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

JAN 18 1983

MEMORANDUM

SUBJECT: California Underground Injection Control Approval Package - ACTION MEMORANDUM

FROM: Frederic A. Eidsness, Jr.
Assistant Administrator for Water (WH-556)

TO: The Administrator

THRU: AX

Purpose

Attached is a memorandum from Sonia Crow recommending your approval of the California program to regulate Class II injection wells under the Underground Injection Control Program established by the Safe Drinking Water Act.

Background

The Safe Drinking Water Act (SDWA) authorizes State Underground Injection Control (UIC) programs designed to protect underground sources of drinking water from endangerment by the subsurface emplacement of fluids through injection wells. We have promulgated minimum national requirements for effective State programs. These requirements are codified in 40 CFR 122, 123, and 124 (the Consolidated Permits regulations) and 40 CFR 146 (the related Technical Criteria and Standards).

Within 90 days of the receipt of an application from a State, you are to approve, disapprove or approve in part and disapprove in part the State's UIC application (program). This period may be extended by agreement between EPA and the State. If a State fails to apply, or if you disapprove its application, the Agency must prescribe and implement the UIC program in that State.

In December of 1980, Congress amended the SDWA by adding a Section 1425. Section 1425 provides that a State may obtain your approval for the oil and natural gas related (Class II) portion of its UIC program, not by demonstrating that its

program meets the requirements of our regulations, but by demonstrating that its Class II UIC program meets the requirements of the Act and represents an effective program to prevent underground injection which endangers drinking water sources. The deadline for the submission of applications, the review process, and the consequences of disapproval remain the same.

This application from California was received in our Region IX office on April 5, 1982, and covers the UIC program with respect to all Class II oil and natural gas related injection wells. The State has agreed to an extension of the review period. The California program which covers Classes I, III, IV, and V injection wells is expected to be submitted during FY 1983. Your approval of this application would, therefore, represent a partial approval of the complete California UIC program.

Discussion

a. Questions Resolved

Region IX staff has been working with the California Division of Oil and Gas (CDOG) for some time in developing this application. A Headquarters review group, including representatives of the Offices of Drinking Water, General Counsel, Enforcement Counsel, Water Enforcement and Permits, and Solid Waste, has also reviewed both the draft and final applications.

Two serious problems were surfaced in the review.

1. A crucial tool for an oil and gas regulatory agency is the ability to use pipe-line severance or closure in an enforcement action. The CDOG does not have such authority. Consequently, the State was asked to demonstrate that it had an effective enforcement program even without such authority. The CDOG was able to demonstrate that its other enforcement mechanisms combined with an aggressive inspection program constituted an effective program to protect underground sources of drinking water.

2. In its permitting process for underground injections, the CDOG uses a letter of approval instead of a form permit to set out conditions for operations. This procedure posed two questions:

- Could the letter of approval be considered a permit and therefore be an enforceable document; and

- Would compliance with the letter of approval by the operator serve as a shield, i.e., in any way relieve the operator from compliance with other applicable statutes and regulations?

The Attorney General was able to give positive assurance on these two questions. Therefore, we can consider the project plan approval letter to be enforceable, and that compliance with conditions does not constitute a shield.

b. Economic Impacts

The underlying regulations do generate certain costs of compliance. However, approval of the California UIC program does not in itself impose any additional costs since the regulated community must comply with either a State or Federal UIC program.

c. Expected Reactions

The approval of the California application would enjoy the support of the State, Congress, and industry in general.

Recommendation

Consequently, I recommend that you sign the attached Federal Register notice approving the California UIC program for Class II oil and natural gas related injection wells.

CONCURRENCES

Robert M. Perry JAN 25 1983 ✓ Concur ____ Nonconcur
Robert M. Perry
Associate Administrator
for Legal and Enforcement Counsel

Attachments
RA Recommendation
Federal Register Notice
Responsiveness Summary