

Regulatory Update

Perchlorate	Proposal	June 26, 2019
	Final	June 19, 2020 (court deadline)
Lead and Copper Rule Revisions (LCRR)	Signed by Administrator	October 10, 2019
	Final	Late 2020(?)
Fourth Regulatory Determination	Preliminary	2020
	Final	January 2021 (Five-year cycle)
Fifth Contaminant Candidate List (CCL5)	Draft	2020
	Final	November 2021 (Five-year cycle)
Fifth Unregulated Contaminant Monitoring Rule (UCMR5)	Proposal	Summer 2020
	Final	November 2021 (Five-year cycle)
Water System Restructuring Rule	Final	October 2020 (Statutory deadline)
Consumer Confidence Report (CCR) Revisions	Final	October 2020 (Statutory deadline)
Fourth Six-Year Review	Final	January 2023 (Six-year cycle)



LCR Proposal Summary and Key Improvements

EPA's proposed Lead and Copper Rule (LCR) includes a suite of actions to reduce lead exposure in drinking water where it is needed the most. The proposed rule will identify the most at-risk communities and ensure systems have plans in place to rapidly respond by taking actions to reduce elevated levels of lead in drinking water.

The proposed LCR maintains the current Maximum Contaminant Level Goal (MCLG) of zero and the Action Level of 15 ppb. The proposed rule will require a more comprehensive response at the action level and introduces a trigger level of 10 ppb that requires more proactive planning in communities with lead service lines.

The agency's proposal therefore takes a proactive and holistic approach to improving the current rule—from testing to treatment to telling the public about the levels and risks of lead in drinking water. This approach focuses on six key areas provided below.

1: IDENTIFYING AREAS MOST IMPACTED

To help identify areas with the greatest potential for lead contamination of drinking water, the EPA is proposing that all water systems prepare and update a lead service line (LSL) inventory. To reduce high levels of lead in certain locations, the EPA is proposing to require water systems to "find-and-fix" the causes of these elevated levels.

Key Improvements:

- The EPA will for the first time require a public lead service line inventory.
- Unlike now, systems will have to pay attention to individual locations with elevated levels of lead by identifying the cause and mitigating the problem.

Under the Current LCR:

- Systems are only required to conduct a materials inventory for the purposes of identifying enough sites for tap sampling. These inventories are not of the entire system, nor are they public.
- Systems must only take action if more than 10% of tap samples are greater than the action level (15 ppb). There are no requirements for systems to take follow-up samples at sites with individual tap samples greater than 15 ppb.

2: STRENGTHENING TREATMENT REQUIREMENTS

The EPA is proposing to revise requirements for corrosion control treatment (CCT) based on tap sampling results. The EPA's proposal also establishes a new trigger level of 10 ppb. At this trigger level, systems that currently treat for corrosion would be required to re-optimize their existing treatment. Systems that do not currently treat for corrosion would be required to conduct a corrosion control study so that the system is prepared to respond quickly when necessary.

Key Improvements:

- Based on sampling results, systems with elevated lead levels will reevaluate their existing corrosion control treatment or conduct a treatment study so that they are prepared to respond quickly when necessary.

Under the Current LCR:

- Requirements are based primarily on system size. Systems serving > 50,000 persons are required to have CCT while systems serving \leq 50,000 have CCT requirements after an action level exceedance and may discontinue these requirements if the action level no longer exceeded for two 6-month monitoring periods.
- Systems are not required to re-optimize their CCT, unless directed to do so by the state, and may only be required to conduct a CCT study when there is an action level exceedance.

3: REPLACING LEAD SERVICE LINES

The EPA is proposing to require water systems to replace the water system-owned portion of an LSL when a customer chooses to replace their customer-owned portion of the line. The EPA is also proposing to require water systems to conduct outreach and initiate lead service line replacement programs when lead levels are above the proposed trigger level of 10 ppb. The proposal requires systems that are above 10 ppb but at or below 15 ppb to work with their state to set an annual goal for replacement. Systems that are above 15 ppb will be required to replace a minimum of three percent of the number of LSLs annually. The proposal also prevents systems from avoiding lead service line replacements (LSLR) by "testing out" through sampling. Additionally, small systems that exceed the trigger and action levels will have flexibility with respect to treatment and lead service line replacement actions.

Key Improvements:

- The trigger level is a new flexible provision designed to compel water systems to take proactive, tailored actions to plan upgrades to aging infrastructure and reduce levels of lead in drinking water.
- Systems above 10 parts per billion would be required to work with their state to set an annual goal for replacing lead service lines. Water systems above 15 parts per billion would be required to fully replace a minimum of three percent of the number of known or potential lead service lines annually.
- Importantly, the proposal prohibits "test-outs" to avoid replacing lead service lines – an allowed practice under the current rule that has significantly slowed national progress in removing this significant source of lead from our homes.
- Partial lead service line replacements will no longer be allowed except in certain situations (e.g., emergency repair) because science has recently shown us that partial lead service line replacement may increase short-term lead exposure.
- Flexibility is important for small systems so that they can protect public health by taking the action that makes sense for their community.

Under the Current LCR:

- Water systems are not required to replace their portion of an LSL when the customer-owned portion of the line is being replaced.
- No LSLR plan is required. Systems are only required to implement an LSLR program when the lead action level of 15 ppb is exceeded.
- Systems can count partial LSLRs and LSLs that have been tested out (i.e., samples from the LSL do not exceed 15ppb) as replaced to meet the 7% mandatory annual replacement rate.



EPA's proposed Lead and Copper Rule has **sensible approaches to protect children from lead in drinking water**. By providing flexibility for small systems, the rule allows systems to protect public health by taking **common sense actions**.

4: INCREASING SAMPLING RELIABILITY

The EPA is proposing to improve tap sampling procedures. For example, requiring wide-mouth bottles for collection and prohibiting flushing and cleaning or removing faucet aerators before sampling. The EPA is also changing the criteria for selecting homes where samples are taken to require sampling in homes with lead service lines. And, systems with higher levels of lead will sample more frequently.

Key Improvements:

- Water systems will follow new, improved sampling procedures, will adjust sampling sites to better target locations with higher lead levels, and systems with higher levels will sample more frequently.

Under the Current LCR:

- Systems are not prohibited from instructing samplers to flush before sampling, remove and/or clean faucet aerators, and use narrow-necked collection bottles, all of which could mask elevated lead levels.
- Systems with LSLs are only required to collect 50% of tap samples from sites served by LSLs, which could obscure problems in the system.

5: IMPROVING RISK COMMUNICATION

The EPA is proposing to require systems to notify customers of an action level exceedance within 24 hours. The EPA is also proposing to require that systems make the LSL inventory publicly available and conduct regular outreach to homeowners with LSLs.

Key Improvements:

- Homeowners will learn about elevated levels of lead in their system sooner. They will also understand where lead services lines are in their community and how to protect their family from exposure to lead.

Under the Current LCR:

- Customers are notified of their tap sampling results, regardless of whether there is an action level exceedance, within 30 days of the system receiving the results.
- A materials evaluation is only required for sites used for tap monitoring and is not public. Water systems are not required to inform customers if they have a known or potential LSL.

6: PROTECTING CHILDREN IN SCHOOLS

Since children are most at risk, the EPA is proposing that community water systems (CWS) sample drinking water outlets at each school and each child care facility served by the system. The system would be required to provide the results and information about the actions the school or child care facility can take to reduce lead in drinking water.

Key Improvements:

- For the first time, systems will be required to test school and child care facilities.

Under the Current LCR:

- Community water systems are not currently required to test schools and child care facilities. Only schools and child care facilities classified as Non-Transient Non-Community Water Systems must sample for lead and copper.



For more information, visit:
epa.gov/safewater/LCRproposal

State Activities

The State implementation and administration costs of complying with the proposed LCR revisions include: reading and understanding the rule; adopting the rule and developing an implementation program; modifying data recording systems; training staff; providing water system staff with initial and on-going technical assistance and training; coordinating annual administration tasks with the EPA; and reporting data to SDWIS/Fed.

State activities regarding sampling include reviewing:

- PWS reports on lead and copper WQP monitoring from entry points and distribution system taps;
- Lead tap sampling plans, changes in sampling locations, sample invalidations, sampling results and 90th percentile calculations, and certification of customer notification of sampling results;
- 9-year waiver requests;
- Source water sampling results; and
- School sampling results.

The State activities associated with CCT installation, re-optimization, and “find-and-fix” rule requirements include:

- Consulting with water systems on source water and treatment changes;
- Reviewing CCT studies for installation and re-optimization;
- Reviewing post CCT installation WQP monitoring and tap sample results (including sample invalidation);
- Setting optimal water quality parameters;
- Reviewing “find-and-fix” follow-up tap and water quality parameter sampling for each individual lead tap sample greater than 15 µg/L;
- Reviewing water system’s “find-and-fix” summary reports;
- Reviewing new the EPA’s CCT guidance; and
- Conducting CCT water quality reviews in conjunction with sanitary surveys.

LSLR creates a number of water system/State interactions. States would be required to:

- Review water system inventory data;
- Confer with water systems with LSLs on initial planning for LSLR program activities, including standard operating procedures for conducting replacements, and outreach programs;

- Work with LSL water systems to determine a goal-based LSLR rate;
- Provide templates and targeted public education language for LSLR programs;
- Determine the additional outreach activities required if a water system fails to meet its goal-based LSLR rate; and
- Review annual LSLR program compliance reports from water systems.

State activities associated with CWSs serving 3,300 or fewer people and NTNCWSs that select POU as a treatment alternative include:

- Conferring with water systems on initial planning for POU programs;
- Reviewing public education material for POU devices; and
- Reviewing annual reports on POU programs, including POU device sampling results.

Proposed public education provisions will require a great deal of primacy agency oversight. Activities which produce primacy agency burden include:

- Providing water systems with templates to update CCR language;
- Reviewing water system information developed for new customer outreach;
- Participating in joint communication efforts for sharing lead public education with health care providers;
- Reviewing educational material developed for delivery during water-related work;
- Reviewing water system certifications of lead public education and outreach;
- Reviewing public education language submitted by water systems in response to an individual tap sample above the action level;
- Consulting with water systems on public education response to a lead action level exceedance, including reviewing language; and
- Reviewing the water systems public education self-certification letter following a lead action level exceedance.

Specific areas where EPA is requesting comment for the LCR Proposal Extracted from the 10/10/19 Pre-publication version

General Matters

The EPA is requesting comment on the overall framework for the proposed LCR revisions. Has the EPA developed proposed revisions that address the variability in conditions among the regulated water systems that effect the levels of lead that may be present in drinking water? Do the proposed revisions to the LCR target the appropriate treatment technique actions to prevent known or anticipated adverse health effects to the extent feasible in accordance with the Safe Drinking Water Act (SDWA)?

The EPA requests comment on the complexity of the regulatory requirements that result from targeting different actions for different types of water systems and challenges States and water systems will encounter.

The EPA requests comment on ways that the proposed LCR revisions could be simplified and burden, including paperwork burden, could be reduced while still assuring adverse health effects are prevented to the extent feasible. The EPA solicits comment on ways it can improve the ability of State or Federal government to enforce this rule. The EPA solicits comment on ways it can improve the ability of State or Federal government to assist water systems with compliance.

Trigger Level

The EPA requests comment on the proposed trigger level of 10 µg/L and the actions water systems must take if they exceed this trigger level. Does this level represent an appropriate 90th percentile level at which to require systems to initiate progressive actions to reduce drinking water lead levels? The EPA requests comment on other 90th percentile level thresholds that would be reasonable for water systems to initiate progressive actions to reduce drinking water lead levels.

Lead Service Line Requirements

The EPA requests comment on the feasibility of creating initial lead service line inventories by the compliance date, which is three years after publication of the final rule, and if a different frequency (other than annual) would be more appropriate for inventory updates. The EPA requests comment on whether additional requirements or guidance are needed relating to the content or format of inventories. The EPA also requests comment on the actions that system with limited records can take to improve their understanding of the number and location of lead service lines in their water system.

The EPA request comment on whether small water systems should be exempt from the requirement to prepare a LSLR plan concurrent with their LSL inventory, given that they may opt not to select LSLR as a compliance option if the action level is exceeded.

The EPA requests comment on including galvanized pipe in lead service line (LSL) inventories and in goal-based and mandatory lead service line replacement (LSLR) rates under the proposed LCR revisions.

The EPA requests comment on the treatment of unknown service lines in the inventory.

The EPA requests comment on whether the Agency should require water systems to distribute education materials to homes with unknown service lines to inform them of the potential for their line to be made of lead and the actions they can take to reduce their exposure to drinking water lead.

The EPA requests comment on proposed revisions to the lead service line replacement program requirements.

The EPA requests comment on the goal-based lead service line requirement for systems that exceed the trigger level. Does the goal based LSLR requirement provide adequate incentives for water systems to achieve meaningful reductions in their lead service line inventory? Does the goal based program enable systems to effectively incorporate LSLR into their infrastructure replacement programs? The EPA requests comment on what criteria must be met for the EPA to establish a federal goal rate for water system under § 142.19.

The EPA also requests comment upon the feasibility of replacing a minimum of three percent of the lead service lines a year for the systems that exceed the action level. The EPA requests comment on whether the number of lines required to be replaced should be three percent of the number of lead service lines plus the number of unknown service lines at the time the systems exceeds the action level.

The EPA requests comment on the feasibility for a water system to replace its portion of an LSL within 45 days of being notified that a customer has replaced the customer portion of an LSL. Should this time frame be longer? Should this time frame be shorter? The EPA also requests comment on whether such replacement by a water system should be mandatory or voluntary.

The EPA requests comment on how water systems that are conducting LSLR can identify and prioritize replacements at the locations that have the highest lead levels and/or the most susceptible populations. The EPA requests comment on whether to require water systems to describe in their LSLR plan, how LSLR will be prioritized or to require a prioritization plan at the time LSLR is compelled.

The EPA is requesting comment on the appropriateness of requiring two years of tap sample monitoring before water systems may stop LSLR. Under this proposal, corrosion control treatment (CCT) or re-optimization of CCT may not immediately reduce lead levels at the tap. The EPA proposes that two years of monitoring would be enough time to evaluate and ensure these measures consistently reduce lead to meet the action level.

The EPA requests comment on requiring systems with LSLs to make publicly available the exact address of the LSL in the inventory instead of a location identifier (street, intersection, landmark) as proposed. As discussed in section VI of this notice, the EPA estimates that the costs and benefits of this alternative would be similar to the proposal.

The EPA request comment on the appropriateness of pitcher filters for risk mitigation after LSLR or LSL disturbances given that the customer would be responsible for operation and maintenance.

Corrosion Control Treatment

The EPA is requesting comment on the proposed CCT re-optimization requirements. EPA requests comment upon the potential actions water systems could take to adjust their corrosion control treatment and how they should work with the State to determine if adjustments to the treatment would better optimize corrosion control.

Tap Sampling

The EPA is requesting comment on an alternative revision to the LCR's existing tap sample collection method provisions. In promulgating the LCR, the EPA noted "the rule contains other procedures to ensure that excessive lead and/or copper levels would be detected in monitoring by requiring, for example, sampling of the first liter of water from the tap after water has been standing for at least six hours, conditions under which higher than average contaminant levels are likely to occur" (58 FR 26514). The EPA continues to believe that first draw sampling following a 6-hour stagnation period is an effective technique to determine when optimal corrosion control treatment is being maintained. However, the EPA notes that research using sequential tap sample collection techniques on homes with LSLs indicates that a first draw sample may not represent the significant contributions of LSLs (Lytle et al., 2019). The EPA evaluated the feasibility of conducting sequential sampling techniques for every tap sample site for the public water systems that are subject to the LCR. The EPA finds it is not feasible due to the complexity of the sequential sampling technique, the number of samples that must be analyzed and the difficulty of interpreting the results from multiple tap samples. However, the EPA is requesting comment on whether water systems with lead service lines should be required to collect tap samples that are representative of water that was in contact with lead service lines during the 6-hour stagnation period.

The EPA requests comment on an alternative tap sampling technique for sampling locations with LSLs. The EPA requests comment on requiring tap samplers to collect the first gallon of water from the tap following the stagnation period (referred to as the fifth liter), then to collect a one-liter sample for analysis. The sampler would be instructed to pour out the gallon container or to use it for other purposes (*e.g.*, watering plants) and to submit the one-liter tap sample for analysis. The EPA finds this approach would be more representative of lead concentrations in service lines (Del Toral, 2013) and would be more likely to identify a greater number of water systems that would be required to take action to address elevated levels of lead. The EPA has included an analysis of the costs and benefits of this option in Section VI of this notice and Chapter 9 of the Economic Analysis of the Proposed Lead and Copper Rule Revisions (USEPA, 2019a). The EPA also requests comment on how the EPA could develop tap sample protocols that would allow for collection of a first draw copper sample and a fifth liter lead tap sample during a single tap sample event. The EPA requests data that demonstrate collecting a tap sample liter (*i.e.*, 5th liter) other than a first draw is more representative of water that has been in contact with a lead service line during the six hour stagnation period.

The EPA is proposing to require that all water systems that change their source water or make significant treatment changes obtain approval from their primacy agency prior to making the change. The EPA expects that in addition to evaluating and mitigating the impacts of the source water change or treatment change on corrosion control, many primacy agencies will require the water systems to conduct more frequent tap sampling following the change in treatment or source. The EPA requests comment on whether the regulation should specify a minimum tap sampling frequency of once every six months or once per year following the source water change or significant treatment change.

Testing in Schools and Child Care Facilities

The EPA requests comment on whether it should revise the rule to require community water systems (CWSs) to offer to collect samples from schools and child care facilities every five years or to collect samples from a school or a child care facility only if requested. The CWS would still be required to provide the schools and child care facilities information on the health effects and sources of lead in drinking water, and the 3Ts guidance. Under this approach, CWS would be able to respond to requests for sampling in a way that allows the water system to spread out the cost burden over multiple years (*i.e.*, delay fulfillment of requests to future years) if the water system samples at a minimum of five percent of schools and child care facilities each year. Additionally, a facility could decline the offer. The EPA has included an analysis of the costs and benefits of this option in section VI of this notice and Chapter 9 of the Economic Analysis of the Proposed Lead and Copper Rule Revisions (USEPA, 2019a).

Small System Flexibilities

The EPA is proposing that small system flexibilities be allowed for CWSs serving 10,000 or fewer persons and all NTNCWS. The EPA request comment on whether this flexibility is needed by systems serving between 3,301 and 10,000 persons and whether a different threshold is more appropriate. EPA requests comment on whether different flexibilities would be more appropriate for small systems whether defined as water systems serving 10,000 or fewer persons or 3,300 or fewer persons.

Public Education and Outreach

The EPA requests comment on whether the Agency should require water systems to distribute education materials to homes with unknown service line types to inform them of the potential for their line to be made of lead and the actions they can take to reduce their exposure to drinking water lead.

The EPA requests comment on the appropriateness of required outreach activities a water system would conduct if they do not meet the goal LSLR rate in response to a trigger level exceedance. The EPA also requests comments on other actions or additional outreach efforts water systems could take to meet their LSLR goal rate.

The EPA requests comment on the appropriateness, frequency, and content of required outreach to State and local health agencies and whether the requirement should apply only to a subset of the country's community water systems.

Economic Analysis

The EPA is soliciting comment on all aspects of the analysis for this rule. The agency offers a fulsome discussion on assumptions, models and related uncertainties in the regulatory impact analysis. In particular, the EPA requests comment on the five drivers of costs identified including rate of LSLR in its economic analysis. EPA requests comments on whether this estimated rate of lead service lines being replaced is appropriate. The EPA also solicits comment on: (1) the existing number of LSLs in PWSs; (2) the number of PWS above the AL or TL under the current and proposed monitoring requirements; (3) the cost of installing and optimizing corrosion control treatment (CCT); (4) the effectiveness of CCT in mitigating lead concentrations; and (5) the cost of lead service line replacement cost of lead service line replacement, cost of CCT, effectiveness of CCT. In addition to these cost drivers, the EPA solicits comment on the assumptions regarding labor required to comply with this rule, including labor required to collect and analyze samples. As described in section VI.E.2 of this notice, the EPA is not estimating benefits of avoided cardiovascular mortality that may result from the proposed LCR revisions. The EPA acknowledges the scientific understanding of the relationship between lead exposure and cardiovascular mortality is evolving and scientific questions remain. The EPA intends to conduct additional analysis and conduct a peer review that includes an opportunity for public comment. In the interim, EPA solicits peer reviewed information on the evidence relevant to quantifying the incremental contribution of blood lead concentrations (especially at BLL < 5 µg/dL) to cardiovascular disease (and associated mortality) relative to strong predictors such as diet, exercise, and genetics that may be useful in future benefits analysis.

As mentioned in Section VI, and detailed in Appendix F of the EA, the EPA in a secondary analysis has estimated the changes in lead concentrations at non-LSL households that result from changes in CCT. The lead concentration values used in this assessment come from data EPA collected from 15 cities across the United States and Canada (See Chapter 6, section 6.2 of the EA for more detail). The EPA has not found additional studies to corroborate this data. The EPA, therefore, is requesting comment and additional information about the change in lead concentrations that occur in non-LSL households that experience changes in CCT.

Recordkeeping

The EPA requests comment on the utility of States maintaining records of water system actions related to find-and-fix.

America's Water Infrastructure Act of 2018 (AWIA)

Overview

[America's Water Infrastructure Act of 2018 \(AWIA\)](#) improves drinking water and water quality, deepens infrastructure investments, enhances public health and quality of life, increases jobs, and bolsters the economy. The AWIA provisions are the most far-reaching changes to the Safe Drinking Water Act since the 1996 Amendments, with over 30 mandated programs. Learn about EPA's current actions under the new law.

Summary of EPA's Current Actions

Drinking Water State Revolving Fund

AWIA authorizes the DWSRF to allow extended infrastructure loan terms, requires the provision of additional subsidy to state-defined disadvantaged communities, and expands source water protection-related eligibilities under the Local Assistance set-aside. Review the [EPA memorandum to assist the EPA and states in implementing changes to the DWSRF Program](#).

Community Water System Risk and Resilience Assessments

AWIA requires community water systems serving more than 3,300 people to develop or update risk assessments and emergency response plans (ERPs). The law specifies the components that the risk assessments and ERPs must address, and establishes deadlines by which water systems must certify to EPA completion of the risk assessment and ERP. [Find more on Risk Assessments and Emergency Response Plans](#).

Amendments to the Emergency Planning and Community Right-to-Know Act

AWIA requires state and tribal emergency response commissions to notify the applicable State agency (i.e., the drinking water primacy agency) of any reportable releases and provide community water systems with hazardous chemical inventory data. This guide provides information for community water systems and state drinking water primacy agencies. [Access the guides](#).

Water Infrastructure Improvements for the Nation (WIIN) Act Grant Programs

AWIA provides funding to assist public water systems in small and disadvantaged communities with reducing lead in drinking water systems, provides financial assistance to homeowners for lead line replacement and testing drinking water in schools and child care facilities for lead. [Find information on EPA's WIIN Grant Programs](#).

Asset Management and Capacity Development Strategies

States must amend their state capacity development strategies to include a description of how the state will encourage the development of asset management plans that include best practices, training, technical assistance and other activities to help with implementation of those plans. States also must include an update of these activities to encourage asset management practices in the Governor's report. EPA must review and update, if appropriate, asset management documents and trainings every five years. [Review EPA's information on asset management.](#)

Upcoming Actions

The Water System Restructuring Rule

AWIA requires that EPA issue a regulation which authorizes primacy agencies to mandate restructuring assessments for public water systems (PWSs) which frequently violate health-based standards, and which have unsuccessfully attempted, or which are unable to attempt, feasible and affordable actions to comply and must describe liability protection for a compliant PWS which is consolidating with an assessed PWS. AWIA also adds contractual agreements as a new type of restructuring. [Access the factsheet.](#)

Small System Report to Congress

AWIA directs EPA to complete a study no later than two years from the enactment of the Act. As a result, EPA is developing a report to congress that summarizes compliance with National Primary Drinking Water Regulations for public water systems (PWSs) serving fewer than 1,000 persons that have been identified as historically significant non-compliers (HSNCs).

State Experiences with EPA Regions and Emergency Powers – Section 1431

Throughout 2019, ASDWA staff received an increasing number of reports from states in multiple regions that EPA (typically Region staff) were either overtly or implicitly threatening to invoke Safe Drinking Water Act (SDWA) Section 1431 Emergency Powers. Due to these reports, ASDWA recently conducted a voluntary survey of its members asking if, in discussions between the state and EPA, Section 1431 had ever been mentioned and if so, describe the situation and circumstances.

Background

From [EPA's website](#), "SDWA section 1431, 42 U.S.C. §300i gives the EPA Administrator broad authority to act to protect the health of persons in situations where there may be an imminent and substantial endangerment. Specifically, section 1431 provides that, upon receipt of information that a contaminant that is present in or likely to enter a public water system or an underground source of drinking water, or there is a threatened or potential terrorist attack or other intentional act, that may present an imminent and substantial endangerment to the health of persons, the EPA Administrator may take any action she deems necessary to protect human health.

The Administrator may take action under this section only if the state and local authorities have not acted to protect the health of persons. Then, to the extent the Administrator deems practicable in light of the imminent and substantial endangerment, she must consult with the state and local authorities to confirm the factual situation and any action the state or local authorities are or will be taking. Actions the Administrator may take under this section include but are not limited to issuing administrative orders to persons subject to the SDWA, including federal agencies, such as orders to clean contaminated sources of drinking water or to provide alternative water supplies.

