governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposal would not significantly or uniquely affect tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposal.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposal will not have a significant impact on a substantial number of small entities because a finding of failure to attain under section 181(b)(2) of the CAA, and the establishment of a SIP submittal schedule for the reclassified area, do not, in and of themselves, directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. *FEC.*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to requirements of the rule). Instead, this proposal proposes to make a determination and to establish a schedule for states to submit SIP revisions and does not propose to directly regulate any entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must, unless otherwise prohibited by law, prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

Sections 202 and 205 do not apply to today's action because the proposed determination that the Louisville area failed to reach attainment does not, in-and-of-itself, constitute a Federal mandate because it does not impose an enforceable duty on any entity. In addition, the CAA does not permit EPA to consider the types of analyses described in section 202, in determining whether an area has attained the ozone standard or qualifies for an extension. Finally, section 203 does not apply to today's proposal because the SIP submittal schedule would affect only the states of Kentucky and Indiana, which are not small governments.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 4, 1999.

John H. Hankinson, Jr.,

Regional Administrator, Region 4.

Dated: May 12, 1999.

Richard C. Karl,

Acting Regional Administrator, Region 5.

[FR Doc. 99–12751 Filed 5–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144 and 146

[FRL–6348–9]

Revisions to the Underground Injection Control Regulations for Class V Injection Wells—Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment on related proposed rule.

SUMMARY: On July 29, 1998, EPA published the proposed Revisions to the Underground Injection Control Regulations for Class V Injection Wells in the **Federal Register** (63 FR 40586). The public comment on this proposal was open until November 30, 1998. During and after the close of the public comment period, EPA became aware of data that might help make key decisions relating to the proposed Class V requirements and to refine the estimated economic burden of these requirements. The purpose of this notice is to: provide the public with this new data for review and comment; to seek public comment on how EPA intends to use this data in the Class V rule making effort; and, solicit public comment on issues resulting from this new data and the public comments already received on the Class V proposal.

DATES: EPA must receive public comment, in writing, on the notice of data availability by June 21, 1999.

ADDRESSES: Send written comments to the UIC Class V, W–98–05 Comment Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 401 M Street, SW, Washington, D.C. 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW., East Tower Basement, Washington, D.C. 20460. Comments may be submitted electronically to ow-docket@epamail.epa.gov.

Please submit all references cited in your comments. Facsimiles (faxes) cannot be accepted. Send one original and three copies of your comments and enclosures (including any references). Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope.

With one exception, the documents referenced in this notice are available for review in the Water Docket at the above address. The proposed rule, supporting documentation and public comment are also available through the docket. For information on how to access docket materials, please call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. Eastern Standard Time, Monday through Friday.

State Source Water Assessment Plans (SWAPs), which are discussed later in this notice, are available for review on the EPA, Office of Ground Water and Drinking Water Home Page www.epa.gov/ogwdw. The SWAPs are also available for review at the U.S. Environmental Protection Agency; 401 M Street, SW., 1127 East Tower, Washington, D.C. 20460. To make an appointment to review the SWAPs, please contact Robyn Delehanty, Underground Injection Control Program, Office of Ground Water and Drinking Water (mailcode 4606), EPA, 401 M Street, SW, Washington, D.C., 20460. Phone: 202–260–1993. E-mail: delehanty.robyn@epa.gov.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Safe Drinking Water Hotline, phone 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Standard Time. For technical inquiries, contact Robyn Delehanty, Underground Injection Control Program, Office of Ground Water and Drinking Water (mailcode 4606), EPA, 401 M Street, SW, Washington, D.C., 20460. Phone: 202–260–1993. E-mail: delehanty.robyn@epa.gov.

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I. Introduction

Class V wells are shallow injection wells or systems that are used to dispose of non-hazardous wastes directly into or above underground sources of drinking water (USDWs). The Safe Drinking Water Act (SDWA) is designed to protect the quality of drinking water in the United States, and Part C specifically mandates the regulation of underground injection of fluids to ensure that such injection does not endanger USDWs. The Agency has promulgated a series of underground injection control (UIC) regulations under this authority.

On July 29, 1998, EPA published in the **Federal Register** the proposed Revisions to the Underground Injection Control Regulations for Class V Injection Wells. The proposal would change the Class V Underground Injection Control (UIC) regulations by adding new requirements for three categories of Class V wells that are located in ground-water based source water protection areas being delineated for community water systems and non-transient non-community water systems under the 1996 Amendments to the SDWA. Class V motor vehicle waste disposal wells in such areas would either be totally banned or banned with an option for owners and operators to get a permit that requires fluids released in those wells to meet the drinking water maximum contaminant levels (MCLs) or other health-based standards at the point of injection. Class V industrial waste disposal wells in the delineated areas also would be required to meet the MCLs and other health-based standards at the point of injection, and large-capacity cesspools in such areas would be banned.

