised Statutes, sections 183.310-183.550.	
PENNSYLVANIA Department of Environmental Resources, Division of Water Supply	Section 13, paragraph g of the Pennsylvania Safe Drinking Water Act (Act 1984-43)	Regulations specific to this study were not submitted by the State.	Field orders and compliance orders can be issued.	In most circumstances, the Department meets with the system in an effort to resolve the problem.	Penalties may be unilaterally assessed in orders or negotiated in a consent order.	Maximum penalty: $5,000 per day per violation.	Safe Drinking Water Account	The recipient of a penalty has 30 days to file an appeal with the Environmental Hearing Board.	
RHODE ISLAND Department of Health	Title 46, Chapter 13 (Public Drinking Water Supply), Section 16, paragraph c	Regulations specific to this study were not submitted by the State.	Director issues a Notice of Violation.	Administrative hearing is held if requested.	Penalties are generally considered following an administrative hearing.	Maximum penalty is $5,000 per day per violation.	Water Development Fund	30 days are allowed to file for an administrative hearing. Failure to appeal within 30 days results in a waiver of all legal rights to contest the violation or penalty amount.	State officials noted that in 1989, no administrative penalties were assessed.

AGENCY	LEGISLATIVE AUTHORITY	REGULATIONS	INITIAL ACTION	SUBSEQUENT ACTIONS	PENALTY ASSESSMENT	PENALTY AMOUNTS	PENALTY ALLOCATION	APPEALS	OTHER INFORMATION
SOUTH CAROLINA Department of Health and Environmental Control, Office of Environmental Quality Control, Bureau of Drinking Water Protection	Section 44-55-90 of South Carolina's Safe Drinking Water Act	State Primary Drinking Water Regulations, section R61-58 D: Violations and Penalties	Written notification of potential violation is sent.	Notice of Enforcement Conference is issued. If an agreement cannot be reached, an order may be issued without the system's consent.	Penalties may be assessed unilaterally in orders and negotiated in consent orders.	Maximum penalty: $5,000 per day per violation.	General Fund	Requests for an adjudicatory hearing must be made within 15 days of a final administrative decision.	
TENNESSEE Department of Health and Environment, Division of Water Supply	Section 68-13-705, paragraph 9 of the Tennessee Safe Drinking Water Act	Regulations specific to this study were not submitted by the State.	The Commissioner may issue an assessment for violations.	A petition for review with the Commissioner must be filed within 30 days.	Assessment becomes final if a petition is not filed.	Maximum penalty: $5,000 per day per violation. Minimum penalty: $50.	Division of Water Supply	Information not provided.	
UTAH Department of Health, Division of Environmental Health, Bureau of Drinking Water/ Sanitation	Section 26-12-5 of the Utah Safe Drinking Water Act	Regulations specific to this study were not submitted by the State.	A Notice of Violation is issued specifying the violation.	An order requiring corrective action is issued if a notice does not resolve the situation.	A bilateral consent agreement signed by both parties and a judge may include a negotiated penalty assessment.	Maximum penalties for civil actions is $1,000 per day per violation (for willful violations the maximum is $5,000 per day per violation).	Information not provided.	The recipient has 30 days to request a hearing before the Committee. The recipient has 30 days to secure judicial review of the Committee's decision.	A water system rating may be downgraded to "not approved" which may result in systems becoming ineligible for Federally insured home loans.

