

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA-HQ-OW-2020-0123; FRL-10007-48-OW]

Wyoming Underground Injection Control Program; Class VI Primacy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has received a complete Underground Injection Control (UIC) program revision package from the State of Wyoming requesting approval of a revision to the State's Safe Drinking Water Act (SDWA) section 1422 UIC program to include Class VI injection well primary implementation and enforcement authority (primacy). The EPA proposes to approve the application from Wyoming under the SDWA to implement a UIC program for Class VI injection wells located within the State, except those on Indian country. This revision would allow the Wyoming Department of Environmental Quality to issue UIC permits for geologic carbon sequestration facilities as Class VI wells and ensure compliance of Class VI wells with applicable requirements under the UIC program. The EPA is requesting public comments and announcing that any member of the public may request a public hearing.

DATES: The application is available for inspection and copying at the address appearing in the **ADDRESSES** section of this document. Comments must be received on or before **[insert date 45 days after date of publication in the *Federal Register*]**. Requests for a public hearing will be accepted until **[insert date 15 days after date of publication in the *Federal Register*]**.

ADDRESSES: You may send comments, identified by Docket ID No. **EPA-HQ-OW-2020-**

0123, to the Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).

Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. **EPA-HQ-OW-2020-**

0123 for this rulemaking. Comments received may be posted without change to

<https://www.regulations.gov/>, including any personal information provided. For detailed

instructions on sending comments and additional information on the rulemaking process, see the

“Public Participation” heading in the **SUPPLEMENTARY INFORMATION** section of this document.

Public Hearing

Only if requested, a public hearing will be held on May 14, 2020 from 9 a.m. to 5 p.m. at 200 West 17th Street, Room 210, Cheyenne, Wyoming 82002. The hearing details will be provided in a Federal Register publication if requested.

FOR FURTHER INFORMATION CONTACT: Molly McEvoy, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 564-4765; fax number: (202) 564-3754; email address: mcevoy.molly@epa.gov or Wendy Cheung, Underground Injection Control Unit, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, MSC 8WD-SDU, Denver, Colorado 80202; telephone number: (303) 312-6242; fax number: (303) 312-7206; email address: cheung.wendy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. **EPA-HQ-OW-2020-0123**, at <https://www.regulations.gov/> (our preferred method). Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. If you need to submit CBI, contact Wendy Cheung, contact information available in the **FOR FURTHER INFORMATION CONTACT** section. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

B. Participation in Public Hearing

Only if requested, a public hearing will be held on May 14, 2020 from 9:00 a.m. to 5:00 p.m. at 200 West 17th Street, Room 210, Cheyenne, Wyoming 82001. Requests for a hearing may be sent to Wendy Cheung, EPA Region 8, 1595 Wynkoop Street, MSC 8WD-SDU, Denver, Colorado 80202. For additional information regarding the public hearing, please contact Wendy Cheung at (303) 312-6242 or cheung.wendy@epa.gov.

The EPA will begin pre-registering speakers for the hearing upon publication of this document in the *Federal Register*. To register to speak at the hearing, please contact

Wendy Cheung, EPA Region 8, 1595 Wynkoop Street, MSC 8WD-SDU, Denver, Colorado 80202. For additional information regarding the public hearing, please contact Wendy Cheung (303) 312-6242 or cheung.wendy@epa.gov.

The last day to pre-register to speak at the hearing will be May 8, 2020. On May 13, 2020 the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: <https://www.epa.gov/uic/underground-injection-control-epa-region-8-co-mt-nd-sd-ut-and-wy#public-notice>

If the EPA convenes a hearing, the Agency will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk. The EPA will make every effort to accommodate all speakers who arrive and register, although preferences on speaking times may not be able to be fulfilled.

Each commenter will have five minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) or in hard copy form.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Commenters should notify Wendy Cheung at (303) 312-6242 or cheung.wendy@epa.gov if they will need specific equipment or if there are other special needs related to providing comments at the hearings.

