

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WSG 37

Date Signed: April 21, 1988

MEMORANDUM

SUBJECT: Coordination with State Officials on the Issuance of Notices of Violation under Section 1414 of the Safe Drinking Water Act

FROM: John R. Trax, Chief
Drinking Water Branch

TO: Drinking Water Branch Chiefs
Regions I - X

At our March 24, 1988, Compliance and Enforcement conference call, a question was raised on dealing with the States prior to the issuance of a notice of violation (NOV) to a public water system for violations of the Safe Drinking Water Act (SDWA) or its implementing regulations. Although we responded to this question at the conference call, we indicated that we would provide you with written guidance on the matter.

It has always been our position that coordination with the States is an essential component of our enforcement program. We have suggested, for example, that you hold quarterly meetings with your State counterparts to discuss SNCs and exception systems and to coordinate enforcement efforts. Further, the State-EPA enforcement agreements should lay out the process for coordinating enforcement efforts in some detail.

States, thus, have a critical role to play in enforcing the drinking water regulations and we must do all that we can to keep our relationships with them both positive and productive. To this end, several Regions have worked extensively with their States and have established procedures defining each party's roles and responsibilities prior to the issuance of an NOV. Where this has been done, the enforcement process appears to be working smoothly.

While it is important to keep States involved in the enforcement process, please remember that the States are not given the statutory right to review or concur on NOVs. Under Section 1414, whenever EPA finds a violation, EPA is to notify the State and the public water system (that is, issue the NOV) and if beyond the 30th day after this notification, the State has not commenced an appropriate enforcement action, EPA is to issue an order requiring the system to comply. [Section 1414(a)(1)(B).] Therefore, technically, EPA is to issue the NOV to the system and the State and then discuss the issue and provide advice and technical assistance to the system in violation. While I am not suggesting that you adopt this exact procedure, I believe that it is important to realize that the States cannot delay Federal enforcement actions and that the SDWA mandates the issuance of NOVs to systems in violation of drinking water regulations regardless of whether the State agrees with this action.

In summary then, it is our position that the States play a critical role in the enforcement of the drinking water regulations and we should coordinate enforcement efforts with them as much as possible. However, the desire to coordinate with the States on enforcement matters must be balanced against the very specific responsibilities the SDWA imposes on EPA. We believe that the best way to reconcile these two responsibilities is to work with your States, both through routine meetings and the Enforcement Agreement process, as many of you have already done to develop procedures and to define the roles and responsibilities of the respective parties.

I hope that this clarifies our policy. Should you have any questions, please feel free to call me or any member of my staff.

cc: Carl Reeverts
Paul Baltay
PWS Enforcement Coordinators