



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

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OFFICE OF ENFORCEMENT

MEMORANDUM

Subject: Conflicting Regulation of Infiltration Galleries by the
Office of Ground Water and Drinking Water and the
Office of Solid Waste

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To: James R. Elder
Director
Office of Ground Water and Drinking Water

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Director
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The purpose of this memorandum is to alert you to a regulatory and enforcement problem that has been created by the conflicting regulation of infiltration galleries by the Office of Ground Water and Drinking Water (OGWDW) and the Office of Solid Waste (OSW). We ask for your assistance in correcting this conflict as discussed further below.

Background

On April 2, 1991, OSW published a final rule in the Federal Register extending the final compliance date with the Toxicity Characteristics Leaching Procedure (TCLP) Rule for certain types of facilities, including some injection wells. The rule did not extend the compliance date for infiltration galleries, reasoning that they were not injection wells. Such reasoning was applied by OSW after being informed by staff for the Underground Injection Control (UIC) Branch, OGWDW that infiltration galleries were not injection wells. This view is contrary to the position previously taken by this Office, the Department of Justice and several Regions in enforcement and permit actions.

On June 11, 1991, in a conference call with the Regional UIC Section Chiefs and George Hoessel of the Headquarters UIC Branch, Mr. Hoessel acknowledged and agreed with the Regions that the

design and operation of infiltration galleries are not significantly different from leachfields or septic systems with leachfields/drainfields that are currently regulated under the UIC program as injection wells.¹ In addition, during the conference call we learned that several of the Regions are currently regulating infiltration galleries as injection wells and either have permitted them or have permits pending.²

During the joint National 5X28 Class V Enforcement Initiative conducted by OGWDW and the Office of Enforcement (OE), we were requested by OGWDW to consult the Department of Justice as to whether the Department would enforce against owners and operators of leachfields or septic systems with leachfields/drainfields, i.e., to determine whether the Department considered these units to be injection wells. At that time, the representative from the Department informed our office that he considered these units to be injection wells.

We have also consulted with the Office of General Counsel staff and have been assured that leachfields and septic systems with leachfields/drainfields are within our regulatory authority pursuant to the Safe Drinking Water Act though the exact regulatory language addressing these units could be clearer.

Office of Enforcement's Concern

Our Office has been informed by several Regional UIC technical experts that they cannot significantly distinguish the design or operation of infiltration galleries from leachfields or septic systems with leachfields/drainfields so as to support the UIC program's regulation and enforcement against owners and operators of leachfields or septic systems with leachfields/drainfields in the face of the conflicting OSW Final

¹ Attached are four documents produced by OGWDW stating the Agency position on septic systems, leachfields and drainfields. In summary, these documents indicate that the intent of the UIC program is to protect underground sources of drinking water through regulation of the subsurface emplacement of fluids via septic systems with leachfields/drainfields and via subterranean leachfields/drainfields.

² Approximately sixty (60) infiltration galleries are inventoried in the five (5) Regions that responded. The number is expected to grow significantly as the technology becomes accepted practice for remediation and storm water management. Two (2) UIC permitted facilities would be directly affected by the April 2, 1991, Federal Register notice banning these operations. These facilities are associated with remediation at a refinery and the injected fluids exceed the TCLP during the initial phase of the project.

Rule of April 2, 1991 that infiltration galleries are not injection wells. This raises an immediate concern that the OSW Final Rule of April 2, 1991 could potentially compromise the joint National 5X28 Class V Enforcement Initiative by calling into question our regulatory authority over septic systems with leachfields/drainfields. It also raises more long term concerns that the regulation of, and enforcement against, owners and operators of leachfields or septic systems with leachfields/drainfields could be jeopardized by the OSW publication.

Recommendations

We recommend that the OSW April 2, 1991 Federal Register publication be amended to clarify that infiltration galleries are injection wells, and to either base the failure to extend the compliance date with the TCLP on another reason or extend the compliance date for infiltration galleries. We also recommend the UIC regulations be clarified to the extent necessary to indicate that leachfields, septic systems with leachfields/drainfields and infiltration galleries are injection wells.

We offer our assistance in an effort to resolve the conflict. In addition, we have consulted with the Office of General Counsel and they too are willing to assist in resolving this conflict.

Attachments

cc: Lee Schroer, OGC