

NAVAJO NATION
SAFE DRINKING WATER ACT

TITLE 22, NAVAJO NATION CODE
CHAPTER 11 - WATER CODE
SUBCHAPTER 15 - NAVAJO NATION SAFE DRINKING WATER ACT

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SUBCHAPTER 1 - GENERAL PROVISIONS

101. TITLE

This Act may be cited as the Navajo Nation Safe Drinking Water Act (NNSDWA).

102. GENERAL POLICY

It is the policy of the Navajo Nation to recognize, preserve, and protect the health and welfare of the Navajo people by ensuring that water is safe for drinking and to protect underground sources of drinking water from contamination by the subsurface emplacement of fluids by injection wells as well as by surface and subsurface discharges.

103. PURPOSE

The purpose of this Act is to protect the health and welfare of the Navajo people and the environment by establishing appropriate drinking water standards to ensure that drinking water is safe for consumption, and by protecting underground sources of drinking water from potential contamination by underground injection activities.

104. DEFINITIONS

1. **ADMINISTRATOR** means the Administrator of the United States Environmental Protection Agency.
2. **AQUIFER** means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.
3. **ATTORNEY GENERAL** means the Attorney General of the Navajo Nation.
4. **CONTAMINANT** means any physical, chemical, biological or radiological substance or matter in water, including uranium and other radiological isotopes.
5. **COMMUNITY WATER SYSTEM** means a public water system that a) serves at least 15 service connections used by year-round residents of the area served by the system; or b) regularly serves at least 25 year-round residents. Community water systems serve a residential population on a year-round basis. Users of community systems are likely to be exposed to any contaminants in the water supply over an extended time period.
6. **DIRECTOR** means the Executive Director of the Navajo Nation Environmental Protection Agency or his/her designee.

7. ENDANGERMENT TO DRINKING WATER SOURCES means, in reference to underground injection, that such injection may result in the presence of any contaminant in underground water which supplies or can reasonably be expected to supply a public water system, and that the presence of such contaminant may result in such system's not complying with a Navajo Nation Primary Drinking Water Regulation or may otherwise adversely affect the health of any person.
8. EPA means the United States Environmental Protection Agency.
9. EXEMPTED AQUIFER means an aquifer or portion of an aquifer that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures in the Navajo Nation Underground Injection Control regulations.
10. EXEMPTION means a waiver granted by the Director to a public water system pursuant to this Act and regulations promulgated hereunder.
11. FLUID means any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.
12. GROUNDWATER means water below the land surface in a zone of saturation.
13. INJECTION WELL means a "well" into which "fluids" are being injected.
14. LEAD - FREE when used with respect to solders and flux, means not more than 0.2 percent lead, and when used with respect to pipes and pipe fittings, means not more than 8.0 percent lead.
15. MAXIMUM CONTAMINANT LEVEL means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system, except in the case of turbidity, where the maximum permissible level is measured at the point of entry to the distribution system.
16. NAVAJO NATION means
 - A. When referring to the body politic, except as the context may otherwise require, the same meaning as set forth in 1 N.N.C. §552.
 - B. When referring to governmental territory, all lands and water within the territorial boundaries of the Navajo Nation, including:
 - i. all lands and waters within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency or within the boundaries of Navajo dependent Indian communities, including all

lands within the boundaries of Navajo chapter governments, all without regard to the nature of title thereto;

- ii. all lands and waters held in trust by the United States for, or restricted by the United States, or otherwise set apart under the superintendence of the United States for, the use of the Navajo Nation, or benefit of the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indians as such; and
 - iii. all other lands and waters over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.
17. NAVAJO NATION ENVIRONMENTAL PROTECTION AGENCY or NNEPA means the agency established by the Navajo Nation Council pursuant to CAP-47-95, 2 N.N.C. §§ 1921 et seq., to carry out the environmental laws and regulations adopted by the Navajo Nation.
18. NONCOMMUNITY WATER SYSTEM means a public water system that is not a community water system.
19. PERSON means any individual, public or private corporation, company, partnership, firm, association or society of persons, the federal, state or local governments or any of their programs or agencies, any Indian tribe, including the Navajo Nation, or any of its agencies, divisions, departments, programs, enterprises, companies, chapters or other political subdivisions.
20. PRIMARY DRINKING WATER REGULATIONS means requirements promulgated under this Act that 1) apply to public water systems, 2) specify contaminants which, in the judgment of the Director, may have an adverse effect on the health of persons, 3) specify for each contaminant either (a) a maximum contaminant level if, in the judgment of the Director, it is economically and technologically feasible to ascertain the level of contaminant in public water systems, or b) if, in the judgment of the Director, it is not economically or technologically feasible to so ascertain the level of contaminant, each treatment technique known to the Director which leads to a reduction in the level of contaminant sufficient to satisfy the requirements of § 1412 of the SDWA, 42 U.S.C. § 300g-1, and of subchapter 3 of this Act; and 4) contain criteria and procedures to assure a supply of drinking water which dependably complies with maximum contaminant levels, including accepted methods for quality control and testing procedures to ensure compliance with such levels and to ensure proper operation and maintenance of the public water system, and requirements as to a) the minimum quality of water which may be taken into the system and b) siting for new facilities for public water systems.

21. PUBLIC WATER SYSTEM OWNER OR OPERATOR means any person who owns and/or operates a public water system.
22. PUBLIC WATER SYSTEM
- a. The term “public water system” means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. Such term includes: i) any collection, treatment, storage and distribution facilities under control of the operator of such system and which are used primarily in connection with such system; and ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system is either a “community water system” or a “noncommunity water system.”
 - b. For purposes of paragraph A, a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if
 - i. The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);
 - ii. The Director determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or
 - iii. The Director determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable primary drinking water regulations.
23. PWSSP means the NNEPA program responsible for implementing and enforcing the provisions of this Act pertaining to public water systems.
24. REGULARLY SERVES means that a public water system serves an average of at least twenty-five individuals daily at least 60 days out of the year.
25. RESOURCES COMMITTEE means the standing committee of the Navajo Nation Council as defined in 2 N.N.C. §§ 691 et seq. with oversight authority

over the Navajo Nation Environmental Protection Agency as provided for by Navajo Nation Council Resolution No. CAP-47-95.

26. **SAFE DRINKING WATER ACT OR SDWA** means the Public Health Service Act, as amended by the Safe Drinking Water Act Amendments of 1986 as amended, 42 U.S.C. Section 300f et seq.
27. **SANITARY SURVEY** means an on-site review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of the source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.
28. **SECONDARY DRINKING WATER STANDARDS** means standards promulgated under this Act that apply to public water systems and specify the maximum contaminant levels which, in the judgment of the Director, are requisite to protect the public welfare primarily with regard to aesthetic qualities. Such standards may apply to any contaminant in drinking water (a) which may adversely affect the odor or appearance of water and, consequently, may cause a substantial number of persons served by the public water system providing such water to discontinue its use, or (b) which may otherwise adversely affect the public welfare. Such standards may vary according to geographic and other circumstances.
29. **TAMPER** means to introduce a contaminant into a public water system with the intention of harming persons; or to otherwise interfere with the operation of a public water system with the intention of harming persons.
30. **TOTAL DISSOLVED SOLIDS** means the total dissolved (filterable) solids as determined by use of established US EPA test methods.
31. **UNDERGROUND INJECTION ACTIVITY OR FACILITY** means any underground injection well or another facility or activity that is subject to regulation under the SDWA.
32. **UNDERGROUND INJECTION CONTROL (UIC) PROGRAM** means the NNEPA program responsible for implementing and enforcing the provisions of this Act pertaining to underground injection and the protection of underground sources of drinking water.
33. **UNDERGROUND INJECTION** means the subsurface emplacement of fluids by well injection. The term does not include the underground injection of natural gas for purposes of storage.

