Executive Order 13563

President Obama explained that our regulatory system must:

- Protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation
- Be based on the best available science
- Allow for public participation and an open exchange of ideas
- Promote predictability and reduce uncertainty
- Identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends
- Take into account benefits and costs, both quantitative and qualitative
- Ensure that regulations are accessible, consistent, written in plain language, and easy to understand
- Measure, and seek to improve, the actual results of regulatory requirements

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President Obama also reaffirmed the Executive Order 12866 of September 30, 1993 directive that “to the extent permitted by law, each agency must, among other things”:

- Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify);
- Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;
- Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);
- To the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and
- Identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

Flexible Approaches

Sec. 4. Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.

Sec. 6. (a) To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible.

Modify, Streamline, Expand, Repeal

In response to EPA’s invitation under Executive Order 13563, the Underground Injection Technology Council (the UITC) provided recommendations for underground injection control (UIC) regulations that should be modified, streamlined, expanded, or repealed, to make the Agency's UIC regulatory program more effective or less burdensome in achieving its regulatory objectives.

- Consensus building project of the Ground Water Protection Council (GWPC)
- Collective experience of UITC members in operating underground injection wells in a number of different well classes
- EPA engagement with states and the GWPC to establish a national database for UIC program data
The work on a national database for UIC program has yielded a new appreciation for the data that will prove most useful for informing EPA, state governors and agencies, legislators and the public about the UIC program.

The time is ripe to reassess how to improve UIC record keeping and reporting requirements.

Other improvements should be made at the same time.
Revise Land Ban Exemptions

- Revise the hazardous waste disposal injection restriction exemption petition approval/modification process for petitions to allow injection of a waste prohibited under subpart B of Part 148.

- This will help to eliminate the large backlog of pending petition actions in EPA regional offices.
Longer Interval for Pressure Fall-off Testing for Class I HW Wells

- The requested revision would allow UIC program Directors the discretion to reduce the frequency of pressure fall-off testing where more frequent testing would not be expected to provide additional useful information (i.e., where previous tests have established a consistent pattern that is not expected to change, or where the data generated is not expected to be susceptible of useful analysis).

- The revision is also modified to clarify that the testing of one well at each facility may be sufficient and therefore the Director is given the discretion to allow the testing of just one well.

- These revisions would still reserve the Director’s ability to specify shorter testing intervals and testing of multiple wells where the Director concludes that such a requirement is necessary.
Molecular Diffusion for Non-migration

- Clarify that operators may use “short form” criteria in lieu of a more complicated methodology.
- Operators should not be required to quantify molecular diffusion if the separation between the top of their injection interval and the top of their injection zone exceeds an appropriate minimum value.
- Alternatively, operators should be allowed to base molecular diffusion calculations on a conservative generic concentration reduction factor and diffusion coefficient in lieu of site-specific values.
Aquifer Exemptions

- Make aquifer exemptions available option for all classes of injection wells wherein deep aquifers (>5,000 feet to 12,000 feet) that may meet the definition of USDW solely from a TDS concentration standpoint but also meet applicable standards for exemption are not automatically disqualified from consideration as a matter of standard agency practice.

- Allow exemptions for zones not intended for use as an injection zone, but that underlie proposed injection zones.

- Unwarranted, unilateral treatment as USDWs of all deep, poor quality, uneconomic to produce waters can force communities and states to use less environmentally protective technologies for waste management or to forego highly beneficial economic activity.

- Use realistic and protective boundary determinations.
The requested change with respect to maintaining mechanical integrity is designed to focus attention on the importance of operator response to a loss or potential loss of mechanical integrity as specified in Section 146.67(f) and (g).

These sections require prompt cessation of injection in the event of an apparent or actual loss of mechanical integrity and provide that a well lacking mechanical integrity may not be returned to service until mechanical integrity has been restored and demonstrated.

The requested change is designed to make it clear that if these requirements are satisfied and no other consequences involving a program violation have occurred, a loss of mechanical integrity alone should not be considered to be a program violation.

