

**UIC – 1**

**MEMORANDUM  
OF  
AGREEMENT**

**Dated April 6, 2004**



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

APR 13 2004

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

April 6, 2004

Ms. Karen Menetrey  
Project Coordinator  
Ground Water Pollution Prevention Section  
New Mexico Environment Department  
1190 South St. Francis Drive  
Santa Fe, New Mexico 87505

RE: Revised Memorandum of Agreement

Dear Ms. Menetrey:

Enclosed are four copies of the revised Memorandum of Agreement (MOA) between U.S. EPA Region 6, the New Mexico Energy, Minerals and Natural Resources Department, and the New Mexico Environment Department. As shown, the MOA which is one component of the program revision package that is being processed separately has been approved and signed by the Regional Administrator of the U.S. EPA Region 6.

If you have any question regarding this MOA, please contact me at (214) 665-8326, or Philip Dellinger, Chief, Underground Injection Control Section, at (214) 665-7165.

Sincerely yours,

A handwritten signature in cursive script that reads "Lisa Pham".

Lisa Pham  
EPA New Mexico UIC Project Officer

Enclosures

**UNDERGROUND INJECTION CONTROL PROGRAM  
SUBSTITUTE MEMORANDUM OF AGREEMENT BETWEEN   APR 13 2004  
THE STATE OF NEW MEXICO  
AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VI**

**I. General**

This Substitute Memorandum of Agreement (Substitute Agreement) establishes responsibilities and procedures pursuant to 40 C.F.R. Parts 122, 144 and 145 and 146 for the State of New Mexico Underground Injection Control (UIC) Program for Class I, III, IV and V wells (State Program), as authorized by Part C of the Safe Drinking Water Act (P.L. 93-523, as amended).<sup>1</sup>

**II. Parties**

This Substitute Agreement is entered into by the New Mexico Water Quality Control Commission (Commission), the Secretary of the New Mexico Environment Department (NMED), and the New Mexico Energy, Minerals, and Natural Resources Department (EMNRD), on behalf of the State of New Mexico (State), and the Regional Administrator, United States Environmental Protection Agency (EPA), Region VI (Regional Administrator). This Substitute Agreement is a modification to the original Agreement dated April 13, 1983, approved when the State established UIC primacy.

**III. Modification of Agreement**

This Agreement may be modified to ensure consistency with State Program modifications or for any other purpose mutually agreed upon (40 C.F.R. Part 145.25). Modifications must be in writing and must be signed by the Commission, NMED, EMNRD and the Regional Administrator. Modifications may be made after the effective date of this Agreement by consecutively numbered and dated addenda attached to this Agreement. Modifications become effective when signed by the Commission, NMED, EMNRD and the Regional Administrator.

**IV. Renegotiation of Agreement**

The State may immediately open renegotiation of this Agreement upon learning that the State will become ineligible for Federal grant funding or that level of Federal grant funding to the State will become insufficient to carry out this Agreement. Beginning on the date that Federal grant funding to the State is cut-off or that Federal grant funds to the State are no longer sufficient for full program operations, the State shall not be held responsible for those affected portions of this Agreement being renegotiated.

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<sup>1</sup> All references to federal and state statutes and regulations are to statutes and regulations as in effect at the time this Agreement is signed.

This Agreement's terms are also contingent upon the New Mexico State Legislature granting sufficient appropriation and authorization for the State Program. If sufficient appropriation or authorization is not granted, the State may renegotiate this Agreement upon written notice from the State to EPA. The State's decision to renegotiate shall be accepted by EPA.

**V. Relaying Information Concerning Developments Which Might Affect the State's Ability to Administer the UIC Program**

The State shall inform EPA of any proposed modification to laws, regulations, rules and guidelines, and of any judicial decisions or administrative actions which affect the State's authority to administer the program. The information shall be given to EPA within 30 days after the proposal, decision, or action is made or taken. The State shall inform EPA of any resource allocation and staffing changes, which might impair the State's ability to administer the program within 30 days after the change.

