

PRE-PUBLICATION NOTICE. The EPA Administrator, Michael S. Regan, signed the following notice on November 20, 2024, and the EPA is submitting it for publication in the Federal Register (FR). This document is not disseminated for purposes of the EPA's Information Quality Guidelines and does not represent an Agency determination or policy. While we have taken steps to ensure the accuracy of this internet version of the document, it is not the official version. Please refer to the official version in a forthcoming Federal Register publication, which will appear on the Government Printing Office's govinfo website (<https://www.govinfo.gov/app/collection/fr>). It will also appear on Regulations.gov (<https://www.regulations.gov>) in Docket Number EPA-HQ-OW-2024-0357. Once the official version of this document is published in the FR, this version will be removed from the internet and replaced with a link to the official version.

Contact Colin Dyroff ([dyroff.colin@epa.gov](mailto:dyroff.colin@epa.gov); 202-564-31490) for 508 Compliance assistance.

6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 147**

**[EPA-HQ-OW-2024-0357; FRL 12000-01-OW]**

### **West Virginia Underground Injection Control (UIC) Program; Class VI Primacy**

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA or the Agency) has received a complete Underground Injection Control (UIC) program revision package from the State of West Virginia (State), requesting approval of a revision to the State's Safe Drinking Water Act (SDWA) section 1422 UIC program to include Class VI injection well primary enforcement responsibility (primacy). The proposed revision would allow the West Virginia Department of Environmental Protection (WVDEP) to issue UIC permits for geologic carbon sequestration facilities as Class VI wells and ensure compliance of Class VI wells under the UIC program. The EPA proposes to issue a final rule approving West Virginia's application to implement the UIC program for Class VI injection wells located within the State, except those on Indian lands. The EPA proposes amendments to reflect this proposed approval of West Virginia's Class VI primacy application.

**DATES:** Comments must be received on or before December 30, 2024. *Public hearing:*

The EPA will hold a public hearing on December 30, 2024. Please refer to the

**SUPPLEMENTARY INFORMATION** section for additional information on the public

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

hearing.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OW-2024-0357 by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday – Friday (except Federal Holidays).

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Colin Dyroff, Drinking Water Infrastructure Development Division, Office of Ground Water and Drinking Water (4606M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-3149; or Himanshu Vyas, Water Division, Source Water & UIC Section (3WD22), Environmental Protection Agency, Region 3, Four Penn Center, 1600 JFK Boulevard, Philadelphia, PA 19103; telephone number: (215) 814-2112. Both can be reached by emailing [WVClassVI@epa.gov](mailto:WVClassVI@epa.gov).

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

## **SUPPLEMENTARY INFORMATION:**

### **Table of Contents**

- I. Public Participation
  - A. Written Comments
  - B. Participation in Public Hearing
  - C. Public Participation Activities Conducted by West Virginia
- II. Introduction
  - A. UIC Program and Primary Enforcement Authority (Primacy)
  - B. Class VI Wells Under the UIC Program
  - C. West Virginia UIC Program
- III. Legal Authorities
- IV. The EPA's Evaluation of West Virginia's Program Revision Application
  - A. Background
  - B. Environmental Justice in Class VI Permitting
  - C. Summary of the EPA's Comprehensive Evaluation
- V. The EPA's Proposed Action
  - A. Incorporation by Reference
  - B. Class I-V Codification—No Action
- VI. Statutory and Executive Orders Reviews
  - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review
  - B. Paperwork Reduction Act (PRA)
  - C. Regulatory Flexibility Act (RFA)
  - D. Unfunded Mandates Reform Act (UMRA)
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act (NTTAA)
  - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All
- VII. References

### **I. Public Participation**

#### *A. Written Comments*

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2024-0357, at <https://www.regulations.gov> (our preferred method), or the other methods identified in

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. If you need to submit CBI, contact Himanshu Vyas with the contact information available in the **FOR FURTHER INFORMATION CONTACT** section. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

#### *B. Participation in Public Hearing*

A public hearing is anticipated to be held on December 30, 2024. The EPA expects to announce the location, time of the hearing, as well as any updates made to any aspect of the hearing online at <https://www.epa.gov/aboutepa/epa-region-3-mid-atlantic#pn>. The hearing can also be attended virtually at <https://www.zoomgov.com/j/1600637199>. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact Himanshu Vyas at (215) 814-2112 or [WVClassVI@epa.gov](mailto:WVClassVI@epa.gov) to determine if there are any updates or for additional information regarding the public hearing. The EPA does not intend to publish a document in the *Federal Register* announcing updates.