AGENCY	LEGISLATIVE AUTHORITY	REGULATIONS	INITIAL ACTION	SUBSEQUENT ACTIONS	PENALTY ASSESSMENT	PENALTY AMOUNTS	PENALTY ALLOCATION	APPEALS	OTHER INFORMATION
VERMONT Department of Health, Division of Environmental Health, Water Supply Program	Title 18, Chapter 24, Public Drinking Water	Chapter 5, Vermont Health Regulations, Subchapter 12: Environmental Control - General, section 9.0	A notification of violation is issued specifying the violation.	Assurances of Discontinuance, which are documents signed by both parties, may be issued. An order requiring corrective action within 30 days may be issued.	Assurances of Discontinuance may include a fine for further violations of any schedules included in the document.	Maximum penalty for civil actions is $10,000 per day per violation.	Information not provided.	A recipient has 30 days to appeal to the Board for a hearing.	
VIRGINIA Department of Health, Division of Water Supply Engineering	Section 32-1-27, paragraph D of the Virginia Health Laws	Regulations specific to this study were not submitted by the State.	A Notice of Violation is issued specifying the violation.	An order requiring corrective action may be issued following an emergency, agreement in a consent order, or an administrative hearing.	Penalties may be negotiated in a consent order.	Maximum penalty: $10,000 per day per violation.	General Fund	Hearings are conducted in accordance with Virginia's Administrative Procedures Act.	A "penalty order" is being developed.
WASHINGTON Department of Health, Division of Drinking Water	Revised Code of Washington, section 70.119A.030	WAC 248-54-045: Enforcement	The system is informed of the violation.	An administrative order to initiate corrective action is issued.	If the system continues to remain in noncompliance, a penalty will be issued.	Maximum penalty: $5,000.	State Treasury/ General Fund	The system has 14 days to apply for mitigation of a penalty and 28 days to apply for an adjudicatory hearing.	

APPENDIX C

INVENTORY OF ENFORCEMENT ACTIVITIES

Although the focus of this study has been on administrative penalties, all enforcement activities were reviewed. This table has been included to provide a summary of State drinking water enforcement activities. State administrative activities (issuing of notices, ability to come to agreements with violators through bilateral consent agreements or consent orders, ability to issue administrative or compliance orders, as well as the ability to assess administrative penalties) are identified. In addition, civil actions; criminal proceedings; and appeal procedures, both judicial and administrative are summarized. The last column provides additional information on other enforcement activities, including efforts to obtain specified enforcement authorities. States with administrative penalty programs can be identified by review of the "Penalty Assessment" column (additional information on administrative penalty programs is provided in Appendix B). The table was compiled using information provided by the States for this study. The completeness of the information varies from State to State and the terminology presented represents the actual language used by the various States. Although listed, no information is provided for States that did not submit documents during the course of this study. The inventory highlights the various options available to State officials and places administrative penalties in the context of the entire enforcement effort.

ADMINISTRATIVE ACTIONS

STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Alabama -- NO INFORMATION PROVIDED.								
Alaska	The Department may issue a determination and notice for suspected violations.	No information provided.	A compliance order is served once the recipient of the determination has filed with the Department.		The recipient has 30 days to request a hearing to review the compliance order. The Department has 20 days following the hearing to make any changes.	Violators are liable, in a civil action, to a sum assessed by the court. Maximum penalty: $100,000 per violation and $5,000 per day that the violation continues.	Maximum penalty: $25,000 and costs for prosecution.	Administrative penalty authority is under consideration.
American Samoa: NO INFORMATION PROVIDED								
Arizona	No information provided.	No information provided.	The Director may issue an order requiring compliance within a specified time period.		The recipient has 30 days to request a hearing before an administrative law judge.	The Director, through the Attorney General, may begin an action to recover penalties. Maximum penalty: $500 per day per violation.	No information provided.	

ADMINISTRATIVE ACTIONS

STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Arkansas	No information provided.	No information provided.	The Department may issue orders to public water systems to take correction actions.		Orders are subject to appeal to the Board of Health.	Department may file charges in civil court to gain injunctive relief and/or seek penalties. Maximum penalty: $500 per day per violation and/or up to 1 month in prison.	No information provided.	Administrative penalty provisions will be proposed during the 1991 legislative session.
California	A citation may be issued for determined violations.	Not identified as being used.	The Director may issue an order for compliance or appropriate preventive action.	Legislative Authority: Health and Safety Code, Article 7, section 4032. The Department may assess a penalty for failure to correct a violation as specified in the citation. Maximum penalty: $1,000 per day per violation.	The recipient has 30 days to file with the Superior Court to challenge a departmental order. Citations may be appealed before an Administrative Judge.	The Department may bring action in the Superior Court. Maximum penalty: $25,000 per day per violation.	Maximum penalty: $25,000 per day per violation and/or 1 year imprison-ment. Maximum penalty for second conviction: $50,000 per day per violation and/or 2 years imprison-ment.	

