

## **APPENDIX A**

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### **SECTION 1428 OF THE 1986 AMENDMENTS TO THE SAFE DRINKING WATER ACT TO ESTABLISH WELLHEAD PROTECTION AREAS**

(NNEPA's Guidance in establishing Wellhead Protection Regulations)

**(a) State Programs** —The Governor or Governor's designee of each State shall within 3 years of the date of enactment of the Safe Drinking Water Act Amendments of 1986, adopt and submit to the Administrator a State program to protect wellhead areas within their jurisdiction from contaminants which may have any adverse affect on the health of persons. Each State program under this section shall, at a minimum —

1. specify the duties of State agencies, local governmental entities, and public water supply systems with respect to the development and implementation of programs required by this section;
2. for each wellhead, determine the wellhead protection area as defined in subsection (e) based on all reasonable available hydrogeologic information on the ground water flow, recharge and discharge and other information the State deems necessary to adequately determine the wellhead protection area;
3. identify within each wellhead protection area all potential anthropogenic sources of contaminants which may have any adverse effect on the health of persons;
4. describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of control measures, education, training, and demonstration projects to protect the water supply within wellhead protection areas from such contaminants;
5. include contingency plans for the location and provision of alternate drinking water supplies for each public water system in the event of well or wellfield contamination by such contaminants; and
6. include a requirement that consideration be given to all potential sources of such contaminants within the expected wellhead area of a new water well which serves a public water supply system.

**(b) Public Participation** — To the maximum extent possible, each State shall establish procedures, including but not limited to the establishment of technical and citizens' advisory committees, to encourage the public to participate in developing the protection program for wellhead areas. Such procedures shall include notice and opportunity for public hearing on the State program before it is submitted to the Administrator.

**(c) Disapproval —**

- 1. In General —** If, in the judgement of the Administrator, a State program (or portion thereof, including the definition of a wellhead protection area), is not adequate to protect public water systems as required by this section, the Administrator shall disapprove such program (or portion thereof). A State program developed pursuant to subsection (a) shall be deemed to be adequate unless the Administrator determines, within 9 months of the receipt of a State program, that such program (or portion thereof) is inadequate for the purpose of protecting public water systems as required by this section from contaminants that may have any adverse effect on the health of persons. If the Administrator determines that proposed State program (or any portion thereof) is inadequate, the Administrator shall submit a written statement of the reasons for such determination to the Governor of the State.
- 2. Modification and Resubmission —** Within 6 months after receipt of the Administrator's written notice under paragraph (1) that any proposed State program (or portion thereof) is inadequate, the Governor or Governor's designee, shall modify the program based upon the recommendations of the Administrator and resubmit the modified program to the Administrator.

**(d) Federal Assistance —** After the date 3 years after the enactment of this section, no State shall receive funds authorized to be appropriated under this section except for the purpose of implementing the program and requirements of paragraphs (4) and (6) of subsection (a).

**(e) Definition of Wellhead Protection Area —** As used in this section, the term, 'wellhead protection area' means the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield. The extent of a wellhead protection area, within a State, necessary to provide protection from contaminants which may have any adverse effect on the health of persons is to be determined by the State in the program submitted under subsection (a). Not later than one year after the enactment of the Safe Drinking Water Act Amendments of 1986, the Administrator shall issue technical guidance which States may use in making such determinations. Such guidance may reflect such factors as the radius of influence around a well or wellfield, the depth of drawdown of the water table by such well or wellfield at any given point, the time or rate of travel of various contaminants in various hydrologic conditions, distance from the well or wellfield, or other factors affecting the likelihood of contaminants reaching the well or wellfield, taking into account available engineering pump tests or comparable data, field reconnaissance, topographic information, and the geology of the formation in which the well wellfield is located.

**(f) Prohibitions —**

- 1. Activities Under Other Laws —** No funds authorized to be appropriated under this section may be used to support activities authorized by the Federal Water Pollution Control Act, the Solid Waste Disposal Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or other sections of this Act.
- 2. Individual Sources —** No funds authorized to be appropriated under this section may be used to bring individual sources of contamination into compliance.

**(g) Implementation —** Each State shall make every reasonable effort to implement the State wellhead area protection program under this section within 2 years of submitting the program to the Administrator. Each State shall submit to the Administrator a biennial status report describing the State's progress in implementing the program. Such reports shall include amendments to the State program for water wells sited during the biennial period.

**(h) Federal Agencies —** Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any potential source of contaminants identified by a State program pursuant to the provisions of subsection (a) (3) shall be subject to and comply with all requirements of the State program developed according to subsection (a) (4) applicable to such potential source of contaminants, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable charges and fees. The President may exempt any potential source under the jurisdiction of any department, agency, or instrumentality in the executive branch if the President determines it to be the paramount interest of the United States to do so. No such exemption shall be granted due to the lack of an appropriation unless the President shall have specifically requested such appropriation as part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

**(i) Additional Requirement —**

- 1. In General —** In addition to the provisions of subsection (a) of this section. States in which there are more than 2,500 active wells at which annular injection is used as of January 1, 1986, shall include in their State program a certification that a State program exists and is being adequately enforced that provides protection from contaminants which may have any adverse effect on the health of persons and which are associated with the annular injection or surface disposal of brines associated with oil and gas production.
- 2. Definition —** For purposes of this subsection, the term 'annular injection' means the reinjection of brines associated with the production of oil or gas between the production and surface casings of a conventional oil or gas producing well.

3. **Review** — The Administrator shall conduct a review of each program certified under this subsection.
4. **Disapproval** --- If a State fails to include the certification required by this subsection or if in the judgement of the Administrator the State program certified under this subsection is not being adequately enforced, the Administrator shall disapprove the State program submitted under subsection (a) of this section.

**(j) Coordination With Other Laws** — Nothing in this section shall authorize or require any department, agency, or other instrumentality of the Federal Government or State or local government or apportion, allocate or otherwise regulate the withdrawal or beneficial use of ground or surface waters, so as to abrogate or modify any existing rights to water established pursuant to State or Federal law, including interstate compacts.