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

The EPA will begin pre-registering speakers for the hearing upon publication of this document in the *Federal Register*. To register to speak at the hearing, please contact Himanshu Vyas at (215) 814-2112 or [WVClassVI@epa.gov](mailto:WVClassVI@epa.gov) and indicate whether you will be attending in-person or virtually. The last day to pre-register to speak at the hearing will be December 23, 2024. Prior to the hearing, the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at:

<https://www.epa.gov/aboutepa/epa-region-3-mid-atlantic#pn>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk. The EPA will make every effort to accommodate all speakers who arrive and register, although preferences on speaking times may not be able to be fulfilled.

The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically by emailing it to [WVClassVI@epa.gov](mailto:WVClassVI@epa.gov). The EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

The EPA will not provide audiovisual equipment for presentations unless we receive special requests in advance. Commenters should notify Himanshu Vyas when they pre-register to speak that they will need specific equipment. If you require the

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

services of an interpreter or special accommodations such as audio description, please pre-register for the hearing with Himanshu Vyas and describe your needs by December 23, 2024. The EPA may not be able to arrange accommodations without advance notice.

### *C. Public Participation Activities Conducted By West Virginia*

On June 23, 2021, the WVDEP posted a notice of public comment period on their website for an action to revise West Virginia Code of State Rules 47CSR13 to add new regulations for Class VI wells and to update the State's existing Class I-V regulations. The WVDEP held a public comment period from June 23, 2021 to July 23, 2021 and held a virtual public hearing on July 23, 2021. The WVDEP received 55 comments, 19 of which commented on Class VI wells. These comments did not result in changes to the proposed regulatory revisions. The effective date for this rule revision was March 9, 2022.

Then, on June 12, 2023, the WVDEP posted a notice of public comment period on their website for another action to make additional updates to the State's Class I-VI regulations in 47CSR13 of the West Virginia Code of State Rules. The WVDEP held a public comment period from June 12, 2023 to July 18, 2023 and held a public hearing on July 18, 2023 in Charleston, WV. The WVDEP received five comments, all of which related to Class VI wells. These comments did not result in changes to the proposed updates to the regulations. The effective date for this rule revision was April 5, 2024.

Commenters on the WVDEP's proposed rulemakings shared concerns on various topics including applicant financial burden, fees, the area of review radius, post-injection site care, and seismic activity reviews. Commenters also expressed concern about whether the WVDEP has adequate staffing and technical expertise to properly manage a UIC Class VI program. Environmental justice (EJ) also appeared to be a major concern,

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

with commenters asking about how EJ protections will be integrated into the program.

The WVDEP responded to all public comments, provided various clarifications, and confirmed to commenters that EJ will be an important part of the agency's Class VI program. The WVDEP also added that the agency's Class VI team would be composed of technical specialists with expertise in geology, well construction, and UIC inspections. Additionally, the WVDEP stated that the rule revisions were adopted to be consistent with Federal requirements and that the agency's primary objective is to protect underground sources of drinking water, groundwater, and surface water. Documentation of West Virginia's public participation activities, including comments received and responses by the WVDEP, can be found in the EPA's Docket ID No. EPA-HQ-OW-2024-0357.

## **II. Introduction**

### *A. UIC Program and Primary Enforcement Authority (Primacy)*

The SDWA protects public health by regulating the nation's public drinking water supply, including both surface and groundwater sources. The SDWA requires the EPA to develop minimum requirements for effective State and Tribal UIC programs to prevent underground injection of fluids (such as water, wastewater, brines from oil and gas production, and carbon dioxide) from endangering underground sources of drinking water (USDWs). In general, USDWs are aquifers or parts of aquifers that supply a public water system or contain enough groundwater to supply a public water system. See 40 CFR 144.3.

The UIC program regulates various aspects of an injection well project. These include technical aspects throughout the lifetime of the project from site characterization, construction, operation, and testing and monitoring through site closure, as well as

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

permitting, site inspections, and reporting to ensure well owners and operators comply with UIC regulations.

SDWA section 1421 directs the EPA to establish requirements that States, territories, and federally recognized Tribes (hereafter referred to as applicants) must meet to be granted primary enforcement responsibility or “primacy” for implementing a UIC program, including a Class VI program. An applicant seeking primacy under SDWA section 1422 for a Class VI program must demonstrate to the EPA that the applicant’s Class VI program meets the Federal requirements and is protective of USDWs. An applicant agency must also demonstrate jurisdiction over underground injection and the administrative, civil, and criminal enforcement authorities required by EPA regulation. After the EPA approves a State for UIC primacy, the State’s UIC program may be revised with EPA approval. See 40 CFR 145.32. When a State that already has primacy under SDWA section 1422 seeks to add Class VI primacy to its existing program, a subsequent primacy application and review process takes the form of a program revision.