34. UIC OWNER OR OPERATOR means any person who owns or operates an underground injection facility.
35. UNDERGROUND SOURCE OF DRINKING WATER (USDW) means an aquifer or portion of an aquifer:
 - a. Which supplies any public water system; or
 - b. Which contains a sufficient quantity of groundwater to supply a public water system; and
 - i. Currently supplies drinking water for human consumption; or
 - ii. Contains fewer than 10,000 mg/l total dissolved solids; and
 - c. Which is not an exempted aquifer.
36. VARIANCE means a waiver granted by the Director to a public water system pursuant to this Act and regulations promulgated hereunder.
37. WELL means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than its largest surface dimension.

105. APPLICABILITY

- A. Except as otherwise provided in this section, the provisions of this Act and the regulations promulgated hereunder shall apply to all persons and all property within the Navajo Nation.
- B. This Act does not apply to any water system that meets all of the following conditions:
 1. it consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
 2. it obtains all of its water from, but is not owned or operated by, a public water system to which these regulations apply;
 3. it does not sell water to any person;
 4. it is not a carrier which conveys passengers in interstate commerce; and

5. it does not provide water to any school, tribal, state or federal governmental office or private entity serving twenty-five (25) or more employees or individuals.
- C. Except as otherwise provided in subsections D and E of this section, the provisions of this Act and/or regulations promulgated hereunder in whole or in part, shall not apply to any person or property where, but only to the limited extent that, such application would be in violation of any covenant not to regulate or otherwise exercise jurisdiction over such person or property.
- D. Notwithstanding the provisions of subsection C of this section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall apply to any person who has submitted an application for and received a permit pursuant to this Act or is otherwise subject to its provisions and to all property within the Navajo Nation owned or operated by such person.
- E. If not otherwise applicable in accordance with subsection D of this section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall apply to any person and to such property owned or operated by such person to such extent and under such terms and conditions as may be provided in any voluntary compliance agreement entered into pursuant to section 106.
- F. Nothing in this Act shall excuse the required performance of any act as set out in any other applicable law or regulation of the Navajo Nation.
- G. Nothing in this section shall be construed as a determination or admission by the Navajo Nation that any claim of covenant not to regulate or otherwise exercise jurisdiction is valid.

106. VOLUNTARY COMPLIANCE AGREEMENT

- A. Any person to whom the provisions of this Act are not otherwise applicable, may apply to the Director to enter into a voluntary compliance agreement with the Navajo Nation with respect to any property to which the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, are not otherwise applicable.
- B. A proposal to enter into a voluntary compliance agreement shall be in writing, shall indicate the person and property proposed to be subject to the agreement, shall indicate the proposed term of the agreement, and shall indicate the part or parts of this Act and/or regulations promulgated hereunder, in whole or in part, with which voluntary compliance is proposed.

- C. A voluntary compliance agreement shall be for a term of not less than one year, and may be subject to renewal for successive terms of not less than one year. A voluntary compliance agreement may not vary the requirements of this Act, except that the consent required to be given in accordance with section 702 of this Act shall be strictly limited to the application of this Act and regulations promulgated pursuant to this Act in accordance with the terms of said voluntary compliance agreement, including any renewals thereof.
- D. A voluntary compliance agreement shall not be effective unless and until there is final approval of the agreement by the Director.
- E. Except as otherwise expressly provided in the agreement, by entering into a voluntary compliance agreement, no person shall be deprived of the benefit of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property owned or operated by such person.
- F. A person may enter into a voluntary compliance agreement in accordance with this section, notwithstanding that the validity of such person's claim to be exempt from the provisions of this Act has not been judicially determined, whenever the Director determines that entering into such an agreement is in the best interest of the Navajo Nation. Entering into an agreement pursuant to this subsection shall not constitute a determination or admission by the Navajo Nation that such claim of exemption is valid.

107. AUTHORITY OF DIRECTOR

A. General Responsibilities

1. The Director is responsible for administering this Act and is authorized to exercise all the legal authority necessary for this purpose. The Director may delegate to any officer or employee of the Navajo Nation Environmental Protection Agency such of his or her powers and duties under this Act, except the making of regulations, as he or she may deem necessary or expedient.
2. The Director shall promulgate regulations for the enforcement of this Act.
3. Inventory. The Director shall establish and maintain a current inventory of all public water systems and of all underground injection facilities within the Navajo Nation.

In compiling such inventory, the Director shall review and incorporate all appropriate materials previously developed by the USEPA, by the Navajo Nation, and by other appropriate governmental agencies. It shall,

however, be the duty of each public water system owner or operator and each UIC owner or operator to provide all information needed for this inventory, and all amendments or modifications, in the form required by the Director.

The Director shall make available, at the Navajo Nation EPA offices, a copy of the inventory information and other information regarding each Navajo public water system and underground injection facility and shall provide a copy when requested to the appropriate public water system owner or operator, UIC owner or operator and to the general public.

All public water system and UIC owners and operators shall provide, in writing, all information, corrections or amendments necessary for the development and maintenance of a complete inventory.

4. Records. The Director shall establish and maintain a file for each public water system and underground injection facility listed in the inventory. With respect to public water systems, each file shall contain the information and be maintained as required by 40 CFR § 142.14, as that regulation may be amended from time to time, as well as any additional information deemed appropriate by the Director. These records shall be made available for public inspection at the office of the Director during regular business hours.
5. Reports. The Director shall submit reports to the USEPA as required by 40 CFR § 142.15, with regard to public water systems, and by 40 C.F.R. § 144. 8, with regard to underground injection facilities, as those provisions are amended from time to time. These reports shall be made available for public inspection at the office of the Director during regular business hours.

B. Contracts and Grants

The Director is authorized to:

1. In compliance with Title 2 of the Navajo Nation Code, enter into agreements, contracts or cooperative arrangements with other tribal departments, divisions or entities; with state, federal or interstate agencies; municipalities; local health departments, educational institutions or other organizations; or other persons for the purpose of ensuring the safety of drinking water or underground sources of drinking water within the Navajo Nation.

2. In compliance with Title 2 of the Navajo Nation Code, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this subchapter, provided that all monies resulting therefrom shall be deposited in PWS Fund or the UIC Fund, as the case may be, pursuant to Section 703 and as authorized under Navajo Nation law.
3. Participate in demonstration programs, such as the sole source aquifer demonstration program provided for in section 1427 of the SDWA, 42 U.S.C § 300h-6.

C. Investigations and Hearings

In order to fulfill the obligations of this Act, the Director is authorized to:

1. Conduct investigations, inspections and tests to carry out the duties of this Act;
2. Hold hearings related to any aspect of or matter within the duties of this Act and, in connection therewith, compel the attendance of witnesses and the production of records according to the procedures established in this Act;
3. Encourage voluntary cooperation by advising and consulting with persons or affected groups, tribes or states to achieve the purposes of this Act;
4. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, to carry out the purposes of this Act;
5. Compile and publish, from time to time, reports, data and statistics with respect to matters studied or investigated by the Director or at his or her direction;
6. Implement and administer the provisions of this Act; and
7. Perform such other activities as the Director may find necessary to carry out his or her functions under this Act.

D. Regulations

1. The Director is authorized to promulgate such regulations from time to time as may be necessary to carry out the provisions of this Act. Such regulations may include:
 - a. regulations governing the determination of penalties and denials, suspension or revocation of permits;
 - b. regulations governing appeals from actions taken under this Act; and
 - c. regulations governing administration of this Act by the Director.
2. Notice of any proposed regulation shall be published in a newspaper of general circulation for the areas of the Navajo Nation that are concerned and shall be given orally in English and in the Navajo language over local radio and/or television stations. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question, the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall provide a comment period of at least 30 calendar days; allow any person to submit written comments, data or documentary information; give interested persons an opportunity to present orally their views, data or arguments in the Navajo or English languages ; and keep the docket open for at least 10 days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.
3. The final regulation shall be based on the record of the rulemaking proceeding, contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.
4. The effectiveness and enforceability of the provisions of this Act shall not be dependent upon the adoption of regulations pursuant to paragraph D(1) of this section.
5. Regulations shall be effective in accordance with their terms after approval of the Resources Committee.