SDWA subsection 1431(b) subjects persons who violate an order issued under §1431(a) to a penalty not to exceed \$16,500 (after January 12, 2009, 40 C.F.R. §19.4, Table 1 for each day the violation occurs or the failure to comply continues. Federal agencies may be subject to administrative penalties under section 1447 for violation of an order issued under section 1431."

It appears that the heart of the issue is a relatively recent change in EPA guidance language. The [original 1991 guidance](#) on using Section 1431 said, "The Regions should note that they need to determine that both State and local authorities have failed to act before bringing a Section 1431 action." However, the [2018 guidance](#) which replaced the 1991 version states, "OECA recognizes there are sensitivities associated with determining whether a State or local authority has not acted to protect the health of persons. Section 1431 does not require any finding that a State or local authority has "failed" to act."

ASDWA Survey Results & Concerns

The draft results of the survey showed 14 states have not had any discussions about Section 1431, 17 states have had discussions with EPA about Section 1431, and 19 states did not respond. Of the five territories, none responded to the survey.

Of the 17 states that have had discussions with EPA about using Section 1431, most point to discussions where EPA offered using Section 1431 as an option to the state (if needed) to address severely non-compliant systems, natural disasters or emergency situations, or when a state program was seriously lacking resources to deal with a critical situation. In these cases, it is reasonable that EPA would, in discussions with the states, offer and evaluate the use of every tool at their disposal, including Section 1431. In some situations, states explained that they had welcomed and even asked for EPA intervention via Section 1431 as a cooperative effort. ASDWA is not concerned at this time with these approaches.

Much more concerning are the reports from a handful of states in more than one EPA region where staff have overtly or implicitly threatened the use of Section 1431 to force states to take additional action regarding both regulated and unregulated contaminants. In each of these cases, the states felt “blindsided” by EPA’s statements and in some cases were already taking significant action.

ASDWA is asking that EPA provide further clarification on the appropriate use of Section 1431, particularly for unregulated contaminants. ASDWA strongly encourages that EPA be diligent and dedicated in ensuring strong communication with states and be transparent and honest about intentions of using emergency powers. ASDWA is also asking for consistent implementation of guidance across EPA Regions. The inconsistency in reports from states on conversations with EPA on the 2018 guidance needs to be resolved.

Finally, states would like to remind EPA that policies and procedures are not an adjudication or a regulation, nor do they carry the force of statute. EPA should not intend to give the Section 1431 guidance that weight or deference. The existing statutory language trumps guidance and requires EPA to find that both state and local authorities have failed to act before bringing a Section 1431 action. EPA should revise the Section 1431 guidance to be consistent with the statute.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MAY 30 2018

MEMORANDUM

SUBJECT: Updated Guidance on Emergency Authority under Section 1431 of the Safe Drinking Water Act

FROM: Rosemarie Kelley, Director
Office of Civil Enforcement
Office of Enforcement and
Compliance Assurance

A handwritten signature in blue ink that reads "Rosemarie Kelley".

Karin Leff, Acting Director
Federal Facilities Enforcement Office
Office of Enforcement and
Compliance Assurance

A handwritten signature in black ink that reads "Karin Leff".

TO: Enforcement Directors
Regions 1 - 10

Regional Counsels
Regions 1 - 10

This memorandum transmits the Office of Enforcement and Compliance Assurance's (OECA) updated guidance on invoking EPA's emergency authority, granted under Section 1431 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300i. This guidance has been reviewed by the Office of General Counsel (OGC) and the Office of Groundwater and Drinking Water (OGWDW). This guidance replaces EPA's December 28, 1976 guidance entitled "Regional Guidance - Emergency Action on Water Supply Hazards" and September 27, 1991 guidance (Water Supply Guidance No. 68) entitled "Final Guidance on Emergency Authority under Section 1431 of the Safe Drinking Water Act."

If you have any questions, please contact OECA's Office of Civil Enforcement's Water Enforcement Division. If the matter involves a federal facility specifically, please contact OECA's

Federal Facilities Enforcement Office.

cc: OGC
OGWDW
Regional Drinking Water Enforcement and Program Branch Chiefs

UPDATED GUIDANCE ON INVOKING EMERGENCY AUTHORITY UNDER SECTION 1431 OF THE SAFE DRINKING WATER ACT

Purpose of Guidance

Section 1431 has broad application and provides EPA with an effective tool to address public health endangerments concerning public water systems (PWSs) and underground sources of drinking water (USDWs). One of the purposes of this guidance is to encourage a more widespread use of EPA's Section 1431 authority by more fully explaining situations where this authority may be applied. In addition, this guidance discusses EPA's internal procedures for taking action under Section 1431 and provides information on how to support and prepare an order. The Office of Enforcement and Compliance Assurance (OECA) is issuing this 2018 guidance update in response to the Office of Inspector General's (OIG) October 20, 2016 Management Alert entitled "Drinking Water Contamination in Flint, Michigan, Demonstrates a Need to Clarify EPA Authority to Issue Emergency Orders to Protect the Public" (Report No. 17-P-0004).

Contents

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Disclaimer

This guidance document on the application of EPA's emergency powers under Section 1431 of the SDWA is a statement of Agency policies and principles. It does not establish or affect legal rights or obligations. This guidance document does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by

¹ For purposes of the SDWA, federally-recognized Indian tribes are considered "States" under Section 1401 and Section 1451. Similarly, when interpreting and applying Section 1431, EPA includes tribes, territories, and the District of Columbia under the "State and local authorities" element.

applying the law to the specific facts of the case. The Agency may take action at variance with this guidance.

Overview

Introduction

Drinking water sources can be contaminated by both naturally occurring contaminants or by activities in the watershed such as agriculture or industry. PWSs use treatment and monitoring to identify and protect consumers from such contaminants. Contaminants may be present in or released into the environment as a result of inadequate treatment of drinking water by a PWS, or potentially impact USDWs from sources like a leaking underground storage tank, or failure of an underground injection control (UIC) well, to name a few. These incidents may result in contamination in or near a PWS or USDW that may pose an “imminent and substantial” endangerment to human health.

Authority granted under SDWA Section 1431, 42 U.S.C. Section 300(i), gives the Administrator broad powers to take appropriate enforcement action² if he or she receives information that:

- A contaminant is present in or likely to enter a PWS or USDW, or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals), and
- The contaminant or attack may present an “imminent and substantial endangerment” to human health, and
- The appropriate state and local authorities have not acted to protect public health.

The purposes of a Section 1431 action are to prevent an impending dangerous condition from materializing, or to reduce or eliminate a dangerous situation once it has been discovered. Section 1431 focuses on “imminent and substantial endangerment,” which is a broadly defined concept (see discussion below). For example, one major function of Section 1431 is its use as a preventative enforcement measure.³

² The legislative history of Section 1431 reflects the intent of Congress to confer broad power to the Administrator in Section 1431 actions. *See* 120 Cong. Rec. 37591 (1974) (stating the authority under Section 1431 is “broad in scope and provides a necessary enforcement tool for the Administrator”).

³ The preventative intent of Section 1431 is apparent in the legislative history, which states: “the Committee intends that this language be construed by the courts and the Administrator so as to give paramount importance to the objective of protection of the public health. Administrative and judicial implementation of this authority must occur early enough to prevent the potential hazard from materializing.” H.R. Rep. No. 1185, 93rd Cong., 2d Sess. 35-36, *reprinted in*, 1974 U.S. Code Cong. & Ad. News 6454, 6488 (H.R. 93-1185). The discussion of Section 1431 in this 1974 House Report is shown in Attachment 2 of this Guidance.

As an “emergency” provision, however, Section 1431 should not be used as a substitute for other SDWA provisions, where such other provisions are adequate to protect public health.⁴ For example, under the Public Water System Supervision (PWSS) Program, violations of monitoring requirements or even of a maximum contaminant level (MCL) should generally be addressed through use of the enforcement authorities (including administrative order authority) in Section 1414. But if the MCL exceedance may present an imminent and substantial endangerment, then an emergency action under Section 1431 may be appropriate in addition to or in place of any SDWA Section 1414 enforcement action. Examples under the UIC program would include a Class II well injection pressure exceedance that causes movement of fluid into an USDW, or a Class V UIC well operator who is injecting contaminants that may be causing or contributing to an MCL exceedance or otherwise endangering an USDW. Although these generally would be enforced as a violation under Section 1423, a Section 1431 action also may be appropriate if an imminent and substantial endangerment may be present.

1986, 1996 and 2002 Amendments to Section 1431

The 1986 SDWA amendments clarified EPA’s existing authority to order the provision of an alternative water supply by persons who caused or contributed to the endangerment. In addition, the 1986 amendments strengthened EPA’s authority to enforce Section 1431. Previously, Section 1431 provided that EPA could enforce against any person who “willfully” violated or failed or refused to comply with a Section 1431 order. The 1986 amendments removed the term “willfully,” enabling EPA to enforce against any persons, whether or not their actions were willful. Also, the 1986 amendments clarified EPA’s authority to protect USDWs, as discussed on page 7.

Additionally, in 1996, Congress changed the maximum civil penalty from \$5,000 to \$15,000 per day.⁵ The 2002 SDWA amendments inserted language regarding terrorist attacks or other intentional acts designed to disrupt or adversely impact the safety of drinking water.

Delegation of Authority

In January 2017, the Administrator revised Delegation No. 9-17, which delegates the authority to take administrative action under Section 1431 to the Regional Administrators (RAs) and the Assistant Administrator (AA) for OECA. The January 2017 version of Delegation No. 9-17 supersedes

⁴ H.R. 93-1185, at 36, states that “Section 1431 reflects the Committee’s determination to confer completely adequate authority to deal promptly and effectively with emergency situations which jeopardize the health of persons.” The Report further states that the authority of Section 1431 should “not be used when the system of regulatory authority provided elsewhere in the bill could be used adequately to protect the public health.” *Id.*

⁵ The penalty numbers in SDWA Section 1431 (and other statutes) are annually updated for inflation in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. 28 U.S.C. Section 2461 note. *See* 40 C.F.R. Section 19.4 for the most up-to-date numbers.

the May 11, 1994 and July 25, 1984 SDWA Section 1431 related delegations. Among other things, the January 2017 revision added a requirement for Regions to consult with OECA before issuing orders under Section 1431. Further, Delegation No. 9-16 was also updated in January 2017. Delegation No. 9-16A requires Regions to notify OECA before commencing a judicial action under SDWA. Under the limited circumstances of a temporary restraining order issued under SDWA Section 1431, Delegation No. 9-16D applies and requires notification to OECA before Regions exercise this authority. While Delegation No. 9-16 specifies notification, Regions are expected to consult with OECA in these instances, as discussed below.

Within OECA, the Office of Civil Enforcement's (OCE) Water Enforcement Division (WED) has been designated to consult with the Regions on SDWA Section 1431 actions, and the Federal Facilities Enforcement Office (FFEO) has been designated for actions involving federal agencies. OECA is committed to providing feedback to the Regions as soon as possible, which typically is within 24 to 48 hours, and has responded even earlier where the endangerment is acute. In some Regions, the authority to issue Section 1431 orders has been redelegated below the RA level.

Under OECA's February 1, 2017 "Revised Consolidated Procedures for Regional and Headquarters Coordination on Regulatory Enforcement Cases Involving Nationally Significantly Issues (NSIs)" List B, "any enforcement action invoking the imminent and substantial endangerment authority under SDWA Section 1431" requires consultation with OECA.⁶

If the order involves a federally recognized Indian tribe or Indian country entity, the Region should consult OECA's January 17, 2001 "Final Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy." Where EPA issues an emergency order in Indian country, such actions are generally considered "exigent circumstances" that would not need the concurrence of OECA's Assistance Administrator as provided for in the "Final Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy." However, consultation with OECA is still required before the Region takes a Section 1431 action.

Elements of Section 1431 Authority

To apply the authority granted under Section 1431, two conditions must be met. First, the Administrator must have received "information that a contaminant which is present in or likely to enter a public water system or an underground source of drinking water, or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals), which may present an imminent and substantial endangerment to the health of persons."⁷ Second, the Administrator

⁶ For federal facility matters, see the June 10, 2015 David J. Kling memorandum, "Revised Procedures for Determining Level of Federal Facility Enforcement Office Involvement in Formal Regulatory Enforcement Cases."

⁷ It should be noted that unlike several of the imminent and substantial endangerment provisions in other statutes, SDWA Section 1431 uses the term "information" instead of "evidence."

must have received information that “appropriate State and local authorities have not acted to protect the health of such persons.” To realize the full potential of Section 1431, the key elements of these conditions must be understood. Each element is discussed in greater detail below.

Contaminant

Section 1401(6) of the SDWA defines “contaminant” very broadly to include “any physical, chemical, biological, or radiological substance or matter in water.” Under this broad definition, EPA may take action under Section 1431 even when the contaminant in question is not regulated by a National Primary Drinking Water Regulation (NPDWR) or listed in a National Secondary Drinking Water Regulation (NSDWR) under the SDWA (e.g., EPA has not issued a NPDWR for the contaminant or the regulation has been promulgated, but is not yet effective). This authority is supported by the SDWA legislative history.⁸ Moreover, listing on EPA’s Contaminant Candidate List, under the Unregulated Contaminant Monitoring Rule, or establishment of a health advisory, are similarly not required for a substance to be considered a contaminant, and are not prerequisites for use of Section 1431 authority.

Likely to Enter

Application of the Section 1431 authority is not limited to existing contamination of a PWS or USDW, but also may be used to prevent the introduction of contaminants that are “likely to enter” drinking water. Thus, Section 1431 orders should ideally be issued early enough to prevent the potential hazard from materializing.⁹

Underground Sources of Drinking Water

EPA’s Section 1431 authority is not limited to the protection of PWSs. It also extends to the protection of all USDWs, whether or not the USDW currently supplies a PWS. The 1986 amendments clarified EPA’s existing authority to protect USDWs by making this authority explicit in the statute.

The Agency has defined “underground sources of drinking water” in 40 C.F.R. Section 144.3. Under this definition, “USDW” includes both aquifers that currently supply a PWS and those that simply have the potential to supply a PWS (according to the criteria in Section 144.3). The ability to address the

⁸ H.R. 93-1185, at 35, states, “The authority to take emergency action is intended to be applicable not only to potential hazards presented by contaminants which are subject to primary drinking water regulations, but also to those presented by unregulated contaminants.”

⁹ “Administrative and judicial implementation of this authority must occur early enough to prevent the potential hazard from materializing. This means that ‘imminence’ must be considered in light of the time it may take to prepare administrative orders or moving papers, to commence and complete litigation, and to permit issuance, notification, implementation, and enforcement of administrative or court orders to protect the public health.” H.R. 93-1185, at 35–36.

contamination of USDWs (rather than only PWSs) broadens EPA's authority in two ways. First, it allows EPA to act under Section 1431 where the groundwater source in question is only a potential supplier of a PWS. Second, it allows the Agency to protect water supplies that do not meet the threshold of 25 persons served or 15 service connections in the definition of "public water system" (for example, many private wells) that are at risk because of the contamination or threatened contamination of an USDW.

Imminent and Substantial Endangerment

Assuming EPA can show that a contaminant is "present in or likely to enter" the drinking water supply (either PWS or USDW), EPA also must show that a contaminant "may present" an "endangerment" and that the endangerment is both "imminent" and "substantial."

Imminent Endangerment

Section 1431 authorizes EPA to address "endangerments" that are "imminent." The case law that has developed on these terms (as used in the SDWA or in analogous provisions of other statutes), together with the SDWA legislative history, suggests the following guidance.

An "endangerment" may include not only actual harm, but also a threatened or potential harm.¹⁰ No actual injury need ever occur.¹¹ Therefore, while the threat or risk of harm must be "imminent" for EPA to act, the harm itself need not be.¹² Public health may be endangered imminently and substantially "both by a lesser risk of a greater harm and by a greater risk of a lesser harm;" this will ultimately depend on the facts of each case.¹³

An endangerment is "imminent" if conditions which give rise to it are present, even though the actual harm may not be realized for years.¹⁴ Courts have stated that an "imminent hazard" may be declared at any point in a chain of events that may ultimately result in harm to the public.¹⁵ For

¹⁰ U.S. v. Conservation Chemical Co., 619 F. Supp. 162, 192 (W.D. Mo. 1985) (interpreting the term "endangerment" in CERCLA), citing Ethyl Corp. v. EPA, 541 F.2d 1 (D.C. Cir. 1976), (en banc), cert. denied, E.I. Du Pont de Nemours & Co. v. EPA, 426 U.S. 941 (1976) (interpreting the language "will endanger" in the Clean Air Act).

¹¹ See Ethyl Corp. v. EPA, 541 F.2d at 13.

¹² See U.S. v. Reilly Tar and Chemical Corp., 546 F. Supp. 1100, 1109-10 (D. Minn. 1982) (quoting H.R. 93-1185); U.S. v. Conservation Chemical Co., 619 F. Supp. at 193-94. The Conservation Chemical Co. court, construing similar language in CERCLA, stated that the standard is especially lenient since it authorizes action "when there *may* be risk of harm, not just when there *is* a risk of harm." Id. at 193 (emphasis in original).

¹³ See Ethyl Corp. v. EPA, 541 F.2d at 18.

¹⁴ See U.S. v. Conservation Chemical Co., 619 F. Supp. at 193-94; B.F. Goodrich v. Murtha, 697 F. Supp. 89, 96 (D. Conn. 1988) (CERCLA action).

¹⁵ Trinity Am. Corp. v. EPA, 150 F.3d 389, 399 (4th Cir. 1998) ("EPA need not demonstrate that individuals are drinking contaminated water to justify issuing an emergency order."); Dague v. City of Burlington, 935 F.2d 1343, 1356 (2nd Cir. 1991); U.S. v. Ottati & Goss, Inc., 630 F. Supp. 1361, 1394 (D.N.H. 1985).

example, in U.S. v. Midway Heights County Water District,¹⁶ individuals were exposed to microbiological and turbidity exceedances, but actual illnesses had not yet been reported. The court found that the presence of organisms that were accepted indicators of the potential for the spread of serious disease presented an imminent (and substantial) endangerment.¹⁷

Endangerments can more readily be determined to be imminent where they involve contaminants that pose acute human health threats. Examples include (but are not limited to):

- A nitrate MCL violation when a sensitive population is exposed (e.g., infants less than six months of age).
- A waterborne disease outbreak with or without MCL violations.
- A microbiological MCL or turbidity treatment technique violation with or without a waterborne disease outbreak.
- Migration of untreated sewage directly into or near an USDW.
- A release of surficial contamination that may ultimately migrate to a usable aquifer.
- A reduction or loss of pressure in a distribution system (e.g., due to broken water mains or power outages) that increases the risk of contaminants entering water.
- A sanitary problem such as dead birds or rodents in finished water storage tanks.

However, acute contaminants are not the only ones that might pose an imminent endangerment. Because an endangerment is created by the risk of harm, not necessarily actual harm, EPA should determine whether a risk of harm is imminent. Therefore, contaminants that lead to chronic health effects, such as carcinogens, also may be considered to cause “imminent endangerment”¹⁸ even though there is a period of latency before those contaminants, if introduced into a drinking water supply, might cause adverse health effects. A factor that a Region may consider is the length of time a population has been or could be exposed to a contaminant. In the SDWA legislative history, the House Report specifically states that an imminent endangerment may result from exposure to a carcinogenic agent.¹⁹

¹⁶ 695 F. Supp. 1072, 1076 (E.D. Cal. 1988).

¹⁷ Id.

¹⁸ See Conservation Chemical Co., 619 F. Supp. at 194 (citing legislative history of RCRA Section 7003).

¹⁹ See H.R. 93-1185, at 36. This view is underscored by the numerous other references in the legislative history to the discovery of carcinogens and potential carcinogens in an ever increasing number of water supplies. 1974 House Report, *supra*, at 6, 10-11, 35; 120 Cong. Rec. 36372, 36374-75, 36398-99, 36401 (1974). This concern was reiterated and strengthened in subsequent Congressional reviews of the SDWA program. House Comm. on Interstate and Foreign

Examples could include (but are not limited to):

- An exposure, or threat of exposure, to chronic contaminants at levels exceeding their MCLs or health advisory levels (e.g., PFOA).
- Exposures to chronic-type contaminants, such as lead, that are present at high enough concentrations to cause not only immediate, but also long-term health effects.

Section 1431 should not be used in cases where the risk of harm is remote in time or completely speculative in nature.²⁰ However, in determining the imminence of a hazardous condition, EPA may consider the time it may require to prepare orders, to commence and complete litigation, to implement and enforce administrative or judicial orders to protect public health, and to implement corrective action under Section 1431.²¹ For example, even where a contaminant is not likely to enter a ground water supply for several months or longer (as can be the case with a ground water plume moving toward a well), EPA may consider this hazard to be “imminent” in light of the time required to implement the actions described above. Further, even where a hazardous condition has been present for some time (even years), case law supports the view that EPA is not prevented from finding that the conditions present an imminent endangerment.²²

In addition, Section 1431 may be used to address threats to health from exposure pathways other than direct ingestion of drinking water. For example, in U.S. v. Midway Heights County Water District,²³ individuals were exposed to bacteriological and turbidity contamination through uses such as bathing, showering, cooking, dishwashing, and oral hygiene. The court determined that, although the water primarily was not used for drinking water, an imminent and substantial endangerment existed from “human consumption.” EPA has defined human consumption broadly to include these various uses.²⁴ Section 1431 may be invoked in situations where, for instance, the risks involve exposure to contaminants like *Legionella* or disinfection byproducts in water vapor from a shower.

Commerce, H.R. Rep. No. 96-186, 96th Cong., 1st sess. 4-6 (1979), and Senate Comm. on Environment and Public Works, S. Rep. No. 96-161, 96th Cong., 1st Sess. 3 (1979).

²⁰ This interpretation is supported by H. Rep. 93-1185. See also W.R. Grace & Co. v. United States EPA, 261 F.3d 330, 339 (3d Cir. 2001).

²¹ See H. Rep. 93-1185, at 36; B.F. Goodrich v. Murtha, 697 F. Supp. at 96 (quoting H. Rep. 93-1185).

²² See In re FCX, Inc., 96 B.R. 49, 55 (Bankr. E.D.N.C. 1989) (“even when there is an inordinate delay [by EPA], the court must find an immediate danger to public health if in fact one exists”).

²³ 695 F. Supp. at 1076.

²⁴ See 40 C.F.R. Section 141.801.

Substantial Endangerment

The term “substantial endangerment” can apply to a range of existing or threatened hazards and should not be limited to extreme circumstances. Actual reports of human illness are not required to establish the presence of a “substantial” endangerment to water consumers.²⁵ One court, interpreting “substantial endangerment” as used in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), has stated that “the word ‘substantial’ does not require quantification of the endangerment (e.g., proof that a certain number of persons will be exposed, that ‘excess deaths’ will occur, or that a water supply will be contaminated to a specific degree).”²⁶ Instead, the court found, an endangerment is substantial if there is a reasonable cause for concern that someone may be exposed to a risk of harm. The court stated that a number of factors (e.g., the quantities of CERCLA hazardous substances involved, the nature and degree of their hazards, or the potential for human exposure) may be considered in determining whether there is a reasonable cause for concern, but in any given case, one or two factors may be so predominant as to be determinative of the issue.²⁷ Of course, the emergency authority of Section 1431 should not be used in cases where the risk of harm is completely speculative in nature or is *de minimis* in degree.²⁸

House Report 93-1185 gives the following examples of what may be considered a “substantial” endangerment:

- “a substantial likelihood that contaminants capable of causing adverse health effects will be ingested by consumers if preventative action is not taken.”
- “a substantial statistical probability exists that disease will result from the presence of contaminants in drinking water.”
- “the threat of substantial or serious harm (such as exposure to carcinogenic agents or other hazardous contaminants).”²⁹

There is no bright line test for when Regions and OECA should consider emergency action; it is always a case specific decision based on the facts in a particular matter. It is important to remember that EPA may consider various types of “information” when determining whether a contaminant “may present an imminent and substantial endangerment to the health of persons.” As part of the required consultation with OECA, a Region can discuss with OECA whether the information available is sufficiently credible and warrants the use of Section 1431’s emergency powers. For a nonexhaustive list of appropriate, potential types of supporting information, see Attachment 4.

²⁵ United States v. North Adams, 777 F. Supp. 61, 84 (D. Mass. 1991).

²⁶ Conservation Chemical Co., 619 F. Supp. at 194.

²⁷ Id.

²⁸ *See* H.R. 93-1185, at 35.

²⁹ Id. at 36.

Role of State and Local Authorities

One of the crucial requirements of a Section 1431 enforcement action is that “appropriate State and local authorities have not acted to protect the health of such persons.”³⁰ Generally, EPA considers the lack of sufficient actions of State and local officials to be a finding the Agency must make, supported by a record, when taking an action under Section 1431.³¹ Accordingly, Section 1431 should not be used to deal with problems that are being handled effectively by state (including tribes or territories) or local governments in a timely fashion.³² Effective and timely State and local actions could include the issuance of an administrative order containing enforceable compliance deadlines and, if necessary, the provision of alternative drinking water. In other situations, for instance where E. coli was detected at a child care facility, an example of a timely State action was the development of an action plan, approved by the Region, that included: discontinued use of the contaminated well; installation of a new, deeper well; provision of interim bottled water to employees; and delay of school start date until a new, safe well was online.

