

EPA Releases Draft UIC Permitting Guidance

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On May 4, 2012, the EPA released [draft Underground Injection Control \(UIC\) permitting guidance](#) for oil and gas hydraulic fracturing fluid injection activities involving the use of diesel fuels. These activities are subject to UIC permitting requirements because the exemption for injection of hydraulic fracturing fluids incorporated in the Energy Policy Act of 2005 specifically excluded diesel fuels. The UIC regulations, authorized under the Safe Drinking Water Act (SDWA), prohibit any underground injection, unless into a well authorized by rule or authorized by a UIC permit. The UIC regulations are either implemented by EPA, or states, tribes, or territories that have received approval from EPA to implement the program (EPA is the permitting authority for 14 state and territorial Class II UIC programs). Although the guidance was not directed to state UIC permit writers, EPA is encouraging states approved to administer the UIC program to follow the guidance.

The draft guidance provides a list of six Chemical Abstract Service Registry Numbers (CASRN) that should be used to identify diesel fuels that are subject to the UIC regulations. EPA indicated it may update the list of CASRN to add new chemical compounds with similar properties. EPA also indicated that permit writers should consider fracking fluids that contain diesel fuel as a component as subject to UIC permitting, and that biodiesel should not be considered as subject to permitting requirements, unless it is blended with petroleum-based diesel fuels.

Since injection activities are prohibited until authorized by a permit, EPA recommended that permit writers establish a permit application submission timeframe to help well owners and operators determine when to submit an application. In evaluating permit applications, the guidance indicates that permit writers may need to consider additional information, such as maps showing the extent of the planned fracture network and any nearby underground sources of drinking water, detailed descriptions of the fracking fluid composition, and baseline geochemical information on underground sources of drinking water.

With respect to well construction requirements, EPA noted that some pre-existing oil and gas wells may not be adequately protective of underground drinking water sources, either due to their age or because they were constructed under less stringent well construction standards. EPA recommended that UIC permit writers either require owners or operators of such wells to perform corrective actions, such as replacement of tubing or cementing, or deny the permit application. Existing UIC regulations require mechanical integrity testing to be conducted at least once every five years during the life of a well. EPA recommended that permit writers require integrity testing to be performed before the first well stimulation, and after completion of all stages of hydraulic fracturing.

EPA's draft guidance includes several other recommendations concerning monitoring and reporting, financial assurance, public notification, and environmental justice considerations. EPA will accept public comments on the draft UIC permitting guidance for 60 days following publication in the *Federal Register*. The [pre-publication notice](#) of EPA's request for comments provides details on the procedure for submitting comments, and lists areas in which EPA is specifically requesting comments.

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