



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

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OFFICE OF WATER

MEMORANDUM

SUBJECT: Guidance for Case-by-Case Extension Petitions for Class I Hazardous Waste Injection Wells With Submitted No Migration Petitions; UIC Program Guidance #69

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TO: Water Division Directors
Regions I-X

Purpose

This memorandum serves as guidance for action on case-by-case extensions under Section 3004(h)(3) of the Resource Conservation and Recovery Act, from the effective date of land disposal restrictions for deep well injection of hazardous wastes as provided under 40 CFR §§148.4 and 268.5.

RCRA Section 3004(h)(3)

RCRA Section 3004(h)(3) allows the Administrator to grant a case-by-case extension of the effective date of applicable prohibitions on injected hazardous waste established under 40 CFR 148 Subpart B. Procedures and standards for granting a case-by-case extension are found in 40 CFR §268.5. The case-by-case extension may be granted for up to one year, and is renewable once for no more than one additional year.

Injection well operators, who have submitted timely no migration petitions for exemption from the land ban, may not have their petitions approved in time to avoid an applicable effective date due to the extensive administrative procedures required to process these petitions. These facilities will have to either shut down or severely curtail their operations. The Agency has clarified certain procedures and requirements necessary for granting a case-by-case extension in the preamble to the Third Thirds final rule promulgated on May 8, 1990 (55 FR 22520), as they may apply in the context of no migration petitions. In certain cases, the Agency has reviewed a no migration petition and has proposed (or will shortly propose) a no migration variance. However, because EPA will not be in a position to grant final approval by the applicable prohibition date, such facilities may now wish to apply for a case-by-case extension.

Commitment to Provide Protective Disposal Capacity

In order to be granted a case-by-case extension, RCRA requires that the applicant must demonstrate that a binding contractual commitment has been made to construct or otherwise provide alternative treatment, recovery, or disposal capacity that protects human health and the environment. The Agency has interpreted "disposal capacity that protects human health and the environment" to mean a no-migration unit.

The Agency believes that the statutory requirement to obtain a "binding contractual commitment to construct or otherwise provide" ... "disposal capacity" may, in the case of already constructed and permitted injection wells, be satisfied where the facility has in a timely manner pursued a no migration variance and the Agency has found the petition technically adequate to propose a no migration variance. See 55 FR 22673.

EPA's proposing to approve a no migration petition is a sufficient demonstration that the petitioner has made an objective commitment to provide protective disposal capacity. The subsequent finding of no migration is then contingent on Agency action.

Eligibility

Case-by-case extension requests should only be considered for timely and appropriate no migration petitions. When the clear indication is that the no migration petition will be denied, the Agency will not review the case-by-case petition, and the petitioner should be notified at the same time he is notified of the status of the no migration petition.

Information to be Submitted by Operators

An administrative record should be maintained for each application for a case-by-case extension. This record will be made available for public review and comment. All supporting documentation and correspondence regarding the case-by-case extension application should be included in the record.

The Agency must first obtain a written request from the operator for a case-by-case extension under §268.5.

Additionally, applicants should consult §268.5 for information requirements for case-by-case extensions and provide the necessary documentation. The applicant must demonstrate:

- #1. That he has made a good faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his waste in accordance with the effective date of the applicable restriction established.

This demonstration should include contacts made with reasonably available, commercial treatment, recovery, or no migration facilities. Good faith efforts can be evaluated in light of the relatively short period of time expected between the August 8, 1990 prohibition date and the date EPA expects to make final decisions on the no migration variances. Good faith efforts can also be evaluated in light of potential logistic problems as described under number (3) below.

#2. He has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery, or disposal capacity that meets the treatment standards or, where treatment standards have not been specified, such treatment, recovery, or disposal capacity is protective of human health and the environment.

As discussed above, where an operator has timely filed a petition sufficient to warrant a proposed no migration finding, he can qualify as "committed...to otherwise provide...disposal capacity".

#3. Due to circumstances beyond the applicant's control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity will result in the capacity not being available by the applicable effective date.

To satisfy (3), information should be provided by the applicant detailing for his injection facility, the technical and practical difficulties associated with providing the alternative capacity resulting in the capacity not being available by the applicable effective date. This documentation should include the dates that a no migration petition was submitted, revision dates, and pertinent scheduling considerations that were involved in the Agency's processing of the petition. The applicant may also cite retooling, repiping, construction, equipment modification, and transportation logistics that would need to be considered, and should provide a schedule which outlines the time period needed in order to develop alternative capacity or obtain treatment necessary for the wastes.

#4. The capacity being constructed or otherwise provided by the applicant will be sufficient to manage the entire quantity of waste that is the subject of the application.

#5. He provides a detailed schedule for obtaining required operating and construction permits or an outline of how and when alternative capacity will be available.

The applicant should provide appropriate statements in his case-by-case extension petition to satisfy (4) and (5). The petitioner may include appropriate schedules, correspondence, and other documentation developed during the course of his no migration petition review by the Agency. An estimation of when his petition should receive preliminary and final approval should suffice.

#6. He has arranged for adequate capacity to manage his waste during an extension and provides documentation in the application of the location of all sites at which the waste will be managed.

This information should be included in the case-by-case extension application by the operator.

#7. Any waste managed in a surface impoundment or landfill during the extension period will meet the requirements of §268.5(h)(2).

The wastes are managed by Class I hazardous waste injection wells, therefore the demonstration under (7) does not apply.

Additional Considerations

Appropriate certification must be provided by the applicant as under §268.5(b). As outlined in §268.5(c), the Administrator may request any additional information he deems necessary to evaluate the application. Any extension will apply only to waste generated at the individual facility. See §268.5(d). This precludes the granting of a case-by-case extension to commercial injectors.

Consultation with the appropriate State agencies in all affected States is required under §268.5(e), and such consultation should be initiated as early as possible during the review process.

Procedures

A. Delegation of Authority

The Office of Drinking Water initiated the delegation of authority to act on case-by-case extension applications (for underground injection wells) to the Regional Administrator with provision to redelegate authority to the Division Director level. This redelegation was signed by the Administrator on June 15, 1990.

B. Federal Register Notices

Case-by-case extension proposals and final approvals may be published in the Federal Register for an individual facility or for groups of facilities on a Regional basis in one notice. Appropriate Federal Register language will be provided to each Region requiring it by Headquarters.

Adequate public comment opportunity is required for case-by-case extensions. A 30-day public comment period is appropriate for §268.5 extensions. The administrative record for the case-by-case extension application, as well as the no migration petition's administrative record, should be made available by the Agency to the public for review.

C. Effective Date of Case-by-Case Extension

A final case-by-case extension approval is effective upon signature. The approval must subsequently be published in the Federal Register.