

MAR 10 1987

PWS & UIC ADMINISTRATIVE ORDER  
ISSUANCE GUIDANCE

U.S. Environmental Protection Agency  
Office of Drinking Water  
Office of Enforcement and Compliance  
Monitoring - Water  
November 28, 1986

PWS & UIC ADMINISTRATIVE ORDER ISSUANCE GUIDANCE

Part II - UIC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

RECEIVED

MAY 20 1988

OFFICE OF ENFORCEMENT

MEMORANDUM

SUBJECT: Applicable CWA and SDWA administrative compliance and penalty order procedures

FROM: Frederick F. Stiehl *Frederick F. Stiehl*  
Associate Enforcement Counsel for Water

TO: Regional Counsels, Regions I-X  
Regional Counsel Water Branch Chiefs, Regions I-X  
Regional Presiding Officers and Judicial Officers  
Water Management Division Directors, Regions I-X  
Administrative Law Judges

Headquarters has issued a number of enforcement procedural regulations and guidances in the past few years that correspond to changes in the Clean Water and Safe Drinking Water Acts. Because of the rapid rate of statutory and regulatory amendments, and the difficulty the Regions may have in keeping track of all the statutory changes, regulations, and guidances, we have identified below the CWA and SDWA administrative procedures that apply currently, and those procedures that we know or expect will apply in the future:

■ Clean Water Act §309(g) Class I: The August 28, 1987, procedural guidance applies until superseded by proposed 40 C.F.R. Part 26. New Part 26, upon issuance of new Class I delegations of authority in the near future, will be the procedural guidance for new cases.

■ Clean Water Act §309(g) Class II: 40 C.F.R. Part 22 governs.

■ Clean Water Act §311(b)(6) Class I (OPA): Effective upon the issuance of new delegations of authority, proposed Part 26 will apply. Until then, the Agency does not have procedures or delegations of authorities in place to employ this statutory provision.

■ Clean Water Act §311(b)(6) Class II (OPA): Effective upon the issuance of amended delegations of authority, Part 22, with minor conforming changes, will be used as guidance. Until then, the Agency does not have procedures in place to employ this statutory provision.

■ Safe Drinking Water Act §1414(g)(1) (PWS compliance orders): "PWS Administrative Order Issuance Procedures Guidance," dated November 28, 1986, applies to actions started before March 1, 1991. For actions starting March 1 or later, 40 C.F.R. Part 142.201 et seq. (56 Fed. Reg. 3755, January 30, 1991) governs. Copies of these regulations have already been sent to the ORC PWS contacts. The 40 C.F.R. Part 142.201 et seq. regulations also cover SDWA §1445 information-gathering violations for both PWS and UIC programs.

■ Safe Drinking Water Act §1414(g)(3) (PWS penalty orders for violation of compliance orders): These orders are under the APA pursuant to the statute, and are governed by the procedures of 40 C.F.R. Part 22.

■ Safe Drinking Water Act §1423(c) (UIC compliance and/or penalty orders): "UIC Administrative Order Issuance Procedures Guidance," dated November 28, 1986 ("Part 144"). We expect that UIC penalty-only and compliance/penalty orders will be governed by Part 26 upon its promulgation as a final regulation. UIC compliance-only orders will remain under the 1986 procedural guidance until such time as the Agency may develop other procedures.

Eventually, we anticipate that all water administrative penalty actions will fall under either Part 26 or Part 22. UIC non-penalty compliance orders, which by statute require an opportunity for public hearing, will probably be subject to a less complex procedure. We have not yet reached the point, however, of consolidating our guidances. If you have any questions, please call me at 475-8180.

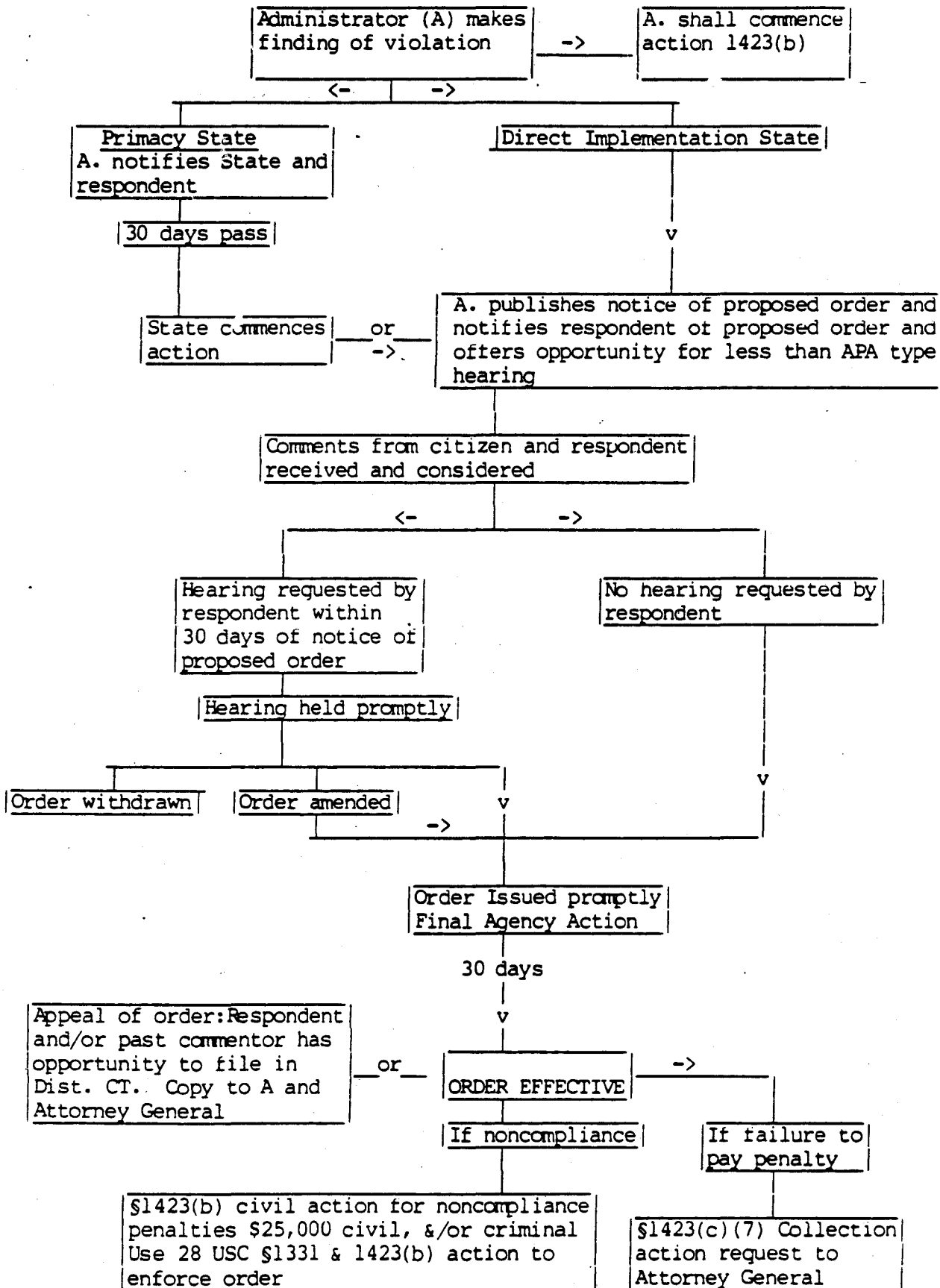
cc: Michael Cook, OWEC  
James R. Elder, ODW  
Bruce Diamond, OWPE

INTRODUCTION

UIC Administrative Order Flowchart

PROCEDURES FOR THE ISSUANCE OF ADMINISTRATIVE ORDERS  
 Enforcement of SDWA under §1423, Part C Underground Injection Control Program

OCT -3 1986



New UIC Enforcement Authorities Summary



## Enforcement Authorities Affecting Underground Injectors

### OVERFILING PROCEDURES -- SDWA §1423(a)(1)

The amendments reduce UIC overfiling procedures to (1) notice to the primacy State and involved underground injector and (2) passage of thirty days without appropriate State action. At that point direct federal enforcement would be authorized. Note also that EPA does not have to find that the injector is still noncompliant after the thirty day notice period as a prerequisite to federal enforcement action.

### MANDATORY vs. DISCRETIONARY FEDERAL ENFORCEMENT -- SDWA §1423(a)(1)

The amended Section 1423(a)(1) now states that the Administrator "shall" take enforcement action, rather than "may" take enforcement action, when he finds an injector in violation and in the absence of timely and appropriate primacy State action.

### ADMINISTRATIVE ORDERS -- SDWA §§1423(c) and 1431(a)

Section 1423(c) provides EPA with the authority to issue UIC compliance/penalty orders. The Administrator may assess penalties up to \$125,000 (up to \$5,000 or \$10,000 per day of such violation, depending on the type of injection activity at issue.) Both the compliance and penalty orders take effect only after opportunity for other-than-APA hearing procedures (§1423(c)(3)(A)). The Agency has subpoena authority (§1423(c)(8)).

If the Agency issues an order that includes an administrative penalty, it may not sue the violator in court for the same violations (§1423(c)(5)). The Agency may, however collect unpaid administrative penalties in court (§1423(c)(7), and may sue in court for the same violations if a non-penalty order was issued. Compliance order violators are also subject to civil and criminal penalties.

Section 1431(a) has been amended to include emergency order authority addressing imminent and substantial health endangerments resulting from actual or potential contamination of underground sources of drinking water.

### CIVIL JUDICIAL ACTIONS -- SDWA §§1423(b), 1423(c)(7), 1431(b) and 1445(c)

New §1423(b) authorizes EPA district court actions requesting civil penalties of up to "\$25,000 per day of such violation" and appropriate injunctive relief for UIC violators (if no penalty administrative order has already issued). The section also provides for the enforcement of orders, and civil penalties of up to "\$25,000 per day of such violation" for violations of compliance orders.

Section 1423(c)(7) allows the government to collect unpaid administrative penalties in district court. In those cases "the validity, amount, and appropriateness of such penalty shall not be subject to review."

Section 1431(b) has been amended to provide for a maximum \$5,000 per day civil penalty for violations of emergency administrative orders, instead of a maximum \$5,000 per day fine.

Section 1445(c) has been amended so that violations of sampling, reporting and recordkeeping requirements may result in a maximum \$25,000 civil penalty instead of a maximum \$5,000 fine.

#### CRIMINAL JUDICIAL ACTIONS -- SDWA §1423(b)

Section 1423(b) establishes criminal penalties of imprisonment for up to 3 years and, by reference, a maximum \$250,000 fine for individuals and a maximum \$500,000 fine for corporations (18 U.S.C. §3623) for willful violations of applicable UIC program requirements or a UIC compliance order.

Fines against underground injectors have been changed to civil penalty provisions in Sections 1431(b) (emergency orders) and 1445(c) (UIC entry, monitoring, reporting, and recordkeeping).

#### CHANGE TO RCRA §7010

Section 7010(c) of the Solid Waste Disposal Act has been amended to authorize the use of any enforcement authority otherwise applicable under RCRA to enforce the prohibition against the direct injection of hazardous wastes into underground sources of drinking water.

UIC Administrative Order Issuance Procedures Guidance  
Amendments to Part 144

UIC GUIDANCE NOVEMBER 28, 1986

PART II – UIC

UIC ADMINISTRATIVE ORDER ISSUANCE PROCEDURES GUIDANCE:

PART G.1 – AMENDMENTS TO PART 144

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**FOR UPDATED REGULATIONS GO TO 40 C.F.R. PART 144**

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## GUIDANCE ON UIC ADMINISTRATIVE ORDER PROCEDURES

EPA will use the procedures set forth in the guidance which follows to issue administrative orders under Section 1423(c) of the Safe Drinking Water Act. This guidance is set forth in the form of regulatory amendments with the expectation that EPA will notice them in the near future for proposed rulemaking.

### PROCEDURES FOR UIC ADMINISTRATIVE ORDERS

I. Amend §144.1(f) to add new subparagraph (vi):

(vi) Subpart F sets forth specific requirements for demonstrations of financial responsibility by Class I hazardous waste injection wells.

II. Amend §144.1(f) to add new subparagraph (vii):

(vii) Subpart G sets forth specific procedures for issuance, modification and issuance, withdrawal and hearings on administrative orders.

III. Amend §144.3 to add (in alphabetical listing) the following:

Respondent means an "owner or operator" alleged by the Administrator to have violated Part C of the SDWA, 42 U.S.C. §300h, et seq., or regulations promulgated thereunder.

Presiding Officer means an EPA employee to whom the Administrator has delegated authority and responsibility for the scheduling and orderly conduct of hearings and the performance of related duties.

IV. Add Subpart G as follows:

Subpart G - Procedures for UIC Administrative Orders

§144.101 Purpose

This subpart describes procedures for initiation and administration of all administrative orders under Section 1423 of the Safe Drinking Water Act, 42 U.S.C. §300h-2.

§144.102 Initiation of action

(a) If the Administrator finds that respondent has violated Part C of the SDWA or any provision of its implementing regulations, the Administrator may prepare a proposed administrative order requiring that the respondent comply with the regulation, schedule, or other requirement

of Part C or the regulations that is alleged to have been violated. Any such proposed administrative order shall state with reasonable specificity the nature of the violation. Any such proposed administrative order may assess a civil penalty and may provide a reasonable time for compliance.

(b) The Administrator shall give public notice of the proposed administrative order, in the form and manner set forth below. Such public notice shall allow at least 30 days for public comment.

- (1) Public notice shall be given by mailing a copy of a notice to:
  - (A) the respondent;
  - (B) any person who requests notice;
  - (C) persons on a mailing list developed to include those who request in writing to be on the list, soliciting persons for "area lists" from participants in past UIC proceedings in that area, and notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals. (The Administrator may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Administrator may delete from the list the name of any person who fails to respond to such a request.); and
  - (D) the most appropriate State agency having authority under State law with respect to the construction or operation of the facility and to the most appropriate unit of local government having jurisdiction over the area where the facility is located or is proposed to be located.
- (2) Notwithstanding any other provision of this paragraph, the Administrator may provide notice by any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

- (3) All public notices issued under this subpart shall contain the following minimum information:
- (A) Name and address of the EPA office processing the administrative order for which notice is being given;
  - (B) Name and address of the respondent, and if different, of the facility or activity regulated by the order;
  - (C) A brief description of the business or activity conducted at the facility or the operation described in the order;
  - (D) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the proposed order;
  - (E) A statement of the opportunity to submit written comments on the proposed order and the deadline for submission of such comments;
  - (F) A statement of the opportunity for the respondent to request and the procedures to request a hearing;
  - (G) Any procedures through which the public may participate in the final decision on the order;
  - (H) A general description of the location of each existing, new or proposed injection well and the name or general description of the receiving formation; and
  - (I) The location of the administrative record referenced in §144.105, the times at which the file will be open for public inspection, and a statement that all information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting the public disclosure of confidential information.

(c) During the public comment period provided under subsection (b) above, any interested person may submit written comments on the draft administrative order. The Administrator shall include all written comments in the administrative record.

