

PH4B: Initiate administrative infringement procedures against non-compliant drinking water service operators and impose adequate sanctions

REGULATORY FUNCTION: PUBLIC HEALTH		PH4B
<p>OBJECTIVE PH4</p> <p>Penalty systems are adopted and enforced to penalize service operators for actions that infringe legal provisions on drinking water quality</p>	<p>ACTION CARD PH4B</p> <h2 style="margin: 0;">INITIATE ADMINISTRATIVE INFRINGEMENT PROCEDURES AGAINST NON-COMPLIANT DRINKING WATER SERVICE OPERATORS AND IMPOSE ADEQUATE SANCTIONS</h2>	
<p>COST: Low FREQUENCY: One time</p> <p>TARGET GROUPS: Regulators, service operators, ministries of health</p>		
<p>DESCRIPTION</p> <p>Regulators and national health authorities are responsible for opening administrative procedures against non-compliance, and issuing sanctions only as a measure of last resort. Sanctions must be defined in advance and made publicly accessible, and regulators, in principle, may sanction any kind of misconduct that results in consequent damage that is irreversible. In cases where self-corrective measures are still possible that can revert the public health damage, regulators issue remedial instructions to operators with fixed deadlines, and failure to address these may result in more severe penalties.</p>		
<p>EXPECTED OUTCOMES</p> <ul style="list-style-type: none"> • Non-compliant operators are prevented from causing further damage. • Remediation of damage caused by operators is demanded and ensured. • Consumer health is protected. 		
<p>EXAMPLE 1: IRELAND</p> <p>In Ireland, the Environmental Protection Agency (EPA) can issue a 'direction'(legally binding instruction) under the Drinking Water Regulations to the national regulator, Irish Water, where there is a risk to human health or where remedial action is required to fix a water quality issue. The EPA issued nine legally binding Directions to Irish Water during 2017. Examples include the following.</p> <ul style="list-style-type: none"> • There is no chlorine monitor or alarm in place. • There have been persistent water quality failures and Irish Water have not acted or not acted quickly enough to improve water quality. • Irish Water have not provided information to the EPA when asked for it. <p>If not complied with, the EPA may decide to prosecute. For example, the EPA had issued Directions to Irish Water due to persistent trihalomethane failures in six supplies in Donegal. In September 2017, the EPA began legal proceedings and the cases were heard in April 2018.</p> <p>A remedial action list (RAL), first prepared by the EPA in 2008, includes public water supplies in need of significant corrective action, usually at the treatment plant. In 2017, the EPA included persistent pesticide problems. Updated every three months, supplies are added to the list for one or more of the following reasons:</p> <ul style="list-style-type: none"> • Persistent failure to comply with standards for priority parameters, for example, <i>E. coli</i>, trihalomethanes, aluminum, turbidity. • Inadequate treatment, such as where there is no treatment other than chlorination for a surface water supply. 		

- Results from monitoring or compliance checks by the EPA indicate a lack of operational control at treatment plants.
- The Health Service Executive identify a supply where improvements are required.

The EPA identified the preparation and completion of action programmes for remedial action list supplies as a priority action to protect drinking water. When Irish Water have demonstrated that a supply is safe and secure, it can be removed from the RAL.

EXAMPLE 2: PARAGUAY

In Paraguay, in the event of a possible lack of compliance by the operator, the Sanitary Services Regulator (ERSSAN) may demand that the necessary measures be adopted. In the event that such measures are not implemented, summary proceedings are carried out to prove the infringement and apply the corresponding sanction. The sanctions system deems a severe violation to be non-compliance with drinking water quality parameters or established wastewater discharge limits, as long as the case of non-compliance does not pose a risk to human health, the safety of inhabitants or the environment, in which case the violation would be deemed major, as is the case of not conducting or submitting the regular service quality test reports within the established time frames.

Other major violations are: supplying drinking water for human consumption without complying with maximum permissible bacteriological parameters, containing physical or chemical contaminants that, even in low concentrations, are harmful to health; and discharging or allowing the circulation of wastewater in the sanitary sewerage system with the presence of toxic, flammable or explosive elements, without adopting the necessary contingency measures. Severe and major sanctions are applied as fines, with the possibility of rescinding or revoking provider status in situations of extreme severity or urgency that pose a hazard to population health, or affect service continuity due to generalized drinking water contamination, posing a sanitary risk and affecting an area greater than twenty percent (20%) of the zone under the concession or license, without remediation within forty-eight (48) hours of the contamination being detected, or when there is environmental pollution caused by a generalized spill in a significant service area, with wastewater exceeding regulatory parameters, without remediation within forty-eight (48) hours as of the moment the pollution is detected.

LINKS

Ireland: EPA Drinking Water Report for Public Supplies: https://www.water.ie/docs/2017-DW-Report_web_Final.pdf

Paraguay: Law No. 1.614/2000. Infringements and Sanctions Regulation

https://www.erssan.gov.py/application/files/3315/8896/1500/Reglamento_de_Infracciones_y_Sanciones.pdf

INTERNAL CAPACITIES NEEDED AND THE ROLE OF PARTNERS

Penalizing operators for non-compliance requires the capacity to have first established a framework of non-legal, legal, and criminal punishments available, and guidance on their suitable and proportionate use. If punishments are monetary, then capacity is needed to establish formulas to calculate the value of fines. Development partners and ministries of health could assist by providing technical assistance to regulators in framework setting.