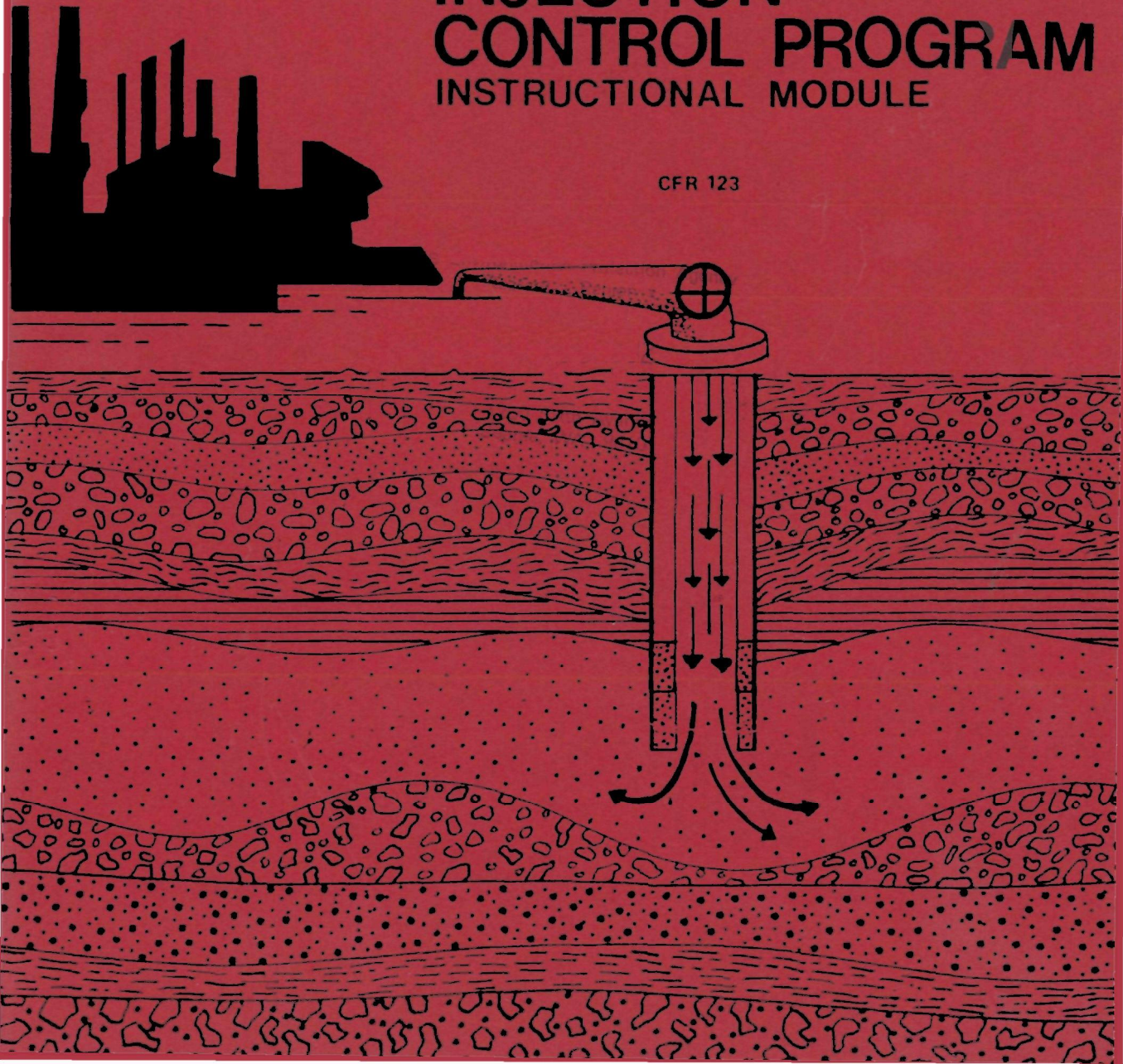


NOVEMBER 1980



UNDERGROUND INJECTION CONTROL PROGRAM INSTRUCTIONAL MODULE

CFR 123



INSTRUCTIONAL

MODULE

UNDERGROUND INJECTION
CONTROL PROGRAM

CFR 123 A
123 C

Ground Water Protection Branch
Office of Drinking Water
Environmental Protection Ag

Introduction

This booklet is designed to help you read the Underground Injection Control (UIC) regulations. We have cut and pasted, added a few notes and some questions. Please use any way you like. One way is to try the questions first, then read the regulations.

