

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WSG 64

Date Signed: January 3, 1992

MEMORANDUM

SUBJECT: Opportunity for Public Hearing in Conjunction with
Filtration Decisions

FROM: Robert J. Blanco, Director
Enforcement and Program Implementation Division

TO: Drinking Water/Ground Water Protection Branch Chiefs
Regions I-X

This memorandum responds to a question raised by Region X; however, the issue, that of providing an opportunity for public hearing in conjunction with filtration determinations under the Surface Water Treatment (SWT) Rule, is one of national significance.

Section 1412(b)(7)(C)(i) of the SDWA requires EPA to promulgate a regulation specifying the criteria under which filtration will be required. Section 1413(b)(7)(C)(ii) states that the Administrators to specify procedures by which the States are to determine which public water systems within their jurisdiction must filter under the criteria of clause (i). These procedures "shall provide notice and opportunity for public hearing on this determination".

Up to this point, we have not provided guidance on the requirement for a public hearing. Region X, which is making some filtration determinations asked:

(1) Do our regulations require that the States provide notice/opportunity for hearing on their filtration determinations?; and

(2) What is EPA's position on a public hearing in cases where EPA makes the determination on filtration?

In response to the first question, the proposed SWT rule contained a special primacy condition which required States in their primacy program revision application to submit a description of the protocol they were going to use to determine which surface systems would be required to filter, "including procedures and timing to be used to inform the public and review comments from them with respect to each such decision." 52 FR 42220 (November 3, 1987).

This special primacy condition was not included in the final regulation. We believed that States already had processes to insure public participation and that those processes would be sufficient to cover SWT decisions.

EPA did not promulgate regulations to specify procedures for public participation in filtration decisions that the Regions would have to make; however, the SDWA requires that we provide an opportunity for a hearing on these determinations. We discussed this issue with the Office of General Counsel and we suggest that Regions employ the procedures that are used for notice/opportunity for hearings on proposed PWS compliance orders.

Specifically, the Regional notification to the system of its filtration decision should also state that the system or a member of the public may request a hearing or an informal conference with EPA. In order to insure that the public is notified of our determinations and of their opportunity to request a hearing, we suggest that you put a notice of your determination in the local newspaper or post it in a conspicuous place in the community.

As with our compliance orders, any hearing or conference must be requested within 14 days; a request for a hearing or a conference will not stay the effective date of the determination. Hearings are to be information gathering and should be conducted in the same manner as are hearings on proposed compliance orders. See 40 CFR 142 Subpart J "Procedures for PWS Administrative Compliance Orders" and Water Supply Guidance # 35 "Notification and Public Hearing Procedures for SDWA Section 1414(g) Administrative Orders", February 12, 1987, for additional details.

EPA has discretion on whether or not to grant a hearing if a member of the public requests it. We generally state that if "sufficient public interest" is shown, we will grant a hearing.

I hope that this guidance is responsive to your concerns. Should you have any questions, please contact Betsy Devlin (FTS 564-2245) or Clive Davies (FTS 260-1421).