

# ELECTRONIC CODE OF FEDERAL REGULATIONS

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Title 40: Protection of Environment

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## **PART 145—STATE UIC PROGRAM REQUIREMENTS**

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AUTHORITY: 42 U.S.C. 300f *et seq.*

SOURCE: 48 FR 14202, Apr. 1, 1983, unless otherwise noted.

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### **Subpart A—General Program Requirements**

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### **§145.1 Purpose and scope.**

(a) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State programs under section 1422 (underground injection control—UIC) of SDWA, and includes the elements which must be part of submissions to EPA for program approval and the substantive provisions which must be present in State programs for them to be approved.

(b) State submissions for program approval must be made in accordance with the procedures set out in subpart C. This includes developing and submitting to EPA a program description (§145.23), an Attorney General's Statement (§145.24), and a Memorandum of Agreement with the Regional Administrator (§145.25).

(c) The substantive provisions which must be included in State programs to obtain approval include requirements for permitting, compliance evaluation, enforcement, public participation, and sharing of information. The requirements are found in subpart B. Many of the requirements for State programs are made applicable to States by cross-referencing other EPA regulations. In particular, many of the provisions of parts 144 and 124 are made applicable to States by the references contained in §145.11.

(d) Upon submission of a complete program, EPA will conduct a public hearing, if interest is shown, and determine whether to approve or disapprove the program taking into consideration the requirements of this part, the Safe Drinking Water Act and any comments received.

(e) Upon approval of a State program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program.

(f) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part.

(g) Nothing in this part precludes a State from:

(1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this part;

(2) Operating a program with a greater scope of coverage than that required under this part. Where an approved State program has a greater scope of coverage than required by Federal law the additional coverage is not part of the federally approved program.

(h) Section 1451 of the SDWA authorizes the Administrator to delegate primary enforcement responsibility for the Underground Injection Control Program to eligible Indian Tribes. An Indian Tribe must establish its eligibility to be treated as a State before it is eligible to apply for Underground Injection Control grants and primary enforcement responsibility. All requirements of parts 124, 144, 145, and 146 that apply to States with UIC primary enforcement responsibility also apply to Indian Tribes except where specifically noted.

(i) States seeking primary enforcement responsibility for Class VI wells must submit a primacy application in accordance with subpart C of this part and meet all requirements of this part. States may apply for primary enforcement responsibility for Class VI wells independently of other injection well classes.

[48 FR 14202, Apr. 1, 1983, as amended at 53 FR 37412, Sept. 26, 1988; 59 FR 64345, Dec. 14, 1994; 75 FR 77290, Dec. 10, 2010]

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## §145.2 Definitions.

The definitions of part 144 apply to all subparts of this part.

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## Subpart B—Requirements for State Programs

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### §145.11 Requirements for permitting.

(a) All State programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each; except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements.

(1) Section 144.5(b)-(Confidential information);

(2) Section 144.6—(Classification of injection wells);

(3) Section 144.7—(Identification of underground sources of drinking water and exempted aquifers);

(4) Section 144.8—(Noncompliance reporting);

(5) Section 144.11—(Prohibition of unauthorized injection);

(6) Section 144.12—(Prohibition of movement of fluids into underground sources of drinking water);

(7) Section 144.13—(Elimination of Class IV wells);

(8) Section 144.14—(Requirements for wells managing hazardous waste);

(9) Sections 144.21-144.26—(Authorization by rule);

(10) Section 144.31—(Application for a permit);

(11) Section 144.32—(Signatories);

(12) Section 144.33—(Area Permits);

(13) Section 144.34—(Emergency permits);

(14) Section 144.35—(Effect of permit);

(15) Section 144.36—(Duration);

(16) Section 144.38—(Permit transfer);

(17) Section 144.39—(Permit modification);

(18) Section 144.40—(Permit termination);

(19) Section 144.51—(Applicable permit conditions);

