

3 IMPLEMENTATION

Legal Basis for Requirements

Public water systems are the only entities with direct legal requirements under the Navajo Nation Wellhead Protection Program. All new and existing community water systems using wells or springs as their source of supply (excluding systems purchasing sources, or interties) are required to develop local wellhead protection programs. While transient non-community water systems have elements of wellhead protection incorporated into their new source approval requirements, the *Navajo Nation Wellhead Protection Program applies only to community water systems*.

The Navajo Nation Wellhead Protection Program is a requirement for community water systems. The Navajo Nation Safe Drinking Water Act (NNSDWA) pertaining to the Navajo Nation Primary Drinking Water Regulations (NNPDWR) for community water systems was modified in 2002 to explicitly require wellhead protection measures. The legislative authorities to require wellhead protection planning can be found in the NNPDWR Revised Section 1700 - WELLHEAD PROTECTION.

Under the NNEPA Surface and Groundwater Protection Department there are established mandates developed through the Clean Water Act (CWA) and the federal Safe Drinking Water Act (SDWA) for public water systems which include protecting the water sources used for drinking water, assuring the availability of safe and reliable drinking water, and taking whatever investigative action is necessary to assure that a safe reliable drinking water supply is continuously available to users.

The NNEPA PWSSP has the authority through primacy delegation granted by the USEPA Region IX to administer a drinking water program which includes program elements of section 1428 of part C of the federal Safe Drinking Water Act (wellhead protection requirements).

Implementation Schedule (tentative)

The time table for compliance begins October 2003. By October 2003, all groundwater based community water systems are expected to have completed a Vulnerability Assessment Form (which includes an assessment of the circularity of the zone of contribution - wellhead protection area). The findings from the assessment and system size, determine the minimum acceptable delineation method. For most systems a calculated fixed radius method may be employed with most community water systems being in low populated rural areas. For more details on minimum delineation requirements, and which systems can use a calculated fixed radius method as a delineating method, reference Chapter 4 of this document.

Systems using the Calculated Fixed Radius (CFR) method are expected to complete the initial delineation, including boundary mapping by October 2003. Vulnerability Assessments were sent to all Navajo Nation Water Owners in October 2002.

Concurrent with the delineation process, the public water system should establish a local wellhead protection committee.

An inventory should be conducted following delineation of the wellhead protection area boundaries. The purpose of the inventory is to locate potential sources of groundwater contamination within the wellhead protection area which could threaten current and future water waters used as the drinking water supply. Within one (1) year of the wellhead protection area boundaries being defined, an initial inventory should be completed for the entire wellhead protection area (within the 10 year time-of-travel boundary). Land use practices change over time, therefore, inventory data is required by the NNEPA PWSSP to be updated every two (2) years. If the entire wellhead protection area is large, the initial emphasis should be on detecting potential contaminant sources within the one (1) year time-of-travel zone, and detecting high risk sources within the five (5) and ten (10) year time-of-travel zones. The inventory must be expanded to cover all potential contaminant sources within the entire wellhead protection area as rapidly as possible.

Analyzing the inventory data is essential for a successful wellhead protection program. The identified potential contaminant sources and the agencies and jurisdictions with regulatory responsibilities for the sources should be notified of the source's presence within the wellhead protection area. This should be accomplished in writing within one (1) year of the wellhead protection area boundaries being delineated. Documentation of the required notifications should be maintained. Sample notification letters are provided in Appendix E)

The required contingency plans, such as the Emergency Water Supply Plan (EWSP) and coordination with emergency responders should also be completed within one (1) year of the wellhead protection area boundaries being delineated. These components of the local wellhead protection program should be current and updated every two years at minimum.

Relationship to Current Planning Requirements

All of the above mentioned elements of a local wellhead protection program must be documented and included in either the EWSP and the Waiver Application (if one has been completed for your system). The EWSP is reviewed on a 3 year cycle by the NNEPA PWSSP. Water systems whose plans are submitted prior to October 2003 must include the appropriate elements of their wellhead protection program in their EWSP document. Water systems submitting an EWSP after October 2003 will be required to have a completed wellhead protection program documented.

Compliance Mechanisms

NNEPA PWSSP will continue to provide wellhead protection workshops and other means of outreach to maintain a working relationship with water system purveyors and community to maintain wellhead protection program compliance. However, failure to cooperate and maintain compliance with the planning requirements of the wellhead protection components will be addressed by the NNEPA Criminal Environmental Enforcement Department. When, a purveyor of a water system is out of compliance, the NNEPA PWSSP may initiate enforcement actions including any one or a combination of the following:

1. Notice of violation instructing or requiring appropriate corrective measures;
2. Compliance schedule for specific actions necessary to achieve compliance status;
3. Departmental order requiring specific actions;
4. Departmental order to stop work and/or refrain from using any public water system or improvements thereto, until all written approvals required are obtained;
5. Imposition of civil penalties for failure to comply with departmental orders may be issued as per §§§ 802 GENERAL ENFORCEMENT AUTHORITY, 803 JUDICIAL ENFORCEMENT & 804 ADMINISTRATIVE ASSESSMENT OF PENALTIES of the NNSDWA; and
6. Legal Action may be taken by the attorney general or local prosecutor. The legal action may be criminal or civil.

Should contamination of the source of supply occur, and subsequent investigation reveals that the purveyor is out of compliance with wellhead protection requirements, water system customers may be in a position to seek civil damages from the purveyor for losses, e.g. source of drinking water.