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

OFFICE OF  
WATER

JUN 29 1987

MEMORANDUM

SUBJECT: Guidance on Determining Which Existing Wells Became Authorized by Rule Under Subpart C of the Underground Injection Control Program, and on Available Enforcement Actions Against Owners and Operators of Wells Not Authorized by Rule or Permitted # 59

FROM: Michael B. Cook, Director *Michael B Cook*  
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TO: Water Division Directors  
Regional Counsels  
Regions I-X

Purpose

The purpose of this document is to identify for Regions which existing wells became authorized by rule to inject under the Underground Injection Control (UIC) program regulations, and to identify enforcement actions available against owners and operators of wells not authorized by rule or permit to inject.

Background

The UIC program regulations at 40 CFR Part 144, Subpart B prohibit underground injection unless authorized by permit or rule. 40 CFR Part 144, Subpart C of the regulations covers wells authorized by rule. 40 CFR Part 144, Subpart D covers wells authorized by permit.

Regions have requested guidance on determining which existing wells became authorized by rule to inject, and therefore regulated under Subpart C of the UIC program regulations. The Regions have also requested guidance on what enforcement actions may be brought against the owners and operators of wells which have not been authorized to inject by rule or permit and may be causing endangerment to underground sources of drinking water (USDWs).

Guidance

A. Identification of Wells Which Became Authorized by Rule Under Subpart C.

"Existing"<sup>1</sup> injection wells became authorized by rule upon injection into the well during the first year after the effective date of an approved or prescribed State program. 40 CFR §144.21, §144.22(a), §144.23, §144.24. In the alternative, "existing" injection wells may be authorized by rule if the owner or operator submitted inventory information on the well to EPA in a timely manner (in most cases within one year after the effective date of the state program), as required in 40 CFR §144.26.

If the owner or operator of an existing well neither injected into nor "inventoried" the well during the first year of an effective State program, the well never became "authorized by rule" and thus is not subject to the requirements established in the Subpart C regulations.

B. Enforcement Actions Available Against Owners and Operators of Wells Never Authorized by Rule Under Subpart C Nor Permitted Under Subpart D.

A well never authorized by rule under Subpart C nor permitted and subject to Subpart D requirements may be subject to an enforcement action for noncompliance with Subpart B of the UIC program regulations, "General Program Requirements," including 40 CFR §144.11 "Prohibition of Unauthorized Injection," and 40 CFR §144.12 "Prohibition of movement of fluid into underground sources of drinking water." Regions may also, when appropriate, bring an enforcement action pursuant to Section 1431 of the SDWA, 42 USC §300(i), if the threat of contamination from a well may present an imminent and substantial endangerment to health.

Lastly, the Regions may, when appropriate facts are present to support the relevant legal claims, bring an enforcement action against owners and operators of a well for a violation of, for example, Section 3008 or 7003 of the Resource Conservation and Recovery Act, 42 USC §6928, §6973; Section 106 of

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<sup>1</sup> "Existing injection well" means an injection well other than a new injection well. "New injection well" means an injection well which began injection after the UIC program for the State applicable to the well is approved or prescribed. 40 CFR §144.3.

the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC §9606; and Section 309 of the Federal Water Pollution Control Act, 42 USC §1319.

A Region should not initiate an enforcement action against owners and operators of wells not authorized by rule or permit to inject to enforce the requirements of 40 CFR Part 144, Subpart C - Authorization of Underground Injection by Rule. This conclusion is appropriate because, as stated in Paragraph A (above), the Subpart C regulations do not apply to owners and operators of those wells.

For further information on this guidance, contact Sarah Day, Office of Drinking Water (WH-550E), 382-5548, or Susan Desrosiers, Office of Enforcement and Compliance Monitoring - Water (LE-134W), 382-2856.

cc: Susan Lepow  
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