



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 26 2012

Dear Honorable Leader,

OFFICE OF WATER

The U.S. Environmental Protection Agency (EPA) is initiating consultation and coordination with federally-recognized Indian Tribes on the *Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels – Draft*. On May 4, 2012, EPA released draft guidance to provide greater regulatory clarity under the Safe Drinking Water Act for permitting the underground injection of diesel fuels associated with hydraulic fracturing. The draft guidance outlines regulatory requirements and provides technical recommendations for permitting oil and gas hydraulic fracturing wells using diesel fuels as a fracturing fluid or as a component of a fracturing fluid, applying Underground Injection Control (UIC) Class II permitting requirements to the unique characteristics of the hydraulic fracturing process. The goal of the recommendations in the guidance is to prevent migration of diesel fuels into underground sources of drinking water and to protect human health.

EPA consulted with tribes early using the previously established consultation process in the development of this draft guidance in June of 2011, and is now initiating consultation on the completed draft of the guidance because of tribal interests in hydraulic fracturing. Following consultation, EPA will work to finalize the guidance. As detailed in the enclosure on the Tribal Consultation and Coordination Process Timeline, a webinar on the draft guidance is planned for Thursday, August 9, from 1-3 p.m., Eastern Time.

The guidance may impact tribes in a number of ways. The draft guidance is intended for use by EPA permit writers under the UIC program. It is applicable in situations where EPA directly implements the UIC Class II program. EPA is the permitting authority for UIC Class II programs in 11 states, the District of Columbia, two territories, and almost all parts of Indian country. Currently, the Navajo Nation and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation have primacy for the UIC program for Class II wells. The guidance is not directed at states or tribes that have primacy, meaning the state or tribe has approval from EPA to implement its own UIC program. However, tribes with primacy programs for UIC Class II wells are encouraged to review and consider the information and recommendations in the guidance.

This consultation and coordination process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (www.epa.gov/tribal/consultation/consult-policy.htm). EPA invites you and your designated consultation representative(s) to participate in this process. EPA's anticipated timeline for the consultation and coordination period is expected to extend from the date of this letter to August 23, 2012.

Enclosed is a consultation and coordination plan for this action that includes a description of the action under consultation and the process EPA intends to follow, including a timeline for the consultation and coordination period and information on how you can provide input on this action, or tribes may request alternate arrangements. *This information is also available on EPA's Tribal Portal <http://www.epa.gov/tribal/consultation>.*

The official EPA contact person for this consultation and coordination process is Sherri Comerford, Environmental Protection Specialist. Please do not hesitate to contact Sherri Comerford at (202) 564-4639, Comerford.Sherri@epa.gov should you have any questions on this action.

Whether or not you participate in this consultation process, you still have the opportunity to provide input on this guidance during the public comment period, which is open to August 23, 2012. The draft guidance is published in the *Federal Register* and accessible at <http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/hydraulic-fracturing.cfm>.

I look forward to hearing from you on this important matter.

Sincerely,



Pamela S. Barr, Acting Director
Office of Ground Water and Drinking Water

cc:
Enclosures

Enclosure:

Consultation Plan

Background information on the draft guidance

The Permitting Guidance

for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels – Draft is for permitting the underground injection of fluids as part of oil-and gas-related hydraulic fracturing using diesel fuels under the Safe Drinking Water Act (SDWA) Underground Injection Control (UIC) Program where the U.S. Environmental Protection Agency (EPA) is the permitting authority. EPA’s goal is to explain existing requirements in order to provide regulatory certainty, improve compliance with the SDWA requirements and strengthen environmental protections consistent with existing law. Other environmental statutes and regulations may apply to certain aspects of the hydraulic fracturing process, such as surface handling of waste waters, chemicals, and air emissions, but are not addressed in this document. Additionally, permitting requirements not covered in this document may be applicable on federal lands.

Recommendations in this draft guidance may change based on the comments received on the draft publication and this will be reflected in the final guidance. EPA understands that a permit writer who receives a permit application in the interim period before this guidance is finalized will have to make decisions about how to permit hydraulic fracturing wells using diesel fuels. While this guidance undergoes public notice and comment, EPA expects that decisions about permitting hydraulic fracturing operations that use diesel fuels will be made on a case-by-case basis, considering the facts and circumstances of the specific injection activity and applicable statutes, regulations and case law, and will not cite to this draft guidance as a basis for decision.

Underground injection of fluids through wells is generally subject to the requirements of the SDWA. In the Energy Policy Act of 2005, Congress revised the SDWA definition of “underground injection” to specifically exclude from UIC regulation the “underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities” (SDWA Section 1421(d)(1)(B)). UIC regulations further provide that “[a]ny underground injection, except into a well authorized by rule or except as authorized by permit issued under the UIC program, is prohibited” (40 CFR 144.11). Thus, owners or operators who inject diesel fuels during hydraulic fracturing related to oil, gas, or geothermal operations must obtain a UIC permit before injection begins.

This draft guidance includes EPA’s interpretation that oil and gas hydraulic fracturing operations using diesel fuels as a fracturing fluid or as a component of a fracturing fluid are subject to UIC Class II requirements. The draft guidance recommends that UIC permit writers consider whether any portion of the injectate has one of six listed Chemical Abstract Service Registry Numbers, 68334-30-5, 68476-34-6, 68476-30-2, 68476-31-3, 8008-20-6, and 68410-00-4. Additionally, the guidance provides recommendations on how permit writers should implement UIC permitting requirements related to permit duration and well closure, permit application and review, area of review, and well construction, including mechanical integrity testing, financial responsibility, and public notification.

Potential impacts to tribes

The guidance is intended for use by EPA permit writers under the UIC program. EPA is the permitting authority for almost all parts of Indian country, except areas under the jurisdiction of the Navajo Nation and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, who have EPA-approved UIC programs for Class II wells (i.e., primacy). EPA is particularly interested in tribal input on the following aspects of the guidance: diesel fuels description; diesel fuels usage information; permit duration and well closure; area of review; information submitted with the permitting application; and monitoring. The agency welcomes information on how these or any other aspects of the guidance would potentially impact tribes.

Opportunities for tribes to participate

The tribal consultation process table below lays out the process and timeline for government-to-government consultation and coordination throughout the consultation process from the date of this letter to the close of consultation on August 23, 2012. Tribes may also participate in the public review and comment process by providing written comment on the guidance. Instructions for commenting are on the Agency website at

<http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/hydraulic-fracturing.cfm>.

The combined goal for all these efforts is to ensure there is sufficient information for tribal officials to make an informed decision about the desire to participate in consultation and to understand how to provide informed input.

Tribal Consultation and Coordination Process and Timeline

Date	Event	For More Information
July 26, 2012	Initiation of tribal consultation via mail and electronic announcement.	Contact Sherri Comerford, (202) 564-4630, Comerford.Sherri@epa.gov
August 9, 2012, 1-3 p.m. Eastern Time	Draft Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels Tribal Coordination and Consultation Webinar	Use the following link to register: http://hfwebinar2.eventbrite.com After registering, you will be sent the webinar link and a call-in number.
<u>Previous Events:</u> June 2, 2011	EPA's Approach to Developing Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels: EPA Discussion with Tribal Representatives	Presentations and Meeting Summaries for both events are available online: http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/wells_hydroout.cfm
June 25, 2012	Draft Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels Tribal Consultation Webinar	

* The webinar will include two segments. The first segment will be used to coordinate and share information, and provide an opportunity for input and clarifying questions on the action. The second segment will provide an opportunity for consultation comments from tribal leaders or their authorized representatives.