F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule simply stays the effectiveness of requirements for air emission testing bodies that would have become effective on January 1, 2009. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule simply stays the effectiveness of requirements for air emission testing bodies that would have become effective on January 1, 2009. Moreover, when first promulgated, the AETB provision required the use of ASTM D 7036–04, an applicable voluntary consensus standard.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the level of protection provided to human health or the environment, but simply stays the effectiveness of requirements for air emission testing bodies that would have become effective on January 1, 2009. Moreover, when first promulgated, the AETB provision did not change the level of protection provided to human health or the environment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established that the effective date shall be upon publication in the **Federal Register**. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 75

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Carbon dioxide, Continuous emission monitoring, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides, Reference test methods.

Dated: October 29, 2008.

Stephen L. Johnson,

Administrator.

■ 40 CFR part 75 is amended as follows:

PART 75—CONTINUOUS EMISSION MONITORING

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Appendix A to Part 75—[Amended]

■ 2. In Appendix A to Part 75, the effectiveness of Section 6.1.2(a) through (c) is stayed indefinitely.

[FR Doc. E8–26264 Filed 11–3–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA–R09–OW–2007–0248; FRL–8734–5]

Navajo Nation; Underground Injection Control (UIC) Program; Primacy Approval

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving an application from the Navajo Nation (''Tribe'') under Section 1425 of the Safe Drinking Water Act (SDWA) for primary enforcement responsibility (or ''primacy'') for the underground injection control (UIC) program for Class II (oil and gas-related) injection wells located within the exterior boundaries of the formal Navajo Reservation, including the three satellite reservations (Alamo, Canoncito and Ramah), but excluding the former Bennett Freeze Area, the Four Corners Power Plant and the Navajo Generating Station; and on Navajo Nation tribal trust lands and trust allotments outside the exterior boundaries of the formal Navajo Reservation. (These areas are collectively referred to hereinafter as ''areas covered by the Tribe's Primacy Application.'')

DATES: This approval is effective December 4, 2008. The incorporation by

reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 4, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R09–OW–2007–0248. All documents in the docket, including the Decision Document, the Navajo Nation's Primacy Application and EPA's supporting documentation, are listed on the *http://www.regulations.gov* Web site. Although listed in the docket index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Ground Water Office (WTR–9), 75 Hawthorne Street, San Francisco, CA 94105–3920. This Docket Facility is open Monday through Friday, between 8 a.m. and 4 p.m., Pacific time excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Kate Rao, U.S. Environmental Protection Agency, Ground Water Office (WTR–9), 75 Hawthorne Street, San Francisco, CA 94105–3920. Telephone number: 415–972–3533. E-mail: *rao.kate@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

Category	Examples of potentially regulated entities	North American Industry Classification System
State, Local, and Tribal Governments	State, local, and tribal governments that own and operate Class II injection wells in the areas covered by the Tribe's Primacy Application.	924110
Industry	Private owners and operators of Class II injection wells in the areas covered by the Tribe's Primacy Application.	221310
Municipalities	Municipal owners and operators of Class II injection wells in the areas covered by the Tribe's Primacy Application.	924110

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. The Navajo Nation's Class II UIC Primacy Application

On October 18, 2001, the Navajo Nation submitted an initial application for primacy for its UIC program for Class II wells. On January 30, 2002, the EPA notified the Navajo Nation that its application required revision, clarification and additional documentation. The Tribe provided various supplemental application materials to EPA. The Tribe amended its underground injection control regulations, and, in 2006, submitted the final outstanding components of its Primacy Application to EPA. Subsequently, in 2007, as an addendum to its Primacy Application, the Tribe submitted several Navajo Nation Class II UIC permits that it had issued pursuant to its authority under tribal laws and regulations. The materials described above are collectively referred to hereinafter as the Tribe's ''Primacy Application,'' and are described in detail in EPA's Decision Document: The Navajo Nation—Approval of Tribal Application for Primacy, Class II Underground Injection Control Program, Safe Drinking Water Act.

B. Proposed Rule

On April 24, 2008, EPA issued a proposed rule in which the Agency announced its proposal to approve the Tribe's primacy for the Class II UIC program in the areas covered by the Tribe's Primacy Application under section 1425 of the SDWA, 42 U.S.C. 300h–4. EPA requested public review of the proposed rule; the Navajo Nation's Primacy Application; a proposed Decision Document, which included findings that the Navajo Nation meets all eligibility requirements of section 1451 of the SDWA and its implementing regulations at 40 CFR part 145, Subpart E, as well as all applicable requirements for approval under SDWA section 1425, and EPA's supporting documentation (see 73 FR 22111–22120, April 24, 2008). EPA received two comments on the proposal: one supporting the action, and the other challenging EPA's proposed approval of the Tribe's Application based on concerns about the Tribe's jurisdictional authority in certain areas covered by the Tribe's Primacy Application. EPA's response to the submitted comments is provided in section V. Response to Comments.

III. Legal Authorities

These regulations are being promulgated under authority of sections 1422, 1425, 1450 and 1451 of the SDWA, 42 U.S.C. 300h–1, 300h–4, 300j–9 and 300j–11.

A. Requirements for State UIC Programs

Section 1421 of the SDWA requires the Administrator of EPA to promulgate minimum requirements for effective State UIC programs to prevent underground injection activities that endanger underground sources of drinking water (USDWs). Sections 1422 and 1425 of the SDWA establish requirements for States seeking EPA approval of State UIC programs.

For States that seek primacy for UIC programs under section 1422 of the SDWA, EPA has promulgated regulations setting forth the applicable procedures and substantive requirements. These regulations are codified in the *Code of Federal Regulations* (40 CFR part 145). They include requirements for State permitting programs (by reference to certain provisions of 40 CFR parts 124 and 144), compliance evaluation programs, enforcement authority, and information sharing.