OECA recognizes there are sensitivities associated with determining whether a State or local authority has not acted to protect the health of persons. Section 1431 does not require any finding that a State or local authority has “failed” to act.³³ When assessing State and local actions, it is not a black and white test. Instead, there is often a range of potential responses to a specific situation. For example, State and local authorities intentionally may defer action to, or request action by, EPA because the Section 1431 authority may be more powerful or expeditious. In addition, the State or local authorities may not have acted due to lack of jurisdiction. In other cases, a State may have made a good faith effort to address an emergency, but EPA may determine the State actions have not been effective, or are no longer effective, to protect public health, and, thus, that additional actions are needed.³⁴ These additional actions may help fill a gap and could be included in an EPA Section 1431 action (e.g., State agency has only provided alternative water to a portion of an impacted area, but information indicates other people are at risk so EPA addresses the rest in a federal order). Further, State or local authorities may decide to act jointly with EPA. In such cases, EPA would determine that State and local authorities have not acted (on their own) to sufficiently protect the health of persons. Therefore, EPA may proceed with Section 1431 actions when State and local authorities are working jointly with EPA.

Section 1431 also provides that before taking action and to the extent practicable in light of the imminent endangerment, EPA shall consult with the State and local authorities to confirm the information on which EPA is basing the proposed action and to determine what action the State and local

³⁰ See Footnote 1.

³¹ It should be noted one court has held that the receipt of such information is a jurisdictional prerequisite to action under this section. United States v. Occidental Petroleum Corp., No. 79-989 (E.D. Cal. 1980).

³² See H.R. Rep. 93-1185, at 35. This implements legislative intent expressed in House Report 93-1185 to “direct the Administrator to refrain from precipitous preemption of effective State or local emergency abatement efforts.”

³³ Reading the SDWA to say that any action by the state (even if minor or ineffective) deprives EPA of authority to act would strip EPA of its statutory emergency powers and be at odds with the clear purpose of the statute to preserve and protect the public health. Trinity Am. Corp. v. EPA, 150 F.3d at 397.

³⁴ Id. at 398-399.

governments are taking or will take. Under Section 1431, then, it is not mandatory to consult with the State and local authorities (i.e., they should be contacted “to the extent practicable”).³⁵ Nevertheless, the Regions should be aware that EPA will need a basis in the record for the finding. This written basis could be simply a log of a telephone conversation or correspondence between EPA and the State and local authorities.

If EPA has information that State/local agencies are going to act, then EPA must decide whether the action is timely and protective of public health.³⁶ If EPA determines that the action is insufficient and State and local agencies do not plan to take additional actions to ensure public health protection, in a timely way, then EPA should proceed with an action under Section 1431.³⁷

Unlike under Sections 1414 or 1423, a notice of violation (NOV) need not be issued prior to taking a Section 1431 action. No violation of any requirement is needed for a Section 1431 order. An NOV, even if issued, would not be a means of consulting with the State and local authorities to determine whether they have acted in a timely and appropriate manner to protect the health of persons. Rather, an NOV serves as a prerequisite under Sections 1414 or 1423 for the EPA to take certain enforcement actions in primacy states.

The Regions should note that they need to determine that neither State nor local authorities acted adequately to protect public health before bringing a Section 1431 action. The State can be of assistance to EPA in making this determination because the State should be able to identify the appropriate local authorities and may be aware of whether these authorities have taken any actions.

It is important to remember EPA is authorized to act under Section 1431 regardless of whether a State, territory or tribe has primary enforcement authority. EPA has invoked Section 1431 in cases where it is not the primacy agency, but is instead exercising its oversight authority and taking independent, federal action to address an emergency.

³⁵ This language was added from an amendment offered during a House debate on November 19, 1974: “To the extent [the EPA Administrator] determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking.” In explaining the amendment, Representative Murphy of Illinois stated that it “requires [] the Federal Administrator [to] consult with State and local authorities as to the emergency, what information it is based on, and what action he proposes to take, so that [EPA] can work hand in glove with the local and State authorities.” See 120 Cong. Rec. 36400 (1974).

³⁶ “State health authorities, therefore, must not only have acted, but acted in a way adequate to protect the public health; and EPA, the agency with expertise in this area, determines if the state efforts were adequate.” Trinity Am. Corp., 150 F.3d at 398.

³⁷ Congressional reports and floor debates support the view that Congress inserted this language in Section 1431 (and added certain procedural prerequisites before allowing federal enforcement in a primacy state) simply to avoid duplication between the federal and state enforcement and to preserve the primary responsibility for protecting the public at the state and local levels. H.R. Rep. 93-1185, at 22-34, 35; S. Rep. No. 93-231, 93rd Cong., 1st Sess. 9, 10 (1973); 120 Cong. Rec. 36372, 36374-75, 37591-92 (1974).

Remedial Actions That May Be Ordered

Once EPA determines that action under Section 1431 is needed, a very broad range of options is available. The statute provides that EPA may take actions as may be necessary to protect the health of persons. Moreover, EPA may take such actions notwithstanding any exemption, variances, permit, license, regulation, order, or other requirement that would otherwise apply.³⁸

The actions that EPA may take may include (but are not limited to):³⁹

- issuing orders as necessary to protect the health of persons who are or may be users of such system (including travelers), including orders that require:
 - the provision of alternative water supplies, at no cost to the consumer, by persons who caused or contributed to the endangerment (e.g., provision of bottled water, installing and maintaining treatment, drilling of new well(s), connecting to an existing PWS).
 - information about actual or impending emergencies (e.g., if standard information gathering tools like SDWA Section 1445 would not result in an expeditious response or may not apply in a certain case).
 - public notification of hazards (e.g., door-to-door, posting, newspapers, electronic media).
 - an investigation to determine the nature and extent of the contamination in the environment.
 - a survey to identify PWSs, private supply wells or ground water monitoring wells near potentially contaminated areas.⁴⁰
 - monitoring of regulated or unregulated potential or identified contaminants.
 - development of a feasibility study to assess potential remedial actions to abate an endangerment.
 - an engineering study proposing a remedy to eliminate the endangerment and a timetable for its implementation.

³⁸ The legislative history supports this view. *See* H.R. Rep. 93-1185, at 35.

³⁹ The House Report specifically mentions several of these listed actions as among those EPA may take.

⁴⁰ Portion of the emergency order mandating that Trinity identify all potential users of the contaminated wells in the three-quarter-mile area is not a “‘limitless’ or unduly burdensome task.” *Trinity Am. Corp.*, 150 F.3d at 401.

- control of the source of contaminants that may be contributing to the endangerment, including by halting disposal.
- cleanup of contaminated soils endangering an USDW.
- commencing a civil action for appropriate relief including a restraining order, or a temporary or permanent injunction. The injunction may require the PWS owner or operator, UIC well owner or operator, or the responsible party to take steps to abate the hazard.

Use of Judicial vs. Administrative Orders

Except where the responsible party is a federal agency, the Region may issue a Section 1431 administrative order and/or ask the Department of Justice to file a civil judicial action.⁴¹ A civil referral may be preferable to a Section 1431 administrative order if the Region believes the responsible party will be uncooperative or recalcitrant or if the necessary relief is long-term or otherwise appropriate for supervision by a U.S. District Court (e.g., expected cost of relief is high).

A Section 1431 administrative order offers EPA some unique powers. EPA may issue unilateral Section 1431 orders or enter into administrative orders on consent. Unlike compliance orders (e.g., issued under Sections 1414 or 1423), Section 1431 orders enable the Agency (versus the courts) to order actual injunctive-type relief. This relief is limited only by the usual constraints of the Administrative Procedure Act (APA). The APA requires all Agency actions be reasonable and not “arbitrary or capricious.”⁴² Thus, by issuing an administrative order instead of filing a civil judicial action, the Agency rather than the District Court determines the scope and timing of appropriate relief in the first instance.

The recipients of an administrative order may challenge its terms. Under the judicial review provisions of SDWA Section 1448, the petition must be filed within 45 days in the appropriate Court of Appeals (a District Court does not have jurisdiction to hear challenges to a Section 1431 administrative order). If the recipient fails to meet this condition, he or she loses the right to contest the terms of the order.

Section 1431 administrative orders have long been considered final agency action subject to review under Section 1448. Following the Supreme Court’s 2012 decision in *Sackett*,⁴³ on March 21, 2013, OECA issued guidance to the Regions about “Language Regarding Judicial Review of Certain Administrative Enforcement Orders Following the Supreme Court Decision in *Sackett v. EPA*.” In

⁴¹ In the case of a federal agency recipient, the action will be a Section 1431 administrative order.

⁴² 5 U.S.C. Section 706(2).

⁴³ *Sackett v. EPA*, 132 S. Ct. 1367 (2012).

the March 2013 guidance, OECA provided specific language to be included in unilateral orders, such as Section 1431 orders (i.e., respondent may seek federal judicial review) and administrative orders on consent (i.e., respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review). Regions should include the appropriate *Sackett* language in their administrative actions (whether unilateral or on consent).

Except where the responsible party is a federal agency, any enforcement actions to require compliance with an administrative order or to seek civil penalties for its violation must be in District Court. Where the recipient is a federal agency, EPA may issue an administrative penalty order under Section 1447(b) of the SDWA for the federal agency's failure to comply with a Section 1431 administrative order.⁴⁴ A recipient who violates or fails or refuses to comply with the terms of the administrative order, may be subject to a civil penalty pursuant to Section 1431(b); a federal agency recipient may be subject to a penalty pursuant to Section 1447(b).⁴⁵

Relationship between Section 1431 and Other EPA Emergency Authorities

A Section 1431 order can be taken in conjunction with emergency orders under other statutes. Emergency provisions include:

- Resource Conservation and Recovery Act (RCRA) - Section 7003
- CERCLA - Section 106⁴⁶
- Clean Water Act (CWA) – Sections 504(a) and 311
- Toxic Substances Control Act - Section 7
- Clean Air Act (CAA) - Sections 112(r)(9) or 303

Although similar in general terms, each of the emergency provisions of these statutes is somewhat different. Guidance on EPA's authority to address imminent and substantial endangerment under CERCLA, RCRA, CWA and CAA have been issued by the Agency.⁴⁷ For example, Section

⁴⁴ For more information about EPA's federal facility penalty authority under the SDWA, see "Guidance on Federal Facility Penalty Order Authority Under the Safe Drinking Water Act, as amended in 1996," signed on May 29, 1998 by Steven A. Herman, Assistant Administrator, Office of Enforcement and Compliance Assurance (Steven A. Herman memorandum).

⁴⁵ See Footnote 5 above regarding annual adjustments for inflation. Also note that for federal agency recipients, "As a matter of practice, EPA will seek penalties against a Federal agency which violates or fails or refuses to comply with a § 1431 order not to exceed [the maximum penalty for non-federal parties] for each day in which such violation occurs or failure to comply continues." Steven A. Herman memorandum, Footnote 5.

⁴⁶ CERCLA Section 106 orders against Executive Branch agencies require the concurrence of the Attorney General.

⁴⁷ "Guidance on CERCLA Section 106(a) Unilateral Administrative Orders for Remedial Designs and Remedial

7003 of RCRA is very broad in that it allows for protection of the “environment.”⁴⁸ However, it is somewhat limited in that the threat must be caused by a “solid waste.” Section 1431, on the other hand, is limited to the protection of a PWS or an USDW, but covers a broad universe of “contaminants.” Regions may consider issuing joint orders under more than one of these statutory authorities, or separate orders that complement each other. When issuing orders under more than one authority, Regions should be sure to coordinate with each appropriate office. However, if the order is being unduly delayed by coordination difficulties, the Region should proceed with the Section 1431 order, followed by an order under the other statute or statutes.

Parties over Whom Section 1431 Grants EPA Authority

Section 1431 by its terms gives EPA broad discretion to issue any orders necessary to protect the health of persons. EPA may issue Section 1431 orders not only to an owner or operator of a PWS, but also, for example, to federal, state, tribal, territorial or local governments; owners or operators of underground injection wells; area or point source polluters; or to any other person whose action or inaction requires prompt regulatory intervention to protect public health.⁴⁹

In cases where the responsible party is not clearly known, one option is to issue the order to the most likely contributor(s) based on the type of contaminant(s) found in the PWS and/or USDW compared to current and past land practices in the area. As part of the order, EPA can require that a study be performed to more clearly determine the responsible parties. In such a case, additional orders may be issued as knowledge accumulates. Thus, an initial Section 1431 order may merely request records, samples, or other existing data/documents to help clarify what or who caused the endangerment before ordering other actions be taken, and a subsequent order(s) would

Actions,” U.S. EPA, OSWER Directive No. 9833.0-1a, March 7, 1990. “Guidance on CERCLA Section 106 Judicial Actions,” U.S. EPA, OSWER Directive No. 9835.7, February 24, 1989. “Issuance of Administrative Orders for Immediate Removal Actions,” U.S. EPA, OSWER Directive No. 9833.1, February 21, 1984. “Use of CERCLA § 106 to Address Endangerments That May Also be Addressed Under Other Environmental Statutes,” U.S. EPA, January 18, 2001. “Endangerment Assessment Guidance,” U.S. EPA, OSWER Directive 9850.0-1, November 22, 1985. “Guidelines for Using the Imminent Hazard, Enforcement and Emergency Response Authorities of Superfund and Other Statutes,” U.S. EPA, May 11, 1982. “Guidance on the Use of Section 7003 of RCRA,” U.S. EPA, October 20, 1997. “Guidance on Using Order Authority under Section 112(r)(9) of the Clean Air Act, as Amended, and on Coordinated Use with Other Order and Enforcement Authorities,” U.S. EPA, April 17, 1991. “Guidance on Use of Section 303 of the Clean Air Act,” U.S. EPA, September 15, 1983. “Guidance on Use of Section 504, the Emergency Powers Provision of the Clean Water Act,” U.S. EPA, July 30, 1993. “Final Guidance on the Issuance of Administrative Orders Under Section 311(c) and (e) of the Clean Water Act,” U.S. EPA, July 1, 1997. “Toxic Substances Control Act: Compliance/Enforcement Guidance Manual,” U.S. EPA, August 1984.

⁴⁸ Under Section 7003 of RCRA, EPA may “authorize[] the cleanup of a site, even a dormant one, if that action is necessary to abate a present threat to the public health or the environment[,]” but that it ‘could not order the cleanup of a waste disposal site which posed no threat to health or the environment.’ Because the ‘authority conferred . . . by section 1431 of SDWA is quite as broad as that conferred by RCRA,’ we believe the limitations under the latter provision are equally applicable to the former. As is the case with RCRA, EPA cannot order cleanup under section 1431 of SDWA when there is no threat to the public’s health.” W.R. Grace & Co., 261 F.3d at 340 (citing United States v. Price, 688 F.2d 204, 214 (3d Cir. 1982)).

⁴⁹ See H.R. 93-1185, at 35.

address the potential harm. For example, if a PWS is contaminated with benzene, toluene, and xylene, and there are five gasoline service stations located near the PWS, an initial order could require each of the service stations to test for leaks in their underground storage tanks. However, Regions should keep in mind that the delay involved with such an approach (e.g., a series of orders) must be weighed against the danger posed by the contaminant(s) in the water, the need to protect public health as soon as possible and concerns with issuing a broader initial order with additional requirements. For instance, in an area with karst geology and more than one source of nitrate contamination, the Agency, to protect public health, has the authority to issue multiple formal administrative orders containing enforceable milestones (e.g., control discharges) and, if necessary, requirements for the provision of alternative drinking water until compliance is achieved. Issues like this should be discussed during the required consultation with OECA before taking Section 1431 action.

EPA may even use Section 1431 authority to reach parties that are not responsible for the endangerment. Orders to a non-responsible party ordinarily should be limited to those instances where no responsible party exists or is suspected and the issuance of an order to a non-responsible party is the most appropriate means to protect or mitigate the endangerment. For example, an order may require a PWS, contaminated by unknown polluters, to filter or relocate its water source.

Taking Action Under Section 1431

Components of an Administrative Order

The recommended basic components of a Section 1431 order are:

- EPA's Statutory Authority
- Findings of Fact
- Conclusions of Law
- Conditions or Actions Required by the Emergency Order - Should also contain a statement that requires the respondent to advise the Agency of his or her intentions to comply with the terms of the order in a specified short time frame (e.g., 24 hours)
- General provisions to address issues such as modification, termination and judicial review (e.g., the *Sackett* language described above)
- Name and Address of EPA Contact

- Opportunity to Confer for Orders Against Federal Agencies⁵⁰

Civil Judicial Action

If a judicial order is sought, the Agency must still determine that an “imminent and substantial endangerment” exists. If proceeding judicially, the Region, OECA and DOJ will draft and discuss the appropriate court filings.

Degree of Support

Development of a Record

The issuance of a Section 1431 order as an administrative action must be supported by an adequate written record. Therefore, the Regions should ensure that the findings of fact in the order are adequately supported by documents in the record showing the basis for EPA’s technical determinations. Similarly, before bringing a judicial action under Section 1431, Regions should ensure that sufficient information has been compiled and can be presented to a court to support the action. This information would take the form of technical documents (e.g., such as statements from a toxicologist), other background materials, such as records of correspondence indicating the State and local authorities are not acting sufficiently to protect public health or have requested that EPA act on their behalf, and memoranda to the file. Regions should refer to OECA’s May 16, 2013 “Guidance on Developing Administrative Records for Unilateral Administrative Enforcement Orders.” Additionally, EPA issued general guidance on administrative records (“EPA’s Action Development Process: Administrative Records Guidance,” September 2011).

Absolute Proof Not Required

Even though EPA should strive to create a record basis to support its Section 1431 actions, the Regions should recognize that EPA does not need uncontroverted proof that contaminants are present in or likely to enter the water supply or that an imminent and substantial endangerment may be present before acting under Section 1431.⁵¹ Similarly, EPA does not need uncontroverted proof that the recipient of the order is the person responsible for the contamination or threatened contamination. Courts generally will give deference to EPA’s technical findings of imminent and substantial endangerment. The purpose of Section 1431 actions is to prevent harm from occurring. Extensive efforts to document the available information should be avoided, where the delay in obtaining such information or proof could impair attempts to prevent or reduce the hazardous situation. The Region may use, for example, sampling data from public and/or private wells, the exceedance of the unreasonable risk to health level, data from toxicological studies, and/or the opinion of a

⁵⁰ See Steven A. Herman memorandum.

⁵¹ See U.S. v. Conservation Chemical Co., 619 F. Supp. at 193 (because of scientific and medical uncertainties, proof with certainty is impossible).

toxicologist or other expert as evidence that an “imminent and substantial endangerment” may exist.⁵²

State and Local Authorities Have Not Acted

As stated previously, before taking an action under Section 1431, EPA must explain and document, as necessary, why the ordered action is needed even if state or local governments may have taken or are taking actions to protect public health. As highlighted above, EPA makes this determination in each specific case and, significantly, when assessing the actions of a State, tribal, territory or local authority, potential responses may vary based on particular factual circumstances. This is another important issue to discuss with OECA during the consultation process when contemplating a Section 1431 action in a particular matter. The Region should have a written basis for its finding that federal action is necessary notwithstanding action by a State, tribal, territorial or local authority; that state or local authorities requested assistance; or that EPA is working with the State or local authority. This may consist of a telephone log or written communications (e.g., emails or letters), that serves to document contact between EPA and State and local authorities.

Headquarters Contact

The Region must consult with OECA before issuing an administrative Section 1431 order or referring a Section 1431 matter to DOJ. OECA will coordinate with other Headquarters offices as appropriate (e.g., OW, OGC). OECA is committed to providing feedback to the Regions as soon as possible, which typically is within 24 to 48 hours, and has responded even earlier where the endangerment is acute. Consulting with OECA staff in advance may protect against subsequent adverse judicial determinations.

Regardless of whether the Region prepares an administrative order or requests that a court issue a judicial order, OECA requests that the Region submit copies of all final orders for its central files. The Region’s emergency action should also be reflected in the Agency’s Integrated Compliance Information System (ICIS). ICIS is the database of record for all federal enforcement actions.

No Citizen’s Suits To Compel EPA Action Under Section 1431

SDWA Section 1449 authorizes citizen’s suits against EPA when the Agency has failed to take actions that are mandatory under the statute. Because EPA’s authority to act under Section 1431 is discretionary, citizen’s suits to compel EPA to act under Section 1431 are not authorized.⁵³

⁵² See Attachment 4.

⁵³ See U.S. v. Hooker Chemicals & Plastics Corp., 101 F.R.D. 451, 455 (W.D.N.Y. 1984).

ATTACHMENT 1

Citation from 42 U.S.C. Section 300i (SDWA Section 1431)

SEC. 1431. (a) Actions authorized against imminent and substantial endangerment to health. Notwithstanding any other provision of this title, the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water, or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals), which may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment, and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

(b) Penalties for violations; separate offenses. Any person who violates or fails or refuses to comply with any order issued by the Administrator under subsection (a)(1) may, in an action brought in the appropriate United States district court to enforce such order, be subject to a civil penalty of not to exceed \$ 15,000 for each day in which such violation occurs or failure to comply continues.

ATTACHMENT 2

Citation from H.R. Rep. No. 1185, 93rd Cong., 2d Sess.

Section 1431 reflects the Committee's determination to confer completely adequate authority to deal promptly and effectively with emergency situations which jeopardize the health of persons.

The authority conferred by this section is intended to override any limitations upon the Administrator's authority found elsewhere in the bill. Thus, the section authorizes the Administrator to issue such orders as may be necessary (including reporting, monitoring, entry and inspection orders) to protect the health of persons, as well as to commence civil actions for injunctive relief for the same purpose.

The authority to take emergency action is intended to be applicable not only to potential hazards presented by contaminants which are subject to primary drinking water regulations, but also to those presented by unregulated contaminants.

The authority conferred hereby is intended to be broad enough to permit the Administrator to issue orders to owners or operators of public water systems, to State or local governmental units, to State or local officials, owners or operators of underground injection wells, to area or point source polluters, and to any other person whose action or inaction requires prompt regulation to protect public health. Such orders may be issued and enforced notwithstanding the existence of any exemption, variance, permit, license, regulation, order, or other requirement. Such orders may be issued to obtain relevant information about impending or actual emergencies, to require the issuance of notice so as to alert the public to a hazard, to prevent a hazardous condition from materializing, to treat or reduce hazardous situations once they have arisen, or to provide alternative safe water supply sources in the event any drinking water source which is relied upon becomes hazardous or unusable.

Willful violation of the Administrator's order is made punishable by a fine of up to \$5,000 per day of violation.

In using the words "that appropriate State or local authorities have not acted to protect the health of persons," the Committee intends to direct the Administrator to refrain from precipitous preemption of effective State and local emergency abatement efforts. However, if State or local efforts are not forthcoming in timely fashion or are not effective to prevent or treat the hazardous condition, this provision should not bar prompt enforcement by the Administrator.

In using the words "imminent and substantial endangerment to the health of persons," the Committee intends that this broad administrative authority not be used when the system of regulatory authority provided elsewhere in the bill could be used adequately to protect the public health. Nor is the emergency authority to be used in cases when the risk of harm is remote in time, completely speculative in nature, or *de minimis* in degree. However, as in the case of U.S. v. United States Steel, Civ. Act. No. 71-1041 (N.D. Ala. 1971), under the Clean Air Act, the Committee intends that this language be

construed by the court and the Administrator so as to give paramount importance to the objective of protection of the public health. Administrative and judicial implementation of this authority must occur early enough to prevent the potential hazard from materializing. This means that “imminence” must be considered in light of the time it may take to prepare administrative orders or moving papers, to commence and complete litigation, and to permit issuance, notification, implementation, and enforcement of administrative or court orders to protect the public health.

Furthermore, while the risk of harm must be “imminent” for the Administrator to act, the harm itself need not be. Thus, for example, the Administrator may invoke this section when there is an imminent likelihood of the introduction into the drinking water of contaminants that may cause health damage after a period of latency.

Among those situations in which the endangerment may be regarded as “substantial” are the following: (1) a substantial likelihood that contaminants capable of causing adverse health effects will be ingested by consumers if preventive action is not taken; (2) a substantial statistical probability that disease will result from the presence of contaminants in drinking water; or (3) the threat of substantial or serious harm (such as exposure to carcinogenic agents or other hazardous contaminants).

ATTACHMENT 3

Office of Inspector General, Management Alert, Report No. 17-P-0004, “Drinking Water Contamination in Flint, Michigan, Demonstrates a Need to Clarify EPA Authority to Issue Emergency Orders to Protect the Public” (October 20, 2016).



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Protecting America's Waters

Management Alert:
**Drinking Water Contamination
in Flint, Michigan, Demonstrates
a Need to Clarify EPA Authority
to Issue Emergency Orders to
Protect the Public**

Project No. 17-P-0004

October 20, 2016



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Abbreviations

EPA	U.S. Environmental Protection Agency
MDEQ	Michigan Department of Environmental Quality
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
SDWA	Safe Drinking Water Act

Cover photo: Flint Water Plant, Flint, Michigan. (EPA OIG photo)

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At a Glance

Why We Did This Review

The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) is reviewing the circumstances of, and the EPA's response to, the contamination in the city of Flint, Michigan's, community water system, including the EPA's exercise of its oversight authority. We are issuing this report to alert the EPA about factors that delayed its intervention using emergency authority under Section 1431 of the Safe Drinking Water Act (SDWA). When our review is completed, we plan to issue a subsequent report.

After Flint switched its drinking water supply in April 2014, inadequate treatment exposed many of the residents to lead. Emergency authority was available to EPA to take actions to protect the public from contamination.

This report addresses the following EPA goals or cross-agency strategies:

- *Protecting America's waters.*
- *Protecting human health and the environment by enforcing laws and assuring compliance.*
- *Working to make a visible difference in communities.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit www.epa.gov/oig.