The EPA conducts a comprehensive technical and legal evaluation of each primacy application to assess and confirm that the proposed program meets Federal regulations and to evaluate the effectiveness of the State’s proposed program. The EPA likewise conducts a comprehensive evaluation of a proposed revision to an existing UIC program, particularly a revision as substantial as adding Class VI primacy.

#### *B. Class VI Wells Under the UIC Program*

Class VI wells are used to inject carbon dioxide into deep rock formations for the purpose of long-term underground storage, also known as geologic sequestration. The geologic sequestration of carbon dioxide in UIC Class VI wells is used in carbon capture and storage to prevent carbon dioxide emissions from industrial sources from reaching



This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

the atmosphere. Class VI injection wells are regulated under an existing, rigorous SDWA permitting framework that protects USDWs.

The UIC Class VI program provides multiple safeguards that work together to protect USDWs and human health. Owners or operators that wish to inject carbon dioxide underground for the purpose of geologic sequestration must demonstrate that their injection well and injection activities will meet all regulatory requirements and receive a Class VI permit for each well. The UIC Class VI program requires applicants to meet strict technical, financial, and managerial requirements to obtain a Class VI permit, including:

- Site characterization to ensure the geology in the project area will contain the carbon dioxide within the zone where it will be injected.
- Modeling to delineate the predicted area influenced by injection activities through the lifetime of operation.
- Evaluation of the delineated area to ensure all potential pathways for fluid movement have been identified and addressed through corrective action.
- Well construction requirements that ensure the Class VI injection well will not leak carbon dioxide.
- Testing and monitoring throughout the life of the project, including after carbon dioxide injection has ended. Requirements include, for example, testing to ensure physical integrity of the well, monitoring for seismic activity near the injection site, monitoring of injection pressure and flow, chemical analysis of the carbon dioxide stream that is being injected, and monitoring the extent of the injected carbon dioxide plume and the surrounding area (e.g., ground water) to ensure the carbon dioxide is contained as predicted.

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

- Operating requirements (for example, injection pressure limitations) to ensure the injection activity will not endanger USDWs or human health.
- Financial assurance mechanisms sufficient to cover the costs for all phases of the geologic sequestration project including the post-injection site care period and until site closure has been approved by the permitting authority.
- Emergency and remedial response plans.
- Reporting of all testing and monitoring results to the permitting authority to ensure the well is operating in compliance with all permit and regulatory requirements.

The permitting authority ensures that these protective requirements are included in each Class VI permit. A draft of each Class VI permit is made available to the public for comment before the decision is made whether to issue a final permit.

### *C. West Virginia UIC Program*

The State of West Virginia received primacy for Class I, III, IV, and V injection wells under SDWA section 1422 and Class II injection wells under SDWA section 1425 on December 9, 1983 (48 FR 55127). On May 1, 2024, West Virginia applied to the EPA under section 1422 of SDWA, 42 U.S.C. 300h-1, for primacy for Class VI injection wells located within the State, except those located on Indian lands.

### **III. Legal Authorities**

This regulation is proposed under authority of SDWA sections 1422 and 1450, 42 U.S.C. sections 300h-1 and 300j-9.

Section 1421 of SDWA requires the Administrator of the EPA to promulgate Federal requirements for effective State UIC programs to prevent underground injection activities that endanger USDWs. Section 1422 of SDWA establishes requirements for

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

States and Tribes seeking EPA approval of their UIC programs. It also requires that States and Tribes seeking approval demonstrate how the applicant (after public notice) will implement a UIC program which meets the requirements that the EPA promulgated under section 1421.

For States and Tribes that seek approval for UIC programs under section 1422 of SDWA and those seeking EPA approval of revisions to existing State and Tribal UIC programs, the EPA has promulgated regulations setting forth the applicable procedures and substantive requirements codified in 40 CFR parts 144, 145 and 146. 40 CFR part 144 outlines general program requirements that each State must meet to obtain primary enforcement authority. 40 CFR part 145 specifies the procedures the EPA will follow in approving, revising, and withdrawing State programs and outlines the elements and provisions that a State must include in its application for primacy. 40 CFR part 145 also includes requirements for State permitting programs (by reference to certain provisions of 40 CFR parts 124 and 144), compliance evaluation programs, enforcement authority, and sharing of information between the EPA and the State. 40 CFR part 146 contains the technical criteria and standards applicable to each well class, including Class VI wells.