Section 1425 of the SDWA describes alternative requirements for States to obtain primacy for UIC programs that relate solely to Class II wells. Section 1425 allows a State, in lieu of the showing required under SDWA section 1422(b)(1)(A), to demonstrate that its proposed Class II UIC program meets the minimum requirements of SDWA sections 1421(b)(1)(A)–(D), and represents an ''effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.'' EPA published interim guidance entitled ''Guidance for State Submissions Under Section 1425 of the Safe Drinking Water Act, Ground Water

Program Guidance #19'' (Guidance 19) in the **Federal Register** (46 FR 27333–27339, May 19, 1981) which sets forth the criteria EPA generally considers in evaluating applications under SDWA section 1425.

B. Tribal UIC Programs—Tribal Eligibility Requirements

Section 1451 of the SDWA and 40 CFR 145.52 authorize the Administrator of EPA to treat an Indian Tribe in the same manner as a State for purposes of delegating primary enforcement responsibility for the UIC program if the Tribe demonstrates that: (1) It is recognized by the Secretary of the Interior; (2) it has a governing body carrying out substantial governmental duties and powers over a defined area; (3) the functions to be exercised by the Tribe are within an area of the tribal government's jurisdiction; and (4) the Tribe is reasonably expected to be capable, in the EPA Administrator's judgment, of implementing a program consistent with the terms and purposes of the SDWA and applicable regulations.

Tribes may apply for primacy under either or both sections 1422 and 1425 of the SDWA; and the references in 40 CFR part 145 and the EPA's May 19, 1981, interim guidance to ''State'' programs are also construed to include eligible ''tribal'' programs. (See also 40 CFR 145.1(h), which provides that all requirements of parts 124, 144, 145, and 146 that apply to States with UIC primacy also apply to Indian Tribes except where specifically noted.)

IV. Explanation of This Action

EPA is approving the Navajo Nation's application for primacy for the SDWA Class II UIC program in the areas covered by the Tribe's Primacy Application. EPA's final rulemaking decision is based on a careful and extensive legal and technical review of the Tribe's Primacy Application, the two public comments received, the Navajo Nation's response to those comments, and other relevant information.

EPA's Decision Document in support of EPA's approval is part of the public record and is available for public review. The Decision Document includes findings that the Navajo Nation meets all requirements of section 1451 of the SDWA, including that the Tribe has demonstrated adequate jurisdictional authority over all Class II injection activities in the areas covered by the Tribe's Primacy Application, including those conducted by nonmembers, and that the Tribe's program meets all applicable requirements for approval under section 1425 of the SDWA.

As a result of this final action, the Navajo Nation will assume primary enforcement authority for regulating all Class II injection activities in the areas covered by the Tribe's Primacy Application. Because Indian Tribes are precluded under Federal Indian law from pursuing certain criminal enforcement matters under 25 U.S.C. 1302, EPA has entered into a Criminal Enforcement Memorandum of Agreement with the Navajo Nation (signed by EPA on October 30, 2006), per 40 CFR 145.13(e), whereby the Tribe will notify EPA of potential criminal violations of its SDWA Class II UIC program. EPA will continue to administer its SDWA UIC program for any Class I, III, IV, and V wells on Navajo Indian lands (defined as Indian country in EPA UIC regulations; *see* definition of ''Indian lands'' at 40 CFR 144.3). EPA will oversee the Navajo Nation's administration of the SDWA Class II UIC program in the areas covered by the Tribe's Primacy Application. Part of EPA's oversight responsibility will include requiring quarterly reports of non-compliance and annual UIC program performance reports pursuant to 40 CFR 144.8. The UIC Memorandum of Agreement between EPA and the Navajo Nation (signed by EPA on August 21, 2001) provides EPA with the opportunity to review and comment on all permits and, where applicable, object.

EPA is amending 40 CFR part 147 to revise the references to the EPA-administered program for Class II injection wells in the areas covered by the Tribe's Primacy Application to refer to the Navajo Nation's Class II UIC program. The provisions of the Navajo Nation Underground Injection Control (NNUIC) Regulations that contain standards, requirements, and procedures applicable to owners or operators of Class II wells in the areas covered by the Tribe's Primacy Application are being incorporated by reference into 40 CFR part 147. Any provisions incorporated by reference, as well as all Tribal permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA and 40 CFR 147.1(e).

Class II UIC Permitting Matrix

EPA evaluated the existing Federal and Tribal UIC Class II permitting matrix in the areas covered by the Tribe's Primacy Application, which can be summarized into four categories: 1) Wells with both Navajo Nation- and EPA-issued permits; 2) wells with EPA-issued permits only; 3) wells with Navajo Nation-issued permits only (Federally authorized by rule); and 4) wells without permits (authorized by rule). Below is a summary of the impact of this final rulemaking action on each category of wells.

Wells with both Navajo Nation- and EPA-issued permits: The Navajo Nation-issued UIC permits will remain in effect as the Federally enforceable UIC permits under the SDWA and the EPA-issued permits for wells in this category will expire.

EPA-issued permits only: The Navajo Nation will administer the EPA-issued Class II UIC permits until Navajo Nation UIC permits are issued.

Navajo Nation-issued permits only: The Navajo-Nation-issued Class II UIC permits will remain in effect as Federally enforceable UIC permits under the SDWA.

Wells not currently permitted by EPA or the Tribe: The Navajo Nation, in its UIC Regulations, has adopted by reference the Federal authorization by rule regulations that will apply until the Tribe issues UIC permits for these wells.

Copies of the 18 Navajo Nation-issued permits are part of the public record and available for review in EPA's Docket No. EPA–R09–OW–2007–0248.

