

under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and published by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the

data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 3, 1999.

Charles Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99-20505 Filed 8-9-99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL-6415-6]

State of Alabama; Underground Injection Control (UIC) Program; Notice of Rescheduled Public Hearing and Extension of Comment Period on Withdrawal of Alabama's Class II UIC Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of rescheduled public hearing and extension of public comment period on withdrawal.

SUMMARY: EPA announces a rescheduled public hearing and extension of the public comment period regarding withdrawal of Alabama's Class II Underground Injection Control (UIC) Program from the State Oil and Gas Board of Alabama on the grounds that it does not regulate as "underground injection," hydraulic fracturing associated with coalbed methane gas production. This program is currently approved by EPA under section 1425 of the Safe Drinking Water Act (SDWA), as amended. This action is being taken in accordance with paragraph 2(a) of the Writ of Mandamus issued on February 18, 1999, by the U. S. Court of Appeals for the Eleventh Circuit and in accordance with Federal regulations for withdrawal of State programs.

DATES: The rescheduled public hearing will be held Thursday, September 9, 1999, at 4:00 p.m. Central Standard Time (CST) to discuss withdrawal of the Alabama Class II UIC Program due to its failure to regulate hydraulic fracturing associated with coalbed methane gas

production and EPA's proposed rule seeking such withdrawal. Registration for the hearing will begin at 3 p.m.. Written comments on EPA's proposed rule withdrawing approval of the Alabama Class II UIC Program on the grounds that it does not regulate as "underground injection" hydraulic fracturing associated with coalbed methane gas production must be received by the close of business Thursday, September 16, 1999.

ADDRESSES: The rescheduled public hearing will be held at the University of Alabama in the Sellers Auditorium of the Bryant Conference Center, 240 Bryant Drive, Tuscaloosa, Alabama 35401. Those interested should contact the Bryant Conference Center at (205) 348-8751 for directions. Persons wishing to comment upon or object to any aspects of this proposed withdrawal action of Alabama's Section 1425 approved Class II Program are invited to submit oral or written comments at the September 9th, 1999, public hearing or submit written comments by September 16, 1999, to the Ground Water/Drinking Water Branch, Ground Water & UIC Section, United States Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303-8960, Attention: Mr. Larry Cole. Copies of documents regarding this action are available between 8:30 a.m. and 4 p.m. Monday through Friday at the following locations for inspection and copying: Environmental Protection Agency, Region 4, 9th Floor Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303-8960, PH: (404) 562-8190; and the State Oil & Gas Board of Alabama, 420 Hackberry Lane, Tuscaloosa, AL 35489-9780, PH: (205) 349-2852.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cole at (404) 562-9474 or at the following address: Environmental Protection Agency, Water Management Division, Ground Water/Drinking Water Branch, Ground Water & UIC Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303-8960.

SUPPLEMENTARY INFORMATION:

I. Background Information

This public hearing is a reschedule of the public hearing held on July 28th at 5:30 pm in the Tuscaloosa Public Library, 1801 River Road, Tuscaloosa, Alabama 35401, announced in the **Federal Register**/Vol. 64, No. 98/Friday, May 21, 1999, Pages 27744-27747. The July 28th hearing was canceled prior to its conclusion by the Tuscaloosa Fire Marshal. With this notice we are also

extending the comment period on withdrawal.

By court order, the Regional Administrator for EPA's Region 4 Office informed the State Oil and Gas Board of Alabama of specific areas of alleged noncompliance regarding its approved UIC Program. Specifically, EPA informed the State that, consistent with the Eleventh Circuit's ruling in *LEAF v. EPA*, hydraulic fracturing associated with coalbed methane gas production must be regulated as an "underground injection" under Alabama's UIC Program. Withdrawal of the Alabama program would, if completed, divest Alabama of primary enforcement authority under the SDWA to regulate Class II Wells, including hydraulic fracturing associated with coalbed methane gas wells within Alabama.

EPA is proceeding at this time with this notice of reschedule of public hearing and extension of the public comment period in order to comply with paragraph 2(a) of the Writ of Mandamus because hydraulic fracturing associated with coalbed methane gas production is not currently regulated as underground injection (by permit or rule) pursuant to the EPA-approved underground injection control program for Alabama.

