



Enforcement Alert

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Protecting the Quality of Our Nation's Drinking Water

Federal Court in California Finds Owners-Operators of Public Water Systems Liable for SDWA Violations; Places Eight Systems in Receivership

On April 9, 2003, a federal district court in California handed down another significant ruling in the ongoing litigation between the United

States and Alisal Water Corp., Toro Water Service, Inc., and Robert and Patricia Adcock, the majority shareholders, officers, and directors of the companies. These defendants are the owners and operators of nine public water systems in Monterey County, California. Following earlier rulings holding the Adcocks personally liable for the water systems' violations of the Safe Drinking Water Act (SDWA), the court in its latest ruling found that the Adcocks had fraudulently conveyed assets away from the companies. With this latest ruling, the court has made it clear that owners and operators of public water systems will face serious consequences when they fail to comply with safe drinking water regulations.

This litigation began on Jan. 30, 1997, when the United States filed a judicial action against Alisal, Toro Water Service, and Robert and Patricia Adcock. The United States alleged that Alisal had violated the SDWA by:

- Exceeding the total coliform bacteria limits;
- Failing to give the public notice of its violations;
- Failing to perform required tests to confirm the presence of harmful bacteria;
- Improperly reporting test re-

sults to the County and the California Department of Health Services; and

- Failing to sample its smaller water delivery systems to ensure compliance with lead and copper regulations.

In August 2000, the district court issued its first partial summary judgment finding the defendants liable for numerous violations of the SDWA, including several violations involving inaccurate reporting. In a case of first



About

Enforcement Alert

Enforcement Alert is published periodically by the EPA's Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance to inform and educate the public and regulated community of important environmental enforcement issues, recent trends and significant enforcement actions.

This information should help the regulated community anticipate and prevent violations of federal environmental law that could otherwise lead to enforcement action. Reproduction and wide dissemination of this publication are encouraged. To receive this newsletter electronically, see <http://www.epa.gov/compliance/resources/newsletters/civil/enfalert/index.html>.

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U.S. and Guam Reach Agreement for Guam Waterworks Authority Violations

SAN FRANCISCO—The United States Attorney in Guam and the U.S. Environmental Protection Agency announced on May 21 the terms of an agreement that requires the Guam Waterworks Authority and the Government of Guam to take specific initial measures to improve Guam Waterworks' drinking water and wastewater systems.

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impression under the SDWA, the court found the corporate defendants and the individual defendants, the Adcocks, liable for myriad violations. The court held that the Adcocks were liable because of their personal conduct as owners and operators.

During the trial in this case, the United States described a pattern of noncompliance and intransigence dating back to the mid-1980s. The United States also demonstrated that the defendants were not competent to run their water systems and that, based upon information provided by the defendants themselves, they lacked adequate financial capabilities to make required improvements to ensure delivery of safe drinking water to consumers. The United States therefore sought a receiver to correctly run the systems, with the goal of ultimately selling the water systems to more responsible operators. The government also sought a monetary penalty against the defendants.

On April 9, 2002, the court ordered

eight of the defendants' privately-owned drinking water systems into receivership as a result of defendants' failure to comply with the SDWA and to ensure the safety of the drinking water that they provided to their customers (the ninth system has not yet been ordered into receivership but is operating under a court order requiring compliance with the SDWA). The judge found especially serious the defendants' failure to monitor the quality of its water and their submission of "... false results, at best with gross negligence and at worst with conscious intent to deceive." The judge was concerned that the violations had seriously affected customers: on one water system, customers had endured a five-week order to boil their water before consumption, while on another system, customers were forced to boil their water for 10 months due to fecal coliform contamination. The court opined that misleading letters to customers concerning the nature of the drinking water problems had further exacerbated the seriousness of the violations. The court pointed to a long

history of violations, including violations of lead and copper sampling rules that had continued not only after the Adcocks had received a notice of violation from EPA, but even after the initiation of this action in district court and into the time of trial. Failing to take responsibility for their actions, the defendants chose to litigate rather than cooperate with regulators.

In the most recent ruling in the action, the court granted the United States' claim for fraudulent conveyance of assets against the Adcocks. The United States had argued at trial on July 17, 2002, that the defendants had fraudulently conveyed significant assets into trusts in an effort to place them beyond the reach of the government. The court agreed and found that in early 2002, at the time of the trial on liability, the fair market value of the assets was approximately \$1.7 million. With this important issue decided, additional proceedings will focus on assessment of an appropriate monetary penalty against the defendants.