(d) On the same date that the public notice is issued or earlier, the Administrator shall send to the respondent written notice by certified mail of the proposal to issue the order, a copy of the proposed order, and other information, including:

- (1) The alleged violation and the applicable law and regulations;
- (2) The amount of the maximum penalty that may be assessed for each violation;
- (3) The general nature of the procedure for issuing administrative orders and assessing civil penalties;
- (4) The amount of penalty, if any, which the Administrator proposes to assess;
- (5) The fact that the respondent may request a hearing prior to final issuance of any order;
- (6) The fact that the respondent must request a hearing within 30 days of receipt of the notice provided under this subparagraph in order for respondent to be entitled to receive a hearing;
- (7) The name and address of the person to whom respondent must send a request for hearing;
- (8) The fact that the Administrator may issue the proposed order 30 days following receipt of the notice provided under this subparagraph, if respondent does not request a hearing; and
- (9) The fact that any order issued under this subpart shall become effective 30 days following its issuance unless an appeal is taken under Section 1423(c)(6) of SDWA, 42 U.S.C. §300h-2(c)(6).

§144.103 Presiding Officer

(a) The Administrator shall delegate to one or more EPA employees the authority to act as Presiding Officer. The Presiding Officer shall exercise no other responsibility, direct or supervisory, for the investigation or prosecution of cases which have been or could be referred to a presiding officer for consideration of an administrative order requiring compliance with regulations, schedules or other requirements of Part C of the SDWA or any provision of its implementing regulations or assessing a civil penalty.



(b) The Presiding Officer shall consider each case on the basis of the evidence presented, and must have no prior connection with the case. The Presiding Officer is solely responsible for the recommended decision in each case.

(c) The Presiding Officer is authorized to administer oaths and issue subpoenas necessary to the conduct of a hearing, to the extent provided by law.

(d) Ex Parte Communications.

- (1) "Ex parte communication" means any communication, written or oral, relating to the merits of the proceeding, between the Presiding Officer and an interested person outside the Agency or the interested Agency staff, which was not originally filed or stated in the administrative record or in the hearing. Such communication is not an "ex parte communication" if all parties have received prior written notice of the proposed communication and have been given the opportunity to be present and participate therein.
- (2) "Interested person outside the Agency" includes the respondent, any person who filed written comments on the proposed order, any other interested person not employed by the Agency at the time of the communication, and any attorney of record for those persons.
- (3) "Interested Agency staff" means those Agency employees, whether temporary or permanent, who may investigate, litigate, or present evidence, arguments, or the position of the Agency in the hearing or who participated in the preparation, investigation or deliberations concerning the proposed order, including any EPA employee, contractor, or consultant who may be called as a witness.
- (4) No interested person outside the Agency or member of the interested Agency staff shall make or knowingly cause to be made to the Presiding Officer, an ex parte communication on the merits of the proceeding.
- (5) The Presiding Officer shall not make or knowingly cause to be made to any interested person outside the Agency or to any member of the interested

Agency staff an ex parte communication on the merits of the proceeding.

- (6) The Administrator may replace the Presiding Officer in any proceeding in which it is demonstrated to the Administrator's satisfaction that the Presiding Officer has engaged in prohibited ex parte communications to the prejudice of any participant.
- (7) Whenever an ex parte communication in violation of this section is received by the Presiding Officer, the Presiding Officer shall immediately notify all participants in the hearing of the circumstances and substance of the communication and may require the party who made the communication or caused it to be made, or the party whose representative made the communication or caused it to be made, to the extent consistent with justice and the policies of the SDWA, to show cause why that party's claim or interest in the proceedings should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.
- (8) The prohibitions of this paragraph apply upon designation of the Presiding Officer and terminate on the date of final agency action.

#### §144.104 Opportunity for Hearing

(a) Within 30 days after receipt of the notice set forth in §144.102(d), the respondent may request a hearing and may provide written comments on the proposed administrative order. Respondent must request a hearing in writing; the request must specify the factual and legal issues which are in dispute and the specific factual and legal grounds for the respondent's defense.

(b) The respondent waives the right to a hearing if the respondent does not submit the request to the official designated in the notice of the proposed order within 30 days after receiving that notice. For good cause shown, the Presiding Officer may grant a hearing if the respondent submits a late request.

(c) Except as provided in subparagraph (f), the Presiding Officer shall promptly schedule all hearings and provide reasonable notice of the schedule to all participants.

The Presiding Officer may grant any delays or continuances necessary or desirable to resolve the case fairly.

(d) A respondent who has requested a hearing may amend the specification of the issues in dispute and the grounds for defense not later than 10 days before the scheduled date of the hearing. The respondent may address issues raised later than 10 days before the scheduled hearing at the discretion of the Presiding Officer.

(e) The Presiding Officer shall give written notice of any hearing to be held under this subpart to any person who commented on the proposed Administrative Order under §144.102(c). This notice shall specify a reasonable time prior to the hearing within which the commentor may request an opportunity to be heard and to present evidence in any such hearing. The notice shall require that any such request specify the facts or issues which the commentor wishes to address.

(f) Summary determinations.

- (1) Any participant in a hearing to be held under this subpart may move, with or without supporting affidavits and briefs, for a summary determination upon any of the issues being adjudicated, on the basis that there is no genuine issue of material fact for determination. The motion shall be served upon each other participant and filed with the Presiding Officer at least 15 days before the date set for the hearing, except that upon leave granted for good cause shown, the motion may be filed at any time before the close of the hearing.
- (2) Any other participant may file and serve a response to the motion or a countermotion for summary determination, in accordance with a schedule to be set by the Presiding Officer. When a motion for summary determination is made and supported, a participant opposing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the Presiding Officer, that there is a genuine issue of material fact for determination at the hearing.
- (3) Affidavits shall be made on personal knowledge, setting forth facts and showing that the affiant is competent to testify to the matters stated therein.
- (4) No oral argument shall be had on the motion.

The Presiding Officer shall rule on the motion promptly after responses to the motion are filed under subparagraph (2).

- (5) If all issues are decided by summary determination, no hearing shall be held and the Presiding Officer shall prepare a recommended decision under §144.111. If summary determination is denied or if partial summary determination is granted, the Presiding Officer shall issue a statement of findings and reasons, interlocutory in character, and the hearing shall proceed on the remaining issues.
- (6) After receipt of all pleadings, the Presiding Officer may grant or deny any motion, order a continuance to allow additional affidavits or other information to be obtained, or make such other order as is just and proper.

§144.105 Availability of the Administrative Record

At any time after public notice of a proposed order is given under §144.102, the administrative record shall be available at reasonable times for inspection and copying by any interested person, subject to provisions of law restricting the public disclosure of confidential information. The requester may be required to pay reasonable charges for copies.

§144.106 Counsel

A respondent has the right to be represented at all stages of the proceeding by counsel. After receiving notification that a respondent is represented by counsel, the Presiding Officer shall direct all further communications to that counsel.

§144.107 Location of Hearings

(a) The hearing shall be held at the appropriate EPA office, except as provided in subparagraph (b).

(b) The respondent or EPA may request in writing that the hearing be held at a location other than that specified in subparagraph (a). Action on the request is at the discretion of the Presiding Officer.

§144.108 Witnesses

All direct and rebuttal evidence shall be submitted in written form, unless, upon motion and good cause shown,

the Presiding Officer determines that oral presentation of the evidence on any particular fact will materially assist in the efficient identification or clarification of the issues. The respondent and the Administrator shall be afforded a right of cross-examination. The Presiding Officer may limit the scope or extent of cross-examination and the number of witnesses in the interests of justice and conducting a reasonably expeditious proceeding. No cross-examination shall be allowed on questions of law or regarding matters that are not subject to challenge in a hearing under this subpart. No Agency witnesses shall be required to testify or be made available for cross-examination on such matters. Upon leave granted by the Presiding Officer in the exercise of his discretion, any participant may call hostile witnesses as on cross-examination.

§144.109 Hearing Procedures

(a) The Presiding Officer shall conduct a fair and impartial proceeding in which the participants are given a reasonable opportunity to be heard and to present evidence.

(b) At the hearing, the Administrator shall be represented by an official from the Agency's Office of Regional Counsel or the Office of Enforcement and Compliance Monitoring (OECM).

(c) The Office of Regional Counsel, the Office of Enforcement and Compliance Monitoring and the Presiding Officer may subpoena witnesses and issue subpoenas duces tecum, under Section 1423(c)(8) of the SDWA, 42 U.S.C. §300h-2(c)(8).

(d) Prior to the commencement of the hearing, the Administrator shall provide to the Presiding Officer the complete administrative record as of that date. Thereafter, the Presiding Officer shall maintain the administrative record of the proceedings and shall include in that record all documentary evidence, written statements, correspondence, the record of hearing, and any other relevant matter.

(e) Upon commencement of the hearing, an authorized representative of the Administrator may summarize the basis for the administrative order. The administrative record shall be admitted into evidence. The respondent has the right to examine, and to respond to the administrative record. The respondent may offer into evidence the response to the administrative record and any facts, statements, explanations, documents, testimony, or other exculpatory items which bear on any appropriate issues. The Presiding Officer may require the authentication of any written exhibit or statement. The Presiding Officer may exclude any repetitive or irrelevant matter.

(f) At the close of the respondent's presentation of evidence, the Presiding Officer may allow the introduction of rebuttal evidence. The Presiding Officer may allow the respondent to respond to any such rebuttal evidence submitted.

(g) The Presiding Officer shall provide a reasonable opportunity to be heard and to present evidence to any citizen commentator who filed a request to participate under §144.104(e) on the facts or issues specified in the request to participate.

(h) In receiving evidence, the Presiding Officer is not bound by strict rules of evidence. The Presiding Officer may determine the weight to be accorded the evidence.

(i) The Presiding Officer may take official notice of matters that are not reasonably in dispute and are commonly known in the community or are ascertainable from readily available sources of known accuracy. Prior to taking notice of a matter, the Presiding Officer shall give the Agency and the respondent an opportunity to show why notice should not be taken. In any case in which notice is taken, the Presiding Officer shall place a written statement of the matters as to which notice was taken in the record, including the basis for such notice and a statement that the Agency or respondent consented to notice being taken or a summary of the objections of the Agency or the respondent.

(j) After all evidence has been presented, any participant may present argument on any relevant issue. The respondent and the Administrator may submit a written statement for consideration by the Presiding Officer. The Presiding Officer shall specify a deadline for submission of the statement. If the statement is not received within the time prescribed, the Presiding Officer may render a recommended decision in accordance with §144.111, without considering that statement.

#### §144.110 Record of Hearing

(a) The Presiding Officer shall cause a tape recording, written transcript or other permanent, verbatim record of the hearing to be made, which shall be included in the Administrative Record, and shall, upon written request, be made available, for inspection or copying, to the respondent or any interested person, subject to provisions of law restricting the public disclosure of confidential information. Any person making a request may be required to pay reasonable charges for copies.

(b) A respondent may independently at its own expense cause a verbatim transcript to be made. If a respondent causes such an independent transcript to be made, the respondent shall submit two copies to the Presiding Officer not later than the time of filing any judicial appeal of the administrative order.

§144.111 The Decision

(a) Within a reasonable time following the close of the hearing and receipt of any statements following the hearing, the Presiding Officer shall forward a written recommended decision, including a clear and concise statement of reasons, to the Administrator. The decision shall recommend that the Administrator withdraw, issue or modify and issue the proposed order. The recommended decision shall be based on a preponderance of the evidence in the administrative record. If the Presiding Officer finds that there is not a preponderance of evidence in the record to support any required actions, any schedule, or the amount of any penalty in a proposed order, the Presiding Officer may recommend that the order be withdrawn or modified and then issued on terms that are supported by a preponderance of evidence on the record. The Presiding Officer also shall make available to the Administrator for review the complete administrative record.

(b) The Presiding Officer provides a recommended decision solely to the Administrator. The recommended decision does not become part of the administrative record and is not available to the parties to the proceeding.

(c) Ex Parte Communications. The rules applicable to Presiding Officers under §144.103(d) regarding ex parte communications are also applicable to the Administrator and to any other person who advises the Administrator in the decision on the order. Communications between the Administrator and the Presiding Officer do not constitute ex parte communications.

(d) The Administrator may request additional information on specified issues from the participants in whatever form the Administrator designates, giving all participants a fair opportunity to be heard. The Administrator shall include this additional information in the administrative record.

(e) Within a reasonable time following receipt of the Presiding Officer's recommended decision, the Administrator shall withdraw, issue, or modify and issue the proposed order. The Administrator's decision shall be based on a preponderance of the evidence in the administrative record,

shall be in writing, shall include a clear and concise statement of reasons, and shall include any final order. The Administrator's decision shall constitute final agency action for purposes of judicial review.

(f) The Administrator shall provide written notice of the issuance, modification and issuance, or withdrawal of the proposed order to the respondent and every person who submitted written comments on the proposed order.

(g) The decision shall include a statement of the right to judicial review and of the procedures and deadlines for obtaining judicial review.

§144.112 Issuance of Order

(a) If no hearing is held under §144.104, the Administrator shall consider all public comments received, if any, and shall promptly withdraw, issue, or modify and issue the final order by sending the order, or written notice of its withdrawal, to the respondent by certified mail. The Administrator shall provide notice of the decision to all persons who submitted comments. Issuance of the order under this subparagraph constitutes final agency action for purposes of judicial review.

(b) If a hearing is held under this subpart, issuance or withdrawal shall occur on the date that the notice referenced in §144.111(c) is sent and final agency action for purposes of judicial review shall occur as provided in §144.111(b) and (d).

§144.113 Effective Date of Order

Any order issued under this subpart shall become effective 30 days following its issuance unless an appeal is taken pursuant to Section 1423(c)(6) of SDWA, 42 U.S.C. §300h-2(c)(6).



UIC Administrative Order Guidance

Choosing Between Criminal, Civil and Administrative  
Action for UIC Violations

# Guidance on Choosing Between Criminal, Civil and Administrative Enforcement Action for UIC Violations Under the SDWA Amendments of 1986

## Purpose

The purpose of this document is to provide guidance to EPA Regional Offices in making decisions whether to pursue violations of the SDWA or UIC regulations through criminal, civil judicial or administrative enforcement action.

## Background

The Safe Drinking Water Act Amendments of 1986 provide EPA with greatly enhanced enforcement authority, particularly, the addition of administrative order authority for compliance relief and penalties of up to \$125,000. Section 1423(c). The Amendments contain procedural requirements that provide for notice to an alleged violator and the public, opportunity for public comment, and an opportunity for hearing on any proposed order before the order becomes effective. Section 1423(c)(3). Even with these procedural requirements, AO authority will greatly enhance EPA's ability to deal effectively with certain types of UIC violations. The types of violations that should be addressed administratively are discussed in detail below.

## Decision Criteria

1. AO not intended to replace civil action. The report of the Senate Committee on Environment and Public Works (May 15, 1985) provides insight into the drafter's purpose in providing EPA with AO authority. The report makes the following points:

- a) AO authority is intended to complement and not to replace the civil judicial enforcement program

(emphasis supplied);

- b) the Administrator is not expected to use the new authority for cases that would otherwise be tried in court;
- c) civil judicial enforcement will always be necessary for cases involving novel issues of law and for serious violations of the Act; and
- d) AO authority should be tailored to the less complex cases for which it is intended.

Thus, it was the drafter's intent that AOs not be used in instances in which the violations and issues are complex and not well defined and where the agency will be breaking new legal ground.