Listing of [OIG reports](#).

Management Alert: Drinking Water Contamination in Flint, Michigan, Demonstrates a Need to Clarify EPA Authority to Issue Emergency Orders to Protect the Public

What We Found

EPA Region 5 had the authority and sufficient information to issue a SDWA Section 1431 emergency order to protect Flint residents from lead-contaminated water as early as June 2015. Region 5 had information that systems designed to protect Flint drinking water from lead contamination were not in place, residents had reported multiple abnormalities in the water, and test results from some homes showed lead levels above the federal action level.

To avoid future public health harm through drinking water contamination, the EPA needs to clarify for its employees how its emergency authority can and should be used to intervene in a public health threat.

EPA Region 5 did not issue an emergency order because the region concluded the state's actions were a jurisdictional bar preventing the EPA from issuing a SDWA Section 1431 emergency order. However, the EPA's 1991 guidance on SDWA Section 1431 orders states that if state actions are deemed insufficient, the EPA can and should proceed with a SDWA Section 1431 order, and the EPA may use its emergency authority if state action is not protecting the public in a timely manner. However, EPA Region 5 did not intervene under SDWA Section 1431, the conditions in Flint persisted, and the state continued to delay taking action to require corrosion control or provide alternative drinking water supplies.

In September 2015, EPA Region 5 first briefed the EPA headquarters' Office of Enforcement and Compliance Assurance (OECA) about Flint's water crisis. OECA recommended the region take SDWA Section 1431 action. During the fall, the state began to take actions to correct the problems in Flint. EPA Region 5 maintained that the state was acting, but the contamination continued. The EPA Administrator subsequently directed OECA to issue an emergency order on January 21, 2016. The emergency order stated the EPA had determined that Flint's and Michigan's responses to the drinking water crisis were inadequate, and the EPA ordered specific actions to address a public health threat.

These situations should generate a greater sense of urgency. We are issuing a management alert report on this matter to promote awareness and facilitate immediate EPA action. The OIG's evaluation of the Flint drinking water crisis is ongoing, and we expect to issue an additional report when our work concludes.

Recommendations

We recommend that OECA update the EPA's 1991 guidance on SDWA Section 1431 emergency authority. We also recommend that OECA require all relevant EPA drinking water and water enforcement program management and staff to attend training on SDWA Section 1431 authority.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

October 20, 2016

MEMORANDUM

SUBJECT: Management Alert: Drinking Water Contamination in Flint, Michigan,
Demonstrates a Need to Clarify EPA Authority to Issue Emergency Orders
to Protect the Public
Report No. 17-P-0004

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Cynthia Giles, Assistant Administrator
Office of Enforcement and Compliance Assurance

During our evaluation to examine the circumstances of contamination in the city of Flint, Michigan's, community water system, including the U.S. Environmental Protection Agency's (EPA's) response to the situation, we became aware of significant factors that delayed EPA intervention in Flint using its emergency authority granted under the Safe Drinking Water Act. We identified the need for the EPA to update and clarify how and when it should act in response to drinking water contamination. As a result, we are providing you with this management alert. We plan to issue a subsequent report when our evaluation concludes.

This report represents the opinion of the Office of Inspector General (OIG) and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures. Accordingly, the findings described in the report are not binding upon the EPA in any enforcement proceeding brought by the EPA or the U.S. Department of Justice.

Action Required

Prior to issuing this report, we met with agency officials to discuss our report, and the officials agreed with our recommendations, with revisions. Please provide a formal written response to this report within 30 calendar days that includes planned corrective actions and projected completion dates for the recommendations. Your response will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

This report will be available at www.epa.gov/oig.

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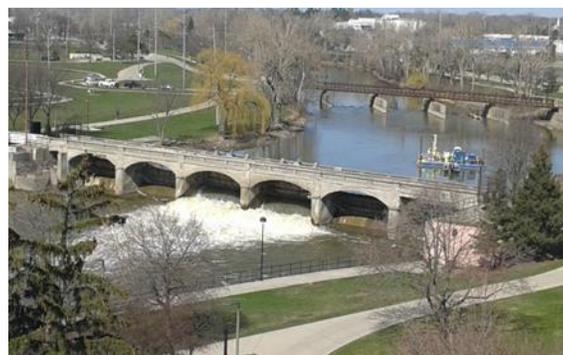
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Purpose

The U.S. Environmental Protection Agency's (EPA's) Office of Inspector General (OIG) has an ongoing review to examine the circumstances of, and the EPA's response to, the contamination in the city of Flint, Michigan's, community water system, including the EPA's exercise of its oversight authority. The purpose of our issuing this initial report is to alert the EPA of key factors that delayed its intervention in Flint using its emergency authority granted under the Safe Drinking Water Act (SDWA), and to recommend that the EPA update and clarify how and when it should intervene. When our review is complete, we plan to issue a subsequent report.

Background

Inadequate drinking water treatment exposed many of the nearly 100,000 residents who were customers of the city of Flint community water system to lead. Flint switched from purchasing treated water from Detroit Water and Sewerage to sourcing and treating its water supply from the Flint River in April 2014. Treated water from Detroit Water and Sewerage included a corrosion-inhibiting additive, which lined pipes and connections to minimize the level of lead leaching into drinking water. Flint's treatment of the new drinking water source did not include a process for reducing the corrosion of lead-containing pipes and connections, which allowed lead to begin leaching into drinking water.



Flint River in Flint, Michigan. (EPA OIG photo)

Potential Health Effects From Lead in Drinking Water

High levels of *lead* may cause liver or kidney damage. Long-term lead exposure in adults can lead to nervous system problems and reproductive, brain and kidney damage, and can ultimately cause death. Children under the age of 6 are especially vulnerable to lead poisoning, which can severely affect mental and physical development.

After the source switch, residents began reporting to the EPA that there were color and odor problems with the water. In February 2015, the public health risk escalated as indications of lead were identified in the drinking water supply. In April 2015, the EPA discovered that the necessary corrosion control had not been added in the community water system since the source switch. In August and September 2015, private researchers identified numerous homes with lead contamination, and also identified an increase in the blood lead levels of children living in Flint.

In October 2015, Flint switched back to purchasing treated water from Detroit Water and Sewerage. In January 2016, the EPA Administrator directed the headquarters' Office of Enforcement and Compliance Assurance (OECA) to issue an emergency administrative order under Section 1431 of the SDWA. This order required the city to, among other things: continue to add corrosion inhibitors; demonstrate it has the technical, managerial and financial capacity to operate the system presently and before it switches to a new water source; and sample water quality and make data publicly available.

On the day the EPA issued the emergency order, the EPA Administrator established the agency's *Policy on Elevation of Critical Public Health Issues*. This policy, which supports the EPA's mission to protect human health and the environment, calls for EPA leaders to encourage staff to elevate issues that have the following characteristics:

- “There appears to be a substantial threat to public health;
- “EPA is or can reasonably be expected to be a focus of the need for action; and/or
- “Other authorities appear to be unable to address or are unsuccessful in effectively addressing such a threat;
- “Recourse to normal enforcement and compliance tools is not appropriate or unlikely to succeed in the near term;
- “High and sustained public attention is possible.”

After the emergency order was issued, OECA provided SDWA enforcement training to some headquarters and regional managers and staff. In addition, the EPA Region 5 acting Regional Administrator stated he is taking steps to implement the Administrator's new policy.

What SDWA and EPA Guidance Provides

Congress enacted the SDWA in 1974 to protect the quality of drinking water in the United States. Public water systems are required to comply with SDWA. States, territories and tribes (collectively referred to as “states” herein) have primary implementation and enforcement authority.¹ The EPA retains national oversight responsibility for state administration and enforcement of SDWA.

Section 1431 provides the EPA with emergency authority to address imminent and substantial endangerment to human health from drinking water contamination. The EPA can use this discretionary authority whenever:

¹ Nearly all states, including Michigan, have primacy to implement the SDWA. Primacy is granted to states that adopt regulations at least as stringent as national requirements, develop adequate procedures for enforcement (including conducting monitoring and inspections), adopt authority for administrative penalties, and maintain records and make reports as the EPA may require.

- (1) contamination is in or likely to enter a drinking water source which may present an imminent and substantial endangerment to the health of persons; and
- (2) the appropriate state and local authorities have not acted to protect human health.

The EPA's authorized actions include issuing administrative orders requiring specific actions that are necessary to protect human health or commencing a civil judicial action.

In 1994, the EPA Administrator delegated the authority to issue administrative emergency orders under Section 1431 to EPA Regional Administrators and, in multi-regional cases or cases of national significance, to the Assistant Administrator for OECA. The authority to make a Section 1431 judicial referral remains with headquarters.

The EPA's *Final Guidance on Emergency Authority under Section 1431 of the Safe Drinking Water Act (1991)* is designed, in part, to encourage more widespread use of the EPA's Section 1431 authority by more fully explaining situations where this authority may be applied. This guidance clarifies that the EPA may use its emergency authority even when a state is acting or is going to act. Regarding whether the state action is in fact protecting the public from the contaminants in a timely fashion:

If EPA has information that State/local agencies are going to act, EPA must decide whether the action is timely and protective of public health. If EPA determines that the action is insufficient and State and local agencies do not plan to take stronger or additional actions to ensure public health protection, in a timely way, EPA should proceed with an action under Section 1431.

Scope and Methodology

We began our evaluation in February 2016, and our work is ongoing. We are conducting this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our work to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our ongoing work may provide supplemental findings to this report. We believe that the evidence obtained provides a reasonable basis for the findings and conclusions in this report based on our audit objectives.

We reviewed the laws, regulations, policies, procedures and guidance related to the SDWA program. At EPA headquarters, we interviewed the EPA Administrator, and staff and officials from the Office of General Counsel, Office

of Water and OECA. We also interviewed staff and officials in EPA Region 5, including the former EPA Region 5 Regional Administrator and the Region 5 acting Regional Administrator. Further, we interviewed staff from the Michigan Department of Environmental Quality (MDEQ), former and current employees of the city of Flint, and Flint residents. In addition, we reviewed criteria documents provided to us by the EPA and MDEQ.

Results of Review

Based on information we obtained, EPA Region 5 had the information it needed about the drinking water issues in Flint in June 2015 to exercise its discretionary authority to issue an emergency order under SDWA Section 1431. The information EPA Region 5 had in June 2015 met the two requirements necessary for an emergency order under SDWA Section 1431, as shown in Table 1:

Table 1: SDWA Section 1431 Emergency Order Requirements and EPA's Information about Flint Events in June 2015

Emergency order requirement	EPA's information about Flint events by June 2015
1. The contamination may present imminent and substantial endangerment to human health.	<ul style="list-style-type: none"> • EPA Region 5 received the first Flint drinking water distribution system lead sampling test result, indicating a requirement for corrosion control (February 2015).² • State informed EPA Region 5 that no corrosion control was in place (April 2015). • EPA Region 5 had information that at least four homes had lead in drinking water in concentrations above the action level (June 2015).³
2. Appropriate state and local authorities have not acted to protect the health of persons.	<ul style="list-style-type: none"> • State informed EPA that no corrosion control was in place (April 2015). • State and city had not disclosed risk of potential lead exposure to the public.

Source: SDWA Section 1431 and OIG analysis of EPA Region 5 documents.

² Under SDWA, the Lead and Copper Rule requires optimized corrosion control for systems servicing populations over 50,000. The rule also deems a drinking water system to have optimized corrosion control when lead sampling results fall at 5 parts per billion or less at test sites throughout the system. The city's lead sampling results were 6 parts per billion.

³ The Lead and Copper Rule requires that drinking water utilities take action when lead exceeds 15 parts per billion in a sample of homes. An action level exceedance is not a violation, but it triggers other required actions to minimize exposure to lead and copper in drinking water. Those other actions include water quality parameter monitoring, corrosion control treatment, source water monitoring/treatment, public education, and lead service line replacement.

EPA Region 5 Had Sufficient Information and the Authority to Issue an Emergency Order in June 2015, but Did Not

By June 2015, EPA Region 5 had information that the city of Flint exceeded the lead level at which corrosion control is required, and that Flint was not using a corrosion inhibitor. EPA Region 5 also had information that at least four homes had concentrations of lead in household drinking water above the action level of 15 parts per billion. These factors and others indicated that some residents were being exposed to lead-contaminated water, and that exposure to lead-contaminated drinking water was likely to increase as corrosion continued within the distribution system.

Additional information from the public provided further evidence of Flint drinking water abnormalities. Between April 2014 (month of the water source switch) and June 2015, EPA Region 5 received many documented complaints from Flint residents.⁴

By June 2015, EPA Region 5 also knew that the state and local authorities were not acting quickly to protect human health. In February 2015, the state initially told the EPA that Flint had an optimized corrosion control program in place. Subsequently, in April 2015, the state admitted that Flint was not using corrosion control, but the state also said none was required. Neither state nor local authorities disclosed the risks of potential lead contamination to residents.

EPA Region 5 began discussing the issue with the state and offered the state technical assistance in February 2015. However, instead of acting immediately to protect human health, the state delayed action by awaiting the results of the second round of lead sampling (not anticipated until August 2015). The state argued Flint had as many as 5 years from the date of the source switch to optimize corrosion control. The city of Flint also did not take action.

On June 24, 2015, an EPA Region 5 regulations manager produced an interim report about lead contamination identified in Flint homes and described major public health concerns in the city of Flint. However, on July 9, 2015, the then Flint mayor held a press conference assuring Flint residents that the water was safe to drink. Despite these conditions, the region did not issue an emergency order because the region concluded the state's ongoing activities were a jurisdictional bar preventing the EPA from issuing a SDWA Section 1431 emergency order.

The EPA's 1991 guidance on taking emergency action under Section 1431 describes how and when the EPA can use its emergency authority even if a state or local agency acts:

⁴ These complaints were submitted to EPA Region 5 directly or forwarded to Region 5 from the EPA OIG or the White House.

The Regions should not view this standard - whether a State or local authority has acted to protect the health of persons - as an issue of whether these authorities have “failed” to protect public health. Instead, these authorities intentionally may defer action to EPA because the Section 1431 authority may be more powerful or expeditious.... Further, State or local authorities may decide to take action jointly with EPA. In such cases, EPA would determine that State and local authorities have not acted (on their own) to protect the health of persons. Therefore, EPA may proceed with Section 1431 actions when State and local authorities are working jointly with EPA.

Our analysis of the publicly available data on SDWA Section 1431 actions taken by EPA regions prior to the Flint incident shows that it is rare for a region to issue an emergency order to a municipality in a state with primacy. OIG analysis showed that the vast majority of the SDWA Section 1431 emergency orders taken by EPA occurred in Wyoming and in Indian country, where the EPA regions directly implement SDWA and there is no “state” entity to consider. Based on the publicly available data, the majority of Section 1431 emergency orders issued by the EPA were to businesses and federal facilities.⁵

Emergency action by EPA Region 5 could have required the city and state to provide alternative water supplies to affected residents, study the extent and severity of lead contamination within the water system, or immediately begin corrective actions to reduce and eliminate lead contamination in the drinking water system. However, EPA Region 5 did not intervene under SDWA Section 1431 to require immediate actions to protect human health, and the conditions in Flint continued.

In the absence of EPA intervention in Flint, the state continued to delay taking action to require corrosion control or provide alternative drinking water supplies. Additional data in August and September 2015 demonstrated lead contamination was widespread, and also demonstrated an increase in the blood lead levels of children living in Flint. It was not until December 2015 that Flint began adding a corrosion inhibitor to optimize corrosion control in the water system.



EPA emergency response vehicle in Flint. (EPA OIG photo)

⁵ OIG analyzed information from the EPA’s public Enforcement and Compliance History Online database. The EPA informed the OIG that this public database does not reflect all EPA Section 1431 actions taken.

Region 5 did not formally brief OECA about Flint’s water issues until September, 2015. Staff and managers in OECA viewed the Flint situation as one in which it was appropriate for the region to take Section 1431 action, and recommended that the region take such action. However, Region 5 declined to take emergency action, on the basis that the ongoing state actions constituted a jurisdictional bar.

Table 2 provides examples of federal, state and local events occurring in Flint during the fall and early winter.

Table 2: Examples of Federal, State and Local Actions in Flint—September 2015 through January 2016

Month	Event
September	<ul style="list-style-type: none"> • External researchers inform the EPA about broader scope of lead contamination and elevated blood lead levels in Flint children. • Flint mayor announces that corrosion control will be initiated; invites EPA experts to Flint. • City of Flint and Genesee County issue formal health advisory.
October	<ul style="list-style-type: none"> • Region 5 establishes Flint task force to provide technical expertise. • Michigan develops a 10-point action plan. • Flint returns to purchasing treated water from Detroit Water and Sewerage.
November	<ul style="list-style-type: none"> • EPA Office of Water issues memo verifying that the Lead and Copper Rule requires that large drinking water systems, such as Flint, have optimized corrosion control technologies in place. • Region 5 Flint task force concludes that contamination in Flint is still not controlled, because the city did not comply with a request for information that would give this assurance.
December	<ul style="list-style-type: none"> • Flint begins to implement supplemental corrosion control. • Flint mayor declares state of emergency.
January	<ul style="list-style-type: none"> • Michigan governor declares state of emergency. • President declares federal state of emergency for Flint. • EPA issues emergency order to MDEQ and Flint.

Source: OIG

According to OECA staff and management, as these events unfolded, OECA continued to discuss a Section 1431 action with EPA Region 5 leadership, stressing that this would formalize the state’s planned actions. This would also have federalized the response. However, OECA and the EPA Administrator’s office did not initiate SDWA 1431 action from the EPA headquarters level, and continued to rely on EPA Region 5’s determination that the state was acting. However, the contamination continued.

The Administrator, in delegating to OECA the authority for SDWA Section 1431 emergency action, limited OECA to taking these actions in “multi-regional cases or cases of national significance.” However, the Administrator retains the authority to act in all cases. Only in January 2016 did it become clear to OECA that even though the contamination continued to be unresolved by months of ongoing activity, the EPA Region 5 Regional Administrator did not adequately recognize the available authority under Section 1431 to take an emergency action.

The EPA Administrator directed OECA to issue an emergency order to the state of Michigan, MDEQ and the city of Flint on January 21, 2016.

While the 1991 guidance provides that the EPA may proceed if state actions do not serve to protect public health, the guidance does not provide examples of state actions that would and would not be deemed timely and protective. The guidance also does not provide a checklist or other tools for determining when the Regional Administrators and OECA Assistant Administrator should consider emergency action under SDWA Section 1431.

We are issuing a management alert report on this matter to promote awareness and facilitate EPA action to clarify and update its guidance and scenarios under which a SDWA Section 1431 emergency order should be considered. The OIG's evaluation of the Flint drinking water crisis is ongoing, and we expect to issue an additional report when our work concludes.

Conclusion

EPA Region 5 had sufficient information to issue an emergency order to Flint as early as June 2015, but did not. Issuing an emergency order to a state or local entity is a rare occurrence at the EPA. The former EPA Region 5 Regional Administrator believed that the state of Michigan's actions to address the Flint situation barred formal federal action. While events were complicated, given what we know about the consequences of the Flint drinking water contamination, it is clear that EPA intervention was delayed. These situations should generate a greater sense of urgency. The EPA must be better prepared and able to timely intercede in public health emergencies like that which occurred in Flint.

To that end, the EPA has since taken some responsive steps by issuing the policy on elevation of critical public health issues and conducting SDWA enforcement trainings. However, the EPA can do more to emphasize that SDWA Section 1431 is a tool that should be used in cases where responding with urgency will protect human health. This management alert identifies initial actions we believe the EPA must take to clarify regions' authorities to use this tool, and to clarify OECA's role in recommending and taking emergency action to immediately address urgent drinking water issues.

Specifically, the EPA should update its 1991 SDWA Section 1431 guidance to include relevant examples of how and when Section 1431 orders have been issued, and examples of timely and protective state action. The updated guidance should include the current delegation of authority for issuing Section 1431 orders, and should establish a guide to give employees direction about when Section 1431 emergency action could be taken. Further, the EPA should require all relevant EPA drinking water and water enforcement management and staff to attend training on the use of the authorities provided in SDWA Section 1431. As the

OIG completes its work, it will examine the management and program controls in place at the EPA and make further recommendations as warranted.

Recommendations

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

1. Update the EPA's *Final Guidance on Emergency Authority under Section 1431 of the Safe Drinking Water Act (1991)* to:
 - a. Include the most relevant examples of Safe Drinking Water Act Section 1431 orders nationwide and examples of state actions that would be considered timely and protective.
 - b. Reflect the current delegations of authority to both the Regional Administrators and the Assistant Administrator for Enforcement and Compliance Assurance.
 - c. Establish checklists for when both the Regional Administrators and the Assistant Administrator for Enforcement and Compliance Assurance should consider emergency action under the Safe Drinking Water Act Section 1431.
2. Train, in cooperation with the Assistant Administrator for Water, all relevant EPA drinking water and water enforcement program management and staff on the Safe Drinking Water Act Section 1431 authority and updated guidance.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
1	9	Update the EPA's <i>Final Guidance on Emergency Authority under Section 1431 of the Safe Drinking Water Act (1991)</i> to: <ul style="list-style-type: none"> a. Include the most relevant examples of Safe Drinking Water Act Section 1431 orders nationwide and examples of state actions that would be considered timely and protective. b. Reflect the current delegations of authority to both the Regional Administrators and the Assistant Administrator for Enforcement and Compliance Assurance. c. Establish checklists for when both the Regional Administrators and the Assistant Administrator for Enforcement and Compliance Assurance should consider emergency action under the Safe Drinking Water Act Section 1431. 		Assistant Administrator for Enforcement and Compliance Assurance		
2	9	Train, in cooperation with the Assistant Administrator for Water, all relevant EPA drinking water and water enforcement program management and staff on the Safe Drinking Water Act Section 1431 authority and updated guidance.		Assistant Administrator for Enforcement and Compliance Assurance		

¹ O = Recommendation is open with agreed-to corrective actions pending.
 C = Recommendation is closed with all agreed-to actions completed.
 U = Recommendation is unresolved with resolution efforts in progress.

Distribution

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Deputy Regional Administrator, Region 5
Audit Follow-Up Coordinator, Office of Enforcement and Compliance Assurance
Audit Follow-Up Coordinator, Region 5

ATTACHMENT 4

Examples of Information to Support a SDWA Section 1431 Action

The following is a nonexhaustive list of the types of information that could be included or considered as part of an administrative record when issuing a SDWA Section 1431 order. Note that not all the following information needs to be obtained, especially if some of the information is not available or time consuming or expensive to attain. As noted in the guidance document, extensive efforts to document the available information should be avoided where the delay in obtaining such information or proof could impair attempts to prevent or reduce the hazardous situation. Additionally, as stressed above, SDWA Section 1431 applies to regulated and unregulated contaminants, and thus any information related to unregulated contaminants can and should be considered.

For example, the following circumstances, accompanied by appropriate supporting information, may lead EPA to consider utilizing Section 1431 authority:

- **Data generated by:**
 - EPA or other federal agencies
 - State, tribal or territorial agency
 - Local authorities
 - Independent organizations (e.g., universities or local citizen groups)
 - Potentially responsible parties

- **Contamination:**
 - Was there a recent or historic release, spill, discharge, or emission?
 - What contaminants are being detected? Is there more than one contaminant of concern?
 - What media (e.g., surface water, ground water, soil, air) has been impacted?
 - When did the release, spill, discharge, or emission occur?
 - What are the current levels and concentrations?
 - What is the toxicity?
 - What is the mobility of the contaminant(s)?
 - What are the techniques for mitigation (e.g., bottled water, point of use/point of entry treatment)?

- **Exposure information:**
 - What are the exposure pathways (e.g., ingestion, inhalation, dermal risks)?
 - Have persons using (or that may use) the water been alerted not to consume it? Have any other precautions or warnings been issued?
 - Are sensitive populations consuming the water? For example: pregnant women and women of childbearing age; children, including those fed mixed (powdered) formula; or individuals with compromised immune systems?
 - What is the amount of time the population may have been exposed?
 - Is the water coming from a PWS or private wells?

- What are potential future exposures?
- What is the proximity of release to exposure points?
- Fate/transport modeling to exposure points? Hydrology?

- **Health information from:**
 - CDC and other federal agencies (e.g., studies and reports, email and/or phone communications)
 - State, tribal, territorial and local health or environmental agencies (e.g., hospital reports of illnesses/symptoms, blood levels)
 - Residents or other members of the public
 - Peer reviewed journals and other credible sources

- **Citizen complaints or petitions received by:**
 - EPA
 - State, tribal or territorial agencies
 - Local authorities
 - PWSs
 - Congress

- **Additional possible considerations:**
 - History of water supply and treatment processes
 - Data that results from the water supply and treatment process decisions
 - EPA, State, tribal or territorial enforcement actions



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 11 2019

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Assurance Work

FROM: Susan Parker Bodine 

TO: Regional Administrators

This policy sets out expectations and procedures for enhancing effective partnerships in civil enforcement and compliance assurance work between the U.S. Environmental Protection Agency and states that are authorized, delegated, or approved to implement federal environmental programs (hereinafter, "states").¹

The first part of this policy articulates expectations and best practices for periodic joint work planning and effective communication between EPA regions and states to further the goal of shared accountability for the consistent enforcement of the law. The second part articulates the primary role of the states in implementing authorized programs, while acknowledging the EPA's responsibilities to the President, the Congress, and the public to take direct action when a state lacks the economic or technical capability or the will to take timely and appropriate action. The second part also describes those circumstances that may warrant direct federal action. The third part sets out the process by which issues that may arise under this policy will be elevated.