Proposed Rule Revisions Not Included

In its proposed rule for this action, EPA proposed minor revisions to specific introductory language at 40 CFR part 147 and updates to 40 CFR 147.1, which were not specific to the Navajo Nation's Primacy Application. The same regulatory revisions were previously proposed by EPA Region 8 (see 73 FR 5471, January 30, 2008; Fort Peck Assiniboine and Sioux Tribes in Montana; Underground Injection Control (UIC) Program; Proposed Primacy Approval and Minor Revisions) and subsequently promulgated (see Fort Peck final rule which published in the **Federal Register** on October 27, 2008 at 73 FR 63639: Fort Peck Assiniboine and Sioux Tribes in Montana; Underground Injection Control (UIC) Program; Primacy Approval and Minor Revisions). Thus, today's rule does not include this regulatory language because it has already been incorporated into 40 CFR part 147 and 40 CFR 147.1.

Cross Media Electronic Reporting Rule

The analysis of the Navajo Nation's program with respect to 40 CFR 145.11 in EPA's proposed Decision Document for this action did not include a discussion of the Tribal program's consistency with 40 CFR 145.11(a)(33). 40 CFR 145.11(a)(33) requires that State programs under that part that ''wish to

receive electronic documents'' have legal authority to implement 40 CFR part 3, the Cross Media Electronic Reporting Rule (CROMERR) (see 70 FR 59879, October 13, 2005). CROMERR includes requirements applicable to States, Tribes, and local governments administering or seeking to administer authorized programs under Title 40 of the CFR where such programs receive electronic documents in lieu of paper to satisfy requirements under such programs. EPA has consulted with the Navajo Nation and determined that the Navajo Nation UIC Program does not accept electronic copies of official documents or records, and therefore has concluded that the Tribe's program is consistent with 40 CFR 145.11(a)(33).

V. Response to Comments

Summary

EPA received two letters providing comments on the proposed rulemaking. One comment was from a private individual (''Commenter A''), who expressed support for the Tribe's application and EPA's proposed decision to approve it. The second comment was submitted by a private law firm on behalf of an industry client that is a member of the regulated community (''Commenter B''). It opposed on several legal grounds EPA's proposed decision, particularly regarding areas outside of the exterior boundaries of the formal Navajo Reservation, although it did not specifically contest the proposed decision for areas within the boundaries of the Reservation. As provided for by EPA policy, EPA provided the Navajo Nation with an opportunity to respond to these comments, and the response submitted by the Navajo Nation supplements the record for this action.

Comments Received

A. Commenter A: An individual, who previously lived on the Navajo Nation, commented that he approved of EPA's proposed primacy determination.

EPA appreciates the comment in support of the Tribe's application and EPA's proposed decision to approve the application.

B. Commenter B:

1. The United States Supreme Court Has Applied Federal Common Law Principles of Indian Sovereignty Over the Activities of Non-Indians in the Context of and Only to Conduct on Reservation Land

Commenter B first objects to EPA's proposed approval because he argues that Federal common law and Supreme Court precedent limit tribal authority over nonmember activities to conduct on reservation land and, therefore, EPA's approval may not extend to nonmember activities outside the formal Reservation. EPA disagrees. Section 1451 of the SDWA authorizes EPA to treat a Tribe in a manner similar to a State (TAS) to carry out functions authorized by the SDWA ''within the area of the Tribal Government's jurisdiction.'' 42 U.S.C. 300j–11(b)(1)(B). There is no language in the SDWA limiting the role of Tribes under the SDWA to lands within the boundaries of Indian reservations, and no evidence of Congressional intent to impose such limits. As noted by the Navajo Nation in its response, the SDWA is different from the Clean Water Act, which contains a TAS provision that limits the role of Tribes to reservation areas. See 33 U.S.C. 1377(e)(2) (specifying that the functions exercised by the Tribe must pertain to water resources within the borders of an Indian reservation). Cf. 42 U.S.C. 7601(d)(2)(B) (authorizing TAS for Tribes under the Clean Air Act for ''reservation[s] or other areas within the Tribe's jurisdiction,'' which includes non-reservation areas of Indian country).

The relevant legal term with respect to who has jurisdiction in a particular area is ''Indian country,'' as defined at 18 U.S.C. 1151. *Indian Country, U.S.A.* v. *Oklahoma Tax Comm'n*, 829 F.2d 967, 973 (10th Cir. 1987) (''[T]he Indian country classification is the benchmark for approaching the allocation of Federal, tribal, and State authority with respect to Indians and Indian lands.''). The ''Indian country'' statute makes it clear that Indian country extends beyond reservations and encompasses three types of land: All lands within reservation boundaries, all dependent Indian communities, and ''all Indian allotments, the Indian title to which have not been extinguished.'' *Alaska* v. *Native Village of Venetie*, 522 U.S. 520, 526–527, (1998), quoting 18 U.S.C. 1151 (a)–(c). In Venetie, the Supreme Court confirmed that the ''Indian country'' statute is a codification of Federal case law, and that, while the statute is found in the criminal code, it also generally applies to questions of tribal civil jurisdiction. *Id.* at 527 and n.1, citing with approval to *DeCoteau* v. *District Court*, 420 U.S. 425, 427 n. 2 (1975). As discussed further in this section, the case law codified by the statute, as described in *Venetie*, includes Supreme Court decisions establishing that Indian country includes both areas that are within reservations and areas that are not, and that the term reservation includes both formal reservations and informal reservations (*i.e.*, lands held by the government in trust for Tribes that have not been formally designated as reservations). The *Venetie* Court also recognized that the term ''Indian country'' delineates the areas over which primary jurisdiction rests with the Federal government and the Tribes rather than the States. *Id.* at 527 n. 1.

