ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[WI107–01–7337b; FRL–7064–5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the minor source/minor modification pre-construction permitting requirements for Wisconsin Electric Power Company's (WE's) Pleasant Prairie Power Plant. The Pleasant Prairie Power Plant is located in Kenosha County at 8000 95th Street, Pleasant Prairie, Wisconsin. The Wisconsin Department of Natural Resources (WDNR) submitted the revised requirements on February 9, 2001, as amendments to its State Implementation Plan (SIP). The revisions include the expansion of the State's general construction permit exemption to include certain activities at the Pleasant Prairie facility. This SIP revision will not have an adverse effect on air quality.

DATES: EPA must receive written comments on this proposed rule by December 10, 2001.

ADDRESSES: You should mail written comments to: Robert Miller, Chief, Permits and Grants Section MI/MN/WI, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at: Permits and Grants Section MI/MN/WI, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Robert Miller, Chief, Permits and Grants Section MI/MN/WI, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–0396.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'', or ''our'' is used we mean EPA.

Table of Contents

I. What Action Is EPA Taking Today?

We are proposing to approve revisions to pre-construction permitting requirements for WE's Pleasant Prairie Power Plant. The Pleasant Prairie Power Plant is located in Kenosha County at 8000 95th Street, Pleasant Prairie, Wisconsin. WDNR submitted the revised requirements on February 9, 2001, as amendments to its SIP. The revisions include the expansion of the State's general construction permit exemption to include certain activities at the Pleasant Prairie facility.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: September 10, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 01–27830 Filed 11–7–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–7098–2]

Proposed Revision to That Portion of the Approved Texas Underground Injection Control (UIC) Program Administered by the Texas Natural Resource Conservation Commission (TNRCC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA received an application to revise portions of Texas' approved UIC program for Class I, III, IV, and V injection wells. After careful review of the application, EPA determined the revisions to TNRCC's UIC program warrant approval. Further, the relevant UIC regulation at 40 CFR 145.32(b)(2) requires that whenever EPA determines the proposed program revision is substantial, EPA shall publish its decision in the **Federal Register** and in enough large newspapers to achieve statewide coverage to allow the opportunity for the public to comment for at least 30 days. By this notification, EPA advises the public of the nature of the proposed action, time-frame during which public comment will be taken, and the address where comments should be sent. The regulation provides an opportunity for the public to request a hearing. Such a hearing shall be held if there is significant public interest based on requests received. As such, this action advises the public of the hearing request process and opportunity to request a hearing.

The application to revise portions of the State's approved UIC program, and public comments received in response to this document, will provide EPA with the essential information necessary to approve, disapprove, or approve in part, the proposed revisions submitted under Section 1422 of the Safe Drinking Water Act (SDWA). This action is being taken to ensure that the proposed revisions of the Texas UIC program which are the Texas statutes and regulations governing underground injection are accurately incorporated by reference into the Code of Federal Regulations.

DATES: EPA will accept public comments and requests for hearing on the proposed revisions to the approved TNRCC UIC program from November 8, 2001 until the close of the business day of December 10, 2001.

ADDRESSES: Written public comments should be sent to the Environmental Protection Agency, Ground Water/UIC Section (6WQ–SG), 1445 Ross Avenue, Dallas, Texas, 75202, or electronically to *leissner.ray@epa.gov*. Please include your name, address, and optionally, your affiliation with any public or private organization. Paper copies of the revision application, related correspondence, and documents are available for examination and duplication (for a nominal fee) between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the EPA offices in Dallas.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Ray Leissner, Ground Water/UIC Section (6WQ–SG), Environmental Protection Agency, Region 6, (214) 665–7183.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection activities which endanger underground sources of drinking water (USDWs). Section 1422 of the SDWA allows states to apply to the EPA Administrator for authorization of primary enforcement and permitting authority (primacy) over injection wells within the State. Section 1422(b)(1)(A) provides that States shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State has adopted and will implement an underground injection control program which meets

the requirements of regulations in effect under Section 1421 of the SDWA, and will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation. Section 1422(b)(1)(B)(2) requires, after reasonable opportunity for public comment, the Administrator by rule to approve, disapprove, or approve in part, the State UIC program.

