

commenters provide any information they have on the costs of this option.

2. The proposed rule solicited comment on a second option, Option 2, that would allow facilities operating wells that have caused or may cause fluid movement to conduct hydrogeologic demonstrations to show that injection will not cause fluids that exceed any national primary drinking water regulations in 40 CFR part 141 and other health-based standards to enter any USDW. Option 2 would also require well owners and/or operators that cannot make this demonstration to provide additional treatment as needed to address contaminants of concern. Further, Option 2 requires advanced wastewater treatment and high-level disinfection to be in place by 2015. The Agency requests comment on whether the findings from the relative risk assessment, specifically those regarding deep well injection, suggest anything regarding the practicability and feasibility of this approach. Should facilities be granted the opportunity to conduct hydrogeologic demonstrations (and expend the resources and funds necessary) despite the inherent difficulties and uncertainties regarding the extent, location, and connectivity of possible natural conduits for flow identified in the relative risk assessment? If facilities should be granted this opportunity, how should the UIC director in his/her review of a demonstration, address the technical difficulties in determining the extent of the contamination, and the location of conduits for flow into USDWs, so that the demonstration may be deemed adequate? Given the uncertainty that accompanies the effort to analytically or numerically simulate the fate and transport of fluid and stressors in South Florida's deep underground environment, EPA solicits comment on ways that a satisfactory hydrogeological demonstration can be conducted. Finally, the proposed rule included a "sunset provision" (requiring advanced wastewater treatment and high-level disinfection by 2015) as part of this option even if protection of USDWs is being demonstrated. EPA requests comment on an alternative that would allow the State Director to authorize updated hydrogeologic assessments and defer treatment requirements beyond 2015 if the assessments continued to demonstrate adequate protection of the USDW.

3. One option to address the fluid movement that has occurred, while also preventing the endangerment of USDWs, might be to promulgate new Class V requirements specific to deep municipal wells in South Florida. In a

1999 stakeholders meeting, the Agency discussed two options for reclassifying these wells as Class V. One of these options would reclassify the wells based on a determination that the wells no longer meet the regulatory definition of a Class I well. Another option would involve converting the wells to Class V by physically altering the wells so that they inject directly into or above formations containing the lowermost USDW. Two other options discussed at the stakeholders meeting were (1) to make no regulatory change (and enforce the existing requirements) and (2) to amend the Class I regulations to address the fluid movement issues. EPA ultimately proposed this last option and published proposed revisions to the Class I requirements. EPA stated in the preamble to the July 7, 2000, proposal (65 FR 42237): "The Agency is not planning to allow reclassification unless the well was misclassified in the first instance. Misclassification might have occurred if the well did not originally meet the definition of a Class I well. The facility could demonstrate this if new information has become available that proves that the well originally was injecting into a USDW and therefore would meet the definition of a Class V well."

EPA is now reconsidering the reclassification option. Reclassification could be accomplished without any regulatory changes to the Class I definitions or the Class I "no fluid movement" requirements. Following publication of this NODA and receipt of comments on this option, EPA, if it chose the reclassification option, would publish final revisions to the Class V regulations that include the same operating conditions that EPA would have promulgated as revisions to the Class I regulations. This option is contrasted with the approach discussed more fully in the July 7, 2000, proposal to keep the wells as Class I and add the necessary operating conditions to the Class I regulations. Either approach could be used to place the same operating conditions on continued injection activities and provide identical protection to USDWs.

In addition, EPA is considering whether there might be a need to promulgate the operating conditions under consideration as final regulations under both the Class I and Class V regulatory frameworks. This might be necessary in order to ensure that the new requirements apply to all municipal waste disposal wells in South Florida that cause or may cause fluid movement into a USDW, regardless of whether it is determined that a particular well may be reclassified as

Class V or must remain in Class I. EPA invites comment on the need for incorporating the proposed operating conditions into either, or both, the Class I and Class V regulations. EPA notes that the costs of installing a specified level of treatment would be the same, regardless of whether a particular well is classified as Class I or Class V.

One potential advantage of the reclassification option is that it could correct any previous misclassification of wells in South Florida.

A potential disadvantage of the reclassification option is that it could lead to reclassification requests associated with other wells in other parts of the country and could limit the flexibility of local permit writers to make classification determinations.

In summary, with regard to reclassification of Class I wells, the Agency requests comment on whether the findings from the relative risk assessment, specifically those regarding deep well injection, suggest that some South Florida wells may have been misclassified as Class I wells? Do the findings suggest that some wells in South Florida may, in fact, discharge directly to (and not below) formations containing a USDW? Do the findings suggest that this misclassification should be accepted for the entire group of South Florida municipal wells, or only a subset? Should the regulatory requirements under consideration be promulgated under provisions for Class I or Class V? If reclassification is only appropriate for some of the covered South Florida wells, should the regulatory requirements under consideration be promulgated under provisions for both Class I and Class V.

Dated: April 17, 2003.

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[FR Doc. 03-10268 Filed 5-2-03; 8:45 am]

BILLING CODE 6560-50-P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 146

[FRL-7488-8]

#### Underground Injection Control Program—Relative Risk Assessment of Management Options for Treated Wastewater in South Florida; Notice of Availability

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability.

**SUMMARY:** On July 7, 2000, the Environmental Protection Agency (EPA)