Confirmation of the public hearing will be announced on **[insert date 30 days after date of publication in the *Federal Register*]**. Any updates made to any aspect of the hearing including registration information and the hearing procedure, should a hearing be requested, will be posted online at <https://www.epa.gov/uic/underground-injection-control-epa-region-8-co-mt-nd-sd-ut-and-wy#public-notice>. Please monitor our website to determine if there are any updates. The EPA does not intend to publish a document in the *Federal Register* announcing updates.

The EPA will not provide audiovisual equipment for presentations unless we receive special requests in advance. Commenters should notify Wendy Cheung at (303) 312-6242 or cheung.wendy@epa.gov when they pre-register to speak if they will need specific equipment. If you require the service of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by May 7, 2020. We may not be able to arrange accommodations without advanced notice.

C. Public Participation Activities Conducted by Wyoming

In 2019, Wyoming held two public hearings with public comment periods on the State's intent to adopt its Class VI UIC regulations. The Wyoming Water and Waste Advisory Board (WWAB) held the first public hearing on June 25, 2019, in Casper, Wyoming. The State accepted public comments beginning on May 17, 2019, through the adjournment of the public hearing. The Wyoming Environmental Quality Council held the second public hearing on November 19, 2019, in Cheyenne, Wyoming. The State accepted comments on proposed revisions from September 13, 2019 through October 30, 2019. The Wyoming Class VI regulations were signed by the Governor on January 23, 2020. Documentation of all public participation activities, including those associated with

Class VI UIC regulations and subsequent revisions that the State proposed before 2019, can be found in EPA's Docket ID No. **EPA-HQ-OW-2020-0123**.

II. Introduction

Wyoming received primacy for Class I, III, IV, and V injection wells under SDWA section 1422 on August 17, 1983, and Class II injection wells under SDWA section 1425 on December 23, 1982. Wyoming has applied to the EPA under section 1422 of the SDWA, 42 U.S.C. sections 300h-1, for primacy for Class VI injection wells, except those located on Indian lands. The UIC program revision package from Wyoming includes a description of the State Underground Injection Control program, copies of all applicable rules and forms, a statement of legal authority, a summary and results of Wyoming's public participation activities, and a Memorandum of Agreement between Wyoming and the EPA Region 8 office.

This proposed action is based on a legal and technical review of Wyoming's application as directed in the *Code of Federal Regulations* (CFR) at 40 CFR part 145. As a result of this review, the EPA is proposing to approve Wyoming's application for primacy, based on its finding that the program meets all applicable requirements for approval under SDWA section 1422 and the State is capable of administering a Class VI UIC program in a manner consistent with the terms and purposes of the SDWA and all applicable regulations.

III. Legal Authorities

This proposed action would be taken under the authority of sections 1422 and 1450 of the SDWA, 42 U.S.C. 300h-1 and 300j-9.

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

SDWA establishes requirements for states seeking EPA approval of State UIC programs.

For states that seek approval for UIC programs under section 1422 of the SDWA, the EPA has promulgated a regulation setting forth the applicable procedures and substantive requirements, codified in 40 CFR part 145. It includes 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.

IV. Wyoming's Application

On January 31, 2020, Wyoming submitted a program revision application to add Class VI injection wells to the State's SDWA section 1422 UIC program. The UIC program revision package from Wyoming includes a description of the State UIC program, copies of all applicable rules and forms, a statement of legal authority, a summary and results of Wyoming's public participation activities, and a Memorandum of Agreement between Wyoming and the EPA's Region 8 office. The EPA reviewed the application for completeness and simultaneously performed a technical evaluation of the application materials.

V. EPA's Proposed Action -- Incorporation by Reference

In this action, the EPA is proposing to approve primacy for the State of Wyoming's Class VI UIC program over Class VI injection wells in the State, except for those located on Indian lands. Support of this action is part of the public record in EPA's Docket No. **EPA-HQ-OW-2020-0123**. When finalized, this action will amend 40 CFR 147.2550 and incorporate by reference the EPA-approved state program. The EPA will continue to administer its UIC program for Class I, II, III, IV, V, and VI injection wells on Indian lands.