2. AO not to include long compliance schedule. The committee report further states that AO authority is not to be abused by imposing unduly long compliance schedules. In other words, where compliance can only be achieved with a long schedule, it should be imposed through a civil judicial order or in a court approved consent agreement, presumably, because these judicial orders carry greater "weight" and are easier to enforce. However, unduly long compliance schedules should be relatively rare for the UIC program since most violations will require compliance through well work over, proper plugging and abandonment, and MIT demonstration. All of these remedial actions typically can be accomplished without a long compliance schedule and thus are appropriate for inclusion of relief in an AO. Studies and clean-up

activities associated with injection violations may require longer compliance schedules, and substantial capital expenditure by the defendant and therefore may be more appropriately addressed through court approved schedules.

3. AO is limited to a \$125,000 total penalty and precludes dual enforcement for the same violation. When the Agency has commenced and is diligently prosecuting an action for violations of the SDWA or has issued an AO assessing a penalty, or for which a final order has been issued, the Agency is prohibited from commencing a judicial action for the same violations under Sections 1423(b) or 1424(c). Similarly, a citizen is precluded from bringing a judicial action for the same violation under Section 1449. Section 1423(c)(5). An exception to this prohibition is provided for law suits filed by citizens prior to the commencement of an AO action, or actions filed within 120 days of a citizen's notice of intent to sue issued pursuant to Section 1449(b)(1) and prior to the commencement of an AO action. AOs requiring compliance that do not assess a penalty are not included in this prohibition of parallel enforcement. This provision forces EPA to look closely at each case to ensure that the relief and penalty are appropriate to the violation(s). Since the maximum penalty that can be assessed administratively is \$125,000, where the economic benefit associated with the violations(s) plus the gravity of the violation(s) less any mitigating considerations warrant penalties greater than \$125,000, such cases must be brought judicially. See SDWA Section 1423(c)(4)(B) for relevant penalty considerations identified by the statute. For cases that marginally approach

or exceed the \$125,000 penalty cap, EPA will have to weigh the time and resource burden associated with taking a judicial action against the impact of the administrative penalty.

4. AO not designed for prompt relief. The procedural due process requirements in Section 1423(e)(3) contain a built in minimum 60 day period before the AO becomes effective. Any order must provide the opportunity to request a hearing within 30 days of notice and a subsequent period of 30 days following its issuance before it becomes effective. Thus, for any situations where a quick response is needed to prevent or limit contamination of a USDW, and the defendant is not likely to agree to implement a quick remedy, you should consider issuing a Section 1431 emergency order, commencing a civil action for a TRO or if hazardous waste is involved, using the imminent hazard authority of Section 7003 of RCRA to issue an order or commence a civil action.

5. Consider Criminal Enforcement for Serious, Willful Violations. Section 1423(b) contains clarified criminal enforcement authority which provides for imprisonment of up to 3 years and increased fines or both for willful violations of applicable UIC program requirements or of a final order. These changes were added to clarify the criminal nature of these violations and to provide a strong deterrent against such serious violations. If a Region has proof of or suspects criminal (willful) violation of a UIC program requirement or final order, the information should be immediately provided to the Special Agent In Charge (SAIC) in the Region. The SAIC

will conduct an initial evaluation and determine the need for a complete investigation. Parallel criminal and civil judicial or administrative proceedings may be undertaken where the public interest requires a dual approach (e.g., where both injunctive relief and criminal sanctions are warranted). However, where injunctive relief is not needed, the civil actions should generally be held in abeyance pending the resolution of the criminal investigation.

#### Decision Process

A decision whether to issue an AO or commence a civil action under Section 1423 can be made in a logical manner based on the above described decision criteria and the 28 separate types of UIC violations identified in Table B taken from the Compliance Strategy, for Direct Implementation Jurisdictions<sup>1</sup> (Attachment 1).

Table C (Attachment 2) is subdivided into three categories of violations based on the endangerment potential of the various violations. Category I violations either result in endangerment of a USDW or are likely to cause endangerment. Category II violations are similar to those in Category I but there is no suspected endangerment. Category III violations relate to administrative requirements for monitoring, reporting, recordkeeping, financial responsibility and information requests from EPA.

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<sup>1</sup> Underground Injection Control Program Compliance Strategy for Direct Implementation Jurisdictions, ODW, Revised February 14, 1985.

Category I Violations

Category I violations are premised on actual or likely endangerment of a USDW and a high degree of willfulness or recalcitrance on part of the owner/operator. Additionally, these violations may require complex relief, including substantial capital expenditure on the part of the owner and/or operator, have the potential for substantial penalties above \$125,000, may represent new or complex legal issues. Where the fact situation indicates, certain Class I violations may more appropriately be addressed by a Section 1423 civil or criminal judicial action than by an AO. Figure 1 (Attachment 3) is a schematic representation of the considerations that the Regional staff should make in deciding what type of enforcement response is most appropriate to the case specific facts.

Category II Violations

Category II violations are by definition less likely to result in actual or potential endangerment, and generally will require uncomplicated relief and penalties not in excess of \$125,000. They are more suited for use of a Section 1423 AO where an informal response has not resulted in compliance.



Category III Violations

In the absence of specific unique circumstances, a Section 1423 AO is an appropriate enforcement response for all Category III violations where an informal response has not resulted in submission of the required report, information or conduct of monitoring.

Relationship between Significant Noncompliance (SNC) and Decision Criteria

The definition of significant noncompliance (SNC) for the UIC program captures many, but not all, of the violations listed in Category I because SNC is closely tied to actual or potential endangerment. The SNC definition also includes a time criterion that is not included in the Category I list. Since most of the Regions enforcement efforts will be focused on responding to SNC violations, it is important to have a clear understanding of the relationship between SNC and this decision guidance. Any of the appropriate responses listed in Table B (Attachment 1) may be used to resolve SNC violations. Generally, the least resource intensive response that achieves timely compliance should be employed. However, where timely compliance is not achieved, the level of response should be escalated. Because of the higher potential for endangerment, SNC violations will generally be addressed by an AO, or where the decision criteria indicate (e.g., penalty in excess of \$125,000, new or complex issues and past history of recalcitrance) addressed by a civil action.

Conclusion

This document provides guidance to Regional UIC staff for making decisions whether to issue a Section 1423 AO or commence a civil action based on criteria developed from the legislative history of the 1986 SDWA Amendments and a violation categorization scheme based on the potential for endangerment of a USDW. The fact situation for each case is compared with the outlined decision criteria in order to reach a decision on what type of action to take.

## TABLE B

## POSSIBLE APPROPRIATE RESPONSES TO VIOLATIONS

- A. Telephone call and/or meeting (only with appropriate documentation).
- B. Standardized letter notifying owner or operator of nature of suspected violation and required response.
- C. Warning letter tailored to individual operator (must include possible criminal/civil liabilities, and may include advice on how to limit their liabilities).
- D. Field inspection (generally not appropriate as a final response to a violation).
- E. Formal request for information (may include new information, mechanical integrity test, monitoring, etc. - see 144.27).  
Note: Owner/operator's failure to respond to this request results in automatic termination of authorization by rule, §144.27(c).
- F. Request for permit application (§144.25; 144.12(c) or (d)).  
Note: When §144.27 information request authority is not appropriate, the §144.25 authority can be used to terminate authorization by rule if the permit application is not submitted in a timely fashion, or if the permit is denied.
- G. Initiate permit modification, alteration or termination or impose or modify a compliance schedule.
- H. Direct owner or operator of a Class V well to take such actions as may be necessary to prevent primary drinking water standard violations or to prevent contamination which may otherwise adversely affect the health of persons. (§144.12(c)(2) Directive).
- I. Commence bond forfeiture or utilize other financial mechanisms to plug the well.
- J. §1423(c) SDWA Administrative Order (with or without penalty assessment).
- K. §1431 SDWA Administrative Order or, where well is injecting solid or hazardous waste, RCRA §3008 or §7003 Administrative Order (or where appropriate, a CERCLA §106 Administrative Order).
- L. Referral to Department of Justice (DOJ) (Civil or Criminal).

TABLE C

CATEGORY I	APPROPRIATE RESPONSE (SEE TABLE B)												
	A	B	C	D	E	F	G	H	I	J	K	L	
Mechanical Integrity Test Failure 1/ §§ 144.52(a)(8), 144.28(g), 146.8,			X	X	X	X	X	X	X	X	X	X	
Unauthorized Injection, 3/ §§ 144.21(a), 144.14(b), 144.11(b), 144.31, 144.13, 144.23(a)								2/	2/		/	2/	X
24 Hour Reporting and/or Written Follow-up §§ 144.28(b), 144.51(1)(6)			X	X	X	X	X	X			X		X
Well Construction, 1/ Part 146, § 144.28(e)			X	X	X	X	X	X			X	X	X
Operating requirements, 3/ §§144.28(f), 144.52(a) Part 146, §144.51(e)			X	X	X	X	X	X			X	X	X
Failure to Plug and Abandon Properly §§ 144.52(a)(6), 144.28(c), 146.10, 144.51(o) 144.23(b)			X	X	X	X	X	X			X	X	X
Unauthorized Plug, §§ 144.28(c), 146.10, 144.51(o) 1/				2/	2/	2/	2/	2/	2/		X		
Falsifying Information, §144.51(o), §1445(c), (SDWA), 18 U.S.C. §§1001 (false and fictitious statements); 1341 (mail fraud)(SDWA)									2/	2/		2/	X
Contamination of USDW, §§ 144.12, 1431, SDWA				4/	4/		X				X	X	X
Compliance Schedule 1/, §§ 144.39(a)(4), 144.57(1)(5), 144.53			X	X		X					X	X	X
Record Retention, §§ 144.28(i), 144.51(j)(2)			X	X	X		X	X			X	X	X
Unauthorized Injection, (non-endangering), §§144.11, 144.31(a),144.23(a)			X	X		X		X	X	X			X

1/ Suspected/known endangerment; willful violations

2/ Strongly recommended in conjunction with referral,  
as applicable

3/ Suspected/ known endangerment

4/ Where an aquifer exemption is pending, these responses may, in some cases,  
be appropriate while the exemption is being processed.

TABLE C

Appropriate Responses

(See Table B)

A B C D E F G H I J K L

CATEGORY II

Financial Responsibility (inadequate and/or failure to submit) §§ 144.28(d), 144.60-70, 144.52(a)(7)	X	X	X		X	X	X			X		X
Failure to Make Required Notification (P&A, MIT, transfer of ownership, etc.) §§ 144.28(g), (j) (1) 144.23(b)(3), 144.51(l)(n), 144.13		X	X	X	X	X	X			X		X
Failure to Monitor, § 144.28(g), Part 146			X	X	X	X	X			X		X
Well Construction (below ground construction, no suspected endangerment) § 144.28(e)			X	X	X	X	X			X		X
Operating requirements (no suspected endangerment but violation substantial), 144.28(f), Part 146, §§ 144.51(a), (e)			X	X	X	X	X			X		X
Failure to P&A properly (no suspected endangerment), §§ 144.52(a)(6), 144.28(c) 146.10, 144.51(o), 144.23b			X	X	X	X	X		X	X		X
Failure to run M.I.T., §§ 144.28(g) 144.51(p)			X	X	X	X	X		X	X		X
Compliance Schedule (non-endangering) §§ 144.25 (Results in unauthorized Injection)	X		X	X			X			X		X
Failure to comply with permit condition, § 144.51(a)	X	X	X	X			X		X	X		X
Failure to apply for a permit, §§ 144.25 (Results in unauthorized Injection)	X	X	X	X	X	X				X		X

Table C

CATEGORY III	Appropriate Responses											
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>	<u>I</u>	<u>J</u>	<u>K</u>	<u>L</u>
Report												
- Incomplete												
- No Report												
- Late												
- Incorrect												
144.23(h), 144.28(k)	X	X	X	X	X						X	
Well Construction (above ground nonsubstantial)	X		X	X	X	X	X				X	5/
Operation (not endangering, repetitive or substantial)	X	X	X	5/	X	5/	X				X	5/
No P&A Plan, 6/, 144.23(b)(2), 144.28(e)	X	X	X		X						X	
Unauthorized P&A		X	5/	X	X	5/					X	
Inventory Requirement (1 year inventory requirement)	X	X	X	X	X	X	X				X	

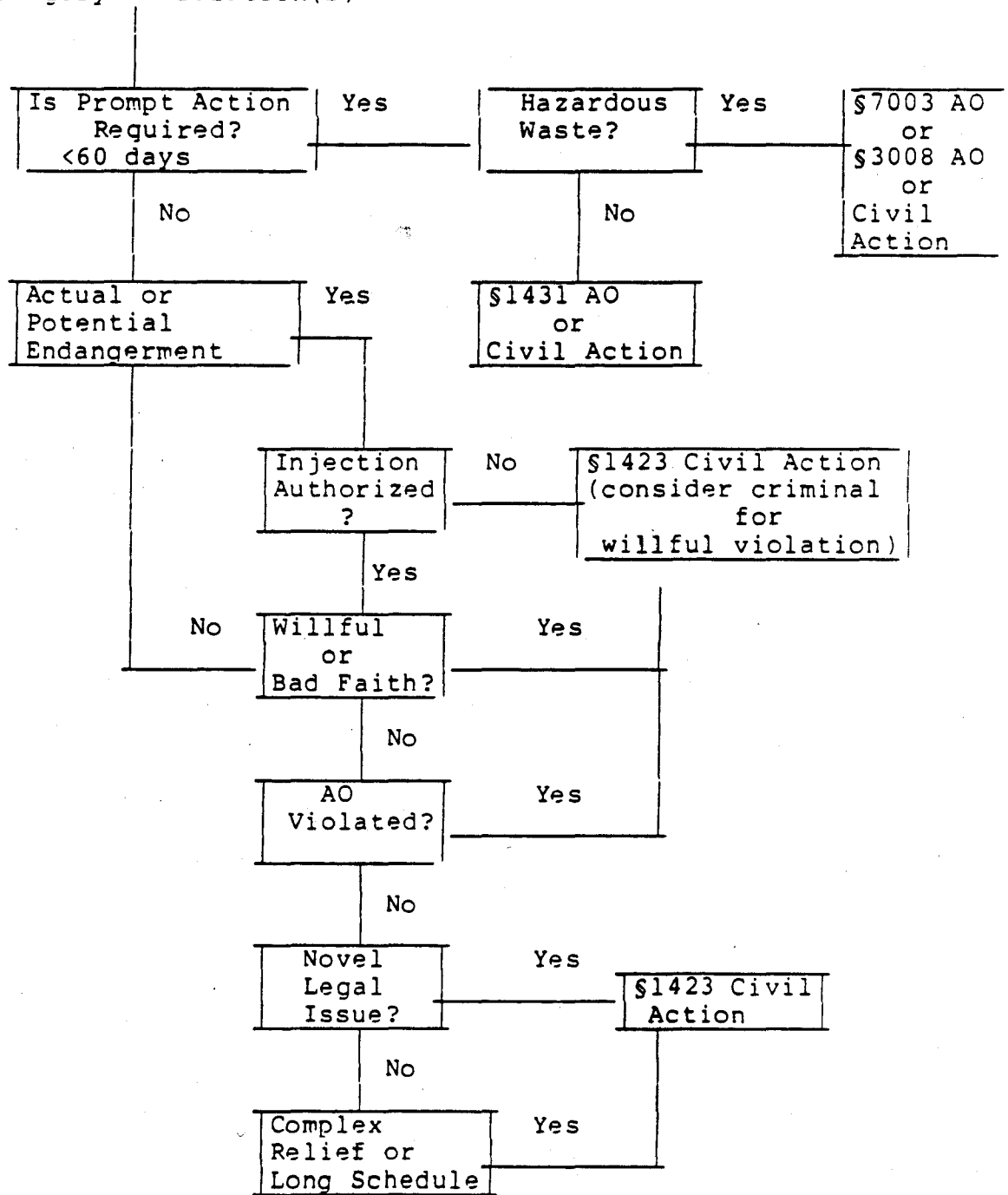
5/ Repeated or unusual (willful or bad faith).