- (20) Section 144.52—(Establishing permit conditions);
- (21) Section 144.53(a)—(Schedule of compliance);
- (22) Section 144.54—(Monitoring requirements);
- (23) Section 144.55—(Corrective Action);
- (24) Section 124.3(a)—(Application for a permit);
- (25) Section 124.5 (a), (c), (d), and (f)—(Modification of permits);
- (26) Section 124.6 (a), (c), (d), and (e)—(Draft Permit);
- (27) Section 124.8—(Fact sheets);
- (28) Section 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e)—(Public notice);
- (29) Section 124.11—(Public comments and requests for hearings);
- (30) Section 124.12(a)—(Public hearings);
- (31) Section 124.17 (a) and (c)—(Response to comments);
- (32) Section 144.88—(What are the additional requirements?); and
- (33) For states that wish to receive electronic documents, 40 CFR part 3—(Electronic reporting).

(b)(1) States need not implement provisions identical to the provisions listed in paragraphs (a)(1) through (a)(32) of this section. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions. While States may impose more stringent requirements, they may not make one requirement more lenient as a tradeoff for making another requirement more stringent; for example, by requiring that public hearings be held prior to issuing any permit while reducing the amount of advance notice of such a hearing.

(2) State programs may, if they have adequate legal authority, implement any of the provisions of parts 144 and 124. See, for example §144.37(d) (continuation of permits) and §124.4 (consolidation of permit processing).

[48 FR 14202, Apr. 1, 1983, as amended at 64 FR 78572, Dec. 7, 1999; 70 FR 59888, Oct. 13, 2005]

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### **§145.12 Requirements for compliance evaluation programs.**

(a) State programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other regulated persons (and for investigation for possible enforcement of failure to submit these notices and reports).

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements. The State shall maintain:

(1) A program which is capable of making comprehensive surveys of all facilities and activities subject to the State Director's authority to identify persons subject to regulation who have failed to comply with permit application or other program requirements. Any compilation, index, or inventory of such facilities and activities shall be made available to the Regional Administrator upon request;

(2) A program for periodic inspections of the facilities and activities subject to regulation. These inspections shall be conducted in a manner designed to:

(i) Determine compliance or noncompliance with issued permit conditions and other program requirements;

(ii) Verify the accuracy of information submitted by permittees and other regulated persons in reporting forms and other forms supplying monitoring data; and

(iii) Verify the adequacy of sampling, monitoring, and other methods used by permittees and other regulated persons to develop that information;

(3) A program for investigating information obtained regarding violations of applicable program and permit requirements; and

(4) Procedures for receiving and ensuring proper consideration of information submitted by the public about violations. Public effort in reporting violations shall be encouraged and the State Director shall make available information on reporting procedures.

(c) The State Director and State officers engaged in compliance evaluation shall have authority to enter any site or premises subject to regulation or in which records relevant to program operation are kept in order to copy any records, inspect, monitor or otherwise investigate compliance with permit conditions and other program requirements. States whose law requires a search warrant before entry conform with this requirement.

(d) Investigatory inspections shall be conducted, samples shall be taken and other information shall be gathered in a manner [e.g., using proper “chain of custody” procedures] that will produce evidence admissible in an enforcement proceeding or in court.

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### **§145.13 Requirements for enforcement authority.**

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or environment;

NOTE: This paragraph requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit;

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) For all wells except Class II wells, civil penalties shall be recoverable for any program violation in at least the amount of \$2,500 per day. For Class II wells, civil penalties shall be recoverable for any program violation in at least the amount of \$1,000 per day.

(ii) Criminal fines shall be recoverable in at least the amount of \$5,000 per day against any person

who willfully violates any program requirement, or for Class II wells, pipeline (production) severance shall be impossible against any person who willfully violates any program requirement.

NOTE: In many States the State Director will be represented in State courts by the State Attorney General or other appropriate legal officer. Although the State Director need not appear in court actions he or she should have power to request that any of the above actions be brought.

(b)(1) The maximum civil penalty or criminal fine (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the Safe Drinking Water Act.

NOTE: For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.

(c) A civil penalty assessed, sought, or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation.