The provisions of Wyoming's Code that contain standards, requirements, and procedures applicable to owners or operators of Class VI UIC wells will be incorporated by reference into

40 CFR 147.2550. Provisions of Wyoming’s Code that contain standards, requirements, and procedures applicable to owners or operators of Class I, III, IV, and V injection wells have already been incorporated by reference into 40 CFR 147.2550. Any provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, will be enforceable by the EPA pursuant to section 1423 of the SDWA and 40 CFR 147.1(e).

In order to better serve the public, the EPA is reformatting the codification of the EPA-approved Wyoming SDWA section 1422 UIC Program Statutes and Regulations for Well Classes I, III, IV, V, and VI. Instead of codifying Wyoming Statutes and Regulations as separate paragraphs, the EPA is now codifying a notebook that contains the EPA-approved Wyoming Statutes and Regulations for Well Classes I, III, IV, V, and VI. This notebook will be incorporated by reference into 40 CFR 147.2550 and the documents will be available at <https://www.regulations.gov> in the docket for this rule. The EPA will also codify a table listing the EPA-approved Wyoming Statutes and Regulations for Well Classes I, III, IV, V, and VI in 40 CFR 147.2550.

The EPA will continue to oversee Wyoming’s administration of the SDWA Class VI program. Part of the EPA’s oversight responsibility will require quarterly reports of non-compliance and annual UIC performance reports pursuant to 40 CFR 144.8. The Memorandum of Agreement between the EPA and Wyoming, signed by the Regional Administrator on March 20, 2020, makes available to the EPA any information obtained or used by Wyoming’s Class VI UIC program without restriction.

VI. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is exempt from review by the Office of Management and Budget (OMB) because it is a proposed approval of a state UIC program.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This proposed action is not an Executive Order 13771 regulatory action because this action is exempt under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This proposed action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040-0042. Reporting or recordkeeping requirements will be based on Wyoming's UIC Regulations, and the State of Wyoming is not subject to the PRA.

D. Regulatory Flexibility Act (RFA)

I certify that this proposed action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This proposed action does not impose any requirements on small entities as this proposed action would approve a state program.

E. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The proposed action imposes no enforceable duty on any state, local or tribal governments or the private sector. EPA’s proposed approval of Wyoming’s program will not constitute a federal mandate because there is no requirement that a state establish UIC regulatory programs and because the program is a state, rather than a federal program.

F. Executive Order 13132: Federalism

This proposed action 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.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This proposed action does not have tribal implications as specified in Executive Order 13175. This proposed action contains no federal mandates for tribal governments and does not impose any enforceable duties on tribal governments. Thus, Executive Order 13175 does not apply to this proposed action.

H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory

action” in section 2-202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because it approves a state program.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This proposed action does not involve technical standards.

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

The EPA has determined that this proposed action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This proposed action is simply proposing to provide that Wyoming has primacy under the SDWA for the Class VI UIC program, pursuant to which Wyoming will be implementing and enforcing a state regulatory program that is as stringent as the existing federal program.

List of Subjects in 40 CFR Part 147

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

Dated: .

Andrew Wheeler,
Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 147 as follows:

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

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

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

2. Amend § 147.2550 by:

- a. Revising the section heading;
- b. Revising the introductory text and paragraph (a); and
- c. Adding paragraph (c) subject heading, and paragraphs (c)(6) and (7), and (d)(3) and (4).

The revisions and additions read as follows:

§ 147.2550 State-administered program—Class I, III, IV, V and VI wells.