6/ Request operator to submit P&A plan under §144.27. Failure to submit plan after request results in termination of authorization by rule - see unauthorized injection in categories I and II.

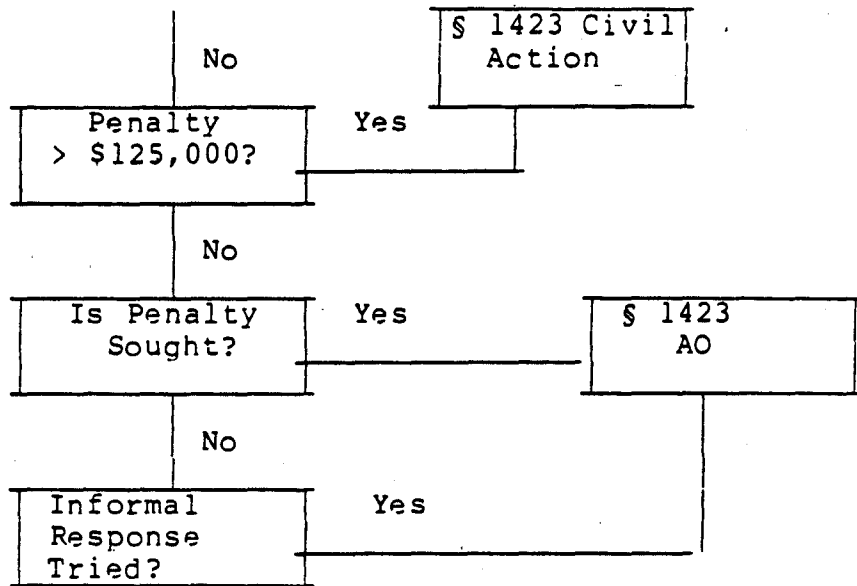
AO vs Civil Action Decision Process

Step 1. Identify all UIC violations and categorize according to violation categories I, II or III (see DI Compliance Strategy for details).

Step 2. Category I Violation(s)



(Continued)





Retroactivity of SDWA Amendments Relating  
to Enforcement Actions

Guidance on Retroactivity of SDWA Amendments  
Relating to Enforcement Actions

The 1986 SDWA Amendments have increased maximum civil and criminal statutory penalties and now authorize administrative penalties. This guidance addresses which of these enforcement provisions may be applied to violations occurring prior to June 19, 1986, the date of the Safe Drinking Water Act Amendments of 1986. These determinations are based on legal analysis and policy considerations.

Criminal Provisions

The "ex post facto" clause of the Constitution precludes the new criminal provisions from being retroactively applied. Thus the provisions of SDWA §1423(b)(2) which authorize criminal imprisonment and the increase in the criminal fine may not be retroactively applied. However, criminal violations of an applicable UIC program requirement occurring prior to June 19, 1986, are still subject to the \$10,000 fine as provided by the SDWA prior to the 1986 amendments. Since SDWA §1432 provisions are new to the Act, the criminal provisions of SDWA §1432(a) and §1432(b) may not be retroactively applied.

Civil Provisions

The Supreme Court has ruled that the "ex post facto" clause of the Constitution applies only to legislation imposing criminal or penal sanctions. Thus the retroactive application of civil penalties does not necessarily violate the "ex post facto" clause. However the "due process" clause of the Fifth Amendment of the Constitution does apply and may impose some restrictions on the retroactive application of the increased civil penalties. Therefore in order to minimize the raising of Constitutional issues and the expenditure of legal resources, and in light of the strong likelihood that adequate relief will still be available to EPA, it is the Agency's policy not to seek the increased civil penalty amount for violations occurring prior to the Safe Drinking Water Act Amendments of 1986. Exceptions may be appropriate on a case by case basis if it can be shown that the retroactive application of the higher civil penalty amount is necessary in order to recover a substantial portion of the economic benefit obtained by the violator. This policy applies to sections 1414(b) and 1423(b) of the SDWA.

Based on a similar rationale, newly authorized civil penalties shall not be retroactively applied where no authority to obtain penalties or fines previously existed. This would apply to SDWA §1432(c). Civil penalties for violation of the newly authorized administrative orders of SDWA §§1414(g) and 1423(c) cannot apply retroactively since violations are only possible subsequent to enactment of the 1986 SDWA Amendments.

Forum Changes

Legislative acts that retroactively change the forum have been ruled constitutional. Therefore enforcement actions seeking civil penalties in an administrative action under SDWA §1423(c), may seek penalties for violations which predate June 19, 1986. However, as discussed above, such penalties must be limited to the previously authorized \$5000 per day per violation maximum amount. This policy does not affect SDWA §1414(g) administrative penalties since such penalties may only be assessed for violation of SDWA §1414(g) administrative orders which may only be issued subsequent to enactment of the 1986 SDWA Amendments.

For further questions on this guidance, please contact Alan Morrissey of OECM at 382-2855.

**Election of Remedies**

## Election of Remedies (UIC)

When a plaintiff has to choose between two types of legal actions and cannot use both against a potential defendant, he is said to "elect" his remedy.

### Discussion

Section 1423(c)(5) states, in part:

Any violation with respect to which the Administrator has commenced and is diligently prosecuting an action, or has issued an order under this subsection [1423(c)] assessing a penalty, shall not be subject to an action under subsection (b) of this section [1423(b)] . . . .

As a result of this provision, a UIC violator may not be assessed both an administrative civil penalty and a judicial civil penalty for the same violation. Agency officials who assess an administrative civil penalty for a UIC violation are foreclosed from referring to the Justice Department any judicial action for the same violation requesting injunctive relief or civil penalties -- they have elected an administrative remedy at the expense of a judicial action.

If the Agency proposes and issues a compliance-only UIC order, Section 1423(c)(5) does not require an election of remedies. In these instances, the Agency may also refer a Section 1423(b) case against a violator who has received such an order. That referral may request injunctive relief and civil penalties for the same violation which was the subject of the compliance order. (See Section H.1, guidance on non-negotiated UIC orders, for more discussion of this point.)

A more complex issue arises if the Agency proposes a penalties-included administrative order, but issues the order

in final form without penalties after adjudication. In that case, the Agency has not elected an administrative remedy for that violation at the expense of a judicial action. EPA may still refer a case to the Department of Justice requesting injunctive relief and civil penalties for the same violation. Nevertheless, Regions should not recommend referral of such a case requesting civil penalties absent new information about the violation. It will be quite difficult to convince a court to assess penalties for a violation when the Agency was unable to obtain them administratively after a hearing on the record.\* Regions may recommend referral of compliance-only judicial referrals for the same violation, if appropriate, without being impeded by Section 1423(c)(5), if no administrative penalty was assessed in an order.

In all cases, the Agency may refer a Section 1423(b) case against the same violator to the Department of Justice for a violation other than that addressed by a penalties-included administrative order. (See Section H.4 for further analysis.) For this reason, EPA enforcement personnel should make sure that any administrative order issued under Section 1423(c) is

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\* If the Agency proposes, but then before a hearing withdraws, a penalty order, the respondent will not later be able to argue to a court either that he was made to defend against an administrative penalty assessment or that the Agency failed to assess a penalty after development of the record. In that circumstance, the Agency may refer a judicial action requesting compliance and civil penalties for the same violation without new information about the violation. The decision to withdraw a penalty order, however, must include a basis other than the respondent's refusal to settle on a consent order, so that the respondent is not penalized by being exposed to greater liability for merely exercising his rights under law. A respondent's refusal to recognize Agency administrative authority, however, is reason to withdraw a proposed order and institute a civil action on grounds of administrative convenience.

as specific as possible regarding the violations it references so as to avoid any unwarranted barriers to potential future enforcement claims.

UIC Claim Splitting



## UIC "Claim Splitting"

This guidance addresses the appropriateness of claim splitting in the context of UIC enforcement. In this context, claim splitting means either dividing an existing set of UIC violations and addressing each group through a different enforcement action, or pursuing different remedies in different enforcement actions for the same set of violations.

## Administrative and Judicial Parallel Proceedings

The enforcement structure of the amended SDWA allows the Agency to seek either administrative or court-imposed civil penalties against a UIC violator, except that a civil penalty cannot be assessed twice -- administratively and judicially -- for the same violation of Part C of the Act.\* The Agency may subject a UIC violator with multiple violations to administrative civil penalties of up to \$125,000 for some violations, and judicial civil penalties of "\$25,000 for each day of such violation" for the remaining violations. Section 1423(b) and (c)(1) and (2). The language of the Act imposes no restriction on the Administrator's initial choice of an administrative or a judicial remedy.

As a matter of law, therefore, EPA may choose to split its civil enforcement claims to encompass simultaneous administrative and judicial action against a UIC defendant

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\*"Any violation with respect to which the Administrator ... has issued an order under this subsection [1423(c)] assessing a penalty, shall not be subject to an action under subsection (b) of this section [1423(b)] ...." Section 1423 (c)(5) of the Act.

with multiple violations. As a matter of practice, however, such claim-splitting could promote an inefficient use of Agency resources that could impair UIC enforcement efforts. According to the Senate committee report on this provision, "Administrative enforcement should be as flexible and unencumbered by procedural complexities as possible."

Rather than concentrating government enforcement resources on one proceeding, two parallel civil proceedings with equivalent goals would require duplicative efforts by legal and technical staffs, and could even achieve unequal or inconsistent results. The potential for inconsistent results would also provide the defendant with an opportunity to request a stay of one or the other of the enforcement cases, leading to an ultimately slower resolution of all outstanding violations.

As a general rule, EPA should avoid initiating parallel administrative and judicial civil penalty enforcement cases. This guidance does not apply to parallel civil and criminal cases, which may be appropriate in certain cases, and does not apply to later civil penalty enforcement actions against a UIC violator who has been the defendant in an earlier, concluded civil penalty case.

EPA still may pursue judicial enforcement of a compliance-only administrative order. EPA also may pursue judicial penalty actions for the same violations that resulted in the issuance of a compliance-only administrative order, as long as EPA did not seek penalties in that initial compliance order and receive an adverse result.

Simultaneous Administrative Proceedings

EPA will be on strongest legal grounds by avoiding simultaneous administrative enforcement actions against violations at a single injection well or facility in which the total civil penalty sought by EPA exceeds \$125,000. Otherwise, the Agency may have to rebut claims that it is attempting to circumvent the Act's \$125,000 administrative penalty "cap" by splitting claims. EPA would be in a stronger legal position, and would be using enforcement resources more efficiently, if it consolidated these potential actions into a single, judicial enforcement action.

Non-Negotiated Orders  
(Proposed and Final)

## Guidance for Non-negotiated UIC Orders

The accompanying model Section 1423(c) order (included in Section I.7) provides a format that incorporates the analysis provided below. It is intended to be a generic model that applies to virtually all cases of noncompliance. Language that is bracketed in the order is either exemplary or optional language. In certain cases, such as the listing of statutory assessment factors and references to administrative civil penalties, the bracketed language should only be used in case the order includes a civil penalty. In other areas, such as references to a fictional "40 CFR §147.xxx," the model order's language is only suggestive.

Except for those items specifically addressed in "Guidance for UIC Order on Consent," this guidance applies to all UIC orders. The model may be used for both proposed and final administrative orders, although the bracketed title "Proposed" is used only in proposed orders (which remain unsigned), and ¶9 of Findings is used only in final orders.

## Legal Elements of UIC Orders

The Act provides that Section 1423(c) orders:

(1) May be issued against a person who is violating the "requirement of an applicable underground injection control program" in a State;

(2) "Shall state with reasonable specificity the nature of the violation";

(3) Shall require the violator to comply with the requirements

of the applicable underground injection control program;

(4) "May specify a reasonable time for compliance";

(5) May assess an administrative civil penalty of up to \$125,000, at the rate of up to \$5,000 per day against owners or operators of most Class II wells, or at the rate of up to \$10,000 per day against the owners or operators of other injection wells;

(6) In cases where the Administrator assesses a civil penalty, require that he take enumerated "appropriate factors" into account; and

(7) Do not become effective until "30 days following its issuance unless an appeal is taken pursuant to [§1423(c)(6)]."

#### Who is Subject to a Section 1423 Order

Owners or operators of injection wells in all States, whether primacy or direct implementation, are subject to applicable underground injection control programs, as described in Section 1423(a). In general, a UIC violator either is injecting without authorization or injecting in violation of an authorization by rule or by permit. The accompanying model provides alternative language (§§3 and 7 Findings, §1 Order, §1 General Provisions) for persons violating an applicable permit or rule.

#### Section 1423 Orders Shall Make Findings

The basis for an administrative order is a finding of violation. Consequently, all Section 1423 orders must include a section titled "Findings" in which the Agency sets out, clearly and specifically, the relevant legal requirements and

Respondent's activities that give rise to the Administrator's finding of violation. Without such a finding, there can be no order requiring compliance or assessing a civil penalty. In cases in which compliance cannot be immediately achieved, a finding setting out a reasonable time for compliance shall also be included as a basis for ordering compliance within that same reasonable time period (§5 Findings, §1 Order).

#### What Shall Be Required in a Section 1423 Order

Section 1423 orders shall, at a minimum, require the Respondent to comply with UIC program requirements. In the case of a person violating a requirement of an authorization by rule or by permit, the order must require compliance with the violated requirement by a date certain. In no case may a Section 1423 order allow continued noncompliance with UIC program requirements beyond that time found to be reasonable for the Respondent to achieve compliance.

Section 1423 orders may not be employed as interim permits for unauthorized injectors, nor as rule or permit modifications for persons in violation of UIC rules or permits. Any orders which attempt to accomplish these purposes are not authorized by law, and are unenforceable. Such orders run the risk of compromising enforcement and the effective administration of the UIC program, and are explicitly prohibited by this guidance. This prohibition encompasses consent orders as well as unilateral Section 1423 orders.

In a UIC administrative order a Region may require an

unauthorized injector to either shut down its well in an orderly fashion, expeditiously "cease and desist" its violations, or, if the Region finds that the injector is not endangering or risking endangerment of underground drinking water supplies, it may impose certain interim limitations on the injector's operations. The Regional determination of nonendangerment shall not, however, be a part of administrative order findings in these cases.\*

In all cases where a Region pursues the option of interim injection, it must require the injector to apply for a permit within sixty days or cease injecting entirely.\*\* Moreover, the order should require orderly shutdown (by a time certain) in the event the Agency rejects the injector's permit application. If the Region does not believe that the unauthorized injector could receive a permit, it may not allow interim injection. The Region should then act on the permit application expeditiously.

Orders for compliance under Section 1423 may include interim compliance requirements with enforceable milestone dates. All interim requirements shall be reasonably related to the Respondent's achieving compliance with the requirements of the applicable underground injection control program within a

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\* Formal findings of nonendangerment are not required elements of Section 1423(c) administrative orders. The Region's determination of nonendangerment may inform its exercise of prosecutorial discretion, but should not bind the Agency in any way.

