

§ 145.14

40 CFR Ch. I (7-1-03 Edition)

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 imposable 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;

Procedures which enable the State to assess or to sue any persons responsible for unauthorized activities for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon human health and the environment resulting from the unauthorized activity, or both; and

Procedures for the administrative assessment of penalties by the Director.

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraph (a) (1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in §145.12(b)(4);

(ii) Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

(e) To the extent that an Indian Tribe does not assert or is precluded from asserting criminal enforcement authority the Administrator will assume primary enforcement responsibility for criminal violations. The Memorandum of Agreement in §145.25 shall reflect a system where the Tribal agency will refer such violations to the Administrator in an appropriate and timely manner.

(Clean Water Act (33 U.S.C. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*)

[48 FR 14202, Apr. 1, 1983, as amended at 48 FR 39621, Sept. 1, 1983; 53 FR 37412, Sept. 26, 1988]

§ 145.14 Sharing of information.

(a) Any information obtained or used in the administration of a State program shall be available to EPA upon

request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information under this section. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR part 2. If EPA obtains from a State information that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA shall furnish to States with approved programs the information in its files not submitted under a claim of confidentiality which the State needs to implement its approved program. EPA shall furnish to States with approved programs information submitted to EPA under a claim of confidentiality, which the State needs to implement its approved program, subject to the conditions in 40 CFR part 2.

Subpart C—State Program Submissions

§ 145.21 General requirements for program approvals.

(a) States shall submit to the Administrator a proposed State UIC program complying with § 145.22 of this part within 270 days of the date of promulgation of the UIC regulations on June 24, 1980. The administrator may, for good cause, extend the date for submission of a proposed State UIC program for up to an additional 270 days.

(b) States shall submit to the Administrator 6 months after the date of promulgation of the UIC regulations a report describing the State's progress in developing a UIC program. If the Administrator extends the time for submission of a UIC program an additional 270 days, pursuant to § 145.21(a), the State shall submit a second report six months after the first report is due. The Administrator may prescribe the manner and form of the report.

(c) The requirements of § 145.21 (a) and (b) shall not apply to Indian Tribes.

(d) EPA will establish a UIC program in any State which does not comply with paragraph (a) of this section. EPA will continue to operate a UIC program

in such a State until the State receives approval of a UIC program in accordance with the requirements of this part.

NOTE: States which are authorized to administer the NPDES permit program under section 402 of CWA are encouraged to rely on existing statutory authority, to the extent possible, in developing a State UIC program. Section 402(b)(1)(D) of CWA requires that NPDES States have the authority "to issue permits which control the disposal of pollutants into wells." In many instances, therefore, NPDES States will have existing statutory authority to regulate well disposal which satisfies the requirements of the UIC program. Note, however, that CWA excludes certain types of well injections from the definition of "pollutant." If the State's statutory authority contains a similar exclusion it may need to be modified to qualify for UIC program approval.

(e) If a State can demonstrate to EPA's satisfaction that there are no underground injections within the State for one or more classes of injection wells (other than Class IV wells) subject to SDWA and that such injections cannot legally occur in the State until the State has developed an approved program for those classes of injections, the State need not submit a program to regulate those injections and a partial program may be approved. The demonstration of legal prohibition shall be made by either explicitly banning new injections of the class not covered by the State program or providing a certification from the State Attorney General that such new injections cannot legally occur until the State has developed an approved program for that class. The State shall submit a program to regulate both those classes of injections for which a demonstration is not made and class IV wells.

(f) When a State UIC program is fully approved by EPA to regulate all classes of injections, the State assumes primary enforcement authority under section 1422(b)(3) of SDWA. EPA retains primary enforcement responsibility whenever the State program is disapproved in whole or in part. States which have partially approved programs have authority to enforce any violation of the approved portion of their program. EPA retains authority