EPA shall inform the State of any proposed modification to Federal statutes, regulations, guidelines and standards, and of any judicial decisions, policy decisions, directives, and resource allocations which affect the State Program or the State's ability to administer the program. The information shall be given to the State within 30 days after the proposal, decisions, directive, or allocation is made. EPA shall inform the State of the issuance, content, and meaning of Federal statutes, regulations, guidelines, and standards which might affect the State Program within 30 days after their enactment or adoption, and of any other factors which affect the State Program or the State's ability to administer the program, within 30 days after EPA learns of this factor.

**VI. Showing by State That it Meets Revised Federal Requirements**

Within 270 days of the effective date of any revisions or additions to any regulations issued under Section 1421 of the Safe Drinking Water Act (SDWA), the State shall submit notice to EPA containing a showing that the State Program meets the revised or added requirement (SDWA 1422(b)(1)(B)). Nothing in this section shall affect the State's right to challenge a regulation pursuant to Section 1448(a) of the Safe Drinking Water Act or any other applicable laws or regulations.

**VII. Administration of the Program**

The State shall administer the State Program in accordance with the program submission.<sup>2</sup> After six (6) months following approval of the State UIC program, the State shall not authorize the construction or operation of any Class IV disposal well injecting hazardous waste directly into the ground water which has an existing concentration of 10,000 mg/l or less of total dissolved solids (TDS), and which has not been "designated" pursuant to Section 20.6.2.5103 NMAC (40 C.F.R. Part 144.13).

<sup>2</sup> 40 C.F.R. 145.22. The State Program submission for primary enforcement responsibility shall include: (1) a letter from the Governor requesting program approval, (2) a complete program description, (3) an Attorney General's statement, (4) this Agreement, (5) copies of all applicable State statutes and regulations, and (6) a showing of compliance with public participation requirements. The showing required in (6), above, has not been submitted separately, but is included in the program description.

**Permanent Aquifer Designations**

The State Program shall protect all ground water of the State which has an existing concentration of 10,000 mg/l or less total dissolved solids (TDS), and which has not been "designated" by the Commission to allow injection pursuant to Section 20.6.2.5103 NMAC. All permanent aquifer designations subsequent to the granting of primary enforcement responsibility shall be submitted in writing to EPA for review at least 45 days prior to the effective date of the designation. If EPA is opposed to the designation, then EPA shall respond in writing to the State within 45 days of receipt of the proposed designation stating the reasons for disapproval (40 C.F.R. Part 144.7).

**Temporary Aquifer Designations**

All proposed temporary aquifer designations (pursuant to Section 20.6.2.5101.C.2 NMAC) shall be submitted in writing to EPA on the date public notice is issued. The EPA Regional Administrator shall review the information submitted for sufficiency in demonstrating that the aquifer within the area proposed for temporary aquifer designation does not contain a water supply well currently serving as a source of drinking water, and that the aquifer within the proposed area is mineral or hydrocarbon producing or expected to be commercially producible for mineral or hydrocarbon extraction. The EPA Regional Administrator shall respond in writing to the State either approving or disapproving the designation within 30 days of receipt of the proposed designation. If disapproved, the reasons for disapproval shall be stated in writing.

**VIII. Sharing of Records and Files: Confidential Information**

All information used in the administration of the State Program including copies of all UIC permit files shall be available for EPA review upon request (40 C.F.R. Part 145.14). Any information in State files reviewed by EPA which is subject to a claim of confidentiality shall be treated by EPA in accordance with EPA regulations governing confidentiality (40 C.F.R. Part 2), and in accordance with Section 74-6-12.B. NMSA 1978.

All information used by EPA in fulfilling and maintaining its oversight and technical assistance roles and other responsibilities for the State Program under the SDWA shall be available for State review upon request without restriction. Any information in EPA files reviewed by the State shall be subject, as appropriate, to EPA regulations governing confidentiality.

**IX. State Retention of Administrative Records**

The State shall retain records used in the administration of the program for at least 3 years (40 C.F.R. Parts 30 and 35) unless an enforcement action is pending. In that event, all records pertaining to such action shall be retained at least until 3 years after such action is resolved.