This is the first module to be printed and distributed. CFR 122, 124 and 146 will be following immediately. Also included will be a bookmark to help you keep track of all the references.

Good luck.

November 1980.

Larry Graham
Judy Long

123. A

1. A public hearing must be held before EPA approval of any State program submittals (123.1).

True _____ False _____

2. States are required to consolidate permit programs, to the extent practical (123.1).

True _____ False _____

3. A State program lacking authority over Indian lands may be approved as a full program.

True _____ False _____

4. State requirements may be more extensive than those in CFR 123.

True _____ False _____

5. The statutory review period refers to the protection of historical sculpture.

True _____ False _____

6. The program description must include a description of State permitting and review procedures.

True _____ False _____

7. If the State proposes to use uniform national forms, they need not include copies.

True _____ False _____

8. The State is allowed to modify the forms used by EPA.

True _____ False _____

123.4(g)

9. The State must provide a schedule for issuing all permits as soon as possible, but no later than three years after program approval.

True _____ False _____

10. The State must set priorities and state the number of permits in each class to be issued each year for five years.

True _____ False _____

11. The Director must notify injectors that they are required to apply for a permit at least five years after program approval.

True _____ False _____

12. The program description must include the text of any proposed rule.

True _____ False _____

13. Enhanced recovery and hydrocarbon storage wells are now Class V wells and fall under Class V requirements.

True _____ False _____

14. The State must inventory all injection wells.

True _____ False _____

15. The program description must include a description and identification of all underground sources of drinking water.

True _____ False _____

16. If an aquifer is oil or gas producing, it is an exempted aquifer.

True _____ False _____

17. The Director must set a schedule to ban Class IV wells prohibited under 122.36.

True _____ False _____

18. The Director may decline to inventory Class V wells.

True _____ False _____

Page

33456

Subpart A—General Program Requirements

§ 123.1 Purpose and scope.

(a) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State programs under the following statutes and the requirements State programs must meet to be approved by the Administrator under:

(2) Section 1422 (underground injection control—UIC) of SDWA:

Subpart A includes the elements which must be part of submissions to EPA for program approval, the substantive provisions which must be present in State programs for them to be approved, and the procedures EPA will follow in approving, revising, and withdrawing State programs.

(c) State submissions for program approval must be made in accordance with the procedures set out in Subpart A

This includes developing and submitting to EPA a program description (§ 123.4), an Attorney General's statement (§ 123.5), a Memorandum of Agreement with the Regional Administrator (§ 123.6)

p. 33457

p. 33458

p. 33459

(d) The substantive provisions which must be included in State programs for them to be approved include requirements for permitting, compliance evaluation, enforcement, public participation, and sharing of information. The requirements are found both in Subpart A (§§ 123.7 to 123.11) and in the program specific subparts. 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 122 and 124 are made

p. 33460 - 33463

Page

33456 applicable to States by the references contained in § 123.7.

(e) 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 appropriate Act and any comments received.

(f) The Administrator shall approve State programs which conform to the applicable requirements of this Part.

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

33457 (h) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this Part.

(i) States are encouraged to consolidate their permitting activities. While approval of State programs under this Part will facilitate such consolidation, these regulations do not require consolidation. Each of the four programs under this Part may be applied for and approved separately.

(j) Partial State programs are not allowed under NPDES, 404, or RCRA (for programs operating under final authorization). However, in many cases States will lack authority to regulate activities on Indian lands. This lack of authority does not impair a State's ability to obtain full program approval in accordance with this Part, i.e., inability of a State to regulate activities on Indian lands does not constitute a partial program. Similarly, a State can assume primary enforcement responsibility for the UIC program, notwithstanding § 123.51(e), when the

SHALL

Suspend issuance of
Federal permits

Consolidation

Indian Lands

Primacy p. 33468

Page

33457 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.

[Note.—States are advised to contact the United States Department of the Interior, Bureau of Indian Affairs, concerning authority over Indian lands.]

(k) 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.

§ 123.3 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. 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 § 123.4, describing how the State intends to carry out its responsibilities under this Part;

(3) An Attorney General's statement as required by § 123.5;

(4) A Memorandum of Agreement with the Regional Administrator as required by § 123.6,

(5) Copies of all applicable State statutes and regulations, including those governing State administrative procedures;

More stringent/
extensive

Greater scope -
not part of program

Governor

Program Description
p. 33457

Attorney General's
Statement
p. 33458

MOA - p. 33459

Laws and Regs

Page

- 33457 (6) The showing required by § 123.54(b) (UIC programs only) 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 appropriate 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.
- § 123.4 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. 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

Public Participation
30 Days

Review Period begins
again

Organization Charts

Page

33457 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

Class of Activities

"May"

"Resources"

Staff

2 year budget

Funds

Procedures

Forms

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.-

[Note.—States are encouraged to use uniform national forms established by the Administrator. If uniform national forms are used, they may be modified to include the State Agency's name, address, logo, and other similar information, as appropriate, in place of EPA's.]

