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40 CFR Ch. I (7-1-07 Edition)

EPA determines to be necessary under the circumstances.

(2) Whenever EPA determines that the proposed program revision is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to interested persons and shall be published in the FEDERAL REGISTER and in enough of the largest newspapers in the State to provide Statewide coverage. The public notice shall summarize the proposed revisions and provide for the opportunity to request a public hearing. Such a hearing will be held if there is significant public interest based on requests received.

(3) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Safe Drinking Water Act.

(4) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the FEDERAL REGISTER. Notice of approval of non-substantial program revisions may be given by a letter from the Administrator to the State Governor or his designee.

(c) States with approved programs shall notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approval by the Administrator under paragraph (b) of this section. Organizational charts required under §145.23(b) shall be revised and resubmitted.

(d) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as are necessary.

(e) The State shall submit the information required under paragraph (b)(1) of this section within 270 days of any amendment to this part or 40 CFR part 144, 146, or 124 which revises or adds any requirement respecting an approved UIC program.

§ 145.33 Criteria for withdrawal of State programs.

(a) The Administrator may withdraw program approval when a State program no longer complies with the requirements of this part, and the State fails to take corrective action. Such circumstances include the following:

(1) When the State's legal authority no longer meets their requirements of this part, including:

(i) Failure of the State to promulgate or enact new authorities when necessary; or

(ii) Action by a State legislature or court striking down or limiting State authorities.

(2) When the operation of the State program fails to comply with the requirements of this part, including:

(i) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits;

(ii) Repeated issuance of permits which do not conform to the requirements of this part; or

(iii) Failure to comply with the public participation requirements of this part.

(3) When the State's enforcement program fails to comply with the requirements of this part, including:

(i) Failure to act on violations of permits or other program requirements;

(ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or

(iii) Failure to inspect and monitor activities subject to regulation.

(4) When the State program fails to comply with the terms of the Memorandum of Agreement required under §145.24.

§ 145.34 Procedures for withdrawal of State programs.

(a) A State with a program approved under this part may voluntarily transfer program responsibilities required by Federal law to EPA by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

(1) The State shall give the Administrator 180 days notice of the proposed transfer and shall submit a plan for the orderly transfer of all relevant program information not in the possession

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of EPA (such as permits, permit files, compliance files, reports, permit applications) which are necessary for EPA to administer the program.

(2) Within 60 days of receiving the notice and transfer plan, the Administrator shall evaluate the State's transfer plan and shall identify any additional information needed by the Federal government for program administration and/or identify any other deficiencies in the plan.

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of the transfer in the FEDERAL REGISTER and in enough of the largest newspapers in the State to provide Statewide coverage, and shall mail notice to all permit holders, permit applicants, other regulated persons and other interested persons on appropriate EPA and State mailing lists.

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

(1) *Notice to State of public hearing.* If the Administrator has cause to believe that a State is not administering or enforcing its authorized program in compliance with the requirements of SDWA and this part, he or she shall inform the State by registered mail of the specific areas of alleged noncompliance. If the State demonstrates to the Administrator within 30 days of such notification that the State program is in compliance, the Administrator shall take no further action toward withdrawal and shall so notify the State by registered mail.

(2) *Public hearing.* If the State has not demonstrated its compliance to the satisfaction of the Administrator within 30 days after notification, the Administrator shall inform the State Director and schedule a public hearing to discuss withdrawal of the State program. Notice of such public hearing shall be published in the FEDERAL REGISTER and in enough of the largest newspapers in the State to attract statewide attention, and mailed to persons on appropriate State and EPA mailing lists. This hearing shall be convened not less than 60 days nor

more than 75 days following the publication of the notice of the hearing. Notice of the hearing shall identify the Administrator's concerns. All interested persons shall be given opportunity to make written or oral presentation on the State's program at the public hearing.

(3) *Notice to State of findings.* When the Administrator finds after the public hearing that the State is not in compliance, he or she shall notify the State by registered mail of the specific deficiencies in the State program and of necessary remedial actions. Within 90 days of receipt of the above letter, the State shall either carry out the required remedial action or the Administrator shall withdraw program approval. If the State carries out the remedial action or, as a result of the hearing is found to be in compliance, the Administrator shall so notify the State by registered mail and conclude the withdrawal proceedings.

Subpart E—Indian Tribes

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

§ 145.52 Requirements for Tribal eligibility.

The Administrator is authorized to treat an Indian Tribe as eligible to apply for primary enforcement responsibility for the Underground Injection Control Program if it meets the following criteria:

(a) The Indian Tribe is recognized by the Secretary of the Interior.

(b) The Indian Tribe has a Tribal governing body which is currently "carrying out substantial governmental duties and powers" over a defined area, (*i.e.*, is currently performing governmental functions to promote the health, safety, and welfare of the affected population within a defined geographic area).

(c) The Indian Tribe demonstrates that the functions to be performed in regulating the underground injection wells that the applicant intends to regulate are within the area of the Indian Tribal government's jurisdiction.

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of administering (in