



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

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

J. Alan Roberson
Executive Director
Association of State Drinking Water Administrators
1401 Wilson Boulevard, Suite 1225
Arlington, Virginia 22209

Dear Mr. Roberson,

I apologize for the delay in responding to your May 18, 2020 letter on the National Compliance Initiative (NCI) Strategy for “Reducing Noncompliance with Drinking Water Standards at Community Water Systems.” EPA values ASDWA’s input regarding this NCI. We plan to accept several of your proposed Strategy edits. Before the Office of Enforcement and Compliance Assurance (OECA) finalizes the NCI Strategy, we would like to meet with you to better understand some of your suggested changes and comments. OECA is also in the process of working with our colleagues in the Office of Water regarding other NCI Strategy updates.

The NCI Strategy identifies the goals and key actions that will guide EPA work over the next three years to improve drinking water compliance. Of course, EPA remains committed to closely coordinating with primacy agencies, consistent with the Safe Drinking Water Act (SDWA) and guided by the 2019 “Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Assurance Work,” also known as the Partnership Policy. EPA’s Partnership Policy stresses the importance of joint work planning and communication with states. In response to your May 18 letter about the NCI Strategy, we are adding some of the language ASDWA has suggested to emphasize, for instance, “regularly consulting with primacy agencies” about “prioritization” for community water systems to evaluate under measure 1.4. EPA’s compliance assurance and enforcement staff will continue to work with primacy agencies that are willing partners to appropriately utilize our limited resources as we implement our concurrent authorities and oversight responsibilities. Before the NCI, and since we began NCI implementation, EPA regions have worked to develop collaborative relationships with the primacy agencies. Some examples that demonstrate the strong working relationships between regions and states that currently exist are provided in the enclosure to this letter.

OECA management and staff have met many times with ASDWA staff and members to seek the Association’s input on the NCI. In addition, our regional offices have engaged closely with the primacy agencies in each region. EPA regions, including the Enforcement and Compliance Assurance Divisions and Water Divisions, will continue to have regular meetings with their primacy program counterparts. EPA will continue to work with primacy agencies to identify, prioritize, and address community water systems in noncompliance and those at risk of being in violation and establish coordinated implementation strategies through Regional Action Plans. In addition to the actions in the Regional

Action Plans, OECA will work with willing primacy agency partners to enhance and develop tools to support our collective efforts to promote drinking water compliance.

One of the concerns expressed in your letter was that “much of the work identified in the draft strategy is duplicative of EPA’s Office of Water work or work that is already happening in the states and in EPA regions.” The design of the draft Strategy is intended to complement, not duplicate, the Office of Water’s work and to increase the integrity and consistency of EPA’s enforcement and compliance assurance program. As we build the compliance assurance and enforcement capacity in the drinking water program, we are committed to respecting the existing relationships that the states, tribes and territories have already developed with the Office of Water. In order to further build on those established relationships, OECA and the Office of Water will expect each regional enforcement program and drinking water program to develop a joint workplan which will establish a uniform framework for both programs. The joint workplan will outline the work each program will perform and how they will coordinate that work with their states. Additionally, OECA (in coordination with the Office of Water and consultation with ASDWA) will develop standard procedures for conducting drinking water system inspections to help regions and states better understand the respective roles of inspections and sanitary surveys.

We expect these joint work plans to include the appropriate use of federal inspection and enforcement authority in primacy states, territories, and Indian country. While some states prefer the use of tools other than compliance assurance tools to address deficiencies in drinking water systems, others recognize that inspections and enforcement play an important role in ensuring compliance with the SDWA. In circumstances where non-compliance continues to exist despite compliance assistance and other informal efforts, it is important to consider use of enforcement tools to achieve our shared goal of clean drinking water. Indeed, Congress established a statutory program that envisions EPA not only establishing technical standards, but also providing oversight and retaining its independent authority to take actions where appropriate to help protect public health. But again, close coordination and collaboration means that primacy agencies will be consulted prior to any EPA inspection or enforcement action and any disputes will be elevated.

Another concern highlighted in your letter is that “[t]he draft strategy is somewhat disconnected from the enforcement targeting tool (ETT).” As mentioned in the NCI Strategy, EPA is scoping potential enhancements to the ETT, an important tool for identifying public water systems that are serious violators. Another example of an edit that ASDWA suggested and that we intend to incorporate into the final NCI Strategy is extending the deadline for deliverable 1.1.3 and explicitly adding language about developing ETT enhancements in consultation with not only the steering committee, but also primacy agencies. We would like to work with you to obtain primacy agency input on how we can more effectively utilize the ETT as a management tool to prioritize systems. We are also developing a new predictive tool to assist regulators in identifying water systems that have the potential to become serious violators but are not yet identified as such in the ETT. OECA will work with ASDWA and its members to develop and test these tools. We would also like to work with you and your members to further identify tools and trainings that may be useful to both EPA and primacy agencies. We are also considering convening a symposium to work with primacy agencies to discuss our mutual challenges and identify strategies and best practices to advance our joint goals. In addition to the symposium, we expect to have a regular forum with the states to discuss Strategy implementation issues as they arise.

