



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, DC 20460

OFFICE OF
WATER

MEMORANDUM

July 27, 1998

SUBJECT: Additional Guidance for the Update and Codification of Part 147

FROM: Mario Salazar, Coordinator, Part 147 Update and Codification
Regulatory Implementation Branch, IAD

TO: UIC Managers and Part 147 Contacts, Regions I - X

The purpose of this document is to provide additional guidance on the update and codification of Part 147. **It also requests a commitment by the Regions to update and provide information to headquarters for codification by or before the end of a specific calendar year.** Please provide this information within two weeks of the date of this memo.

In your response to Connie Bosma's memo on the update and codification of Part 147, dated 3/23/98, several of you indicated that additional guidance was needed on the process. Nathan Wiser and Paul Osborne, of Regions V and VIII respectively who are members of the task group for this regulatory effort, have collaborated in preparing the attached **flow chart**, instructions and other background material. **As a preliminary step, they recommended that the Regions contact the Secretary of State for each jurisdiction and request the latest UIC regulations and authorizing laws.** They also recommended that we send you copies of several guidance. The background materials and guidance include:

- ★ Attachment with elements to consider when reviewing the states' program description, attorney general statement and memoranda of agreement;
- ★ Sample table for obtaining information for the update and codification of Part 147;
- ★ Electronic copies of relevant UIC guidance -, 15 (Procedure for Review of State Primacy Application), 19 (Interim Final Guidance for Section 1425 of SDWA) and 34 (Guidance for Review and Approval of State UIC Program and Revisions to Approved State Programs). **Since the digitization of these documents is labor intensive, I have chosen to send under a separate cover in order not to delay this guidance.**

In your answers, some of you also expressed your concern on the timetable and resources needed for the completion of the task, our suggestion to forego public hearings if UIC compliant changes already in effect had received the state's equivalent of our public participation requirements and the process to allocate contract funds. We would like to respond to these concerns as follows:

- ★ In several places in the 3/23/98 memo we indicated that the process outlined, timetable and implied use of resources **was only proposed**; that we needed your input, commitment and recommendations. **We are still in need of these, especially your commitment.** Of the Regions responding to the March memo, only one had specific commitments and one had a general description of what it had already started implementing.

- ★ As indicated in the March memo and emphasized in the attached flow chart, the Regions have to do a thorough review of the changes in the states' laws and regulations, and determine whether they still meet the minimum standards in the UIC regulations or the "effective" standard for §1425 programs. If this is the case, then the details of the public participation episodes should be reviewed to determine if they met the standards of the approved UIC program in the state. If the results of the review indicate that either one or both of these conditions were not met, the Regions should contact the state to negotiate a satisfactory solution. If both conditions are met, then the changes should be considered satisfactory and the state upgrade and codification should be put in the fast track;

- ★ If you are interested in getting the contractor's assistance in this effort, please send me a note indicating specifically:
 - How the contractor will be used;
 - LOE hours estimate;
 - Whether travel is involved;
 - Final product by the contractor and how it dove-tails with your overall effort;
 - Timetable.

I have also attached a copy of the Scope of Work for the assignment.

