UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: JUL 31 1981

SUBJECT: Attorney General's Statement, Underground Injection Control Program (UIC), Ground Water Program Guidance #16

FROM: Alan Levin, Director
State Programs Division Alan Levin 19,904

TO: Water Division Directors (Regions I - X)
Water Supply Branch Chiefs
UIC Representatives

PURPOSE

The purpose of this guidance is to provide a listing of all the elements considered necessary to demonstrate that the laws of the State that seeks to administer a UIC program provide adequate authority to carry out the program as described in 40 CFR 123.4. Each listing includes: an explanation of the Federal requirement; a section on the "State Statutory and Regulatory Authority" in which the State should list all relevant statutes and regulations; and a section for "Remarks of the Attorney General" which allows further legal explanation and clarification, including judicial decisions demonstrating adequate authority.

BACKGROUND

40 CFR 123.3 lists the Attorney General's statement as one of the elements necessary for the submission of an acceptable UIC program. This statement is a certification by a qualified representative of the State (or State Agency) stating that the State statutes, administrative regulations, and judicial decisions demonstrate adequate authority to administer a program for the protection of underground sources of drinking water. 40 CFR 123.5 (Attorney General's Statement) requires that the State demonstrate adequate authority to carry out the program submitted under § 123.4 and which meets the requirements of 40 CFR Parts 122, 123, 124, and 146.

This guidance is intended to apply to Class I, III, IV, and V wells, and also Class II wells submitted with a program meeting the requirements of 40 CFR Parts 122, 123, 124, and 146 . Nevertheless, it may be used as an example for State programs submitted under Section 1425 guidance since the statement of legal authority may consist of a simple certification by the legal representative of that State, or a full analysis of the legal basis for the State program, including case law as appropriate. However, if the State

chooses to submit a certification, the program description should detail the legal authority on which the various elements of the State's program is based.

GUIDANCE

The guidance and index for the Attorney General's Statement is attached.

IMPLEMENTATION

The Water Supply Branch (WSB) Chief in coordination with the Regional Counsel shall follow this guidance to develop with the State an acceptable State Attorney General's Statement for the UIC program submission. All State statutes and regulations cited by the Attorney General or independent legal counsel shall be lawfully adopted State statutes and regulations at the time the statement is signed, and shall be fully effective at the time the program is approved. The attorney signing this Statement must have full authority to independently represent the State agency in court on all matters pertaining to the State program.

FILING INSTRUCTIONS

This guidance should be filed as Ground Water Program Guidance No. 16.

ACTION RESPONSIBILITY

For further information on this guidance contact:

A. Roger Anzzolin
Environmental Protection Agency
Office of Drinking Water WH-550
401 M Street, SW
Washington, DC 20460
(202) 426-3934