\*\* Certain Regional program descriptions may provide more notice to authorized injectors to apply for permits under 40 CFR §144.25. Unauthorized injectors, however, may receive no more than sixty days' notice.



reasonable time. The hearing process required by the Act (as embodied in accompanying guidance), in conjunction with the opportunity for District Court review, as well as Section 1423(b)'s statement that District Courts "shall have jurisdiction to require compliance with . . . an order requiring compliance under [§1423(c)]," provide adequate grounds for enforceable interim compliance requirements.

The accompanying model (¶1 order) suggests how such interim schedules are to be included in compliance orders. In practice, interim requirements may be quite extensive and may, for instance, also include monitoring and reporting requirements.

#### What is a Reasonable Time for Compliance

The Act does not specify what it means by a reasonable time for compliance. Reasonableness is a term used to require case-by-case determinations by the Administrator, and the term for compliance necessarily will vary according to the circumstances of the violation and the remedy for that violation. (See accompanying model, ¶5 Findings). The committee report on the Senate bill, from which this provision was adopted, notes that "There are several safeguards in this provision to prevent abuse of the administrative order authority, such as unduly long compliance schedules . . . ."

The time for compliance shall represent the minimum reasonable time required for the Respondent to return to compliance with the Act. In case of a rule or permit violation, if the Region has reason to believe the Respondent is unable to assure compliance

with the rule or permit requirement in a reasonable time (whether due to unusual physical constraints or financial difficulties), the Region must set forth such findings in the proposed order, and propose a cessation of the injection activities. As a matter of policy, in cases of violations of the Act the violator, rather than the public, should bear the burden of its noncompliance.

#### When to Seek a Civil Penalty

Several factors control the decision to administratively assess a civil penalty. Initially, the Region must decide whether to seek an administrative or judicial remedy. See accompanying guidance on this subject in Section H.7. Second, Section 1423 (c) (5) of the Act precludes a civil action for the same UIC violations that have been addressed by an administrative civil penalty action. See guidance on Election of Remedies (UIC) (Section H.2 of this guidance). Finally, the legislative history of the Act provides that:

The authority to issue administrative orders is intended to complement and not to replace the civil judicial enforcement program. The addition of administrative order authority should, therefore, increase the total number of enforcement actions without any corresponding decline in the modest number of judicial enforcement actions being taken by the Administrator at present. The Administrator is not expected to use this new authority for cases that would otherwise have been tried in court. Civil judicial enforcement will always be necessary for cases involving novel issues of law and for serious violation of the Act.

To serve its intended function, the administrative order authority should be tailored to the less complex cases for which it is intended.

. . . [A]dministrative orders will be used in smaller cases . . . .

There are several safeguards in this provision to prevent abuse of the administrative order authority, such as . . . significant violators' escaping with nominal penalties.

Senate Committee Report at 17-18. The following guidelines should be applied in an attempt to both carry out the intent of Congress and achieve an efficient enforcement policy.

The Regions need not seek an administrative penalty if a violation is only technical, without significant environmental risk or harm, and if the Respondent has received no economic benefit as a result of its violations. In such a case, it is unlikely that a civil judicial action would have been undertaken in the absence of the administrative order authority.

At the other extreme, the Regions should not seek an administrative penalty order against a UIC violator if the violation is so significant that the \$125,000 administrative penalty cap would interfere with adequate relief in the case. Assessment of a penalty against such a major violator would preclude later court action for the same significant violations and contradict Congressional intent that the Agency not administratively enforce against the most serious violators at the expense of civil judicial actions.

In this regard, if there is any question that a Respondent should be more properly brought to court, the Region especially should avoid assessing a minor penalty that would eliminate that violator's greater civil judicial liability under Section 1423(c)(5) of the Act.

The prime candidates for an administrative civil penalty are those violators who have received some economic benefit from their violations, whose cases do not present novel legal questions, who would not normally be the subject of a judicial action in the absence of an administrative order remedy, and whose cases do not present any significant unanswered factual questions regarding liability or improper conduct.

#### What Factors the Administrator Considers in Penalty Assessment

Section 1423(c)(4)(B) of the Act provides six factors which the Administrator must take into account before assessing a civil penalty:

(i) the seriousness of the violation; (ii) the economic benefit (if any) resulting from the violation; (iii) any history of such violations; (iv) any good-faith efforts to comply with the applicable requirements; (v) the economic impact of the penalty on the violator; and (vi) such other matters as justice may require.

See the accompanying UIC penalty policy guidance for a detailed application of these factors. (Section H.6).

In the model "Administrative Order" these factors are listed as a preface to the Order, as part of a declaration by the Administrator. It may be useful in certain cases for the Order to describe this declaration in more detail, so that a reviewing court can more easily be satisfied that the Agency made a reasonable penalty assessment by using appropriate criteria for its decision.

#### When Does the Proposed Order Become Effective

A final UIC administrative order may be appealed by either

the Respondent or any member of the public that commented on the order when it was proposed. See Section 1423(c)(3)(6). As a result, the Agency will follow this administrative sequence: proposed order, comment period, potential hearing, final order, appeal period of thirty days, effective date. The accompanying model order (which is in the form of a proposed order without ¶9 of the Findings, and in the form of a final order if signed and ¶9 is included) therefore notes that "Pursuant to Section 1423 (c)(3)(D) of the Act, this Order becomes effective thirty days from issuance unless an appeal is taken pursuant to Section 1423(c)(6) of the Act."

Use of Subpoenas in UIC Enforcement

## GULDANCE ON USE OF SUBPOENAS IN UIC ENFORCEMENT

SDWA Section 1423(c)(8) authorizes issuance of subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum. An investigatory subpoena may be issued to gather information prior to issuance of a proposed administrative order (AO). A subpoena may also be issued after an AO has been issued.

### Investigatory Subpoenas

The investigatory subpoena may be used in a manner similar to a Clean Water Act Section 308 letter, which authorizes the Administrator to require the owner or operator of any point source, or an indirect discharger, to provide whatever information the Administrator can reasonably require to determine, inter alia, whether a person is complying with the Act, including reports, sampling, and monitoring. However, the UIC subpoena differs from a Section 308 letter in that the UIC subpoena can only be used to require production of existing documents or to compel a witness to testify; it cannot be used to compel a well owner or operator to perform monitoring, sampling, or other tests.

Although there is currently no regulation permitting the Agency to use Section 1445 to gather whatever information may be relevant to determining a party's compliance, once such a regulation is adopted Section 1445 will usually be the preferred method of gathering routine compliance information.

### Information to be Obtained by Subpoena

Although the type of information sought may vary according to the violation(s) alleged, a subpoena will be appropriate to obtain the following information:

- (1) well operating data, including pumphouse or other injection records, production records, casing and cementing records, tubing size and depth of packer, average and maximum injection pressure at the well-head, average and maximum injection rate, date and results of mechanical integrity test(s), if any, description of device(s) used to monitor injection pressure, flow rate, and volume, records of any malfunction in the injection system which may have caused or may cause fluid migration into or between any underground source(s) of drinking water (USDW);

- (2) ownership and lease information, including locations of all injection and production wells owned or operated by the respondent and any leases with the landowner;
- (3) financial information, including capital expenditures, operating expenses, and profits or losses;
- (4) construction records and other data on construction, including dates of completion for each well and total depth of each well;
- (5) well maintenance and repair data, including for example, casing and cementing, and plugging and abandonment;
- (6) type, number, and location of any monitoring or water wells and results and records of sampling or monitoring from those wells;
- (7) the physical and chemical nature of the injected fluids;
- (8) description of the geologic strata through and into which injection is taking place;
- (9) description of actions taken by the owner or operator to prevent endangerment of USDWs during any period of temporary abandonment;
- (10) number of employees and records of employment;
- (11) results of any tests related to the well(s) conducted by the owner or operator;
- (12) measures taken to comply with applicable regulations and records of expenses incurred for such measures;
- (13) any information necessary to determine whether a well may be endangering an USDW.

The above list is merely illustrative of the type of information that can be obtained with a subpoena, and the list is not intended to be comprehensive. The specific information sought will depend on the nature of the alleged violation.

The Regional Counsel's Office, in conjunction with the Regional Program Office, shall prepare the subpoena. The subpoena must state to whom the subpoena is to be issued and describe with particularity the information sought, as well as the date by which the recipient must provide information. The subpoena shall be issued by the delegated representative of the Regional Administrator, and it may be served personally or by certified mail, return-receipt requested.



### Delivery of Subpoenaed Documents

The party subpoenaed may be required to deliver documents by mail or other appropriate means to the Regional Office. In some instances it may be necessary to require the party to report to the Regional Office or other mutually convenient location to meet with the Regional Attorney and support staff to present copies of the subpoenaed documents. This procedure would be appropriate in circumstances where the Regional Attorney needs to question the party subpoenaed concerning the documents subpoenaed. In this case, the subpoena must make clear that it is not only requesting production of documents, but that the party subpoenaed may be required to answer questions concerning the documents. A permanent record of such a meeting must be made.

The party responding to an investigatory subpoena may be accompanied by legal counsel, but the meeting shall not be open to the other parties nor to the public. If the subpoena is issued during the course of a hearing the meeting must be open to the participants at the hearing.

### Witness Fees

Witnesses subpoenaed to testify in UIC administrative proceedings are to be paid the same fees as are paid to witnesses in Federal court. The fees and allowances to be paid to witnesses in Federal court are listed in detail at 28 U.S.C. § 1821. Such fees include \$30.00/day for each day of attendance, and where appropriate, common carrier travel expenses, mileage equal to that paid for Federal government employees' travel, and a subsistence allowance not to exceed that paid to Federal employees. Fees must be paid by the party at whose instance the witness appears. If the witness is appearing pursuant to a request initiated by the Agency, fees should be paid by the Agency. The Agency should also bear the costs of postage for documents subpoenaed if the respondent seeks such costs.

### Enforcement of Subpoenas

The Administrator may request the Attorney General to bring an action to enforce any subpoena. The district courts have jurisdiction to enforce subpoenas and to impose sanctions.

If you have any questions concerning this guidance, please contact Donna Duer of OECM at FTS 475-8186.

Maintenance of UIC Administrative Record

## INTERIM GUIDANCE ON MAINTAINING THE ADMINISTRATIVE RECORD IN UIC ENFORCEMENT PROCEEDINGS

The following guidance is to be followed in maintaining the administrative record for UIC administrative enforcement proceedings. These procedures are in accord with the accompanying guidance styled as "Proposed Modification to Part 144 Adding UIC Administrative Order Procedures."

Conformance to these procedures is particularly important to ensure EPA develops a clear record to enhance effective enforcement of an order. Moreover, appeals of these decisions most likely will be judged exclusively on information contained in the record.

Enforcement personnel responsible for pursuing an enforcement action on EPA's behalf are thus responsible for ensuring that they submit to the administrative record through the Presiding Officer or his designee at the time a hearing commences evidence sufficient to prove EPA's case, including relevant documents and correspondence already generated. (See e.g., items 1-9 in the checklist below.) In the event an administrative hearing is held, the Presiding Officer or his or her designee will be responsible for maintaining and completing the administrative record.

### Contents of the Administrative Record

The administrative record shall include the following:

- 1) All background/investigatory information, report or test results serving as a basis for the provisions of the proposed administrative order, particularly the findings of violation and the compliance requirements and penalties proposed.
- 2) any other correspondence and/or summaries of telephone conversations with the respondent or any other person which otherwise serves as a basis for the proposed administrative order;
- 3) subpoenas issued;
- 4) notice of noncompliance under §1423(a) which EPA has sent to a primacy State and an alleged violator, if applicable;
- 5) proposed administrative order;

- 6) notice of the proposed order to the respondent and the state;
- 7) public notice of the proposed order (press release or other appropriate form of notice);
- 8) respondent's comments on the proposed order;
- 9) public comments on the proposed order;
- 10) respondent's request for a hearing;
- 11) Presiding Officer's notice of the hearing schedule;
- 12) respondent's amendment to specification of issues;
- 13) Presiding Officer's written notice of the hearing to any person who commented on the proposed administrative order;
- 14) motion for summary disposition and any accompanying affidavits;
- 15) response to the motion for summary disposition;
- 16) Presiding Officer's rulings on motions;
- 17) direct and rebuttal prefiled testimony;
- 18) exhibits;
- 19) a complete and accurate record of the hearing;
- 20) any written statements or records of authorized oral presentations submitted by the respondent or the Agency's enforcement representatives;
- 21) any requests for further information by the Agency official responsible for making EPA's final decision on the proposed decision on the proposed order;
- 22) written notice of issuance, modification, or withdrawal of the proposed order to the respondent and every person who submitted written comments on the proposed order;
- 23) Presiding Officer's statement of the right to judicial review and of the procedures and deadlines for obtaining judicial review;
- 24) the final order and explanation of the Agency's decision; and
- 25) any other appropriate documents related to the administrative proceeding.

Settlement of UIC Enforcement Actions

Guidance on Settling Enforcement Actions against Violations of  
the Underground Injection Control Program under the Amended  
Safe Drinking Water Act

PURPOSE

This memorandum establishes general principles governing settlements of Federal enforcement actions against violations of the underground injection control program under the amended Safe Drinking Water Act (SDWA). The principles set out in this guidance apply to EPA's new administrative order authority under Section 1423(c) as well as civil judicial enforcement actions under Section 1423(b) and Section 1445.

Injunctive and Administrative Relief

In a judicial enforcement action, Section 1423(b) authorizes Federal district courts to require compliance with any applicable UIC program requirement or Federal administrative order, and to "enter such judgment as protection of public health may require." In an administrative enforcement action, Section 1423(c)(1) authorizes EPA administrative orders to require compliance with any UIC requirement, and subparagraph (4)(A) of that subsection explicitly permits the order to set a reasonable time for compliance.

As a general matter, in any EPA enforcement action under these authorities, EPA should obtain actual compliance or a clear enforceable schedule for attaining full compliance with program requirements. The schedule should call for achieving full compliance as quickly as possible. In addition, settlements should be sure to include monitoring and reporting requirements which confirm an alleged violator's return to or progress toward compliance.

Civil Penalties

Section 1423(c)(4)(B) of the statute states that in assessing any administrative civil penalty:

". . . the Administrator shall take into account appropriate factors, including (1) the seriousness of the violation; (ii) the economic benefit (if any)

resulting from the violation; (iii) any history of such violations; (iv) any good-faith efforts to comply with applicable requirements; (v) the economic impact of the penalty on the violator; and (vi) such other matters as justice may require."

Section 1423(b) does not specify criteria applicable to assessment of civil penalties in the context of judicial enforcement actions; nevertheless, it is reasonable for EPA to employ the same criteria in determining appropriate civil penalty amounts for settlement purposes.

Since many of these factors involve a significant amount of subjective judgment, EPA should in most if not all cases propose administrative civil penalties equal to the statutory maximum (i.e., \$5,000 or \$10,000 for each day of violation, depending on the type of well) up to the statutory maximum total of \$125,000, unless the facts of the case clearly do not support such a proposal. Such an approach obviously will best preserve EPA's litigation and negotiation positions. Similarly, when instituting a civil judicial action, the Federal government will continue its practice of requesting in its complaint that the court assess the maximum civil penalty authorized by law, namely \$25,000 for each day of "such violation" (for violations after June 19, 1986).

