Marquess, Scott

From: Marquess, Scott
Sent: Tuesday, July 16, 2013 3:59 PM
To: Huffman, Diane
Subject: KS DW enforcement mtg tomorrow
Attachments: pretty prairie chronology.pdf; Enforcement stats april 2013.docx; Summary of KDHE ETT Response July 2013.docx

Redacted non responsive

Diane,

For our meeting tomorrow with Karen and Mary, I was planning to approach things as follows:

[redacted]

3) Discuss Pretty Prairie to the extent anyone would like - to say that it's fair game from an enforcement standpoint and that we will probably need to take an action there to demonstrate to KDHE that we're serious.

Please let me know if you have any thoughts on this.

Thanks
Scott

From: Marquess, Scott
Sent: Tuesday, July 09, 2013 5:50 PM
To: Huffman, Diane
Subject: Pretty Prairie enforcement status

Diane,

The attached chronology outlines the enforcement history with PP.

Some highlights:

June 1994 - EPA AOC w/ PP

June 1995 - PP has "brief" compliance w/ nitrate MCL (PP drilled new well and removed others from service)

Early-mid 1996 - EPA closes PP AOC

October 1996 - KDHE AOC w/ PP, implements "nitrate strategy"; Order expires 7 years after issuance

July 2007 - KDHE Directive to PP requiring bottled water for pregnant women and infants where nitrates > 10; and completing FS; KDHE and PP would "jointly review the FS and determine a course of action".

Based on the information in the chronology, it would appear that EPA does not have any open enforcement orders with PP, nor does KDHE. The KDHE "Directive" includes no specific enforceable provisions, and while it could possibly be considered to be "effective", it was not designed with the end goal of achieving compliance, but was merely a step towards that goal.

[redacted]

One approach for moving forward might be to draft a letter/NOV to the state and PP outlining our understanding of the current enforcement status, give the state (and PWS) the opportunity to issue/negotiate an order, and if they choose not to do so, offer PP the opportunity to negotiate a consent order with us for some limited period of time (rather than issuing a unilateral order right away).

Alternatively, we could simply issue NOVs to PP and state, and then issue a unilateral order (within 30 days I think), going with a "by the book" approach (SDWA 1414).

If we had something formal from KDHE referring PP to us for enforcement, we wouldn't need to issue NOVs, but given the long and involved history here, an NOV might be a safe approach.

Scott