

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
GUIDANCE FROM HOTLINE COMPENDIUM

WSG H6  
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SUBJECT: State Enforcement of the NSDWRs

SOURCE: Ray Enyeart

Title 40 CFR Section 143.1 states that the National Secondary Drinking Water Regulations (NSDWRs) are not federally enforceable, but are intended only as guidelines to the States. However, SDWA Section 1414(d) indicates that States must ensure compliance with the NSDWRs, or they will be "notified" by EPA. What is the intent of 1414(d)? Also, have primacy agreements between the States and Regions mandated that States enforce the NSDWR as they must the National Primary Drinking Water Regulations?

**Response:**

Section 1414(d) of the SDWA sets forth the federal requirements pertaining to the States' failure to ensure compliance with the NSDWRs. Subsection (d) provides:

Whenever, on the basis of information available to him, the Administrator finds that within reasonable time after NSDWR have been promulgated, one or more public water systems in a State do not comply with secondary regulations, and that non-compliance appears to result from a failure of such States to take reasonable action to assure that public water systems throughout the States meet secondary regulations, he shall so notify the State. The preamble to the July 19, 1979, NSDWR final rule states that [44 FR 42196]: EPA interprets Section 1414(d) to give the States the responsibility of taking "reasonable action" to assure the public water systems are providing drinking water which protects the public welfare and does not cause consumers not to drink the water served due to aesthetic reasons.

...Appropriate action in a particular case will depend on a number of factors including: the degree of non-compliance with the secondary regulations; the direct and indirect adverse results such as the incurrence of substantial expenditures by individuals to upgrade the quality at the tap or the risk and expense of individuals shifting to other water sources; the nature of the raw water sources available; and such efforts that are being taken to assure compliance with the primary regulations.

In response to the second portion of the question, "Have primacy agreements between the

States and Regions mandated that states enforce the secondary regulations?" The answer is no.

Although some States have adopted EPA regulations as State secondary regulations (some States have even adopted select secondary contaminants as State primary contaminants), State activity on secondary contaminant regulations played no role in EPA determinations of whether or not to delegate primacy to States.