The UIC program for Class I, III, IV, and V wells in the State of Wyoming, except those located on Indian lands, is the program administered by Wyoming Department of Environmental Quality, approved by the EPA pursuant to the Safe Drinking Water Act (SDWA) section 1422. The effective date of this program is August 17, 1983. The UIC Program for Class VI wells in Wyoming, except those located on Indian lands, is the program administered by Wyoming Department of Environmental Quality, approved by the EPA pursuant to SDWA section 1422. Notice of this approval was published in the *Federal Register* on [DATE OF FINAL RULE]; the effective date of this program is [DATE OF FINAL RULE]. This program consists of the

following elements, as submitted to the EPA in the State’s program revision application.

(a) *Incorporation by reference.* The requirements set forth in the state statutes and regulations cited in the notebook entitled “*EPA-Approved Wyoming SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI*”, dated [DATE OF FINAL RULE], and Table 1 to paragraph (a) of this section are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for Wyoming. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the State of Wyoming’s regulations that are incorporated by reference in paragraph (a) of this section may be inspected at the U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, MSC 8WD-SDU, Denver, Colorado 80202; Water Docket, EPA Docket Center (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460; and the National Archives and Records Administration (NARA). If you wish to obtain materials from the EPA Regional Office, please call (303) 312-7226; for materials from a docket in the EPA Headquarters Library, please call the Water Docket at (202) 566-2426. 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.

Table 1 to paragraph (a) EPA-Approved Wyoming SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI			
State citation	Title/subject	State effective date	EPA approval date ¹
Wyoming Statutes sections 35-11-101 through 35-11-115, and 35-11-301 through 35-11-	Wyoming Environmental Quality Act	1989	March 6, 1991, 56 FR 9421.

¹ In order to determine the EPA effective date for a specific provision listed in this table, consult the Federal Register publication cited in this column for the particular provision.

Table 1 to paragraph (a) EPA-Approved Wyoming SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI			
State citation	Title/subject	State effective date	EPA approval date ¹
305			
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality Chapter III: Regulations for Permit to Construct, Install or Modify Public Facilities Capable or, (sic) Causing or Contributing to Pollution	Regulations for Permit to Construct, Install or Modify Public Water Supplies, Wastewater Facilities, Disposal Systems, Biosolids Management Facilities, Treated Wastewater Reuse Systems and Other Facilities Capable of Causing or Contributing to Pollution	1983	May 11, 1984, 49 FR 20197.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter VIII: Quality Standards for Groundwaters of Wyoming	Quality Standards for Groundwaters of Wyoming	1980	May 11, 1984, 49 FR 20197.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter IX: Wyoming Groundwater Pollution Control Permit	Wyoming Groundwater Pollution Control Permit	1980	May 11, 1984, 49 FR 20197.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XIII: Prohibitions of Permits for New Hazardous Waste Injection Wells	Prohibitions of Permits for New Hazardous Waste Injection Wells	1989	March 6, 1991, 56 FR 9421.
Land Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XXI: In Situ Mining	In Situ Mining	1981	May 11, 1984, 49 FR 20197.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XXIV: Class VI	Class VI Injection Wells and Facilities Underground and Injection Control Program	2020	[INSERT NEW FR DATE AND #]

Table 1 to paragraph (a) EPA-Approved Wyoming SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI			
State citation	Title/subject	State effective date	EPA approval date ¹
Injection Wells and Facilities Underground and Injection Control Program			

(c) Statements of agreement.

(6) Memorandum of Agreement addendum between EPA, Region VIII and Wyoming Department of Environmental Quality, signed by the EPA Regional Administrator on March 20, 2020.

(7) Letter from Governor of Wyoming to Regional Administrator, EPA Region VIII, “Re: UIC Program Class VI Application,” January 23, 2020.

(d) ***

(3) “Attorney General’s Statement – “Attorney General’s Statement to Accompany Wyoming’s Underground Injection Control Program Class VI Primacy Application,” signed by Attorney General and Assistant Attorney General for the State of Wyoming, January 9, 2020.

(4) Letter form Attorney General for the State of Wyoming to Regional Counsel, EPA Region VIII, “Re: Wyoming Underground Injection Control Program Class VI Regulations,” October 25, 2019.