For purposes of settlement of UIC administrative or judicial civil penalty claims, and consistent with EPA's February 16, 1984 "Policy on Civil Penalties" (EPA General Enforcement Policy GM-21), EPA should obtain civil penalties which recover the defendant's calculated economic benefit of noncompliance plus an additional amount to reflect the gravity of the violation at issue and deter future noncompliance. EPA may mitigate the penalty settlement amount to reflect litigation practicalities or a defendant's demonstrated inability to pay; however, the final penalty typically still should be at least in excess of the calculated economic benefit of noncompliance. Any settlement of civil penalties sought by EPA must be within the maximum amounts authorized by law.

A defendant's economic benefit from noncompliance would include savings from costs delayed by, for example, delaying required construction, testing, monitoring, corrective action or plugging and abandonment activities. The benefit also would include savings from costs avoided such as by not meeting certain operating requirements (including shutting down the well), not employing alternative means of disposal, or not conducting specified, periodic monitoring, testing, or reporting

activities. Where quantifiable, the calculated economic benefit from noncompliance may also include additional profits accruing to an injection well owner or operator as a result of engaging in illegal activity.

Quantifying the gravity or deterrence component of an appropriate civil penalty settlement figure involves the use of judgment in applying the remaining penalty assessment criteria set out in section 1423(c)(4)(B). "Seriousness of the violation" should account for the extent to which a defendant's behavior deviated from regulatory requirements and the environmental harm or risk of harm created by the violations. History of such violations should take into account similar violations by defendant in the past and the duration of violations which have occurred. "Good faith efforts to comply" should give greatest weight to credible compliance efforts by the defendant before institution of the enforcement action, and some definite but lesser weight to a defendant's effort to rectify violations after EPA commenced an enforcement action. "Economic impact of the penalty on the violator" should turn on the extent to which defendant can demonstrate a clear inability to pay an otherwise appropriate penalty. "Such other matters as justice may require" could include consideration of any case-specific mitigating circumstances or considerations of the extent to which the alleged violations may have been the result of willful or negligent behavior by the defendant."

In addition, an appropriate settlement figure also should reflect litigation practicalities, such as strength of evidence or precedent, on the usefulness of establishing a precedent.

As a bottom line after applying all of the above factors, however, most enforcement actions still should obtain something in excess of the defendant's economic benefit of noncompliance. The amount in excess typically should reflect a balance between the facts of an individual case and the government's interest in deterring future similar violations by the defendants specifically and the regulated community generally.

In certain instances "as justice may require," EPA may accept lower penalties where a defendant also commits to performing an environmentally-beneficial "mitigation project." Attachment A is an excerpt from EPA's Clean Water Act Penalty Policy for Civil Settlement Negotiations," dated February 11, 1986. The criteria set out in this attachment regarding the acceptability of mitigation projects in the context of Federal Clean Water Act enforcement actions also are applicable to the settlement of administrative or judicial civil penalties with defendants in underground injection control program enforcement actions.



## Guidance for UIC Order on Consent

The Agency may enter into consent orders under Section 1423(c) of the Act. EPA and a Respondent may agree to a consent order at any time before EPA has issued a final order. Any such consent order, however, is subject to public notice and opportunity to comment under Section 1423(c)(6) of the Act. The accompanying model "Stipulations and Findings and Order on Consent" incorporate the following guidance. (The accompanying Guidance for Non-negotiated UIC Orders applies equally to consent orders.)

The potential differences between a Section 1423(c) consent order and a non-negotiated Section 1423(c) order are limited to the following:

1. The Administrator's Findings may also be termed Stipulations in a consent order;
2. The Respondent may waive its Section 1423(c) hearing and appeal rights in a consent order;
3. The consent order may include stipulated penalty provisions; and
4. The consent order may include environmentally beneficial "mitigation" projects.

## Limitations on Stipulated Penalties

Consent order stipulated penalty provisions are available under Section 1423(c) because the Administrator is authorized

to administratively assess (and collect) civil penalties for violations of the Act. The stipulated penalty provisions in the accompanying model consent order are based on the Administrator's authority to assess additional administrative civil penalties under Sections 1423(c)(1) or (2) for new violations of the Act.\* In the model, these provisions are not based on the Administrator's authority to collect up to \$125,000 for violations of the Act that already have occurred.\*\*

When, as EPA recommends, the jurisdictional basis for stipulated penalties in UIC consent orders is Sections 1423(c)(1) and (2), EPA is in the strongest legal position if it incorporates that subsection's procedures for citizen involvement into any UIC consent order provisions. The Agency is settling on a summary administrative procedure with the Respondent for future violations, but members of the public are not signatories to the consent order, and therefore no agreed summary administrative procedure can be provided for public comments and appeals when EPA acts under the consent order against future violations. The accompanying model UIC consent order ensures preservation of public comment and appeal rights as to stipulated penalties.\*\*\*

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\* These stipulated penalties are not authorized under Sections 1423(b) and (c)(7) because these sections require the participation of the courts and the Department of Justice. The Administrator may not collect stipulated penalties in an administrative UIC consent order that purports to settle a potential judicial action available under Section 1423(b) or (c). Only the Department of Justice may collect judicial penalties.

\*\* Use of the \$125,000 cap in collecting stipulated penalties raises significant legal and drafting issues that should be addressed by Headquarters review of such proposed consent orders.

\*\*\* See ¶¶ 4 and 5 of the model Order on Consent (order provisions).

Stipulated penalty provisions in UIC consent orders described as "not less than \$x", rather than a fixed amount, avoid certain potential problems associated with settling cases against violators of environmental laws before the violations have occurred. In addition, consent orders (as well as unilateral orders) are to provide that "Issuance of this Order is not an election by EPA to forgo any civil or criminal action, or both, otherwise authorized under the Act." Conformance with this guidance will insure that the Administrator does not bargain away his prosecutorial discretion to enforce against future violations to the statutory maximums.

Nevertheless, as an inducement to a Respondent to agree to a stipulated penalty of "not less than" a specified amount, the accompanying model UIC consent order provides (1) that if EPA requests more than the minimum specified amount, the Respondent reserves its rights to contest that assessment in a new hearing and (2) that the Respondent may use as a defense in any future Section 1423(b) or (c) civil action the fact that it paid a penalty for the day the Respondent was alleged to have violated the Act. See ¶6(c)(order provision) and ¶3(general provision).

#### Environmental Mitigation Projects

Environmental mitigation projects may be provided for in Section 1423(c) consent orders, subject to the accompanying

guidance on settling UIC enforcement actions. See Section H.6. The model UIC consent order does not include proposed environmental mitigation provisions.

Headquarters Involvement in the Issuance by Regions  
of the First Proposed and Final Administrative Orders

Guidance Regarding Headquarters Involvement in the Issuances by Regions of the First Group of Proposed and Final Administrative Orders Under New Enforcement Authorities of the Safe Drinking Water Act.

Purpose

The purpose of this guidance is to explain the interaction required between Headquarters and the Regions during the first few administrative enforcement actions taken by Regions under §1414(g), Part B, Public Water Systems (PWS), and §1423(c), Part C, Underground Injection Control (UIC) program of the Safe Drinking Water Act (SDWA).

Background

On June 19, 1986, the SDWA amendments of 1986 were enacted. Amended §1414(g) and §1423(c) give the Administrator new enforcement authority to issue administrative orders against alleged violators of the SDWA. The Administrator is delegating these new authorities to the Regional Administrators who may then redelegate most of these new authorities. (See SDWA Chapter 9 Delegations 9-7-A and B, and 9-32 through 9-35.)

In order that the first administrative orders and penalty assessments issued under the expanded PWS and UIC program enforcement authorities are nationally consistent, and because of Regional agreement to submit their initial group of proposed and final PWS and UIC AO's for review in lieu of a more restrictive role in the new delegations, we are issuing the following guidance covering Headquarters review and concurrence on PWS and UIC AO's.

DIRECTIVE

A. Public Water System Administrative Orders, Part B, SDWA

Each Regional office intending to issue a proposed or final PWS AO shall submit to the State Programs Division Director, Office of Drinking Water (ODW), and the Associate Enforcement Counsel for Water in the Office of Enforcement and Compliance Monitoring (OECM), copies of the following prior to issuance:

1. The first three proposed AO's prior to issuance under §1414(g)(1) of the SDWA;
2. The first three final AO's prior to issuance after a public hearing has been conducted under §1414(g)(2);
3. The first three administrative penalty complaints for \$5,000.00 or less issued under §1414(g)(3); and

4. The first three final penalty orders on consent prior to signing or consent agreement under 40 CFR §22.18.

B. Underground Injection Control Program, Part C, SDWA

Each Regional office intending to issue a proposed or final UIC AO shall submit to the State Programs Division Director, ODW, and the Associate Enforcement Counsel for Water, OECM copies of:

1. The first three proposed AO's prior to notice; and
2. The first three final AO's on consent prior to issuance under §1423(c) of the SDWA.

C. Implementation

EPA Regions must obtain comments and concurrence from ODW and OECM - Water on proposed AO's and final orders on consent before signing or issuing these documents to the respondent or to any other party outside of EPA.

In order to expedite Headquarters review of proposed and final orders, the Regions must include an action memo explaining the factual basis, rationale, and significant issues associated with each proposed and final order. We hope that in many cases the Regions will be able to use the same action memo already developed for their own internal use. The package should be addressed to the State Programs Division Director, ODW, and the Associate Enforcement Counsel for Water Enforcement, OECM. The package also should designate a contact person in the Region with whom Headquarters should communicate on the package.

The Region may, at its discretion, submit in the package any other relevant materials which may be of assistance to Headquarters during the review process.

ODW and OECM review for purposes of deciding on concurrence will focus on whether the submitted documents are consistent with national law and policy in the areas of SDWA programs, SDWA enforcement and enforcement generally. ODW and OECM agree to respond in writing to the Regions no later than ten working days from receipt of the package unless there is good cause for a delayed decision. Headquarters may need to delay its response if, for example, either office requires additional information from the Region before concurrence may be given. If good cause for delay exists, the delaying office must immediately notify the other Headquarters office and affected Region of the delay, and reasons for the delay.

Upon resolution of the matter causing delay, ODW and OECM agree to respond to the Region within a reasonable time, but no longer than ten working days from receipt of all information requested.

If Headquarters does not respond to the Region within the appropriate time frame, the Region must notify ODW and OECM that a response has not been received. If the designated representatives for ODW and OECM do not respond to the Region within one day, the Region may assume that ODW and OECM have no comment on the proposed or final order and concur in its issuance.

Where possible, the Regions are encouraged to forward diverse cases, involving a variety of SDWA violations, to Headquarters for concurrence. The Regions are also encouraged to consult with Headquarters on matters arising in subsequent SDWA enforcement actions in which Headquarters concurrence is not required but involve precedential or nationally significant issues.

Attachment



**GUIDANCE ON HEADQUARTERS REVIEW OF EACH REGION'S INITIAL  
ADMINISTRATIVE ENFORCEMENT EFFORTS UNDER THE SAFE DRINKING WATER ACT**

**I. Public Water Systems, Part B, SDWA §1414(g)**

	Administrative Order for Compliance		Administrative Penalty Assessments	
<u>Concurrence by ODW &amp; OECM Required</u>	Prior to issuance of first 3 proposed A.O.s	Prior to issuance of first 3 final A.O.s after public hearing	Prior to issuing first 3 administrative penalty complaints for \$5,000 or less	Prior to issuing first 3 consent agreements for administrative penalties

**II. Underground Injection Control Program, Part C, SDWA §1423(c)**

	More complex A.O.s where AO's assess administrative penalties	
<u>Concurrence by ODW &amp; OECM Required</u>	Prior to directing notice of first 3 proposed A.O.s	Prior to issuance of first 3 final A.O.s on consent

**III. Implementation**

In order that ODW and OECM may promptly review each of the initial proposed and final orders received, the Regions must send a copy of an action memo with each proposed and final order to each office.

ODW and OECM agree to respond to the Regions no later than ten working days from receipt of each action memo and accompanying materials. ODW and OECM review will focus on conformance to national law and policy.

Where possible, the Regions are encouraged to forward diverse cases involving a variety of SDWA violations to Headquarters for concurrence.

UIC Model Forms

Cover Letter Transmitting Notice of Violation  
to Primacy State

COVER LETTER TRANSMITTING  
N.O.V. TO PRIMACY STATE

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

REF: [ ]

[Name] [Title]  
[Name of State Agency]  
[Address]  
[City and State]

Re: Transmittal of Notice of Violation

Dear [name]:

The enclosed notice of violation sets forth the findings of the U.S. Environmental Protection Agency (EPA) that [name] is in violation of the Safe Drinking Water Act (SDWA), 42 U.S.C. §300f et seq., and the Underground Injection Control (UIC) regulations promulgated under §1421 and §1422 of the SDWA.

Such violations are subject to enforcement action under Section 1423 of the SDWA, 42 U.S.C. §300h-2, et seq. This Section provides for the initiation of civil and/or criminal actions in court or the issuance of administrative orders which mandate compliance with all provisions of the Act and regulations and which may assess penalties for violations.

EPA has sent the notice of violation to [name of facility]. If the State does not commence appropriate enforcement action within 30 days of the date of this notification, EPA is authorized to either issue to [name] an administrative order [with penalty], under §1423(c), 42 U.S.C. §300h-2(c), or commence a civil action under §1423(b), 42 U.S.C. §300h-2(b).

If you have any questions relating to this matter, please contact [name], Chief, UIC Compliance Unit, Groundwater Protection Branch at [telephone number] or [name], Attorney, Office of Regional Counsel at [telephone number]. Please inform this Agency of all action taken on this matter.

Sincerely,

[name], Director  
Water Management Division

Enclosure [See Section I.2 of this guidance package]

cc: [name of facility]

Notice of Violation to Well Owner or Operator  
in Primacy State

We urge your prompt attention to this matter.

Sincerely,

[name], Director  
Water Management Division

Enclosure

cc: [State Dept. of Environmental Regulation]

Cover Letter for Proposed UIC Administrative  
Order

SAMPLE COVER LETTER  
FOR PROPOSED UIC  
ADMINISTRATIVE ORDER

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

REF: [ ]

[Name of Owner or Operator]  
[Address]  
[City and State]

Re: Proposed Administrative Order and  
Opportunity to Request a Hearing

Dear [name]:

The U.S. Environmental Protection Agency (EPA) has found that [name] is in violation of the Safe Drinking Water Act (SDWA), 42 U.S.C. §300f et seq., and the Underground Injection Control (UIC) regulations promulgated under §§1421 and 1422 of the SDWA.

Such violations are subject to enforcement action under Section 1423 of the SDWA, 42 U.S.C. §300h-2, et seq. This Section provides for the initiation of civil and/or criminal actions in court or the issuance of administrative orders which may mandate compliance with all provisions of the Act and regulations and which may assess penalties for violations.

Notice is hereby provided that in response to these violations EPA proposes to issue to [name] the enclosed administrative order [with penalty], under §1423(c)(2), 42 U.S.C. 300h-2(c)(2). Notice of EPA's proposed order and of the opportunity to provide written comments on the proposed order is also being provided to the public, pursuant to Section 1423(c)(3)(B) of the SDWA, 42 U.S.C. §300h-2(c)(3)(B), [and 40 C.F.R. §144.102(b)(1)(C) and (c)].\*

You are hereby offered an opportunity to submit written comments on the proposed order and/or to request a hearing within 30 days of receipt of this notice, under §1423(c)(3), 42 U.S.C. §300h-2(c)(3). EPA will conduct any hearing pursuant to the procedures required by this section of the SDWA and specified [at 40 C.F.R. §144.101 et seq. or in the enclosed guidance]. This hearing will formally offer you an opportunity to show cause why the attached order should not issue, why its terms should be modified, or why the penalty should be reduced or waived.