NOTE: To the extent that State judgments or settlements provide penalties in amounts which EPA believes to be substantially inadequate in comparison to the amounts which EPA would require under similar facts, EPA, when authorized by the applicable statute, may commence separate actions for penalties.

In addition to the requirements of this paragraph, the State may have other enforcement remedies. The following enforcement options, while not mandatory, are highly recommended:

Procedures for assessment by the State of the costs of investigations, inspections, or monitoring surveys which lead to the establishment of violations;

Procedures which enable the State to assess or to sue any persons responsible for unauthorized activities for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon human health and the environment resulting from the unauthorized activity, or both; and

Procedures for the administrative assessment of penalties by the Director.

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraph (a) (1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in §145.12(b)(4);

(ii) Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

(e) To the extent that an Indian Tribe does not assert or is precluded from asserting criminal

enforcement authority the Administrator will assume primary enforcement responsibility for criminal violations. The Memorandum of Agreement in §145.25 shall reflect a system where the Tribal agency will refer such violations to the Administrator in an appropriate and timely manner.

(Clean Water Act (33 U.S.C. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*))

[48 FR 14202, Apr. 1, 1983, as amended at 48 FR 39621, Sept. 1, 1983; 53 FR 37412, Sept. 26, 1988]

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#### **§145.14 Sharing of information.**

(a) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information under this section. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR part 2. If EPA obtains from a State information that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA shall furnish to States with approved programs the information in its files not submitted under a claim of confidentiality which the State needs to implement its approved program. EPA shall furnish to States with approved programs information submitted to EPA under a claim of confidentiality, which the State needs to implement its approved program, subject to the conditions in 40 CFR part 2.

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### **Subpart C—State Program Submissions**

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#### **§145.21 General requirements for program approvals.**

(a) States shall submit to the Administrator a proposed State UIC program complying with §145.22 of this part within 270 days of the date of promulgation of the UIC regulations on June 24, 1980. The administrator may, for good cause, extend the date for submission of a proposed State UIC program for up to an additional 270 days.

(b) States shall submit to the Administrator 6 months after the date of promulgation of the UIC regulations a report describing the State's progress in developing a UIC program. If the Administrator extends the time for submission of a UIC program an additional 270 days, pursuant to §145.21(a), the State shall submit a second report six months after the first report is due. The Administrator may prescribe the manner and form of the report.

(c) The requirements of §145.21 (a) and (b) shall not apply to Indian Tribes.

(d) EPA will establish a UIC program in any State which does not comply with paragraph (a) of this section. EPA will continue to operate a UIC program in such a State until the State receives approval of a UIC program in accordance with the requirements of this part.

NOTE: States which are authorized to administer the NPDES permit program under section 402 of CWA are encouraged to rely on existing statutory authority, to the extent possible, in developing a State UIC program. Section 402(b)(1)(D) of CWA requires that NPDES States have the authority "to issue permits which control the disposal of pollutants into wells." In many instances, therefore, NPDES States will have existing statutory authority to regulate well disposal which satisfies the requirements of the UIC program. Note, however, that CWA

excludes certain types of well injections from the definition of "pollutant." If the State's statutory authority contains a similar exclusion it may need to be modified to qualify for UIC program approval.

(e) If a State can demonstrate to EPA's satisfaction that there are no underground injections within the State for one or more classes of injection wells (other than Class IV wells) subject to SDWA and that such injections cannot legally occur in the State until the State has developed an approved program for those classes of injections, the State need not submit a program to regulate those injections and a partial program may be approved. The demonstration of legal prohibition shall be made by either explicitly banning new injections of the class not covered by the State program or providing a certification from the State Attorney General that such new injections cannot legally occur until the State has developed an approved program for that class. The State shall submit a program to regulate both those classes of injections for which a demonstration is not made and class IV wells.