6. Regulations promulgated under paragraph D(1) shall contain minimum requirements for an effective program to prevent underground injection which endangers drinking water sources. Such regulations shall require that the Navajo Underground Injection Control Program:
 - a. prohibit, effective on the date on which the applicable underground injection control program takes effect, any underground injection which is not authorized by a permit issued by the EPA or NNEPA;
 - b. require
 - (i) that the applicant for a permit to inject must satisfy the Navajo Nation that the underground injection activity will not endanger drinking water sources, and
 - (ii) that no regulation may be promulgated which authorizes any underground injection which endangers drinking water sources;
 - c. include inspection, monitoring, recordkeeping, and reporting requirements; and
 - d. apply to all underground injection activities on the Navajo Nation, including but not limited to
 - (i) underground injections by Federal agencies, and
 - (ii) underground injections by any other person whether or not occurring on property owned or leased by the United States, including injection for the purpose of uranium protection.
7. Regulations pertaining to underground injection control may not prescribe requirements which interfere with or impede:
 - a. the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations; or
 - b. any underground injection for the secondary or tertiary recovery of oil or natural gas, unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

8. The regulations of the Director under this section shall permit or provide for consideration of varying geologic, hydrological or historical conditions in different areas within the Navajo Nation.
9. Nothing in this section shall be construed to alter or affect the duty of ensuring that underground sources of drinking water will not be endangered by any underground injection activities.

108. SEVERABILITY

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall remain unaffected, and to this end the provisions of this Act are declared to be severable.

109. CONSTRUCTION

- A. The provisions of this Act shall be liberally construed to fulfill the intent and purposes of this Act and so as not to conflict with applicable law of the United States.
- B. Nothing contained in this Act shall be construed to diminish, limit or otherwise adversely affect any right or remedy otherwise held or available to the Navajo Nation or its members under applicable law.

SUBCHAPTER 2 - PROHIBITED ACTS

201. USE OF LEAD PIPES, SOLDER, AND FLUX

- A. No person may use any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption which is not lead-free, as defined in section 104. This subsection shall not apply to leaded joints necessary for the repair of cast iron pipes.
- B. No person shall introduce into commerce any pipe or any pipe or plumbing fitting or fixture that is not lead-free, except for a pipe that is used in manufacturing or industrial processing.
- C. No person engaged in the business of selling plumbing supplies, except manufacturers, shall sell solder or flux that is not lead-free.

- D. No person shall introduce into commerce any solder or flux that is not lead-free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.
- E. The requirements of this prohibition on lead shall be enforced by the Director and through local plumbing codes or such other means of enforcement as the Navajo Nation may determine to be appropriate.

202. TAMPERING WITH PUBLIC WATER SYSTEMS

It shall be unlawful to tamper or attempt or threaten to tamper with a public water system. Any person who tampers or attempts or threatens to tamper with a public water system may be subject to civil and/or criminal fines, pursuant to section 803 of this Act.

203. OTHER VIOLATIONS

No person shall violate:

1. any conditions of any variance, exemption, permit or order, including cease and desist orders and orders to comply, decisions, rules, or any other actions taken pursuant to this Act;
2. any of the requirements of this Act or the regulations promulgated hereunder.

204. OPERATING A PUBLIC WATER SYSTEM WITHOUT A PERMIT

Within 90 days of the effective date of these amendments, no person shall operate or construct a public water system unless said person holds, or, in the case of an existing facility, has applied for a permit from the Director, pursuant to regulations promulgated under §701 of this Act and the NNEPA Uniform Permit Procedures, or, if a Navajo Nation PWS permit program has not yet been developed, has contacted the Director in writing and has provided whatever information the Director reasonably requests regarding the public water system.

205. OPERATING AN UNDERGROUND INJECTION FACILITY WITHOUT A PERMIT

Within 90 days of the effective date of these amendments, no person shall operate or construct an underground injection facility unless said person holds or, in the case of an existing facility, has applied for a permit from the Director, pursuant to regulations promulgated under §701 of this Act and the NNEPA Uniform Permit Procedures, or, if a Navajo Nation UIC permit program has not yet been developed, has contacted the

Director in writing and has provided whatever information the Director reasonably requests regarding the underground injection facility.

SUBCHAPTER 3 - DRINKING WATER REGULATIONS

301. PRIMARY DRINKING WATER REGULATIONS

The Director may prescribe by regulation the maximum permissible levels for contaminants in all public water systems on the Navajo Nation. These regulations shall govern monitoring and reporting of the water quality of all public water systems, and shall be at least as stringent as federal regulations promulgated pursuant to the SDWA or, with respect to quality control and testing procedures, as stringent as the alternative procedures published by the Administrator as guidance pursuant to SDWA §1401(1), 42 U.S.C. §300f(1).

302. SECONDARY DRINKING WATER REGULATIONS

The Director may prescribe by regulation controls for contaminants in drinking water that primarily affect the aesthetic qualities (such as taste, color and smell) relating to the public acceptance of drinking water. Such secondary regulations should be guided by any national secondary drinking water regulations, but may vary from any non-mandatory federal guidelines.

303. SAMPLING AND ANALYTICAL REGULATIONS

The Director may prescribe by regulation the microbiological, inorganic, organic, radioactivity, and turbidity sampling requirements.

304. REPORTING, RECORD-KEEPING AND PUBLIC NOTIFICATION REQUIREMENTS

The Director may prescribe by regulation the method of record-keeping and reporting of sample analyses as well as the requirements for public notification.

305. SURFACE WATER TREATMENT REGULATIONS

The Director may prescribe by regulation the filtration, disinfection, analytical and sampling requirements for those public water systems that use surface water and/or groundwater under the influence of surface water.

306. LEAD AND COPPER REGULATIONS

The Director may prescribe by regulation corrosion control treatment, source water treatment and lead service line replacement requirements. These regulations may also prescribe sampling requirements, analytical methods, reporting requirements and record-keeping requirements.

307. LABORATORY REQUIREMENTS

The Navajo Nation adopts the certified laboratory lists maintained by the USEPA or any state with primacy over that state's drinking water program, as they may be amended from time to time. Public water system owners or operators are required to use a certified laboratory from such lists in contracting for laboratory services. The Director may maintain a service contract with one or more certified laboratories to meet this requirement.

308. WELLHEAD PROTECTION

A. Wellhead Protection Program

The Director shall develop by regulation a program to protect wellhead areas within the Navajo Nation from contaminants that may have an adverse effect on public health. Such program shall at a minimum:

1. specify the duties of Navajo agencies, other governmental entities and public water supply systems with respect to the development and implementation of the program;
2. for each wellhead, determine the wellhead protection area as defined in subsection B based on all reasonably available hydrogeologic information on groundwater flow, recharge and discharge and other information the Director deems necessary;
3. identify within each wellhead protection area all potential anthropogenic sources of contaminants which may have an adverse effect on public health;

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 with 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;
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; and
7. Provide for the addition of new wellhead protection areas for water wells sited after promulgation of the initial program.

B. 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 necessary to provide protection from contaminants which may have an adverse effect on the public health is to be determined by the Director in the program developed under subsection A. The Director may rely on technical guidance issued by the Administrator in making such determination. In any event, the determination should reflect factors such as the radius of influence around a well or wellhead, 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 or wellhead is located.