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

33458

(g) *State UIC programs only.* In the case of a submission for approval of a State UIC program the State's 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 Part 122;

(2) The priorities (according to criteria set forth in 40 CFR § 146.09) 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;

(3) A description of how the Director will implement the mechanical integrity testing requirements of 40 CFR § 146.08, 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 and operators of injection wells of the requirement that they apply for and obtain a permit. The notification required by this paragraph shall require

Enforcement

Five years

Priorities for Permits
Criteria for establishing
permitting priorities

p. 42505
Mechanical integrity

Notification

Page

33458 applications to be filed as soon as possible, but not later than four years after program approval for all injection wells requiring a permit;
(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 §§ 122.41 and 122.42, 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 has designated underground sources of drinking water in accordance with § 122.35(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 § 122.35(b) as exempted aquifers, and a summary of supporting data;
(10) A description of and schedule for the State's program to ban Class IV wells prohibited under § 122.36; 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.

Four years

Rule

Compliance review

Additional conditions
p. 33439

Establishing permitting
conditions p. 33440

Identification of USDW
p. 33437

Elimination of certain
Class IV p. 33438

123.5

19. State statutes cited in the Attorney General's statement need not be effective at the time of program approval.

True _____ False _____

20. Pending permit applications are to be completed by EPA.

True _____ False _____

21. Joint processing of permits by the State and EPA is not required.

True _____ False _____

22. The SEA may override the MOA.

True _____ False _____

123 A

23. The State programs are not allowed to depend upon information supplied by regulated persons to determine compliance.

True _____ False _____

24. State programs are required to have a program for periodic inspection.

True _____ False _____

25. A State UIC program must have the authority to impose civil penalties of at least \$2,500 per day.

True _____ False _____

26. Public notice and 30 day comment period is required of a proposed State enforcement action.

True _____ False _____

27. EPA may not furnish to State programs information submitted under a claim of confidentiality.

True _____ False _____

28. A substantial State program revision requires public notice and a comment period of at least 30 days.

True _____ False _____

29. The Administrator may withdraw State program approval if permits are issued without public participation.

True _____ False _____

30. A State with an approved UIC program can give 180 day notice and transfer all program responsibilities to EPA.

True _____ False _____

123 C

31. If a State has no injection wells of a particular class, no program is required for that class of well.

True _____ False _____

32. EPA retains primary enforcement responsibility when the State has an approved partial program.

True _____ False _____

33. If the State conducts a public hearing on a proposed UIC program, EPA is not required to schedule one.

True _____ False _____

34. The Administrator may not withdraw approval of a State UIC program without a public hearing.

True _____ False _____

Page

33458 **§ 123.5 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 § 123.4 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.]

33459 **§ 123.6 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

Authority

Page

33459

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 the 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.]

(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:

No restriction on EPA

Transfer pending

Existing permits

Reports

33459

(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.

Joint Processing

[Note.—To promote efficiency and to avoid duplication and inconsistency, States are encouraged to enter into joint processing agreements with EPA for permit issuance. Likewise, States are encouraged (but not required) to consider steps to coordinate or consolidate their own permit programs and activities.]

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

Modification

(c) The Memorandum of Agreement, the annual program 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.

Consistency

[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.]

§ 123.7 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) § 122.4—(Application for a permit);
- (2) § 122.6—(Signatories);
- (3) § 122.7—(Applicable permit conditions);
- (4) § 122.8—(Establishing permit conditions);
- (5) § 122.9—(Duration);
- (6) § 122.10(a)—(Schedules of compliance);
- (7) § 122.11—(Monitoring requirements);
- (8) § 122.13 (a) and (b)—(Effect of permit);
- (9) § 122.14—(Permit transfer);
- (10) § 122.15—(Permit modification);
- (11) § 122.16—(Permit termination);
- (12) § 122.18—(Noncompliance reporting);
- (13) § 122.19 (b)–(d)—(Confidential information);
- (14) § 124.3(a)—(Application for a permit);
- (15) § 124.5 (a), (c), (d), and (f)—(Modification of permits),
- (16) § 124.6 (a), (c), (d), and (e)—(Draft permit),
- (17) § 124.8—(Fact sheets),
- (18) § 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e)—(Public notice);
- (19) § 124.11—(Public comments and requests for hearings);
- (20) § 124.12(a)—(Public hearings); and
- (21) § 124.17 (a) and (c)—(Response to comments).