(f) When a State UIC program is fully approved by EPA to regulate all classes of injections, the State assumes primary enforcement authority under section 1422(b)(3) of SDWA. EPA retains primary enforcement responsibility whenever the State program is disapproved in whole or in part. States which have partially approved programs have authority to enforce any violation of the approved portion of their program. EPA retains authority to enforce violations of State underground injection control programs, except that, when a State has a fully approved program, EPA will not take enforcement actions without providing prior notice to the State and otherwise complying with section 1423 of SDWA.

(g) A State can assume primary enforcement responsibility for the UIC program, notwithstanding §145.21(3), when the State program is unable to regulate activities on Indian lands within the State. EPA will administer the program on Indian lands if the State does not seek this authority.

(h) To establish a Federal UIC Class VI program in States not seeking full UIC primary enforcement responsibility approval, pursuant to the SDWA section 1422(c), States shall, by September 6, 2011, submit to the Administrator a new or revised State UIC program complying with §§145.22 or 145.32 of this part. Beginning on September 6, 2011 the requirements of subpart H of part 146 of this chapter will be applicable and enforceable by EPA in each State that has not received approval of a new Class VI program application under section 1422 of the Safe Drinking Water Act or a revision of its UIC program under section 1422 of the Safe Drinking Water Act to incorporate subpart H of part 146. Following September 6, 2011, EPA will publish a list of the States where subpart H of part 146 has become applicable.

[48 FR 14202, Apr. 1, 1983, as amended at 53 FR 37412, Sept. 26, 1988; 75 FR 77290, Dec. 10, 2010]

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### **§145.22 Elements of a program submission.**

(a) Any State that seeks to administer a program under this part shall submit to the Administrator at least three copies of a program submission. For Class VI programs, the entire submission can be sent electronically. The submission shall contain the following:

- (1) A letter from the Governor of the State requesting program approval;
- (2) A complete program description, as required by §145.23, describing how the State intends to carry out its responsibilities under this part;
- (3) An Attorney General's statement as required by §145.24;
- (4) A Memorandum of Agreement with the Regional Administrator as required by §145.25;
- (5) Copies of all applicable State statutes and regulations, including those governing State



administrative procedures;

(6) The showing required by §145.31(b) of the State's public participation activities prior to program submission.

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the statutory review period (*i.e.*, the period of time allotted for formal EPA review of a proposed State program under the Safe Drinking Water Act) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the statutory review period shall not begin until all the necessary information is received by EPA.

(c) If the State's submission is materially changed during the statutory review period, the statutory review period shall begin again upon receipt of the revised submission.

(d) The State and EPA may extend the statutory review period by agreement.

[48 FR 14202, Apr. 1, 1983, as amended at 75 FR 77290, Dec. 10, 2010]

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### **§145.23 Program description.**

Any State that seeks to administer a program under this part shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under an interstate compact. For Class VI programs, the entire submission can be sent electronically. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a "lead agency" to facilitate communications between EPA and the State agencies having program responsibility. When the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding.

(c) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

(d) Copies of the permit form(s), application form(s), reporting form(s), and manifest format the State intends to employ in its program. Forms used by States need not be identical to the forms used by EPA but should require the same basic information. The State need not provide copies of uniform national forms it intends to use but should note its intention to use such forms. For Class VI programs, submit copies of the current forms in use by the State, if any.

(e) A complete description of the State's compliance tracking and enforcement program.

(f) A State UIC program description shall also include:

(1) A schedule for issuing permits within five years after program approval to all injection wells within the State which are required to have permits under this part and 40 CFR part 144. For Class VI programs, a schedule for issuing permits within two years after program approval;

(2) The priorities (according to criteria set forth in §146.9 of this chapter) for issuing permits, including the number of permits in each class of injection well which will be issued each year during the first five years of program operation. For Class VI programs, include the priorities for issuing permits and the number of permits which will be issued during the first two years of program operation;

(3) A description of how the Director will implement the mechanical integrity testing requirements of §146.8 of this chapter, or, for Class VI wells, the mechanical integrity testing requirements of §146.89 of this chapter, including the frequency of testing that will be required and the number of tests that will be reviewed by the Director each year;

