To: Rao, Kate[Rao.kate@epa.gov]
Cc: Robin, George[Robin.George@epa.gov]
From: Robin, George
Sent: Wed 7/30/2014 7:32:55 PM
Subject: RE: The Morning Headlines from InsideEPA.com -- July 29, 2014 (EPA Rejects GAO Call For SDWA Rule To Boost Drilling Well Enforcement 0

thanks Kate, let me know if you want that GAO Report

George

From: Rao, Kate
Sent: Tuesday, July 29, 2014 9:26 AM
To: Albright, David; Coffman, Joel; Dermer, Michele; Robin, George; Rumrill, Nancy
Subject: FW: The Morning Headlines from InsideEPA.com -- July 29, 2014 (EPA Rejects GAO Call For SDWA Rule To Boost Drilling Well Enforcement 0

Deep Well Team:

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Daily News

EPA Rejects GAO Call For SDWA Rule To Boost Drilling Well Enforcement

Posted: July 28, 2014

EPA is rejecting the Government Accountability Office's (GAO) call to craft a broad rule codifying requirements for state-issued Safe Drinking Water Act (SDWA) permits for oil and gas wells, rejecting GAO's suggestion that the lack of a uniform rulemaking adopting state permitting revisions is hampering EPA's ability to enforce SDWA at the wells.

Although the agency disagrees with the need for a new rulemaking, it does concur with other conclusions in a GAO report released July 28 that the agency has not been adequately undertaking annual on-site SDWA compliance evaluations of state programs for "Class II" well permits that cover oil and gas activities. EPA commits to working to identify and address emerging issues within the Class II program to address some of the concerns.

Under the Class II rules of the federal underground injection control program (UIC), EPA and states with delegated

authority establish monitoring, mechanical integrity and other requirements for permitting of underground injection activities for oil and gas disposal wells, enhanced oil recovery wells and other operations related to oil and gas.

EPA also issued guidance in February that includes recommendations for how permit writers should establish conditions that protect against contamination of underground sources of drinking water from hydraulic fracturing operations that use diesel fuels -- the only type of fracking injection EPA may directly regulate under SDWA.

The Class II program has been under especially close scrutiny in recent years, as it is the only place under the drinking water law where the agency has some authority to oversee oil and gas development, though a 2005 energy law largely constrained that authority to regulating underground disposal of fracking wastewater, barring direct regulation of fracking unless diesel fuels are used.

The natural gas boom of the past decade has focused more attention on whether the Class II program is adequate to address risks to water supplies, given that a number of states, including Ohio, Arkansas and Texas, have experienced earthquakes linked to "overpressurization" caused by high volumes of wastewater disposal.

And environmentalists want oil and gas wastewater regulated as hazardous waste under the Class I UIC rules, which would require more rigorous siting and monitoring for earthquake risks, among other stricter measures.

The agency in its June 16 response to the GAO report outlines several steps it is taking to address emerging issues related to Class II activities, including a UIC workgroup's draft report, currently undergoing peer review, on seismicity risks associated with injection of oil and gas wastewater, EPA's final SDWA guidance for permitting fracking wells that use diesel fuels and a congressioanlly directed study of whether fracking impacts drinking water supply.

EPA is also planning to launch discussions this summer with state and federal regulators over the effectiveness of its oversight, potential for remote evaluations to substitute for on-site reviews and whether it must update its 1983 guidance on oversight approaches, eying July 2015 as a target for announcing further action.

Permitting 'Backlog'

But EPA is pushing back on the recommendation that a national rulemaking is needed to remedy what the office says is a "backlog" of Class II requirements that have been adopted by individual states with delegated Class II authority, but not adopted by EPA, limiting the agency's enforcement authority.

"Until it conducts a rulemaking to incorporate the backlog of state program requirements and changes to state program requirements that have been approved, EPA will not be able to enforce some state program requirements, hindering the agency's enforcement of the program nationally," GAO says in the report.

GAO says EPA faced a similar backlog in the early 1990's and in response crafted one large rule to incorporate all changes it identified in 37 state programs into the federal UIC requirements, a three-year undertaking, but has made no such updates since 1991.

In 2010, EPA attempted to review discrepancies between state and federal requirements, but could not verify that any state programs were up-to-date in federal requirements, estimating it would require two to three years, $150,000 in external contractual support and additional staff to identify and incorporate all of the changes to state requirements since 1991.

"Because EPA has not been incorporating changes to state program requirements into federal regulations, the agency has a backlog of state program requirements that it cannot enforce if necessary," GAO says.

The report highlights one example, in Illinois, where EPA struggled to pursue an enforcement action against a well operator for violating the state's Class II requirements for conducting and reporting mechanical integrity tests, after the state's enforcement efforts had failed. But after the state challenged EPA's enforcement order in court, the agency discovered Illinois' most recent mechanical integrity requirements had not yet been adopted in the federal rules, leaving the agency to settle the case for $20,000, as opposed to the fines of $105,000 it sought earlier.

"EPA officials said that they do not often have to step in to enforce a state class II program regulation, but as the oil

and gas industry continues to develop its resources and use innovative technologies, state programs may change their regulations, and EPA may have increasing numbers of state program changes to review, approve, incorporate into federal regulations, and enforce," GAO says.

Broad Rulemaking

But EPA says that conducting a broad rulemaking to codify all state program revisions would be inappropriate because it would first have to verify that each change meets the requirements of SDWA -- that it be at least as stringent as federal measures.

"EPA stated that given that the process would take many years to complete, this approach would still not ensure that all program changes are up to date in federal regulations, as other states could make changes to their programs during this time," the report says.

Instead, EPA is conducting an "ongoing process of individual rulemakings to approve and codify state UIC program revisions in a collaborative manner with states," EPA says in its response to the report, which was requested by members of Congress.

But GAO says that a targeted, state-by-state approach will be far more time-consuming and face greater challenges of keeping pace with state revisions during the review process, leaving EPA without the ability to enforce the program. "EPA provided no evidence in its comment letter that the effort it is now contemplating would be any less costly or any more efficient than the approach it assessed in 2010," GAO says.

"For this reason, we believe that our recommendation is still necessary for EPA to carry out its responsibilities for the Class II program," the report says. -- *Bridget DiCosmo* (bdicosmo@iwpnews.com This e-mail address is being protected from spambots. You need JavaScript enabled to view it)

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Kate Rao
Ground Water Office (WTR-9)
USEPA Region 9
75 Hawthorne St., San Francisco, CA 94105
tel: (415) 972-3533 / fax: (415) 947-3549

From: InsideEPA.com [mailto:epa-alerts@iwpnews.com]
Sent: Tuesday, July 29, 2014 3:37 AM
To: Rao, Kate
Subject: The Morning Headlines from InsideEPA.com -- July 29, 2014

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July 29, 2014

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EPA Scraps GHG-Only Permit Mandate But Leaves Option Open To States

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A federal district court judge has ruled in favor of environmentalists' claim that EPA must take public notice and comment on its determination that it has satisfied a Clean Air Act mandate to regulate 90 percent of certain air toxics, though the judge declined to address the merits of whether the agency's determination is legally sound.

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Energy industry groups are warning that EPA suggestions that it is considering crafting a federal implementation plan (FIP) for curbing emissions from existing minor sources at oil and gas sites on tribal lands -- largely in Western shale plays -- would be unlawful and EPA must instead address those sources on a case-by-case basis.

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