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

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OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: UIC Permit Appeals Procedures -- UICPG #49

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This memorandum is intended to provide a description of the procedure which will be used for appeals of Underground Injection Control (UIC) permits for states with EPA-administered UIC programs. All previous guidance on the matter is superseded, but this guidance is not retroactive. This guidance is just that--guidance--and may be altered from time to time to suit individual circumstances. It does not provide any person with any rights, procedural or substantive, not provided by EPA regulations or applicable statutes.

The Regulations

The Agency's regulations provide that the Administrator may, at his discretion, review any condition of a UIC permit. The procedure for requesting such review is summarized in the rules:

> (a) Within 30 days after a ... UIC ... final permit decisions has been issued under §124.15, any person who filed comments on that draft permit or participated in the public hearing may petition the Administrator to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The 30-day period within

which a person may request review under this section begins with the service of notice of the Regional Administrator's action unless a later date is specified in that notice. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations and when appropriate, a showing that the condition in question is based on:

(1) A finding of fact or conclusion of law which is clearly erroneous, or

(2) An exercise of discretion or an important policy consideration which the Administrator should, in his or her discretion, review.

(b) The Administrator may also decide on his or her initiative to review any condition of any ... UIC ... permit issued under this part. The Administrator must act under this paragraph within 30 days of the service date of notice of the Regional Administrator's action.

(c) Within a reasonable time following the filing of the petition for review, the Administrator shall issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. Public notice of any grant of review by the Administrator under paragraph (a) or (b) of this section shall be given as provided in §124.10. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent only to the person(s) requesting review.

40 C.F.R. §124.19(a)-(c)(1985).

In the preamble to the regulations, the Agency stated that the review power should be "sparingly exercised" and that "most permit conditions should be finally determined at the Regional level ...." 45 Fed. Reg. 33412 (May 19, 1980). The regulations envision a two-tiered procedure when UIC permit decisions are appealed to the Administrator. First, the Administrator determines whether the petition for review raises issues warranting review. If the Administrator determines that such issues are not raised, or that some of the issues raised do not warrant review under the regulation's standard for review, he or