Background

The EPA aims to enhance its partnerships with its state, local, and tribal co-regulators by more effectively carrying out our shared responsibilities under environmental laws. Administrator Wheeler issued a memorandum on October 30, 2018, that complemented and modernized earlier EPA statements on EPA and state roles.² That memorandum outlined four key principles relevant to the enforcement of federal environmental laws: (1) general deference to the states in state-implemented programs, consistent with the

¹ Although this policy is focused on the EPA's work with states that implement federal programs, the EPA will also strive to follow these planning and communication practices when working with federally-recognized Indian tribes, territories, and local governments that implement federal programs.

² See Memorandum from Andrew R. Wheeler, Acting Administrator, Principles and Best Practices for Oversight of Federal Environmental Programs Implemented by States and Tribes (Oct. 30, 2018). See also Memorandum from William D. Ruckelshaus, Administrator, EPA Policy on Oversight of Delegated Environmental Programs (Apr. 4, 1984).

EPA's oversight responsibilities; (2) effective communication between the EPA and the states; (3) clear standards of review and predictable processes; and (4) a clear process for elevating issues.³

In a complementary process, the EPA and the Environmental Council of the States ("ECOS") convened an EPA-ECOS Compliance Assurance Workgroup in September 2017 to develop practical procedures to advance cooperation between EPA and state enforcement offices.⁴ The EPA-ECOS Workgroup published a consensus-based series of recommendations in August 2018 that touched on all four principles in the 2018 Wheeler memorandum.

The EPA also issued interim guidance on January 22, 2018, related to enhancing planning and communication between EPA regions and the states.⁵ The EPA signaled that it would update and finalize that guidance based on input from EPA regions, states, and the EPA-ECOS Workgroup. The EPA published a notice and request for public comments on a draft of this final guidance on May 13, 2019.⁶

After considering the 2018 Wheeler memorandum, the EPA-ECOS Workgroup recommendations, and comments received on the interim and draft final policies, I am now issuing this final enhancing effective partnerships policy.⁷

I. PERIODIC JOINT WORK PLANNING

Cooperative, periodic, and early joint planning and regular communication between the EPA and states is essential to promote enhanced, shared accountability between federal and state enforcement authorities. A "no surprises" principle is the foundation of joint work planning and will minimize the misunderstandings that can be caused by the lack of regular, bilateral communication. With increased EPA cooperation and transparency, the EPA expects the states to respond in kind. A break-down in two-way communication between a state and the EPA should be elevated to senior management in both organizations. The overall goal of joint planning is the sharing of enforcement responsibilities with a clear agreement on EPA and state roles in individual inspections and formal enforcement actions. Such agreements cannot be reached

³ See Wheeler at 2.

⁴ Workgroup members included geographically- and politically-diverse state director-level representatives from Alaska, California, Missouri, New Jersey, Ohio, and Tennessee, and Deputy Regional Administrator-level representatives from EPA Regions 1, 2, 3, 7, and 8. The Workgroup was co-chaired by the Director of the Nebraska Department of Environmental Quality and the OECA Deputy Assistant Administrator. See <https://www.ecos.org/documents/final-report-of-the-ecos-epa-compliance-assurance-workgroup>.

⁵ See Memorandum from Susan Parker Bodine, Assistant Administrator for the Office of Enforcement and Compliance Assurance, Interim OECA Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States (Jan. 22, 2018).

⁶ See 84 Fed. Reg. 20,882 (May 13, 2019).

⁷ This policy withdraws and replaces the January 22, 2018, Bodine interim guidance memorandum. This policy is intended for use by EPA personnel and does not create any right or benefit, substantive or procedural, enforceable by law by a party against the United States, its agencies, its officers, or any person. This policy is not intended to supersede any statutory or regulatory requirements or agency policy. Any inconsistencies between this policy and any statute or regulation should be resolved in favor of the relevant statutory or regulatory requirements. The EPA may revise, replace, or discontinue this policy at any time.

if the EPA or a state is unaware of the actions of the other. Where agreement cannot be achieved, the matter should be elevated within the EPA and the state for resolution under the issue-elevation procedures in Section III. Periodic joint work planning should at a minimum include strategic planning, joint inspection planning, and joint formal enforcement planning.⁸

A. Joint planning participants

Joint work planning should take place at various levels within the EPA and state agencies. The timing, method, and preparation for planning communications will vary based on the EPA-state relationship, and the level of the participants will vary as appropriate to the items to be discussed. In this policy, “career managers” means the employees with day-to-day responsibility for an enforcement and compliance program (e.g., air enforcement managers). “Senior management” means the employees with responsibility for multiple statutory programs, not necessarily limited to enforcement programs (e.g., Regional Enforcement and Compliance Assurance Division Directors and Deputy Regional Administrators).

As a practical matter, most discussions of work-sharing, inspections, and enforcement actions are likely to occur between EPA regional and state career managers. Effective collaboration and shared accountability require appropriate communication up and down the respective management chains within the EPA and the states. This does not mean that every enforcement issue must be elevated to the highest possible level within an organization. It does mean that the more significant the issue, the more likely it will be appropriate to brief more senior managers.

In addition to these day-to-day discussions, the senior management in each region should meet—preferably in person—with their counterparts in a state, including, as appropriate, the EPA Regional Administrator and Secretaries or Commissioners of state environmental agencies. The frequency of these meetings and the participants should be appropriate to the needs and styles of the specific region-state relationship. These meetings should include a jointly-prepared agenda and supporting materials circulated sufficiently in advance to allow for full preparation and participation.

B. Strategic planning

Joint planning should include a strategic element that goes beyond planning for individual inspections and enforcement actions. Strategic planning should include a discussion of: (1) the environmental compliance problems and needs in the state; (2) national, regional, and state compliance assurance priorities; (3) emerging issues; and (4) how the combined resources of the EPA and the state could be used to address these needs. Strategic planning should also include a discussion of how the EPA and the state may mutually build their respective capabilities to conduct inspections and develop and prosecute cases. Strategic planning meetings should include senior management.

C. Joint inspection planning

EPA regions and the states should work together to identify which inspections the EPA or a state will perform, consistent with the guidelines in Section II. Inspection planning will avoid duplicate efforts, improve efficiency, reduce unnecessary burdens on the regulated community, and could provide EPA regions and states with more flexibility in setting and adjusting inspection targets and Compliance

⁸ This periodic joint work planning process is not appropriate for those emergency actions described in Section II(3).

Monitoring Strategies. Cooperative inspection planning also helps the EPA meet its oversight responsibilities to ensure compliance with federal statutes. The following best practices should be followed in the joint inspection planning process.

- 1) EPA regions and states should communicate as they develop their separate inspection priorities and commitments and should work together as appropriate on joint inspection priorities and commitments.
 - a) EPA regions and the states should avoid duplicative or overlapping inspections that would lead them to inspect the same facility for the same regulatory requirements within the same twelve-month period. Multiple inspections by the EPA and the states may, however, be appropriate for complex sites where the inspections will focus on different regulatory requirements or where the EPA and a state agree that multiple inspections serve a valuable purpose.
 - b) EPA regions and the states should exchange and discuss their targeting rationales and draft inspection plans as early as possible. This should be more than a simple exchange of planned inspection lists for informational purposes. Instead, this discussion should create a shared understanding between EPA regions and the states of the purpose and objectives of their respective inspections.
 - c) EPA regions should provide states with advance notice of inspections, especially because inspection plans tend to be dynamic and it might have been some time since the planned inspection was discussed. This type of coordination requires EPA regions and states to reach agreements regarding confidentiality and whether or when facilities are to be provided notice of inspections.
- 2) EPA regions and states should invite each other to participate in inspections where there is value in both entities participating.
- 3) The inspection planning process should make the best use of both EPA and state resources and expertise. EPA regions and states should discuss how they will use their combined resources to meet national inspection coverage expectations under applicable Compliance Monitoring Strategies and statutory requirements and should consider the use of alternative compliance monitoring strategies where appropriate.
- 4) Consistent with the “no surprises” principle, in investigations where the EPA has the lead, EPA regions should share information requests and inspection reports for authorized programs with the state concurrently with sending them to the recipient.

D. Joint enforcement planning

Joint enforcement planning should identify which individual or classes of enforcement actions the EPA or a state will initiate, consistent with the guidance in Section II. The following best practices should be followed in the joint enforcement planning process.

- 1) The EPA should communicate with states when the EPA believes that an enforcement action is warranted in a state. The communication should include a review of the EPA’s observations and findings from inspections and other case development techniques. The communication should include a discussion whether the enforcement action should be federal, state, or joint, and the type of action to be

taken. In these communications, the EPA should expect the state to respond quickly and clearly so that a federal, state, or joint enforcement action may proceed in a timely way, although the state's response does not need to be in writing.⁹

- 2) Where a state proposes to take the lead to address noncompliance identified by the EPA, the state and the EPA should discuss state-specific authorities and procedures and how the claims made and relief sought in an enforcement action taken by a state will—as appropriate for the circumstances of the violation—remedy the noncompliance and deter similar violations, including civil penalties as appropriate.
- 3) Where the EPA is taking an enforcement action in a state, the EPA should notify the state before notifying the facility.
- 4) Joint enforcement planning should include regular, bilateral updates on the progress and outcomes of selected actions (e.g., National Compliance Initiative actions, new areas of state implementation, “priority state assists,”¹⁰ or important cases discussed during joint work planning).
- 5) The EPA and the states should remain mindful of the requirements of confidentiality in enforcement actions—breaches of confidentiality will diminish the ability to work in an effective partnership. It may not be possible for the EPA to share details of a planned enforcement action where a confidentiality agreement with the state is not executed and where differences in freedom of information and evidentiary rules would make case-sensitive information vulnerable to release.
- 6) If the need arises for additional enforcement or compliance actions after making joint planning decisions in an action, the EPA and the state should discuss the appropriate lead agency for these additional actions.¹¹
- 7) Ongoing cooperation and assistance between the EPA and the states is encouraged.

⁹ If a region does not hear from a state, the EPA should document when it communicated with the state and the reasonable length of time the state had to respond.

¹⁰ See Memorandum from Susan Parker Bodine, Assistant Administrator for the Office of Enforcement and Compliance Assurance, Procedures for Measuring Regions’ “State Assists” that Help Remedy Violations (May 31, 2019).

¹¹ Joint work planning has been proceeding under the January 2018 interim guidance for over a year and a half. In the increasingly rare situation where an action has not gone through that or a similar prior process and the state or the EPA seeks a change in the lead agency for an enforcement action, a decision on changing the lead will be made only after consultation among the state’s Secretary or Commissioner, the Regional Administrator, and the Assistant Administrator for the Office of Enforcement and Compliance Assurance. Changes in lead should be memorialized in writing and should include the requirement that the EPA and the state will periodically discuss the progress of the case. To minimize delays in returning an entity to compliance, the likelihood that the EPA will agree to a mid-course change in case lead from the EPA to a state will decrease as EPA case development becomes more advanced.

II. ROLES OF THE EPA AND STATES IN IMPLEMENTING AUTHORIZED PROGRAMS

The EPA will generally defer to a state as the primary implementer of inspections and enforcement in authorized programs. The EPA, however, retains concurrent enforcement authority and so there are specific situations where the EPA may choose to take direct action after following the processes in Section I.¹² Examples of situations that could warrant EPA involvement include the following.

- 1) **Joint work planning or specific situations where the state requests that the EPA take the lead.** Using the processes described in Section I, the EPA may provide enforcement assistance as requested by a state or may take the lead in an enforcement action, sub-program, sector, or geographic area under an EPA-state work-sharing arrangement.
- 2) **Violations that are part of a National Compliance Initiative.** The EPA and the states should discuss work-sharing and how to make the best collective use of EPA and state resources and expertise to achieve the goals of the National Compliance Initiatives (“NCIs”). NCIs will be defined as a subset of cases in a program area where the EPA has determined that national consistency and federal assistance in achieving compliance are important to the protection of public health and the environment. While NCIs are intended to address widespread noncompliance problems, such problems may not be present in each jurisdiction nor a priority for each state. States are not obligated to participate in NCIs, although the EPA welcomes their participation. The EPA is expected to take the lead in some of the specific enforcement actions identified as NCI actions to apply and maintain its expertise, to ensure consistency, and to promote a level playing field, while at the same time inviting individual states to join in a judicial case as it relates to facilities in that state. If a state proposes to take the lead in an NCI case, the EPA should defer to a state that agrees to seek compliance and enforcement outcomes consistent with EPA-led resolutions elsewhere in the nation. States and the EPA are expected to share with each other the specifics of outcomes of the NCI enforcement actions for which they have the lead. The EPA region should provide OECA with a list of facilities where the joint planning process results in a state taking the lead for an enforcement action that falls under an NCI.
- 3) **Emergency situations or situations where there is substantial risk to human health or the environment.** In consultation and coordination with the state, the EPA may take direct action or supplement state enforcement resources in these circumstances.
- 4) **Situations where a state lacks adequate equipment, resources, or expertise.** While the states have built capable environmental enforcement programs, the EPA may take the lead in a case where the state does not have the equipment, resources, or expertise necessary to enforce an aspect of an authorized statutory program. The EPA should defer more to a state that has demonstrated greater compliance assurance capability and may defer less to a state that continues to have difficulty improving compliance. In cases where less deference may be warranted, the EPA and the state should consider working jointly on an enforcement action to build state capacity.

¹² See Wheeler at 3 (“States and tribes have the primary role in state- and tribal-implemented federal programs, and the EPA will generally defer to states and tribes in their day-to-day activities. At the same time, the EPA remains responsible and accountable to the President, the Congress and the public for upholding the rule of law . . . and ensuring that federal statutes are consistently . . . enforced.”).

- 5) **Situations involving multi-state or multi-jurisdictional interests or interstate impacts.** The EPA should take the lead in cases addressing noncompliance at facilities owned or operated by the same entity in multiple states to ensure consistency and a level playing field, while at the same time inviting individual states with affected facilities to join the case. Similarly, the EPA may take the lead in enforcement actions addressing significant cross-boundary impacts affecting other states or nations to ensure that cross-boundary impacts from noncompliance are resolved equitably.
- 6) **Significant violations that the state has not timely or appropriately addressed.** The EPA may take an enforcement action where a state is not taking timely and appropriate action.
- 7) **Serious violations for which the EPA's criminal enforcement authorities may be needed.** Because only a handful of states have active environmental criminal enforcement programs, most environmental criminal investigations are performed by the EPA in consultation and cooperation with local law enforcement authorities.
- 8) **State enforcement program review inspections.** The EPA has a responsibility under the federal environmental statutes to conduct a limited number of inspections to verify the efficacy of authorized enforcement programs.¹³
- 9) **Situations that involve enforcement at federal and state owned or operated facilities.** The EPA may take the lead or assist a state in an enforcement action at a federally owned or operated facility. The EPA may also take the lead in an enforcement action against a state owned or operated facility where there are conflicts internal to the state that make state enforcement less effective.

III. PROCESS FOR THE ELEVATION OF ISSUES

Issues that may arise under the processes in Sections I or II must be elevated and resolved as quickly as practicable.¹⁴ The following best practices should be followed.

- 1) Issues should be resolved whenever possible at the EPA and state career management level.
- 2) If career management cannot resolve an issue, the matter should be elevated within thirty days for resolution by regional and state senior management.
- 3) If following elevation within the region and the state there remains a dispute between the Regional Administrator and the State Secretary or Commissioner, the matter should be elevated within sixty days to the Assistant Administrator for the Office of Enforcement and Compliance Assurance for a decision. The Regional Administrator and the State Secretary or Commissioner will be afforded the opportunity to present the matter in dispute to the Assistant Administrator prior to a final decision.

¹³ This policy does not concern the situation where a state has not addressed State Review Framework deficiencies adequately. Communications regarding these deficiencies should take place within the structure of that program.

¹⁴ Regions and states may continue to use the dispute resolution provisions in their existing bilateral agreements to the extent they are not inconsistent with this policy.

Congressional Update

Overall

Congress is struggling to remain functional and relevant, as bi-partisanship has reached record heights. The ongoing investigations into potential impeachment are increasing partisan positions and that trend doesn't seem likely to stop.

Funding

Appropriations: After one of the longest government shutdowns in recent memory, FY 19 appropriations funded the DWSRF at \$1.16 billion, which is equal to the 2018 enacted level and provided appropriations for WIIN grants as well.

The PWSS Program was funded at the \$101,963,000, equal to FY18. The PWSS Program was authorized at \$125 million by AWIA in 2018.

Looking forward to 2020, the federal government is operating under a continuing resolution (CR) through November 21st. It's likely/possible that another (or more than one) CR will be passed to keep the government functioning.

The House appropriations bill for Interior-Environment appropriates \$1.3 billion for DWSRF and the Senate appropriated \$1.126 billion. The difference will have to be worked out in conference. Although high level number for State and Tribal Assistance Grant (STAG) have been released in the Senate and House bills, no details on PWSS funding has been made public for FY20 yet.

National Defense Appropriations Act (NDAA): NDAA is considered a "must-pass" bill due to its linkages to national security. Both sides of Congress passed their own versions of NDAA this summer, and the conference committee didn't come to a quick agreement in September, as anticipated. A [letter](#) was sent on September 3rd to Congress that was signed by 162 bipartisan House members asking National Defense Authorization Act of 2019 conferees to retain House and Senate provisions that address PFAS contamination and cleanup. While the Senate and House PFAS provisions differ, they both have potential regulatory requirements for drinking water regulations and CERCLA designations as "hazardous substances" for PFOA and PFAS.

Dues Increase for ASDWA 2021-2025 Dues

Background

This year, ASDWA celebrates 35 years of providing critical, consistent support and services to its members, to help them meet the evolving challenges associated with managing drinking water programs for the protection of public health.

As we look to the future, it is clear this frenetic pace of change and increasing demands on the drinking water sector will continue, and ASDWA has been hard at work preparing. Transitions and change have been constant the past few years. Darrell Osterhoudt and Bridget O'Grady, two long-time ASDWA employees, retired this year. The past two years have also seen significant time and resources spent on building upon ASDWA's organizational foundation. Last year we embarked on process to develop our first strategic plan to guide our efforts efficiently and effectively into the future. A key part of that plan is assuring we are well-resourced as we go. To that end, we conducted a study to determine whether our current dues structure was enough to continue to adequately support us in the future. The ASDWA Board concluded that a dues increase was needed, starting with dues for 2021.

ASDWA's dues have been generally based on a percentage of the monies each state received from PWSS funding. The last time ASDWA looked at dues, and increased them, was more than ten years ago, in 2006. The Board took note of the fact that the EPA-ASDWA Cooperative Agreement was comprising a progressively larger portion of total revenue (i.e., greater than 50% of revenue). The Board expressed the view that the dues portion of ASDWA's income should be the majority (greater than 50%) of its total income and voted at that time to approve a 15% increase, to take place in increments of 5% per year, in 2008, 2009, and 2010.

Benefits

ASDWA's benefits to its members include:

- Representing states on SDWA regulation development and implementation issues in order to help ensure that state considerations are appropriately considered;
- Keeping Congress informed on key issues relating to drinking water, including appropriations, contaminants of concern, and any legislation that might impact drinking water programs
- Informing states about Federal and state activities and initiatives through a weekly update, annual conference, annual member meeting, specialty conferences (e.g., security, data management), webcasts, e-mail communications on particular topics of interest to states, and special reports (e.g., state resource needs report); and
- Providing technical training opportunities and (and travel assistance) for the states.
- Providing opportunities for state-to-state sharing of information about their programs

Challenges

In the 10 years since the last increase, ASDWA's role as the voice of – and support to – our nation's drinking water programs has continued to evolve and increase in vitality. The current income structure and total income is no longer enough to sustain ASDWA programs and people. Some of the specific ways ASDWA's costs have evolved include:

- Increased travel – ASDWA spent \$202,000 for 183 state staff in 2018 to attend ASDWA/EPA meetings such as the Data Management Users Conference (DMUC), SDWIS Prime development meetings, Regional Area-Wide Optimization Program (AWOP) meetings, the National Capacity Development/Operator Certification Workshop, the EPA ORD Small System Workshop and other meetings. ASDWA's support for increased state travel in 2019 is continuing.
- Project funding – ASDWA is updating the 2013 State Resources Needs Report in 2019 using its own funds, without any EPA support/funding. ASDWA has also started new projects on *Legionella* resources and a toolkit for states setting their own drinking water standards.
- Increasing mission – In addition to the more traditional support ASDWA has provided states over the years, our expertise and support is increasingly needed on non-regulatory issues such as PFAS, *Legionella*, algal toxins, and SDWIS Prime. These non-regulatory drivers are taking more and more staff time to address.

Comparison to Other Comparable State Associations

Other comparable state associations have simpler dues structures.

ECOS – Has one category at \$13,000 for every state.

ASTSWMO – Has three categories with a goal to shift to one category. Their members are also supporting a 2.5% annual increase, as they feel it's easier for them to move those small increases forward. ASTSWMO's current dues are:

Large - \$13,000 (5.6 million or more population)

Medium - \$9,000 (2 million to 5.6 million)

Small - \$6,000 (2 million or less – including all territories)

ACWA – Has four categories and additional details of ACWA's dues history and dues structure are included as an Appendix. ACWA's current dues are:

Tier 1 - \$19,500 (8 million or more population – 12 states)

Tier 2 - \$16,000 (3 million to 8 million population – 21 states)

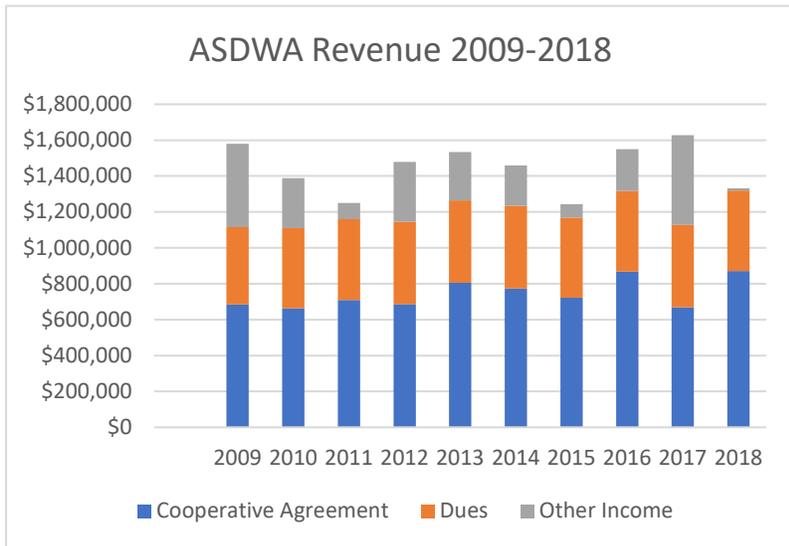
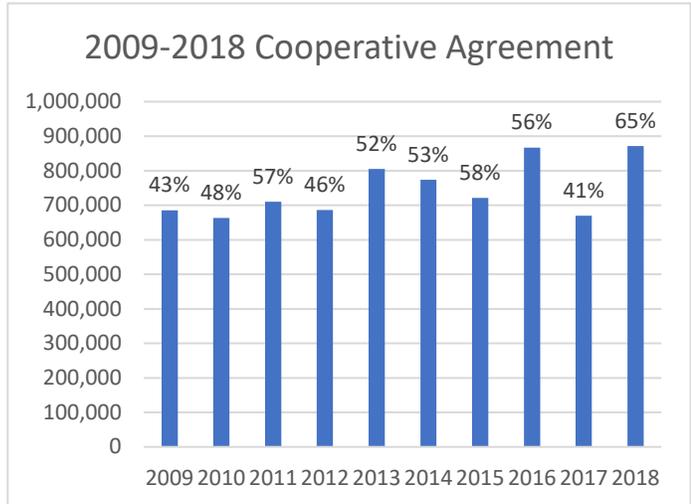
Tier 3 - \$12,500 (3 million or less – 17 states)

Interstates and DC (7 entities) - \$7,885

Note that ACWA’s lowest tier for states is comparable to ASDWA’s second-highest tier for our current dues. ACWA’s cooperative agreement only funds 11% of their revenue (FY15), while dues cover 72% of revenue.

Purpose of Current Dues Change

The intent of the proposed dues increase, in addition to more closely aligning revenues with costs of service, is to take another step beyond the 2006 change to further reduce the percentage of ASDWA’s budget funded by the EPA-ASDWA Cooperative Agreement so that it’s less than 50% of total revenue. The adjacent table shows the percentage of ASDWA’ revenue from the cooperative agreement for the past ten years, and the percentage has been greater than 50% for six out of the past ten years.



The adjacent table shows the breakdown between dues income, cooperative agreement income and other income for the same timeframe.

Current Dues Structure

State’s dues are currently divided into ten tiers. The territories, D.C., and the Navajo Nation fall into four additional tiers. It should be noted that the territories receive the smallest amounts of PWSS funding, and we would like to continue to support their travel when possible (and when their staff are able to travel). Similarly, we would like to continue to support Puerto Rico and the Virgin Islands with the appropriate information.