EPA has previously construed the language in SDWA section 1451 as covering the full extent of Indian country. In particular, EPA granted the Navajo Nation primacy under the SDWA Public Water Systems Supervision (PWSS) program for lands within the formal Reservation boundary as well as tribal trust lands (which EPA treated as informal reservation lands) and for allotments in the Eastern Agency, noting that, ''[t]he statutory language in section 1451 of the SDWA establishes a relatively broad standard for tribal jurisdiction.'' EPA DETERMINATION OF THE NAVAJO NATION'S ELIGIBILITY UNDER SECTION 1451 OF THE SDWA 8 (October 23, 2000) (''EPA PWSS DETERMINATION''). In EPA's approval of the Navajo Nation's SDWA PWSS primacy program, EPA found that Indian country was the relevant standard: ''EPA agrees that 'Indian country' is the appropriate standard for determining the territorial extent of jurisdiction of the Navajo Nation for the purposes of section 1451 of the SDWA.'' EPA PWSS DETERMINATION at 10. EPA found in the SDWA PWSS approval that the Navajo Nation had demonstrated its authority under the SDWA over lands within the formal Reservation boundary and tribal trust lands and allotments in the Eastern Agency.

EPA's interpretation of section 1451 in the primacy determination for the Navajo Nation SDWA PWSS program has not been challenged by Commenter B or any other party, but EPA's position that tribal authority in Indian country may extend beyond a formal reservation has been challenged and upheld in other contexts, including *Arizona Public Service Co.* v. *EPA*, 211 F.3d 1280, 1292–94 (D.C. Cir. 2000) (upholding EPA's regulations that interpret the Clean Air Act's TAS provisions as authorizing tribal programs for reservations (including informal reservations, i.e., tribal trust lands not formally designated as a reservation) and for other Indian country areas (including dependent Indian communities and allotments) within the Tribe's jurisdiction).

2. The Navajo Nation Asserts That It Has Inherent Authority and Jurisdiction Over Indian Country as Defined in 18 U.S.C. 1151 and 7 N.N.C. 254

Commenter B argues that 18 U.S.C. 1151 is neither a Congressional delegation of authority nor a source of inherent sovereign authority for the Navajo Nation. EPA recognizes that 18 U.S.C. 1151 does not provide the source of a Tribe's inherent sovereign authority, but rather generally defines the limit of the area over which a Tribe may demonstrate authority. As explained in EPA's Decision Document for this action, and supported by the Findings of Fact, Appendix A, EPA finds that the Navajo Nation has demonstrated its authority under the SDWA over the areas covered by its application, including tribal trust lands and trust allotments in the Eastern Agency.

3. The Montana Doctrine Indicates That ''Navajo Tribal Sovereignty'' and ''Inherent Sovereignty'' Over the Activities of Non-Indians Does Not Extend Beyond the Boundaries of the Navajo Reservation Regardless of How the Land Is Titled

Commenter B's third comment overlaps with his first comment in stating that ''to the extent that the Navajo Nation may have inherent sovereign authority over the activities of non-Indians, that authority applies only to lands within the Navajo reservation if *Montana* exceptions (described more fully below in section VI) apply, as determined on a case-by-case basis, and does not extend to lands or activities outside the exterior boundaries of the Navajo reservation.'' Commenter B cites several cases, but none of the cases cited support Commenter B's assertion that the Navajo Tribe may not exercise inherent authority over tribal ''lands or activities outside the exterior boundaries'' of a formal reservation; rather, the cited cases present the more common factual scenario involving fee lands within a formal reservation boundary.

The Tenth Circuit has previously considered the argument that the *Montana* test cannot apply outside a reservation boundary, and more specifically that it cannot apply in the Eastern Agency. *See Texaco, Inc.* v. *Zah, 5 F.3d 1374 (10th Cir. 1993)*. In *Zah*, the appellants contended that the tribal courts lacked jurisdiction because the Navajo Nation's authority over non-Indians terminated at the reservation boundary, citing specifically to *United States* v. *Montana*, (1981) and *Merrion* v. *Jicarilla Apache Tribe*, 455 U.S. 130, 141 (1982). The Tenth Circuit in *Zah* rejected this argument, however, finding, ''[s]uch cases * * * do not expressly stand for the proposition that a tribal court has no jurisdiction over non-Indian activity occurring outside the reservation, but within Indian Country.'' *Zah* at 1377.

Contrary to Commenter B's comments, neither the Tenth Circuit nor the Supreme Court have held that Tribes cannot exercise inherent authority in Indian country outside of reservation boundaries.[1] Indeed such a holding would effectively eliminate any significance to the broader scope of the term ''Indian country.'' Moreover, as already noted, the Supreme Court has expressly recognized that Indian country is the area of primary Federal and tribal, rather than State, jurisdiction, and that Indian country, and thus tribal jurisdiction, can exist outside reservations, consistent with both the text of the Indian country statute and the Federal common law that the statute codified. *Venetie*, 522 U.S. at 527–529. Moreover, the Supreme Court has found that lands owned by the Federal government in trust for Indian Tribes are Indian country, and that formal designation as a reservation is not a necessary requirement for status as Indian country. See, e.g., *Oklahoma Tax Comm'n* v. *Potawatomi Tribe*, 498 U.S. 505, 511 (1991), (''formally designated 'reservation' '' status not dispositive; trust lands can be Indian country); *Oklahoma Tax Comm'n* v. *Sac & Fox Nation*, 508 U.S. 114, 123 (1993) (''formal reservation'' is not a necessary precondition for Indian country status under 18 U.S.C. 1151(a); rejecting argument that a State has taxing jurisdiction over tribal members unless they live ''on a *reservation*'') (emphasis in original). The Court has also held, directly contrary to the commenter's assertion, that Indian allotments that are not located on a reservation can be Indian country and thus subject to tribal jurisdiction. *Venetie*, 522 U.S. at 529, citing *U.S.* v. *Pelican*, 232 U.S. 442, 449 (1914). As discussed earlier in this response to comments, EPA has also stated in regulations and in previous determinations that tribal authority to implement the SDWA can extend to the limits of Indian country.