C. Public Participation

The Director shall establish procedures to encourage public participation in developing the wellhead protection program. Such procedures may include the establishment of technical and citizens’ advisory committees and the presentation of program proposals at chapter meetings. Such procedures shall include notice and opportunity for public hearing on the program before it is promulgated by the Director.

D. Reports

Every two years after promulgation of a wellhead protection program, the Director shall submit to the Navajo Resources Committee and to the Administrator a report describing the progress in implementing the program. Such report shall include amendments to the program for water wells sited during the two-year period.

309. OPERATOR CERTIFICATION

All operators of public water systems on the Navajo Nation must be certified to operate such a facility. The Director shall develop by regulation a program, consistent with guidelines published by the Administrator pursuant to Section 1419(a) of the SDWA Amendments of 1996 (Pub. L. 104-182), to certify all public water system operators in accordance with the standards described below. The Director shall serve as the Certification Administrator. The Director shall:

- A. Implement a program requiring the certification of all operators of public water systems and requiring that such operators comply with the applicable requirements of the certification and training program;
- B. Classify all public water systems and specify operator certification, renewal and re-certification procedures and requirements for each level of classification;
- C. Establish minimum operator qualifications to validate skills, knowledge, ability and judgment for each level of classification, and include provisions for reciprocity for operator certifications from neighboring states;
- D. Establish procedures for suspension, revocation and other appropriate enforcement action for operator and owner noncompliance;
- E. Establish a fee system for the examination and certification of operators;
- F. Establish an advisory committee for ongoing involvement in the revision and operation of operator certification; and
- G. Develop a procedure to review and evaluate the adequacy of the operator certification program, including to revise the certification requirements based on revisions to applicable law and on new technology or construction techniques that change operator requirements.

SUBCHAPTER 4 - GENERAL RESPONSIBILITIES OF PUBLIC WATER SYSTEM OWNERS AND OPERATORS

401. RECORD-KEEPING

A public water system owner or operator shall retain, on the premises or at a convenient location near the premises of the public water system, the following records:

- A. Records of microbiological analyses made pursuant to this Act or the regulations hereunder shall be kept for no fewer than five years. Records of chemical analyses made pursuant to this Act or the regulations hereunder shall be kept for no fewer than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:
 - 1. The date, place and time of sampling, and the name of the person who collected the sample;
 - 2. Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or processed water sample or other special purpose sample;
 - 3. Date of analysis;
 - 4. Laboratory and person responsible for performing analysis;
 - 5. The analytical technique or method used; and
 - 6. The results of the analysis.
- B. Records of actions taken by the public water system owner or operator to correct violations of this Act or the regulations shall be kept for no fewer than 3 years after the last action taken with respect to the particular violation involved.
- C. Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any tribal, state or federal agency, shall be kept for no fewer than 10 years after completion of the sanitary survey involved.
- D. Records concerning a variance or exemption to the system shall be kept for no fewer than 5 years following the expiration of such variance or exemption.

402. REPORTING RESULTS OF TESTS AND ANALYSES

- A. It shall be the duty of each public water system owner or operator to ensure that copies of all tests and analyses performed on each public water system, pursuant to the requirements of the Primary Drinking Water Regulations and other applicable Navajo and federal law, are made available to the Director, on a timely basis, for inclusion in such files.
- B. Except where a shorter period is specified in this section, each public water system owner or operator shall report to the Director the results of any test, measurement, or analysis required by this Act or the regulations hereunder within:
 - 1. The first 10 days following the month in which the result is received; or
 - 2. The first 10 days following the end of the monitoring period required by the Director, whichever of these is shorter.
- C. The public water system owner or operator shall report to the Director within 48 hours any violation of a primary drinking water regulation (including failure to comply with monitoring requirements) set forth in this Act or the regulations thereunder.
- D. The public water system owner or operator is not required to report analytical results to the Director in cases where a USEPA-approved laboratory performs the analysis and reports the results to the Director.
- E. The public water system owner or operator shall, within 10 days of completion of each public notice required by this Act or the regulations hereunder, submit to the Director a representative copy of each type of notice distributed, published, posted, and/or made available to the media or to persons served by the system.
- F. The Director may request from the public water system owner or operator all pertinent information. The public water system owner or operator shall submit to the Director, within the time stated in the request, copies of any records required by this Act or the regulations hereunder to be maintained and copies of any documents which the Director is entitled to inspect pursuant to this Act.
- G. By January 1st of each year the Director shall prepare, make readily available to the public and submit to the Administrator an annual report on violations of primary drinking water regulations by public water systems within the Navajo Nation, including violations with respect to maximum contaminant levels, treatment requirements, variances and exemptions, and monitoring requirements determined to be significant by the Administrator after consultation with NNEPA.

- H. The NNEPA must make reports of the public water systems available to the public upon request, and must maintain a copy of the reports for one year. The certifications submitted by the public water system should be kept for five years.

403. GENERAL PUBLIC NOTIFICATION REQUIREMENTS

- A. Each owner or operator of a public water system shall give notice of each of the following to the persons served by the public water system:
 - 1. Failure by the public water system to comply with an applicable maximum contaminant level or treatment technique, specified in the regulations promulgated under this Act;
 - 2. Failure to limit fluoride concentration to less than 2.0 mg/l;
 - 3. Failure to comply with an applicable testing procedure established by this Act or the regulations promulgated hereunder;
 - 4. The existence of a variance or exemption from an applicable maximum contaminant level;
 - 5. Failure to comply with a schedule prescribed pursuant to such variance or exemption;
 - 6. Failure to perform any monitoring required by this subchapter or the regulations promulgated hereunder; or
 - 7. The concentration level of any unregulated contaminant for which public notice is required either under §1414(c)(2)(E) of the Safe Drinking Water Act, 42 U.S.C. §300g-3(c)(2)(E), or under this section. Such notice shall comply with federal regulations issued under SDWA §1414(c)(2) and the provisions set forth in this section, except to the extent that the Director establishes alternative requirements regarding form and content pursuant to SDWA §1414(c)(2)(b).
- B. If a community water system has violated an applicable maximum contaminant level, the public water system owner or operator shall notify the public of such violation in addition to the notification required in subsection C below, as follows:
 - 1. By publication for no fewer than 3 consecutive days in a newspaper or newspapers of general circulation in the area served by the system. Such notice shall be completed within 14 days after the public water system owner or operator learns of the violation.

2. By furnishing a copy of the notice to the radio and television stations serving the area served by the system. Such notice shall be furnished within 7 days after the public water system owner or operator learns of the violation. The notice shall be given orally in English and in the Navajo language.
 3. The requirements of paragraph 2 of this subsection may be waived by the Director if he or she determines that the violations have been corrected promptly after discovery, the causes of the violation have been eliminated, and there is no longer a risk to public health.
- C. In addition, in the case of a community water system and with respect to all violations listed in subsection A and the grant of variances and exemptions, the owner or operator of the system shall notify the users of the water system as soon as possible and in any event within three months after a violation or grant of an exemption or variance. The notification shall be by any means necessary to ensure that all users are notified of the problem. This may require the house-to-house distribution of handouts in cases where inclusion with monthly utility bills is not practical. Such notice shall be repeated at least once every three months as long as the violation or the variance or exemption remains in effect.
- D. Customers of a community water system must be notified by the owner or operator of the public water system in question every three 3 months when drinking water concentrations for fluoride exceed 2.0 mg/l. The notification must consist of any means necessary to make users aware of the problem. The notices must also be mailed on a quarterly basis to tribal and federal public health officials, and published in the local newspaper(s). Continued notification is desirable to alert new users who may begin using the system. The exact form and manner of such notice shall be prescribed by the Director as may be necessary to ensure adequate notice.
- E. In the case of a non-community water system, the public water system owner or operator shall give notice by continuous posting of any violation of an applicable maximum contaminant level or of the granting of a variance or exemption from any such level to the persons served by the system as long as the violation or variance or exemption continues. The form and manner of such notice shall be prescribed by the Director, and shall ensure that the public using the system is adequately informed of the violation or the variance or exemption.
- F. Notice given pursuant to this section other than that specified in subsection D of this section shall be written in a manner reasonably designed to inform fully the users of the system. The notice shall be conspicuous and shall not use unduly technical language, unduly small print, or other methods which could frustrate the purpose of the notice. The notice shall disclose all material facts regarding the

subject, including the nature of the problem and, when appropriate, a clear statement that a primary drinking water regulation has been violated and preventive measures that should be taken by the public, such as the necessity for seeking alternative water supplies. Where appropriate, or where designated by the Director, bilingual notice shall be given. Notices may include a balanced explanation of the significance or seriousness to the public health of the subject of the notice, a fair explanation of steps taken by the system to correct any problem and the results of any additional sampling.