The current dues structure is shown on the next page:

	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5	Tier 6	Tier 7	Tier 8	Tier 9	Tier 10
Example States	CA, TX PA, MI	FL, NC IL, OH	NJ, VA MN, AL	CT, GA IN, LA	MD,MS OK, CO	SC, KS MT, ID	ME,NH WV,AL	VT, KY SD, UT	DE,ND	RI, HI
Dues	\$13,800	\$12,650	\$11,500	\$10,350	\$9,200	\$8,050	\$6,900	\$5,750	\$4,600	\$3,450
# States in category	5	5	5	5	7	5	8	6	2	2
Territories, D.C., and the Navajo Nation	Guam, Northern Mariana Islands and American Samoa			Virgin Islands and Washington, DC			Navajo Nation		Puerto Rico	
Dues	\$870			\$2,300			\$4,025		\$5,750	

New Dues Structure

In the new structure, 27 states (Tiers 2, 4, 6, 8, 10) would experience a 5% increase, annually from 2021 to 2025, and a 1% increase annually thereafter. For the other 23 states (Tiers 1, 3, 5, 7, 9), the ten tiers will be collapsed into five tiers over five years, by bringing up the lower groups of states in each pair to match the higher group with the same percentage increase over the five years – this would smooth out the percentage increase over the five-year timeframe.

The next page provides a state-by-state breakdown on how the consolidation of the tiers would work, as well as the dues for each year between 2021 and 2025. Dues would continue to be increased at 1% annually after 2025. The tiers for the new due structure are shown below:

	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5
States	CA, NY, PA, MI, TX, FL, NC, IL, OH, WI, WA, MN	NJ, VA, AK, GA, IN, MO	LA, CT, MD, MS, OK, IA, CO, AZ, OR, MA, SC, KS, MT, ID, NH, NM	ME, WV, AL, TN, AR, NE, VT, KY, SD, UT, WY, NV	DE, ND, RI, HI
# States	12	6	16	12	4

Additional State Adjustments

When taking a closer look at the five tiers, it appears that six states aren't in the appropriate tiers when comparing to their peers. In the new dues structure, these six states have been moved to match their peers with similar PWSS funding:

- Washington and Minnesota are going up the Tier 1
- New Hampshire and New Mexico are going up to Tier 3
- Connecticut and Louisiana are going down to Tier 3

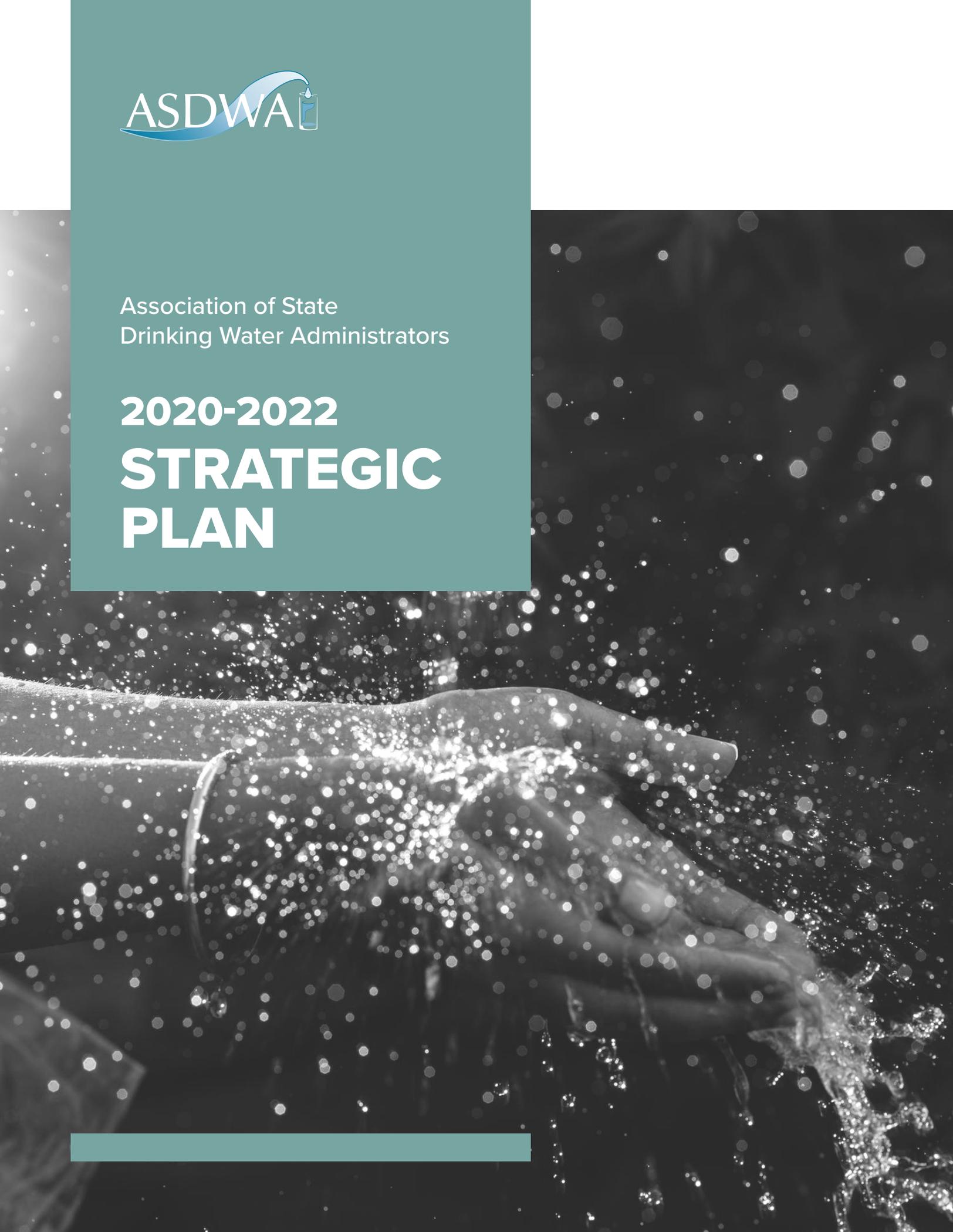
The due increases for these six states would match the approach for every other state, i.e., using same percentage across the five years for collapsing the tiers. Washington and Minnesota would see a 6.39% increase for five years, going to 1% annually thereafter. New Hampshire and New Mexico would see an 8.66% increase for five years, going to 1% annually thereafter.

PROPOSED ASDWA 2020-2025 DUES								
1% Annual Dues Increase After 2025								
States	FY 19 PWSS \$	2019 & 2020 Dues	2021 Dues	2022 Dues	2023 Dues	2024 Dues	2025 Dues	Percent increases
Tier 1 - 12 states								
California	\$6,250,000	\$13,800	\$14,490	\$15,215	\$15,365	\$15,520	\$15,675	5% two years, 1% thereafter
New York	\$4,315,000	\$13,800	\$14,490	\$15,215	\$15,365	\$15,520	\$15,675	5% two years, 1% thereafter
Pennsylvania	\$3,983,000	\$13,800	\$14,490	\$15,215	\$15,365	\$15,520	\$15,675	5% two years, 1% thereafter
Michigan	\$4,064,000	\$13,800	\$14,490	\$15,215	\$15,365	\$15,520	\$15,675	5% two years, 1% thereafter
Texas	\$6,548,000	\$13,800	\$14,490	\$15,215	\$15,365	\$15,520	\$15,675	5% two years, 1% thereafter
Florida	\$3,550,000	\$12,650	\$13,205	\$13,780	\$14,385	\$15,015	\$15,675	4.38% five years, 1% thereafter
North Carolina	\$2,966,000	\$12,650	\$13,205	\$13,780	\$14,385	\$15,015	\$15,675	4.38% five years, 1% thereafter
Illinois	\$3,001,000	\$12,650	\$13,205	\$13,780	\$14,385	\$15,015	\$15,675	4.38% five years, 1% thereafter
Ohio	\$2,571,000	\$12,650	\$13,205	\$13,780	\$14,385	\$15,015	\$15,675	4.38% five years, 1% thereafter
Wisconsin	\$3,454,000	\$12,650	\$13,205	\$13,780	\$14,385	\$15,015	\$15,675	4.38% five years, 1% thereafter
Washington (adjusted up)	\$2,695,000	\$11,500	\$12,235	\$13,015	\$13,845	\$14,730	\$15,675	6.39% five years, 1% thereafter
Minnesota (adjusted up)	\$2,571,000	\$11,500	\$12,235	\$13,015	\$13,845	\$14,730	\$15,675	6.39% five years, 1% thereafter
Tier 2 - 6 states								
New Jersey	\$1,893,000	\$11,500	\$12,075	\$12,680	\$12,805	\$12,934	\$13,065	5% two years, 1% thereafter
Virginia	\$1,995,000	\$11,500	\$12,075	\$12,680	\$12,805	\$12,934	\$13,065	5% two years, 1% thereafter
Alaska	\$2,266,000	\$11,500	\$12,075	\$12,680	\$12,805	\$12,934	\$13,065	5% two years, 1% thereafter
Georgia	\$2,243,000	\$10,350	\$10,844	\$11,360	\$11,905	\$12,470	\$13,065	4.77% five years, 1% thereafter
Indiana	\$1,925,000	\$10,350	\$10,844	\$11,360	\$11,905	\$12,470	\$13,065	4.77% five years, 1% thereafter
Missouri	\$1,932,000	\$10,350	\$10,844	\$11,360	\$11,905	\$12,470	\$13,065	4.77% five years, 1% thereafter
Tier 3 - 16 states								
Louisiana (adjusted down)	\$1,285,000	\$10,350	\$10,370	\$10,390	\$10,410	\$10,430	\$10,450	0.19% five years, 1% thereafter
Connecticut (adjusted down)	\$1,246,000	\$10,350	\$10,370	\$10,390	\$10,410	\$10,430	\$10,450	0.19% five years, 1% thereafter
Maryland	\$1,426,000	\$9,200	\$9,660	\$10,145	\$10,245	\$10,350	\$10,450	5% two years, 1% thereafter
Mississippi	\$1,165,000	\$9,200	\$9,660	\$10,145	\$10,245	\$10,350	\$10,450	5% two years, 1% thereafter
Oklahoma	\$1,348,000	\$9,200	\$9,660	\$10,145	\$10,245	\$10,350	\$10,450	5% two years, 1% thereafter
Iowa	\$1,340,000	\$9,200	\$9,660	\$10,145	\$10,245	\$10,350	\$10,450	5% two years, 1% thereafter
Colorado	\$1,513,000	\$9,200	\$9,660	\$10,145	\$10,245	\$10,350	\$10,450	5% two years, 1% thereafter
Arizona	\$1,399,000	\$9,200	\$9,660	\$10,145	\$10,245	\$10,350	\$10,450	5% two years, 1% thereafter
Oregon	\$1,601,000	\$9,200	\$9,660	\$10,145	\$10,245	\$10,350	\$10,450	5% two years, 1% thereafter
Massachusetts	\$1,167,000	\$8,050	\$8,480	\$8,935	\$9,415	\$9,920	\$10,450	5.36% five years, 1% thereafter
South Carolina	\$1,014,000	\$8,050	\$8,480	\$8,935	\$9,415	\$9,920	\$10,450	5.36% five years, 1% thereafter
Kansas	\$1,085,000	\$8,050	\$8,480	\$8,935	\$9,415	\$9,920	\$10,450	5.36% five years, 1% thereafter
Montana	\$1,355,000	\$8,050	\$8,480	\$8,935	\$9,415	\$9,920	\$10,450	5.36% five years, 1% thereafter
Idaho	\$1,206,000	\$8,050	\$8,480	\$8,935	\$9,415	\$9,920	\$10,450	5.36% five years, 1% thereafter
New Hampshire (adjusted up)	\$1,213,000	\$6,900	\$7,495	\$8,145	\$8,850	\$9,615	\$10,450	8.66% five years, 1% thereafter
New Mexico (adjusted up)	\$1,348,000	\$6,900	\$7,495	\$8,145	\$8,850	\$9,615	\$10,450	8.66% five years, 1% thereafter
Tier 4 - 12 states								
Maine	\$920,000	\$6,900	\$7,245	\$7,605	\$7,685	\$7,760	\$7,840	5% two years, 1% thereafter
West Virginia	\$741,000	\$6,900	\$7,245	\$7,605	\$7,685	\$7,760	\$7,840	5% two years, 1% thereafter
Alabama	\$865,000	\$6,900	\$7,245	\$7,605	\$7,685	\$7,760	\$7,840	5% two years, 1% thereafter
Tennessee	\$876,000	\$6,900	\$7,245	\$7,605	\$7,685	\$7,760	\$7,840	5% two years, 1% thereafter
Arkansas	\$923,000	\$6,900	\$7,245	\$7,605	\$7,685	\$7,760	\$7,840	5% two years, 1% thereafter
Nebraska	\$974,000	\$6,900	\$7,245	\$7,605	\$7,685	\$7,760	\$7,840	5% two years, 1% thereafter
Vermont	\$780,000	\$5,750	\$6,115	\$6,510	\$6,925	\$7,365	\$7,840	6.39% five years, 1% thereafter
Kentucky	\$762,000	\$5,750	\$6,115	\$6,510	\$6,925	\$7,365	\$7,840	6.39% five years, 1% thereafter
South Dakota	\$892,000	\$5,750	\$6,115	\$6,510	\$6,925	\$7,365	\$7,840	6.39% five years, 1% thereafter
Utah	\$892,000	\$5,750	\$6,115	\$6,510	\$6,925	\$7,365	\$7,840	6.39% five years, 1% thereafter
Wyoming	\$750,000	\$5,750	\$6,115	\$6,510	\$6,925	\$7,365	\$7,840	6.39% five years, 1% thereafter
Nevada	\$812,000	\$5,750	\$6,115	\$6,510	\$6,925	\$7,365	\$7,840	6.39% five years, 1% thereafter
Tier 5 - 4 states								
Delaware	\$542,000	\$4,600	\$4,830	\$5,070	\$5,120	\$5,175	\$5,225	5% two years, 1% thereafter
North Dakota	\$643,000	\$4,600	\$4,830	\$5,070	\$5,120	\$5,175	\$5,225	5% two years, 1% thereafter
Rhode Island	\$493,000	\$3,450	\$3,735	\$4,040	\$4,375	\$4,735	\$5,225	8.66% five years, 1% thereafter
Hawaii	\$469,000	\$3,450	\$3,735	\$4,040	\$4,375	\$4,735	\$5,225	8.66% five years, 1% thereafter
Navajo Nation	\$454,000	\$4,025	\$4,225	\$4,440	\$4,480	\$4,525	\$4,570	5% two years, 1% thereafter
District of Columbia	\$363,000	\$2,300	\$2,415	\$2,535	\$2,560	\$2,590	\$2,615	5% two years, 1% thereafter
Territories								
Guam	\$123,000	\$870	\$915	\$960	\$970	\$980	\$990	5% two years, 1% thereafter
Northern Mariana Island	\$146,000	\$870	\$915	\$960	\$970	\$980	\$990	5% two years, 1% thereafter
American Samoa	\$136,000	\$870	\$915	\$960	\$970	\$980	\$990	5% two years, 1% thereafter
Puerto Rico	\$689,000	\$5,750	\$6,040	\$6,340	\$6,400	\$6,465	\$6,530	5% two years, 1% thereafter
Virgin Islands	\$212,000	\$2,300	\$2,415	\$2,535	\$2,560	\$2,585	\$2,615	5% two years, 1% thereafter



Association of State
Drinking Water Administrators

2020-2022
STRATEGIC
PLAN



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Dear Members,

It's been my goal since my first day at ASDWA in January of 2017 to ensure we are strategic in our approach to fulfilling our mission and that staff is empowered, efficient, and supported in their work. Like you, our members, and the utilities and partners throughout the sector, we are experiencing a period of incredible change. The challenges we face together in terms of regulatory leadership, financial support, an evolving workforce, and meeting growing public expectation for action and information are numerous and complex, but opportunities abound to meet these challenges and, together, we are positioned for great success. It's in the spirit of that togetherness that Mark and I proudly share with you this document – our very first three-year Strategic Plan.

We'd like to thank our Board of Directors and staff who spent the time to develop this document collaboratively, to really understand key industry trends, and to identify the most critical steps we need to take to ensure ASDWA's long-term success.

We now have a clear plan of action, with specific goals and objectives to guide our work for the next three years. We look forward to providing continued service to all, and we're especially excited to implement this plan to ensure we reach our full potential.

Sincerely,



Alan Roberson
Executive Director
ASDWA



Mark S. Mayer
President
ASDWA

Introduction

The Association of State Drinking Water Administrators (ASDWA) has been, for 34 years, the professional association that supports states in their efforts to protect public health through safe drinking water.

It aims to inform, support, and equip state agencies with the information they need to fulfill their duties; provide states with national representation; and be a respected voice for state primacy agents with Congress, the Environmental Protection Agency (EPA), and other professional organizations.

The Need for Strategic Planning

On the horizon, ASDWA faces many new and difficult challenges toward fulfilling its mission, most notably regulatory uncertainty, financial constraints, and growing public expectation of communication and action to protect our nation's drinking water.

ASDWA continues to experience an increasing number of competing national drinking water priorities posed by unregulated contaminants and contaminants of emerging concern. It will be beneficial for staff to incorporate the knowledge gained from, and foundation created by, its legacy work in meeting the newer challenges facing the sector. In addition, ASDWA must assure no impacts to productivity occur amidst its evolving workforce.

Fortunately, ASDWA has the potential to meet these challenges with an engaged Board of Directors; a diversely talented staff that will remain; new technologies and tools to help them work smarter, not harder; and healthy reserves.

This strategic plan, ASDWA's first, provides a roadmap from 2020 to 2022. It will ensure the organization continues to monitor and account for the external threats to its success and is amply prepared and equipped to meet them, while providing continued service to its members.

In 2020, it is anticipated that ASDWA will focus first on issues of top priority, as well as the easiest activities that will have the largest impact on its future success. The majority of these focus on ASDWA's internal culture and work environment.

From 2021 to 2022, it is anticipated that ASDWA will transition from inward focused initiatives, to more outward focused ones that will bolster and buoy its ability to deliver on its brand promise to members.

Finally, in year three, 2022, ASDWA will be fully executing on external initiatives developed in 2021 and will begin the process of looking ahead three more years with the development of a strategic plan for 2023-2025.

Vision

Drinking water in the United States is managed and protected sustainably and efficiently through appropriate funding, planning, policy, and regulation.

Mission

ASDWA provides information, opportunities, and guidance to state and federal leaders and partners in the drinking water sector in order to protect public health and the environment.

Guiding Principles

- ▶ We act with integrity in all aspects of our work.
- ▶ We respect the unique perspectives and skill sets of our colleagues, and approach all projects in a spirit of openness, inclusion and collaboration.
- ▶ We anticipate needs, take initiative, and proactively seek to solve problems and add value.
- ▶ We create an environment that rewards innovation and calculated risk taking, understanding that sometimes the way forward is on a new path we haven't tried before.
- ▶ We are agile, recognizing we work in a constantly evolving sector, so we readily pivot priorities when needed.

Goals



To create and continuously enhance member value



To positively impact the development of policies, regulations, and legislation that support state drinking water programs



To amplify ASDWA's impact with key partnerships and proactive communications



To empower a high-performing team

Strategic Plan

Development Process

Staff and Board Surveys

ASDWA began the process for developing this Strategic Plan in October of 2018. The first step was to conduct a survey of staff and Board members to gather understanding of their impressions of the current environment and what internal and external factors are influencing ASDWA's success.

Staff Workshops

In November of 2018, the staff gathered off-site for a full day to review the survey results, using them to develop the foundation of this plan. The day began with a facilitated "Improv for Business" workshop to help staff get in the right mindset for brainstorming and thinking beyond the usual ideas. After that, staff was guided through several group exercises to continue to brainstorm ways to be responsive and anticipatory to the challenges they face. They capped the day with an exercise to prioritize those ideas.

Board Review

In January of 2019, a draft plan was presented to staff and the Executive Committee for additional input and review. With that input, a draft was shared with the full Board at its March meeting. A second draft of the plan was completed in April and brought again to the Board for their final review at their July meeting.

Board Adoption

The final plan was presented to the Board for approval and adoption at the ASDWA Annual Conference in October, 2019.

Implementation and Impact Analysis

Upon final Board approval, staff will create detailed implementation task plans for the various initiatives, which will identify the responsible and accountable staff member, tasks necessary, suggested due dates, and resources required. In addition, tasks will be incorporated into Individual Action Plans for each staff member and tied to performance appraisals beginning in 2020.



Eight

Influencing Factors

ASDWA's success is influenced by many factors both within and outside of its control. Some of these factors have the capability to enhance ASDWA's success—and it will be important for ASDWA to seize the opportunities they present. Other factors, both internal and external to ASDWA, have the potential to detract from ASDWA's success. ASDWA must understand and anticipate them by employing strategies that can either deflect or diminish their impact. The following eight influential factors were identified in the planning process, as well as strategies ASDWA will need to employ to effectively handle them. These strategies are revealed in more detail within the goals, objectives, and strategies of the plan, described on the following pages.



ECONOMIC UNCERTAINTY

Many states are experiencing funding limitations, which impact their ability to address a continuously growing and evolving regulatory agenda. In addition, the availability of resources vary from state to state. These factors prevent states from consistently addressing the full regulatory and non-regulatory agenda and also threaten their ability to stay engaged with ASDWA.

ASDWA Strategy to Maximize Benefit and Minimize Risk

ASDWA will consider ways to minimize the burden of requests on the states and keep continued pressure on The Hill with reports like *Beyond Tight Budgets* that help provide context for Congress and educate members and staffers on funding needs. ASDWA will also seek out and evaluate alternative funding and grant opportunities so it is not solely reliant on states and EPA for revenue.



INTERNAL CULTURE

ASDWA staff is experiencing a transition in culture, with a new Executive Director and turnover in staff, as some employees retire and new ones are brought on. With just six employees, the team is very sensitive to even the smallest of impacts, such as a change in policy, focus, procedure, or personnel.

ASDWA Strategy to Maximize Benefit and Minimize Risk

To ensure continued and consistent service to members, ASDWA will promote and reward use of technologies that enable greater efficiencies and higher productivity, as well as taking initiative, calculated risk taking, and some failure. The team will endeavor to be mindful of the way seemingly minute changes can impact productivity, and they will employ software and new approaches to teamwork that accentuate collaboration and efficiency.



ENVIRONMENT

The effects of climate change and extreme weather events will continue to impact how utilities manage their systems and assure sustainable sources of drinking water. The effects will also impact the abilities of both utilities and states to allocate funds to the future, while they continue to expend resources and funds on the crises of today.

ASDWA Strategy to Maximize Benefit and Minimize Risk

ASDWA will continue to seek out and be engaged in climate change conversations and look to deepen its relationships with utility associations, so that it can better anticipate, understand, and alleviate climate change's evolving effects on states and utilities.



INDUSTRY CONVERGENCE

Water and wastewater sectors are increasingly converging in a one-water approach to problem solving. This new approach unifies resources and presents tremendous opportunity to gain efficiencies and attention for both sectors, but at the same time risks diminishing the focus on issues that are germane to drinking water alone.

ASDWA Strategy to Maximize Benefit and Minimize Risk

ASDWA will build relationships with utility trade groups and partners to facilitate coordination among all groups, while also assuring the convergence multiplies, rather than diminishes, collective efforts to provide safe drinking water to consumers.



POLITICAL LEADERSHIP

Political uncertainty, in terms of its impacts to federal and state leadership of safe drinking water, makes it difficult for ASDWA to anticipate and act on future policy and regulatory changes. At the same time, Congress is showing a renewed interest in water infrastructure.

ASDWA Strategy to Maximize Benefit and Minimize Risk

ASDWA will capitalize on its balanced voice in Congress to obtain bipartisan support for funding and take formal steps to proactively develop and sustain mutually beneficial relationships with federal partners and The Hill in order to anticipate and respond to changes that can support or detract from its efforts.



PUBLIC EXPECTATION

Drinking water crises like those in Flint, MI and West Virginia, along with a steadily growing focus on water issues in the media, have increased public concern and expectation for greater regulation and information about water quality. This puts pressure on federal agencies to move more quickly to enact standards and necessitates a more proactive approach to water communications on behalf of utilities, states, federal agencies, and partners.

ASDWA Strategy to Maximize Benefit and Minimize Risk

ASDWA will take advantage of the elevated media and public interest in water issues with a more formalized plan for communication and outreach to its stakeholders and to the media directly. It will monitor media coverage of key issues, comment where appropriate, and seek to develop relationships with key media journalists and other influencers, while at the same time, build its profile as a leader in effecting positive change in support of safe drinking water. In addition, ASDWA will emphasize with its members, their opportunity and role in setting the agenda for water issues and engaging their constituents in the water conversation.



REGULATION

Lack of regulatory leadership and slow decision making on issues puts the onus on states to take action to protect their public. The long timeline for EPA's standards development makes it difficult for states to meet public expectation for protection. This is compounded by increasingly sophisticated detection technology that continues to reveal more unregulated contaminants, which, in turn, raises public concern before the true risks are known.

ASDWA Strategy to Maximize Benefit and Minimize Risk

ASDWA will prioritize meetings with states on key issues that need coordination and collaboration, so a unified voice can be expressed to feds and others. Keeping in mind that faster is not always better, ASDWA will also explore its influence with partners and states to expedite the process while also publicly ramping up communications about issues. Finally, ASDWA will seek common ground on actions and common messages, even when states differ on an issue, to minimize inconsistencies in regulation and the confusion those inconsistencies can cause among the public.