Although the most recent Supreme Court case addressing tribal authority over nonmember activities was decided after Commenter B submitted its comments on this action, the Court in that case confirms that *Montana* continues to be the relevant test with respect to tribal authority over nonmember activities, and that in certain circumstances, ''tribes may exercise authority over the conduct of nonmembers[.]'' *Plains Commerce Bank* v. *Long Family Land & Cattle Co., Inc.*, 554 U.S. _____, 128 S.Ct. 2709, 2726 (2008). In its decision, the Court did not distinguish between whether lands are within or outside the boundaries of a formal reservation, as the primary issue was whether the sale of nonmember-owned fee land constituted a nonmember activity subject to regulation by the Tribe. *Id.* at 2723.

4. Even if There Is Inherent Authority Over the Activities of Non-Indians on Tribal Trust Lands Outside the Exterior Boundaries of the Reservation, the Navajo Nation Does Not Have Inherent Authority Over the Activities of Non-Indians on ''Split Estate'' and Allotted Lands Outside the Boundaries of the Reservation

Commenter B's fourth comment argues in the alternative that if the Navajo Nation has authority over the activities of nonmembers on tribal trust lands in the Eastern Agency, the Navajo Nation does not have authority over the activities of nonmembers on ''split estate'' and allotments in the Eastern Agency area. As discussed more extensively earlier in this response to comments and in the Decision Document, EPA has previously found that Tribes may exercise authority under the SDWA over areas within their jurisdiction, including tribal trust lands and allotments in the Eastern Agency. As EPA has noted in the Decision Document and earlier in this discussion, no Congressional intent to limit tribal authority to reservation lands can be read into the SDWA. With respect to split estate lands described in the Decision Document, the U.S. Court of Appeals for the Tenth Circuit has previously determined that split estate lands in the Eastern Agency are Indian country, as discussed in greater length in the Decision Document. *HRI Inc.* v. *EPA*, 198 F. 3d 1224, 1254 (''The split nature of surface and mineral estates does not alter the jurisdictional status of these lands for SDWA purposes.''). In finding that lands outside the formal Navajo Reservation were Indian country, the Court in *HRI* cited to a previous Tenth Circuit case finding that allotments outside the boundaries of a formal reservation qualify as Indian country under tribal civil jurisdiction.

[1] The most recent Tenth Circuit decision, *MacArthur* v. *San Juan County*, 497 F.3d 1057 (10th Cir. 2007) *cert. denied*, 128 S.Ct. 1229 (2008), involved tribal authority over employment-related claims against a non-tribal facility located on state-owned fee land within the Navajo reservation rather than a non-reservation area of Navajo Indian country.

HRI at 1250. (''*See Mustang Prod. Co.* v. *Harrison, 94 F.3d 1382, 1384 (10th Cir. 1996)* (holding that 'disestablishment of the reservation is not dispositive of the question of tribal jurisdiction. In order to determine whether the Tribes have jurisdiction we must instead look to whether the land in question is Indian country' '' (internal citations omitted)). Commenter B also argues that the Navajo Nation waived the right to occupy lands outside the Reservation, as defined in the 1868 Treaty, and therefore waived its basis for inherent authority in any area outside the exterior boundaries of the formal Reservation. The Navajo Nation has provided a detailed response to this comment, and has described how in fact the formal Navajo Reservation was expanded 11 times by Executive Orders and Acts of Congress subsequent to the 1868 Treaty. Clearly, the Federal government has affirmatively set aside all the lands that are held in trust for the Navajo Nation or its members, and there is no indication that the Navajo Nation ever intended to waive authority over the lands in the Eastern Navajo Agency. Moreover, apart from the power to exclude, ''tribes retain authority to govern 'both their members and their territory.' '' *Plains Commerce*, 128 S.Ct. at 2718, quoting *U.S.* v. *Mazurie*, 419 U.S. 544 (1975).

5. Jurisdiction Based on the Montana Exceptions Must Be Determined on a Case-by-Case Basis

Finally, Commenter B's fifth comment states that jurisdiction based on the Montana test must be determined on a case-by-case basis. EPA does evaluate tribal TAS applications on a case-by-case basis, examining the facts presented in each application, as EPA did in this case. The Decision Document, including the Findings of Fact, shows clearly that EPA has conducted a thorough analysis of the Navajo Nation's authority to regulate nonmember activities and found that, for purposes of primacy of the SDWA Class II underground injection control program, the Navajo Nation has demonstrated that it has the necessary inherent authority over such activities in the areas covered by its application, including individual and tribal trust lands outside the boundaries of the formal Reservation.

VI. Generalized Findings

As described earlier, EPA's decision to approve the Navajo Nation to implement a Class II UIC program includes findings that the Tribe meets all requirements of section 1451 of the SDWA, including that the Tribe has demonstrated adequate jurisdictional authority over all Class II injection activities in the areas covered by the Tribe's Primacy Application, including those conducted by nonmembers. With regard to authority over nonmember activities on nonmember-owned fee lands, EPA finds that the Tribe has demonstrated such authority under the test established by the United States Supreme Court in *Montana* v. *United States,* 450 U.S. 544 (1981) (*Montana* test). Under the *Montana* test, the Supreme Court held that absent a Federal grant of authority, Tribes generally lack inherent jurisdiction over the activities of nonmembers on nonmember-owned fee lands. However, the Court also found that Indian Tribes retain inherent sovereign power to exercise civil jurisdiction over nonmember activities on nonmember-owned fee lands within the reservation where: (1) Nonmembers enter into ''consensual relationships with the Tribe or its members, through commercial dealing, contracts, leases, or other arrangements'' or (2) ''* * * [nonmember] conduct threatens or has some direct effect on the political integrity, the economic security or the health or welfare of the Tribe.'' *Id.* at 565–66. In analyzing Tribal assertions of inherent authority over nonmember activities on Indian reservations, the Supreme Court has reiterated that the *Montana* test remains the relevant standard. See e.g., *Strate* v. *A–1 Contractors,* 520 U.S. 438, 445 (1997) (describing *Montana* as ''the pathmarking case concerning Tribal civil authority over nonmembers''); *Nevada* v. *Hicks,* 533 U.S. 353, 358 (2001) (''Indian Tribes' regulatory authority over nonmembers is governed by the principles set forth in [*Montana*]''); *Plains Commerce Bank* v. *Long Family Land & Cattle Co., Inc.,* 128 S.Ct. 2709.