An Important Microbial Rule: Total Coliform Rule

When a "boil water emergency" is announced, there is often mention of a "total coliform violation." The Total Coliform Rule sets limits for total coliform levels in drinking water, and dictates the type and frequency of testing that water systems must perform. Coliforms are a group of bacteria, most of which are harmless, but all of which serve as detectable markers that indicate when drinking water is potentially contaminated by more serious agents. There are many types of bacteria, parasites, and viruses that can cause immediate, though usually mild, health problems when humans ingest them in drinking water. Among the health problems that contamination can cause are diarrhea, cramps, nausea, and vomiting. Together, these symptoms comprise a general category known as gastroenteritis, not usually life-threatening for a healthy person. However, these same microbiological contaminants may cause more serious problems for people with weakened immune systems, such as the very young, elderly, or the immuno-compromised. In addition, other bacteria, viruses, and parasites may cause debilitating diseases, even among more healthy individuals.

Given the wide range of such microbiological contaminants, testing drinking water for each of them individually would be difficult and expensive. Instead, water systems must measure coliform levels. The presence of coliforms in drinking water indicates that there may be other more serious disease-causing agents in the water, which suggests that remedial actions are required because the treatment system is not working properly or there is a problem in the pipes delivering the water.



National Primary Drinking Water Regulations

Approximately 170,000 public water systems exist nationwide. These public drinking water systems, which may be publicly or privately owned, serve at least 25 people or 15 service connections for at least 60 days per year. Through the Public Water System Supervision (PWSS) program, EPA implements and enforces drinking water standards to protect public health. Public water systems range in size from large municipal systems serving millions of people to small trailer parks, campgrounds, day care centers, and rest stops, but do not include drinking water wells that serve fewer than 25 people. Roughly one-third of the nation's public water systems are community water systems like the ones involved in the Alisal case.

Under the Safe Drinking Water Act (SDWA), EPA regulates the quality of the nation's drinking water by setting maximum contaminant levels (MCLs) and by promulgating National Primary Drinking Water Regulations. MCLs limit the amount of certain contaminants in drinking water. MCL limits reflect the level of protection necessary for human health and the level that water delivery systems can achieve using the best available technology. Besides prescribing these limits, EPA also sets water-testing schedules and methods that water systems must follow to verify that these limits are being met. The rules may also require acceptable techniques for treating water to remove certain contaminants.

More than 80 contaminants are regulated by the SDWA, including microbiological contaminants such as

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fecal coliform and chemical contaminants such as lead and copper. The Lead and Copper Rule, one of the drinking water regulations violated in the Alisal case, sets treatment technique requirements to ensure that safe levels of lead and copper are met in the public's drinking water. For more information on these rules, see EPA's website at <http://www.epa.gov/safewater/source/therule.html>.

Potential Public Health Impacts Associated with Noncompliance

The potential public health impacts associated with violating drinking water regulations vary considerably depending on the contaminants, concentrations, duration of exposure, and other factors. For example, microbiological contaminants such as fecal coliform can cause a variety of gastrointestinal illnesses, with the potential for more severe, debilitating, and sometimes fatal effects on children, the elderly, and individuals with compromised immune systems. Contamination of drinking water by sewage or fecal matter can cause diseases such as dysentery, cholera, meningitis, and encephalitis. In children, lead contami-



nation can retard physical and mental development and cause learning disabilities, shorter attention span, kidney problems, high blood pressure, and other impairments. For this reason, compliance with the National Primary Drinking Water Regulations is critical to protect public health. Violations of contaminant limits and violations of the monitoring and reporting requirements that can hide the presence of harmful contaminants can pose serious threats to human health.

Compliance and Enforcement Priorities with Microbial Rules

Ensuring compliance with the "microbial rules" is a national priority for EPA's compliance and enforcement programs. These particular regulations





relate to the removal or inactivation of microbiological contaminants such as bacteria, viruses, and protozoa. These regulations are a priority for EPA because improperly treated

drinking water containing these contaminants may cause acute, severe health affects.

Compliance Assistance: EPA and the states conduct extensive compliance assistance to public water systems. State and EPA compliance as-

sistance efforts include: conducting site visits and sanitary surveys at PWSs (*i.e.*, a review of the site's water sources, facilities, equipment, operations, and maintenance to evaluate their adequacy to produce and distribute safe drinking water); helping systems invest in preventive measures; providing financial assistance for system improvements through the Drinking Water State Revolving Fund and other state funding programs; reviewing water system plans and specifications; conducting training sessions; holding public information meetings; lending specialized monitoring equipment; and publishing informational bulletins and newsletters regarding training events and other educational opportunities. For more information on EPA's compliance assistance activities in this area, visit <http://www.epa.gov/compliance>.

Informal Enforcement Actions:

When a drinking water violation is detected, either EPA or the state will respond. For less serious violations, first response is often an informal action such as a reminder letter, warning letter, notice of violation, field visit, or telephone call.