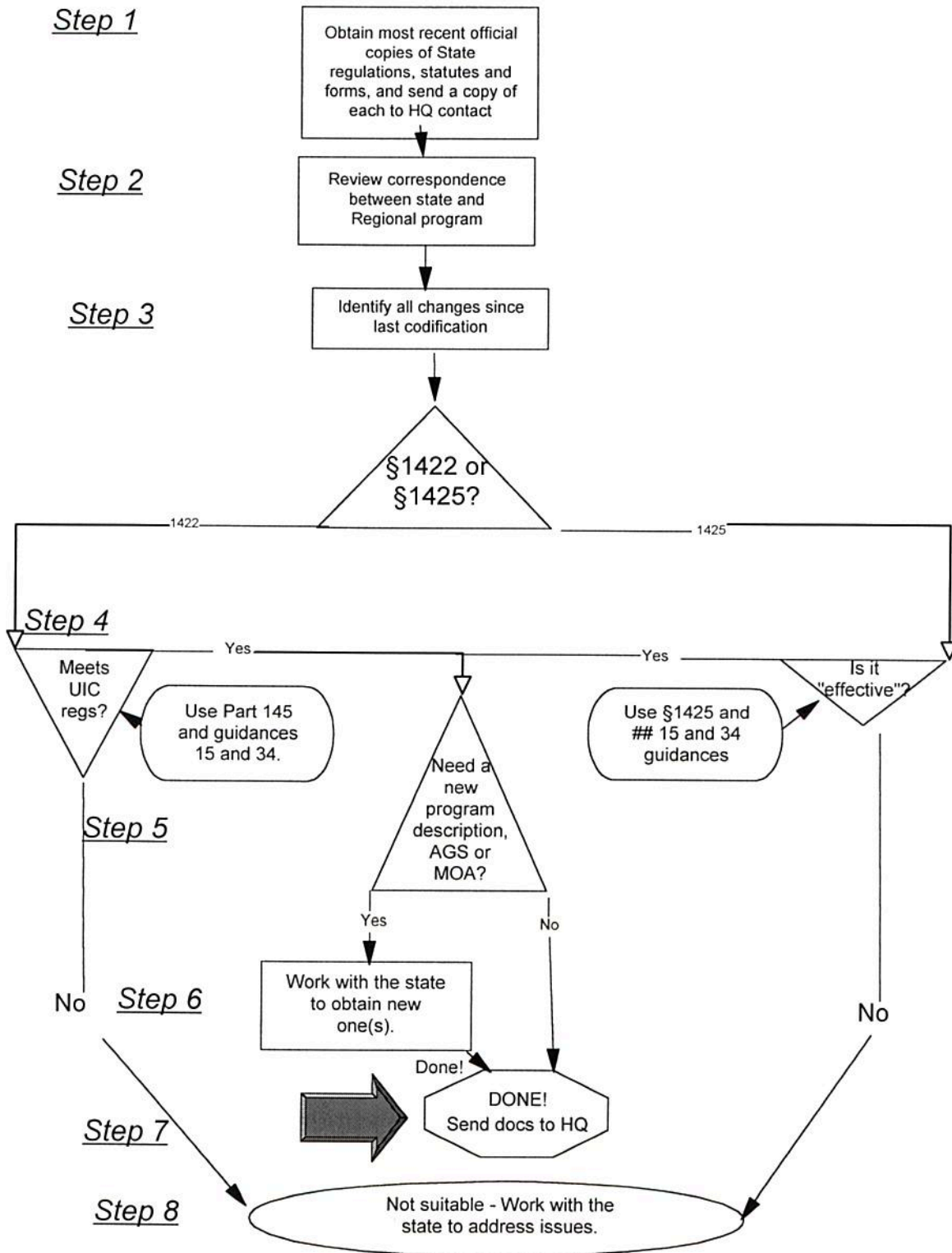
As you know the contract funds are limited and cannot be used to support only one Region or state. Taking into consideration that there are other 9 Regions that may need some contractor assistance, please send us a realistic list of needs in this respect.

The attached guidance documents mentioned above provide criteria for acceptable UIC programs as well as procedures for the modification of state programs. We believe that the aggregation of these documents will give you the information you need for deciding

your timetable for the update and codification of state programs in your Region. Please contact me at 202 260-2363 or by email if you need additional information.

We hope to hear from you in the next two weeks. Include in your response a commitment for the update and codification of the state programs. **Within the limits of the information that you currently have**, provide us also with a timetable for processing each state in your Region.

Attachments: Process flow chart, instructions, examples, guidance documents.
 Scope of Work for contractor support.
 Under separate cover:
 Guidances 15, 19 and 34.



Process for the Update and Codification of Part 147

INSTRUCTIONS FOR PART 147 UPDATE FLOW CHART

Step 1:

Obtain an original copy of the most recent State statute(s) providing the authority to regulate UIC wells. Obtain also an original copy of the most recent State regulations which implement the UIC program which has been delegated to the State. Obtain copies of all forms used in the UIC program (such as mechanical integrity test forms, monitoring and reporting forms, permit applications, etc). When all of these have been received, send a copy to the Headquarters contact for this effort. Please don't send the package piece-meal. If a new document is requested and/or sent, please clearly describe what other document it replaces/updates. A contractor may be used to organize the submitted packages and provide feed-back to the Regions.

Step 2:

Go through the correspondence record between USEPA and the State UIC program. Look for documents which are relevant and appropriate for publication in the Federal Register as defining the State's UIC program. Examples include such things as (1) quality assurance plans, (2) responses to notices of deficiencies, (3) approvals of aquifer exemptions, (4) enforcement agreements, (5) mechanical integrity test agreements, and so forth. If the correspondence is binding in some way, or specifies an important aspect of the UIC program occurring in the State, then it can be included by reference in the 40 CFR 147 update. Copies of qualifying correspondence should also be sent to Headquarters.

