

The EPA Administrator, Andrew R. Wheeler, signed the following proposed rule on 9/23/2020, and EPA is submitting it for publication in the Federal Register (FR). While we have taken steps to ensure the accuracy of this Internet version of the proposed rule, it is not the official version of the proposed rule for purposes of public comment. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDsys website (<https://www.gpo.gov/fdsys/>). It will also appear on Regulations.gov (<https://www.regulations.gov/>) in Docket No. EPA-HQ-OW-2020-0154. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 147

[EPA-HQ-OW-2020-0154; FRL-10015-00-OW]

### State of New Mexico Underground Injection Control Program; Primacy Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve an application from the State of New Mexico under the Safe Drinking Water Act (SDWA) to revise the state's existing Underground Injection Control (UIC) program for Class I injection wells located within the state, except those in Indian country. New Mexico has revised the state's UIC Class I program regulations to remove the current ban on Class I injection wells and establish new permit conditions, oversight, and enforcement to safely manage Class I hazardous waste disposal wells.

**DATES:** Comments must be received on or before [insert date 45 days after date of publication in the Federal Register].

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OW-2020-0154, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).  
Follow the online instructions for submitting comments.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004.  
The Docket Center's hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

*Instructions:* All submissions received must include the Docket ID No. EPA-HQ-OW-2020-0154 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 of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Kyle Carey, 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) 564-2322; fax number: (202) 564-3754; email address: [carey.kyle@epa.gov](mailto:carey.kyle@epa.gov), or Evelyn Rosborough, Region VI Library (6WD), U.S. Environmental Protection Agency, 1201 Elm Street, Suite 500, Dallas, Texas 75270; telephone number: (214) 665-7515; fax: (214) 665-6490; email address: [rosborough.evelyn@epa.gov](mailto:rosborough.evelyn@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

#### *A. Written Comments:*

Submit your comments, identified by Docket ID No. **EPA-HQ-OW-2020-0154**, at <https://www.regulations.gov> or other methods identified in the **ADDRESSES** section of this document. Once submitted, comments cannot be edited or removed from the docket. 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. Contact EPA if you want to submit CBI; see FOR INFORMATION CONTACT section of this document. 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. 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>.

The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

*B. Participation in the Public Hearing*

Please note that EPA may deviate from its typical approach because the President has declared a national emergency. Because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID-19, EPA may not be able to hold in-person public meetings at this time.

Confirmation or cancellation of the public hearing will be announced on **[insert date 45 days after date of publication in the Federal Register]** and on EPA Region VI's website at: <https://www.epa.gov/uic/new-mexico-proposed-uic-program-revision-class-i-injection-wells>. For information regarding the public hearing, including a request to hold a hearing, or to speak at the hearing, please contact Evelyn Rosborough, Region VI Library (6WD), U. S. Environmental Protection Agency, 1201 Elm Street, Suite 500,

Dallas, Texas 75270; or telephone: (214) 665-7515; fax: (214) 665-6490; email: [rosborough.evelyn@epa.gov](mailto:rosborough.evelyn@epa.gov).

If requested, the public hearing may be held at the Wendell Chino Building (Porter Hall, 1st floor), 1220 South St. Francis Drive, Santa Fe, New Mexico 87505 or at the New Mexico State Capitol, 490 Old Santa Fe Trail, Santa Fe, NM 87501. EPA may change the format and the timing of the public hearing (i.e. a virtual hearing held during regular business hours) if appropriate to protect public health in the face of COVID-19 risks. EPA will publish notice of any such change at least seven days prior to the hearing date exclusively at: <https://www.epa.gov/uic/new-mexico-proposed-uic-program-revision-class-i-injection-wells>.

### C. *Public Outreach*

On **[insert date of publication in the Federal Register]**, a public notice announcing this proposed approval, request for public comment, and notice of a public hearing to be held on **[insert date 45 days after date of publication in the Federal Register]**, will be published in the *Albuquerque Journal*, the *Roswell Daily Record*, the *Gallup Independent*, and posted to EPA Region VI's website at: <https://www.epa.gov/uic/new-mexico-proposed-uic-program-revision-class-i-injection-wells>. In addition, EPA will email a link to the document published in the **Federal Register** to a statewide list of interested stakeholders.