EPA's approval of primacy for to the State of Texas for underground injection into Class I, III, IV, and V wells was published on January 6, 1982 (47 FR 618), and became effective February 7, 1982. Elements of the State's approved primacy application, submitted through the Texas Department of Water Resources, a predecessor to the Texas Natural Resource Conservation Commission (TNRCC), were published in Title 40 of the Code of Federal Regulations, at 40 CFR 147.2200.

Section 1422 of the SDWA and regulations at 40 CFR 145.32 allow for revision of approved State UIC programs when State statutory or regulatory authority is modified or supplemented. In accordance with those requirements, TNRCC submitted an application to EPA for revision of the UIC program governing Class I, III, IV, and V injection wells.

II. Actions Related to This Rulemaking

A. Petition

On June 17, 1996, Mr. Richard Lowerre of the law firm of Henry, Lowerre, Johnson, Hess and Fredrick, acting on behalf of his clients, the Environmental Defense Fund (EDF) and later the Oil and Chemical Association of Workers (OCAW), filed a petition for partial withdrawal of program approval for the Texas UIC program. The petition informed EPA of EDF's intent to sue under Sections 1422 and 1449 of the SDWA and EPA rules at 40 CFR Part 135, subpart B. The petition alleged that, due to changes made by the Texas Legislature to environmental statutes and TNRCC's interpretation of those changes, TNRCC's UIC program no longer met the conditions for primacy for the UIC program. The petition identified specific elements of TNRCC's UIC program that formed the basis for EDF's request to EPA to withdraw approval of TNRCC's UIC program. These included: Inadequate enforcement authority due to recently passed audit privilege and takings laws, inadequate public participation in enforcement activities, inadequate public participation in permitting decisions, and inadequate opportunities for judicial review of permit decisions made by TNRCC. Over the course of the resolution of the petition, additional issues were raised by the Petitioners but not included within the petition. These issues, as well as issues raised by EPA, were satisfactorily addressed through subsequent negotiations.

Many issues raised over the course of the negotiations were applicable to other federal programs authorized to Texas for implementation, such as the National Pollutant Discharge Elimination System (NPDES) and the Resource Conservation and Recovery Act (RCRA). The effort to resolve issues spanning several programs resulted in the exchange of several letters, memos, and other documentation addressing other programs in addition to UIC. Note however, this notice only addresses the resolutions reached to satisfy the EDF/OCAW petition and federal UIC program requirements under the SDWA.

B. EDF/OCAW Petition Issues

Enforcement Authority and Audit Privilege Law

The petition alleged that TNRCC did not possess adequate enforcement authority due to recently passed laws regarding audit privilege and takings and the interpretations of those laws by TNRCC. In 1995 the Texas legislature passed House Bill 2473, the Texas Audit Privilege Law. The petition claimed this law established broad immunity from prosecution from environmental laws and restricted the public's right to know and right to bring enforcement actions.

On February 11, 1997, EPA representatives met with the Governor of Texas to discuss the impact of recent legislation on the UIC program. Discussions led to an agreement that TNRCC would seek amendments to the audit law needed to meet specific requirements for enforcement authority and public availability of information associated with authorized federal programs administered by the State. This agreement was briefly discussed in an April 23, 1997, letter from the EPA Office of Enforcement and Compliance Assurance (OECA) to Mr. Lowerre. This letter also outlined four general points providing the context of EPA's approach to State audit immunity and privilege laws and explained how the proposed amendments, if implemented properly, met federal requirements to retain enforcement authority on all delegated and authorized federal programs. Further, the letter concluded that the proposed amendments restored information gathering authority, provided public availability equal to that afforded under the federal program, and addressed additional concerns of the petitioner including: Protection of whistle blowers, immunity from repeat violations, and reduction of the scope of immunity from penalties based upon economic benefit. On September 1, 1997, Texas House Bill (HB) 3459 took effect and amended, as agreed to by EPA and TNRCC, the Texas Environmental, Health, and Safety Audit Privilege Act. A copy of HB 3459 was submitted as part of the UIC revision supplement submitted by Texas in March 1999.