#### **IV. The EPA's Evaluation of West Virginia's Program Revision Application**

##### *A. Background*

On May 1, 2024, West Virginia submitted to the EPA a program revision application to add Class VI wells to the State's SDWA section 1422 UIC program. The UIC program revision package from West Virginia includes a description of the State's UIC Class VI program, copies of all applicable rules and forms, a statement of legal authority, a summary and results of West Virginia's public participation activities, an amended addendum to the existing Memorandum of Agreement (MOA) between West

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Virginia and the EPA's Region 3 office, an interagency MOA between the WVDEP and the West Virginia Geologic and Economic Survey (WVGES), and an interagency MOA between the WVDEP and the West Virginia Department of Health. The EPA reviewed the application for completeness and performed a technical evaluation of the application materials.

### *B. Environmental Justice in Class VI Permitting*

People across the country have shared with the EPA concerns that already environmentally overburdened communities may bear a disproportionate environmental burden associated with geologic sequestration. Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14096 (88 FR 25251, April 21, 2023) direct Federal agencies, to the greatest extent practicable and permitted by law, to identify and address, as appropriate, disproportionate and adverse human health or environmental impacts on communities with EJ concerns. On August 17, 2023, the EPA released a guidance document titled *Environmental Justice Guidance for UIC Class VI Permitting and Primacy*. This guidance outlines expectations for the EPA to incorporate EJ considerations into Class VI activities. It is organized into five themes that address various aspects of EJ in UIC Class VI permitting, and strongly encourages States, Tribes, and Territories to implement their Class VI programs in a similar fashion.

As part of developing this proposal, the EPA worked with the State of West Virginia to adopt the EJ approaches encouraged in the August 17, 2023 guidance document, which West Virginia has incorporated in its primacy application. The EPA reviewed West Virginia's EJ approach as described in the State's Class VI program description and amended MOA addendum and compared it to the EJ themes and actions in the guidance document. The EJ approach in the amended MOA addendum corresponds

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

to the five themes in the EPA's August 17, 2023 guidance document, which include identifying communities with potential EJ concerns, implementing an augmented public participation process, conducting additional assessments for projects identified as having EJ concerns, ensuring the permitting process is transparent, and minimizing adverse effects to underground sources of drinking water and the communities they may serve. Furthermore, West Virginia's Class VI program description specifies that the WVDEP will require well owners or operators to conduct an EJ review as part of the Class VI permit application process. The EPA supports the WVDEP's agreement in its Class VI program description to evaluate project sites using the EPA's EJ Screen and to take additional steps if this initial screening identifies the presence of an EJ community or other risk factors in the area of review (AOR). West Virginia's Class VI program, as described in the WVDEP's primacy application, includes approaches to ensure equity and EJ will be appropriately considered in permit reviews, and in the WVDEP's UIC Class VI program as a whole.

### *C. Summary of the EPA's Comprehensive Evaluation*

The EPA conducted a comprehensive technical and legal evaluation of West Virginia's Class VI primacy application to assess and confirm that the State's UIC Class VI program is as stringent as the Federal regulations and evaluated the effectiveness of the State's Class VI program. To be approved for Class VI primacy under SDWA section 1422, a State or Tribe must have a UIC program that meets Federal requirements (40 CFR parts 124, 144, 145, and 146). The EPA evaluated West Virginia's Class VI UIC statutes and regulations against these Federal requirements. The EPA worked with West Virginia to address any stringency issues with their Class VI statutes and regulations prior to submittal of the Class VI primacy application. The Agency also evaluated for

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

stringency and effectiveness West Virginia's Class VI program description, the Class VI Attorney General's statement, the amended Class VI addendum to the MOA between the EPA and West Virginia, the interagency MOA between the WVDEP and the West Virginia Geologic and Economic Survey, and the interagency MOA between the WVDEP and the West Virginia Department of Health.

The EPA evaluated West Virginia's Class VI program description against 40 CFR 145.23, which lists all the information to be submitted as part of the program description. The EPA's evaluation of the Class VI program description included reviewing the scope, structure, coverage, processes, and organizational structure of the permitting authority. The EPA evaluated the WVDEP's permitting, administrative, and judicial review procedures, as well as the State's permit application, reporting, and manifest forms. The EPA also reviewed the State's compliance evaluation and enforcement mechanisms. The EPA evaluated the WVDEP's proposed schedule for issuing Class VI permits within the first two years after program approval. The EPA required West Virginia to demonstrate that the State's Class VI program will have adequate in-house staff or access to contractor support for technical areas including site characterization, modeling, well construction and testing, financial responsibility, and regulatory and risk analysis.