ADMINISTRATIVE ACTIONS

STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Colorado	No information provided.	No information provided.	The Department may issue an enforcement order for violations, inaccurate data submittals, and emergency conditions.		A hearing request must be filed with the Department within 30 days.	Maximum penalty: $1,000 per day per violation.	No information provided.	
Connecticut	Notices of Violation identify the violation.	Not identified as being used.	Final orders can be issued.	Legislative Authority: Public Act No. 85-450. Regulations: A compilation of regulations concerning civil penalties was submitted. Law states that civil penalties may be assessed by the Commissioner and the amount is based on immediate compliance, impact of the violation, actions taken by water system, prior violations, and degree of injury. Currently, the Department must petition a Superior Court judge to have a penalty levied.	A water company has 20 days to make a written application to the Commissioner for a hearing to contest the imposition of a penalty. Final orders may be appealed in Superior Court.	Maximum penalty: $5,000 per day per violation.	No information provided.	Provisions for joint take-over proceedings with the Department of Public Utility are utilized.

ADMINISTRATIVE ACTIONS

STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Delaware	The Director may issue a written notice for an alleged violation.	No information provided.	An order requiring corrective action may accompany a notice of violation.		A request for a hearing may be made to the State Board of Health.	The Board may apply to an appropriate court for an injunction or other legal process. Maximum penalty: $1,000	Maximum penalty: $1,000.	
Florida	A notice of violation is issued specifying the violation.	Consent orders are negotiated with fines and possible compliance schedule.	An order for corrective action may be included in the notice of violation but is not effective until after the opportunity for an administrative hearing is given.	Legislative Authority: section 403.860, Florida Statutes. Penalties can be assessed as noncompliance fees for specific reporting violations. Maximum penalty: depends on violation. The maximum negotiated penalty is $2,000.	An administrative proceeding must be requested within 20 days.	Maximum fine: $5,000 per day per violation. The department may initiate action for injunctive relief.	No information provided.	

ADMINISTRATIVE ACTIONS

STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Georgia	No information provided.	No information provided.	Director may issue a final order.	Legislative Authority: Act 231, Section 19, (Georgia Safe Drinking Water Act). Regulations: Rules for Safe Drinking Water, section 391-3-5-36. Director may initiate a hearing conducted before an officer appointed by the Board. The Hearing Officer is responsible for issuing a decision imposing a civil penalty. Maximum penalty: $1,000 per violation and an additional $500 per day the violation continues ($5,000 per day for willful violations).	Within 30 days, the recipient may file a request with the Director for a hearing. Hearings are conducted in accordance with section 17(a) of the "Executive Reorganization Act of 1972."	Director may make application for a court order requiring compliance. Maximum penalty: $1,000 per violation and $500 for each day the violation continues.	Willful violations have a maximum penalty of $5,000 per day per violation.	
Guam	A notice of violation is issued specifying the violation.	No information provided.	An order may require that the violation be stopped, that a civil penalty be paid, or that the violator appear before the administrator.	Legislative Authority: P.L. 14-90 (not submitted). Maximum penalty: $5,000 per day per violation.	A hearing must be requested within 10 days or the order becomes final.	The administrator may institute a civil action to enforce orders or for injunctive relief.	Maximum penalty: $5,000 per day per violation.	

ADMINISTRATIVE ACTIONS

STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Hawaii	A notice of violation is issued specifying the violation.	An agreement may require the violator to adhere to a negotiated compliance schedule which is designed to correct the source of the violation.	An Order may require that the violation be stopped, that a civil penalty be paid, or that the violator appear before the Director.	Legislative Authority: Hawaii Revised Statutes, 340E-8. Regulations: Department of Health, 11-20-32. Maximum penalty: $25,000 per day per violation.	A hearing may be requested within 20 days or the order becomes final.	Maximum penalty: $25,000 per day per violation. The Director may institute a civil action to enforce orders or for injunctive relief.	Maximum penalty: $25,000 per day per violation and/or 3 years in prison.	

ADMINISTRATIVE ACTIONS

STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Idaho	A notice of violation may be issued specifying violation and offering a compliance conference.	A consent order will be entered into if an agreement can be negotiated. This agreement may include a provision for the payment of a penalty.	No information provided.	Legislative Authority: Idaho Code, 39-108. Penalties are negotiated in a consent order.	No information provided.	Under certain conditions, the Director may initiate a civil action through the Attorney General. The Director is not required to initiate an administrative action first. Maximum penalty: $10,000 per violation or $1,000 per day for a continuing violation, whichever is greater.	For willful or negligent violations, the maximum penalty is: $10,000 per violation or $1,000 per day of a continuing violation, whichever is greater.	