As part of the public record available for review, EPA's Decision Document, and Appendix A thereto, set forth the Agency's specific factual findings relating to the Tribe's demonstration of inherent authority over the UIC Class II activities of nonmembers under the *Montana* test and, in particular, the potential for direct effects of nonmember UIC activities on the Tribe's health, welfare, political integrity, and economic security that are serious and substantial. In addition, EPA is publishing the general findings set forth below regarding the effects of underground injection activities. These general findings provide a backdrop for EPA's analysis of the Tribe's assertion of authority under the *Montana* test and supplement the Agency's factual findings specific to the Tribe and to the areas covered by the Tribe's Primacy Application.

A. General Finding on Human Health and Welfare, and Economic and Political Impacts

In enacting part C of the SDWA, Congress generally recognized that if left unregulated or improperly managed, underground injection can endanger drinking water sources and thus has the potential to cause serious and substantial, harmful impacts on human health and welfare, and economic and political interests. As stated in the legislative history of the SDWA:

> [U]nderground injection of contaminants is clearly an increasing problem. Municipalities are increasingly engaging in underground injection of sewage, sludge, and other wastes. Industries are injecting chemicals, byproducts, and wastes. Energy production companies are using injection techniques to increase production and to dispose of unwanted brines brought to the surface during production. Even government agencies, including the military, are getting rid of difficult to manage waste problems by underground disposal methods. Part C is intended to deal with all of the foregoing situations insofar as they may endanger USDWs.[2]

In response to the problem of the substantial risks inherent in underground injection activities, Congress enacted section 1421 of the SDWA ''to assure that drinking water sources, actual and potential, are not rendered unfit for such use by underground injection of contaminants.'' [3]

In enacting the SDWA, Congress also generally found that waste disposal practices, including mismanaged underground injection activities, could have serious and substantial, harmful impacts on human health and welfare, and economic and political interests. For example, Congress found that:

> Federal air and water pollution control legislation have increased the pressure to dispose of waste materials on or below land, frequently in ways, such as subsurface injection, which endanger drinking water quality. Moreover, the national economy may be expected to be harmed by unhealthy drinking water and the illnesses which may result therefrom.[4]

Congress specifically noted several economic and political consequences that can result from the degradation of good quality drinking water supplies,

[2] *See* H.R. Report No. 93–1185, 93rd Congress, 2nd Session (1974), *reprinted in* ''A Legislative History of the Safe Drinking Water Act,'' February, 1982, by the Government Printing Office, Serial No. 97–9, page 561.

[3] *Id.*, page 560.

[4] *Id.*, page 540.

including: (1) Inhibition of interstate tourism and travel; (2) loss of economic productivity because of absence from employment due to illness; (3) limited ability of a town or region to attract workers; and (4) impaired economic growth of a town or region, and, ultimately, the nation.[5]

As the Agency charged by Congress with implementing part C of the SDWA and assuring implementation of effective UIC programs throughout the United States, EPA agrees with these Congressional findings. EPA finds that underground injection activities, if not effectively regulated, can have serious and substantial, harmful impacts on human health and welfare, and economic and political interests. In making this finding, EPA recognizes that: (1) The underground injection activities, currently regulated as five distinct classes of injection wells as defined in the UIC regulations, typically emplace a variety of potentially harmful organic and inorganic contaminants (e.g., brines and hazardous wastes) into the ground; (2) these injected contaminants have the potential to enter USDWs through a variety of migratory pathways if injection wells are not properly managed; and (3) once present in USDWs, these injected contaminants can have harmful impacts on human health and welfare, and economic and political interests, that are both serious and substantial.

In 1980, EPA issued a document entitled, ''Underground Injection Control Regulations: Statement of Basis and Purpose,'' which provides the rationale for the Agency in proposing specific regulatory controls for a variety of underground injection activities. These controls, or technical requirements (e.g., testing to ensure the mechanical integrity of an injection well), were promulgated to prevent release of pollutants through the six primary ''pathways of contamination,'' or well-established and recognized ''ways in which fluids can escape the well or injection horizon and enter USDWs.''[6] EPA has found that USDW contamination from one or more of these pathways can occur from underground injection activity of all classes (I–V) of injection wells.

The six pathways are:

1. Migration of fluids through a leak in the casing of an injection well and directly into a USDW;
2. Vertical migration of fluids through improperly abandoned and improperly completed wells in the vicinity of injection well operations;
3. Direct injection of fluids into or above a USDW;
4. Upward migration of fluids through the annulus, which is the space located between the injection well's casing and the well bore. This can occur if there is sufficient injection pressure to push such fluid into an overlying USDW;
5. Migration of fluids from an injection zone through the confining strata over or underlying a USDW. This can occur if there is sufficient injection pressure to push fluid through a stratum, which is either fractured or permeable, and into the adjacent USDW; and
6. Lateral migration of fluids from within an injection zone into a portion of that stratum considered to be a USDW. In this scenario, there may be no impermeable layer or other barrier to prevent migration of such fluids.[7]

Moreover, consistent with EPA's findings, the U.S. Department of the Interior has recognized the ability of injection wells to contaminate surface waters that are hydrogeologically connected to contaminated ground water.[8] Such contamination of surface waters could further cause negative impacts on human health and welfare, and economic and political interests.