Enforcement Authority and the Takings Law

The Texas legislature passed Senate Bill 14, the Takings Law in 1995. A ''taking'' is defined under the Private Real Property Rights Preservation Act as a governmental action that affects an owner's private real property that is the subject of the government's action, in whole or in part, temporarily or permanently, in a manner that restricts or limits the owner's right to the property. The Takings Law established a new right for compensation where certain government authorized action reduced the value of real property by 25%. The petition alleged that the legislature did not appropriate funds for compensation requests and this lack of funding had a chilling effect on the State's ability to act responsibly on permit and enforcement actions. The petition alleged the Takings Law increased the State's burden of proof in enforcement actions beyond that required in the federal UIC program. 40 CFR 145.13(b)(2) requires an authorized State program's burden of proof under State law be no greater than that established for the federal program under the SDWA.

40 CFR Part 145, subpart B, lists the provisions and requirements State programs authorized under section 1422 of the SDWA must administer within their UIC program. These rules, promulgated in 1983, do not address or consider the effect of takings laws as they would apply to UIC program activities. The takings issue was resolved in the manner described below.

The Petitioners proposed that TNRCC include in the UIC program revision Memorandum of Agreement (MOA) with EPA, additional annual reporting on any effect the Takings Law may have imposed on the State's UIC program. TNRCC found the additional reporting suggested by Petitioners was not required under the federal regulations for UIC authorization. EPA agreed. However, under the March 23, 1999 MOA, TNRCC agreed to keep EPA informed of any proposed changes to laws, regulations, guidelines, judicial

decisions, or administrative actions that might affect the State UIC program. As such, TNRCC agreed to document and compile any action demonstrating impacts to the UIC program from implementation of the Takings Law. This documentation will be made available to the general public and EPA in Central Records in TNRCC's main offices in Austin, Texas on April 1 of each year for the next four years.

Public Participation in Enforcement and Permitting Activities

Enforcement Activities

The petition contended that public participation in enforcement activities was inadequate based on a 1995 letter from the EPA Regional Counsel to the Texas Attorney General's (AG) office responding to an application for primacy for the Texas NPDES program that had similar participation requirements. The EPA letter identified as inadequate the State's agreement not to oppose the permissive intervention by a citizen in an enforcement action. EPA opined that, under Texas rules, the scope of interests necessary for a citizen to intervene in a contested case in Texas appeared narrower than those allowed for under federal law.

In addition, the petition contended that TNRCC lacked the necessary statutory or regulatory requirements to establish appropriate procedures or practice to notify affected citizens of enforcement proceedings. The petition claimed that publishing notice within the Texas Register was insufficient.

Permitting Activities

The petition raised several issues with public participation in UIC permitting activities. Primarily, the petition argued TNRCC's public participation process for permitted activities was more restrictive than federal requirements, affording only ''affected persons'' with standing to participate through an adjudicatory hearing process. The federal public participation requirements for UIC permits, found at 40 CFR Part 124, allow for a more informal open meeting and comment process. The petition asserted the State adjudicatory hearing process was too restrictive. The passage of Senate Bill 1546 narrowed the conditions for standing, thus limiting participation to ''affected persons''. Other issues included problems with the content of the public notices, publication of the notice before a draft permit was complete, a lack of response to public comments, and a slow review process on claims of confidentiality precluding timely citizen inquiry.

Resolution

In June 1997, EPA Region 6, EPA Headquarters (HQ), and TNRCC reached tentative agreements to resolve these public participation issues. These agreements are discussed in letters from TNRCC to Region 6 dated June 6, 1997, and in response by EPA to TNRCC on June 19, 1997.

TNRCC proposed: (1) To draft rules that would amend Title 30 of the Texas Administrative Code (TAC), Chapter 55, subchapter B, to implement changes wherein written responses to public comment on permitting decisions would be considered and responded to by the person or body making the permitting decision; (2) to provide for notice and comment on administrative enforcement cases for the UIC program; (3) to provide that the rules at 30 TAC Chapter 39 concerning comments, public meetings and notices of public meetings were sufficient to meet EPA's concerns; (4) to draft rules that expanded citizens' opportunity for permissive intervention in UIC penalty actions; and (5) to draft rules with less restrictive conditions for determining a person's status as an affected person (standing), and to eliminate the need to seek a contested case hearing to obtain a judicial review of the permitting decision.