Step 3:

It is important in this step to carefully ascertain just which changes there are in the current state program when compared to the program referenced in Part 147. Identifying every change or difference will be very helpful in determining whether the state program still meets the minimum standards in the UIC regulations or is effective in protecting USDWs for programs delegated under §1425 of the SDWA.

Step 4:

This all-important step is the actual test for whether or not the changes that have occurred in the State program are cumulatively or individually considered substantial or non-substantial. Also, the more critical exercise to determine that USEPA is willing to support the evolved program is made at this point. It is anticipated that the vast majority, if not all, State programs are generally in a better condition now than when they were last described in the CFR at Part 147. Thus, it is anticipated that there will be no need to find ourselves at Step 8. To assist in the determination effort, look to HQ guidances and the CFR for clarity. HQ guidance on State §1425 Program Approvals (Federal Register pp. 27333-27339, 5/19/81), Guidance #15 (7/31/81), and Guidance #34 (7/9/84) are meant to provide direction about initial UIC program approvals and

subsequent UIC program updates. 40 CFR §§145.23-145.25 also sheds some light on what elements should minimally be included in various supporting descriptions of an approvable State UIC program. If it appears that the State UIC program has evolved to become either less stringent (§1422 programs), or ineffective (§1425 programs), then go to step 8. Otherwise continue to step 5.

Step 5:

After reviewing the delegated program as a whole, it may be necessary to obtain updated attorney general's statements, memoranda of agreement between the State and USEPA, or program descriptions. See the attached reminder checklist for completing this step. These things can only be provided by the State. If one or more of these documents is needed, go to the next step (Step 6). Otherwise go the Step 7.

Step 6:

After determining in the previous step that one or more of the attorney general's statements, memoranda of agreement between the State and USEPA, or program descriptions is/are needed, inform the state. Provide the state with assistance in preparing updated versions of the document(s). Attorney General Statements may be difficult to obtain within a reasonable time, so make this document a priority to review for adequacy.

Step 7:

Send the collected information to Headquarters for publication in the Federal Register, along with an action memorandum from the Regional Administrator to the Administrator recommending approval.

Step 8:

If there are significant problems with a State UIC program in its current form, work with the State to correct/address any identified deficiency. Avoid asking the state for a new primacy submittal or efforts of this caliber if all possible. If the State sufficiently addresses the issue, then enter the flow chart again at step 5.

ATTACHMENT

These are elements to consider when reviewing the most recent version of an approved Primacy package for either a §1422 or §1425 program. When looking

at the currently codified (1) program description, (2) Attorney General's Statement and (3) Memorandum of Agreement, compare the three documents' contents with what is the current Primacy program (i.e. what the delegated program actually does now). If there are updates needed in any of the three documents, have the State submit new one(s). This process is shown on the flow chart as step 5.

1. Program Description

Rules identified

Personnel described

Fiscal costs and funding mechanisms

Policies and procedures identified

Organizational structure

Field work described

Rule change process described

Quality assurance plans (required under 40 CFR Part 31 and EPA Order 5360.1)

State UIC forms (obtain copies of all of the current forms used)

Tracking procedures (i.e. enforcement, permitting, inspections, inventory)

Public participation assured

2. Attorney General's Statement

Signatory level appropriate

Reference correct statutes

Reference correct regulations

3. Memorandum of Agreement

Roles of State and Federal EPA defined

Federal action in State described

Reporting to EPA

Joint permitting, inspections, enforcement described

Review of State permits

Provision to modify the MOA

Aquifer exemption process (HQ 5/19/81 Guidance on State §1425 Program Approval also suggests that this should be in the §1425 Program Descriptions)

UNDERGROUND INJECTION CONTROL STATE PROGRAM REVISIONS FOR INCORPORATION INTO 40 CFR PART

147

TABLE FOR COLLECTING INFORMATION FOR CODIFICATION EFFORT

State Agency	Well Class Governed	State Regulations	Effective Date(s) of State Regulations	State Statute(s)	Effective Date(s) of State Statutes	Dates of Public Participation During State Regulation and/or Statute Enactment	Requirements of 40 CFR §§145.23-25			Other Important Letters to Reference
							Program Description Date	Attorney General Statement Date	MOA Date	
Illinois Department of Natural Resources	II	Illinois Code xxx								
Illinois Environmental Protection Agency	I, III, IV, V	Illinois Code xxx								
Indiana Department of Natural Resources	II	312 IAC Parts 16-17	3/25/98	Indiana Code 14, Articles 37-38						
Ohio Department of Natural Resources	II, III	Ohio Code xxx								
Ohio Environmental Protection Agency	I, IV, V	Ohio Code xxx								
Wisconsin Department of Natural Resources	IV, V	Wisconsin Code xxx								

WORK ASSIGNMENT

Assist Regional Offices in Updating 40 CFR Part 147

Work Assignment # _____
Contract # 68-C5-0061

BACKGROUND

Starting in 1983, the regulation at 40 CFR part 147 has been published and later revised to incorporate the description of Federally and State administered UIC programs. The last revision of part 147 occurred in 1991 (56 FR 9408)¹ to update the program descriptions and to incorporate by reference all rules and regulations that would allow EPA to take direct enforcement action in primacy States.