Formal Enforcement Actions:

If a violation is more serious, or it continues or recurs, EPA or the state initiate a formal enforcement response that requires the violating public water system to return to compliance. Sometimes, formal enforcement may be the best first tool to use to address noncompliance due to public health implications. Formal enforcement responses include administrative orders with or without penalties, civil referrals to state attorneys general or to the Department of Justice, and other sanctions such as denying permission for system expansion, filing criminal

Guam Waterworks/From Page 1

The "stipulated order for preliminary relief" filed with the federal District Court on May 21, 2003, begins the process of addressing compliance issues at Guam Waterworks. The stipulated order addresses near-term injunctive relief (over the next 3-5 years) needed to improve operations to address the imminent and substantial endangerment situation. In a complaint filed on Dec. 20, the United States had alleged that Guam Waterworks repeatedly violated both the Clean Water Act and Safe Drinking Water Act. The federal lawsuit was initiated to ensure that Guam Waterworks undertakes long-term projects to correct these compliance issues at its five publicly owned treatment works (POTWs) and three public water systems serving nearly 170,000 people. The United States and Guam Waterworks may agree to additional conditions or a final settlement, including possible penalties, to address other compliance issues after the initial measures are completed.

"We see the stipulated order as an important first step in the right direction," said Wayne Nastri, the EPA's Regional Administrator for the Pacific Southwest. "It is a blueprint that maps out the path Guam must take to safeguard the public and environment while offering high quality service to its customers."

The order requires Guam Waterworks to:

- hire properly trained professionals;
- improve organizational inefficiencies;
- complete a master plan and several technical assessments;
- overhaul financial and operational systems;
- enhance water disinfection programs;
- improve the reliability of the existing infrastructure; and
- begin the rebuilding process for the island's aging drinking water and wastewater systems.

The federal District Court will retain jurisdiction to enforce the terms of the order over the course of the next few years.

"This is a very important case," said Frederick Black, U.S. Attorney for the District of Guam. "To protect public health, we must ensure that Guam Waterworks is moving quickly towards compliance with the Safe Drinking Water Act and the Clean Water Act."





Ensuring compliance with the "microbial rules" is a national priority for EPA's compliance and enforcement programs.

tools available to EPA is the authority available under Section 1431 of the SDWA. Under this authority, the United States can issue administrative orders or pursue civil judicial actions to address potential or actual threats of imminent and substantial endangerment to public health caused by contamination of public water systems or underground sources of drinking water.

Section 1431 authority may be used whether or not EPA has promulgated a National Primary Drinking Water Regulation and an MCL for the particular contaminants causing or potentially causing the imminent and substantial endangerment, and whether or not the defendant has violated any applicable regulation. The Agency has used SDWA Section 1431 enforcement authority to address contamination by microbiological contaminants with acute health effects, other chemical contaminants with near-term health effects, and cancer-causing chemical contaminants with longer-term health effects. In recent years, this authority has been used to address a variety of contaminant discharges (microbiological contaminants, nitrates, etc.) affecting surface water or groundwater. The Agency has issued over 200 Section 1431 enforcement actions since the enactment of the SDWA in 1974, including the aforementioned Guam action.

For additional information

charges, and imminent and substantial endangerment orders.

The Alisal case is just one example of a formal enforcement action taken by EPA, the Department of Justice, and states to ensure that clean, safe drinking water is available to every person in this nation. In 2000, EPA and the states initiated nearly 3,200 formal enforcement actions against public water systems for failure to comply with the SDWA, the National Primary Drinking Water Regulations, or their state equivalents. Recent civil judicial enforcement actions have been taken by EPA against public water systems serving large cities include New York and Phoenix.

Imminent and Substantial Endangerment Orders

One of the most important and effective drinking water enforcement

regarding the concluded portions of the Alisal case, contact Jon Merkle, EPA Region 9, at (415) 972-3550. For further information regarding EPA's drinking water enforcement program, including SDWA Section 1431 activity, please contact Andrew Hudock, Office of Regulatory Enforcement's Water Enforcement Division, at (202) 564-6032.

Office of Regulatory Enforcement
Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, Washington, D.C.

Useful Compliance Assistance Resources

Office of Enforcement and Compliance Assurance:
<http://www.epa.gov/compliance>

Safe Drinking Water Hotline:
1-800-426-4791

Envirofacts:
<http://www.epa.gov/enviro>

Safe Drinking Water Act:
<http://www.epa.gov/compliance/civil/federal/sdwa.html>

Office of Water:
<http://www.epa.gov/safewater>

Coliform Rule:
<http://www.epa.gov/safewater/source/tcrquickrefguidev10.pdf>

National Compliance Assistance Clearinghouse:
<http://www.epa.gov/clearinghouse>

Compliance Assistance Centers:
<http://www.assistancecenters.net>

Small Business Gateway:
<http://www.epa.gov/smallbusiness>

EPA's Audit Policy:
<http://oeaftp.sdc-moses.com/compliance/incentives/auditing/auditpolicy.html>



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