(4) A description of the procedure whereby the Director will notify owners or operators of injection wells of the requirement that they apply for and obtain a permit. The notification required by this paragraph shall require applications to be filed as soon as possible, but not later than four years after program approval for all injection wells requiring a permit. For Class VI programs approved before December 10, 2011, a description of the procedure whereby the Director will notify owners or operators of any Class I wells previously permitted for the purpose of geologic sequestration or Class V experimental technology wells no longer being used for experimental purposes that will continue injection of carbon dioxide for the purpose of GS that they must apply for a Class VI permit pursuant to requirements at §146.81(c) within one year of December 10, 2011. For Class VI programs approved following December 10, 2011, a description of the procedure whereby the Director will notify owners or operators of any Class I wells previously permitted for the purpose of geologic sequestration or Class V experimental technology wells no longer being used for experimental purposes that will continue injection of carbon dioxide for the purpose of GS or Class VI wells previously permitted by EPA that they must apply for a Class VI permit pursuant to requirements at §146.81(c) within one year of Class VI program approval;

(5) A description of any rule under which the Director proposes to authorize injections, including the text of the rule;

(6) For any existing enhanced recovery and hydrocarbon storage wells which the Director proposes to authorize by rule, a description of the procedure for reviewing the wells for compliance with applicable monitoring, reporting, construction, and financial responsibility requirements of §§144.51 and 144.52, and 40 CFR part 146;

(7) A description of and schedule for the State's program to establish and maintain a current inventory of injection wells which must be permitted under State law;

(8) Where the Director had designated underground sources of drinking water in accordance with §144.7(a), a description and identification of all such designated sources in the State;

(9) A description of aquifers, or parts thereof, which the Director has identified under §144.7(b) as

exempted aquifers, and a summary of supporting data. For Class VI programs only, States must incorporate information related to any EPA approved exemptions expanding the areal extent of existing aquifer exemptions for Class II enhanced oil recovery or enhanced gas recovery wells transitioning to Class VI injection for geologic sequestration pursuant to requirements at §§146.4(d) and 144.7(d), including a summary of supporting data and the specific location of the aquifer exemption expansions. Other than expansions of the areal extent of Class II enhanced oil recovery or enhanced gas recovery well aquifer exemptions for Class VI injection, new aquifer exemptions shall not be issued for Class VI wells or injection activities;

(10) A description of and schedule for the State's program to ban Class IV wells prohibited under §144.13; and

(11) A description of and schedule for the State's program to establish an inventory of Class V wells and to assess the need for a program to regulate Class V wells.

(12) *For Class V programs only.* A description of and a schedule for the State's plan to identify and delineate other sensitive ground water areas. States should consider geologic and hydrogeologic settings, ground water flow and occurrence, topographic and geographic features, depth to ground water, significance as a drinking water source, prevailing land use practices and any other existing information relating to the susceptibility of ground water to contamination from Class V injection wells when developing their plan. Within the schedule for the plan, States must commit to: completing all delineations of other sensitive ground water areas by no later than Jan. 1, 2004; making these delineation available to the public; implementing the Class V regulations, effective April 5, 2000, in these delineated areas by no later than January 1, 2007. Alternately, if a State chooses not to identify other sensitive ground water areas, the requirements for motor vehicle waste disposal wells would apply statewide by January 1, 2007.

(13) For Class VI programs, a description of the procedure whereby the Director must notify, in writing, any States, Tribes, and Territories of any permit applications for geologic sequestration of carbon dioxide wherein the area of review crosses State, Tribal, or Territory boundaries, resulting in the need for trans-boundary coordination related to an injection operation.

[48 FR 14202, Apr. 1, 1983, as amended at 64 FR 68572, Dec. 7, 1999; 75 FR 77290, Dec. 10, 2010]

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#### **§145.24 Attorney General's statement.**

(a) Any State that seeks to administer a program under this part shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel) that the laws of the State, or an interstate compact, provide adequate authority to carry out the program described under §145.23 and to meet the requirements of this part. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program.