ADMINISTRATIVE ACTIONS

STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Illinois	A written notice will be issued, notifying that the Agency intends to file a formal complaint and offering an opportunity for a meeting within 30 days. A written notice with a formal complaint will be issued specifying the violation and other charges.	No information provided.	An order will be issued following a hearing.		The recipient has 21 days to request a hearing before the Board.	Penalties may be recovered in a civil action. Maximum penalty: $50,000 per violation and $10,000 for each additional day.	No information provided.	The State has tried but has failed to get administrative penalty authority.

ADMINISTRATIVE ACTIONS

STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Iowa	No information provided.	No information provided.	The Commissioner may issue administrative orders with penalties.	Legislative Authority: Code of Iowa, Section 455B.109. Regulations: Chapter 10, Administrative Penalties. Penalties are based on the following factors: costs saved by noncompliance, gravity of violation, culpability, and maximum penalty authorized. Maximum penalty: $5,000; $1,000 for minor violations.	No specific information provided.	The Director may seek a remedy in the courts and may direct the Attorney General to institute civil proceed-ings.	The Director may seek a remedy in the courts and may direct the Attorney General to institute criminal proceedings.	Penalties may only be assessed after the alleged violator has an opportunity to attend a contested case hearing.
Kansas: NO INFORMATION PROVIDED								
Kentucky	Notice of Violation or "Demand Letter" may be issued.	An agreed order may be negotiated with the water system.	Order of the Secretary may be issued.	Legislative Authority: Sections 224.032, 224.994, and 224.995. Most penalties are negotiated in agreed orders.	A hearing with a Cabinet-appointed hearing officer may be requested. An order of the Secretary may be appealed in court.	Maximum penalty: $25,000 per day.	No information provided.	

ADMINISTRATIVE ACTIONS

STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Louisiana	No information provided.	No information provided.	No information provided.		No information provided.	The Department may seek an injunction from the District Court. In instances where there is a violation involving pollution of streams and rivers, the State Health Officer may issue a civil compliance order directing a correction of the violation and impose a fine of $100 per day up to a maximum of $10,000.	No information provided.	The Department willingly refers public water systems to EPA for administrative enforcement actions. Administrative penalty authority will be sought again during the 1991 legislative session.
Maine: NO INFORMATION PROVIDED								

ADMINISTRATIVE ACTIONS

STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Maryland	Notices of violations are sent citing alleged violations, applicable penalties, and public notice require-ments.	Bilateral consent agreements are used.	The Secretary may issue any order necessary to protect health.		No information provided.	The Secretary may appeal for injunctive or other appropriate relief. Maximum penalty: $5,000 per day per violation.	Maximum penalty: $5,000.	Administrative penalty authority is under consideration.

ADMINISTRATIVE ACTIONS

STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Massachusetts	The Department may issue a noncompliance notice specifying alleged violations. A civil administrative penalty may not be assessed until a noncompliance notice has been issued except under specified conditions. A penalty assessment notice is used when the Department seeks to assess a civil administrative penalty.	No information provided.	No information provided.	Legislative Authority: Annotated Laws of Massachusetts, C21A, Section 16. Regulations: 310 CMR 5.00, Administrative Penalty Regulations. Penalty amounts are based on factors including potential health impact, previous compliance record, and steps taken towards compliance. Maximum penalty: $1,000.	A recipient of a penalty assessment notice has 21 days to request an adjudicatory hearing. A penalty assessed after an adjudicatory hearing is final after 30 days if no action for judicial review is taken.	No information provided.	No information provided.	

ADMINISTRATIVE ACTIONS

STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Michigan	A notice of violation is issued upon determination that a violation has occurred.	No information provided.	If upon inspection, the Department determines a violation has occurred, an order may be issued.		The supplier has 30 days to request a public hearing.	The Department may request the Attorney General to bring an injunctive action. Maximum penalty: $5,000 per day per violation.	Maximum penalty: $5,000 per day and/or 1 year in prison.	Has recently drafted legislation to use administrative penalties for monitoring requirements and failure to provide public notice.
Minnesota	A notice of violation is issued upon determination that a violation has occurred.	Bilateral compliance agreements are used.	No information provided.		No information provided.	No information provided.	Maximum penalty: $1,000 per day. Intentional, repeat, or emergency order violations - maximum penalty: $10,000 per day and/or 1 year in prison.	
Mississippi: NO INFORMATION PROVIDED								
Missouri: NO INFORMATION PROVIDED								

