

## Environmental Protection Agency

## § 145.13

(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]

### § 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 non-compliance 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.

### § 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

§ 145.13

40 CFR Ch. I (7-1-12 Edition)

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 imposable 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

## Environmental Protection Agency

## § 145.21

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]

### § 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.

### Subpart C—State Program Submissions

#### § 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