II. Statutory and Regulatory Framework

Section 1421 of the Act requires EPA to propose and promulgate regulations specifying minimum requirements for state programs to prevent underground injection that endangers drinking water sources.

Section 1422 of the Act provides that states may apply to EPA for primary responsibility to administer the UIC program (those states receiving such authority are referred to as ''Primacy States''). Where states do not seek this responsibility or fail to demonstrate that they meet EPA's minimum requirements, EPA is required to prescribe, by regulation, and implement a UIC program for such states. Also, currently all Class V UIC Programs in Indian Country are directly implemented by EPA.

III. Additional Data

A. The Class V Study

EPA is conducting a study of Class V injection wells to meet the requirements of a modified consent decree in Sierra Club v. Browner (D.D.C. No. 93–2644), which requires the Agency to study Class V wells and to determine if additional Class V regulations are needed to protect USDWs from Class V injection wells that are not subject to the current regulatory proposal. The study has consisted of an information collection effort for 23 subclasses of Class V wells, including the three well types addressed in the July 29, 1998 proposal: motor vehicle waste disposal wells; industrial waste disposal wells; and large-capacity cesspools. The information collection has included both state and EPA Region data collection, through survey questionnaires and selected site visits, and collection from other sources, such as trade associations, research institutes, and universities.

Although the study is still ongoing and the final methods and results have not yet been fully documented, available information on the three well types targeted by the proposed Class V rule has been compiled in a single notebook and placed in the public docket for review and comment. After a summary of the study methods, this notebook is organized into three basic sections. First, it provides the latest state inventory information for each of the three well types as reported in survey responses. This information includes tables that show the documented and estimated number of wells of each type in each state. Second, the notebook provides information on contamination incidents identified, including a state-by-state summary table and copies of available case-specific documentation. Third, the notebook provides injectate quality data collected for motor vehicle waste disposal wells and industrial wells.

EPA plans to use the latest inventory information in projecting the numbers of wells that might be affected by the new Class V regulation. The contamination incident information and injectate quality data will be used to help assess the threat posed by the different well types.

B. Draft Report on Contaminant Occurrence in Public Water Systems

EPA seeks comment on a draft report titled A Review of Contaminant Occurrence in Public Water Systems Related to Class V Injection Wells. This draft report, which has been placed in the public docket for review, summarizes occurrence data collected from 14 different State databases for public drinking water systems. In total, the data includes more than 10 million analytical results from more than 25,000 public water systems. Twenty three contaminants known or believed to be associated with discharges from industrial and motor vehicle waste disposal wells were selected for analysis. EPA plans to use information in this report to help refine its assessment of the threat posed by Class V injection wells.

C. EPA Regional Data (Regions II and VIII)

On March 1–3, 1999, staff visited the EPA Region II Office in New York City to review case study files on Class V wells. Region II was chosen for this records search because the Region has accumulated large amounts of information (paper files and electronic data) on Class V motor vehicle and industrial waste disposal wells found within the State of New York. This information was developed and collected by the Region while implementing and enforcing the federal UIC regulations in New York. Each year, approximately 600 to 800 facilities are inspected throughout the state.

Approximately 70 motor vehicle facility inspection files and well closure

plans were reviewed during the site visit. About 60 files and plans for industrial wells were reviewed. Of those reviewed, 27 files on motor vehicle waste disposal wells and 37 files on industrial wells have been copied and assembled in the notebook ''Region II Data'' available in the public docket. Most of these files include examples of the ''Class V UIC Permit Application/ Closure Request'' that Region II officials send to well owners or operators. Also included in the notebook are printouts from a database provided by Mobil Corporation that characterize the wastes generated by 38 different motor vehicle facilities; files on possible (investigation ongoing) and confirmed groundwater contamination incidents; facility-specific injectate quality data for a few sites; and limited information on current management practices and the costs of closing motor vehicle waste disposal wells and industrial wells. EPA will use the injectate quality data and contamination incident information to help evaluate the potential threat that motor vehicle waste disposal wells and industrial wells pose to USDWs. EPA will use the information on current management practices and costs in the economic analysis to support conclusions on the possible impacts and costs of the rule.

Recent information compiled by the EPA Region VIII office has also been assembled in the public docket for review (Region VIII directly implements the Class V UIC programs in Colorado, Montana, and South Dakota, while North Dakota, Utah, and Wyoming are Class V Primacy States). This material, which is in the form of various reports and tables of analytical data, is organized in a set of file folders all labeled ''Region VIII Data'' in the docket.

