

## Environmental Protection Agency

## § 145.31

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.

### Subpart D—Program Approval, Revision and Withdrawal

#### § 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

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§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.

**§ 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 is

there if 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]

**§ 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:

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(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.

### § 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 addi-

tional 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.

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(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.

**Subpart E—Indian Tribes**

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

**§ 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