What is important is the manner in which the operator responds to the loss or potential loss of mechanical integrity.
Revisions to Section 146.69 have been requested in order to make it clear that only changes in annulus fluid volume that would represent potential leaks in the casing, tubing, or packer need to be reported. This would allow the accommodation of changes that only represent temperature and similar kinds of effects but do not represent net changes in the volume of annular fluid. Other clarifications are requested and an extension of the reporting requirement from thirty (30) days to ninety (90) days to allow sufficient time for the submission of workover and MIT reports.
RAT Survey Timing Flexibility

- Unless site specific technical details justify greater frequency, allow modifications in radioactive tracer survey requirements for hazardous waste injection wells.
- Allow Directors to extend the time period from annual for up to every five years.
- Add flexibility to allow operators to coordinate with scheduled shutdowns.
Ambient Pressure Monitoring

- Allow Director discretion to decrease ambient pressure monitoring frequency
- Based on site-specific conditions and/or submittal of an alternate analysis of reservoir performance based on continuous injection pressure and rate monitoring data
- Specify methods in the applicable UIC permit as a substitute for ambient static monitoring
Continuous Monitoring

- Clarify that the frequency of monitoring and recording which meets the definition of “continuous”, should be a function of
  1. Instrument technology,
  2. Interval sufficient to maintain proper operation of the disposal well while providing sufficient historical indication of this proper operation, and
  3. How to satisfy the intent of the UIC regulations to protect the nearest USDW

  See TCEQ Guidance, Attachment J.
Automatic Permit Transfer

- Changes in Section 144.38(b)(3) should allow expedited permit transfer once financial assurance requirements are satisfied.
- A change in ownership that involves no significant changes in wastestreams or methods of operation should not require reconsideration of permit terms other than financial assurance.
Allow Permittee Requested Revisions

- UIC program Directors are not clearly authorized to initiate a permit modification or reissuance at the request of the operator.
- Requested revisions would clarify that the UIC program Director has the discretion to initiate such a modification process;
- Would not require that such action be taken by the UIC program Director in every case.
Expand Minor Modifications

- The requested UIC regulation revisions would expand the number of permit modifications that could be processed as minor modifications.
- Allow minor modifications to effectuate changes in compliance schedules necessary to take account of unexpected contingencies.
- Allow changes in sampling, monitoring, analysis, corrective action, closure, post-closure, and other “plans” that are incorporated in a permit by reference.
Clarify Area of Review Requirements

- Area of review (AoR) requirements changed for Class I HW wells in 1988
- Necessary to include an AoR requirement in Part 148 because some states previously required a smaller AoR
- Primacy states have complied with the 1988 revisions to Part 146
- No further need for a duplicative Part 148 AoR requirement
- Duplicative requirement causes confusion over whether redundant AoR is necessary after state Director approves AoR compliance
- Compliance with the updated Part 146 requirement is sufficient for a Part 148 no migration exemption demonstration.
- Requested Section 148.20(a)(2) revision will clarify what is required.
“transmissive faults or fractures”

- It is possible to demonstrate adequate containment and satisfy the no migration exemption requirements even if transmissive faults or fractures are present but contained completely within the injection zone.

- Presence of transmissive faults or fractures may also be irrelevant to a no migration demonstration based on waste transformation.

- Where adequate demonstrations can be made, EPA should be able to grant no migration exemption approval.

- Requested revisions to Section 148.20(c) clarify this.
New Waste Codes for Authorized Wastes

- GWPC requested a new Subsection 148.20(g) to provide that a nonsubstantive revision to an exemption approval can be made to add a waste code that becomes newly applicable to a waste stream for which no migration exemption demonstration has been made.

- Occurs when EPA amends RCRA regulations to apply new waste codes to existing waste streams

- Existence of a new code is not relevant for determining whether or not demonstration is adequate
Other Issues

- Clarify that “annual” mechanical integrity testing means that tests must be conducted once each “calendar year.”
- Eliminate any requirement that operating and monitoring records be retained for as long as a facility is permitted unless delivered to EPA.
- Allow 90 or 120-day extensions for tests requiring shut-ins.
- Eliminate reporting of unnecessary minimum and average values.
- Correct waste minimization certification requirement to clarify that certifications are made by permittees, not incorporated in permits.
- Broaden § 144.13 to allow Class IV wells associated with “authorized” or voluntary cleanups under state-run programs.
- Correct Section 40 CFR 146.6(a)(1)(i) and (ii) cross-references.
For More Information

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