ADMINISTRATIVE ACTIONS

STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Montana	No information provided.	No information provided.	The Board may issue orders necessary to fully implement provisions.		A person aggrieved may appeal to the District Court.	The Department may seek an injunction from the appropriate District Court to require compliance.	Maximum penalty: $500 per day per violation.	The State is hoping to legislation approved in 1991.
Nebraska	No information provided.	No information provided.	The Director may seek a temporary or permanent injunction or such other legal aspects deemed necessary to obtain compliance. An administrative order may be served for alleged violators.		Any person shall be granted upon request, a hearing before the Department.	The Attorney General has the responsi-bility to cause appropriate proceedings to be instituted.	No information provided.	
Nevada	No information provided.	No information provided.	Emergency orders may be issued to eliminate an imminent hazard.		No information provided.	Maximum penalty: $5,000 per day. Applica-tions may be made in a court of competent jurisdic-tion to enjoin violation.	Violations are considered misdemean-ors.	

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STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
New Hampshire: NO INFORMATION PROVIDED								
New Jersey: NO INFORMATION PROVIDED								
New Mexico	No information provided.	No information provided.	The Director may issue orders to protect health.		No information provided.	The Director may commence a civil action for appropriate relief including a restraining order or permanent or temporary injunction.	No information provided.	
New York	A notice of violation is issued.	Not identified as being used.	A written decision is rendered following a hearing.	Legislative Authority: Public Health Law, sections 10, 12a, 206 (not submitted). Regulations: Administrative Rules and Regulations, Part 76, Public Health Administrative Tribunal. Penalties may be assessed in a written decision following a hearing. Maximum penalty: $2,000	The recipient has 15 days to appeal a hearing decision. Final orders and determinations are subject to review under Article 78 of the Civil Practice Law and Rules.	No information provided.	No information provided.	

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STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
North Carolina	A notice of monitoring violation is issued after determining a violation occurred; the notice specifies the violation and the action required for compliance.	Informal agreements for compliance action and/or schedules may be used prior to formal action by penalty or civil suit.	Generally, a notice of penalty assessment is issued rather than a compliance order.	Legislative Authority: North Carolina General Statutes, section 130A-22(b) (not submitted). The Secretary or delegate may assess administrative penalties for violations. Maximum penalty: $25,000 per day a violation continues.	Administrative appeal of penalty may be requested with a hearing before an independent administrative law judge. A final agency decision resulting from a hearing is subject to judicial review.	Action for injunctive relief may be instituted by the Secretary or delegate. Action may also be instituted to collect administrative penalties assessed by the agency.	A violation of law or rules constitutes a misdemeanor. Willful or wanton contamination, damaging, or tampering of a public water system constitutes a felony.	

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STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
North Dakota	A notice of violation may be issued upon discovery of a violation.	Bilateral consent agreements may be negotiated.	The Department may issue emergency orders when a situation exists that requires immediate action. The Department may also issue administrative or other orders necessary to achieve compliance.		The Recipient has 30 days after the date of the final order to appeal to the District Court. Recipients also have the right to a public hearing prior to finalization of the order.	Maximum penalty: $5,000 per day. The Department may maintain an action in the name of the State enjoining the practice or for an order directing compliance. After the administrative hearing process, the Attorney General can take appropriate remedial actions, including injunctive relief.	No information provided.	The Department may seek administrative penalty authority in 1991.
Northern Marianas Islands: NO INFORMATION PROVIDED								

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STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Ohio	Not identified as being used.	Division has the ability to issue Director's final findings and orders. An agreement may be negotiated concerning civil penalties.	Orders may be issued.	Legislative Authority: section 6109.04, Safe Drinking Water Act.	No information provided.	Upon request, the Attorney General may proceed with a civil action. Maximum penalty: $10,000 per violation.	No information provided.	State has failed to get legislation passed for the authority to assess administrative penalties unilaterally.
Oklahoma	Notices are required prior to or at the same time as the initiation of an enforcement action.	Any administrative action may be settled in a consent order. Bilateral consent agreements do not have the legal effect of an order and are not used.	Administrative orders can be issued.	Regulations: Rules of Practice before the Oklahoma State Department of Health. Penalties can be assessed up to $10,000 per day.	Hearings may be requested within 30 days.	All equitable actions and civil penalty procedures are available.	Various misdemeanor proceedings with various penalties are available.	Oklahoma tries to obtain voluntary compliance first, but utilizes a strict enforcement priority system to ensure issuance and enforcement of orders against all chronic violators.