## II. **Introduction**

EPA approved the State of New Mexico's UIC program as meeting the requirements for primary enforcement responsibility (primacy) for Class I, III, IV, and V injection wells, under Section 1422 of the SDWA, on July 11, 1983. The State of New Mexico has revised their UIC

Class I program regulations to remove the current ban on Class I hazardous waste wells and establish new permit conditions, oversight, and enforcement to safely manage Class I wells, except those in Indian country. EPA considers this to be a substantial program revision and therefore subject to the procedures specified in the *Code of Federal Regulations* (CFR) at 40 CFR 145.32(b)(2). EPA is proposing to approve New Mexico's revision to its Class I program. If approved, EPA would make conforming changes to 40 CFR 147.1601 to reflect New Mexico's revised Class I program.

EPA will continue to oversee the State of New Mexico's administration of UIC Class I, III, IV, and V programs as authorized under the SDWA. Part of EPA's oversight responsibility includes the review of required state quarterly reports of non-compliance and annual UIC performance reports pursuant to 40 CFR 144.8.

### **III. Legal Authorities**

These proposed regulations are being promulgated under the authority of Sections 1422 and 1450 of the SDWA, 42 U.S.C. 300h-1 and 300j-9.

#### *A. Revision of State UIC Programs*

As required by Section 1421 of the SDWA, EPA promulgated minimum requirements at 40 CFR part 145 for effective state UIC programs to prevent underground injection activities that endanger underground sources of drinking water (USDWs). Under Section 1422 of the SDWA, once EPA approves a state UIC program, the state has primary enforcement responsibility for underground water sources. A state may revise its UIC program as provided under 40 CFR 145.32(a) and by following the procedures described under 40 CFR 145.32(b), which require the state to submit a modified program description, an Attorney General's statement, a Memorandum of

Agreement, or other such documentation as EPA determines to be necessary under the circumstances (40 CFR 145.32(b)(1)).

*B. Program Revision Effective Date*

A program revision becomes effective upon approval of the Administrator (40 CFR 145.32(b)(4)). All revisions to the state UIC program would be federally enforceable as of the effective date of EPA's approval of the respective revision and 40 CFR part 147 codification. Consistent with EPA Guidance 16,<sup>1</sup> EPA considers state-initiated program revisions to permit a formerly banned activity under the State of New Mexico Class I UIC program to be a substantial program revision. Under EPA regulations, this means there is an opportunity for public comment and to request a public hearing (40 CFR 145.32(b)(2)).

*C. Indian Country*

EPA's approval of the State of New Mexico's program revision to remove the prohibition on hazardous waste injection disposal under the SDWA UIC Class I program does not extend to Indian lands. Pursuant to EPA's UIC regulations at 40 CFR 144.3, Indian lands "means 'Indian country' as defined in 18 U.S.C. 1151." EPA, or eligible Indian tribes, as appropriate, will retain responsibilities under the SDWA UIC program for Class I, III, IV, and V injection wells in Indian country in the State of New Mexico.

**IV. State of New Mexico's Application**

*A. Notice of Completion*

On May 2, 2019, EPA determined that the Agency had received a complete UIC

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<sup>1</sup> <https://www.epa.gov/sites/production/files/2020-02/documents/attorneygeneralsstatement-31july1981.pdf>

program revision application from the State of New Mexico, in which the state requested approval of its revised UIC regulations for Class I injection wells. The full application and supplemental materials are available electronically at <https://www.regulations.gov> in EPA's Docket No. **EPA-HQ-OW-2020-0154**; and a copy of the application can be accessed for inspection and copying at: the U. S. Environmental Protection Agency Region VI Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, by contacting Evelyn Rosborough, telephone number: (214) 665-7515; fax: (214) 665-6490; email address: [rosborough.evelyn@epa.gov](mailto:rosborough.evelyn@epa.gov). Public comments are requested, and a public hearing will be held if requests are received within 45 days of publication of this document (see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this document for further information on how to request a public hearing).