EPA accepted the above proposal subject to the following: (1) That the State Supreme Court never articulate a more restrictive test for standing than that allowed under federal statutes; (2) that TNRCC had the statutory authority to implement these agreements and fully institute the notice and comment process proposed; and (3) that there be timely adoption of regulations necessary to implement the agreements. These agreements resolved concerns regarding the need for: (1) Written responses to comments on permitting actions; (2) public notice and opportunity to comment on proposed settlements of administrative enforcement actions; (3) notice of right to request a public hearing (meeting) on UIC permit applications; (4) permissive intervention in administrative enforcement actions; and (5) standing to participate as a commenter in permitting actions and in subsequent judicial proceedings.

The proposed revisions to implement the regulatory changes called for in the agreement were published in the August 8, 1997, edition of the Texas Register. The regulatory actions included adoption of rule changes in 30 TAC, Chapter 55, subchapter B, section 52.25, repeal of 30 TAC, section 305.106 to avoid duplication of the new rules, and adoption of new rules at 30 TAC, Chapter 80, subchapters C and F, sections 80.105–80.257. These changes were published in the Texas Register on November 21, 1997, effective December 1, 1997.

Response to Comments and More Open Public Meetings

The new rules in 30 TAC, Chapter 55, subchapter B, section 55.25(b) provided the specific provisions agreed to in EPA's letter of June 19, 1997. The amendment to 30 TAC, section 55.25(b), provides procedures for content and timing of Commission responses, and authorizes the Executive Director to call and conduct public meetings and provides requirements governing those meetings. These public meetings, open to all, provide an opportunity for public input into proposed UIC permits equivalent to the public meetings requested and held under 40 CFR Part 124.

Expanded Consideration of Comments

Under federal regulations found at 40 CFR 124.12(c), any person may submit oral or written statements or data concerning a draft permit and 40 CFR 124.17 requires a response to all significant public comments at the time of final permit action. This level of participation is much less formal or restrictive than that reserved for a formal hearing process. The amendment at 30 TAC, Chapters 55 and 80, addressed concerns in the petition that public comments could not be considered within the context of contested case hearings. To ensure comments received during the public comment period are duly considered when a contested case hearing is held, all comments recieved and any subsequent response by TNRCC are entered into the evidentiary hearing record, and may be considered by the Commission in its decision. In addition, parties to the hearing are allowed to enter any comments or responses received in the public meeting into the evidentiary hearing record (30 TAC, section 80.127).

Intervention in Enforcement Actions

TNRCC finalized amendments to 30 TAC Chapter 80, as proposed in the Texas Register August 8, 1997. These amendments provided a process to ensure that all federally delegated and approved programs, including the UIC program, meet federal requirements preserving the rights of citizens to intervene in enforcement actions. 40 CFR 145.13(d) outlines the requirements for an approved State UIC program to involve the public in its enforcement proceedings. In part, under 40 CFR 145.13(d), a State may either provide

authority to allow any citizen having an interest in the action (i.e., standing) to intervene, or provide assurance that the agency will investigate and provide written responses to all citizen complaints provided to the agency through procedures set by the agency for collecting such information. The Petitioners alleged the State's narrower view on standing prohibited more citizens from achieving intervener status in comparison to the federal UIC program. An amendment to 30 TAC, section 80.105, provides that a preliminary hearing is required for an enforcement action under any federally authorized program. A citizen's right to intervene in a proposed enforcement action was broadened under 30 TAC, section 80.109, which expanded the scope of potential parties to contested cases. The term ''party'' to enforcement actions was expanded to include any party granted permissive intervention by the administrative law judge (ALJ). Further, the ALJ will not oppose intervention by parties having a justiciable interest where intervention would not present a risk of delay or prejudice to the original parties. These amendments to 30 TAC, section 80 implemented the regulatory changes required by EPA's agreement dated June 19, 1997.