At the rescheduled public hearing, all interested persons shall be given the opportunity to make written or oral presentations on EPA's proposed action to withdraw approval of Alabama's section 1425 approved Class II Program on the grounds of its failure to regulate as "underground injection" hydraulic fracturing associated with coalbed methane gas production. In addition, comments may be submitted as provided herein. All written and oral presentations submitted prior to the cancellation of the July 28th public hearing were recorded and will be considered in EPA's final evaluation of the State of Alabama's section 1425 Program.

On August 2, 1982, EPA granted primary enforcement responsibility (primacy) for the Class II Underground Injection Control (UIC) Program under Section 1425 of the Safe Drinking Water Act (SDWA) to the State of Alabama. The SDWA requires EPA to approve an effective in-place state UIC Program to protect Underground Sources of Drinking Water (USDW) from endangerment that could result from the improper injection of fluids associated with, among other things, oil and gas production. On May 3, 1994, the Legal Environmental Assistance Foundation, Inc. (LEAF) submitted a petition to EPA to withdraw Alabama's UIC Program asserting that the State was not

regulating activities associated with coalbed methane gas production wells. Following EPA's May 5, 1995 denial of the petition, LEAF sought review of this decision by the United States Court of Appeals for the Eleventh Circuit. On August 7, 1997, in *LEAF v. EPA*, 118 F. 3d 1467 (11th Cir. 1997), the Court held as follows: hydraulic fracturing activities constitute "underground injection" under Part C of the Safe Drinking Water Act, *id.* at 1478; all underground injection is required to be regulated (by permit or rule), *id.* at 1474; and hydraulic fracturing associated with coalbed methane gas production is not currently regulated under Alabama's UIC Program, *id.* at 1471. On February 18, 1999, the Eleventh Circuit issued a Writ of Mandamus directed at EPA to enforce its August 1997 decision. The Writ established a schedule for EPA to follow to determine whether, in light of the Court's holding regarding hydraulic fracturing, EPA should withdraw approval of Alabama's UIC Program.

In response to the LEAF decision and the Writ of Mandamus, EPA must review Alabama's UIC Program in accordance with federal regulations at 40 CFR 145.34(b). The timing of EPA's review and decision-making process must adhere to the time frame contained in the Writ of Mandamus. In order to comply with the Writ of Mandamus and 40 CFR 145.34(b)(2), EPA must hold a public hearing no less than 60 days nor more than 75 days, following the publication of this notice of the hearing in the **Federal Register**. Therefore, in order to comply with this time frame, Region 4 held a public hearing on July 28, 1999, at 5:30 pm in the Tuscaloosa Public Library, Tuscaloosa, Alabama. Due to the cancellation of that hearing prior to its conclusion, Region 4 has rescheduled the public hearing to occur on Thursday, September 9, 1999, at the University of Alabama in the Sellers Auditorium of the Bryant Conference Center, Tuscaloosa, Alabama. All interested persons shall be given the opportunity to make written or oral presentation at the public hearing on whether EPA should withdraw Alabama's Class II UIC Program on the ground that it does not regulate as "underground injection" hydraulic fracturing associated with coalbed methane gas production.

Alabama Class II UIC Section 1425 Program Deficiencies

The State Oil & Gas Board of Alabama is not regulating hydraulic fracturing of coalbed methane gas production wells as "underground injection" (by permit or rule) pursuant to its EPA-approved underground injection control program.

Withdrawal Procedure

Section 1425 of the SDWA and subsequent published EPA guidance does not contain express procedures for the withdrawal of a Section 1425 Program. EPA has promulgated procedures for withdrawing a Section 1422 Program at 40 CFR 145.34(b). In lieu of different express regulatory provisions for the withdrawal of Section 1425 programs and in light of the Court's Writ of Mandamus, EPA is following the procedures at 40 CFR 145.34(b) in proposing to withdraw Alabama's Section 1425 Program.

On March 19, 1999, the Regional Administrator of EPA Region 4 notified the Supervisor of the State Oil and Gas Board of Alabama of EPA's decision to initiate the process to withdraw approval of the Alabama UIC Program. The Regional Administrator's notice to the Supervisor of the State Oil and Gas Board of Alabama constituted the first step in the withdrawal process. According to the procedures established in 40 CFR 145.34(b) and the Writ of Mandamus, the State was given 30 days after the notice to demonstrate that its UIC Program is in compliance with the SDWA and 40 CFR part 145 (i.e., that hydraulic fracturing associated with methane gas production is regulated as "underground injection," by permit or rule, pursuant to the EPA approved Underground Injection Control Program).