**X. Major Facilities**

Every Class I and Class III well shall be considered a major facility for purposes of the State Program under this Agreement.

**XI. Reports Submitted by the State to EPA**

- A. The State shall submit an annual narrative progress report to EPA as specified in 40 C.F.R. Part 144.8(b)(2). The reporting period for the annual report shall be from July 1 to June 30 with the report due to EPA by July 31. The annual progress report shall include a detailed description of the State's implementation of the State Program, suggested program changes if needed, and an updated inventory of underground injection operations in machine-readable form.
- B. The State shall submit quarterly noncompliance reports (as specified in 40 C.F.R. Part 144.8) on major facility permittees in accordance with the following schedule:

|                             |                |
|-----------------------------|----------------|
| January, February, March    | Due April 30   |
| April, May, June            | Due July 31    |
| July, August, September     | Due October 31 |
| October, November, December | Due January 31 |

The State shall submit annual noncompliance reports (as specified in 40 C.F.R. Part 144.8(b)) on non-major facility permittees by January 31 of each year. The reporting period shall be the calendar year ending December 31.

The State shall submit the noncompliance reports according to the format specified in 40 C.F.R. 144.8 including the current status and/or outcome of any actions taken by the Secretary against those permittees who are not in compliance.

- C. In addition to progress and noncompliance reports, the State shall submit a semi-annual narrative report to EPA by January 31 of each year which includes the information listed in A above for the reporting period from July 1 through December 31.

The State shall normally submit all reports in the format requested by EPA. Report formats shall normally be furnished to the State prior to the award of grant funds and there shall be no substantive changes without the concurrence of the State.

**XII. Alternative Test for Mechanical Integrity**

Prior to the use of an alternative test (a test not listed in Section 20.6.2.5204.B(a) NMAC) for mechanical integrity, the State shall submit a written request to EPA and shall obtain written approval (40 C.F.R. 146.8(d)). No approval shall be required for the State to conduct experimental test programs.



### **XIII. Termination of Permit or Approved Discharge Plan**

After the State has determined that an underground injection permit or approved discharge plan must be terminated but prior to the actual date of termination, the State shall issue a public notice stating that the permit or plan will be terminated and giving the date of termination (40 C.F.R. Part 124.5(d)).

### **XIV. Program Evaluation**

EPA shall conduct an annual evaluation of the State Program as required by 40 C.F.R. Part 35.680 using the State reports and requested information to determine State Program consistency with the program submission, the SDWA, the applicable regulations, and applicable guidance and policies. The evaluation will include a review of financial expenditures from the EPA grant to the State (40 C.F.R. 35.415).

EPA shall submit a draft of the program evaluation to the State for its review and comment. The State shall have 15 working days to submit comments on the draft evaluation to EPA, and EPA shall consider the State's comments in preparing the final program evaluations. EPA shall make recommendations to the State based on the program evaluation.

### **XV. Agreement Review**

This Agreement shall be reviewed at least once annually as part of the annual program grant and State/EPA Agreement process. Neither the annual program grant nor any other administrative document may override this Agreement (40 C.F.R. Part 145.25).

### **XVI. Compliance Monitoring and Enforcement**

The State shall enforce the State Program in accordance with the enforcement procedures outlined in the program submission. The State shall take timely and appropriate enforcement actions against any person in violation of any State Program requirement. Situations endangering human health will receive immediate and paramount attention. In such situations, the State shall notify EPA.

The State shall adhere to the compliance monitoring, tracking and evaluation program procedures outlined in the program description. The State shall maintain a timely and effective compliance monitoring system including timely and appropriate actions on noncompliance (40 C.F.R. Part 145.12).

The State shall have primary enforcement responsibility and shall take the lead on compliance, enforcement and emergency response. While the State retains primary enforcement responsibility for the State Program, EPA will not take enforcement actions under Section 1423 (Failure of State to Assure Enforcement of Program) without providing prior notice to the State and otherwise complying with Section 1423 of the SDWA. However, nothing in this Agreement is intended to affect EPA's enforcement responsibility under Section 1431 (Emergency Powers) of the SDWA.