- G. Notice to the public required by this section may be given by the Director on behalf of the public water system owner or operator, where, in the Director's discretion, this is warranted.
- H. In any instance in which notification by mail or other suitable means is required by this section but notification by newspaper, radio or television stations is not required by this section, the Director may nevertheless require the owner or operator of a public water system to provide notification by newspaper and to radio and television stations when circumstances make more immediate or broader notice appropriate to protect the public's health.
- I. Any person who violates this section or regulations issued under this section shall be subject to a civil penalty not to exceed \$25,000.

404. LEAD PUBLIC NOTIFICATION REQUIREMENTS

- A. Each owner or operator of a public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from the lead content in the construction materials of the public water distribution system or the corrosivity of the water supply sufficient to cause leaching of lead.
- B. Notice shall be provided in such manner and form as may be reasonably required by the Director. Notice under this paragraph shall be provided notwithstanding the absence of a violation of any Navajo Nation Drinking Water standard.
- C. Notice under this section shall provide a clear and readily understandable explanation of the potential sources of lead in the drinking water and the potential adverse health effects. The notice shall also include reasonably available methods of mitigating known or potential lead content in drinking water, any steps the system is taking to mitigate lead content in drinking water, and the necessity for seeking alternative water supplies, if any.
- D. The public notice requirements shall apply throughout the Navajo Nation upon enactment of this Act.

405. EMERGENCY WATER PLAN

Each public water system owner or operator shall develop an emergency water plan and submit a copy to the Director for review within 180 days after the enactment of this Act. An emergency water plan is a plan for the provision of alternate safe drinking water in emergencies. The Director shall review and comment on the emergency water plan and notify the public water system owner or operator of his or her determinations within 90 days after having received the emergency water plan. The public water system owner or operator shall incorporate the changes or modifications, if any, recommended by the Director in his or her comments.

406. CONSUMER CONFIDENCE REPORTS BY COMMUNITY WATER SYSTEMS

Each community water system shall prepare annually a report on the quality of drinking water delivered by the system. Such report also shall characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner, and shall comply with regulations issued by the Director pursuant to this section and applicable federal regulations. Each community water system shall mail such report annually to each customer of the system, unless other means of disseminating the report are provided by NNEPA by regulation.

SUBCHAPTER 5 - STANDARDS FOR CONSTRUCTION

501. DESIGN CRITERIA

A. Public Water Systems

1. No new or substantially modified public water system shall be authorized to begin construction or operation within the jurisdiction of the Navajo Nation until such time as the Director has reviewed the proposed design of such facility to ensure that it is capable of compliance with applicable minimum construction guidelines for public water systems. In conducting this review, the Director is authorized to rely upon the technical assistance of the Office of Environmental Health and Engineering, United States Indian Health Service.
2. In the event that the proposed design is satisfactory, the Director shall so advise the applicant, in writing, in a timely manner. In the event that the proposed design is not satisfactory, the Director shall advise the applicant of any necessary modifications, in writing, in a timely manner. Appropriate design changes must be made by the applicant prior to initiating any operation of the system.

B. Underground Injection Wells

1. Proposed designs and plans for new or substantially modified underground injection wells must be submitted with the permit application for each such well. The Director shall decide what standards for construction shall be required based on the geologic formation of the area in question and any relevant standards in the regulations promulgated under this Act or in 40 CFR part 146, and shall include any such requirements in the permit, if a permit is issued.

SUBCHAPTER 6 - VARIANCES AND EXEMPTIONS

601. VARIANCES

- A. The Director may grant one or more variances from an applicable Primary Drinking Water Regulation to one or more public water systems which, because of characteristics of the raw water sources that are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation. A variance may be issued to a system on condition that the system install the best technology, treatment techniques, or other means which the Administrator finds are available (taking costs into consideration), and based upon an evaluation satisfactory to the Director that indicates that alternative sources of water are not reasonably available to the system. Before the Director may grant a variance under this paragraph, the Director must find that the variance will not result in an unreasonable risk to health. If the Director grants a public water system a variance under this subchapter, the variance shall become part of the permit issued to the public water system under Section 701, and the Director shall prescribe, at the time the variance is granted, a schedule for:
1. compliance (including increments of progress) by the public water system with each contaminant level requirement with respect to which the variance was granted; and
 2. implementation by the public water system of such additional control measures as the Director may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

The Director shall provide notice and opportunity for public hearing on the schedule before such schedule may take effect. A notice given pursuant to the preceding sentence may cover the granting of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered

by the notice, and may be conducted as part of the permit hearing. A schedule prescribed pursuant to this subchapter for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable as the Director may reasonably determine.

- B. The Director may grant to one or more public water systems one or more variances from any provision of a primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the Director that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system. A variance granted under this subchapter shall be conditioned on such monitoring and other requirements as the Administrator may prescribe, which conditions shall become part of the permit.
- C. Before a variance proposed to be granted by the Director under subsection A or B of this section may take effect, the Director shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The hearing may be conducted as part of a permit hearing. The Director shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance (and in the case of a variance under subsection A, the basis for the finding required by that paragraph before the granting of the variance) and documentation of the need for the variance.
- D. The Director shall condition each public water system's variance granted under subsection A of this section upon compliance by the public water system with the schedule prescribed pursuant to subsection A of this section. Any schedule or other requirement on which a variance granted under subsection A or B of this section is conditioned may be enforced under section 803 as if such requirement were part of a primary drinking water regulation.
- E. Each schedule prescribed pursuant to subsection A of this section shall be deemed approved by the Administrator pursuant to section 1415 (a) of the U.S. SDWA unless the variance for which it was prescribed is revoked by the Administrator or the schedule is revised by the Administrator under such section.
- F. If an application for a variance under subsection A or B of this section is made, the Director shall act upon such application within 60 days after the date of its submission.

- G. For purposes of this subchapter, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with SDWA section 1401(1)(C)(ii) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 1412 (b)(3) of the SDWA.

602. SMALL SYSTEMS VARIANCES

A. In general

The Director may grant a variance under this section for compliance with a requirement specifying a maximum contaminant level or treatment technique contained in a national primary drinking water regulation to:

1. Public water systems serving 3,300 or fewer persons; and
2. With the approval of the Administrator pursuant to paragraph (9), public water systems serving more than 3,300 persons but fewer than 10,000 persons, if the variance meets each requirement of this section.

B. Availability of variances

A public water system may receive a variance pursuant to subsection A if :

1. The Administrator has identified a variance technology under SDWA § 1412 300g-1(b)(15) that is applicable to the size and source water quality conditions of the public water system;
2. The public water system installs, operates, and maintains, in accordance with guidance or regulations issued by the Administrator, such treatment technology, treatment technique, or other means; and
3. The Director determines that the conditions of subsection (C) are met.