EPA and ASDWA share the goal of ensuring safe drinking water. We will reach success by continuing to work together. I continue to encourage the ongoing dialogue, discussions and coordination between

OECA and ASDWA moving forward. Please contact Mark Pollins at Pollins.Mark@epa.gov and Martha Segall at Segall.Martha@epa.gov about scheduling a meeting at your earliest convenience to discuss the Strategy updates.

Sincerely,

Susan Parker Bodine

Enclosure

cc: Larry Starfield, Principal Deputy Administrator, Office of Enforcement and Compliance Assurance
John Irving, Deputy Administrator, Office of Enforcement and Compliance Assurance
David Hindin, Director, Office of Compliance
Rosemarie Kelley, Director, Office of Civil Enforcement
Jennifer McLain, Director, Office of Ground Water & Drinking Water
Martha Segall, Acting Director, Monitoring, Assistance, and Media Programs Division
Mark Pollins, Director, Water Enforcement Division
Anita Thompkins, Director, Drinking Water Protection Division
NCI Executive Board Members
Community Water System NCI Steering Committee Members
Enforcement and Compliance Assurance Division Directors

ASDWA Letter Enclosure

Examples of Successful Relationships Between Regional Enforcement and Compliance Assurance Divisions and Primacy Agencies

- **Region 2** - The Enforcement and Compliance Assurance Division (ECAD) in Region 2 has a work share agreement with New Jersey to help perform sanitary surveys at their largest water systems and train their staff. In New York, the state does not have primacy for some of the more recent drinking water rules and the Region performs inspections and takes direct enforcement to help assure these rules are implemented. New York is a full partner in these efforts. In Puerto Rico (PR), the Region has an agreement with the Department of Health to provide focused compliance and enforcement efforts within the rural communities not served by the PR Aqueduct and Sewer Authority. Region 2 is regularly requested by the Virgin Islands to take enforcement actions to address specific types of violations. In every case, the primacy agency knows exactly what water system EPA plans to go to (they usually suggest the candidates) and is always invited to participate. In most cases, Region 2 will take direct action to address any violations observed as agreed to by the primacy agency, but there have been examples where they have asked to be the lead on enforcement following our inspections. Those requests have been honored.
- **Region 6** - The working relationships include quarterly meetings with each state agency to review the Enforcement Targeting Tool (ETT) prioritization list. The Region offers its states a variety of support (e.g., writing warning letters, official referrals to EPA to take enforcement actions) to help ensure that all regional communities have access to clean and safe drinking water. In addition, Region 6 trains other EPA Regions and states on using the ETT Assistance Tool to resolve discrepancies and provide real-time data on system compliance status. Texas does not have primacy for some of the drinking water rules (e.g., Revised Total Coliform Rule). The Region issues orders for violation of these rules with complete cooperation from the state. In some instances, the state refers facilities to the Region for inspection and enforcement. In every instance, federal activity is preceded by direct coordination with the state. There are no surprises: the states know every water system that Region 6 plans to address and the state is always invited to participate. Regarding small systems, the Region 6 ECAD has engaged the Water Division and the state revolving loan program to assist in getting funding for these small systems. For example, Region 6 is working in partnership with the Oklahoma Department of Environmental Quality to address two small systems with long-standing water quality violations. Rainbow Valley was referred to Region 6 due to its failure to sample since 2018. Since June 2019, Region 6 has issued several boil water notices to inform residents of the potential health threat from E. coli. Brooksville, with a population of 63 and a median age of 65, is experiencing radionuclides, arsenic and other contaminants in its drinking water. To address drinking water concerns in these two communities Region 6 and Oklahoma are working with USDA, Oklahoma Rural Water, Oklahoma Water Resources Board, Communities Unlimited, and Citizen Potawatomi Nation Water District Number 3 to extend the drinking water service connections to provide a sustainable source of drinking water.
- **Region 8** - The Region 8 ECAD participates in monthly calls and annual meetings arranged by the Region's Water Division with its states, as well as quarterly calls to discuss community water systems with health-based violations. Region 8 states regularly contact the region to discuss unusual events that may impact public water systems (floods, earthquakes, etc.), how EPA would address an issue, and keep the Region informed.

- **Region 9** - The Region meets with its primacy agencies, including states, the Navajo Nation and Pacific Island territories, quarterly to discuss compliance challenges and enforcement actions targeted to put systems on the pathway to compliance. The Region 9 ECAD staff recently reviewed sanitary surveys at three field offices and performed joint inspections/sanitary surveys at two large community water systems within California. These activities identified discrepancies between EPA and the state on rule interpretation. Understanding and resolving these discrepancies will lead to a stronger, nationally consistent drinking water program. Leading up to this NCI, Region 9 was already joining several of its primacy agencies on sanitary surveys or inspections in Arizona, Nevada, Hawaii, California and Guam.