The State shall establish a priority system and schedule for injection well inspections. The inspection schedule shall, at a minimum, include the inspection of all major facilities annually and non-major facilities on a regular basis (40 C.F.R. Part 145.12).

EPA may conduct periodic site and activity inspections on Class I, III, IV and V injection operations. The Regional Administrator will notify the Secretary at least 7 days before any such inspection, except for emergency situations when such lengthy advanced notice is impracticable (40 C.F.R. Part 145.25). The State shall be allowed the opportunity to accompany EPA on any inspection.

#### **XVII. Permit Transfer and Processing**

EPA will promptly transfer to the State all pending UIC permits, permit applications, relevant RCRA files, supporting files, and other relevant information pertaining to the UIC program (40 C.F.R. Part 145.25).

EPA and the State will coordinate the processing of permits for UIC facilities or activities that require permits from both EPA and the State under different programs. The Ground Water Quality Bureau of NMED and the RCRA permit issuing authority will coordinate so that the requirements of 40 C.F.R. 144.14 are applied to hazardous waste injection wells in New Mexico that receive manifested waste.

The State will send EPA copies of the public notice required by Section 20.6.2.3108 NMAC for discharge plan applications and hearings related to any UIC operation regulated under Sections 20.6.2.1-5999 NMAC.

#### **XVIII. Permit Review**

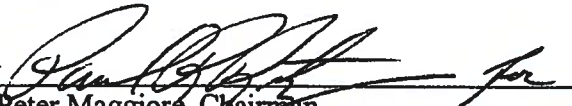
Under the UIC program, EPA has neither a statutory right of review nor the ability to veto a State UIC permit. Review of, and comment on, State permits by EPA is limited to the procedures agreed to below and in Section 1423 (Failure of State to Assure Enforcement of Program) of the SDWA (Preamble discussion to 40 C.F.R. Part 145.24 "Memorandum of Agreement" in Federal Register/Vol. 45, No. 98/Monday, May 19, 1980, p. 33380).

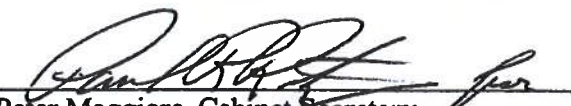
As an attachment to the annual progress report and in addition to the annual inventory update, the State shall submit to EPA a list of all injection well discharge plans issued during the reporting period (40 C.F.R. Part 145.25). The list shall include: discharge plan number; owner/operator name and address; well class designation; well project area, or operational area locations as appropriate; the receiving formation; and discharge plan type (area or single well discharge plan; exceptions or special conditions, etc.). EPA will use the list as one basis for selecting permit files to review and sites to visit. However, any time after the State has been granted primary enforcement responsibility, the State shall submit to EPA upon request any relevant injection well discharge plan information.

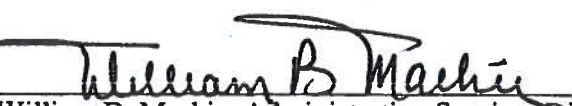



**XIX. Reliance on Federal Regulations**

To the extent that any Federal Regulation is the basis of any requirement in this Agreement, such requirement shall be null and void when such regulation is repealed or stricken.

Date 7/03/02 by  for  
Peter Maggioro, Chairman  
Water Quality Control Commission

Date 7/03/02 by  for  
Peter Maggioro, Cabinet Secretary  
New Mexico Environment Department

Date 6-12-02 by   
William B. Mackie, Administrative Services Division Director  
New Mexico Energy, Minerals & Natural Resources Department

Date 3-17-04 by   
~~Gregg A. Cooke~~ Richard E. Greene  
Regional Administrator, Region VI  
United States Environmental Protection Agency

**UNDERGROUND INJECTION CONTROL PROGRAM  
SUBSTITUTE MEMORANDUM OF AGREEMENT BETWEEN  
THE STATE OF NEW MEXICO  
AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION VI  
  