C. Conditions for granting variances

A variance under this section shall be available only to a system:

1. That cannot afford to comply, in accordance with affordability criteria established by the Director, with a national primary drinking water regulation, including compliance through

- a. treatment;
 - b. alternative source of water supply; or restructuring or consolidation (unless the Director makes a written determination that restructuring or consolidation is not practicable); and
2. For which the Director determines that the terms of the variance ensure adequate protection of human health, considering the quality of the source water for the system and the removal efficiencies and expected useful life of the treatment technology required by the variance.

D. Compliance schedules

A variance granted under this section shall require compliance with the conditions of the variance not later than 3 years after the date on which the variance is granted, except that the Director may allow up to 2 additional years to comply with a variance technology, secure an alternative source of water, restructure or consolidate if the Director determines that additional time is necessary for capital improvements, or to allow for financial assistance provided pursuant to SDWA §1452 or any other federal or tribal program.

E. Duration of variances

The Director shall review each variance granted under this section not less often than every 5 years after the compliance date established in the variance to determine whether the system remains eligible for the variance and is conforming to each condition of the variance.

F. Ineligibility for variances

A variance shall not be available under this section for:

1. Any maximum contaminant level or treatment technique for a contaminant with respect to which a national primary drinking water regulation was promulgated prior to January 1, 1986; or
2. A primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

G. Regulations and guidance

The Director shall promulgate regulations for variances to be granted under this section, specifying:

1. Procedures for granting or denying variances, including requirements for notifying the Director and consumers of the public water system that a variance is proposed to be granted (including information regarding the contaminant and variance) and requirements for a public hearing on the variance before the variance is granted;
2. Requirements for the installation and proper operation of variance technology that is identified for small systems and the financial and technical capability to operate the treatment system, including operator training and certification;
3. Eligibility criteria for a variance for each primary drinking water regulation, including requirements for the quality of the source water (pursuant to section 1412(b)(15)(A) of the SDWA); and
4. Information requirements for variance applications.

H. Approval of variances

Before proposing to grant a variance under this section to a public water system serving more than 3,300 and fewer than 10,000 persons, the Director shall submit the variance to the Administrator for review and approval prior to the issuance of the variance, pursuant to SDWA §1415(e)(9).

I. Petition by consumers

Not later than 30 days after the Director proposes to grant a variance for a public water system, any person served by the system may petition the Administrator to object to the granting of a variance, pursuant to SDWA §1415(e)(10).

J. Timing

No variance shall be granted by the Director until the later of the following:

1. 90 days after the Director proposes to grant a variance; or
2. If the Administrator objects to the variance, the date on which the Director makes the recommended modifications or responds in writing to each objection, pursuant to SDWA §1415(e)(10)(A).

603. EXEMPTIONS

- A. The Director may exempt any public water system from any requirement respecting a maximum contaminant level or any treatment technique requirement, or both, of an applicable primary drinking water regulation upon a finding that:
1. due to compelling factors (which may include economic factors) the public water system is unable to comply with such contaminant level or treatment technique requirement or to implement measures to develop an alternative source of water supply;
 2. the public water system was in operation on the effective date of such contaminant level or treatment technique requirement or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system;
 3. the granting of the exemption will not result in an unreasonable risk to health;
 4. Management or restructuring changes (or both) cannot reasonably be made that will result in compliance with this Act or, if compliance cannot be achieved, improve the quality of the drinking water.
- B. If the Director grants a public water system an exemption under subsection A of this section, the exemption shall become part of the permit issued to the public water system under Section 701. The Director shall prescribe, at the time the exemption is granted, a schedule for:
1. compliance (including increments of progress or measures to develop an alternative source of water supply) by the public water system with each contaminant level requirement and treatment technique requirement with respect to which the exemption was granted; and
 2. implementation by the public water system of such control measures as the Director may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before an exemption or a schedule prescribed by the Director pursuant to this subchapter may take effect, the Director shall provide notice and opportunity for a public hearing on the exemption and schedule, which hearing may be conducted as part of the permit hearing. A notice given pursuant to the preceding sentence may cover more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

C.

1. A schedule prescribed pursuant to this subchapter for a public water system granted an exemption under subsection A of this section shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the Director may reasonably determine) but: not later than 3 years after the otherwise applicable compliance date established under SDWA §1412(b)(10).
2. No exemption shall be granted unless the public water system establishes that:
 - a. The system cannot meet the standard without capital improvements which cannot be completed prior to the date established pursuant to SDWA §1412(b)(10);
 - b. In the case of a system which needs financial assistance for necessary improvements, the system has entered into an agreement to obtain such financial assistance or an assistance program is likely to be available within the period of the exemption; or
 - c. The system has entered into an enforceable agreement to become a part of a regional public water system; and
 - d. The system is taking all practicable steps to meet the standard.
3. In the case of a system which does not serve more than a population of 3,300 and which needs financial assistance for the necessary improvements, an exemption granted under clause a or b of the above paragraph may be renewed for one or more additional two-year periods, but not to exceed a total of 6 years if the system establishes that it is taking all practicable steps to meet the requirements of paragraph 2 of subsection C.
4. A public water system may not receive an exemption under this section if the system was granted a variance under SDWA §1415(e) or section 602 of this Act.

- F. Each public water system's exemption granted by the Director under subsection A of this section shall be conditioned upon compliance by the public water system with the schedule prescribed pursuant to subsection B of this section. The requirements of each such schedule shall be enforceable by the Director under Navajo Nation law as part of the permit issued to the public water system. Any

requirement of a schedule on which an exemption granted under this section is conditioned may be enforced under section 803 as if such requirement were part of a primary drinking water regulation.

- G. Each schedule prescribed pursuant to subsection B of this section shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under section 1416 (d)(2) of the SDWA or the schedule is revised by the Administrator under such section.
- H. The Director will promptly notify the Administrator of the granting of any exemption under subsection A of this section. Such notification shall contain the reasons for the exemption (including the basis for the finding required by paragraph (A)(3) of this section, before the exemption may be granted) and document the need for the exemption.
- I. If an application for an exemption under this section is made, the Director shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.
- J. The Director shall make any revisions or revocations of exemptions or schedules that may be required by the Administrator, pursuant to the Administrator's authority to review such exemptions or schedules under the SDWA.

SUBCHAPTER 7 - PERMIT REQUIREMENTS FOR PUBLIC WATER SYSTEMS AND UNDERGROUND INJECTION FACILITIES

701. PERMITS

- A. The Director shall establish, by regulation, a permit program, requiring owners or operators of public water systems and underground injection facilities within the jurisdiction of the Navajo Nation to obtain a Navajo Nation permit to operate or construct a public water system or an underground injection facility.
- B. Such permit program shall specify permit fees to be paid upon application for a PWS or UIC permit and annually thereafter upon receipt of a permit, and may also include fees for the processing of variances and exemptions. Such permit program shall also specify requirements for applications for and issuance of modifications to permits, shall specify monitoring and reporting requirements and shall provide for hearings on permit determination.
- C. Before a UIC permit is issued under this section, the owner or operator of the underground injection facility must demonstrate and maintain financial responsibility and resources to close, plug and abandon the underground injection

facility as required by the Director by regulation. Evidence of such financial responsibility shall include a surety bond, letter of credit, insurance, corporate guarantee or other submission acceptable to the Director.

702. SUBMISSION OF INFORMATION

A. The Director may prescribe conditions for permits (by issuing regulations and/or on a case-by-case basis) and require the submission of plans, specifications, and other information in connection with permit applications or the issuance of permits or permit modifications, variances or exemptions.

B. All permit applications shall contain the following statement to which the applicant must agree and subscribe for the application to be complete and as a condition precedent to the issuance of any permit:

“Applicant hereby consents to the jurisdiction of the Navajo Nation in connection with all activities conducted pursuant to, in connection with, or directly affecting compliance with, any permit issued pursuant to this application or to which the provisions of the Navajo Nation Safe Drinking Water Act otherwise apply. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents, including contractors and subcontractors, of the applicant.”