The EPA evaluated West Virginia's Class VI Attorney General's statement against 40 CFR 145.24 to ensure it met Federal requirements. The Attorney General's statement is required to ensure that a State's top legal officer affirms that State statutes, regulations, and judicial decisions demonstrate adequate authority to administer the UIC program as described in the Class VI program description and consistent with the EPA's regulatory requirements for UIC programs. The EPA independently evaluates and confirms that the Attorney General's statement certifies that the State either does not

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

have environmental audit privilege and/or immunity laws, or, if there are environmental audit privilege and/or immunity laws, that they will not affect the ability of the State to meet the enforcement and information gathering requirements under the SDWA.

The EPA evaluated West Virginia's amended Class VI MOA addendum against 40 CFR 145.25 to ensure it met Federal requirements. The MOA is the central agreement setting the provisions and arrangements between the State and the EPA concerning the administration, implementation, and enforcement of the State UIC program. The EPA's evaluation includes ensuring that the MOA contains the necessary provisions pertaining to agreements on coordination, permitting, compliance monitoring, enforcement, and EPA oversight. For example, the amended MOA addendum specifies that the WVDEP and the EPA agree to maintain a high level of cooperation and coordination to assure successful and efficient administration of the UIC Class VI program.

The EPA reviewed the WVDEP's interagency MOA with the West Virginia Geological and Economic Survey. The WVGES is a West Virginia agency with expertise to provide information to the WVDEP on local geologic characteristics in relation to proposed underground injection operations. The interagency MOA between the WVDEP and the WVGES establishes a coordinated relationship between the two state agencies to properly assess geological characteristics in a proposed work area to support permit determinations. The EPA also reviewed the WVDEP's interagency MOA with the West Virginia Department of Health (WVDOH). Under this interagency MOA, the WVDOH will conduct a review of the proposed area of work and permit application details and provide input to assist in permit determinations, among other provisions.

The EPA is aware that stakeholders have raised concern about geologic sequestration long term liability transfer provisions enacted in West Virginia and other

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

States. The EPA reviewed the West Virginia statutory provision relating to long-term liability transfer (W. Va. Code § 22-11B-12) and determined that it does not undermine any protections under the Safe Drinking Water Act. Under the West Virginia long-term liability transfer provision, all Class VI regulatory and permit requirements must be met before liability transfer may occur.<sup>1</sup> Consistent with EPA regulations, West Virginia imposes extensive post-injection monitoring—a default of 50 years—and site closure requirements at the end of a Class VI well’s life cycle to ensure that there will be no danger to USDWs. Only after all those requirements are met does West Virginia’s long-term liability transfer provision allow a limited transfer of any future liability to a state-administered and industry-funded trust fund. Among other additional limitations, the provision is explicit that it does not: relieve any owner or operator from any liability that arises from noncompliance with UIC laws, regulations or permits; apply if the WVDEP determines that there is fluid migration for which the operator is responsible that threatens imminent and substantial endangerment to a USDW; or interfere with the EPA’s emergency authority under SDWA section 1431.

West Virginia has demonstrated that it has the legal authority to implement all permit requirements found in 40 CFR 145.11 for Class VI permits. West Virginia’s UIC Class VI permitting provisions are as stringent as the EPA’s regulations in 40 CFR parts 124 and 144. The State has incorporated necessary procedures, pursuant to 40 CFR 145.12 to support a robust Class VI compliance evaluation program. Additionally, West Virginia has the necessary administrative, civil, and criminal enforcement authorities pursuant to 40 CFR 145.13. West Virginia’s Class VI regulations regarding permitting, inspection, operation, and monitoring meet Federal requirements found in 40 CFR parts

---

<sup>1</sup> Such requirements include the post closure deed notation and record retention requirements at 40 CFR 146.93 and 47CSR13.13.9, as specifically mentioned in the Class VI MOA amended addendum.



This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

145 and 146. West Virginia’s reporting and recordkeeping requirements meet Federal requirements found in 40 CFR 144.54 and 146.91 for Class VI wells.

As a result of this comprehensive review, the EPA is proposing to approve West Virginia’s application because the EPA has determined that the application meets all applicable requirements for approval under SDWA section 1422 and the State is capable of administering a UIC Class VI program in a manner consistent with the terms and purposes of SDWA and all applicable UIC regulations.

## **V. The EPA’s Proposed Action**

### *A. Incorporation by Reference*

The EPA is proposing to approve a revision to the State of West Virginia’s UIC program for primacy for regulating Class VI injection wells in the State, except for those located on Indian lands. West Virginia’s statutes and regulations that are proposed to be incorporated by reference are publicly available in the EPA’s Docket No. EPA-HQ-OW-2024-0357. If finalized, this action would amend 40 CFR 147.2450 and incorporate by reference EPA-approved State statutes and regulations that contain standards, requirements, and procedures applicable to Class VI owners or operators. Any provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, are enforceable by the EPA pursuant to section 1423 of SDWA and 40 CFR 147.1(e). The EPA will continue to administer the UIC program for Class I, II, III, IV, V, and VI injection wells on Indian lands.

