

§ 145.12

40 CFR Ch. I (7-1-02 Edition)

- (7) Section 144.13—(Elimination of Class IV wells);
 - (8) Section 144.14—(Requirements for wells managing hazardous waste);
 - (9) Sections 144.21-144.26—(Authorization by rule);
 - (10) Section 144.31—(Application for a permit);
 - (11) Section 144.32—(Signatories);
 - (12) Section 144.33—(Area Permits);
 - (13) Section 144.34—(Emergency permits);
 - (14) Section 144.35—(Effect of permit);
 - (15) Section 144.36—(Duration);
 - (16) Section 144.38—(Permit transfer);
 - (17) Section 144.39—(Permit modification);
 - (18) Section 144.40—(Permit termination);
 - (19) Section 144.51—(Applicable permit conditions);
 - (20) Section 144.52—(Establishing permit conditions);
 - (21) Section 144.53(a)—(Schedule of compliance);
 - (22) Section 144.54—(Monitoring requirements);
 - (23) Section 144.55—(Corrective Action);
 - (24) Section 124.3(a)—(Application for a permit);
 - (25) Section 124.5 (a), (c), (d), and (f)—(Modification of permits);
 - (26) Section 124.6 (a), (c), (d), and (e)—(Draft Permit);
 - (27) Section 124.8—(Fact sheets);
 - (28) Section 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e)—(Public notice);
 - (29) Section 124.11—(Public comments and requests for hearings);
 - (30) Section 124.12(a)—(Public hearings); and
 - (31) Section 124.17 (a) and (c)—(Response to comments).
 - (32) Section 144.88—(What are the additional requirements?);
- (b)(1) States need not implement provisions identical to the provisions listed in paragraphs (a)(1) through (a)(32) of this section. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions. While States may impose more stringent requirements, they may not make one requirement more lenient as a tradeoff for making another requirement more stringent; for example, by requiring

that public hearings be held prior to issuing any permit while reducing the amount of advance notice of such a hearing.

(2) State programs may, if they have adequate legal authority, implement any of the provisions of parts 144 and 124. See, for example §144.37(d) (continuation of permits) and §124.4 (consolidation of permit processing).

[48 FR 14202, Apr. 1, 1983, as amended at 64 FR 78572, Dec. 7, 1999]

§ 145.12 Requirements for compliance evaluation programs.

(a) State programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other regulated persons (and for investigation for possible enforcement of failure to submit these notices and reports).

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements. The State shall maintain:

(1) A program which is capable of making comprehensive surveys of all facilities and activities subject to the State Director's authority to identify persons subject to regulation who have failed to comply with permit application or other program requirements. Any compilation, index, or inventory of such facilities and activities shall be made available to the Regional Administrator upon request;

(2) A program for periodic inspections of the facilities and activities subject to regulation. These inspections shall be conducted in a manner designed to:

(i) Determine compliance or non-compliance with issued permit conditions and other program requirements;

(ii) Verify the accuracy of information submitted by permittees and other regulated persons in reporting forms and other forms supplying monitoring data; and

(iii) Verify the adequacy of sampling, monitoring, and other methods used by permittees and other regulated persons to develop that information;

(3) A program for investigating information obtained regarding violations

Environmental Protection Agency

§ 145.13

of applicable program and permit requirements; and

(4) Procedures for receiving and ensuring proper consideration of information submitted by the public about violations. Public effort in reporting violations shall be encouraged and the State Director shall make available information on reporting procedures.

(c) The State Director and State officers engaged in compliance evaluation shall have authority to enter any site or premises subject to regulation or in which records relevant to program operation are kept in order to copy any records, inspect, monitor or otherwise investigate compliance with permit conditions and other program requirements. States whose law requires a search warrant before entry conform with this requirement.

(d) Investigatory inspections shall be conducted, samples shall be taken and other information shall be gathered in a manner [e.g., using proper "chain of custody" procedures] that will produce evidence admissible in an enforcement proceeding or in court.

§ 145.13 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or environment;

NOTE: This paragraph requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit;

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) For all wells except Class II wells, civil penalties shall be recoverable for

any program violation in at least the amount of \$2,500 per day. For Class II wells, civil penalties shall be recoverable for any program violation in at least the amount of \$1,000 per day.

(ii) Criminal fines shall be recoverable in at least the amount of \$5,000 per day against any person who willfully violates any program requirement, or for Class II wells, pipeline (production) severance shall be impossible against any person who willfully violates any program requirement.

NOTE: In many States the State Director will be represented in State courts by the State Attorney General or other appropriate legal officer. Although the State Director need not appear in court actions he or she should have power to request that any of the above actions be brought.

(b)(1) The maximum civil penalty or criminal fine (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the Safe Drinking Water Act.

NOTE: For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.

(c) A civil penalty assessed, sought, or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation.

NOTE: To the extent that State judgments or settlements provide penalties in amounts which EPA believes to be substantially inadequate in comparison to the amounts which EPA would require under similar facts, EPA, when authorized by the applicable statute, may commence separate actions for penalties.

In addition to the requirements of this paragraph, the State may have other enforcement remedies. The following enforcement options, while not mandatory, are highly recommended:

Procedures for assessment by the State of the costs of investigations, inspections, or monitoring surveys which lead to the establishment of violations;