In sum, EPA finds that, given the common presence of contaminants in injected fluids, serious and substantial contamination of ground water and surface water resources can result from improperly regulated underground injection activities. Moreover, such contamination has the potential to cause correspondingly serious and substantial harm to human health and welfare, and economic and political interests. EPA also has determined that Congress reached a similar finding when it enacted part C of the SDWA, directing EPA to establish UIC programs to mitigate and prevent such harm through the proper regulation of underground injection activities.

B. General Finding on the Protection of Safe Drinking Water Sources as Necessary To Protect Self-Government

Consistent with the finding that improperly managed underground injection activities can have direct harmful effects on human health and welfare, and economic and political interests that are serious and substantial, EPA has determined that proper management of such activities serves the purpose of protecting these human health and welfare, and economic and political interests. Protection of these interests is a core governmental function, the exercise of which is integral to, and is a necessary aspect of, self-government. *See* 56 FR 64876, 64879 (December 12, 1991); *Montana* v. *EPA*, 137 F.3d 1135, 1140–41 (9th Cir. 1998). EPA has determined that Congress reached this conclusion in enacting the SDWA, and that Congress considered the water quality protection functions authorized by the SDWA to be a necessary act of self-government, serving to protect essential and vital public interests by ensuring that the public's essential drinking water sources are safe from contamination, including contamination caused by underground injection activities.

The above findings regarding the effects on human health and welfare, and economic and political interests are generally true for human beings and their communities, wherever they may be located. EPA has determined that the above findings are generally true for any Federal, State and/or Tribal government having responsibility for protecting human health and welfare. With specific relevance to Tribes, EPA has long noted the relationship between proper environmental management within Indian country and Tribal self-government and self-sufficiency. Moreover, in the 1984 *EPA Policy for the Administration of Environmental Programs on Indian Reservations*, EPA determined that as part of the ''principle of Indian self-government,'' Tribal governments are the ''appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace,'' consistent with Agency standards and regulations. (*EPA Policy for the Administration of Environmental Programs on Indian Reservations*, Paragraph 2, November 8, 1984).

EPA interprets section 1451 of the SDWA, in providing for the approval of Tribal programs under the Act, as authorizing eligible Tribes to assume a primary role in protecting drinking water sources. These general findings provide a backdrop for EPA's legal analysis of the Navajo Tribe's Application and, in effect, supplement EPA's factual findings specific to the Navajo Tribe and the areas covered by the Tribe's Application contained in the Decision Document and Appendix A thereto, and the Tribe's similar conclusions, contained in its Application, pertaining specifically to

[5] *Id.*, page 540.

[6] ''Underground Injection Control Regulations: Statement of Basis and Purpose,'' EPA (May 1980) page 7.

[7] *Id.*, pp. 7–17.

[8] *See* Federal Water Quality Administration's Order COM 5040.10 (1970), *as referred to* in H.R. Report No. 93–1185, 561.

the Navajo Tribe and areas covered by its Primacy Application.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Reporting or recordkeeping requirements will be based on the Navajo Nation UIC Regulations, and the Navajo Nation is not subject to the Paperwork Reduction Act. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR parts 144–148) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2040–0042. The OMB control numbers for EPA's regulations in 40 CFR are listed in part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, a ''small entity'' is defined as: (1) A small business that is defined in the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities operating existing Class II wells would be subject to requirements substantially similar to the existing requirements of the EPA's program under 40 CFR 147.3000, and will not incur significant new costs as a result of this final rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. EPA's approval of the Navajo Nation's program will not constitute a ''Federal mandate'' because there is no requirement that the Tribe establish UIC regulatory programs and because the program is a Tribal, rather than a Federal program. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. In developing this rule, EPA consulted with small governments under a plan developed consistent with section 203 of UMRA concerning the regulatory requirements in the rule that might significantly or uniquely affect small governments. The only small government that might be significantly or uniquely affected by this rule is the Navajo Nation Tribal government. Accordingly, EPA has made the Tribe fully aware of the Federal requirements for approval to administer its own Class II UIC program; enabled the Tribe to have meaningful and timely input in the development of this rule; and informed, educated, and advised the Tribe on compliance with these requirements. However, the Tribal government is implementing and complying with these regulatory requirements because it has: (1) Voluntarily requested EPA approval to administer its Class II UIC program; and (2) voluntarily assumed the Tribal share of the costs for doing so.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule would simply provide that the Tribe has primary enforcement responsibility under the SDWA for the Class II UIC program, pursuant to which the Tribe would be implementing and enforcing a tribal regulatory program that is generally equivalent to the existing Federal program, as explained in more detail in section IV and in the Decision Document. The EPA will continue to administer the Federal Class I, III, IV, and V UIC programs on Navajo Indian lands. Authorizing the Navajo Nation as the primacy agency for the Class II UIC program in the areas covered by the Tribe's Primacy Application will not substantially alter the distribution of power and responsibilities among levels of government or significantly change EPA's relationship with the relevant States. The substitution of a Navajo Nation Class II program for an EPA-administered Class II program in the areas covered by the Tribe's Primacy Application will impose no additional costs on the States of Arizona, Utah or New Mexico. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Subject to Executive Order 13175 (65 FR 67249, November 6, 2000) EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this rule will have tribal implications. However, it will neither impose substantial direct

compliance costs on the tribal government, nor preempt tribal law. The Navajo Nation has voluntarily requested authorization for primary enforcement responsibility for the Class II UIC program and has voluntarily assumed the Tribal share of the costs for doing so. Additionally, EPA is approving the Navajo Nation's application for Class II UIC primacy and thus replacing the existing Federal Class II UIC program in the areas covered by the Tribe's Primacy Application with a Tribal program administered pursuant to the laws of the Navajo Nation. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

Consistent with EPA policy, EPA nonetheless consulted with Tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. Since awarding the first developmental grant to the Navajo Nation in fiscal year 1995 for developing capacity to assume the Class II UIC program, EPA has consulted and worked closely with the Tribe in the administration of these funds and in the development of the Tribe's regulatory program.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it approves a tribal primary enforcement (primacy) program. This rule simply provides that the Tribe has primary enforcement responsibility under the SDWA for the Class II UIC program, pursuant to which the Tribe would be implementing and enforcing a tribal regulatory program that is generally equivalent to the existing Federal program, as explained in more detail in the Decision Document.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not decrease the level of protection provided to human health or the environment or lessen current environmental standards. This rule will simply provide that the Tribe has primary enforcement responsibility under the SDWA for the Class II UIC program, pursuant to which the Tribe will be implementing and enforcing a tribal regulatory program that is generally equivalent to the existing Federal program, as explained in more detail in the Decision Document.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 4, 2008.