Legal Authority

Page

33460 [Note.—States need not implement provisions identical to the above listed provisions or the provisions listed in §§ 123.7 (b)–(d). 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.

At least as stringent

State programs may, if they have adequate legal authority, implement any of the provisions of Parts 122 and 124. See, for example, § 122.5(d) (continuation of permits) and § 124.4 (consolidation of permit processing).

33461 (c) *State UIC programs only.* State UIC programs shall 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) § 122.32—(Classification of injection wells);
- (2) § 122.33—(Prohibition of unauthorized injection);
- (3) § 122.34—(Prohibition of movement of fluids into underground sources of drinking water);
- (4) § 122.35—(Identification of underground sources of drinking water and exempted aquifers);
- (5) § 122.36—(Elimination of Class IV wells);
- (6) § 122.37—(Authorization by rule);
- (7) § 122.38—(Authorization by permit);
- (8) § 122.39—(Area permits);
- (9) § 122.41—(Additional permit conditions);
- (10) § 122.42—(Establishing permit conditions);
- (11) § 122.44—(Corrective action); and

Page

33461 (12) § 122.45—(Requirements for wells
managing hazardous wastes).
§ 123.8 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).

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:

Inspection

(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;

Page

33461

(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

33462

regulation or in which records relevant to program operation are kept in order to copy any records, inspect, monitor or otherwise investigate compliance with the State program including 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.

§ 123.9 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 the environment;

Restrain

[Note.—This paragraph requires that States have a mechanism (e.g., an administrative

Page

33462

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:

(ii) *State UIC programs only.* (A) 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.

(B) 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 imposable against any person who willfully violates any program requirement.

(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 appropriate Act.

Sue

Penalties

Civil

\$2,500 (1,000 Class II)

Criminal (\$5,000)

Page

33462

[Note.—For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.]

(c) Any civil penalty assessed, sought or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation. A civil penalty agreed upon by the State Director in settlement of administrative or judicial litigation may be adjusted by a percentage which represents the likelihood of success in establishing the underlying violation(s) in such litigation. If such civil penalty, together with the costs of expeditious compliance, would be so severely disproportionate to the resources of the violator as to jeopardize continuance in business, the payment of the penalty may be deferred or the penalty may be forgiven in whole or part, as circumstances warrant. In the case of a penalty for a failure to meet a statutory or final permit compliance deadline, "appropriate to the violation," as used in this paragraph, means a penalty which is equal to:

(1) An amount appropriate to redress the harm or risk to public health or the environment; plus

(2) An amount appropriate to remove the economic benefit gained or to be gained from delayed compliance; plus

(3) An amount appropriate as a penalty for the violator's degree of recalcitrance, defiance, or indifference to requirements of the law; plus

33463 (4) An amount appropriate to recover unusual or extraordinary enforcement costs thrust upon the public; minus

(5) An amount, if any, appropriate to reflect any part of the noncompliance attributable to the government itself; and minus

(6) An amount appropriate to reflect any part of the noncompliance caused

"Jeopardize
Continuance in Business"

Page

33463 by factors completely beyond the violator's control (e.g., floods, fires).

[Note.—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, whether or not accidental;

Procedures which enable the State to sue for compensation for any loss or destruction of wildlife, fish or aquatic life, or their habitat, and for any other damages caused by unauthorized activity, either to the State or to any residents of the State who are directly aggrieved by 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 paragraphs (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 § 123.8(b)(4);

(ii) Not oppose intervention by any citizen when permissive intervention

Public Participation

Intervention

Citizen complaints

Requirements for
compliance programs

Page

33463 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.

§ 123.10 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.

§ 123.11 Coordination with other programs.

(a) Issuance of State permits under this Part may be coordinated with issuance of RCRA, UIC, NPDES, and 404 permits whether they are controlled by the State, EPA, or the Corps of Engineers. See § 124.4.

(b) The State Director of any approved program which may affect the planning for and development of

Notice

30 day public comment

"May be "

Consolidation of permit
processing p. 33482

Page

33463

hazardous waste management facilities and practices shall consult and coordinate with agencies designated under section 4006(b) of RCRA (40 CFR Part 255) as responsible for the development and implementation of State solid waste management plans under section 4002(b) of RCRA (40 CFR Part 256).