The Supervisor of the State Oil and Gas Board responded to the Regional Administrator's letter by a letter dated April 15, 1999. The response indicated that on March 5, 1999, the State Oil & Gas Board of Alabama promulgated rules which regulate hydraulic fracturing of coalbed methane gas wells by rule authorization. These new regulations were added as an Emergency Order and sent to the Alabama Legislative Reference Service under Section 41-22-5 of the Code of Alabama (1975). They became effective on March 11, 1999, for a period of no longer than 120 days. To become part of the EPA approved UIC Program, Alabama should submit a revised UIC Program package containing new regulations to EPA for review and approval. These new regulations must protect current and potential USDWs from endangerment.

The State will not have fully corrected the identified program deficiencies consistent with the requirements of the Writ of Mandamus until a revised Alabama Section 1425 Program has been approved by EPA. Therefore, in accordance with 40 CFR 145.34(b)(2), the Regional Administrator of Region 4 is soliciting comments on the

appropriateness of withdrawing the Class II UIC Program from the State Oil & Gas Board of Alabama on the grounds that it does not, as currently approved by EPA, regulate as "underground injection" hydraulic fracturing associated with methane gas production. This action constitutes the second step in the withdrawal process set out in 40 CFR 145.32(b) and the Writ of Mandamus. Following the public hearing and close of the public comment period, EPA will fully evaluate the record in this matter. If EPA determines that the State is still not in compliance, the Administrator will notify the State.

Within 90 days of receipt of that notification, the State of Alabama must fully implement any required remedial actions regarding regulating hydraulic fracturing or the State's Class II UIC Program will be withdrawn. Class II program approval will, however, not be withdrawn if Alabama can demonstrate that hydraulic fracturing associated with methane gas production is regulated as "underground injection" (by permit or rule) pursuant to the EPA approved underground injection control program. If EPA withdraws approval of the Alabama Class II Program pursuant to the requirement of 40 CFR 145.32(b) and the Writ of Mandamus, it will propose and promulgate a federal program for Class II wells located in Alabama, including hydraulic fracturing associated with methane gas production.

EPA is extending the public comment period regarding withdrawal of the Alabama Class II UIC Program for failure to adequately regulate hydraulic fracturing associated with methane gas production as "underground injection." Public comments received on or before close of business on September 16, 1999, will be considered in EPA's final evaluation of the State of Alabama Section 1425 Program. Comments may be submitted at the rescheduled public hearing to be held on September 9, 1999, at 4 p.m., CST at the University of Alabama, in the Sellers Auditorium of the Bryant Conference Center at 240 Bryant Drive, Tuscaloosa, Alabama 35401.

List of Subjects in 40 CFR Part 147

Environmental protection, Intergovernmental relations, Water supply.

Dated: July 30, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.
[FR Doc. 99-20314 Filed 8-9-99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-6417-2]

South Dakota: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: South Dakota has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is proposing to authorize the State's changes through this proposed final action.

DATES: Send your comments by September 9, 1999.

ADDRESSES: Send written comments to Kris Shurr, 8P-HW, U.S. EPA, Region VIII, 999 18th St, Ste 500, Denver, Colorado 80202-2466, phone number: (303) 312-6139. We must receive your comments by September 9, 1999. You can view and copy South Dakota's applications at the following addresses: SDDENR, from 9:00 AM to 5:00 PM, Joe Foss Building, 523 E. Capitol, Pierre, South Dakota 57501-3181, contact: Carrie Jacobson, phone number (605) 773-3153 and EPA Region VIII, from 8:00 AM to 4:00 PM, 999 18th Street, Suite 500, Denver, Colorado 80202-2466, contact: Kris Shurr, phone number: (303) 312-6139.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466, phone number: (303) 312-6139.

SUPPLEMENTARY INFORMATION:

A. Why are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What Decisions Have We Made in This Rule?

We conclude that South Dakota's applications to revise its authorized program meet all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant South Dakota Final authorization to operate its hazardous waste program with the changes described in the authorization applications. South Dakota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program applications, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in South Dakota, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in South Dakota subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. South Dakota has enforcement responsibilities under its State hazardous waste program for violations of its currently authorized program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections and require monitoring, tests, analyses, or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the proposed regulations for which South Dakota is requesting authorization are already effective, and are not changed by this proposed approval.

D. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will address all public comments in a later **Federal Register**. You will not have another opportunity to comment. If you want to