C. The applicant shall include the foregoing statement as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the Navajo Nation in connection with any permit issued under this Act or to which the provisions of the Act otherwise apply. Each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for "applicant" as appropriate and substituting the phrase "this agreement" in place of the phrase "any permit issued pursuant to this application." If applicant fails to include such statement, or enters into an agreement with another party without such party agreeing and subscribing to such statement, applicant shall be subject to civil penalties in accordance with this Act.

703. PROGRAM FUNDS

Monies derived from fees and penalties collected under this Act, appropriations authorized by the Navajo Nation Council for the use of the Navajo Nation Public Water Systems Supervision Program or the Navajo Nation Underground Injection Control Program, and federal, state or other grants to such programs, shall be available solely to the Navajo Nation EPA for the administration, implementation and enforcement of this Act and the regulations promulgated hereunder. Such monies shall be deposited into one

of two duly established Special Revenue Funds, called the PWS Fund and the UIC Fund, as the case may be, and shall be expended by the Director for the use of the PWS or UIC Program in accordance with the Special Revenue Fund plan of operation and pursuant to an approved budget. The Director shall report annually to the Navajo Nation Council on the sums deposited into the funds, including the sources and uses thereof. Any monies contained in either of the two funds at the end of the fiscal year shall not revert to the general fund and shall remain available for appropriation as provided in this section.

SUBCHAPTER 8 - INSPECTIONS, ENFORCEMENT, AND JUDICIAL REVIEW

801. INSPECTIONS

- A. The Director shall make such investigations and inspections as are necessary to ensure the compliance of public water systems and underground injection facilities with this Act, the Navajo primary drinking water regulations, Navajo underground injection control regulations, and other applicable laws, decisions, orders, rules or other actions taken pursuant to this Act.
- B. The Director shall have the right to enter the property of any public water system or underground injection facility for the purpose of inspecting and investigating the sanitary condition of the public water system, the quality of the water, compliance with drinking water regulations or underground injection control regulations, and compliance with applicable Navajo law. This right shall include the right to review and copy the records required to be established and maintained by this Act.
- C. Except in an emergency, as determined by the Director, the Director shall notify and permit the public water system owner or operator or underground injection facility owner or operator to be present when an inspection or investigation is being conducted.
- D. The Director is authorized to utilize the services of the United States Indian Health Service or appropriate tribal departments to ensure that necessary inspections are performed, to coordinate his or her activities with those agencies or departments, and to rely upon competent inspections and investigations performed by those agencies or departments.
- E. In any instance in which an inspection reveals that a public water system or underground injection facility is not in compliance with applicable law, the Director is authorized to charge the owner or operator of such system or facility a fee for the cost of conducting inspection, whether undertaken by the Director or by another Navajo department (in which case the department undertaking the inspection would be reimbursed). Such fee shall be based on the time taken and

expenses incurred in conducting the inspection, but not to exceed the costs of such time and expenses that are reasonable in light of the circumstances.

802. GENERAL ENFORCEMENT AUTHORITY

A. In general

Whenever, on the basis of any information available to the Director, the Director finds that any person has violated, or is in violation of, any requirement or prohibition of this Act, the regulations promulgated under this Act, or permits, orders, variances, exemptions, decisions, rules, or any other actions taken pursuant to this Act, the Director is authorized to:

1. issue and serve on such person an order to comply with such requirement or prohibition, including an emergency order to comply, in accordance with the provisions of this section;
2. issue and serve on such person an administrative penalty order, in accordance with section 804;
3. request that the Attorney General bring a civil action including an action for injunctive relief, in accordance with of this section 803; and/or
4. request that the Navajo Nation Prosecutor's Office bring a criminal action in accordance with section 803(c) and/or refer any criminal enforcement action or portion of such action to the U.S. EPA Regional Administrator for Region 9.

B. Requirements for orders to comply

An administrative order, including an administrative penalty order, issued under subsection (A)(1) or (A)(2) of this section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to the Uniform Hearing Regulations if such hearing is requested in writing within 30 days after the date of issuance of the order, and shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the severity of the violation and any good faith efforts to comply with applicable requirements.

The order shall become final immediately upon the expiration of the 30 days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. A copy of the order shall be sent to the appropriate EPA region and, if the order is issued to a corporation, to the appropriate corporate officers and registered agent of the corporation. No order to comply issued under this section shall prevent the Nation from assessing any penalties nor otherwise affect or limit the Nation's authority to enforce under other provisions of this Act, nor affect any person's obligations to comply with any section of this Act, permits, orders, variances or exemptions issued pursuant to this Act, or regulations promulgated under this Act.

C. Emergency Compliance Orders

1. Notwithstanding any other provision of this Act, if the Director determines that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water is presenting an imminent and substantial endangerment to the public health or welfare or the environment and determines, in consultation with the Attorney General, that it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of a civil action pursuant to section 803, the Director may take such actions as the Director may deem necessary in order to protect the public health, welfare or environment. Such actions may include requiring the immediate closure of such public water system or underground injection facility and issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment. Such orders shall be effective immediately upon issuance and shall remain in effect for not more than 60 days, unless the Director brings an action for injunctive

relief pursuant to this section within the 60-day period. If the Director brings such an action, the order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

2. In the event that the Director is required to take direct action, in place of the owner or operator of the public water system or underground injection facility at issue, to respond to an emergency in order to protect the public health and welfare from imminent and substantial endangerment, the Director may charge a fee to cover the cost of such action. Such action may include, but is not limited to, conducting clean-up, closing a facility or providing alternative water supplies to the affected population. The fee shall be charged to the owner or operator of the relevant public water system or underground injection facility, and may be in addition to any penalty imposed under subsection B for failure to comply with applicable orders issued under this section.

D. Enforcement of compliance orders

Enforcement actions of the Director shall be enforced by the Navajo Nation Environmental Protection Agency, the Navajo Department of Justice, Navajo Prosecutors Office, Resources Enforcement and/or the Division of Public Safety. Those authorized to enforce the Director's actions may take reasonable steps to assure compliance, consistent with the requirements established by this Act (including rights of appeal), including but not limited to:

1. Entering upon any property or establishment believed to be violating the order and demanding compliance; and
2. Terminating operations at facilities not in compliance.

E. Repeated violations

In addition, when a person has repeatedly violated any requirements of this Act, the regulations promulgated under this Act, or permits, orders, variances or exemptions or other actions taken pursuant to this Act, or refused to comply with any such requirements, the Director may:

1. Issue an order prohibiting such person from continuing to operate a public water system or underground injection facility within the Navajo Nation;
2. Prohibit such person from entering into any new contracts (including leases) that would permit such person to engage in any activity within the

Navajo Nation that is governed by requirements of this Act or regulations under this Act which the person has repeatedly violated;

3. Take action declaring the person ineligible to do business on the Navajo Nation pursuant to the Business and Procurement Act; or
4. Take any other action available under law.

803. JUDICIAL ENFORCEMENT

A. Civil judicial enforcement

The Director may request the Attorney General to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including damages and the assessment and recovery of civil penalties in an amount not to exceed \$25,000 per day per violation in any of the following instances:

1. Whenever a person has violated, or is in violation of, any requirement or prohibition of this Act, the regulations promulgated under this Act, or permits, orders, variances, exemptions, rules, decisions or any other actions taken pursuant to this Act;
2. Whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities; or
3. Whenever a person is creating an imminent and substantial endangerment to the public health or the environment, in which case the Director shall request the Attorney General to pursue injunctive relief but not the assessment of civil penalties, unless the endangerment is caused by a violation, as specified in paragraphs (1) and (2).