NOTE: EPA will supply States with an Attorney General's statement format on request.

(b) When a State seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

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## **§145.25 Memorandum of Agreement with the Regional Administrator.**

(a) Any State that seeks to administer a program under this part shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's statutory oversight responsibility.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). When existing permits are transferred from EPA to State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

NOTE: For example, EPA and the State and the permittee could agree that the State would issue a permit(s) identical to the outstanding Federal permit which would simultaneously be terminated.

(2) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection.

(3) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate.

(4) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(5) When appropriate, provisions for joint processing of permits by the State and EPA, for facilities or activities which require permits from both EPA and the State under different programs. See §124.4.

(6) Provisions for modification of the Memorandum of Agreement in accordance with this part.

(c) The Memorandum of Agreement, the annual program and grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this part. The State/EPA Agreement may not override the Memorandum of Agreement.

NOTE: Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. However, it may still be appropriate to specify in the MOA the basis for such detailed agreements, e.g., a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the

State/EPA agreement.

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## Subpart D—Program Approval, Revision and Withdrawal

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### §145.31 Approval process.

(a) Prior to submitting an application to the Administrator for approval of a State UIC program, the State shall issue public notice of its intent to adopt a UIC program and to seek program approval from EPA. This public notice shall:

(1) Be circulated in a manner calculated to attract the attention of interested persons. Circulation of the public notice shall include publication in enough of the largest newspapers in the State to attract Statewide attention and mailing to persons on appropriate State mailing lists and to any other persons whom the agency has reason to believe are interested;

(2) Indicate when and where the State's proposed program submission may be reviewed by the public;

(3) Indicate the cost of obtaining a copy of the submission;

(4) Provide for a comment period of not less than 30 days during which interested persons may comment on the proposed UIC program;

(5) Schedule a public hearing on the State program for no less than 30 days after notice of the hearing is published;

(6) Briefly outline the fundamental aspects of the State UIC program; and

(7) Identify a person that an interested member of the public may contact for further information.

(b) After complying with the requirements of paragraph (a) of this section any State may submit a proposed UIC program under section 1422 of SDWA and §145.22 of this part to EPA for approval. Such a submission shall include a showing of compliance with paragraph (a) of this section; copies of all written comments received by the State; a transcript, recording or summary of any public hearing which was held by the State; and a responsiveness summary which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received, and responds to these comments. A copy of the responsiveness summary shall be sent to those who testified at the hearing, and others upon request.

(c) After determining that a State's submission for UIC program approval is complete the Administrator shall issue public notice of the submission in the FEDERAL REGISTER and in accordance with paragraph (a)(1) of this section. Such notice shall:

(1) Indicate that a public hearing will be held by EPA no earlier than 30 days after notice of the hearing. The notice may require persons wishing to present testimony to file a request with the Regional Administrator, who may cancel the public hearing if sufficient public interest in a hearing is not expressed;

(2) Afford the public 30 days after the notice to comment on the State's submission; and

(3) Note the availability of the State submission for inspection and copying by the public.

(d) The Administrator shall approve State programs which conform to the applicable requirements

of this part.

(e) Within 90 days of the receipt of a complete submission (as provided in §145.22) or material amendment thereto, the Administrator shall by rule either fully approve, disapprove, or approve in part the State's UIC program taking into account any comments submitted. The Administrator shall give notice of this rule in the FEDERAL REGISTER and in accordance with paragraph (a)(1) of this section. If the Administrator determines not to approve the State program or to approve it only in part, the notice shall include a concise statement of the reasons for this determination. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received, and explains the Agency's response to these comments. The responsiveness summary shall be sent to those who testified at the public hearing, and to others upon request.

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### **§145.32 Procedures for revision of State programs.**

(a) Either EPA or the approved State may initiate program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The state shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances.

(2) Whenever EPA determines that the proposed program revision is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to interested persons and shall be published in the FEDERAL REGISTER and in enough of the largest newspapers in the State to provide Statewide coverage. The public notice shall summarize the proposed revisions and provide for the opportunity to request a public hearing. Such a hearing will be held if there is significant public interest based on requests received. All requests for expansions to the areal extent of Class II enhanced oil recovery or enhanced gas recovery aquifer exemptions for Class VI wells must be treated as substantial program revisions.

