



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
WATER

MEMORANDUM

SUBJECT: UIC Program Definition of Significant Noncompliance

FROM: Michael B. Cook, Director
Office of Drinking Water *Michael B. Cook*

TO: Water Management Division Directors
Water Supply Branch Chiefs
State Directors

Background

Over the past 13 months, we have been working to develop a definition of what shall constitute "significant noncompliance" (SNC) for the UIC program. This effort began with a meeting in Denver in October 1985 and has continued to date with discussions at the UIPC Winter Meeting in Orlando in January, the UIPC Summer Meeting in San Antonio, the National Branch Chiefs Meeting in Seattle in September and at a UIPC/EPA SNC Meeting in Dallas in October.

The initial definition of SNC was sent to the Regions in March 1986 and was incorporated into the Office of Water's FY 1987 Accountability System and Mid-Year Evaluation Guide. Discussions of the SNC definition after March centered on guidance language that was meant to set out certain criteria for the Director to consider in determining SNC for certain MIT failures and operations over authorized pressure limits.

We have now finished these discussions and reached agreement on a definition of SNC which differs only slightly from the March 1986 version and introduced a new concept of non-SNC violations and how to deal with them.

Significant Noncompliance Definition

The definition of significant noncompliance (SNC) for the UIC program consists of the following:

- I. Violations as described in Section 144.8(a) and on EPA Form 7520-4 (6-83) by the owner/operator of a Class I or a Class IV well.
- II. The following violations by the owner/operator of a Class II, III or V well:
 - A. Any unauthorized emplacement of fluids (where formal authorization is required);
 - B. Well operation without mechanical integrity (MI) which causes the movement of fluid outside the authorized zone of injection if such movement may have the potential for endangering a USDW;
 - C. Well operation at an injection pressure that exceeds the permitted or authorized injection pressure and causes the movement of fluid outside the authorized zone of injection if such movement may have the potential for endangering a USDW;
 - D. The plugging and abandonment of an injection well in an unauthorized manner; [Note: This includes the "walking-away-from" responsibility to plug and abandon a well. These wells will be SNCs if there is endangerment of a USDW and there is an identifiable owner/operator. Appropriate action in those instances where no owner/operator can be identified remains unresolved and will be part of future MOAs between the States and EPA.]
 - E. Any violation of a formal enforcement action, including an administrative or judicial order, consent agreement, judgment or equivalent State action;
 - F. The knowing submission or use of any false information in a permit application, periodic report or special request for information about a well.

Guidance

Under II B, C and D of the SNC definition, it will be the Director's decision as to whether or not the noncompliance could result in endangerment. In making that decision, the Director shall be guided by the following:

In order that a decision is effectively supported and able to be documented, the Director shall take into consideration the following criteria when determining whether or not an MI test failure or the operation of an injection well above the permitted injection pressure represents an endangerment of a USDW. The criteria may be considered singly or in combination, as appropriate.

1. The presence/absence and location of a USDW.
2. How many levels of protection are there? How many have been breached? (This relates solely to well construction).
3. The quality of the injected fluid and the USDW.
4. Operational and geological experience in the adjacent area.
5. Well logs or additional logs.
6. Thickness of intervening layers.
7. Extent of the MIT failure.
8. Location of the MIT failure.
9. Injection pressure and rate (volume) and formation pressure.
10. The type of well - Salt Water Disposal or Enhanced Recovery?
11. Hydrogeological conditions.
12. Cementing records - bond logs.

While the responsibility for demonstrating that the noncompliance does not have a potential to endanger a USDW rests with the owner/operator, the Director may utilize information available from public records or from information submitted by the injection well owner/operator to make his decision.

Non-Significant Noncompliance (NSNC)

For injection wells that fail the mechanical integrity test or are found injecting at excessive pressure but are not considered to be SNC because of the above listed criteria, the Director will negotiate an agreement with the Region on taking appropriate action against the owner/operator according to the following guidelines:

1. A specific percent of wells in each State failing MI or found over pressure would have to come into compliance within 90 days of discovery of the failure. The percentage range discussed in Dallas was from 75 to 90 percent with the final number negotiated between the State and Region with Headquarters review.
2. State shall report quarterly the number or percentage of NSNC wells brought into compliance within 90 days.
3. The Regional Office and the State would agree on the variety of actions which the State would take to bring the remainder into compliance within a set period. Two years was a period suggested although not made final.

Reporting

The above referenced SNC definition is to be used for Federal reporting by approved State and Direct Implementation (DI) UIC programs beginning with the first quarter of FY 1987, October 1, 1986. Reporting of non-SNC MI failures and operation over pressure limits is to begin with the second quarter of FY 1987, January 1, 1987. Regions should begin immediately to negotiate with their States on the percentage of non-SNC wells brought into compliance within 90 days of discovery of the failure and the acceptable actions and time period for bringing wells that remain in noncompliance after 90 days into compliance.

Endangerment Criteria Examples

We are requesting that you provide us with examples of pass/fail conditions for each of the 12 endangerment criteria listed in the SNC definition. Specifically, we would like you to cite examples from your experience of instances where you would consider a well to be SNC or non-SNC based on one or more of the 12 listed criteria. Please send your examples to Tom Belk at Headquarters by December 19, 1986.

Additionally, please indicate what you consider to be a reasonable percentage of non-SNC wells to take appropriate action against in a 90 day period, and how long is reasonable to take action against any remaining wells. Ninety days, six months, one year, two years? If you require any clarification on this request please call Don Olson at FTS 382-5558.

After receipt of your comments we will summarize the cited endangerment/non-endangerment examples and incorporate them as a supplemental guidance. If necessary, we may discuss these examples and the time frame for dealing with non-SNC violations at the Winter UIC Meeting in Santa Fe.

cc: UIC Section Chiefs
Michel Paque, Director, UIPC