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AUTHORITY: Sec. 1424(e), Safe Drinking Water Act (42 U.S.C. 300h-3(e)); sec. 1427 of the Safe Drinking Water Act, (42 U.S.C. 300h-6).

Subpart A—Criteria for Identifying Critical Aquifer Protection Areas

SOURCE: 52 FR 23986, June 26, 1987, unless otherwise noted.

§ 149.1 Purpose.

The purpose of this subpart is to provide criteria for identifying critical aquifer protection areas, pursuant to section 1427 of the Safe Drinking Water Act (SDWA).

§ 149.2 Definitions.

(a) *Aquifer* means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(b) *Recharge* means a process, natural or artificial, by which water is added to the saturated zone of an aquifer.

(c) *Recharge Area* means an area in which water reaches the zone of saturation (ground water) by surface infiltration; in addition, a *major recharge area* is an area where a major part of the recharge to an aquifer occurs.

(d) *Sole or Principal Source Aquifer* (SSA) means an aquifer which is designated as an SSA under section 1424(e) of the SDWA.

[54 FR 6843, Feb. 14, 1989]

§ 149.3 Critical Aquifer Protection Areas.

A Critical Aquifer Protection Area is either:

(a) All or part of an area which was designated as a sole or principal source aquifer prior to June 19, 1986, and for which an areawide ground-water quality protection plan was approved, under section 208 of the Clean Water Act, prior to that date; or

(b) All or part of a major recharge area of a sole or principal source aquifer, designated before June 19, 1988, for which:

(1) The sole or principal source aquifer is particularly vulnerable to contamination due to the hydrogeologic characteristics of the unsaturated or saturated zone within the suggested critical aquifer protection area; and

(2) Contamination of the sole or principal source aquifer is reasonably likely to occur, unless a program to reduce or prevent such contamination is implemented; and

(3) In the absence of any program to reduce or prevent contamination, reasonably foreseeable contamination would result in significant cost, taking into account:

(i) The cost of replacing the drinking water supply from the sole or principal source aquifer, and

(ii) Other economic costs and environmental and social costs resulting from such contamination.

[54 FR 6843, Feb. 14, 1989]

Subpart B—Review of Projects Affecting the Edwards Underground Reservoir, A Designated Sole Source Aquifer in the San Antonio, Texas Area

SOURCE: 42 FR 51574, Sept. 29, 1977, unless otherwise noted. Redesignated at 52 FR 23986, June 26, 1987.

§ 149.100 Applicability.

This subpart sets forth, pursuant to sections 1424(e) and 1450 of the Public Health Service Act, as amended by the Safe Drinking Water Act, Pub. L. 93-523, regulations relating the Edwards Underground Reservoir which is the sole or principal drinking water source for the San Antonio area and which, if contaminated, would create a significant hazard to public health.

[42 FR 51574, Sept. 29, 1977. Redesignated and amended at 52 FR 23986, June 26, 1987]

§ 149.101 Definitions.

As used in this subpart and except as otherwise specifically provided, the term(s):

(a) *Act* means the Public Health Service Act, as amended by the Safe Drinking Water Act, Public Law 93-523.

(b) *Contaminant* means any physical, chemical, biological, or radiological substance or matter in water.

(c) *Recharge zone* means the area through which water enters the Edwards Underground Reservoir as defined in the December 16, 1975, Notice of Determination.

(d) *Administrator* (Regional Administrator) means the Administrator (Regional Administrator) of the United States Environmental Protection Agency.

(e) *Person* means an individual, corporation, company, association, partnership, State, or municipality.

(f) *Project* means a program or action for which an application for Federal financial assistance has been made.

(g) *Federal financial assistance* means any financial benefits provided directly as aid to a project by a department, agency, or instrumentality of the Federal government in any form including contracts, grants, and loan guarantees. Actions or programs carried out by the Federal government itself such as dredging performed by the Army Corps of Engineers do not involve Federal financial assistance. Actions performed for the Federal government by contractors, such as construction of roads on Federal lands by a contractor under the supervision of the Bureau of Land Management, should be distinguished from contracts entered into specifically for the purpose of providing financial assistance, and will not be considered programs or actions receiving Federal financial assistance. Federal financial assistance is limited to benefits earmarked for a specific program or action and directly awarded to the program or action. Indirect assistance, e.g., in the form of a loan to a developer by a lending institution which in turn receives Federal assistance not specifically related to the project in question is not Federal financial assistance under section 1424(e).