The EPA proposes to incorporate by reference the West Virginia statutes and regulations applicable to owners or operators of Class VI wells as a compilation titled “EPA-approved West Virginia SDWA section 1422 Underground Injection Control Program Statutes and Regulations for Well Class VI,” dated [date when the EPA

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

compiles the notebook]. This compilation would be incorporated by reference into 40 CFR 147.2450 and is available at *www.regulations.gov* in the docket for this proposed rulemaking. The EPA also proposes to codify a table in 40 CFR 147.2450 listing the EPA-approved West Virginia Statutes and Regulations for Well Class VI included in the compilation that EPA would incorporate by reference. While the regulations in 47CSR13 contain requirements for all UIC well classes (i.e., Class I-VI), only the requirements applicable to owners or operators of Class VI wells would be incorporated by reference as part of this action.

Upon approval, the EPA would oversee West Virginia's administration of its Class VI program and will continue to oversee West Virginia's administration of its programs for Class I, II, III, IV, and V wells. The EPA will require quarterly reports on non-compliance and annual UIC performance reports pursuant to 40 CFR 144.8. The amended MOA addendum between the EPA and West Virginia, signed by the Regional Administrator on October 9, 2024, articulates that the EPA will oversee the State's administration of the UIC Class VI program on a continuing basis to assure that such administration is consistent with the program MOAs, UIC grant agreements, and all applicable requirements embodied in current regulations and Federal law. In addition, the amended MOA addendum provides that the EPA may request specific information including permits and the accompanying EJ reviews.

#### *B. Class I-V Codification—No Action*

As referenced in section II.C of this preamble, the EPA approved West Virginia for Class I-V primacy in 1983. After notice and public comment, the EPA determined that West Virginia's UIC program met Federal requirements and published its decision to approve West Virginia's UIC program in the *Federal Register* (48 FR 55127, December

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

9, 1983). The Code of Federal Regulations (CFR) sets forth the applicable UIC program for each State (40 CFR 147.1) and, upon approving a State for UIC primacy, the EPA typically updates the CFR to reflect its approval. However, for reasons that current EPA staff were unable to ascertain, when the EPA approved West Virginia's UIC program in 1983, the CFR was not revised to reflect the EPA's approval, and the CFR currently does not reflect West Virginia's Class I-V primacy. While the EPA is not addressing this CFR discrepancy as part of this proposed action, the EPA expects to address it later as part of a separate action. The current proposal is confined to approving a revision to West Virginia's existing UIC primacy program to grant the State primacy over Class VI wells; it is not addressing other well classes.<sup>2</sup> Separately, the EPA is working with West Virginia to assess the State's current Class I-V program elements and expects to codify in the CFR the State's Class I-V program in 2025 as part of a separate action. An email from the WVDEP affirming the State's intention to submit a Class I-V program revision package in 2025 following the Class VI process can be found in the docket for this proposed rulemaking.

## **VI. Statutory and Executive Orders Reviews**

Additional information about these statutes and Executive orders can be found at:

*<https://www.epa.gov/laws-regulations/laws-and-executive-orders>.*

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review*

This proposed action is exempt from review under Executive Order 12866, as amended by Executive Order 14094, because the Office of Management and Budget

---

<sup>2</sup> Even if this proposed action were not a revision to an existing UIC program, the UIC regulations at 40 CFR 145.1(i) allow States to apply for primary enforcement responsibility for Class VI wells independently of other injection well classes.

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(OMB) has exempted, as a category, the approval of State UIC programs.

*B. Paperwork Reduction Act (PRA)*

This proposed action will not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040-0042. Reporting or recordkeeping requirements will be based on West Virginia's Class VI UIC Regulations, and the State of West Virginia is not subject to the PRA.

*C. Regulatory Flexibility Act (RFA)*

I certify that this proposed action will not have a significant economic impact on a substantial number of small entities under the RFA. This proposed action would not impose any new requirements on small entities. It simply approves and codifies West Virginia's UIC Class VI program, which meets the same standard under SDWA section 1422 as is required for the EPA's regulations governing its direct implementation of a UIC Class VI program.