Opportunities for Judicial Review of Permit Decisions

The petition asserted that the State UIC program must allow for judicial review of permit decisions. Further, the petition alleged that the State UIC program must allow for a measure of judicial review of permit decisions equivalent to that afforded persons appealing a permit decision by a federal UIC program. 40 CFR 124.19 allows any person who filed comments on the draft permit or participated in a public hearing on the matter, to seek review of the permit decision by the Environmental Appeals Board. Thereafter, parties can seek judicial review under section 1448 of the SDWA. The petition contends, because of the narrower interpretation of standing by the State, fewer citizens could seek judicial review of a TNRCC UIC permit decision than could under a federal UIC program.

The Petition alleged that the opportunity for a citizen to appeal for judicial review of a TNRCC UIC permit decision was inadequate. Section 1448(a)(2) of the SDWA provides that a petition for judicial review of any action taken by the Administrator under the Act (other than actions pertaining to establishment of MCLs or MCLGs) may be filed within the circuit in which the petitioner resides or transacts business. The relevant federal UIC regulation referencing judicial review is at 40 CFR 124.19(e). Overall, 40 CFR Part 124 identifies conditions for judicial review and various scenarios wherein final agency action occurs on a permit decision.

TNRCC affords the right to seek judicial review of any permit decision at section 5.351 of the Texas Water Code. In addition, the general public's ability to seek judicial review of a permit decision was enhanced and broadened through the rule amendments at 30 TAC, section 55. These amendments expand the TNRCC's response to public comments and provide a greater opportunity for public comments through public meetings and/or preliminary hearings and comments considered at a contested case hearing. Further, 30 TAC, section 55.25(b)(3) provides the procedural prerequisites enabling a commenter to preserve and exercise the right to seek judicial review.

Changes to the Texas UIC Program

The petition alleged that numerous statutory and regulatory changes to the UIC program occurred since the program was approved in 1982, and TNRCC did not provide appropriate notice to EPA of these changes, or afford EPA the opportunity to comment on the changes. Under 40 CFR 145.32(a), an approved State UIC program is required to ''keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities''.

On August 14, 1998, TNRCC submitted one original and two certified copies of its UIC revision package. To review the revision package, EPA set up a review team comprised of personnel specialized in UIC program activites, enforcement activities, and legal requirements. Additional copies were created and distributed to the review team to determine completeness. The initial package contained a summary, a program description, Attorney General's (AG) Statement, Memorandum of Agreement (MOA), a listing of all applicable regulations and State Statutes, and numerous other appendices, including forms, shell permits, shell notices, and guidance documents utilized to implement the program.

Over the course of review, EPA received comments on the submission from the Petitioners, including numerous additional issues consisting of past and present program and legislative activities. These issues were also included in EPA's review. In a February 14, 1999 letter, EPA provided TNRCC with its first formal response to the submission. It contained the EPA review team's findings resulting from a comparison of the submission to required elements for approvable UIC programs found at 40 CFR Part 145. The letter summarized the review team's findings and included requests for revisions and/or clarifications to several elements, including the MOA, AG Statement, and Program Description, as well as a clarification to the TNRCC/Railroad Commission of Texas Memorandum of Understanding (MOU).

On March 23, 1999, TNRCC submitted its initial revision supplement in response to EPA's comments. Ongoing negotiations with the Petitioners and additional review by EPA resulted in a second set of comments sent to TNRCC on July 22, 1999. On November 30, 1999, TNRCC provided a second supplement to the revision submission as a combined response to the ongoing negotiations and EPA's findings. The second supplement included updates and/or corrections to TNRCC's organizational charts and program staffing, a revised Program Description, a Quality Management Plan, an aquifer exemption listing, new public notification requirements under HB801, and clarifications to TNRCC's penalty assessment policy.

Settlement Agreement

In some cases, issues raised by the Petitioners extended into details of UIC program implementation. For those issues, a negotiated agreement was reached. This settlement agreement, signed between the Petitioners and EPA in August and September 2000 respectively, is part of the administrative docket available for review at EPA Region 6. In exchange for additional reporting by TNRCC and oversight by EPA, the Petitioners withdrew their petition for withdrawal of program authorization and agreed not to contest this program revision. EPA believes that there are no unresolved issues raised during the submission and review process that warrant disapproval of this program revision application.