(h) *Commitment of Federal financial assistance* means a written agreement entered into by a department, agency, or instrumentality of the Federal Government to provide financial assistance as defined in paragraph (g) of this section.

Renewal of a commitment which the issuing agency determines has lapsed shall not constitute a new commitment unless the Regional Administrator determines that the project's impact on the aquifer has not been previously reviewed under section 1424(e). The determination of a Federal agency that a certain written agreement constitutes a commitment shall be conclusive with respect to the existence of such a commitment.

(i) *Streamflow source zone* means the upstream headwaters area which drains into the recharge zone as defined in the December 16, 1975, Notice of Determination.

(j) *Significant hazard to public health* means any level of contaminant which causes or may cause the aquifer to exceed any maximum contaminant level set forth in any promulgated National Primary Drinking Water Standard at any point where the water may be used for drinking purposes or which may otherwise adversely affect the health of persons, or which may require a public water system to install additional treatment to prevent such adverse effect.

(k) *Aquifer* means the Edwards Underground Reservoir.

[42 FR 51574, Sept. 29, 1977. Redesignated and amended at 52 FR 23986, June 26, 1987]

§ 149.102 Project review authority.

(a) Once an area is designated, no subsequent commitments of Federal financial assistance may be made to projects which the Administrator determines may contaminate the aquifer so as to create a significant hazard to public health.

(b) The Regional Administrator is hereby delegated the authority and assigned responsibility for carrying out the project review process assigned to the Administrator under section 1424(e) of the Act, except the final determination that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health.

(c) The Regional Administrator may review any project which he considers may potentially contaminate the aquifer through its recharge zone so as to create a significant hazard to public health.

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§ 149.103 Public information.

After the area is designated under section 1424(e), Federal agencies, for projects, located in the recharge zone and streamflow source zones, are required to:

(a) Maintain a list of projects for which environmental impact statements will be prepared in accordance with the National Environmental Policy Act (NEPA);

(b) Revise the list at regular intervals and submit to EPA; and

(c) Make the list available to the public upon request.

§ 149.104 Submission of petitions.

Any person may submit a petition requesting the Regional Administrator to review a project to determine if such project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health. Any such petition shall identify:

(a) The name, address, and telephone number of the individual, organization, or other entity submitting the petition;

(b) A brief statement of the requesting person's interest in the Regional Administrator's determination;

(c) The name of the project and Federal agency involved;

In addition, the petitioner is requested to submit to EPA available information on:

(d) Applicable action already taken by State and local agencies including establishment of regulations to prevent contamination of the aquifer and why, in the petitioner's judgment, the action was inadequate.

(e) Any actions taken under the National Environmental Policy Act and why, in the petitioner's judgment, that action was inadequate in regard to evaluation of potential effect on the aquifer.

(f) The potential contaminants involved;

(g) The means by which the contaminant might enter the aquifer; and

(h) The potential impact of the proposed project.

§ 149.105 Decision to review.

(a) The Regional Administrator shall review under section 1424(e) all projects located in the recharge or streamflow source zone of the aquifer for which a draft or final EIS is submitted which may have an impact on ground water quality and which involve Federal financial assistance as defined in these regulations.

(b) Upon receipt of a public petition, the Regional Administrator shall decide whether the project which is the subject of the petition should be reviewed under section 1424(e).

(c) The Regional Administrator may decide to review a project upon his own motion.

(d) In determining whether to review a project upon receipt of a public petition or upon his own motion, the Regional Administrator shall consider whether the project is likely to directly or indirectly cause contamination of the aquifer through its recharge zone, taking into account any factors he deems relevant, including:

(1) The location of the project, and

(2) The nature of the project.

(e) In determining whether to review a project upon receipt of a public petition or upon his own motion, the Regional Administrator may consult with, or request information from, the Federal agency to which the project application has been made, the applicant seeking Federal assistance, appropriate State and local agencies, and other appropriate persons or entities.

(f) In determining whether to review a project which is the subject of a public petition, the Regional Administrator may request such additional information from the petitioner as he deems necessary.

§ 149.106 Notice of review.

(a) *Notice to Federal agency.* If the Regional Administrator decides upon receipt of a public petition or upon his own motion to review a project under section 1424(e), he shall give written notification of the decision to the Federal agency from which financial assistance is sought. The notification shall include a description and identification of the project.

