



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA-HQ-OW-2011-0520; FRL-9924-92-OW]

State of Tennessee Underground Injection Control (UIC) Program; Primacy Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking direct final action to approve the State of Tennessee Underground Injection Control (UIC) Program for primacy to implement and enforce state regulations for all UIC injection wells located within the state, except for Class VI and all wells on Indian lands, as required by rule under the Safe Drinking Water Act (SDWA). The Agency determined that the state's UIC Program is consistent with the provisions of the SDWA and is as stringent as all applicable federal regulations to prevent underground injection activities that endanger underground sources of drinking water.

DATES: This rule is effective on **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless EPA receives adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. For judicial purposes, this final rule is promulgated as of **[INSERT DATE 90 DAYS AFTER**

DATE OF PUBLICATION IN THE FEDERAL REGISTER. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2011-0520, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- Email: OW-Docket@epa.gov.
- Mail: State of Tennessee; Underground Injection Control (UIC) Primacy, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- Hand Delivery: Water Docket, EPA Docket Center (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OW-2011-0520. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> website is an “anonymous

access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm> .

Docket: All supporting documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC; and U.S. Environmental Protection Agency, Region 4, Library 9th Floor, 61 Forsyth Street SW., Atlanta, Georgia 30303. The Water Docket Facility Public Reading Room in Washington, DC, is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room telephone number is (202) 566-1744 and the telephone number of the Water Docket is (202) 566-2426. The Region 4 Library is open from 8:00 a.m. to 3:45 p.m., Monday

through Friday, excluding legal holidays. The telephone number for the library is (404) 562-8190.

FOR FURTHER INFORMATION CONTACT: Marilyn Ginsberg, 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) 564-3881; fax number: (202) 564-3754; email address: ginsberg.marilyn@epa.gov or Nancy H. Marsh, Safe Drinking Water Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303; telephone number (404) 562-9450; fax number: (404) 562-9439; email address: marsh.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is EPA Issuing a Direct Final Rule?

EPA published this rule without a prior proposed rule because the Agency views this action as noncontroversial and anticipates no adverse comment. However, in the “Proposed Rules” section of today’s Federal Register, EPA published a separate document that serves as the proposed rule if the Agency receives adverse comment on this direct final rule. The Agency will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, the Agency will publish a timely withdrawal in the Federal Register, informing the public that this direct final rule will not take effect. The Agency will then address all public comments in any subsequent final rule based on the proposed rule.

II. Does This Action Apply to Me?

Regulated Entities

Category	Examples of Potentially Regulated Entities	North American Industry Classification System
State, Local, and Tribal Governments	State, local, and tribal governments that own and operate Class I, II, III, IV, and V injection wells located within the state	924110
Industry	Private owners and operators of Class I, II, III, IV, and V injection wells located within the state	221310
Municipalities	Municipal owners and operators of Class I, II, III, IV, and V injection wells located within the state	924110

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Legal Authorities

EPA approves the State of Tennessee's UIC Program primacy application for Class I, II, III, IV, and V injection wells located within the state, as required by rule under the SDWA, to prevent underground injection activities that endanger underground sources of drinking water.

Accordingly, the Agency codifies the state's program in the Code of Federal Regulations (CFR) at 40 CFR part 147, under the authority of the SDWA, sections 1422 and 1450, 42 U.S.C. 300h-1 and 300j-9. The state applied to EPA under sections 1422 of the SDWA, 42 U.S.C. sections 300h-1, for primacy (primary enforcement responsibility) for all UIC classes of injection wells, with the exception of Class VI injection wells and all wells on Indian lands.

The Agency's approval is based on a legal and technical review of the state's primacy application as directed at 40 CFR part 145 and the requirements for state permitting and compliance evaluation programs, enforcement authority and information sharing at 40 CFR parts 124 and 144, to determine that the state's program is as stringent as all applicable federal regulations. EPA oversees the state's administration of the UIC program; part of the Agency's oversight responsibility requires quarterly reports of non-compliance and annual UIC performance reports pursuant to 40 CFR 144.8. The Memorandum of Agreement between EPA and the State of Tennessee, signed by the Regional Administrator on October 20, 2004, provides the Agency with the opportunity to review and comment on all permits. The Agency continues to administer the UIC program for Class VI injection wells in the state and all wells on Indian lands (if any such lands exist in the state in the future).