The Region VIII files primarily contain injectate quality data for motor vehicle waste disposal wells and industrial wells. The motor vehicle well data include sampling results from nine motor vehicle facilities in South Dakota in 1989 and 1990 (in two bound contractor reports in the docket). The injectate quality data for industrial wells consist of tables of sampling results for seven different industrial sites, including a chemistry lab in 1992, a machine parts and fishing equipment manufacturer in 1995, a U.S. Fish and Wildlife Service technology center in 1997, an ammunition manufacturer in 1996–1997, an electric motor repair shop in 1995–1996, and two jewelry manufacturers from 1992 to 1998. The Region VIII files also contain soil and groundwater sampling data for an ammunition manufacturing facility in South Dakota.

EPA will use the injectate quality and contamination incident data from Region VIII to help evaluate the potential threat to USDWs posed by motor vehicle waste disposal wells and industrial wells.

D. Well Closure Cost Data

After the close of the comment period, Penske Truck Leasing Company (Penske) submitted Class V well closure cost information. In the last three years, Penske has received permits for two Class V wells and closed fifteen Class V wells in their facilities nationwide. Penske supplied closure cost information for seven of the seventeen closures. For the seven well closures, Penske supplied an individual summary sheet, correspondence with regulatory agencies, and a well closure report. In addition, a general summary sheet was included which indicates closure costs and other miscellaneous information on all fifteen wells closed by Penske. EPA will review the Class V well closure cost information from the seven documented well closures to assess its usefulness in refining well closure costs in the economic analysis.

E. Source Water Assessment Plans

Under the Safe Drinking Water Act (SDWA) amendments of August 1996, States are required to develop drinking water Source Water Assessment Programs (SWAPs) for submission to EPA by February 6, 1999. EPA then has nine months to approve or disapprove these individual State SWAPs. Most States met the February 6, 1999 deadline, EPA expects to receive the remaining State programs for review in the next few months.

EPA will examine how each state intends to delineate ground water-based source water protection areas around community and non-transient public non-community drinking water supplies. EPA will compare this new information with assumptions made in the economic analysis and make appropriate modification to these assumptions to more accurately estimate the economic burden of the regulatory requirements.

F. Alabama Department of Environmental Management Report

EPA received a report prepared by the Alabama Department of Environmental Management titled Regulation of the Disposal of Funeral Home Discharges Through Class V Injection Wells. The National Funeral Home Directors Association submitted this document to EPA and requested that it be included in the docket.

IV. Additional Issues

The public comments and new information that EPA has obtained since the close of the public comment period have also raised implementation issues. EPA is requesting comment on the additional issues outlined below.

A. Phase-In of Rule Coverage Beyond Source Water Protection Areas (SWPAs)

The proposed regulation would regulate motor vehicle wells, industrial wells, and large-capacity cesspools in SWPAs for community water systems (CWS) and non-transient non-community water systems (NTNCWS) that use groundwater as a source. EPA sought comment in the preamble as to whether or not limiting the rule to these SWPAs was appropriate. EPA received numerous comments that suggested broadening the proposal to include other sensitive ground water areas such as sole source aquifers, karst, sand, gravel and aquifer recharge areas, or even statewide in order to better protect existing public drinking water supplies, future drinking water supplies, and individual wells. While EPA believes that these comments have merit, they also raise issues about how to implement the rule in these additional areas. EPA is evaluating various options suggested by commenters for applying the rule to these additional areas.

If the rule is expanded beyond SWPAs, there would be many additional injection wells covered and it may be desirable to phase in the rule over a longer period of time. As an example, the new UIC requirements would be effective in SWPAs as they are delineated, similar to the proposed rule. Primacy states would then be required to identify the additional sensitive areas that would be subject to the rule. This identification would be required by January 2004. The regulated entities in these identified areas would then have until January 2007 to comply with the rule. If a State failed to identify additional sensitive areas by January 2004, the rule could be effective statewide.

If the EPA decided to apply the final rule to areas outside of SWPAs, this phased-in approach for implementation would allow a state the flexibility to identify critical groundwater areas within the state and would also provide well owners and operators adequate time to identify viable alternatives to their current disposal practices. Lastly, expanded coverage would satisfy concerns about the protection of future sources of drinking water, private

drinking wells, and other sensitive ground water areas. EPA requests comment on this phased-in approach.

B. Identifying the Point of Injection

Commenters have suggested that EPA identify the point of injection and the location at which samples would be collected to determine compliance with the Class V rule.

EPA is considering clarifying the point of injection/sampling point as the last accessible point prior to injection. In the case of septic tanks, the last accessible point prior to injection would be the distribution box between the septic tank and the leach field. If a sampling point is not installed after the septic tank, the point of injection would be at or before the septic tank. For a drywell, the sampling point would be the end of the pipe before the waste enters the well.

C. Requirements for Industrial Wells

Some commenters submitted comments and information suggesting that industrial wells should be subject to the same permit requirements as motor vehicle wells. The proposal identified three permit conditions for motor vehicle wells: meeting MCLs and other health-based standards at the point of injection, monitoring for liquid and sludge, and best management practices. EPA request comments on this suggestion.

