UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WSG 29A
Date Signed: June 16, 1987

MEMORANDUM

SUBJECT: Guidance for FY 1988 PWSS Enforcement agreements

FROM: Lawrence J. Jensen (signed by Lawrence Jensen),
Assistant Administrator
for Water (WH-556)

TO: Regional Water Division Directors
Regions I - X

I. Purpose

The purpose of this memorandum is to provide guidance to Regional offices in concluding FY 1988 enforcement agreements with States which have primary enforcement responsibility for their Public Water System Supervision (PWSS) programs.

II. Background

The Deputy Administrator has issued guidance for the FY 1988 enforcement agreement process. That guidance states that no NEW directions are being identified. Rather, this year's Agency-wide guidance emphasizes improvements and refinements in selected areas of the process as set forth in the policy framework, especially in:

- oversight of State penalties;
- effective involvement of State Attorneys General; and
- enforcement against Federal facilities.

III. Guidance

Regions are to follow the Deputy Administrator's guidance (copy attached) in concluding or revising enforcement agreements for PWSS programs. In addition, I request that you incorporate certain program specific priorities:

- Revised Definition of Significant Non-Compliance (SNC). The SNC definition for the PWSS program was recently revised. The revised definition is attached for your convenience. Please ensure that this definition is used in FY 1988.

- Quarterly Compliance Conference. Most Regions are already holding conferences to review compliance status with their States. This is an excellent mechanism which enables Regions to clarify the systems that are truly SNCs and identify potential candidates for Federal enforcement action. Such quarterly conferences should be used by all Regions with primacy States, and should be formally incorporated in the enforcement agreements.

- Timely and Appropriate Enforcement. The definition of appropriate enforcement actions and the milestones for taking action are not changed for FY 1988. The program is committed to full implementation of the timely and appropriate enforcement system. This system was further strengthened by the passage of the Safe Drinking Water Act Amendments of 1986. The Amendments which give EPA the authority to issue administrative orders, direct EPA to take an administrative action whenever the Administrator finds that a system does not comply with a primary regulation under Section 1412 of the Act.

  Systems in significant non-compliance, for which the State has taken no action or an inappropriate action, will remain the primary focus of Federal oversight and direct Federal action. However, non-compliance other than SNC should be considered for Federal oversight and action. To ensure appropriate enforcement of these areas of non-compliance, the Regions must work closely with the States. Together the Region and State should map out what level of State response is appropriate for each type of non-compliance, and when and how EPA will take action to ensure that a strong enforcement presence is felt throughout the regulated community.

  The State/EPA enforcement agreements should include expectations agreed upon for both State and Federal responses. In addition, effective protocols for discussion, advance consultation, and notification will be critical to ensuring that a working partnership between Region and State is maintained.

- Compliance Strategy. A revised compliance strategy for the PWSS program was issued on March 31, 1987. A copy has been sent to you under separate cover. Regions should ensure that the principles of the revised strategy are implemented. In particular, each primacy State should commit to following the guidance contained in the compliance strategy.

It is not my intention to require Regions and States to expend large amounts of resources revising existing enforcement agreements when no major changes are required. For example, in States which have instituted a formal process for developing and refining these agreements and have them signed at high levels of state governments, revising agreements is a cumbersome process. Therefore, if the existing enforcement agreements comply with the intent and the major thrust of this guidance such that significant changes are not required, they may be left as they are.

Specific priority items referred to in this guidance may be incorporated into other documents as appropriate. I am concerned with achieving our 1988 program priorities, not with the particular document in which an item appears.

IV. Addresses

Any questions concerning this guidance should be addressed to Chet Pauls (382-5550) of the Drinking Water Branch, State Programs Division.

Note: Attachment could not be located. For more information, please contact the EPA staff person mentioned in the document.

***Note: May need to be updated.**