III. Related Action With the Railroad Commission of Texas

In 1982, under the authority of section 1422 of the SDWA, the U.S. EPA Administrator approved Texas' UIC program governing Class I, III, IV and V injection wells except those wells located on Indian lands. This approval conveyed primary enforcement responsibility, ''primacy,'' to the State. That portion of the program administered by the Texas Department

of Water Resources (TDWR), predecessor to the TNRCC, included Class III brine mining wells.

However, in 1985, the Texas legislature transferred the regulation of Class III brine mining wells from the TDWR to the Railroad Commission of Texas (RRC). The transfer of authority over Class III brine mining wells is not reflected in the existing description of the Texas UIC program within 40 CFR part 147, subpart SS. The TNRCC UIC program revision submitted for final approval, along with a RRC UIC program revision submitted in May 1999 (which is also proposed for approval elsewhere in today's **Federal Register**), accurately reflects that transfer of authority within the State's UIC program approved under section 1422.

IV. Revision Package Program Elements

All elements of the TNRCC's comprehensive program revision application are contained within a set of three-ring binders that include the initial submission in August 1998 (3 volume set), a supplement submitted in March of 1999 (1 volume set), and by a second supplement (1 volume set) submitted in November of 1999. Below is a table of contents developed to assist the reader in identifying each element within the application and all relevant amendments that together, comprise the final version of the application EPA proposes to approve.

August 14, 1998 revision application	March 23, 1999 revision supplement	November 30, 1999 revision supplement
Volume I of III	Volume I of I	Volume I of I
Cover Letter/Table of Contents	Cover Letter/Table of Contents/EPA Review Summary.	Cover Letter/Table of Contents/EPA Review Summary/October 1, 1999 letter from Jim Phillips, TNRCC to Larry Starfield, EPA Region 6 on proposed understanding between EPA, EDF, and TNRCC.
Summary		
Program Description	Revised Program Description	Revised Program Description.
Memorandum of (MOA)	Revised MOA.	
Attorney General's Statement		
Appendix 1 Chronology		
Appendix 2 Organization	Revised Appendix 2	Revised Appendix 2.
Appendix 3 Staffing	Revised Appendix 3	Revised Appendix 3.
Appendix 4 Checklist		
Appendix 5 Aquifers		
Appendix 6 Inventory	Revised Appendix 6.	
Appendix 7 Rules		
Volume II of III		
Appendix 8 Legislative Updates/State Statues		
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Appendix 9 Forms	Revised Appendix 9.	
Appendix 10 Permits	Revised Appendix 10.	
Appendix 11 Notices	Revised Appendix 11.	
Appendix 12 Guidance	Revised Appendix 12.	
	Appendix 13 Memorandum of Understanding between TNRCC and RRC.	
	Appendix 14 TNRCC Quality Assurance Program Plan.	
	Appendix 15 TNRCC Penalty Policy.	
	Appendix 16 Aquifer Exemptions for Projects prior to 1982.	
	Appendix 17 Aquifer Exemptions approved since 1982.	Revised Appendix 17.
	Appendix 18 Supporting Documents for AG Statement.	
	Appendix 19 Response to TNRCC/MOU Concerns.	
	Appendix 20 Administrative Records Management.	
	Appendix 21 Public Participation—Production Area Authorizations (PAAs).	
		Appendix 22 TNRCC Quality Management Plan.
		Appendix 23 Additional Information on Public Participation.
		Appendix 24 TNRCC Confidentiality Policy.
		Appendix 25 UIC Permits/PAAs.

The original revision and supplements, consisting of five (3 ring) binders, have been kept in original condition as submitted by the TNRCC for those who may wish to view all documentation as submitted.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant

regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13045: Children's Health Protection.

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because UIC programs afford protection by isolating wastes underground, reducing the risk of exposure to all age groups equally. Therefore, EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to injected wastes.

C. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply to this proposed rule since limited information collection or record-keeping would be involved. The proposed rule would merely update the incorporation by reference material for which any information collection or record-keeping requirements have already been approved by OMB.

D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA applies to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. This rule merely proposes Federal approval of regulations already adopted and implemented by the State of Texas ensuring the protection of underground sources of drinking water. This proposed approval only seeks to revise the existing federally approved Texas UIC program, described at 40 CFR 147.2200, to reflect current statutory, regulatory, and other key programmatic elements of the program. Therefore Federal approval of these revisions, would not result in additional regulatory burden to or directly impact small businesses in Texas. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator, through her duly delegated representative, the Regional Administrator, certifies that this rule, if approved, will not have a significant economic impact on small entities in Texas.

