

## Environmental Protection Agency

## § 142.76

of the treatment technology, the system cannot meet the MCL, that system shall be eligible for a variance under the provisions of section 1415(a)(1)(A) of the Act.

(3) If a community water system can demonstrate through comprehensive engineering assessments, which may include pilot plant studies, that the treatment technologies identified in this section would only achieve a de minimus reduction in the contaminant level, the State may issue a schedule of compliance that requires the system being granted the variance to examine other treatment technologies as a condition of obtaining the variance.

(4) If the State determines that a treatment technology identified under paragraph (a)(3) of this section is technically feasible, the Administrator or primacy State may require the system to install and/or use that treatment technology in connection with a compliance schedule issued under the provisions of section 1415(a)(1)(A) of the Act. The State's determination shall be based upon studies by the system and other relevant information.

(5) The State may require a community water system to use bottled water, point-of-use devices, point-of-entry devices or other means as a condition of granting a variance or an exemption from the requirements of §141.66 of this chapter, to avoid an unreasonable risk to health.

(6) Community water systems that use bottled water as a condition for receiving a variance or an exemption from the requirements of §141.66 of this chapter must meet the requirements specified in either §142.62(g)(1) or §142.62(g)(2) and (g)(3).

(7) Community water systems that use point-of-use or point-of-entry devices as a condition for obtaining a variance or an exemption from the radionuclides NPDWRs must meet the conditions in §142.62(h)(1) through (h)(6).

(b) [Reserved]

[65 FR 76751, Dec. 7, 2000]

### Subpart H—Indian Tribes

SOURCE: 53 FR 37411, Sept. 26, 1988, unless otherwise noted.

#### § 142.72 Requirements for Tribal eligibility.

The Administrator is authorized to treat an Indian tribe as eligible to apply for primary enforcement for the Public Water System Program and the authority to waive the mailing requirements of §141.155(a) if it meets the following criteria:

(a) The Indian Tribe is recognized by the Secretary of the Interior.

(b) The Indian Tribe has a tribal governing body which is currently "carrying out substantial governmental duties and powers" over a defined area, (*i.e.*, is currently performing governmental functions to promote the health, safety, and welfare of the affected population within a defined geographic area).

(c) The Indian Tribe demonstrates that the functions to be performed in regulating the public water systems that the applicant intends to regulate are within the area of the Indian Tribal government's jurisdiction.

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of administering (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Public Water System program.

[53 FR 37411, Sept. 26, 1988, as amended at 59 FR 64344, Dec. 14, 1994; 63 FR 44535, Aug. 19, 1998]

#### § 142.76 Request by an Indian Tribe for a determination of eligibility.

An Indian Tribe may apply to the Administrator for a determination that it meets the criteria of section 1451 of the Act. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of §142.72. The application shall consist of the following information:

(a) A statement that the Tribe is recognized by the Secretary of the Interior.

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. The statement should:

(1) Describe the form of the Tribal government;