



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

NOV 21 2016

MEMORANDUM

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

SUBJECT: Response to the Office of Inspector General Management Alert: (Project No. 17-P-0004) Concerning EPA Authority to Issue Drinking Water Emergency Orders

FROM: Cynthia Giles
Assistant Administrator

A handwritten signature in blue ink that reads "Cynthia Giles".

TO: Arthur A. Elkins, Jr.
Office of Inspector General

Thank you for the opportunity to respond to the recommendations presented in the Office of Inspector General (OIG) Management Alert (Project No. 17-P-0004) regarding EPA authority to issue emergency orders to protect public health. The Office of Enforcement and Compliance Assurance (OECA) has reviewed OIG's October 20, 2016 Management Alert about Safe Drinking Water Act (SDWA) Section 1431 authority. OECA agrees with OIG's recommendations and has already begun undertaking steps consistent with these recommendations. Below we provide our planned corrective actions and projected completion dates.

There is no higher priority for EPA than protecting public health and ensuring the safety of our nation's drinking water. Recent events in Flint, Michigan and other U.S. cities, have led to discussions about the safety of our nation's drinking water supplies. Enforcement plays an important role in ensuring safe drinking water nationally. SDWA Section 1431 is a critical public health protection tool EPA can use to address situations where contaminants may present an imminent and substantial endangerment. Accordingly, we appreciate OIG's efforts to ensure clearer Agency-wide understanding of EPA's statutory authority to address drinking water emergencies.

As discussed, we disagree with a number of the specific factual findings referenced in the Management Alert related to the drinking water contamination in Flint, Michigan. However, EPA is not responding at this time to the factual assertions because it is our understanding OIG's evaluation of the Flint drinking water crisis is ongoing and OIG plans to issue a separate, more comprehensive Flint specific report in 2017. Moreover, the factual findings regarding Flint are not material to our response to the recommendations in the Management Alert. EPA looks forward to commenting on the subsequent Flint report when it becomes available.

Response to Recommendations

The Management Alert makes two recommendations to OECA. First, OECA should update the *Final Guidance on Emergency Authority under Section 1431 of the Safe Drinking Water Act* (1991). Second, OIG recommends OECA should train all relevant EPA drinking water and water enforcement program management and staff on the Safe Drinking Water Act Section 1431 authority and updated guidance. OECA concurs with both recommendations and will work expeditiously to implement them.

Recommendation #1

OIG recommends OECA 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 SDWA 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 SDWA Section 1431.

OECA agrees with all aspects of Recommendation #1. OECA intends to issue updated SDWA Section 1431 guidance by November 30, 2017. While OECA is the lead office, we will work with our colleagues in Office of General Counsel, Office of Water and the Regions to obtain their input.

Recommendation #2

Additionally, OIG recommends OECA train, in cooperation with the Assistant Administrator for Water, all relevant EPA drinking water and water enforcement program management and staff on the SDWA Section 1431 authority and updated guidance.

OECA also agrees with Recommendation #2 and will implement it by November 30, 2017. As noted above, OECA has started undertaking actions consistent with these recommendations. On March 8, 2016 and June 7, 2016 OECA conducted trainings on various SDWA enforcement tools, including SDWA Section 1431. In light of Recommendation #2, OECA will continue to focus on its Section 1431 training and educate staff and managers about this valuable public health protection tool and how it can be used to address urgent situations.

Attachment

**OIG Management Alert: Drinking Water Contamination in Flint, Michigan, Demonstrates a Need to Clarify EPA Authority
to Issue Emergency Orders to Protect Public Health
Corrective Action Plan (CAP)**

Recommendation	Lead Office	CA	Target Date	Corrective Action
<p>1. Update the <i>Final Guidance on Emergency Authority under Section 1431 of the Safe Drinking Water Act</i> (1991) to:</p> <p>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.</p> <p>b. Reflect the current delegations of authority to both the Regional Administrators and the Assistant Administrator for Enforcement and Compliance Assurance.</p> <p>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.</p>	OECA/OCE	1	Will be completed by November 30, 2017	Update the Guidance on Emergency Authority under Section 1431 of the Safe Drinking Water Act so it reflects the current delegations of authority to both OECA and the EPA regions. As part of the update we will include relevant examples of timely and protective EPA and state issued emergency orders as well as checklist(s) for when OECA and EPA regions should consider emergency action under Section 1431.
<p>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.</p>	OECA/OCE	2	Will be completed by November 30, 2017	Provide training on SDWA Section 1431 authority and updated guidance to all relevant EPA drinking water and water enforcement program management and staff.