*D. Unfunded Mandates Reform Act (UMRA)*

This proposed action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The proposed action imposes no enforceable duty on any state, local, or Tribal governments or the private sector. The EPA's proposed approval of West Virginia's Class VI program will not constitute a Federal mandate because there is no requirement that a state establish UIC regulatory programs and because the program is a state, rather than a Federal program.

*E. Executive Order 13132: Federalism*

This proposed action does not have federalism implications. It will not have

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

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 proposed action does not have Tribal implications as specified in Executive Order 13175. This proposed action contains no Federal mandates for Tribal governments and does not impose any enforceable duties on Tribal governments. Thus, Executive Order 13175 does not apply to this proposed action.

*G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the 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 proposed action is not subject to Executive Order 13045 because it approves a state program.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This proposed 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 proposed rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096:*

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

*Revitalizing Our Nation's Commitment to Environmental Justice for All*

The EPA believes that it is not practicable to assess whether the human health or environmental conditions that exist prior to this proposed action result in disproportionate and adverse effects on communities with environmental justice concerns. There currently are no Class VI wells permitted in West Virginia and this proposed action would be a procedural action. The EPA has reviewed West Virginia's proposed approach to environmental justice, as outlined in the Class VI Program Description and Class VI MOA amended addendum, and described in section IV.B of this preamble. The EPA considers West Virginia's Class VI primacy application to integrate environmental justice and equity considerations into the State's UIC Class VI program, while ensuring protection of USDWs. This proposed action would provide West Virginia with primacy under SDWA section 1422 for a UIC Class VI program, pursuant to which West Virginia would implement a program that meets the EPA's requirements for UIC Class VI programs.

**VII. References**

Attorney General's Statement "Attorney General's Statement to Accompany West Virginia's Underground Injection Program Class VI Primacy Application," signed by the General Counsel of the West Virginia Department of Environmental Protection, April 29, 2024.

Class VI Underground Injection Control Program Description "WV Class 6 Program Description", June 2024.

Email from West Virginia to EPA related to Class I-V program revision, April 22, 2024.

Letter from Governor of West Virginia to Regional Administrator, EPA Region III, April 25, 2024.

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Memorandum of Agreement Amended Addendum 1 between the State of West Virginia and the EPA, Region III for the UIC Class VI Program, signed by the EPA Regional Administrator on October 9, 2024.

Federal Register notice “West Virginia Department of Natural Resources; Underground Injection Control Program Approval”, EPA, 48 FR 55127-55128 (December 9, 1983).

Memorandum of Agreement between the State of West Virginia and the EPA, Region III, signed by the EPA Regional Administrator on August 31, 1983.

Memorandum of Agreement Between The West Virginia Department of Environmental Protection and The West Virginia Department of Health, signed April 26, 2024.

Memorandum of Agreement Between The West Virginia Department of Environmental Protection and The West Virginia Geological and Economic Survey, signed April 29, 2024.

Program Description “Program Description for the West Virginia Underground Injection Control Program”, December 1983.

State of West Virginia. Notice of Action Taken by Legislative Rule-Making Review Committee, December 9, 2021.

State of West Virginia. Notice of Action Taken by Legislative Rule-Making Review Committee, September 13, 2023.

State of West Virginia. Notice of Public Comment Period and Hearing, June 12, 2023.

State of West Virginia. Notice of Public Comment Period and Hearing, June 23, 2021.

State of West Virginia. Public Comments and Responses, July 24, 2023.

State of West Virginia. Public Comments and Responses, July 30, 2021.

State of West Virginia. Public Hearing Transcript (Public Hearing Date: July 23, 2021), July 31, 2021.

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

State of West Virginia. Public Hearing Transcript (Public Hearing Date: July 18, 2023), August 12, 2023.

USEPA. 2023b. U.S. Environmental Protection Agency. Memorandum to Water Division Directors, Regions I-X, from Radhika Fox, Office of Water. Environmental Justice Guidance for UIC Class VI Permitting and Primacy (August 17, 2023).

West Virginia Code §22-11. Water Pollution Control Act. May 13, 2024.

West Virginia Code §22-11A. Carbon Dioxide Sequestration Pilot Program. May 20, 2022.

West Virginia Code §22-11B. Underground Carbon Dioxide Sequestration and Storage. May 13, 2024.

West Virginia Code of State Rules § 47-13. Underground Injection Control. April 5, 2024.

#### **List of Subjects in 40 CFR Part 147**

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

**Michael S. Regan,**

*Administrator.*



This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR part 147 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. 300f *et seq.*; and 42 U.S.C. 6901 *et seq.*

2. Add § 147.2450 to read as follows:

**§ 147.2450 State-administered program—Class VI Wells**

The UIC program for Class VI wells in the State of West Virginia, except those on Indian lands, is the program administered by the West Virginia Department of Environmental Protection, approved by the EPA pursuant to SDWA section 1422. The effective date of this program is **[DATE 30 DAYS AFTER FINAL RULE PUBLICATION IN THE FEDERAL REGISTER]**. The UIC program for Class VI wells in the State of West Virginia, except those located on Indian lands, consists of the following elements, as submitted to the EPA in the State’s program revision application.