WORKFORCE ISSUES

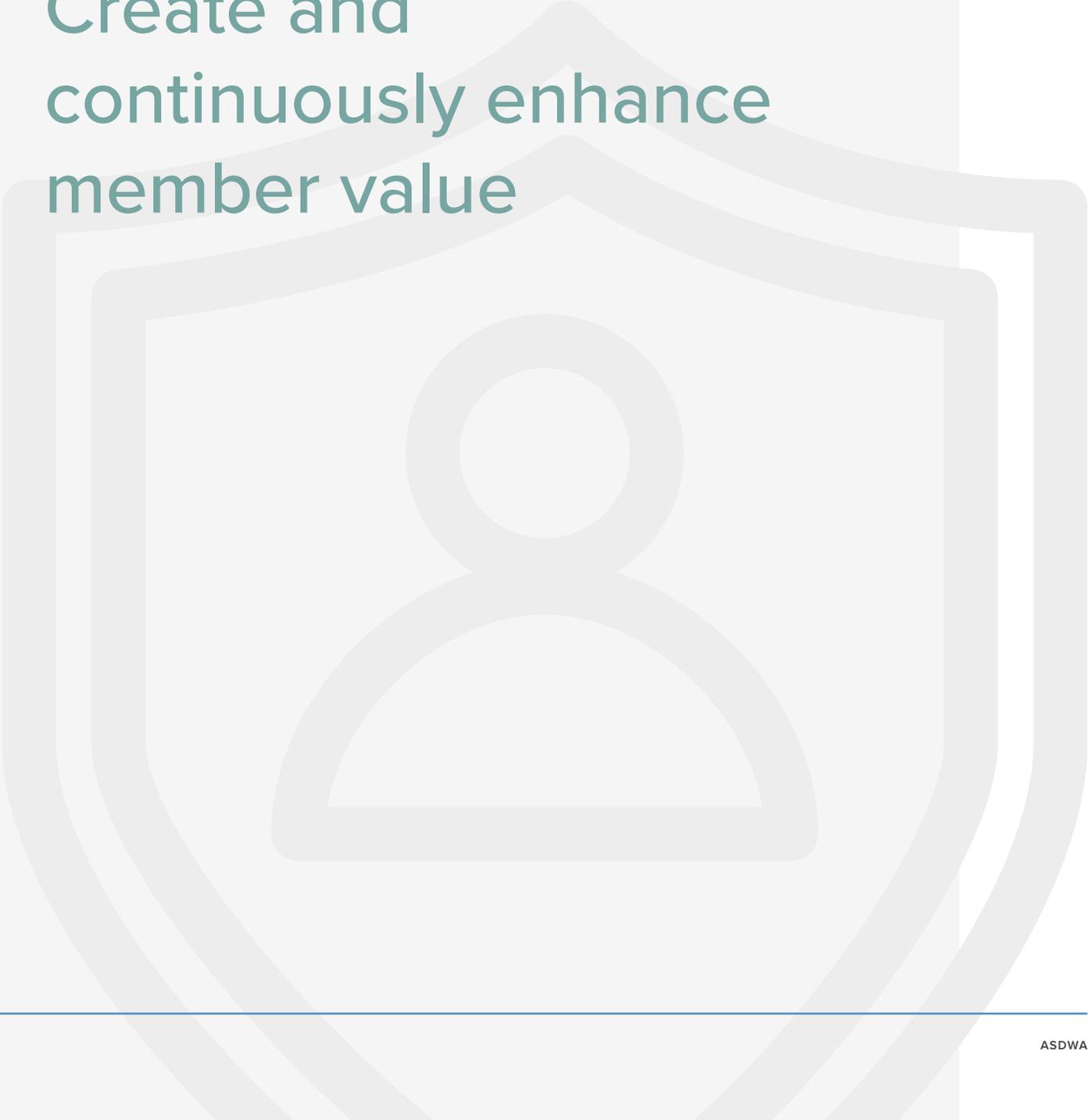
The U.S. workforce is changing and ASDWA and its members are too. Staff turnover in recent years due to retirements, and additional turnover anticipated over the strategic plan period, is disruptive to the culture and productivity of the organization and can result in a loss of tacit knowledge. Turnover at the federal and state level makes long-term relationship building with these agencies a challenge.

ASDWA Strategy to Maximize Benefit and Minimize Risk

ASDWA will capitalize on its diversely skilled and talented staff and assign work and tasks that play to individual strengths, and align with key interests, to keep motivation high. It will document workflows and knowledge and more formally tie compensation and rewards to performance with clearly articulated expectations, a fair and equitable performance review process, and an award and bonus system. In addition, it will formalize efforts to build its own profile and deepen relationships with key state and federal contacts inclusive of successors to current leadership.

GOAL 1

Create and
continuously enhance
member value



Objective

Measurably increase member value and engagement.

2021 Strategies

- Create and implement a member engagement plan, with pre and post surveys to measure KPIs.
- Evaluate and enhance member services to ensure information sharing and guidance is prioritized appropriately for current needs.

2022 Strategies

- Provide new training resources for state staff.
- Update the By Laws.
- Develop tools for state staff to increase approvals for innovative technology.
- Conduct post surveys of membership to evaluate engagement plan, make adjustments where needed.

Objective

Facilitate states' transition to SDWIS Prime.

2020 Strategies

- Support Prime's communications infrastructure.
- Encourage and support peer-to-peer technical support.
- Participate in governance and testing workgroups (DMAC, Advisory Board, IAWG, UAG).
- Assist EN Grant recipients with moving their projects forward.
- Work with ECOS, or the appropriate governing body, to evaluate the future use of the EECIP (E-Enterprise Community Inventory Platform) by SDWIS Prime states.
- Coordinate with EPA to deliver necessary training to states who adopt Prime.

2021 Strategies

- Conduct follow-up work to ensure smooth transition to Prime.

GOAL 2

Positively impact the development of policies, regulations, and legislation that support state drinking water programs

Objective

Support states' development of their own standards for PFAS and other emerging contaminants.

2020 Strategies

- Create program/plan for providing states with the tools, resources, and information to set their own standards for PFAS and other unregulated contaminants if they are required to or choose to do so.
- Create program/plan for providing states with the tools, resources, and information to address buildings and facilities that institute water management plans or install treatment to address Legionella or other premise plumbing pathogens.

Objective

Support states' implementation of AWIA related to lead and the LCR revisions.

2020 Strategies

- Develop relationships with organizations to address lead in schools beyond the lead service line collaborative.
- Advocate for states' perspectives during the development of the revised lead and copper rule.
- Develop a framework that states can use to quantify lead service line removal estimates in the next Drinking Water Needs Survey.

Objective

Advocate for increased authorization and full appropriation for PWSS grants and DWSRF funding.

2020 Strategies

- Identify and collaborate with new and existing partners who can help educate Congressional Partners on the importance of full PWSS appropriations.
- Educate Congressional partners to help them understand the value of increasing DWSRF authorization and full appropriations.
- Increase ASDWA's influence/profile and opportunities for influencing Congressional partners.

Objective

Assist states with implementation of AWIA provisions related to lead and the LCR revisions.

2021 Strategies

- Support implementation of LT-LCR.

GOAL 3

Amplify ASDWA
impact with key
partnerships
and proactive
communications

Objective

Build and secure ASDWA's profile in the drinking water sector as trusted expert, a leading convener of drinking water issues, and a leader in effecting sound drinking water policy and regulations.

2020 Strategies

- Create and implement a strategy for developing relationships on The Hill.
- Create an EPA outreach plan (beyond our traditional contacts).
- Create a comprehensive plan for ASDWA's source water protection efforts, leveraging the work of our partners.

2021 Strategies

- Implement EPA Outreach Plan
- Create and implement a partner/ stakeholder outreach plan.
- Create and begin implementation of ASDWA visibility/media outreach plan.

Objective

Identify and obtain alternative sources of income.

2022 Strategies

- Evaluate and determine if pursuing new funding opportunities is worthwhile.
- Identify potential new funding opportunities.

GOAL 4

Empower a
high-performing
team

Objective

Remove the barriers that inhibit staff productivity.

2020 Strategies

- Improve and facilitate better staff collaboration.
- Improve how staff time is spent and allocated.
- Conduct cross training on ASDWA financials.
- Develop and begin implementation of a strategic technology plan.

2021 Strategies

- Evaluate improvements made in 2020 to enhance staff collaboration and productivity, make adjustments if needed.
- Assess strategic technology plan, make adjustments where needed.

Objective

Devise process to assure employee continued development and growth, and a process for assessing performance that ensures an equitable and fair annual salary review.

2020 Strategies

- Develop a process for assessing performance.
- Align employee development and performance objectives with ASDWA Strategic Plan.

2021 Strategies

- Assess the new performance assessment process, make adjustments if needed.
- Develop pathways for employee growth and development.

STRATEGIC FRAMEWORK

Vision

Drinking Water in the United States is managed and protected sustainably and efficiently through appropriate funding, planning, policy, and regulation.

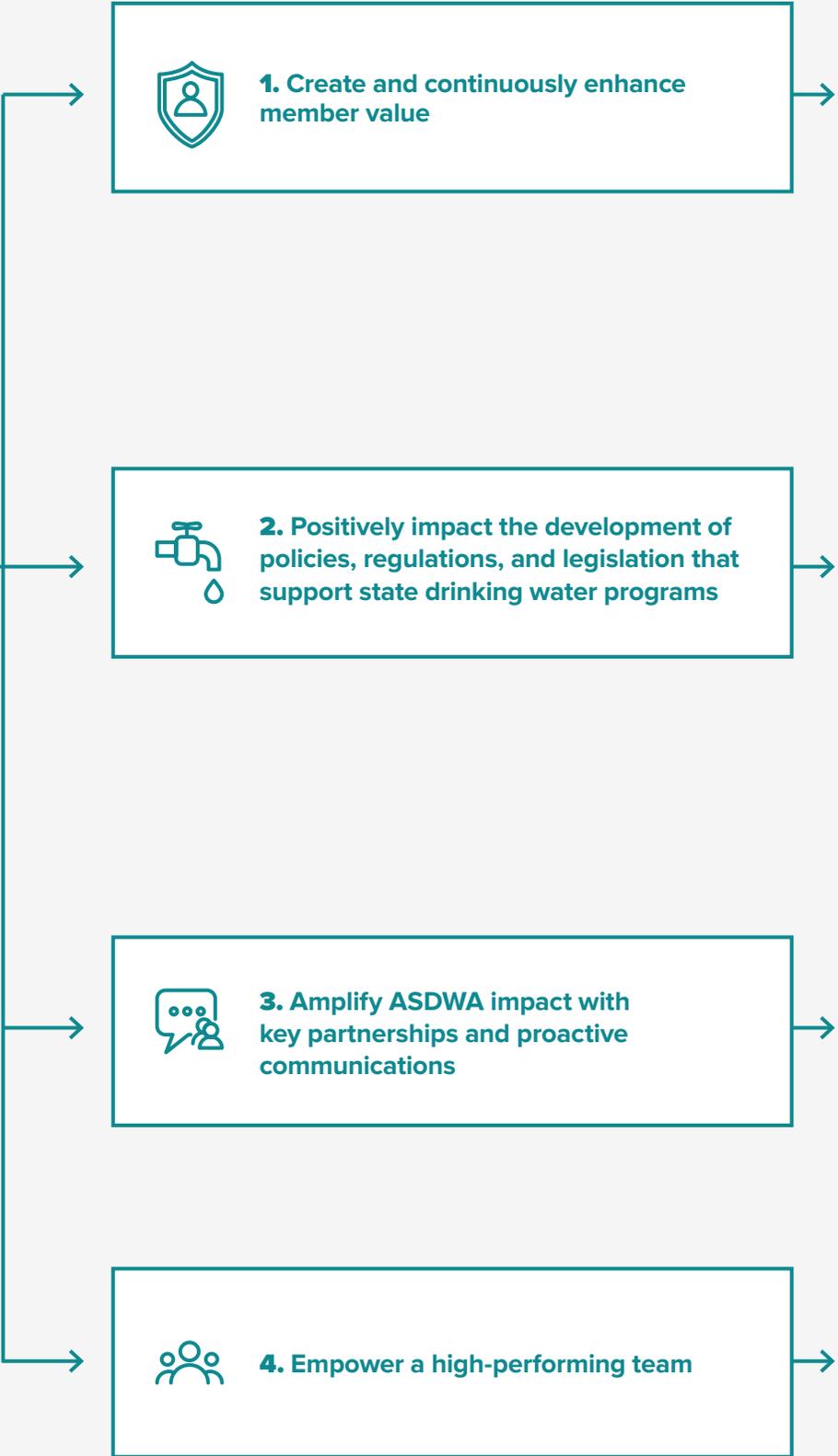
Mission

ASDWA provides information, opportunities, and guidance to state and federal leaders and partners in the drinking water sector in order to protect public health and the environment.

Values

- **Integrity** – We act with integrity in all aspects of our work.
- **Inclusion** – We respect the unique perspectives and skill sets of our colleagues, and approach all projects in a spirit of openness, inclusion and collaboration.
- **Initiative** – We anticipate needs, take initiative, and proactively seek to solve problems and add value.
- **Innovation** – We create an environment that rewards innovation and calculated risk taking, understanding that sometimes the way forward is on a new path we haven't tried before.
- **Agility** – We are agile, recognizing we work in a constantly evolving sector, so we readily pivot priorities when needed.

Goals



Objectives

Strategies

- Measurably increase member value and engagement.
- Facilitate states' transition to SDWIS Prime.



- Develop/implement measurable member engagement plan.
- Ensure information sharing is prioritized appropriately.
- Provide new training resources for state staff.
- Update the By Laws.
- Help state staff get more approvals for innovative technology.
- Support Prime's communication infrastructure.
- Support peer-to-peer technical support.
- Participate in government testing workshops.
- Assist EN Grant recipients.
- Work with ECOS to evaluate future use of EECIP.
- Coordinate with EPA training for states that adopt SDWIS Prime.
- Follow up to ensure smooth transition to Prime.

- Support states' development of their own standards for PFAS and other emerging contaminants.
- Support states' implementation of AWIA related to lead and the LCR revisions.
- Advocate for increased authorization and full appropriation for PWSS grants and DWSRF funding.



- Create program/plan for supporting states with setting their own standards for PFAS and other UCs.
- Create program/plan for supporting states with buildings and facilities that institute water management plans.
- Develop relationships to address lead in schools beyond the lead service line collaborative.
- Advocate for states during development of the revised LCR.
- Develop framework to quantify lead service line removal.
- Identify and collaborate with those who can help educate Congress on the importance of full PWSS and DWSRF appropriations.
- Increase ASDWA's profile and influence in Congress.
- Support implementation of the LT-LCR.

- Build and secure ASDWA's profile in the drinking water sector.
- Identify and obtain alternative sources of income.



- Create and implement a strategy for developing relationships on The Hill.
- Create and implement an EPA outreach plan (beyond traditional contacts).
- Create a comprehensive plan for ASDWA source water protection efforts, leveraging the work of our partners.
- Create and implement an ASDWA visibility/media outreach plan.
- Evaluate/determine whether pursuing new funding sources is worthwhile.
- Identify potential new funding sources.

- Remove the barriers that inhibit staff productivity.
- Devise process to assure employee continued growth and development and for assessing performance that ensures equitable and fair annual salary review.



- Improve and facilitate staff collaboration, assess annually.
- Improve how staff time is spent.
- Conduct cross training on financials.
- Develop and begin implementation of a strategic technology plan, assess annually.
- Develop performance assessment process, assess annually.
- Align employee performance with Strategic Plan.
- Develop pathways for employee growth and development.



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Recommended Changes to ASDWA's Regional Reports

October 11, 2019

Shifting the Focus from the Process to the Content

Regional Reports have significant value to our association, providing opportunities for states to share successes or concerns with our Board of Directors, which in turn, inform future projects for ASDWA staff. While this communication between our member-states and Board assists our organization in tracking issues of national concern, the current procedure for soliciting and consolidating these Reports places an unnecessary burden on our Board Members – requiring they facilitate the administration of this process. The reports often request a significant amount of information, requiring Board Members to read through long reports during time-crunched meetings with little opportunity to dive into the issues.

For these reasons, ASDWA is proposing several changes to our Regional Report format and administration for the Board's consideration. It should be noted that this new format (and the underlying questions) might evolve over time as we develop more experience with the new form

Question Set/Format

Our current Regional Report is lengthy, non-standardized, and may solicit more information than ASDWA can effectively process. The new online form provides a standard template for all submissions, and has been significantly streamlined to focus on:

- Major Issues Impacting States - these quick polls can assist ASDWA in identifying future projects for the coming year to directly support the areas states say they are most concerned. We included this section to demonstrate the kind of quick polling options we can employ.
- Program Challenges - this narrative section captures more detailed descriptions of critical issues impacting the state and allows ASDWA staff to identify topics for Board consideration. Alternatively, information collected could be used by ASDWA to direct other tasks that would not require Board review or approval.
- Program Successes – this narrative section captures details of state successes. Again, ASDWA staff can tease out issues that might be useful to other states to present at the Board Meeting, or perhaps a broader audience.

In our evaluation, we looked at all the information provided by the Board and gathered through our discussions. Our first draft of the form was intended to be the simplest option so that we could iterate towards a more robust solution, if necessary, based on the Board's feedback.

Administration

In addition to looking at the content we collect from states, ASDWA is proposing a change to the process of administrating our Regional Report collection. The new workflow shifts much of the responsibility placed on Board Members to ASDWA staff and should create enough efficiency to allow time to identify critical items for discussion before the Board Meeting. Some details about the proposed changes:

- **Distributing the Form** - on schedule, ASDWA sends a link to an electronic Regional Report Form to all Administrators via email. We're already ahead of the game by sending the information directly to the states on behalf of our Board. Further, this is a standing scheduled task and therefore a candidate for future automation.
- **Collecting Submissions** - Administrators click the link provided in the email notification and can complete a revised form online - their submissions populate an online database. As an alternative to the online form, Administrators receive a fillable-PDF that can push submitted data to the same online database. All our submissions are directly reported to ASDWA, eliminating the need for Board representatives to track, consolidate, and send back submissions to ASDWA.
- **Notifications for All** - upon submission, the system automatically routes an email notification to the appropriate Regional Board Representative based on the selection. For example, a state selecting "Region 2" on the form triggers a notification to the Board Representative for Region 2. ASDWA also receives a copy of this notification, which includes the entire submission. The submitter, meanwhile, gets a confirmation notification with a copy of their submission.
- **Reviewing Submissions** - on schedule, ASDWA staff review submissions to identify critical items for Board consideration. We can also tease out additional action items for ASDWA that may not warrant or be ready for Board discussion. In this way, we're not losing the regional report as a mechanism for keeping tabs on state success/issues.
- **Maximize Facetime** - the Board agenda maintains a block of time for "Regional Reports" or "National Issues." Rather than reading the reports during our meeting time, the agenda will, instead, reflect the issues identified through the reports for discussion, with appropriate supporting materials provided. ASDWA staff will provide a summary and identify areas for further discussion at the meeting.



ASDWA Regional Report: Fall 2019

Region *

Contact Information

Please provide your full contact information. ASDWA uses this information to maintain our membership and email distribution lists.

Name *

First Name Last Name

Email *

example@example.com

Primary Organization *

State *

Check the following challenges that your program is dealing with:

Challenge

PFAS

Risk Comms

HABs

SDWIS

Op Cert

Internal Workforce

Program Funding

Lead

Other (explain below)

PROGRAM CHALLENGES

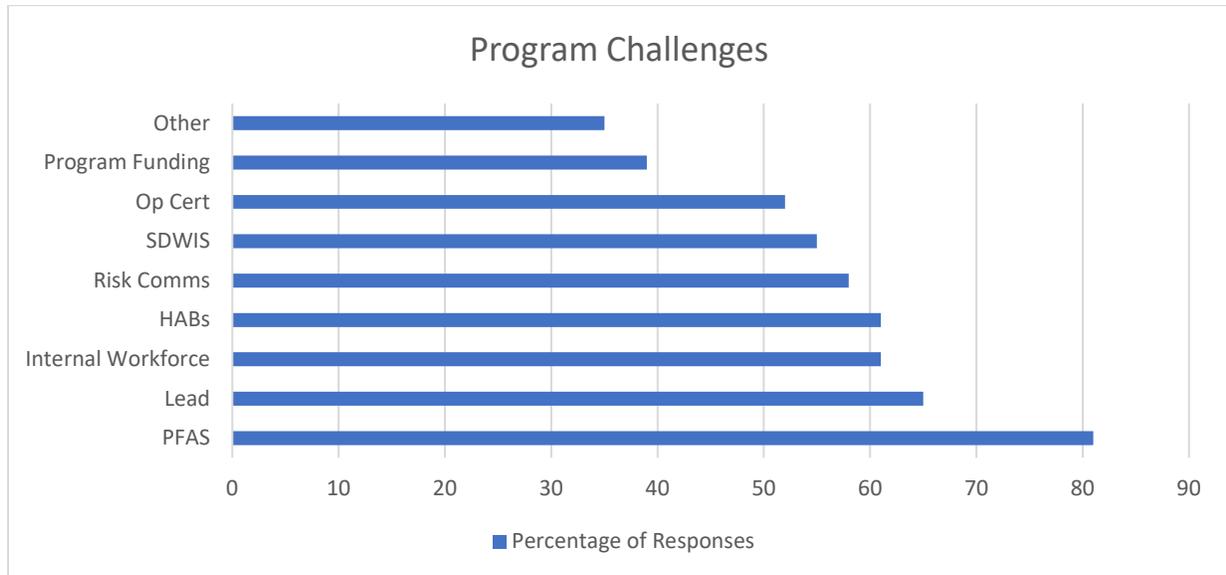
Please provide additional details about the challenges your program is facing. Feel free to elaborate on issues not identified that your program is dealing with.

PROGRAM SUCCESSES

Please provide information on any successes in your program that may be of value to other state drinking water program administrators. This could include innovative solutions to common challenges.

National Issues Report – Fall 2019

Thirty-four states from 9 regions provided insight into this report.



Challenge Narrative:

PFAS

Funding, sampling logistics and analytical capacity, and risk communication are challenges associated with this effort.

- Many states are going through the initial stages of developing a regulatory framework for PFAS if they haven't yet established one. Those states who have not had detections are still going through preparations to respond if/when the contaminant is found.
- Risk Communications – the lack of guidance or EPA leadership, states struggle with communicating appropriate perspective and context to the public with respect to representing the PFAS risk against other regulated contaminants.

Data Management:

States depend on SDWIS to manage their programs, and the current state of development has left many questioning whether to wait for EPA action or not.

- CMDP/e-reporting initiatives – many states in production are struggling with the method analyte pairing issue. EPA has finally developed a new mechanism for collecting, evaluating, and uploading lab methods to CMDP, but the process lacks both transparency and timeliness. EPA has been made aware of these issues and is working to improve the process.
- SDWIS modernization and associated uncertainty. Many states invested significant resources into the project and are now uncertain what the future will hold. A few states have initiated internal projects to develop in-house IT systems to support their needs.

- EN Grants - many states are sitting on EN Grants intended for Prime/CMDP transition/implementation activities and have not received formal guidance on how these funds can be moved or what, ultimately, will happen to those funds.
- Tracking unregulated compounds is a growing concern.
- The centralization of IT resources is becoming the norm and will present many challenges to individual drinking water programs.

Operator Certification:

- Lack of availability of certified operators in rural communities, exacerbated by retirements.
- Workforce development presents a challenge for some states – the complexity of treatment processes requires an increase in the skills and knowledge levels of operators.
- At least one state reported moving into the 2017 ABC op cert test and is experiencing a marked decline in passing rates – mostly in wastewater.
- **Q: are other states on the new system, and have they too experienced similar declines in their passing rates as a result of the switch?**

Internal Workforce Issues:

- Many states reported issues with internal staffing, especially filling technical vacancies. The issues persist despite appropriate funding and authorization to take on new staff. Additionally, some states report challenges with staff transitions – knowledge flight, training new staff, a lot of new people in management positions. The promotion of drinking water as a career field and attracting drinking water industry workforce is a challenge.
- **Q: How might ASDWA support state efforts to attract candidates to these positions – either specifically [helping distribute the announcements] or more broadly [representing drinking water employment opportunities at university job fairs].**

Water Reuse Issues:

- States reported needing more education for drinking water, clean water, and wastewater branch staff as well as how to develop regulations to protect public health and the environment.

Lack of Resources to Meet Rising Challenges:

- Many state programs struggle with keeping pace with the flurry of new activities: WIIN grants, farm bill measures, manganese, PFAS, LSLs, and water quality in buildings.

Organizational Structuring:

- Some states identified issues with organizational structure, for example, NE operating under an MOU and reporting to two governing agencies.

Risk Communications:

- Leadership and guidance are needed to help states communicate about unregulated contaminants and associated issues [variance in state standard-setting, slow federal response, immediate health risks, action levels, etc]. Lack of EPA leadership on the issue and increased public scrutiny further complicate the challenge.

- **Q: How can ASDWA support state needs here? We've been continuing to develop 2-page fact sheets to assist in summarizing major program issues and have discussed developing other supporting materials [slide decks, fact sheets, visuals, templates, etc.] to expand this project and provide communication assets to our membership.**

Small Systems:

- Arizona's biggest challenges continue to lie with small water systems and helping them achieve and maintain compliance with everything from monitoring & reporting requirements, to O&M issues to MCL exceedances. Many of these small water systems are in rural, economically disadvantaged areas and have limited financial options due to their ownership structure (several do not even exist as a legal entity), their poor or non-existent credit history, their insufficient rates (and a customer base that cannot afford a significant rate hike), or their inability to take on additional debt.
- Nevada's program continues to struggle with helping very small systems, and newly found systems, build capacity and maintain compliance with health-based standards, and MR requirements. Many of these systems lack capacity, structure, and resources to achieve TMF to qualify for assistance from our existing funding mechanism. These systems receive the bulk of our staff time in providing one-on-one technical assistance; we also use contract resources for TA.