B. Calculation of Penalties

1. For purposes of determining the number of days of violation for which a penalty is assessed under this section or section 804, if the Director has notified the violator in writing of the violation and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in

nature. Notice under this section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Navajo Nation District Court in Window Rock that alleges any violation described in subsection (A) of this section.

2. In determining the amount of a penalty assessed under this section or section 804, the court or the director, as the case may be, shall consider the history, severity and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator's full compliance history, including the severity and duration of past violations, if any; the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any resulting from the violation; and any other factors that the court or the Director deems relevant. All penalties collected pursuant to this section shall be deposited in the PWS Fund or the UIC Fund, as the case may be, special revenue funds established under Section 703 of this Act.

C. Criminal Penalties

The Director may request that the Navajo Nation Prosecutor's Office initiate criminal proceedings against any person who knowingly:

1. violates any requirement or prohibition of this Act, including but not limited to any regulation adopted pursuant to this Act, a permit, variance, exemption or order issued pursuant to this Act, or a reporting or notice requirement under this Act;
2. makes any false material statement, representation or certification in, or omits material information from, or alters, conceals or fails to file or maintain any notice, record, reports, or other document required pursuant to this Act to be filed or maintained; or
3. tampers with any public water system as prohibited in Section 202 of this Act.

Such person shall, upon conviction, be punished by a fine not to exceed \$5,000 per day of violation or imprisonment for not more than one year, or both, notwithstanding the provisions of 17 N.N.C. §§ 222 and 223, or be subject to any other penalty imposed by the court that is available under Navajo Nation law. In any instance where the Nation lacks jurisdiction over the person charged, or where the Director is limited in the amount of the fine that he may impose, the Director may refer the action to the appropriate EPA Regional Administrator pursuant to section 802 of this Act. For the purpose of this paragraph, the term

“person” includes, in addition to the entities referred to in section 104 of this Act, any responsible corporate officer.

D. Jurisdiction and venue

Any action under this section shall be brought in the Navajo Nation District Court in Window Rock, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil and criminal penalties up to the amounts provided in this section, collect any fees or noncompliance penalties owed the Nation under this Act, and award any other appropriate relief.

E. Failure to pay penalty

If any person fails to pay an assessment of a civil penalty, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the Director’s enforcement expenses, including but not limited to attorneys’ fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be no less than ten percent of the aggregate amount of the person’s outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter; the Director may by regulation establish higher penalties to take into account situations where the prime rate is higher.

804. ADMINISTRATIVE ASSESSMENT OF PENALTIES

A. Basis for penalty

The Director may issue against any person an administrative order assessing a civil administrative penalty of up to \$10,000 per day per violation whenever the Director finds that a person has violated, or is in violation of, any requirement or prohibition of this Act, including but not limited to, a regulation adopted pursuant to this Act, or permits, orders, variances or exemptions issued pursuant to this Act. The Director's authority under this subsection, combined with actions under subsection (C), shall be limited to matters where the total penalty sought does not exceed \$100,000 and the first alleged date of violation occurred no more than 1 year prior to the initiation of administrative action, except where the Director and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty

action. The communications required to make such a joint determination and the method(s) utilized for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify or remit, with or without any conditions, any administrative penalty imposed under this section.

B. Hearing requirement

The Director shall assess an administrative penalty under this section by an order made after opportunity for a hearing, pursuant to section 805 of this Act. Before issuing such an order, the Director shall give written notice of the proposed order to the person on whom the penalty is to be assessed and provide such person an opportunity to request a hearing within 30 calendar days of receipt of the notice.

C. Field citations

After consultation with the Attorney General, the Director may implement a field citation program through regulations establishing minor violations for which field citations (assessing civil penalties not to exceed \$1,000 per day per violation) may be issued by officers or employees designated by the Director, for any violation for which an administrative order could be issued under subsection (A) to the extent permissible under applicable law. The Director's authority under this subsection, combined with action taken under subsection (A), shall be limited into total amount by the provisions in subsection (A). Any person on whom a field citation is assessed may, pursuant to regulations issued under this section, elect to pay the penalty or request a hearing on the citation under the provisions of subsection (B). If a timely request for a hearing is not made, the penalty shall be final and the opportunity for judicial review shall be waived. Any hearing shall provide a reasonable opportunity to be heard and to present evidence. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this Act, except as to the days of violation for which the penalty required by a field citation is paid.

D. Judicial Review

Any person subject to a penalty under subsection A or C of this section may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock, by filing a petition for review in such court within 30 days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Attorney General. A notice of intent to challenge such penalty assessment, otherwise required by the Navajo Nation Sovereign Immunity Act, 1 N.N.C § 351 et seq. is not required. Within 30 days thereafter, the Director shall file in such court a certified copy or certified

index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Director may seek to recover civil penalties ordered or assessed under this section.

E. Failure to pay penalty

If any person fails to comply with an administrative penalty order after the order or assessment has become final, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, pursuant to the provisions of section 803(E).

F. Calculation of penalty

In determining the amount of any penalty to be assessed under this section, the Director or the court, as appropriate, shall take into consideration the factors enumerated in section 803(B) of this Act.

805. ADMINISTRATIVE HEARINGS AND SUBPOENAS

A. Administrative Hearings

The Director shall, by regulation, establish a formal administrative hearing process which meets due process standards to hear appeals taken under sections 802(B) and 804. Until the Director establishes this administrative hearing process and appoints a qualified presiding officer, the Navajo Office of Hearings and Appeals is authorized to conduct hearings under this Act; provided, in addition, that the Director may, at his/her discretion, transfer other hearings conducted under this Act and the regulations promulgated hereunder to the Navajo Office of Hearings and Appeals when the need arises.

B. Administrative Subpoenas

1. In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative enforcement proceeding under this Act, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may administer oaths.
2. Witnesses summoned shall be paid the same fees and mileage that are paid in the Navajo Nation courts. In case of contumacy or refusal to obey a

subpoena, the Navajo Nation District Court for the district in which such person is found, resides or transacts business shall have jurisdiction to issue an order requiring such person to appear before the Director and give testimony or produce papers, books or documents, or both, and any failure to obey such an order may be punished by the court as contempt. A person may challenge the lawfulness of an administrative subpoena issued by the Director in the Navajo Nation District Court for the District of Window Rock, naming as defendant the Director in his or her official capacity and not in any other manner; in any such action, relief will be limited to declaratory relief.

806. JUDICIAL REVIEW

- A. Any person aggrieved by any final action of the Director taken pursuant to the authority of this Act (but not including imposition of administrative penalties under section 804), shall have the right to appeal such action in the Navajo Nation Supreme Court. The appeal shall be taken in accordance with the Navajo Rules of Civil Appellate Procedure. The Navajo Nation Supreme Court, in reviewing the final action, shall limit its review to the issues and the evidence that were before the Director at the time of the final action from which the appeal is taken. The Supreme Court may affirm, reverse, modify in whole or in part, or remand for further consideration, any final action that is the subject of the appeal, provided that final actions may be reversed, modified or remanded only when they are:
1. arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 2. in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or
 3. without observance of procedure required by law; or
 4. unsupported by substantial evidence.
- B. Any challenge to the lawful authority of the Navajo Nation Council to enact any provision of this Act or regulations promulgated hereunder must be filed in accordance with Navajo law within ninety (90) calendar days after the date of enactment of this Act in the District Court for the District of Window Rock, naming as defendant the Navajo Nation, and not hereafter or in any other manner. Provided, however, that any challenge to regulations promulgated under this Act must be filed within 90 days of their adoption. In any such action, relief shall be limited to declaratory relief. The District Court for the District of Window Rock shall have exclusive jurisdiction and venue over any action challenging any

provision of this Act. Any action brought pursuant to the provisions of this section shall be brought in compliance with the Navajo Nation Sovereign Immunity Act; 1 N.N.C., §§ 351, et seq., and not in any other manner.