IV. Tennessee's Application

A. Public Participation Activities Conducted by the State of Tennessee

As part of the primacy application requirements, the state held three public hearings on the state's intent to apply for primacy. The hearings were held on July 9, 17, and 24, 2001, in the cities of Jackson, Murfreesboro and Knoxville, respectively. The comments received at the

hearings were supportive of the state pursuing primacy for the UIC program and expressed concerns related to allowing Class I injection wells throughout the state. Because of these concerns, the state has restricted the use of Class I injection wells to only certain parts of the state. The state also placed a ban on the construction and operation of Class I hazardous waste injection wells in the state. Currently the State of Tennessee has no Class I injection wells.

B. Public Participation Activities Conducted by EPA

On May 3, 2012, the Agency published a document of the state's application in the Federal Register (77 FR 262331). This document provided that a public hearing would be held if requested. There was one request for a public hearing; therefore, the Agency held a public hearing on June, 7, 2012, in Nashville. At the hearing, a commenter requested and received clarification from the Agency related to the approval of Class V injection wells. The commenter also raised concerns regarding state permitting fees and the funding source for the state's UIC program. The Agency determined that the fee and funding issues are outside the scope of the federal program and are not relevant as to whether the state's regulations are as stringent as the federal regulations.

C. Incorporation by Reference

This direct final rule amends 40 CFR part 147 and incorporates by reference EPA-approved state statutes and regulations. The provisions of the State of Tennessee's Code that contain standards, requirements and procedures applicable to owners or operators of UIC well classes I, II, III, IV, and V are incorporated by reference into 40 CFR part 147. 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, the Agency is reformatting the codification of the EPA-approved state statutes and regulations for Well Classes I, II, III, IV, and V. Instead of codifying the Tennessee Statutes and Regulations as separate paragraphs, the Agency is now codifying a binder that contains the EPA-approved Tennessee Statutes and Regulations for Well Classes I, II, III, IV, and V. This binder will be incorporated by reference into 40 CFR part 147 and available at regulations.gov in the docket for this rule. The Agency will also codify a table listing the EPA-approved Tennessee Statutes and Regulations for Well Classes I, II, III, IV, and V in 40 CFR part 147.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA determined that there is no need for an Information Collection Request under the Paperwork Reduction Act because this direct final rule does not impose any new federal

reporting or recordkeeping requirements. Reporting or recordkeeping requirements are based on the State of Tennessee UIC Regulations, and the state is not subject to the Paperwork Reduction Act. However, OMB has previously approved the information collection requirements contained in the existing regulations (40 CFR parts 144-148) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control number 2040-0042. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

I certify 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 action does not impose any new requirements on any regulated entities. It simply codifies the State of Tennessee's UIC Program regulations, which are at least as stringent as the federal regulations. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1521-1538. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. 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.

F. Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 as explained in section V.C. Thus, Executive Order 13175 does not apply to this action.

G. 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 approves a state action as explained in section V.C.

H. 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.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because the rule does not affect or change the level of protection provided to human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 147

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

Dated: March 30, 2015.

Gina McCarthy,
Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended 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. 300h *et seq.*; and 42 U.S.C. 6901 *et seq.*

2. Add §147.2150 to read as follows:

§147.2150 State-administered program – Class I, II, III, IV, and V wells.

The UIC program for Class I, II, III, IV, and V wells in the State of Tennessee, except for those on any Indian lands, is the program administered by the Tennessee Department of Environment and Conservation, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the Federal Register on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; the effective date of this program is **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. This program consists of the following elements, as submitted to EPA in the state's program application.