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(b) *Notice to public.* When the Regional Administrator undertakes to review a project pursuant to §149.13 above, he shall provide public notice of project review by such means as he deems appropriate. The notice shall set forth the availability for public review of all data and information available, and shall solicit comments, data and information with respect to the determination of impact under section 1424(e). The period for public comment shall be 30 days after public notice unless the Regional Administrator extends the period at his discretion or a public hearing is held under §149.16.

§ 149.107 Request for information.

In reviewing a project under section 1424(e), the Regional Administrator may request any additional information from the funding Federal agency which is pertinent to reaching a decision. If full evaluation of the groundwater impact of a project has not been submitted in accordance with the agency's NEPA procedures, the Regional Administrator may specifically request that the Federal agency submit a groundwater impact evaluation of whether the proposed project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health.

§ 149.108 Public hearing.

If there is significant public interest, the Regional Administrator may hold a public hearing with respect to any project or projects to be reviewed if he finds that such a hearing is necessary and would be helpful in clarifying the issues. Public hearings held under this section should be coordinated, if possible, with other Federal public hearings held pursuant to applicable laws and regulations. Any such hearing shall be conducted by the Regional Administrator or designee in an informal, orderly and expeditious manner. Where appropriate, limits may be placed upon the time allowed for oral statements, and statements may be required to be submitted in writing. The record will be held open for further public comment for seven (7) days following the close of the public hearing.

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§ 149.109 Decision under section 1424(e).

(a) As soon as practicable after the submission of public comments under section 1424(e) and information requested by the Environmental Protection Agency from the originating Federal agency, on the basis of such information as is available to him, the Regional Administrator shall review the project taking all relevant factors into account including:

- (1) The extent of possible public health hazard presented by the project;
- (2) Planning, design, construction, operation, maintenance and monitoring measures included in the project which would prevent or mitigate the possible health hazard;
- (3) The extent and effectiveness of State or local control over possible contaminant releases to the aquifer;
- (4) The cumulative and secondary impacts of the proposed project; and
- (5) The expected environmental benefits of the proposed project.

(b) After reviewing the available information, the Regional Administrator shall:

- (1) Determine that the risk of contamination of the aquifer through the recharge zone so as to create a significant hazard to public health is not sufficiently great so as to prevent commitment of Federal funding to the project; or
- (2) Forward the information to the Administrator with his recommendation that the project may contaminate the aquifer through the recharge zone so as to create a significant hazard to public health.

(c) After receiving the available information forwarded by the Regional Administrator, the Administrator shall:

- (1) Determine that the risk of contamination of the aquifer through the recharge zone so as to create a significant hazard to public health is not sufficiently great so as to prevent commitment of Federal funding to the project; or
- (2) Determine that the project may contaminate the aquifer through the recharge zone so as to create a significant hazard to public health.

(d) Notice of any decisions by the Regional Administrator under paragraph

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(b)(1) of this section or by the Administrator under paragraphs (c)(1) and (2) of this section to prevent a commitment of Federal funding shall be published in the FEDERAL REGISTER. Such notices shall include a description of the proposed project, and a statement of decision with an accompanying statement of facts and reasons.

§ 149.110 Resubmittal of redesigned projects.

If a project is redesigned in response to EPA's objections, the applicant for Federal financial assistance or the grantor agency may file a petition with the Regional Administrator for withdrawal of the determination that the project may contaminate the aquifer through the recharge zone so as to create a significant hazard to public health. Any such petition shall demonstrate how the project has been redesigned so as to justify the withdrawal of EPA's objections. If appropriate, the Regional Administrator may request public comments or hold an informal public hearing to consider the petition. After review of pertinent information,

the Regional Administrator shall either deny the petition or recommend to the Administrator that the initial determination that a project may contaminate the aquifer be vacated. Upon receipt of a recommendation from the Regional Administrator that a determination be vacated, the Administrator shall either deny the petition or order that the initial determination be vacated. The final decision regarding a petition shall be published in the FEDERAL REGISTER with an accompanying statement of reasons.

§ 149.111 Funding to redesigned projects.

After publication of a decision that a proposed project may contaminate a sole or principal source aquifer in a designated area through its recharge zone so as to create a significant hazard to public health, a commitment for Federal financial assistance may be entered into, if authorized under another provision of law, to plan or redesign such project to assure that it will not so contaminate the aquifer.