

## EPA Working Toward the Development of UIC Class II Permitting Guidance Under the SDWA

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The EPA is in the process of developing Underground Injection Control (UIC) Class II permitting guidance under the Safe Drinking Water Act (SDWA) for hydraulic fracturing (“fracking”) activities that use diesel fuels in fracturing fluids. Pressure for the development of such guidance has come in large part from many environmental and citizen groups. These groups are concerned that the use of diesel fuel during the injection process used to free trapped reserves of natural gas and oil that are found in deep underground shale formations can cause and/or will cause contamination of ground water sources.

The SDWA generally requires that State UIC programs prohibit underground injection not authorized by a permit (or permitted by rule) in order to protect underground sources of drinking water from contamination. Although the 2005 Energy Policy Act exempted “the underground injection of fluids or propping agents pursuant to hydraulic fracturing operations” from any SDWA requirements (including permitting requirements), the Energy Policy Act excluded diesel fuels from those “fluids or propping agents” covered by the exemption.

According to the EPA, the guidance in development cannot and will not set new nor change existing UIC permitting regulations under the SDWA. Rather, the guidance will make recommendations for permit writers to consider including within UIC Class II permits when writing and issuing permits under the SDWA. In order to determine what types of recommendations would ultimately be appropriate, the EPA held four technical meetings with specific expert stakeholder groups in May 2011, as well as a public webinar on June 15, during which time the EPA posed a number of questions on topics that will be covered by the guidance. These questions included, but were not limited to, the following:

- What should be considered as “diesel fuels”?
- What are important siting considerations?
- Considering the intermittent nature of fracking and Class II plugging and abandonment provisions, what should the permit duration be,?
- What well construction requirements should apply to wells fractured using diesel fuels?
- What well monitoring and reporting requirements should apply to wells fractured using diesel fuels?

- What information should be submitted with the permit application?

The EPA initially stated that draft guidance would be issued this summer. With the summer almost over, it seems less likely that this timeframe will be met. Once the draft is issued it will go to the Office of Management and Budget (OMB) for review, and will then be open for additional public comment. The EPA has not provided an estimate as to the date of final publication of any UIC Class II permitting guidance.

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## Related Topics

Energy

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