The UIC program revision application package from the State of New Mexico includes revisions of: 1) the description of the state's UIC program (40 CFR 145.23); 2) all applicable state statutes, regulations, and forms (40 CFR 145.22(a)(5)); 3) the Attorney General's statement that the state has adequate legal authority to carry out the program described and to meet the requirements of 40 CFR part 145; and 4) the Memorandum of Agreement between the State of New Mexico and EPA's Region VI Administrator (40 CFR 145.25).

*B. Public Participation Activities Conducted by the State of New Mexico*

On May 15, 2015, the New Mexico Water Quality Control Commission (WQCC or Commission) published a public notice of the Commission's intent to adopt amendments to the WQCC rules governing underground injection control to authorize the State of New Mexico to allow the approval of Class I hazardous waste injection wells,



but only for petroleum refineries disposing the waste generated at the refinery. The public notice was published in 15 newspapers across the State of New Mexico. Written comments on the proposed rulemaking changes were accepted between May 15, 2015, and July 14, 2015. The public hearing was held on July 14, 2015, before both a WQCC hearing officer and the full Commission. Prior to the hearing, five technical witnesses from the Navajo Nation and one from New Mexico Oil Conservation Division pre-filed written testimony. At the hearing, in addition to the technical witnesses, several members of the public, including local elected officials, provided written or oral testimony in favor of the proposed rule changes. There was no testimony, written or oral, in opposition to the proposal.

**V. Incorporation by Reference**

In this action, EPA is proposing to approve the revisions to the State of New Mexico's UIC program to permit Class I hazardous waste injection wells in the state, except those in Indian lands. New Mexico's statutes and supporting documentation are publicly available in EPA's Docket at EPA-HQ-OW-2020-0154. This action proposes to amend 40 CFR part 147 and incorporate by reference EPA-approved state statutes and regulations. EPA will continue to administer the UIC program for all well classes within Indian lands.

If EPA approves and finalizes this action by rule, the provisions of New Mexico's statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators of UIC Class I hazardous waste wells will be incorporated by reference into 40 CFR 147.1601 as described in the regulatory text. Provisions of the New Mexico's statutes and regulations that contain standards, requirements, and

procedures applicable to owners or operators of Class I, III, IV, and V injection were incorporated by reference into 40 CFR 147.1601 through prior EPA rules but are being reapproved for this new format. Any provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, will be enforceable by EPA pursuant to the SDWA section 1423 and 40 CFR 147.1(e).

In order to better serve the public, EPA is reformatting the codification of EPA-approved New Mexico SDWA section 1422 UIC program statutes and regulations for well Classes I, III, IV, and V. Instead of codifying the New Mexico statutes and regulations as separate paragraphs, EPA will be incorporating by reference a compilation that contains “EPA Approved New Mexico SDWA § 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, and V,” dated July 8, 2020. This compilation is incorporated by reference into 40 CFR 147.1601 and is available at <https://www.regulations.gov> in the docket for this rule

A complete list of the New Mexico statutes and regulations contained in the compilation, titled “EPA Approved New Mexico SDWA § 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, and V,” dated July 8, 2020, will also be codified in Table 1 to paragraph (a) at 40 CFR 147.1601.

## **VI. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

- 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 proposes to approve the State of New Mexico's UIC Program and state UIC programs are exempt from review.

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

This action is not an Executive Order 13771 regulatory action because actions such as state UIC Program revisions are exempted under Executive Order 12866.

*C. Paperwork Reduction Act (PRA)*

This 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 record-keeping requirements will be based on the State of New Mexico UIC Regulations, and the State of New Mexico is not subject to the PRA.

*D. Regulatory Flexibility Act (RFA)*

The agency certifies that this 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 rulemaking would not impose any requirements on small entities as this rule (when finalized) would approve and codify the State of New Mexico's UIC

program revisions. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

*E. Unfunded Mandates Reform Act (UMRA)*

This 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 action imposes no enforceable duty on any state, local, or Tribal governments or the private sector. EPA’s approval of the State of New Mexico’s program revisions will not constitute a federal mandate because there is no requirement that a state establishes UIC regulatory programs and because the program is a state, rather than a federal program.

*F. Executive Order 13132: Federalism*

This 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 action does not have Tribal implications as specified in Executive Order 13175. This 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 action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that 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 action is not subject to Executive Order 13045 because it proposes to approve existing the State of New Mexico’s UIC program requirements.