(a) *Incorporation by reference.* The requirements applicable to owners or operators of Class VI wells set forth in the State statutes and regulations approved by the EPA for including in “EPA-approved West Virginia SDWA § 1422 Underground Injection Control Program Statutes and Regulations for Well Class VI,” dated [date when the EPA compiles the notebook], and listed in table 1 to this paragraph (a), are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of West Virginia. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the State of West Virginia’s statutes and regulations that are incorporated by reference

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

may be inspected at the U.S. Environmental Protection Agency, Region 3, Four Penn Center, 1600 JFK Blvd, Philadelphia, PA 19103 and the U.S. Environmental Protection Agency, Water Docket, EPA Docket Center (EPA/DC), EPA WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004. If you wish to obtain materials from the EPA Regional Office, please call (215) 814-2816, or from the EPA Headquarters Library, please call the Water Docket at (202) 566-2426. You may also view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html) or email [fr.inspections@nara.gov](mailto:fr.inspections@nara.gov). You may also obtain the State of West Virginia’s statutes and regulations that are incorporated by reference from: Room MB-27, Building 1, State Capitol Complex, Charleston, West Virginia 25305; phone: (304) 347-4836; website: [www.wvlegislature.gov](http://www.wvlegislature.gov).

**Table 1 to Paragraph (a)—EPA-Approved West Virginia SDWA Sec. 1422  
Underground Injection Control Program Statutes and Regulations for Well Class**

**VI**

| <b>State Citation</b>      | <b>Title/subject</b>                                 | <b>State effective date</b> | <b>EPA approval date</b>                                  |
|----------------------------|--|-----------------------------|---|
| West Virginia Code §22-11  | Water Pollution Control Act                          | May 13, 2024                | [DATE OF FINAL RULE PUBLICATION IN THE FEDERAL REGISTER.] |
| West Virginia Code §22-11A | Carbon Dioxide Sequestration Pilot Program           | May 30, 2022                | [DATE OF FINAL RULE PUBLICATION IN THE FEDERAL REGISTER.] |
| West Virginia Code §22-11B | Underground Carbon Dioxide Sequestration and Storage | May 13, 2024                | [DATE OF FINAL RULE PUBLICATION IN THE FEDERAL REGISTER.] |
| West Virginia              | Underground  | April 5, 2024               | [DATE OF FINAL  |

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

|                                |                   |  |   |
|--------------------------------|-------------------|--|---|
| Code of State<br>Rules § 47-13 | Injection Control |  | RULE<br>PUBLICATION IN<br>THE FEDERAL<br>REGISTER.] |
|--------------------------------|-------------------|--|---|

(b) *Memorandum of Agreement (MOA).*

(1) The Memorandum of Agreement between the State of West Virginia and the EPA, Region III, signed by the EPA Regional Administrator on August 31, 1983.

(2) Memorandum of Agreement Amended Addendum 1 between the State of West Virginia and the EPA, Region III for the UIC Class VI Program, signed by the EPA Regional Administrator on October 9, 2024.

(c) *Letter from Governor.* Letter from Governor of West Virginia to Regional Administrator, EPA Region III, April 25, 2024.

(d) *West Virginia Memorandums of Agreement.*

(1) Memorandum of Agreement Between The West Virginia Department of Environmental Protection and The West Virginia Geological and Economic Survey, effective April 1, 2024.

(2) Memorandum of Agreement Between The West Virginia Department of Environmental Protection and The West Virginia Department of Health, signed April 26, 2024.

(e) *Statement of legal authority.* Attorney General’s Statement, “Attorney General’s Statement to Accompany West Virginia’s Underground Injection Program Class VI Primacy Application”, signed by the Attorney General of West Virginia on April 29, 2024.

(f) *Program Description.* The Program Description, “Program Description for the West Virginia Underground Injection Control Program”, and any other materials

This document is a prepublication version, signed by the EPA Administrator Michael S. Regan on November 20, 2024. The EPA is submitting it for publication in the Federal Register. We have taken steps to ensure the accuracy of this version, but it is not the official version.

submitted as part of the application or amendment thereto, and the Class VI Underground Injection Control Program Description, “WV Class 6 Program Description”, and any other materials submitted as part of the program revision application or as amendment thereto.