\* For Primacy State, reference here issuance of a NOV under §1423(a) to the well owner or operator and to the State, and that the State has not commenced an appropriate enforcement action.



The hearing will be held on the record. You may present witnesses and documentary evidence bearing on the findings of the violations cited above, and on specific steps you propose to remedy the violations. Any person who comments on the proposed order has a right to participate in this hearing. At the hearing, you have the right to be represented by legal counsel. You will be notified promptly of the date of the hearing, which will be held at EPA's Region [] office, located at [address].

At the hearing, there will be a discussion of the economic savings to your company as a result of noncompliance. Therefore, you should be prepared to discuss this matter and to present evidence in your behalf.

If you choose not to request a hearing as provided above, EPA will review any comments submitted on the proposed order and will thereafter determine whether to issue the order.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations [or the amount of the proposed penalty]. You may wish to appear at the conference yourself and/or be represented by your counsel. EPA encourages all parties [against whom a civil penalty is proposed to be assessed] to pursue the possibilities of settlement as a result of informal conferences. Any such settlement shall be finalized by the issuance of a Consent Order by the Regional Administrator, EPA, Region []. The issuance of a Final Order By Consent shall constitute a waiver of your right to request a hearing on any matter to which you have stipulated therein. To facilitate arrangements for this conference, please contact [name], Attorney, Office of Regional Counsel at [telephone number].

A request for an informal conference does not extend the 30 day period during which a request for hearing must be submitted. The informal conference procedure may be pursued as an alternative to, or simultaneous with, the hearing.

If you have any questions relating to this matter, please contact [name], Chief, UIC Compliance Unit, Groundwater Protection Branch at [telephone number] or [name], Attorney, Office of Regional Counsel at [telephone number].

We urge your prompt attention to this matter.

Sincerely,

[name], Director  
Water Management Division

Enclosure

cc: [State Dept. of Environmental Regulation]

Notice to Citizens Who Comment On Proposed UIC AO

[Name of Citizen]  
[Address]  
[City, State, ZIP Code]

Re: Proposed Administrative Order  
Facility Name

Dear [Name of Citizen]

We have received your comments on the above captioned order. Please be advised that [name] has requested a hearing on the issuance of the above captioned proposed order which shall take place at [date, time, place].

You have the right to appear and present evidence at this hearing. You may be represented by an attorney. Please contact [EPA staff person assigned] at [phone #] by [date] if you wish to participate at this hearing.

Sincerely yours,

[Name of UIC Section Chief]  
[Title]

I4. = Public Notice

I5. = Notice to Citizens who Comment on Proposed Order

Administrative Order on Consent

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION [XI]

IN THE MATTER OF

[Underground Injectors, Inc.  
Pincushion, Atlantis]

Proceedings under Section  
1423(c) of the Safe Drinking  
Water Act, 42 U.S.C. §300h-2(c)

Docket No. [UIC AO-86-1]

STIPULATIONS and FINDINGS  
and  
ORDER ON CONSENT

[WITH ADMINISTRATIVE CIVIL PENALTY]

STATUTORY AUTHORITY

The following findings are made and Order on Consent issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 1423(c) of the Safe Drinking Water Act ("Act"), 42 U.S.C. §300h-2(c). The Administrator has delegated the authority to take these actions to the Regional Administrator for Region [XI], who in turn has delegated them to the [Water Management Division Director] of EPA, Region [XI].

STIPULATIONS and FINDINGS

Upon consent of the parties by their attorneys and authorized officials, the parties stipulate and the Administrator finds:

1. [Underground Injectors, Inc.] ("Respondent"), is a corporation organized under the laws of [NAME OF STATE] and is authorized to do business in the State of [Atlantis] and as such is a "person" within the meaning of Section 1401(12) of the Act, 42 U.S.C. §300f(12).

2. Respondent [owns and] operates a Class \_\_\_ injection well, as defined by 40 C.F.R. §§144.3, 144.6, 146.3 and 146.5, known as [Big Bertha] ("the well"). The well is located in [the \_\_\_\_\_ quarter of Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, in the \_\_\_\_\_ field, \_\_\_\_\_ County, Atlantis.]

3. Respondent operates the well pursuant to [40 CFR §147.xxx] [Permit No. xxxxxxx], which is part of the applicable underground injection control program in the State of [Atlantis], and which requires Respondent to ["behave himself".]

4. On [date] and [date] EPA Region [XI] [and/or State] officials inspected Respondent's operation of [Big Bertha] and found that [Respondent was not "behaving himself." (be precise in terms of type of violations and dates of violation)] .

and/or

4a. On [date] Respondent provided EPA Region [XI] with information that [Respondent was not "behaving himself" (be precise).]

5. Based upon the nature of Respondent's violations, and based upon the available remedies for those violations, [period of time] is a reasonable time for the Respondent to achieve compliance.

[6. The State of [Atlantis], acting through [State agency], has primary enforcement responsibility for underground water sources within the meaning of Section [1422(b)(3)][1425(c)] of the Act, 42 U.S.C. [§300h-1(b)(3)][§300h-4(c)], to ensure that owners and operators of [Class \_\_\_] injection wells within the State comply with the requirements of the Act.

[7. EPA, under Section 1423(a)(1) of the Act, 42 U.S.C.

§300h-2(a)(1), notified the State of [Atlantis] and Respondent on [provide notification date] that Respondent had failed to ["behave itself"] as required by [40 CFR §§ 147.xxx][Permit No. xxxxxxxx].

[8. On the thirty-first day after the notification described above, the State of [Atlantis] had not commenced appropriate enforcement action against Respondent for violations referenced in ¶4/4a above.]

9. Respondent waives [its] rights [to a hearing under Section 1423(c)(3)(A) of the Act, 42 U.S.C. §300h-2(c)(3)(A), and] to appeal this Order under Section 1423(c)(6) of the Act, 42 U.S.C. §300h-2(c)(6).

ORDER ON CONSENT [WITH ADMINISTRATIVE CIVIL PENALTY]

Based on the foregoing Stipulations and Findings, [after having taken into account (1) the seriousness of Respondent's violations described in ¶ \_\_ above; (2) the economic benefit accruing to the Respondent resulting from the violations; (3) Respondent's history of other violations of Part C of the Act; Respondent's [lack of] good faith efforts to comply with the requirement that he ["behave himself"]; (5) the economic impact of the penalty described below on the Respondent; and (6) such other matters as justice may require, including the Stipulations and Findings above,] and under the authority of Section 1423(a) of the Act, 42 U.S.C. §300h-2(a), EPA HEREBY ORDERS AND RESPONDENT HEREBY CONSENTS, that:

1. The provisions of this Order on Consent shall apply to and be binding upon Respondent, [its] officers, directors, agents, servants, employees, and successors or assigns.

2. [Underground Injectors, Inc.,] shall comply by [DATE: compute period of time, ¶5, after effective date of the Order] with the requirement of [40 CFR §147.xxx] [Permit No. xxxxxxx] to ["behave himself"] [according to the following compliance schedule: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.][]; and

[3. [Underground Injectors, Inc.,] shall pay [a fixed amount up to \$125,000] for [its] violations of [the requirements of 40 CFR §147.xxx] [the terms and conditions of Permit No. xxxxxxx] as described in ¶4/4a above by money order or certified check made payable to ["Treasurer, United States of America"] and mailed by [date] to the following address:

EPA - Region [XI]  
(Regional Hearing Clerk)  
P.O. Box [see lockbox guidance]  
[City, State ZIP]

[4. For a violation of the Act and the compliance schedule described in ¶2 of this Order, upon demand and public notice of the demand by the Administrator, Respondent shall pay a stipulated penalty of not less than \$\_\_\_\_ per day of violation for the first \_\_\_\_ days (not necessarily consecutive) of such violation, a stipulated penalty of not less than \$\_\_\_\_ per day for the next \_\_\_\_ days (not necessarily consecutive) of such violation, and a stipulated penalty of not less than \$\_\_\_\_ per day of violation for the remaining \_\_\_\_ days of such violation. [These penalty figures escalate with continuing violations.] Respondent shall make payment as provided for in ¶3 of this Order.

[5. (a) if there has been no public comment on the demand, Respondent shall pay within thirty days after the demand; or



(b) if there has been public comment on the demand, and

(i) there has been no appeal filed by a member of the public under ¶6(a) below, Respondent shall pay within sixty days after the demand; or

(ii) there has been an appeal filed by a member of the public under ¶6(a) below, Respondent shall pay within ten days after the reviewing United States District Court takes final action on the appeal by other than setting aside or remanding the stipulated penalty.

[6. (a) In any case in which a member of the public comments on the stipulated penalty demand, the commenter shall have the right, and EPA promptly shall inform the commenter of the right, to appeal the stipulated penalty demand under Section 1423(c)(6) of the Act within sixty days of the Agency's demand on the Respondent for payment of stipulated penalties, and promptly shall inform the Respondent of the public comment and any subsequent appeal under Section 1423(c)(6).

[(b) In any case in which the Respondent contests the fact of an alleged violation of the Act and compliance schedule, the Respondent may request a hearing before the Administrator under Section 1423(c)(3)(A) of the Act, 42 U.S.C. §300h-2(c)(3)(A).

[(c) EPA reserves the right to assess administrative civil penalties under Section 1423(c) at a rate greater than that described in ¶4 above, and Respondent reserves the right to contest such assessment of administrative civil penalties.]

GENERAL PROVISIONS

1. This Order does not constitute a waiver, suspension or modification of the [requirements of 40 C.F.R §147.xxx] [terms and conditions of Permit No. xxxxxx], which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or any criminal action otherwise authorized under the Act.

2. Violation of the terms of this Order after its effective date or date of final judgment as described in Section 1423(c)(6) of the Act may subject Respondent to further enforcement action, including a civil action for enforcement of this Order under Section 1423(b) of the Act, 42 U.S.C. §300h-2(b), [a collection action under Section 1423(c)(7) of the Act, 42 U.S.C. §300h-2(c)(7)] and civil and criminal penalties for violations of the compliance terms of this Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. §300h-2(b)(1) and (2).

[3. The Respondent may employ as a defense in any future civil action under Section 1423(b) of the Act, 42 U.S.C. §300h-2(b), or any proposed civil penalty order under Section 1423(c), 42 U.S.C. §300h-2(c), that Respondent paid a penalty to the United States under this Order for the day Respondent was alleged to have been in violation of the Act.]

EFFECTIVE DATE

Pursuant to Section 1423(c)(3)(D) of the Act, 42 U.S.C. §300h-2(c)(3)(D), this Order becomes effective thirty days from today unless an appeal is taken by a person other than the

Respondent under Section 1423(c)(6) of the Act, 42 U.S.C. §300h-2  
(c)(6).

\_\_\_\_\_  
[Name]  
[Attorney for] Respondent

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Name]  
[EPA Official; see Deleg. 9-34]  
EPA Region [XI]

\_\_\_\_\_  
Date

Non-Negotiated Administrative Order  
(Proposed, Final, With & Without Penalty)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION [XI]

IN THE MATTER OF

[Underground Injectors, Inc.  
Pincushion, Atlantis]

Proceedings under Section  
1423(c) of the Safe Drinking  
Water Act, 42 U.S.C. §300h-2(c)

Docket No. [UIC AO-86-1]

[PROPOSED]  
ADMINISTRATIVE ORDER  
[WITH ADMINISTRATIVE CIVIL PENALTY]

STATUTORY AUTHORITY

The following findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 1423(c) of the Safe Drinking Water Act ("Act"), 42 U.S.C. §300h-2(c). The Administrator has delegated the authority to take these actions to the Regional Administrator for Region [XI][.][,who in turn has delegated them to the [Water Management Division Director] of EPA, Region [XI].]

FINDINGS

1. [Underground Injectors, Inc.] ("Respondent"), is a corporation organized under the laws of [NAME OF STATE] and is authorized to do business in the State of [Atlantis] and as such is a "person" within the meaning of Section 1401(12) of the Act, 42 U.S.C. §300f(12).

2. Respondent [owns and] operates a Class \_\_\_ injection

well, as defined by 40 C.F.R. §§144.3, 144.6, 146.3 and 146.5, known as [Big Bertha] ("the well"). The well is located in [the \_\_\_\_\_ quarter of Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, in the \_\_\_\_\_ field, \_\_\_\_\_ County, ATLANTIS.]

3. Respondent operates the well pursuant to [40 CFR §147.xxx] [Permit No. xxxxxxx], which is part of the applicable underground injection control program in the State of [Atlantis], and which requires Respondent to ["behave himself".]

4. On [date] and [date] EPA Region [XI] [and/or State] officials inspected Respondent's operation of [Big Bertha] and found that [Respondent was not "behaving himself." (be precise in terms of type of violations and dates of violation)]

and/or

4a. On [date] Respondent provided EPA Region [XI] with information that [Respondent was not "behaving himself" (be precise).]

5. Based upon the nature of defendant's violations, and based upon the available remedies for those violations, [period of time] is a reasonable time for Respondent to achieve compliance.

[6. The State of [Atlantis], acting through [State agency], has primary enforcement responsibility for underground water sources within the meaning of Section [1422(b)(3)][1425(c)] of the Act, 42 U.S.C. [§300h-1(b)(3)][§300h-4(c)], to ensure that owners and operators of [Class \_\_] injection wells within the State comply with the requirements of the Act.

[7. EPA, under Section 1423(a)(1) of the Act, 42 U.S.C. §300h-2(a)(1), notified the State of [Atlantis] and Respondent

on [provide notification date] that Respondent had failed to ["behave itself"] as required by [40 CFR §147.xxx][Permit No. xxxxxxxx].

[8. On the thirty-first day after the notification described above, the State of [Atlantis] had not commenced appropriate enforcement action against Respondent for violations referenced in ¶4/4a above.

[9. On [provide date], in response to a request by Respondent, the Presiding Officer conducted a hearing pursuant to Section 1423 (c)(3)(A).]

ORDER [WITH ADMINISTRATIVE CIVIL PENALTY]

Based on the foregoing findings, [after having taken into account (1) the seriousness of Respondent's violations described in ¶ \_\_ above; (2) the economic benefit accruing to the Respondent resulting from the violations; (3) Respondent's history of other violations of Part C of the Act; Respondent's [lack of] good faith efforts to comply with the requirement that he ["behave himself"]; (5) the economic impact of the penalty described below on the Respondent; and (6) such other matters as justice may require, including the administrative record, and under the authority of Section 1423(a) of the Act, I HEREBY ORDER:

1. [Underground Injectors, Inc.,] shall comply by [DATE: compute period of time, ¶5, after effective date of the Order] with the requirement of [40 CFR §147.xxx] [Permit No. xxxxxxxx] to ["behave himself"] [according to the following compliance schedule:

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.; and

[2. [Underground Injectors, Inc.,] shall pay [a fixed amount up to \$125,000 (typically \$125,000 will be proposed)] for [its] violations of [the requirements of 40 CFR §147.xxx][the terms and conditions of Permit No. xxxxxxx] as described in ¶4/4a above by money order or certified check made payable to ["Treasurer, United States of America"] and mailed by [date] to the following address:

EPA - Region [XI]  
(Regional Hearing Clerk)  
P.O. Box [see lockbox guidance]  
[City, State ZIP]]

GENERAL PROVISIONS

1. This Order does not constitute a waiver, suspension or modification of the [requirements of 40 CFR §147.xxx] [terms and conditions of Permit No. xxxxxxx], which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or any criminal action otherwise authorized under the Act.