WIIN:

- States reported challenges finding the 45% match for the small/disadvantaged community grant.

DWSRF:

- Getting systems to apply for SRF loans - Missouri's Drinking Water State Revolving Fund (DWSRF) program is having difficulty attracting enough borrowers and getting projects from application to binding commitment in a timely manner. The program tends to attract small communities, who cumulatively apply for much less than the amount available each year. Further, these small communities typically several years to complete a project, despite the program assigning project coordinators responsible for providing assistance. The program is developing strategies to increase loan applications, with an emphasis on attracting large borrowers.

Capacity Development/Emergency Response Plan:

- ODEQ conducted a Capacity Development Baseline Assessment. From that, ODEQ learned that 54% of assessed municipal water systems or rural water districts had no written emergency response plan and that a lack of an emergency response plan was the 6th most commonly reported capacity development deficiency for Oklahoma public water supplies that were assessed.

National Achievements Report – Fall 2019

Part of our Regional Report process asks states to provide ASDWA with examples of successes they achieved in their program for the benefit of other states. As we evaluate the relationship between what the Board of Directors needs to know during face-to-face meetings and the body of information provided in these reports, please consider ways ASDWA can better manage this information. For example, should we focus on presenting Challenges to the Board and share Successes with the broader Membership? What do you want to see in your role as a Board member?

Manganese:

Iowa reported their Manganese Protocol was approved for use. Manganese is prevalent in the state geology and is considered an acute at 0.3 mg/L for bottle-fed infants; we thought the best approach was to treat everyone fairly, get the data from all systems, and in the absence of any lab analytical results, be cautious during main breaks and require bottled water. We have been talking about manganese at operator meetings for more than a year before this protocol being instituted.

North Dakota reported 10 of the 11 Systems are doing public notice twice a year until they add treatment, or the levels of manganese are determined to be less than the health advisory.

HABs:

IN started bimonthly sampling at ten different PWSs in May 2019 as part of their HABs sampling project.

AWOP:

KY reported they have an active Technical Assistance AWOP Program – they decreased health-based violations and DBPs, in addition to monitoring and reporting violations.

Lead:

MD reported they're in their 2nd year of implementing lead testing in schools – they collected more than 42K samples with less than 2% above the lead action level. They also submitted a grant application for lead testing under WIIN and plans to use these funds to expand their program success to include daycare centers.

MT reported a successful partnership between the departments of Environmental Quality and Health and Human Services in standing up a mandatory school lead sampling rule for the state.

ID reported the Boise School District completed the removal of old fountains (some that contained lead), and the installation of new water-efficient fountains as well as GAC units in schools where the water mains dead end. Water use was reduced up to 66% for fountain replacements and reduced an estimated 111,000 gallons per year for each of the three schools that were flushing their distribution systems.

ODEQ has applied for funding from EPA under the WIIN Lead in Schools and Child Care Center Drinking Water Grant and has formed a coalition to provide drinking water lead testing and technical assistance services to all public schools and public/private childcare centers in Oklahoma. The program is voluntary, free-of-charge, and non-enforcement oriented. Disadvantaged communities, older school buildings, and

facilities serving children ages 0-6 years will be prioritized. The coalition that ODEQ has formed includes the following entities in addition to ODEQ: Oklahoma State Department of Education, Oklahoma State Department of Health, Oklahoma State Department of Human Services, Office of the State Secretary of Energy and Environment, and the Oklahoma Parent-Teacher Association.

ND reports their Work plan has been approved by Region 8 EPA and uploaded to grants.gov. The North Dakota Department of Public Instruction has provided information on their facilities so that we can begin to determine the highest priority schools or childcare facilities located in low income or disadvantaged communities with the greatest potential for lead contamination. The program has also developed its Quality Assurance/Quality Control Documentation and is waiting on its approval.

Internal Workforce:

Missouri reports they collaborated with the Missouri Department of Corrections to host a wastewater treatment, multi-day, pre-certification training course for a class of 15 offenders in a correctional institution. Since then, the Department held a second wastewater course and a drinking water distribution certification class at the same location. Department Course attendees take a certification exam after the course. Department staff is working closely with the Department of Corrections' Re-entry Coordinator to provide follow-up information to probation and parole offices for those completing the program about potential employment opportunities.

DE reports the Office of Drinking Water is fully staffed.

E-Reporting:

Indiana reported on their passing of a state reg, HEA1278, which requires Public Water Systems to submit compliance results electronically. IN plans on transitioning to CMDP and working with certified labs to start using CMDP. For labs to maintain their certification, they must start using CMDP by June 30th, 2020. This electronic reporting requirement will help reduce our manual data entry tremendously (staff currently enter 80% of results manually). We hope the staff can eventually spend more time on compliance assistance efforts.

Operator Certification:

Iowa is developing advanced (classroom and in-plant/hands-on) Surface Water Treatment operator training curriculum through a partnership between and program staff and operators from across the state. When finished, the vision is to provide this ongoing through an in-state education institution that surface water operators must attend.

WI reports success working with a technical college in Wisconsin on new training for water supply operator continuing education.

Partnerships:

CWA/SDWA - Nevada reports partnerships with local community leadership and our source water protection program in assisting local communities with science and engineering resources to plan for growth and protection of their precious water resources. We also collaborate with the Clean Water Act programs on several levels to tie the Clean Water Act and Safe Drinking Water Act together for stronger program implementation. We leverage technical and financial assistance to communities municipalities

as they work to maintain critical infrastructure, operations, and management in an ever-changing regulatory and economic environment.

ND reported positively on their Emergency Response/Flood Response coordination between federal, state, and local partners.

Leak Detection Efforts:

Missouri uses the DWSRF Local Assistance and Other State Programs Set-Aside to contract with Missouri Rural Water Association (MRWA) and provide assistance to public drinking water systems facing TMF capacity challenges including water loss, rates and reserves, treatment, disinfection, asset management, distribution mapping, natural disasters, operator certification, and source water protection. Water loss and leak detection visits help systems in identifying nonrevenue water, including real or physical losses of water, as well as apparent losses. Identification and reduction of nonrevenue water is a major component to achieving and maintaining TMF capacity. Promptly repairing leaks can result in cost savings for systems not only in recovered water but also electric and chemical savings. In FFY18, circuit riders performed 99 leak detection visits using specialized equipment. Promptly repairing leaks resulted in over 44 million gallons of water saved per month and approximately \$24,000 in monthly electrical and chemical savings in FFY18. Additional costs associated with nonrevenue water include wear and tear on pumps, cost of equipment, labor, and materials for repair, and customer inconvenience. This contract was re-awarded to MRWA in FFY19, and, as of September 1, circuit riders had performed 140 water loss and leak detection visits for FFY19.

Phone Tree:

Missouri piloted an automated notification system called PhoneTree in FFY18 and continued implementation of the software in FFY19. As a result of these efforts, Laboratory Fee NOVs were reduced by 50 percent in FFY19. Impacts associated with this effort include a reduction in NOVs sent certified mail as well as a reduction in time spent tracking violations and assisting systems in returning to compliance. The software was also used to provide CCR notifications and reminders to systems. As a result of these efforts, the number of systems with outstanding CCR certifications, as of September 1, was reduced by 50 percent in FFY19. Impacts associated with this effort include a reduction in staff time to provide CCR compliance assistance. As a whole, customer feedback has been positive, and the state is looking to expand the use of this tool in FFY20.

Chlorine Residual Tracking:

Missouri does not require certified operators for transient water systems; also, we are not a 'mandatory' disinfection state. Surface water, groundwater under the direct influence, lime softening plants, iron removal plants, compliance monitoring systems under the groundwater rule, and those with a poor history of total coliform results are required to add chlorine. Also, approximately 25% of the boil water orders due to E. coli detects at chlorinated systems. Investigations revealed many systems were not adequately testing and recording for residuals or were uneducated on the subject. Staff created a program that would query SDWIS for those systems with a disinfection treatment code, compare to the past week's bacti results and compile a list of systems that did not record residuals or had less than .2ppm residual on their water analysis card. This list is triaged by central office staff and then forwarded to regional office field staff. Field staff follow up with systems to make sure they haven't had a change in

operator, have an adequate test kit, reagent, are recording residuals, and offer to provide technical assistance if needed. The Department thinks this targeted approach has been effective, reducing boil orders and Level 1 and 2 Assessments triggered. Most importantly, protection of public health has been increased.

Capacity Development/Risk Assessment and Emergency Response Planning:

With EPA's new requirements for risk assessment and emergency response planning via AWIA sections 2013 and 2018, ODEQ has re-tooled the technical assistance it offers to water systems to mirror and satisfy the federal requirements. Through the Capacity Development Assessment Process, ODEQ works with public water supplies to complete risk and resilience assessments using EPA's VSAT Web 2.0 tool, and then also assists water systems in completing an emergency response plan using EPA's ERP Template. This assistance provided by ODEQ aids water systems in satisfying the requirements of AWIA 2013 and 2018 and in becoming more resilient.

CCR's:

ODEQ is making available to water supplies a new process for completing Consumer Confidence Reports. DEQ purchased software that ODEQ can use to create a water system's complete CCR for them. The completed CCR's are stored on an ODEQ-supported website. The systems can then notify their customers of the CCR's availability on the ODEQ website. ODEQ has suggested that water systems include the URL link on water bills sent to customers. This new process provided by ODEQ can eliminate difficulties some systems experienced with the preparation of CCR's and the expenses associated with their distribution. With this new process, greater compliance with the CCR Rule is anticipated.

DWSRF:

Starting in SFY 2019, Oklahoma DWSRF no longer has provided subsidy to regionalization/consolidation projects, and has changed the focus to public water supplies that have health-based violations, such as Disinfection Byproduct (DBP) issues. DEQ has completed meetings to explain this funding opportunity to those combined distribution systems where both the wholesale public water supplies and purchasing public water supplies are out of compliance with DBP's.

Source Water:

The Ground Water Protection Council 2019 Annual Forum was held in Oklahoma City on September 15 - 17, 2019. The agenda for Monday, September 16, 12:00 – 5:00, included a Source Water Workshop, which opened with an overview of traditional source water protection and included several CWA options for source water protection. Additionally, to kick off the workshop there were presentations by the Natural Resources Conservation Service (NRCS) Regional Conservationist (Central) and the NRCS State Conservationist for Oklahoma. The goals of the workshop were to provide key information on actionable source water protection opportunities, share successes, challenges, and questions, and plan for future actions and follow-up.

ODEQ is participating with other agencies and NGO's to potentially establish a statewide source water collaborative.

Backflow/Cross-connection:

North Dakota reports providing basic training through a third-party contractor Backflow Prevention Services, for PWSS staff, water and wastewater operator training and Tester Certification that trains and tests both facility operators and plumbers. Completion of the course and successfully passing the exam allows operators and plumbers to test and fix devices. Only plumbers who have passed the course can install or remove them. We will be updating our Department policies along with the State Plumbing Board over the next year.

Legionella:

ND took part in a Legionella Workshop with ASDWA in May 2019 to discuss and develop "State Procedures for Legionella Management." In July, we organized a meeting with the State Plumbing Board, ND Laboratory Services, local health officials, and Long-Term Care surveyors. In that meeting we listened to their concerns and questions and got feedback that ultimately helped us draft the "North Dakota Legionella Guidance" document, which addresses questions about State policy and offers recommendations. Items include how to develop water management plans in which to reduce bacteria in premise plumbing and sampling methods and thresholds that assist in identifying areas of risk. We continue to reach out to those with questions and offer resources when necessary during a Legionella outbreak.

PFAS:

ND has conducted its sampling for PFAS. Drinking water systems were chosen because they were determined to be the highest risk sites in the state due to proximity to Air bases as well as systems with highest population. Systems were a mixture of ground and surface water systems with results indicating no PFAS issues within drinking water, at levels that were detected, were all below levels of quantitation. We are planning on more sampling this spring.

SDWIS:

A new SDWIS admin was hired recently, and SDWIS State currently meets all our state drinking water program needs. Moving forward we will be looking for new updates regarding SDWIS State and any training associated with them. We will also be looking to move to CMDP if it is truly compatible with SDWIS State.

#6 - ASDWA Committees

Questions for Future Committee Actions/Reports for ASDWA Board and Members:

- **Board Liaisons:** Do we still need Board liaisons for each committee if ASDWA staff can take the lead on providing updates and actions for and from the Board?
- **Board Meetings:** Should we plan to provide committee updates and talk about actions at all Board Meetings or for just one or two meetings, perhaps at the October Board Meeting? For these updates and actions, ASDWA staff suggests that we provide a short list of bullets (as follows) and ask the Board if they have additional actions for the committees.
 - Major actions/accomplishments
 - Future committee action items or focus areas
 - Need for Board decision on actions?
- **ASDWA Member Meeting:** Does the Board agree with the following ASDWA staff suggestions that we provide a comprehensive report out on each of the committees' actions for the entire ASDWA membership at the ASDWA Member Meeting in March of each year? This would potentially include
 - Asking for member input
 - Asking for new members. Note: Currently, each of the committees has good state representation from all the regions.

Background: ASDWA's committees and workgroups are a great way for ASDWA members and their staff to stay engaged in and provide input into national efforts and issues, and also learn about other states' successes and challenges in each of the different topic areas. The ASDWA committees were originally established during the creation of the association in 1986 and documented in our Constitution and By-Laws. There are two different types of committees:

1. Committees focused on high-level decision-making activities that fall under the purview of the ASDWA Board of Directors, including some that no longer function as a stand-alone committee.
2. Committees (and their associated workgroups) that are focused on specific state drinking water program topic areas and include ASDWA members and their staff.

Committees under the purview of the ASDWA Board: The following committees are either comprised of some or all of the ASDWA Board Members; or their relevant association activities are addressed and decided on by the ASDWA Board Members.

- **Executive Committee:** This committee is comprised of the current and past Presidents and the President-Elect. The Executive Committee is responsible for the following committees and relevant association activities, and other high-level association decisions.
 - Audit
 - Nominating
 - Objectives doesn't appear to be needed given 2020-2022 Strategic Plan
- **ASDWA Board:** Though the following committees are no longer functioning as stand-alone committees, The ASDWA Board has primary responsibility for the relevant association activities.
 - Enforcement
 - Legislative
 - Membership
 - State/EPA Relations

ASDWA Committees and Workgroups (based on program area topics): Following are the five currently active committees (as determined by the ASDWA Board at the July 2019 meeting) along with the associated workgroups. This list includes the Committee Chairs (that can be an ASDWA member or someone from their staff), the ASDWA Staff Liaisons and current Board Liaisons.

#6 - ASDWA Committees

1. **Regulatory Committee**
 - a. **Chair/Board Liaison:** Lisa Daniels, PA
 - b. **Staff Liaison:** Wendi Wilkes
 - c. Committee Workgroups
 - i. Consolidation
 - ii. CCR
 - iii. Legionella
 - iv. Long-Term Lead and Copper Rule
 - v. PFAS (and PFAS Regulatory Options subgroup)
 - vi. Perchlorate
2. **Source Water Protection Committee**
 - a. **Chair:** Paul Susca, NH
 - b. **Board Liaison:** Steve Elmore, WI
 - c. **Staff Liaison:** Deirdre White
3. **Small Systems Committee**
 - a. **Chair/Board Liaison:** Cathy Tucker-Vogel, KS
 - b. **Staff Liaison:** Deirdre White
4. **DWSRF Committee**
 - a. **Chair:** Bill Moody, MS
 - b. **Board Liaison:** TBD
 - c. **Staff Liaison:** Wendi Wilkes, Kevin Letterly
5. **Security and Resiliency Committee**
 - a. **Chair:** Vacant
 - b. **Board Liaison:** TBD
 - c. **Staff Liaison:** Kevin Letterly

Other groups for ASDWA projects and work with EPA or other associations partners: Please note that ASDWA frequently enlists our members and their staff to participate in some other groups (either directed by ASDWA, EPA, or other association partners) to work on specific topics and activities, such as data management.

- **Data Management:** ASDWA had a working data management committee several years ago. However, to better align with state needs the association's data management activities are now addressed under the purview of a few different SDWIS workgroups and focus groups and the Data Management Advisory Committee, in coordination with EPA.

ASDWA Committee Purpose and Structure: Some committees are made up entirely from ASDWA's membership and others may be joint committees with other groups or have some outside observers. The overall purpose of the committees is to meet the needs of ASDWA and its members.

Committee Calls and Actions: The committees meet approximately quarterly via conference call to discuss current activities and share ideas; develop and work on action items; and respond to requests for input throughout the year.

Eligibility: Any ASDWA member or their staff are eligible to participate in committees and workgroups, and there is no limit on the number of people participating from one state. Committee members are expected to regularly participate in conference calls and provide input on relevant topics and actions.

6a. ASDWA Committee List

1. ASDWA Regulatory Committee

Chair/Board Liaison: Lisa Daniels, PA

Staff Liaison: Wendi Wilkes

Members:

Dave Hokanson, MN
Mike Hage, CT
Leticia DeLeon, TX
Kevin Cottman, DE
Keith Mensch, DE

Diane Moles, IA
Kay Coffey, OK
Andrea Seifert, NV
Anna Schliep, MN
Joe Uliasz, KY

Stacy Jones, IN
Cindy Christian, AK
David Simons, TX
Doug Kinard, SC

Mission: The primary mission of this committee is to support the states' role as co-regulators with U.S. EPA to improve the development of new regulations and the implementation of existing regulations. This includes, but is not limited to:

- participating in an EPA stakeholder process or rule workgroup for new rule development
- reviewing draft rules
- assisting with Association comments on proposed rules
- reviewing final rules to help states prepare for implementation
- working with EPA to develop guidance for implementing rules and policies affecting states
- help inform members of major regulatory changes
- identify state concerns on regulatory issues
- forming rule-specific subcommittees or support larger ad hoc groups to address specific rule issues (as needed)

2. ASDWA (and GWPC) Source Water Protection Committee(s)

Chair: Paul Susca, NH

Board Liaison: Steve Elmore, WI

Staff Liaison: Deirdre White

Members:

Ryan Chapman, NE (GWPC Chair)
Rebecca Sadosky, NC
Ravin Jarvis, VA
Bruce Rheineck, WI
Corina Hayes, WA
Patrick Bowling, PA
Scotty Sorrells, TN
Kathy Romero, MA
Brian Carr, WV

Deidre Beck, UT
Doug Rambo, DE
Matt Grabowski, DE
Marian Fugitt, FL
Rob Blair, KY
Rick Cobb, IL
Brandon Bowman, OK
Vic Scherer, AZ
Darcia Routh, AR

Eric McPhee, CT
Sophia Scott, ME
Jonathon Haynes, TX
Paul Kaczmarczyk, NY
John Duggan, CO
Chris Miller, AK
Jason Berndt, MI
Amy Williams, ID
Steve Robertson, MN

Mission: This committee meets jointly with the GWPC committee, for which the collective members are listed above. The primary mission of this committee is to support state source water assessment and protection activities, involvement in national initiatives, and opportunities to further local efforts to protect and sustain the quality and quantity of drinking water supplies.

6a. ASDWA Committee List

3. ASDWA Small Systems Committee

Chair/Board Liaison: Cathy Tucker-Vogel, KS

Staff Liaison: Deirdre White

Members:

Dorothy Young, TX	Sarah Pillsbury, NH	Arlene Hyatt, WA
Jeff Warner, AK	Kevin Anderson, PA	My-Linh Nguyen NV
Barbara Jones, ID	Mark Mayer, SD	Michael Maynard, MA
Vicky Carrier, CT	Sarah Gaddis, KY	Liz Melvin, IN
Lori Mathieu, CT	Dana DeBruyn, MI	Betsy Lichti, CA
Anna Schliep MN	Jennifer Taimi, KY	Amelia Springer, KS
June Swallow, RI	Linda Taunt, AZ	Lloyd Wilson, NY

Mission: The primary mission of this committee is to promote small public water system compliance with the SDWA by continually providing opportunities, alternatives, and incentives for states to support water system enhancements and voluntary compliance. The committee also maintains contact and collaborative efforts with technical services and compliance assistance organizations having similarly related missions.

4. ASDWA DWSRF Committee

Chair: Bill Moody, MS

Board Liaison: TBD

Staff Liaison: Wendi Wilkes

Members:

Peggy Ulman, AK	Mark Moeller, IA	Dave Phillips, NY
Teresa Lee, AR	Tim Wendland, ID	Mike Montysco, NY
Christopher Stevens, CA	William Carr, KS	Shaun Wiegmann, OK
Uyen Trinh-le, CA	Dan McDonald, LA	Dorothy Young, TX
Cameron Walden, CT	Hannah Humphrey, MO	Steve Pellei, VA
Sara Ramsbottom, CT		

Mission: The purpose of this Committee is to ensure effective and efficient use of DWSRF loan and set-aside funding to protect public health by:

- Informing and supporting efforts to maintain and increase DWSRF authorization and appropriation
- Reviewing, commenting, and providing input on federal legislation, regulations, and guidance that affects implementation of the Drinking Water SRF
- Ensuring differences in state programs and needs are recognized by EPA and that continued state flexibility is provided and, whenever possible, increased
- Sharing best practices among states for efficient and effective program implementation
- Identifying issues that affect state legislation, regulation, and implementation
- Serving as a liaison to U.S. EPA, CIFA, and other organizations involved in the DWSRF

6a. ASDWA Committee List

5. ASDWA Security and Resiliency Committee

Chair: Vacant

Board Liaison: TBD

Staff Liaison: Kevin Letterly

Members:

Rebecca Sadosky, NC	Bill Gilday, NY	Joe Crisologo, CA
Travis Goodwin, IN	Wayne Muirhead, TN	Kirk Yoder, MT
Bill Randolph, SC	Tony Fields, OR	Cathy Tucker-Vogel, KS
Johnna McKenna, NH	Heather Campbell, VT	Kristin Divris, MA
Laura Taylor, AL	Michele Risko, TX	Sara Flanagan, ME
Bethel Skinker, MI		

Purpose/Mission: This committee's mission is to define the appropriate short and long-term state role in drinking water security, all hazards emergency response, and resiliency and to represent state drinking water programs in national security and emergency management strategy development and implementation forums.

#7-11 – Committee Reports

- Small Systems
 - The committee has been working with EPA on new AWIA requirements, developing new tools, and revisiting existing tools. This includes AWIA requirements for asset management in state Capacity Development strategies, the intractable systems report, and using the DWSRF for disadvantaged communities.
 - Work will continue in coordination with EPA on relevant AWIA implementation efforts.
 - Future focus areas for the committee will be:
 - Engaging local planners (via the American Planning Association) in assisting small systems with long-term capacity and sustainability needs.
 - Coordinating with the Small Systems Committee to talk about including source water protection in asset management plans (e.g., Ohio, Idaho).
 - Planning for the 2020 National Capacity Development/Operator Certification Workshop to be held August 11-14 in Alexandria, VA.
 - Restructuring and consolidating ASDWA's Small Systems web pages.

- Source Water Protection
 - Over the past few years, the committee and the Source Water Collaborative have been focused on efforts to help state source water programs engage in NRCS agricultural conservation projects and this year, with more focused efforts with NRCS to meet the new 2018 Farm Bill drinking water requirements.
 - Work will continue with NRCS to identify and overcome challenges and develop outcome measures for successful protection efforts through agricultural and forestry practices in source water areas.
 - Future focus areas for the committee will be:
 - ASDWA will coordinate with GWPC to conduct a series of call with NRCS Regional Conservationists, state source water coordinators, and EPA Region staff.
 - A future focus area for the committee will be to coordinate with the Small Systems Committee to talk about including source water protection in asset management plans (e.g., Ohio, Idaho).

- Security
 - Adjustments to Security Committee
 - Transitioning committee to be more active during meetings, as opposed to EPA staff making presentations.
 - Looking to find a new Chair and Board Liaison.
 - Bringing in climate change into the resilience discussion, as the previous climate change committee was dissolved.
 - AWIA was a big part of this year.
 - We spent a good portion of our calls covering Sections 2013 and 2018, including preparation for webinar on these Sections.
 - Looking into a security workshop
 - After querying the group, it looks like this will focus on cybersecurity. Details on this workshop are still in the works.

#7-11 – Committee Reports

- DWSRF
 - Changes from AWIA
 - DWSRF source water protection eligibilities under the 15% set-aside were adjusted by AWIA
 - Extended loan terms
 - EPA released new set-aside guidance
 - EPA released AWIA/DWSRF fact sheet
 - Continued to track Appropriations
 - Concern about 14% additional subsidy in the House appropriations bill
 - Concern about reliance on SRF set-asides for PWSS programs
 - Wrote a white paper on additional subsidy but was not published/circulated
 - Needs Survey work kicked off over the Summer
 - ASDWA focus is on LSL AWIA provision and making sure it's a level playing field for everyone
 - Data collection begins 2020
 - Bill will likely step down as chair
 - Need a replacement or transition to a workgroup
 - Kevin will likely take over as staff liaison
- Regulatory
 - Oversight of existing efforts and workgroups
 - Legionella
 - PFAS
 - Perchlorate
 - LCR
 - Restructuring
 - CCRs
 - Reuse
 - UCMR and 6YR
 - Distribution system issues – looking ahead
 - Developing a survey to gain information on biggest DS issues
 - Storage tanks
 - Disinfection residual
 - Valve exercising
 - Flushing protocols
 - Pressure maintenance
 - Main replacement and repairs
 - Gaps in existing regulations
 - Other issues
 - OECA, NCI, and 1431
 - WIIN grants
 - UCMR and HaLs – Manganese