(3) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Safe Drinking Water Act.

(4) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the FEDERAL REGISTER. Notice of approval of non-substantial program revisions may be given by a letter from the Administrator to the State Governor or his designee.

(c) States with approved programs shall notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approval by the Administrator under paragraph (b) of this section. Organizational charts required under §145.23(b) shall be revised and resubmitted.

(d) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as are necessary.

(e) The State shall submit the information required under paragraph (b)(1) of this section within

270 days of any amendment to this part or 40 CFR part 144, 146, or 124 which revises or adds any requirement respecting an approved UIC program.

[48 FR 14202, Apr. 1, 1983, as amended at 75 FR 77291, Dec. 10, 2010]

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### **§145.33 Criteria for withdrawal of State programs.**

(a) The Administrator may withdraw program approval when a State program no longer complies with the requirements of this part, and the State fails to take corrective action. Such circumstances include the following:

(1) When the State's legal authority no longer meets their requirements of this part, including:

(i) Failure of the State to promulgate or enact new authorities when necessary; or

(ii) Action by a State legislature or court striking down or limiting State authorities.

(2) When the operation of the State program fails to comply with the requirements of this part, including:

(i) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits;

(ii) Repeated issuance of permits which do not conform to the requirements of this part; or

(iii) Failure to comply with the public participation requirements of this part.

(3) When the State's enforcement program fails to comply with the requirements of this part, including:

(i) Failure to act on violations of permits or other program requirements;

(ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or

(iii) Failure to inspect and monitor activities subject to regulation.

(4) When the State program fails to comply with the terms of the Memorandum of Agreement required under §145.24.

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### **§145.34 Procedures for withdrawal of State programs.**

(a) A State with a program approved under this part may voluntarily transfer program responsibilities required by Federal law to EPA by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

(1) The State shall give the Administrator 180 days notice of the proposed transfer and shall submit a plan for the orderly transfer of all relevant program information not in the possession of EPA (such as permits, permit files, compliance files, reports, permit applications) which are necessary for EPA to administer the program.

(2) Within 60 days of receiving the notice and transfer plan, the Administrator shall evaluate the State's transfer plan and shall identify any additional information needed by the Federal government

for program administration and/or identify any other deficiencies in the plan.

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of the transfer in the FEDERAL REGISTER and in enough of the largest newspapers in the State to provide Statewide coverage, and shall mail notice to all permit holders, permit applicants, other regulated persons and other interested persons on appropriate EPA and State mailing lists.

(b) Approval of a State UIC program may be withdrawn and a Federal program established in its place when the Administrator determines, after holding a public hearing, that the State program is not in compliance with the requirements of SDWA and this part.

(1) *Notice to State of public hearing.* If the Administrator has cause to believe that a State is not administering or enforcing its authorized program in compliance with the requirements of SDWA and this part, he or she shall inform the State by registered mail of the specific areas of alleged noncompliance. If the State demonstrates to the Administrator within 30 days of such notification that the State program is in compliance, the Administrator shall take no further action toward withdrawal and shall so notify the State by registered mail.

(2) *Public hearing.* If the State has not demonstrated its compliance to the satisfaction of the Administrator within 30 days after notification, the Administrator shall inform the State Director and schedule a public hearing to discuss withdrawal of the State program. Notice of such public hearing shall be published in the FEDERAL REGISTER and in enough of the largest newspapers in the State to attract statewide attention, and mailed to persons on appropriate State and EPA mailing lists. This hearing shall be convened not less than 60 days nor more than 75 days following the publication of the notice of the hearing. Notice of the hearing shall identify the Administrator's concerns. All interested persons shall be given opportunity to make written or oral presentation on the State's program at the public hearing.