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 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.''

This proposed rule does not have federalism implications. This rule, if finalized, will not have substantial direct effects on the State, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule merely proposes Federal approval of regulations already adopted and implemented by the State of Texas ensuring the protection of underground sources of drinking water. This proposed approval only seeks to revise the existing federally approved Texas UIC program, described at 40 CFR 147.2200, to reflect current statutory, regulatory, and other key programmatic elements of the program. Therefore this action will not effect the existing relationship between the national government and the State, or the distribution of power and responsibilities among the various levels of government. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small

government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because the rule imposes no enforceable duty on any State, local or tribal governments or the private sector.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 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 proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

H. Executive Order 12898: Environmental Justice

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), EPA has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. Today's proposal provides equal public health protection to communities irrespective of their socioeconomic condition and demographic make-up.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The UIC program for Indian Lands is separate from the State of Texas UIC program proposed for revision here. The UIC program for Indian lands in Texas is administered by EPA and can be found at 40 CFR 147.2205 under the Code of Federal Regulations. Thus, Executive Order 13175 does not apply to this proposed rule.

J. Executive Order 13211 (Energy Effects)

This proposed rule is not subject to Executive Order 13211, ''Action 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.

List of Subjects in 40 CFR Part 147

Environmental protection, Indian lands, Reporting and recordkeeping requirements, Water supply.

Dated: October 23, 2001.

Gregg Cooke,

Regional Administrator, Region 6.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

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

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

Subpart SS—Texas

2. Section 147.2200 is revised to read as follows:

§ 147.2200 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 Texas, except for those wells on Indian lands, is the State-administered program approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published on January 6, 1982 and effective February 7, 1982. A revision, by application of the Texas Natural Resource Conservation Commission (TNRCC), to the program was approved pursuant to the requirements at § 145.32 on [signature date of final rule]. That portion of the State of Texas underground injection control program, approved under section 1422 of the SDWA, and administered by the TNRCC, consists of the following elements:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph (a) are hereby incorporated by reference and made part of the applicable UIC program under the SDWA for the State of Texas. This incorporation by reference was approved by the Director of the Federal Register on [date of FR Director's approval].

(1) Title 30 of the Texas Administrative Code sections 281.5, 281.11, 281.21, Chapter(s) 305, 331, and 335 subchapters A and C.

(2) Vernon's Texas Codes Annotated, Water Code, Chapter 27 (The Injection Well Act).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference except for select sections identified in paragraph (a) of this section, are also part of the approved State-administered UIC program.

(1) Title 30 of the Texas Administrative Code Chapters 39, 50, 55, 80, and 281.

(2) Vernon's Texas Codes Annotated, Water Code, Chapters 5, 7, 26, and 32, Health and Safety Code section 361, Government Code (ORA) Chapter 552 and Government Code (APA) Chapter 2001.

(c) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the Texas Natural Resource Conservation Commission, revised March 23, 1999, and signed by the EPA Regional Administrator on October 23, 2001.

(d) *Statement of legal authority.* ''State of Texas Office of Attorney General Statement for Class I, III, IV, and V Underground Injections Wells' signed by the Attorney General of Texas, June 30, 1998.

(e) *Program Description.* The Program Description and all final elements of the revised application.

(f) *Other Wells.* Certain Class V and Class III wells are regulated under the UIC program of the Railroad Commission of Texas approved on April 23, 1982 and revised [date of Administrator's approval of the RRC's Class III Brine mining program]. This authority is cited in 147.2201.