ADMINISTRATIVE ACTIONS

STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Oregon	The Assistant Director must issue a written notice for alleged violations. A penalty can not be imposed until the recipient has received 5 days advance notice.	No information provided.	The Division may enter an order requiring a water supplier that fails to comply with a specified schedule to cease operation.	Legislative Authority: Oregon Revised Statutes, section 448.280. Regulations: Administrative Rules, Chapter 333 - Public Water Systems, section 333-61-090. The Administrator may impose penalties. Maximum penalty: $500 per day.	Recipient has 20 days to make a written application for a hearing before the Division.	No information provided.	No information provided.	
Palau: NO INFORMATION PROVIDED								
Pennsylvania	Not identified as being used.	Negotiated civil penalty assessments are issued.	Can issue field and compliance orders.	Legislative Authority: Act 1984-43, section 13(g). Department may assess a civil penalty. Maximum penalty: $5,000 per day per violation.	The recipient has 30 days to file an appeal with the Environmental Hearing Board.	The Department can institute civil proceedings to compel compliance. Maximum penalty for willful violations: $50,000 per day.	Maximum penalty: $25,000 and/or 2 years in prison for conviction of a misdemeanor. Maximum penalty for willful violations: $50,000 per day.	

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STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Puerto Rico	No information provided.	No information provided.	Can issue administrative orders and interagency agreements.		No information provided.	Maximum penalty: $5,000 per day	No information provided.	
Rhode Island	The Director may issue a written notice for any alleged violation.	No information provided.	A compliance order may be issued if the Director determines a violation requires immediate action. If the Director sustains or modifies a written notice following a hearing, a compliance order will be served.	Legislative Authority: Title 46, chapter 13, section 16, paragraph c. The Director may assess a civil penalty. Maximum penalty: $5000 per day per violation.	The recipient has 30 days to file an appeal with the Director.	No information provided.	Maximum penalties: $500 or 1 year imprisonment per day per violation	

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STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
South Carolina	A notice of violation is issued after determining a violation occurred; the notice specifies the violation and the time schedule for correction. A Notice of Enforcement Conference specifies a conference time between the Department's enforcement staff and the alleged violator.	Consent orders are issued if an agreement is negotiated during a conference.	Administrative orders are issued if an agreement can not be negotiated or if alleged violator does not respond to the notice of enforcement conference. An order to show cause is issued if conditions warrant initiating legal proceedings.	Legislative Authority: South Carolina Code of Laws 44-55-90 (State's Safe Drinking Water Act). Regulations: State Primary Drinking Water Regulations R.61-58.D. Penalties are assessed as part of administrative orders or negotiated in administrative consent orders. Maximum penalty: $5,000 per day per violation.	Each administrative order gives the alleged violator 15 days to contest the provisions through a departmental hearing. Judicial review may also be sought under certain circumstances.	Maximum penalty: $5,000 per day per violation.	Maximum penalty: $10,000 per day per violation and/or 1 year in prison.	
South Dakota	No information provided.	No information provided.	No information provided.		No information provided.	Maximum penalty: $500 per day per violation.	No information provided.	The Secretary may take all reasonable steps to ensure compliance.

ADMINISTRATIVE ACTIONS

STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Tennessee	A written complaint will be issued for suspected violations.	The Commissioner may enter into agreements.	The Commissioner may issue orders to secure compliance.	Legislative Authority: 68-13-705. The Commissioner may issue an assessment for violations. Maximum penalty: $5,000 per day per violation.	The recipient may file for a review of the assessment with the Commissioner within 30 days.	The Commissioner may initiate civil actions.	Willful violations have a maximum penalty of $25,000 and/or 2 years in prison.	
Texas	Notices to initiate legal action are issued.	Bilateral compliance agreements are used to establish a formal compliance schedule with deadlines for special actions.	No information provided.		No information provided.	The Department may institute a civil suit for violations for injunctive relief and/or assessment of a civil penalty. Maximum penalty: $1,000 per day per violation.	Maximum penalty: $1,000 per day per violation and/or 30 days in prison.	State tries to obtain voluntary compliance. As a last resort, the agency will refer public water systems to EPA for enforcement proceedings.