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

This 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 rulemaking does not involve technical standards.

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

EPA has determined that this 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 action would approve the State of New Mexico’s revisions to its UIC Class I program.

**List of Subjects in 40 CFR Part 147**

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

Andrew Wheeler,  
Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency is proposing 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 § 147.1601 by:

- a. Revising the introductory text and paragraphs (a) and (b);
- b. Adding a paragraph heading to paragraph (c) and adding paragraph (c)(3); and
- c. Revising paragraph (d).

The revisions and additions read as follows:

**§ 147.1601 State-administered program—Class I, III, IV, and V wells.**

The UIC Program for Class I, III, IV, and V wells in the State of New Mexico except for those located on Indian lands, as defined under 40 CFR 144.3, is the program administered by the New Mexico Water Quality Control Commission, the New Mexico Environment Department (formerly the New Mexico Environmental Improvement Division), and the Oil Conservation Division of the New Mexico Energy, Minerals and Natural Resources Department and approved by EPA pursuant to section 1422 of the Safe Drinking Water Act (SDWA). The effective date of this program is August 10, 1983. A subsequent program revision application for Class I hazardous waste wells was approved by EPA pursuant to section 1422 of the SDWA; the effective date of this program is [DATE 30 DAYS AFTER EFFECTIVE DATE OF FINAL RULE]. The State-administered UIC programs for Classes I, III, IV, and V consist of the

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

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations approved by EPA for inclusion in “*EPA-Approved New Mexico SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, and V,*” dated July 8, 2020, and listed in the Table 1 to this paragraph (a) of this section are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of New Mexico. 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 New Mexico’s regulations that are incorporated by reference may be inspected at the U.S. Environmental Protection Agency, Water Docket, EPA Docket Center (EPA/DC), EPA WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20004, or the Region VI, Library, U. S. Environmental Protection Agency, 1201 Elm Street, Suite 500, Dallas, Texas 75270. If you wish to obtain materials from the EPA Headquarters Library, please call the Water Docket at (202) 566-2426 or from the EPA Regional Office, please call (214) 665-8326. You may also inspect the materials at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov) or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**Table 1 to paragraph (a) EPA—Approved State of New Mexico SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, and V**

| State citation                        | Title/subject   | State effective date | EPA approval date |
|---------------------------------------|---|----------------------|-------------------|
| WQCC 82-1Sections 1-100 through 5-300 | New Mexico Water Quality Control Commission Regulations | September 20, 1982   | July 11, 1983     |



|   |  |                   |  |
|---|--|-------------------|--|
| New Mexico<br>Administrative Code,<br>Title 20, Chapter 6, Part 2 | Ground and Surface<br>Water Protection | December 21, 2018 | [date of publication and FR<br>citation of the final rule] |
|---|--|-------------------|--|

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference, are also part of the approved State-administered UIC program:

(1) Water Quality Act, New Mexico Statutes Annotated Sections 74-6-1 through 74-6-13 (1978 and Supp. 1982);

(2) Geothermal Resources Conservation Act, New Mexico Statutes Annotated Sections 71-5-1 through 71-5-24 (1978 and Supp. 1982); and

(3) Surface Mining Act, New Mexico Statutes Annotated Sections 69-25A-1 through 69-25A-35 (1978 and Supp. 1980).

(c) *Memorandum of Agreement.*

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(3) Amendment No. 1, Underground Injection Program Substitute Memorandum of Agreement Between the State of New Mexico and United States Environmental Protection Agency Region VI, signed by the EPA Regional Administrator on May 2, 2019.

(d) *Statement of legal authority.*

(1) “Attorney General’s Statement,” signed by the Assistant Attorney General for the Environmental Improvement Division, the Assistant Attorney General for Oil Conservation Division, and the Deputy Attorney General, Civil Division, Counsel for the Mining and Minerals Division, undated, submitted December 8, 1982;

(2) Attorney General's Statement for Program Revision of New Mexico UIC Program,  
signed by Bill Brancard, Special Assistant Attorney General, State of New Mexico  
Energy, Minerals and Natural Resources Department, submitted December 12, 2018.

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