[FR Doc. 01–27835 Filed 11–7–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–7098–3]

Proposed Revision to That Portion of the Approved Texas Underground Injection Control (UIC) Program Administered by the Railroad Commission of Texas (RRC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA received an application to revise portions of Texas' approved Underground Injection Control (UIC) program for Class III brine mining injection wells. After careful review of the application, EPA determined the revision to the RRC UIC program warrants approval. Further, the relevant UIC regulation at 40 CFR 145.32(b)(2) requires that whenever EPA determines the proposed program revision is substantial, EPA shall publish its decision in the **Federal Register** and in enough large newspapers to achieve statewide coverage to allow the opportunity for the public to comment for at least 30 days. By this notification, EPA advises the public of the nature of the proposed action, time-frame during which public comment will be taken, and the address where comments should be forwarded. The regulation provides an opportunity for the public to request a hearing. Such a hearing shall be held if there is significant public interest based on requests received. As such, this action advises the public of the hearing request process and opportunity to request a hearing.

The application to revise portions of the State's UIC program, and public comments received in response to this document will provide EPA with the essential information necessary to approve, disapprove, or approve in part, the proposed revision submitted under Section 1422 of the Safe Drinking Water Act (SDWA). This action is being taken to ensure that the proposed revisions of the Texas UIC program which describe the statutes and regulations governing underground injection are incorporated by reference into the Code of Federal Regulations.

DATES: EPA will accept public comments and requests for hearing on the proposed revision to the approved RRC UIC program from November 8, 2001 until the close of the business day of December 10, 2001.

ADDRESSES: Written public comments should be sent to the Environmental Protection Agency, Ground Water/UIC Section (6WQ–SG), 1445 Ross Avenue, Dallas, Texas, 75202, or electronically to *leissner.ray@epa.gov.* Please include your name, address, and optionally, your affiliation with any public or private organization. Paper copies of the revision application, related correspondence, and documents are available for examination and duplication (for a nominal fee) between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday at the EPA offices in Dallas.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Ray Leissner, Ground Water/UIC Section (6WQ–SG), Environmental Protection Agency, Region 6, (214)665–7183.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection activities which endanger underground sources of drinking water (USDWs). Section 1422 of the SDWA allows states to apply to the EPA Administrator for authorization of primary enforcement and permitting authority (primacy) over injection wells within the State. Section 1422(b)(1)(A) provides that States shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State has adopted and will implement an underground injection control program which meets the requirements of regulations in effect under Section 300h of the SDWA, and will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation. Section 1422(b)(1)(B)(2) requires, after reasonable opportunity for public comment, the Administrator to, by rule, approve, disapprove, or approve in part, the State UIC program.

EPA's approval for primacy for the State of Texas for underground injection into Class I, III, IV, and V wells was published on January 6, 1982 (47 FR 618), and became effective February 7, 1982. Elements of the State's primacy application, submitted through the Texas Department of Water Resources (TDWR), a predecessor to the Texas Natural Resource Conservation Commission (TNRCC), were approved and published in Title 40 of the Code of Federal Regulations, 40 CFR 147.2200. Since that time, authority has been passed through to succeeding agencies. The TDWR became the Texas Water Commission (TWC) which was reorganized in 1993 into the TNRCC, the agency currently charged with administering the UIC program for Class I, III, IV, and V wells.

In addition to the TDWR receiving approval to administer the UIC program for Class I, III, IV and V injection wells, the RRC received approval to administer the UIC program for energy related injection activities in the State, effective May 23, 1982. These wells include Class II injection wells related to oil and gas exploration and production, and Class V geothermal wells. In 1985 the 69th Texas Legislature enacted legislation that transferred jurisdiction over Class III brine mining wells from the TNRCC's immediate predecessor, the TWC, to the RRC.

Section 1422 of the SDWA and regulations at 40 CFR 145.32 allow for revision of approved State UIC programs when State statutory or regulatory authority is modified or supplemented. In accordance with those requirements, the RRC submitted an application to EPA for approval of that portion of the RRC's UIC program governing Class III brine mining wells. Other Class III injection wells remain regulated by the TNRCC.

II. Actions Related to This Rulemaking

The RRC revision application for Class III brine mining injection wells was submitted for approval in its final form in May 1999. Prior to that submission, the RRC submitted key elements of a draft revision application to Region 6 for evaluation. EPA utilized the same review team used to evaluate the TNRCC's UIC program revision application also proposed for approval elsewhere in this volume. The team, consisting of EPA staff from the Region and EPA Headquarters, reviewed the draft application and found nine issues of concern. In April of 1997 EPA and