Primacy States are required to submit all revisions of laws and regulations that were used to justify delegation or otherwise affect the State UIC program to EPA Regional Offices. The Regional Offices and EPA headquarters make a determination, per UIC Guidance 34, whether the revision is to be considered "substantial"² for the purpose of its evaluation and approval. Once the submission is found to be complete, if the revisions are considered substantial, the Regional Office holds hearings to allow for public participation and review and determination of adequacy are made in headquarters. Otherwise, the process takes place in the Regional Office and the RA makes a finding of adequacy after resolving all issues. After this finding is communicated to headquarters, the program office has 45 days to comment and request changes before the revision becomes final. If the revision is considered substantial, once approved, it is published in the Federal Register. Since the great majority of program revisions had been classified as "non-substantial" it is expected that there is no record or addendum to part 147 in the Federal Register. Therefore, there is the probability that extensive new materials have to be added to part 147.

Part of the publication of the revisions in the FR includes the changes to the adoption by reference of relevant rules and regulations, which should keep all program descriptions and adoptions by reference current. However, it is very likely that either some of the States have failed to submit program revisions, or the approved revisions have not been published in the FR. An informal query of Regional Offices indicate that it is highly possible that significant changes to the Class II well-programs have occurred without corresponding notification to Regional Offices. If this is the case, there may be the intensification of activity in this area to respond to our request for data from the

¹Because of the timing of the update, rapid changes taking place in the State's UIC programs and other reasons, by the time 40CFR147 was published, substantial changes in some of the programs were not included.

²The revisions portion of UIC guidance 34 is based on §145.32 *Procedures for revision of State programs*.

Regional Offices.

STATEMENT OF WORK

The Regional offices may have different types of needs regarding contractor support. The activities mentioned below, except for task 1, will not necessarily be required for every Region. **This work assignment correspond to Work Area II, part B., sections 1 - 5.** The contractor will perform the following type of activities under this work assignment:

Task 1: Develop Workplan.

The contractor will provide the WAM with a detailed workplan, schedule and budget to complete the tasks described below.

Task 2: Obtainment of Supporting Documents

Legal copies of laws, regulations and other documents will be needed as background materials and for adoption by reference by EPA. The contractor will be directed by the WAM to obtain these types of materials from a variety of sources, including State printing offices, libraries, the Library of Congress or others. The Office of Federal Register has very specific standards on the quality and legality of the documents, the contractor will have to abide by these standards. There may be up to 10 discrete episodes for the obtainment of supporting documents.

Task 3: Compilation of Documents for Conveyance to One or More Sites

The WAM will direct the contractor to gather, catalog, organize and deliver some of the background or adoption by reference documents to one or more sites for permanent storage or for temporary purposes such as public hearings and viewing dockets. There may be up to 5 discrete episodes for this type of compilation and conveyance.

Task 4: Preparation and Arrangements for Public Hearings and Any Other meeting.

The contractor will be directed to provide assistance in the preparation of a wide variety of meetings related to the dissemination of information on the update effort or any legally required reason. Up to 8 of these preparations and arrangements for meetings may be requested from the contractor.

Task 5: Status Reporting and Interface Activities

The contractor will submit reports monthly to the WAM or other designated individual. These reports will indicate the work done over the period of time, degree of completion, diagnosis for completion at the requested date, problems encountered and any other information that the contractor deems important for the timely and effective completion of the tasks. The contractor will also be asked to send selected information to other groups inside and outside EPA.

SCHEDULE OF DELIVERABLES

<u>Task</u>	<u>Deliverable</u>	<u>Due Date</u>
Task 1	Develop Workplan	15 days after receiving the work assignment
Task 2	Obtainment of Supporting Documents	Continuous
Task 3	Compilation of Documents for Conveyance to One or More Sites	To be scheduled by the WAM with notice given 2 weeks in advance.
Task 4	Preparation and Arrangements for Public Hearing and Any Other Meeting	To be scheduled by the WAM with notice given 2 weeks in advance.
Task 5	Status Reporting and Interface Activities	Continuous