

**Notice of Intent to Deny**  
**Deer Creek SWD #1 UIC Class I Permit Application**  
**EPA UIC Permit CO12264-09864**

**PROPOSED ACTION**

The United States Environmental Protection Agency is proposing to deny the application from TC Operating, LLC, for an Underground Injection Control Program Class I injection well permit for commercial injection of industrial waste at the Deer Creek SWD #1 injection well. The proposed well is sited at an existing treatment and disposal facility consisting of two evaporation ponds totaling over eight (8) surface acres for water disposal and a produced water treatment facility to remove hydrocarbons and entrained solids. Fluids proposed to be injected would come from the waste treatment facility and consist of waste produced water from various area oil and gas wells, flow back water and other industrial sources of non-hazardous waste that are allowed under the waste treatment facility's State of Colorado permit and approved operating plan.

The EPA is proposing to deny the TC permit application because it determined that the proposed injection waste disposal activity presents a significant probability of causing endangerment to Underground Sources of Drinking Water (USDWs) in the vicinity of the Deer Creek SWD #1 well. Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.<sup>1</sup>

The EPA has reviewed TC's permit application, and this Notice of Intent to Deny and the accompanying Statement of Basis document the EPA's proposed decision on this UIC permit application. Prior to making a final decision, the EPA is providing for a 30-day public comment period. After close of the comment period, the EPA will make a final determination whether or not to proceed with denial of this permit application. Persons wishing to comment upon any aspect of this proposed decision are invited to submit their comments, IN WRITING, within 30 days of the Date of Publication, to:

Dan Jackson  
U. S. Environmental Protection Agency  
UIC Unit, 8P-W-UIC  
1595 Wynkoop Street  
Denver, Colorado 80202-1129  
Telephone: 1-800-227-8917 ext. 312-6155, Email: Jackson.dan@epa.gov

The Administrative Record, including the application and all data submitted by the applicant, the draft decision and Statement of Basis prepared by the EPA, is available for public inspection at the above location(s) weekdays from 8:00 a.m. to 4:00 p.m. This information also is available on the EPA Region 8 UIC webpage: <http://www2.epa.gov/region8/underground-injection-control>.

**BACKGROUND**

In January 2013, the EPA received a UIC Class I Permit application from TC to operate a commercial waste disposal well at the Deer Creek Disposal Facility. The proposed Class I disposal well, the Deer Creek SWD #1, API # 05-077-10096, is located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 2, Township 14 South, Range 98 West, 6th P.M., Mesa County, Colorado (Latitude 38.86956, Longitude -108.30571). The well was drilled in March, 2011,

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<sup>1</sup> Safe Drinking Water Act, Title 42 Chapter 6A Subchapter XII Part C § 300h(d)(2)

under the authority of the Colorado Oil and Gas Conservation Commission (COGCC) Application for Permit to Drill approval, [COGCC Document # 400058854](#).

This application for a commercial UIC Class I non-hazardous waste injection well permit has further significance because it comes to the EPA after TC's original UIC Class II disposal injection well permit application was denied by the Colorado Oil and Gas Conservation Commission. Chief among the COGCC's concerns was the determination by COGCC that this well used as a commercial oil and gas waste disposal well could result in significant adverse impacts to the environment or public health, safety and welfare. The EPA similarly has concluded that the geologic, hydrologic and cultural setting is not suitable for operation of this commercial Class I waste disposal injection well due to the significant likelihood for the proposed injection operation to result in movement of fluid into overlying aquifers and USDWs. In its conclusion, the EPA considered the potential for endangerment of USDWs, taking into account the anticipated volumes and types of waste fluid that would be injected and the expected long term operation of the well. There is significant uncertainty regarding the ability of the geologic strata to confine injected fluids to the injection zone due to hydrologic properties of the rock strata, and concerns for potential unrecognized local faults and fractures acting as conduits for undetected fluid migration into groundwater and overlying USDWs. The Agency is concerned that contamination of ground water and surface water due to the injection ultimately may occur and the contamination would not be apparent until it has become widespread and irreversible.

### **AUTHORITY TO DENY PERMIT**

UIC regulations require that no injection shall be authorized by permit or rule if it results in the movement of fluid containing any contaminant into Underground Sources of Drinking Water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 141 or may adversely affect the health of persons (§144.12). The applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

If the Director tentatively decides to deny the permit application, he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. The EPA shall prepare a statement of basis for every draft permit for which a fact sheet under §124.8 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

The Director shall give public notice that a permit application has been tentatively denied and shall allow at least 30 days for public comment. All persons, including applicants, who believe that the Director's tentative decision to deny an application must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period, including any public hearing.

### **APPEAL PROCEDURES**

Within 30 days after a final permit decision, a party may appeal may petition the [Environmental Appeals Board](#) to review any condition of an EPA final permit decision. The 30-day period within which a person may request review under this section begins with the service of notice of the Regional Administrator's action unless a later date is specified in that notice. Only parties who file comments on the proposed permit denial during the public comment period or during the public hearing may file an appeal. The petition shall include a statement of the reasons supporting that review. (See 40 C.F.R. § 124.19). A petition is filed when it is received by the Clerk of the Environmental Appeals Board at the address specified for the appropriate method of delivery.

Documents that are sent by U.S. Postal Service (except by U.S. Express Mail) must be sent to the official mailing address of the Clerk of the Environmental Appeals Board at: U.S. Environmental Protection Agency, Environmental Appeals Board, 1200 Pennsylvania Avenue NW., Mail Code 1103M, Washington, DC 20460-0001. Documents delivered by hand or courier (including deliveries by U.S. Express Mail) must be delivered to the Clerk of the Environmental Appeals Board at: U.S. Environmental Protection Agency, Environmental Appeals Board, EPA East Building, 1201 Constitution Avenue NW, Room 3334, Washington, DC 20004. Documents that are hand-carried may be delivered to the Clerk of the Board between 8:30 a.m. and 4:30 p.m., Monday through Friday (excluding federal holidays).