AMENDMENT NO. 1**

**I. Substitute Agreement**

The New Mexico Water Quality Control Commission (Commission), the New Mexico Environment Department (NMED), and the New Mexico Energy, Minerals, and Natural Resources Department (EMNRD), on behalf of the State of New Mexico (State), and the Regional Administrator, United States Environmental Protection Agency (EPA), Region VI (Regional Administrator) entered into a Substitute Memorandum of Agreement dated March 17, 2004 (Substitute Agreement) to establish responsibilities and procedures pursuant to 40 C.F.R. Parts 122, 144 and 145 and 146 for the State of New Mexico Underground Injection Control (UIC) Program for Class I, III, IV and V wells (State Program), as authorized by Part C of the Safe Drinking Water Act (P.L. 93-523, as amended). The State and EPA, pursuant to the authority in Section III ("Modification of Agreement") of the Substitute Agreement, wish to modify the Substitute Agreement as follows.

**II. Amendment**

Section XVIII ("Permit Review") of the Substitute Agreement is modified to add the following paragraph:

Should a variance petition be filed with the Commission pursuant to 20.6.2.1210 NMAC that pertains to any UIC well, NMED or EMNRD shall oppose any such petition. New Mexico and EPA acknowledge that any variance petition granted by New Mexico pursuant to 20.6.2.1210 NMAC shall not be used for the injection of any waste restricted from disposal into UIC Class I wells by 40 C.F.R. 148 of the land disposal restrictions of the Hazardous and Solid Waste amendments of 1984 to the Resource Conservation and Recovery Act, unless an exemption from such restrictions has been granted by EPA in accordance with 40 C.F.R. 148.20. NMED and EMNRD agree to pursue an amendment to 20.6.2.1210 NMAC at the next available opportunity to remove the applicability of these variances to UIC wells. If any such petition is requested, NMED or EMNRD will provide a copy of the petition to EPA Region 6. Failure to respond by EPA to any such petition sent to EPA shall not be considered as evidence of EPA approval of such petition.

**III. No Other Changes.**

All other provisions in the Substitute Agreement remain in full force and effect.

Date: \_\_\_\_\_

\_\_\_\_\_  
Chair  
Water Quality Control Commission

Date: \_\_\_\_\_

\_\_\_\_\_  
Secretary  
New Mexico Environment Department

Date: \_\_\_\_\_

\_\_\_\_\_  
Secretary  
Energy, Minerals and Natural Resources Department

Date: \_\_\_\_\_

\_\_\_\_\_  
Regional Administrator  
U.S. Environmental Protection Agency, Region VI

**District I**  
1625 N. French Dr., Hobbs, NM 88240  
Phone:(575) 393-6161 Fax:(575) 393-0720

**District II**  
811 S. First St., Artesia, NM 88210  
Phone:(575) 748-1283 Fax:(575) 748-9720

**District III**  
1000 Rio Brazos Rd., Aztec, NM 87410  
Phone:(505) 334-6178 Fax:(505) 334-6170

**District IV**  
1220 S. St Francis Dr., Santa Fe, NM 87505  
Phone:(505) 476-3470 Fax:(505) 476-3462

**State of New Mexico**  
**Energy, Minerals and Natural Resources**  
**Oil Conservation Division**  
**1220 S. St Francis Dr.**  
**Santa Fe, NM 87505**

CONDITIONS

Action 315735

CONDITIONS

|   |  |
|---|--|
| Operator:<br>NEW MEXICO ENERGY MINERALS & NATURAL RESOURCE<br>1220 S St Francis Dr<br>Santa Fe , NM 87504 | OGRID:<br>264235   |
|   | Action Number:<br>315735                                       |
|   | Action Type:<br>[IM-SD] Admin Order Support Doc (ENG) (IM-AAO) |

CONDITIONS

|            |           |                |
|------------|-----------|----------------|
| Created By | Condition | Condition Date |
| pgoetze    | None      | 2/19/2024      |