



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

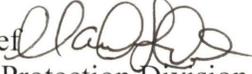
WSG 205

Date Signed: August 25, 2015

AUG 25 2015

MEMORANDUM

SUBJECT: Aircraft Drinking Water Rule: Moving aircraft into a “Pending Bin” in the Aircraft Reporting and Compliance System due to bankruptcy or other changes in operations

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TO: Regional Aircraft Drinking Water Rule Program and Enforcement Managers

This memo provides a nationally consistent process to assist Regions in determining whether an aircraft in EPA’s Aircraft Reporting and Compliance System (ARCS), which appears abandoned or not in use, should be moved into a “Pending Bin.” This memo also provides guidance on actions that should be taken to address potential violations associated with these aircraft.

Background

EPA directly implements the Aircraft Drinking Water Rule (ADWR), 40 C.F.R. §§ 141.800 – 810, which the Agency promulgated under the Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f – 300j-26. To facilitate ADWR implementation, EPA developed ARCS. ARCS is a centralized web-based data collection and management system that helps ADWR managers conduct regulatory program oversight. ARCS includes a complete list of all of the air carriers’ inventory subject to compliance with ADWR.

Registered, existing owners and operators of aircraft can modify their ARCS inventory. The transfer of aircraft among air carriers is a common transaction and EPA tracks it via the participating airlines using ARCS. As part of the transaction, the air carrier selling the aircraft removes the plane from its inventory and transfers the aircraft to the other air carrier’s ARCS



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inventory. However, sometimes air carriers acquire an aircraft that belonged to a company that filed for bankruptcy, or otherwise ceased or changed operations, without notifying EPA and ensuring its aircraft in ARCS were moved accordingly. In these cases, there needs to be a nationally consistent process for Regions to be able to move aircraft into an ARCS “Pending Bin,” which then enables the new owner/operator to add the subject aircraft to its inventory.

In addition, there are other instances where Regions may need to move aircraft into a “Pending Bin” in ARCS for an indefinite period of time. For example, an aircraft may show prolonged periods of inactivity in ARCS because the air carrier terminated operations, but no other carrier is trying to acquire that particular plane. This inactivity may cause an aircraft public water system (PWS) in an air carrier’s ARCS inventory to accrue potential violations because no new information is being entered into the database. EPA must investigate and document the reasons for inactivity with the air carrier and its aircraft inventory. EPA must confirm if the aircraft are still in service and if actual violations are occurring (e.g., passengers and crew are being served water on an aircraft PWS that has not been properly sampled or disinfected and flushed), or if there is a need to move these aircraft into a “Pending Bin” in ARCS because they are no longer operational.

While moving *aircraft* into the “Pending Bin” is the Regions’ responsibility, the removing or deactivating of an *air carrier* in ARCS remains the responsibility of the EPA Headquarters ADWR program lead. When removing or deactivating an *air carrier*, Headquarters will use information provided by the Regions if it is gathered in accordance with the following nationally consistent process.

Process

I. Information gathering

Regions will need to investigate and document instances where it appears a particular aircraft or air carrier has filed for bankruptcy, ceased operations or seems to have abandoned equipment in ARCS. This memo describes how Regions can gather the information needed to determine and document the status of an aircraft, and then, if appropriate, move the subject *aircraft(s)* to the “Pending Bin” and notify the Headquarters ADWR program lead in the Office of Ground Water and Drinking Water. However, as noted above, Regions are not responsible for removing or deactivating *air carriers* in ARCS. Once a Region completes its investigation of a particular *air carrier*, the Region will share the information and its determination with the Headquarters ADWR program lead as soon as possible. Headquarters will then remove or deactivate that particular *air carrier* in ARCS as appropriate. The purpose of the consultation is to ensure consistent national implementation of ADWR and to protect the integrity of data in ARCS.

To determine if the aircraft or air carrier is in operation, Regions should:

- 1) Call or email the air carrier to confirm the current operating status of the aircraft or air carrier;
- 2) Gather additional information using internet searches or other sources of information such as:

- Federal Aviation Administration (FAA) Records - Regions should check FAA records like:
 - ✓ Aircraft listing information in D085 forms
 - ✓ Aircraft registry information
 - ✓ Airline certificate information
 - ✓ Confirmation from the air carrier's Certificate Management Office (CMO)
 - ✓ FAA Operations Spec D485
 - ✓ FAA Enhanced Flight Standards Automation System database
 - ✓ FAA Safety Performance Analysis System database

Regions can access certain records online or via FAA field offices, such as CMOs. CMOs specialize in the certification, surveillance, and inspection of air carriers. Each air carrier is assigned a CMO that is either near its headquarters or some other hub in the air carrier's network.

- Bankruptcy records

Each Region has a designated bankruptcy contact who should be able to help identify if a particular air carrier has filed for bankruptcy. Regional bankruptcy contacts can be accessed through the following intranet link:

<http://intranet.epa.gov/oeca/osre/project/bank-center/contact.html>

Regions should ask their bankruptcy contacts to check bankruptcy records under Chapter 7 (liquidation) or Chapter 11 (reorganization) of the United States Bankruptcy Code. This may include court orders or interested party filings (e.g., creditors) that address the status of the debtor's operations and/or assets (e.g., its aircraft equipment). A debtor may file for bankruptcy in the United States District Court where the company is headquartered or incorporated, which may not be in the Region where the carrier primarily does business.

Particular attention should be paid if an air carrier is in Chapter 11 proceedings and continues to operate during the bankruptcy proceeding. In those situations, a company still has an ongoing obligation to comply with laws to protect public health and the environment. Even if an air carrier files for bankruptcy, it has a legal obligation to comply with ADWR if it still owns/operates aircraft PWSs.

If a Region determines an air carrier in bankruptcy is in violation of ADWR, then the Region should coordinate with the EPA Regional bankruptcy contact and Regional counsel for any follow up enforcement action that may need to be coordinated with the U.S. Department of Justice for filing in bankruptcy court.

II. Determining Potential Violations

Regions must address any potential violation(s) found in the record *before* moving aircraft to the "Pending Bin." Also, if the Region's investigation determines a seemingly abandoned aircraft or

absent air carrier is still in operation and the air carrier has ADWR violations associated with this particular aircraft, then the Region should take appropriate enforcement action in accordance with SDWA, the ADWR and relevant EPA policies. For further guidance, please refer to the Office of Enforcement and Compliance Assurance's (OECA) Water Enforcement Division's June 15, 2011 ADWR National Compliance and Enforcement Strategy (June 2011 ADWR Strategy) and OECA/OGWDW's joint February 29, 2012 memo regarding the process to identify and quantify ADWR violations.

III. Recordkeeping

Regions should keep in the file, all information used to determine the status of the aircraft, such as records of phone conversations, emails, and information from the internet such as newspaper articles or screen shots from an airline's public website. Additionally, any information obtained from FAA or bankruptcy records should also be part of the file. Records of enforcement actions, if any, should also be kept in the file and the information entered in ARCS and EPA's Integrated Compliance Information System (ICIS). As noted in the June 2011 ADWR Strategy, ICIS remains the database of record for all EPA compliance and enforcement activities.

If you have any questions or concerns, please contact Edna Villanueva, ADWR program lead, Protection Branch at 202-564-0815 or villanueva.edna@epa.gov, or Carol DeMarcò King of the Water Enforcement Division's Municipal Enforcement Branch at 202-564-2412 or king.carol@epa.gov.

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