2. Violation of the terms of this Order after its effective date or date of final judgment as described in Section 1423(c)(6) of the Act may subject Respondent to further enforcement action, including a civil action for enforcement of this Order under Section 1423(b) of the Act, [a collection action under Section 1423(c)(7) of the Act,] and civil and criminal penalties for violations of the compliance terms of this Order under Section 1423(b)(1) and (2) of the Act.



EFFECTIVE DATE

Pursuant to Section 1423(c)(3)(D) of the Act, this Order becomes effective thirty days from issuance unless an appeal is taken pursuant to Section 1423(c)(6) of the Act. Issuance occurs as provided by [cite to relevant Agency guidance.]

Issued this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
[Name]  
[Regional Administrator or Delegatee]  
U.S. EPA, Region [XI]  
[Street Address]  
[City, State ZIP]

UIC Delegations

## REDELEGATIONS

### SDWA

### PWS & UIC

#### REGION 2 REDELEGATIONS AS OF FEBRUARY 1, 2010

#### Full Text On Region 2 Human Resources Website:

<http://r2notes3.r02.epa.gov/Intranet/iOPM-HRB.nsf/allwebpages/A8F67081A0B78C2A85256E67005C8233?OpenDocument>

9-3	Certification of Laboratories and Responsible State Officials	SDWA §1412
9-7-A	Finding and Notification of Noncompliance - Part B	1414
9-7-B	Finding and Notification of Violation - Part C	1423(a)&(c)
9-10	Assistance, Information, and Training of Personnel	1442
9-11	To Issue Public Water System Supervision Grants	1443(a)
9-12	Inspections and Information Gathering	1445
9-15	Safe Drinking Water Occupational Training Assistance	1442(b)&(d)
9-21	Approval of State Underground Injection Control (UIC) Program Grant Funds	1443(b)
9-22	Authority to Issue Underground Injection Control (UIC) Program Permits	1421
9-23	Authority to Issue Area Permits and Emergency Permits	40 CFR 144.33-.34
9-24	Authority to Deny, Transfer, Modify, Revoke, Reissue and Terminate Permits	40 CFR 144.38-.41 and 124.5
9-27	Information To Be Considered in Authorizing Injection Wells	40 CFR 146.14
9-28	Noncompliance With Conditions Of An Expiring or Expired Permit	40 CFR 144.37(c)
9-29	Authority to Approve Alternatives to the Use of Tubing and Packer for Class I Well Construction	
9-30	Approval of Injection Well Plugging and Abandonment Plan and Prescribing Aquifer Cleanup and Monitoring	
9-32	Administrative Enforcement Authority Under Part B: Proposed and Final Orders and Agency Representation in Hearings	
9-33-A	Administrative Penalty Under Part B: Penalty Assessments, Issuing Complaints, and Negotiating and Signing Consent Agreements	
9-33-B	Administrative Penalty Under Part B: Agency Representations in the Hearings, Negotiating and Signing of Consent Agreements and Appeals	5 USC 554
9-34	Administrative Enforcement Authority Under Part C	SDWA §1423(c)
9-35	Issuance of Administrative Orders Under Section 1423(c)	1423(c)
9-46	Grants and Cooperative Agreements Under Section 1443(d) of the Safe Drinking Water Act of 1996	1443(d)
9-62	Administrative Penalty Actions Against a Federal Agency for Violations of the Safe Drinking Water Act	1447(b)
9-67	Drinking Water State Revolving Fund (DWSRF) Program	1419, 1420, and 1452
9-68	Approval of Grants under Section 1419(d) of the Safe Drinking Water Act	1419(d)

## DELEGATIONS

### SDWA

### PWS & UIC

EPA HQ DELEGATIONS  
AS OF FEBRUARY 1, 2010

**Full Text On EPA HQ Website**

<http://intranet.epa.gov/ohr/rmpolicy/ads/dm/index9.htm>

<u>9-1</u>	Certification of Potable Water Supplies	Sec. 361
<u>9-2</u>	Withdrawal of Section 1425 Program Approval from the State of Illinois Under Part C	1425
<u>9-2-A</u>	Withdrawal of Section 1422 Program Approval from the State of Texas Under Part C	1422
<u>9-2-B</u>	Withdrawal of Underground Injection Control Program Approval from the State of Alabama Under Part C	
<u>9-3</u>	Certification of Laboratories and Responsible State Officials	1412
<u>9-4</u>	Determination of State Primary Enforcement Responsibility: Public Water Systems	1413
<u>9-5</u>	Conduct Annual Review and Determine Compliance/Noncompliance with the Requirements for Primary Enforcement Responsibilities	1413
<u>9-6</u>	Reports By States	1414
<u>9-7-A</u>	Finding and Notification of Noncompliance - Part B	1414
<u>9-7-B</u>	Finding and Notification of Violation- Part C	
<u>9-8</u>	Review and Issuances of Variances	1415

<u>9-9</u>	Receipt and Issuances of Exemptions	1416
<u>9-10</u>	Assistance, Information, and Training of Personnel	1442
<u>9-11</u>	To Issue Public Water System Supervision Grants	1443(a)
<u>9-12</u>	Inspections and Information Gathering	1445
<u>9-13</u>	Designation of Sole Source Aquifers	1424(e)
<u>9-14</u>	Monitoring of Consecutive Public Water Systems	40 CFR 149.29
9-15	Safe Drinking Water Occupational Training Assistance (Eliminated because it has been consolidated into <u>9-10</u> , Assistance, Information, and Training of Personnel, dated 4/11/2001)	Sec. 1442(B) & (d)
<u>9-16-A</u>	Civil Judicial Enforcement Actions	1450(f)
<u>9-16-B</u>	Criminal Enforcement Actions	
<u>9-16-C</u>	Settlement or Concurrence in Settlement of Civil Judicial Enforcement Actions	
<u>9-16-D</u>	Emergency TRO's	
<u>9-17</u>	Emergency Administrative Powers	
<u>9-18</u>	Publications of Notice of Underground Injection Control (UIC) Program Application	1142
<u>9-19</u>	Revision or Modification of State Underground Injection Control (UIC) Program	1442

<u>9-20</u>	Underground Water Source Protection Grant Authority for Allotment and Reallotment	1443
<u>9-21</u>	Approval of State Underground Injection Control (UIC) Program Grants Funds	1443(b)
<u>9-22</u>	Authority to Issue Underground Injection Control (UIC) Program Permits	1421
<u>9-23</u>	Authority to Issue Area Permits and Emergency Permits	40 CFR 144.33 & 144.34
<u>9-24</u>	Authority to Deny, Transfer, Modify, Revoke, Reissue and Terminate Permits	40 CFR 144.38 thru 144.41 & 124.5
<u>9-25</u>	Approval of Alternative Mechanical Integrity Test Procedures	40 CFR 146.08(d)
<u>9-26</u>	Approval of Additional Aquifer Exemptions	Sec. 40 CFR 144.7
<u>9-27</u>	Information to be Considered in Authorizing Injection Wells	40 CFR 146.14
<u>9-28</u>	Noncompliance With Conditions of an Expiring or Expired Permit	40 CFR 144.37(c)
<u>9-29</u>	Authority to Approve Alternatives to the Use of Tubing and Packer For Class I Well Construction	
<u>9-30</u>	Approval of Injection Well Plugging and Abandonment Plan and Prescribing Aquifer Cleanup and Monitoring	
<u>9-31</u>	Authority to Allot and Reallot Grants Funds for the Public Water System Supervision Program	
<u>9-32</u>	Administrative Enforcement Authority Under Part B: Proposed and Final Orders and Agency Representation in Hearings	
<u>9-33-A</u>	Administrative Penalty Under Part B: Penalty Assessments, Issuing Complaints, and Negotiating and Signing Consent Agreements	
<u>9-</u>	Administrative Penalty Under Part B: Agency	5 USC 554

<u>33-</u> <u>B</u>	Representation in the Hearings, Negotiating and Signing of Consent Agreements and Appeals	
<u>9-</u> <u>33-</u> <u>C</u>	Appeals of Part B Administrative Penalty Orders	
<u>9-</u> <u>34</u>	Administrative Enforcement Authority Under Part C	1423(c)
<u>9-</u> <u>35</u>	Issuance of Administrative Orders Under Section 1423 (c)	1423(c)
<u>9-</u> <u>36</u>	Determining that a State is not Enforcing the Prohibition on Use of Lead Pipes, Solder, and Flux; and Withholding of Federal Funds	
<u>9-</u> <u>37</u>	Approval of State Wellhead Protection Programs and Financial Assistance Agreements	1428
<u>9-</u> <u>38</u>	Treatment of Indian Tribes as States: Public Water Systems and Underground Injection Control	1451
<u>9-</u> <u>39</u>	<i>Grants and Cooperative Agreements to Improve Water Quality Under Section 1442 of the Safe Drinking Water Act (Eliminated because it has been consolidated into <u>9-10</u>, Assistance, Information, and Training of Personnel, dated 04/11/2001)</i>	
<u>9-</u> <u>40</u>	<i>Allotting and Reallotting Funds under Section 1452 of the Safe Drinking Water Act (Eliminated because it has been consolidated into <u>9-67</u>, Drinking Water State Revolving Fund (DWSRF) Program, dated 2/14/2000)</i>	
<u>9-</u> <u>41</u>	<i>Award of Grants under Section 1452 of the Safe Drinking Water Act (Eliminated because it has been consolidated into <u>9-67</u>, Drinking Water State Revolving Fund (DWSRF) Program, dated 2/14/2000)</i>	
<u>9-</u> <u>42</u>	Guidance for State Ground Water Protection Grants under Section 1429 of the Safe Drinking Water Act, as Amended	
<u>9-</u> <u>43</u>	Guidance for States to Follow in Petition Programs under Sections 1453 and 1454 of the Safe Drinking	Sec. 1453 & 1454

	Water Act, as Amended	
<u>9-44</u>	List of Technologies for Small Drinking Water Systems to Meet the Surface Water Treatment Rule, under Section 1412(b)(4)(E)(v) of the Safe Drinking Water Act, as Amended	
<u>9-45</u>	Guidelines for States in Proposing Alternative Monitoring Requirements for Chemical Contaminants under Section 1418 of the Safe Drinking Water Act, as Amended	
<u>9-46</u>	Implementation of Section 1443(d) of the Safe Drinking Water Act of 1996	Sec. 1443(d)
<u>9-47</u>	Administrative Penalty Actions Not to Exceed \$5,000	
<u>9-48</u>	List of Contaminants for Consideration to Regulate under Section 1412(b)(1)(B)(i) of the Safe Drinking Water Act, as Amended	
<u>9-49</u>	Information for States on Recommended Operator Certification Program Requirements under Section 1420(d)(2)(B) of the Safe Drinking Water Act, as amended.	Sec. 1420(d)(2)(B)
<u>9-50</u>	Information for States on Developing Affordability Criteria for Drinking Water under Section 1415(e)(7)(B) of the Safe Drinking Water Act as Amended	Sec. 1415(e)(7)(B)
<u>9-51</u>	Guidelines for Water Conservation Plans for Public Water Systems under Section 1455(a) of the Safe Drinking Water Act, as Amended.	Sec. 1455(a)
<u>9-52</u>	List of Technologies for Small Drinking Water Systems to Achieve Compliance with Each of the Regulations Promulgated Prior to the 1996 Safe Drinking Water Act Amendments, Except for the Surface Water Treatment Rule, Under Section 1412(b)(4)(E)(iii) of the Safe Drinking Water Act, as Amended.	
<u>9-53</u>	List of Additional Compliance Technologies for Small Drinking Water Systems, under Section 1412(b)(4)(E)(iv) of the Safe Drinking Water Act, as	



	Amended.	
<u>9-54</u>	List of Variance Technologies for Small Drinking Water Systems for Those Regulations Promulgated Prior to the 1996 Safe Drinking Water Act Amendments for Which a Variance May Be Granted under Section 1415(e), under Section 1412(b)(15) of the Safe Drinking Water Act, as Amended.	
<u>9-55</u>	List of Additional Variance Technologies for Small Drinking Water Systems, under Section 1412(b)(15) of the Safe Drinking Water Act, as Amended.	
<u>9-56</u>	Guidelines Specifying Minimum Standards for Certification and Recertification of Operators of Community and Nontransient Noncommunity Water Systems under Section 1419 of the Safe Drinking Water Act, as Amended.	Sec. 1419
<u>9-57</u>	Guidance Describing Legal Authorities and Other Means to Ensure That All New Community Water Systems and New Nontransient, Noncommunity Water Systems Demonstrate Technical, Managerial, and Financial Capacity with Respect to National Primary Drinking Water Regulations (Section 1420(d)(4)).	Sec. 1420(d)(4)
<u>9-58</u>	Program Approval for State Source Water Assessment Programs under Section 1453 and Source Water Quality Protection Partnership Petition Programs under Section 1454.	Sec. 1453 and 1454
<u>9-59</u>	State Public Water System Compliance Reports and Annual National Public Water System Compliance Report	Sec. 1414(c)(3)(A)(i)
<u>9-60</u>	Publishing of Guidance for States on Assessment of Capacity and Capacity Development as Authorized by Section 1452(g)(3) of the Safe Drinking Water Act	Sec. 1452(g)(3)
<u>9-61</u>	Determination of Need to Revise Drinking Water Monitoring Requirements Pursuant to Section 1445(a)(1)(D) of the Safe Drinking Water Act	Sec. 1445
<u>9-62</u>	Administrative Penalty Actions Against a Federal Agency for Violations of the Safe Drinking Water	Sec. 1447(b)(a)(1)(D)

	Act	
<u>9-63</u>	Award of Grants for the Establishment of Small System Technology Assistance Centers Under Section 1420(f) of the SDWA	Sec. 1420(f)
<u>9-64</u>	Award of Grants for Initial Funding for One or More University-based Environmental Finance Centers under Section 1420(g) of the SDWA	Sec. 1420(g)
<u>9-65</u>	<i>Determination of Withholding from a State Capitalization Grant Award for Capacity Development Programs Under Section 1452(a)(1)(G)(i) with Regard to Compliance with Section 1420(a) and Section 1420(c) of the SDWA (Eliminated because it has been consolidated into <u>9-67</u>, Drinking Water State Revolving Fund (DWSRF) Program, dated 2/14/2000)</i>	Sec. 1452(a)(1)(G)(i)
<u>9-66</u>	Health Risk Reduction and Cost Analysis for Radon under Section 1412(b)(13)(C) of the SDWA	
<u>9-67</u>	Drinking Water State Revolving Fund (DWSRF) Program	Sec. 1419, 1420 & 1452
<u>9-68</u>	Determination of Allotment and Award of Grants under Section 1419(d) of the Safe Drinking Water Act	
<u>9-69</u>	Issuance of Variances for Treatment Technique Requirements	1415(a)(3)
<u>9-70</u>	National Drinking Water Regulations	1412
<u>9-71</u>	Designation of Individuals Having Access to Vulnerability Assessments	
<u>9-72</u>	Delegation of Authority for Signing Federal Register Notices Addressing Small Drinking Water Systems Variances - National Level Affordability Methodology and Methodology to Identify Variance Technology that is Protective of Public Health	
<u>9-73</u>	Approval of Alternative Analytical Methods	