UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OCT 03 1983

MEMORANDUM

SUBJECT: Guidance for UIC Implementation on Indian Lands Part I - Public Notification and Hearing Schedule (GWPG No. 33)

FROM: Paul M. Baltay, Acting Director
State Programs Division (WH-550) Baltay

TO: Water Division Directors
Water Supply Branch Chiefs
Regions I - X

BACKGROUND

Under Part C of the Safe Drinking Water Act, EPA is required to implement an UIC program on Indian lands unless the State in which the lands are located has demonstrated the necessary jurisdiction and has been given primary enforcement responsibility. As part of the Public Information requirements EPA must give public notice to the affected population and hold public hearings in order to introduce the program and solicit comments.

On January 24, 1983, the President issued an Indian Policy statement that should be followed by Federal agencies in any dealings with Indian Nations. EPA is presently finalizing an Indian Policy document which basically follows the President's policy. Of main importance to the UIC effort on Indian lands is the recognition in these policy papers of the special relationship that exists between the Federal government and the Indian Nations. The Administration's policy indicated that the approach which Federal agencies should follow with Indian Nations is one of government-to-government which recognizes, within the scope of the law, the right of self-determination by the Indians.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OCT 03 1983

MEMORANDUM

SUBJECT: Guidance for UIC Implementation on Indian Lands Part I - Public Notification and Hearing Schedule (GWPG No. 33)

FROM: Paul M. Baltay, Acting Director
State Programs Division (WH-550) Baltay

TO: Water Division Directors
Water Supply Branch Chiefs
Regions I - X

BACKGROUND

Under Part C of the Safe Drinking Water Act, EPA is required to implement an UIC program on Indian lands unless the State in which the lands are located has demonstrated the necessary jurisdiction and has been given primary enforcement responsibility. As part of the Public Information requirements EPA must give public notice to the affected population and hold public hearings in order to introduce the program and solicit comments.

On January 24, 1983, the President issued an Indian Policy statement that should be followed by Federal agencies in any dealings with Indian Nations. EPA is presently finalizing an Indian Policy document which basically follows the President's policy. Of main importance to the UIC effort on Indian lands is the recognition in these policy papers of the special relationship that exists between the Federal government and the Indian Nations. The Administration's policy indicated that the approach which Federal agencies should follow with Indian Nations is one of government-to-government which recognizes, within the scope of the law, the right of self-determination by the Indians.

An important component of this special relationship is the implication that there should be active consultation when the Federal government intends to implement a mandated program on Indian lands. In response to the Administration's policy on the special relationship that exists between the Federal government and the Indian lands, the preamble of the proposed Direct Implementation Regulations (40 CFR Part 147) includes a section which would allow EPA flexibility to implement a UIC program resulting from active consultation with tribal governments. These programs could be different from the one specified in 40 CFR Parts 144, 145, and 146, but would meet the requirements of the Act (SDWA).

PURPOSE

In response to requests for clarification from several Regional Offices (ROs), this document provides information on how, when, and where public hearings should be held. This document was timed to coincide with the publication of the proposed 40 CFR Part 147 which sets the requirements for the direct implementation of the UIC program by EPA. It is also intended to emphasize the importance of consultation between the Regional Offices (ROs) and the Tribal governments.

The preamble to the direct implementation regulations requests comments from Indian governments on the type of UIC program that EPA should implement. This provision makes consultation with Tribal governments most important if EPA expects to receive specific information from the public on the implementation of the UIC program on Indian lands.

GUIDANCE

I. Scope

Regional Offices should undertake two types of information activities: (1) consultation with Tribal governments affected by the proposal; and (2) formal public hearings. The preamble of the proposal will, of course, give notice in the Federal Register of the time and place of public hearings. In addition, Regions should: (1) give notice of each public hearing in a newspaper of general circulation in each affected state; and (2) send to a Regional mailing list a notice briefly describing the program, the issues, and the alternatives.

A. In direct implementation States, Regions should:

1. establish communications with all the tribal governments in each State as part of an active consultation policy and with such agencies as Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and the Indian Health Service (IHS);

2. ensure that appropriate personnel in the tribal hierarchy are aware of the impact of the UIC program, especially on energy producing reservations with injection facilities;

3. keep a file for each Indian group, documenting all contacts;

4. hold a single public hearing for both the general public and the Indians; and

5. hold additional meeting(s) to satisfy the request by Indian governments or the public, at a time and locale convenient to the requestors, if there is sufficient interest.

B. In primacy States containing Indian lands,

1. The Regions should establish communications with all the Indian governments in each State as part of the active consultation policy, as well as with cognizant Federal agencies (BIA, BLM, and IHS) and the State; as in direct implementation States a careful record of these consultations should be kept.

2. In the preamble, we will announce public hearings (based on your advice) for Indian lands in each primacy State where EPA will have to implement programs in a location convenient for the Indians. We will, however, set it up so that the hearing can be cancelled if there is not sufficient public interest.

3. Regions will have to make the decision to cancel the hearing based on communication with Tribal governments and other interested parties.

II. Timetable

When the proposed 40 CFR Part 147 is published, it will contain a 60 day comment period. The ROs should schedule a public hearing sometime within the 60 day comment period, but making sure that at least a 30 day notice is given on the hearing. Following is a tentative timetable which would allow the ROs to logically and effectively meet the public hearing requirements for implementation of an UIC program on Indian lands.

Proposed 40 CFR Part 147 goes to AX	7/15/83
The Administrator signs package	7/28/83
The ROs inform HQ on hearing dates*	7/28/83
The proposed regulations are published in FR	8/05/83
Direct Implementation National Meeting	8/10/83
Public hearings	9/15 - 9/26/83
End public comments on 40 CFR Part 147	10/04/83

IMPLEMENTATION

The ROs should plan the public hearings in accordance with the suggestions in this guidance. They should also be ready to inform HQ on the proposed dates of the hearings. In order to expedite the process, the ROs should have decided on the dates for the hearings by the 21st of July, just in case the review by the Admnistrator is shortened. If this can be accomplished, the phone calls to the ROs can be made in less than a day and there would not be any delay before forwading the package. The ROs were instructed to put aside an adequate portion of the Direct Implementation funds earlier in the year, to cover all these expenses.

FILING INSTRUCTIONS

This guidance should be filed under Ground Water Program Guidance No. 33 (GWPG No. 33).

ACTION RESPONSIBILITY

For further information on this guidance contact:

Mario Salazar, Environmental Engineer
Office of Drinking Water (WH-550)
U.S. Environmental Protection Agency
401 M Street, SW
Washington, D.C. 20460
FTS 382-5550

---

* A phone call will be made to get dates from ROs.

cc: Groundwater Section Chiefs
Tom Belk
Jentai Yang