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Utah	A notice of violation will be served upon discovery of a violation.	Bilateral consent agreements are entered into with the violating system as an alternative to court action.	An order requiring correction is issued when the notice of violation does not resolve the situation.	Legislative Authority: Section 26-12-5 of the Utah Safe Drinking Water Act. Penalties may be included in bilateral consent agreements.	The recipient has 30 days to request a hearing before the Committee. The recipient has 30 days to secure judicial review of the Committee's decision.	Upon request, the Attorney General may commence an action for injunctive or other relief. Maximum penalty $1,000 per day per violation. Maximum penalties for willful violations: $5,000 per day per violation.	No information provided.	A water system rating may be downgraded to "not approved." When this happens, systems may become ineligible for Federally issued home loans (e.g., FHA, VA).

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Vermont	The Commissioner may issue a written notice of violation for alleged violations.	Assurances of discontinuance (documents signed by both parties) can include a fine if violations of schedules included in the document occur. The Department waives the ability to press charges for past violations and the water system waives its appeal for contesting the agreed to compliance schedule.	An order requiring corrective action within 30 days may accompany the notice of violation.	Legislative Authority: Title 18, Chapter 24, Public Drinking Water.	A recipient has 30 days to appeal to the Board for a hearing.	Failure to comply may result in a civil action. Maximum penalty: $10,000 per day per violation.	Maximum penalty: $25,000 and/or 6 months imprison-ment.	
Virgin Islands: NO INFORMATION PROVIDED								

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STATE	NOTICES	BILATERAL CONSENT AGREEMENTS/ CONSENT ORDERS	ADMINISTRATIVE ORDERS/ COMPLIANCE ORDERS	PENALTY ASSESSMENTS	APPEALS	CIVIL ACTIONS	CRIMINAL PROCEEDINGS	OTHER
Virginia	Written notices shall be sent for alleged violations and shall state the reasons why a violation is suspected.	Consent orders contain a schedule of compliance.	Emergency orders may be issued in the case of imminent danger. The Board is authorized to issue orders requiring compliance after a hearing with at least 30 days notice.	Penalties may be assessed as part of a consent order. Legislative Authority: Section 32-1-27 Virginia Health Laws.	Emergency orders may be appealed in accordance with the Administrative Procedures Act.	Failure to comply with court order has a maximum penalty of $10,000 per violation per day. Other maximum penalties are $5,000 per day per violation. Penalties are recovered in civil actions brought by the Attorney General in the name of the State.	Willful violations are considered Class 1 misdemeanors. Maximum penalty: $1,000 per day.	The Commission may attempt to obtain compliance through conferences, warnings, or other appropriate means.

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Washington	A notice will be issued for violations.	Agreements may be negotiated.	Final orders are issued after adjudicative proceedings. Departmental orders may be issued to systems out of compliance.	Legislative Authority: RCW 70.119A.030. Regulations: WAC 248-54-045. Penalties may be assessed in both the initial notices and departmental orders. Maximum penalty: $5,000 per day per violation.	The recipient has 14 days to apply for mitigation of the penalty or the recipient may apply for an adjudicative proceeding within 28 days after notice is received or results of mitigation request are presented.	Administrative procedures are pursued before civil actions.	Department does not pursue criminal prosecution.	
West Virginia	No information provided.	No information provided.	No information provided.		A contested case hearing may be requested as prescribed in "Rules of Procedure for Contested Case Hearings and Declaration Rulings."	Upon conviction, a maximum fine of $200 will be assessed. Willful violators are subject to a maximum civil penalty of $5,000.	No information provided.	

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Wisconsin	A notice of violation is issued when a violation occurs.	Consent orders or compliance agreements may be negotiated.	The Department may issue administrative orders.		Suppliers may appeal within 30 days.	The Department may request the Attorney General to bring a civil action. Maximum penalty: $5,000 per day.	No information provided.	The Department of Natural Resources is trying to obtain administrative penalty authority.