§ 123.12 Approval process.

The process for EPA approval of State programs is set out in §§ 123.39 (RCRA), 123.54 (UIC), 123.77 (NPDES), and 123.104 (404).

§ 123.13 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

Hazardous

Modified program
description

Substantial - public
notice, 30 day comment

Federal Register

Page

33463 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.

(3) The Administrator shall approve or disapprove program revisions based on the requirements of this Part and of the appropriate 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 approved by the Administrator under paragraph (b) of this section. Organizational charts required under § 123.4(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.

Page 33464 (f) *State UIC programs only.* 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 Parts 122, 124, or 146 which revises or adds any requirement respecting an approved State UIC program.

Federal Register

Approval by
Administrator

270 days - any
amendment

Page

33464 § 123.14 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 the 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 § 123.6.

Legal authority

Operation

p. 33459

Page

33464

§ 123.15 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

180 days

(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.

60 days

(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.

30 days

Federal Register

The process for withdrawing approval of State UIC programs is set out in § 123.55.

p. 33469

Page

33468 **Subpart C—Additional Requirements
for State UIC Programs**

§ 123.51 Purpose and scope.

(a) This Subpart describes additional substantive and procedural requirements for State UIC programs authorized under section 1422 of SDWA.

(b) States shall submit to the Administrator a proposed State UIC program complying with § 123.3 of this Part within 270 days of the date of promulgation of these regulations. The Administrator may, for good cause, extend the date for submission of a proposed State UIC program for up to an additional 270 days.

(c) EPA will establish a UIC program in any State which does not comply with paragraph (b) 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.]

(d) 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

Elements of a program
submission p. 33457

Additional 270 days

EPA program

Page

33468 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.

(e) 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.

§ 123.52 Requirement to obtain a permit.

States may authorize certain well injections by rule rather than by permit. Any authorization by rule shall comply with § 122.37.

No existing wells

Partial program

Must propose class IV

P.E.R.

Partial-EPA has PER

Prior notice - enforcement

p. 33438

Page

33468

§ 123.53 Progress reports.

States shall submit to the Administrator 6 months after the date of promulgation of these 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 § 123.51(b), 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.

6 months from
promulgation

Purpose and scope
6 months later

§ 123.54 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:

Public notice

(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;

News

Mailing

(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;

30 days comment

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

Schedule Public Hearing

(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 § 123.3 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.

Elements of a program
submission p. 33457

Comments

Responsiveness summary

Federal Register

Public hearing

30 days

Page

33469 (d) Within 90 days of the receipt of a complete submission (as provided in § 123.3) 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.

§ 123.55 Procedures for withdrawal of State UIC programs.

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

(a) *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

Elements of a program
submission p. 33457

Federal Register

Public Hearing

30 Days

Page

33469 the State program is in compliance, the Administrator shall take no further action toward withdrawal and shall so notify the State by registered mail.

(b) *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 presentations on the State's program at the public hearing.

Mail

60 days - 75 days

(c) *Notice to State of Findings.* Wherein 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.

90 days

Scoring Key CFR 123

1. False. "if interest is shown"
2. False. "States are encouraged"
3. True. "inability ... does not constitute a
 partial program."
4. True.
5. False.
6. True.
7. True.
8. True.
9. False. Five years
10. True.
11. False. Four years
12. True.
13. False. Only gaseous hydrocarbon storage
 wells have been transferred to
 Class V.
14. True. (See 123.7)
15. False. "May"
16. False. May be exempted by the Director, but
 must go through public hearing
 and EPA review.

17. True. Wells injecting hazardous material into a USDW are still to be closed. Other Class IV well regulations are reserved.
18. False.
19. False. [123.5]
20. False. [123.6(b)(1)]
21. True. "When appropriate" [123.6(b)5]
22. False. [123.6(c)]
23. True. [123.8(b)]
24. True. [123.8(b)(2)]
25. False. Not for Class II [123.9(b)(2)(ii)]
26. True. [123.9(d)(2)(iii)]
27. False. [123.10(b)]
28. True. [123.13(2)]
29. True. [123.14(2)(iii)]
30. True. [123.15(a)]
31. False. Tricky, but 123.51 indicates program needed sooner or later.
32. True. [123.51(e)]
33. False. Must be scheduled. [123.54(a)(5)]
34. True. [123.55(b)]

Notes