- (a) *Incorporation by reference.* The requirements set forth in the Tennessee State statutes and regulations cited in the binder (Volumes 1 and 2) entitled “EPA-Approved State of Tennessee Safe Drinking Water Act section 1422 Underground Injection Control (UIC) Program Statutes and Regulations for Well Classes I, II, III, IV, and V,” dated September 2013 and Table 1 to 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 Tennessee. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the Tennessee regulations may be obtained or inspected at Tennessee Department of Environment and Conservation, 6th Floor, 401 Church Street, Nashville, Tennessee 32743, (315) 532-0191, at the Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960, (404) 562-8190 or at the National Archives and Records Administration (NARA).

For information on availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/locations/>.

Table 1 to paragraph (a) EPA-Approved Tennessee SDWA section 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, II, III, IV, and V			
State citation	Title/subject	State effective date	EPA approval date ¹
Tennessee Code Annotated, Title 4, Chapter 5	Uniform Administrative Procedures Act	August 5, 2011	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>
Tennessee Code Annotated, Title 68, Chapter 221, Part 4	Subsurface Sewage Disposal Systems	August 5, 2011	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>
Tennessee Code Annotated, Title 68, Chapter 221, Part 7	Tennessee Safe Drinking Water Act of 1983	July 9, 2012	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>
Tennessee Code Annotated, Title 68, Chapter 212, Section 101 <i>et seq.</i>	Hazardous Waste Management Act of 1977	July 9, 2012	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>
Tennessee Code Annotated, Title 68, Chapter 212, Section 201 <i>et seq.</i>	Hazardous Waste Management Act of 1983	July 9, 2012	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>
Tennessee Code Annotated, Title 68, Chapter 203	Tennessee Environmental Protection Fund	May 10, 2012	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>
Tennessee Code Annotated, Title 68, Chapter 211, Part 1	Tennessee Solid Waste Disposal Act	June 25, 2009	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>
Tennessee Code Annotated, Title 68, Chapter 215, Part 1	Tennessee Petroleum Underground Storage Tank Act	June 29, 2009	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>
Tennessee Code Annotated, Title 69, Chapter 3, Part 1	Water Quality Control Act	October 1, 2012	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>
Official Compilation Rules & Regulations	Underground Injection Control	December 11, 2012	<u>[Insert the date of publication in the Federal Register]</u>

¹ In order to determine the EPA effective date for a specific provision listed in this table, consult the Federal Register document cited in this column for the particular provision.

of the State of Tennessee Chapter 0400-45-06			<u>[Insert Federal Register Citation]</u>
Official Compilation Rules & Regulations of the State of Tennessee Chapter 0400-45-01	Public Water Systems	December 11, 2012	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>
Compilation Rules & Regulations of the State of Tennessee Chapter 1200-1-6	Regulations to Govern Subsurface Sewage Disposal Systems	November 24, 2009	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>
Official Compilation Rules & Regulations of the State of Tennessee Chapter 0400-12-01-.02(1)(c)	Hazardous Waste Management	September 20, 2012	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>
Official Compilation Rules & Regulations of the State of Tennessee Chapter 0400-20-05-.161	Standards For Protection Against Radiation	May 22, 2012	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>

(b) *Memorandum of Agreement (MOA)*. The MOA between EPA Region 4 and the Tennessee Department of Environment and Conservation signed by EPA Regional Administrator on October 20, 2004.

(c) *Statements of legal authority*. “Underground Injection Control Program, Attorney General’s Statement,” signed by Attorney General of Tennessee on July 26, 2005 and “Updating the Attorney General’s Statement on UIC Program Authority,” signed by General Counsel of the Tennessee Department of Environment and Conservation on November 10, 2011.

(d) *Program description*. The Program Description submitted as part of Tennessee’s application, and any other materials submitted as part of this application or as a supplement thereto.

3. In §147.2151, revise the section heading and the first sentence in paragraph (a) to read as follows:

§147.2151 EPA-administered program Class VI and Indian lands.

(a) *Contents.* The UIC program for Class VI wells and all wells on Indian lands in the State of Tennessee is administered by EPA. ***

§§147.2154 and 147.2155 [Removed]

4. Remove §§147.2154 and 147.2155.

[FR Doc. 2015-07746 Filed: 4/3/2015 08:45 am; Publication Date: 4/6/2015]