List of Subjects in 40 CFR Part 147

Environmental protection, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply, Incorporation by reference.

Dated: October 21, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

Subpart D—[Amended]

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300h *et seq.*; and 42 U.S.C. 6901 *et seq.*

■ 2. Section 147.151 is amended by revising the first two sentences of paragraph (a) and the last sentence of paragraph (b) to read as follows:

§ 147.151 EPA-administered program.

(a) *Contents.* The UIC program that applies to all injection activities in Arizona, including those on Indian lands, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is administered by EPA. The UIC program for Navajo Indian lands, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program, consists of the requirements contained in subpart HHH of this part. * * *

(b) * * * The effective date for the UIC program on the lands of the Navajo, except for Class II wells on Navajo Indian lands for which EPA has granted

the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is November 25, 1988.

Subpart GG—[Amended]

■ 3. Section 147.1603 is amended by revising the first sentence of paragraph (a) and paragraph (b) to read as follows:

§ 147.1603 EPA-administered program—Indian Lands.

(a) *Contents*. The UIC program for all classes of wells on Indian lands in New Mexico, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is administered by EPA. * * *

(b) *Effective date*. The effective date for the UIC program on Indian lands in New Mexico, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is November 25, 1988.

Subpart TT—[Amended]

■ 4. Section 147.2253 is amended by revising the first two sentences of paragraph (a) and paragraph (b) to read as follows:

§ 147.2253 EPA-administered program.

(a) *Contents*. The UIC program for all classes of wells on Indian lands in the State of Utah, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is administered by EPA. The program for wells on Navajo Indian lands, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program, and for Ute Mountain Ute consists of the requirements set forth at subpart HHH of this part. * * *

(b) *Effective date*. The effective date for this program for all other Indian lands in Utah, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is November 25, 1988.

Subpart HHH—[Amended]

■ 5. Section 147.3000 is amended by revising the first sentence of paragraph (a) and paragraph (b) to read as follows:

§ 147.3000 EPA-administered program.

(a) *Contents*. The UIC program for Navajo Indian lands, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), the Ute Mountain Ute (Class II wells only on Ute Mountain Ute lands in Colorado and all wells on Ute Mountain Ute lands in Utah and New Mexico), and all wells on other Indian lands in New Mexico is administered by EPA. * * *

(b) *Effective date*. The effective date for the UIC program on these lands, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is November 25, 1988.

■ 6. Subpart KKK is added and reserved to read as follows:

Subpart KKK—[Reserved]

■ 7. Subpart LLL consisting of § 147.3400 is added to read as follows:

Subpart LLL—Navajo Indian Lands

§ 147.3400 Navajo Indian Lands—Class II wells.

The UIC program for Class II injection wells located: Within the exterior boundaries of the formal Navajo Reservation, including the three satellite reservations (Alamo, Canoncito and Ramah), but excluding the former Bennett Freeze Area, the Four Corners Power Plant and the Navajo Generating Station; and on Navajo Nation tribal trust lands and trust allotments outside those exterior boundaries (collectively referred to as ''Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program''), is the program administered by the Navajo Nation approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the **Federal Register** on November 4, 2008; the effective date of this program is December 4, 2008. This program consists of the following elements as submitted to EPA in the Navajo Nation's program application:

(a) *Incorporation by Reference*. The requirements set forth in the Navajo Nation Statutes, Regulations and Resolution notebook, dated October 2008, are hereby incorporated by reference and made part of the applicable UIC program under the SDWA for Class II injection wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in this section). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained or inspected at the Navajo Nation Environmental Protection Agency UIC Office, Old NAPA Auto Parts Building (Tribal Bldg. #S009–080), Highway 64, Shiprock, New Mexico 87420 (505–368–1040), at the Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3920 (415–972–3533), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) *Memorandum of Agreement (MOA)*. The MOA between EPA Region 9 and the Navajo Nation, signed by the EPA Regional Administrator on August 21, 2001. The Criminal Enforcement MOA between EPA Region 9 and the Navajo Nation, signed by EPA on October 30, 2006.

(c) *Statement of Legal Authority*. (1) ''Statement of the Attorney General of the Navajo Nation Pursuant to 40 CFR 145.24'', August 27, 2001.

(2) ''Statement of the Attorney General of the Navajo Nation Regarding the Regulatory Authority and Jurisdiction of the Navajo Nation with Respect To Its Underground Injection Control Program'', July 3, 2002.

(3) ''Supplemental Statement of the Navajo Nation Attorney General Regarding the Regulatory Authority and Jurisdiction of the Navajo Nation to Operate an Underground Injection Control Program under the Safe Drinking Water Act'', October 11, 2006.

(d) *Program Description*. The Program Description submitted as part of the Navajo Nation's application, and any other materials submitted as part of this application or as a supplement thereto.

[FR Doc. E8–26023 Filed 11–3–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385 and 395

[Docket No. FMCSA–2004–19608]

RIN 2126–AB14

Hours of Service of Drivers; Availability of Supplemental Document

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of availability of supplemental document.