Dated: May 19, 1999.

J. Charles Fox,

Assistant Administrator, Office of Water.

[FR Doc. 99–13016 Filed 5–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–6347–5]

State of Alabama; Underground Injection Control (UIC) Program Revision; Withdrawal of Alabama's Class II UIC Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking, public hearing and public comment period on withdrawal.

SUMMARY: EPA announces a proposed rulemaking, public hearing and public comment period regarding withdrawal of Alabama's Class II Underground Injection Control (UIC) Program from the State Oil and Gas Board of Alabama on the grounds that it does not regulate as ''underground injection,'' hydraulic fracturing associated with coalbed methane gas production. This program is currently approved by EPA under section 1425 of the Safe Drinking Water Act (SDWA), as amended. This action is being taken in accordance with paragraph 2(a) of the Writ of Mandamus issued on February 18, 1999, by the U. S. Court of Appeals for the Eleventh Circuit and the requirements in 40 CFR 145.34(b)(2).

By court order, the Regional Administrator for EPA's Region 4 Office informed the State Oil and Gas Board of Alabama of specific areas of alleged noncompliance regarding its approved UIC Program. Specifically, EPA informed the State that, consistent with the Eleventh Circuit's ruling in *LEAF* v. *EPA*, hydraulic fracturing associated with coalbed methane gas production must be regulated as an ''underground injection'' under Alabama's UIC Program. Withdrawal of the Alabama program would, if completed, divest Alabama of primary enforcement authority under the SDWA to regulate Class II Wells, including hydraulic fracturing associated with coalbed methane gas wells within Alabama.

EPA is proceeding at this time with this proposed rulemaking, notice of public hearing, and notice of public comment period in order to comply with paragraph 2(a) of the Writ of Mandamus because hydraulic fracturing associated with coalbed methane gas production is not currently regulated as underground injection (by permit or rule) pursuant to the EPA-approved underground injection control program for Alabama.

At the public hearing, all interested persons shall be given the opportunity to make written or oral presentations on EPA's proposed action to withdraw approval of Alabama's Section 1425 approved Class II Program on the grounds of its failure to regulate as ''underground injection'' hydraulic fracturing associated with coalbed methane gas production. In addition, comments may be submitted as provided herein.

DATES: The public hearing will be held Wednesday, July 28, 1999, at 5:30 p.m. Central Standard Time (CST).

Written comments on EPA's proposed rule must be received by the close of business Thursday, August 5, 1999.

ADDRESSES: The public hearing will be held at the Tuscaloosa Public Library, Rotary Room, 1801 River Road, Tuscaloosa, Alabama 35401. Those interested should contact the Tuscaloosa Public library at (205) 345–5820 for directions.

Persons wishing to comment are invited to submit oral or written comments at the public hearing or submit written comments to the Ground Water/Drinking Water Branch, Ground Water & UIC Section, United States Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960, Attention: Mr. Larry Cole.

Copies of documents regarding this action are available between 8:30 a.m. and 4:00 p.m. Monday through Friday at the following locations for inspection and copying: Environmental Protection Agency, Region 4, 9th Floor Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960, PH: (404) 562–8190; and the State Oil & Gas Board of Alabama, 420 Hackberry Lane, Tuscaloosa, AL 35489–9780, PH: (205) 349–2852.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Marsh, at (404) 562–9450, or Mr. Larry Cole, at (404) 562–9474 or at the following address: Environmental Protection Agency, Water Management Division, Ground Water/Drinking Water Branch, Ground Water & UIC Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960.

SUPPLEMENTARY INFORMATION:

I. Background Information

On August 2, 1982, EPA granted primary enforcement responsibility (primacy) for the Class II Underground Injection Control (UIC) Program under section 1425 of the Safe Drinking Water Act (SDWA) to the State of Alabama. The SDWA requires EPA to approve an effective in-place state UIC Program to protect Underground Sources of Drinking Water (USDW) from endangerment that could result from the improper injection of fluids associated with, among other things, oil and gas production. On May 3, 1994, the Legal Environmental Assistance Foundation, Inc. (LEAF) submitted a petition to EPA to withdraw Alabama's UIC Program asserting that the State was not regulating activities associated with coalbed methane gas production wells. Following EPA's May 5, 1995 denial of the petition, LEAF sought review of this decision by the United States Court of Appeals for the Eleventh Circuit. On August 7, 1997, in *LEAF* v. *EPA*, 118 F. 3d 1467 (11th Cir. 1997), the Court held as follows: hydraulic fracturing activities constitute ''underground injection'' under Part C of the Safe Drinking Water Act, *id.* at 1478; all underground injection is required to be regulated (by permit or rule), *id.* at 1474;