(3) *Notice to State of findings.* When the Administrator finds after the public hearing that the State is not in compliance, he or she shall notify the State by registered mail of the specific deficiencies in the State program and of necessary remedial actions. Within 90 days of receipt of the above letter, the State shall either carry out the required remedial action or the Administrator shall withdraw program approval. If the State carries out the remedial action or, as a result of the hearing is found to be in compliance, the Administrator shall so notify the State by registered mail and conclude the withdrawal proceedings.

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## Subpart E—Indian Tribes

SOURCE: 53 FR 37412, Sept. 26, 1988, unless otherwise noted.

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### **§145.52 Requirements for Tribal eligibility.**

The Administrator is authorized to treat an Indian Tribe as eligible to apply for primary enforcement responsibility for the Underground Injection Control Program if it meets the following criteria:

(a) The Indian Tribe is recognized by the Secretary of the Interior.

(b) The Indian Tribe has a Tribal governing body which is currently “carrying out substantial governmental duties and powers” over a defined area, (*i.e.*, is currently performing governmental functions to promote the health, safety, and welfare of the affected population within a defined geographic area).



(c) The Indian Tribe demonstrates that the functions to be performed in regulating the underground injection wells that the applicant intends to regulate are within the area of the Indian Tribal government's jurisdiction.

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of administering (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Underground Injection Control Program.

[53 FR 37412, Sept. 26, 1988, as amended at 59 FR 64345, Dec. 14, 1994]

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### **§145.56 Request by an Indian Tribe for a determination of eligibility.**

An Indian Tribe may apply to the Administrator for a determination that it meets the criteria of section 1451 of the Act. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of §145.52. The application shall consist of the following:

(a) A statement that the Tribe is recognized by the Secretary of the Interior.

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. The statement should:

(1) Describe the form of the Tribal government;

(2) Describe the types of governmental functions currently performed by the Tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(3) Identify the sources of the Tribal government's authority to carry out the governmental functions currently being performed.

(c) A map or legal description of the area over which the Indian Tribe asserts jurisdiction; a statement by the Tribal Attorney General (or equivalent official) which describes the basis for the Tribe's jurisdictional assertion (including the nature or subject matter of the asserted jurisdiction); a copy of those documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which the Tribe believes are relevant to its assertions regarding jurisdiction; and a description of the locations of the underground injection wells the Tribe proposes to regulate.

(d) A narrative statement describing the capability of the Indian Tribe to administer an effective Underground Injection Control program which should include:

(1) A description of the Indian Tribe's previous management experience which may include, the administration of programs and services authorized under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian Sanitation Facilities Construction Activity Act (42 U.S.C. 2004a).

(2) A list of existing environmental or public health programs administered by the Tribal governing body and a copy of related Tribal laws, regulations and policies.

(3) A description of the Indian Tribe's accounting and procurement systems.

(4) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government.

(5) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary enforcement responsibility, including a description of the relationship between owners/operators of the underground injection wells and the agency.

(6) A description of the technical and administrative capabilities of the staff to administer and manage an effective Underground Injection Control Program or a plan which proposes how the Tribe will acquire additional administrative and/or technical expertise. The plan must address how the Tribe will obtain the funds to acquire the additional administrative and technical expertise.

(e) The Administrator may, in his discretion, request further documentation necessary to support a Tribe's eligibility.

(f) If the Administrator has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a State as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the Underground Injection Control program (§145.76(c) and (d)(6)).

[53 FR 37412, Sept. 26, 1988, as amended at 59 FR 64345, Dec. 14, 1994]

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#### **§145.58 Procedure for processing an Indian Tribe's application.**

(a) The Administrator shall process a completed application of an Indian Tribe in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(b) A tribe that meets the requirements of §145.52 is eligible to apply for development grants and primary enforcement responsibility for an Underground Injection Control program and the associated funding under section 1443(b) of the Act and primary enforcement responsibility for the Underground Injection Control Program under sections 1422 and/or 1425 of the Act.

[53 FR 37412, Sept. 26, 1988, as amended at 59 FR 64345, Dec. 14, 1994]

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