

**APPENDIX H**

**TRANSCRIPT OF PRIMACY HEARING AND RESPONSIVENESS SUMMARY**

Record of UIC Primacy Hearing  
held September 20, 1982

This document contains:

1. Hearing Transcript
2. Exhibits (except copies of Affidavit of Publication for ten New Mexico newspapers /FID Exhibit 2/ and complete primacy application /EID Exhibit 3/)
3. Statements for the hearing record by Mobil Oil Company and EPA.

UIC PRIMACY HEARING ATTANDANCE

SEPTEMBER 20, 1982

Prentiss Childs  
OCD  
P.O. Box 2088  
Santa Fe, New Mexico 87501

Jane Cohen  
EID/Legal Bureau  
P.O. Box 968  
Santa Fe, New Mexico 87504-0968

Wayne P. Cunningham  
NM Dept. of Agriculture  
Box 5702  
Las Cruces, New Mexico 88003

Julie Coston  
U.S. EPA  
1201 Elm Street  
Dallas, Texas 75270

John B. Draper  
Montgomery & Andrews  
P.O. Box 2307  
Santa Fe, New Mexico 87501

John F. Eichelmann, Jr.  
The El Paso Co  
320 Galisteo - Suite 402  
Santa Fe, New Mexico 87501

Bruce Garber  
EID-Legal Bureau  
P.O. Box 968  
Santa Fe, New Mexico 87504-0968

Maxine S. Goad  
NMEID  
Water Pollution Control  
P.O. Box 968  
Santa Fe, New Mexico 87504-0968

David G. Boyer  
NMEID-Water Pollution Control  
P.O. Box 968  
Santa Fe, New Mexico 87504-0968

John S. Hart  
D'Appolonia Consulting Engineers  
2340 Alamo, SE  
Albuquerque, New Mexico 87106

Robert E. Huber  
RW Bryain Co  
Santa Fe, New Mexico 87501

William K. Honker  
EPA Region 6  
1201 Elm Street  
Dallas, Texas 75270

Irene Mossburg  
League of Women Voters  
Rt 7, Box 109 SV  
Santa Fe, New Mexico 87501

Charles Nylander  
NMEID  
P.O. Box 968  
Santa Fe, New Mexico 87504-0968

Joe D Ramey  
WQCC-OCD  
Box 2088  
Santa Fe, New Mexico 87501

Karl Souder  
NMEID  
P.O. Box 968  
Santa Fe, New Mexico 87503

R.L. Stamets  
OCD  
Land Office Bldg  
Santa Fe, New Mexico 87501

Maurice Trimmer  
NM Oil & Gas Association  
P.O. Box 1864  
Santa Fe, New Mexico 87501

BEFORE THE  
HEALTH & ENVIRONMENT DEPARTMENT  
ENVIRONMENTAL IMPROVEMENT DIVISION  
Santa Fe, New Mexico

In the Matter of the Primary )  
Enforcement Authority Concern-)  
ing Federal Underground )  
Injection Control in New )  
Mexico. )

TRANSCRIPT OF PROCEEDINGS

September 20, 1982

BE IT REMEMBERED that on to-wit, the twentieth day of  
September 1982, the above matter came on for hearing before  
the Environmental Improvement Division; Mr. Cubia Clayton,  
Hearing Officer, at Apodaca Hall, P.E.R.A. Building, Capitol  
Complex, Santa Fe, New Mexico, at the hour of ten o'clock in  
the forenoon.

\* \* \* \*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

A P P E A R A N C E S

FOR THE ENVIRONMENTAL IMPROVEMENT DIVISION:

Mr. Cubia Clayton, Hearing Officer  
Assistant Director of Environmental Improvement Division  
P. O. Box 968  
Santa Fe, New Mexico

Mr. Bruce S. Garber  
Chief Attorney, Environmental Improvement Division  
P. O. Box 968  
Santa Fe, New Mexico

Mr. David G. Boyer  
Ground Water Hydrologist, Environmental Improvement  
Division  
P. O. Box 968  
Santa Fe, New Mexico

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

THE HEARING OFFICER: I will call this hearing to order. This hearing today is a hearing before the Environmental Improvement Division of the Health & Environment Department, and the Oil Conservation Division of the Energy and Minerals Department concerning the state application for underground injection control.

As Hearing Officer I will exercise the right to limit testimony if it becomes redundant, or involved in matters other than that appropriate to the consideration of the application.

All testimony given will be sworn, and anyone who testifies may be cross examined by any member in the audience, and with that out of the way, Mr. Garber, do you have some introductory exhibits?

MR. GARBER: Yes, I do, Mr. Hearing Officer. My name is Bruce Garber, and I am an Assistant Attorney General employed by the Environmental Improvement Division, and I have some procedural exhibits that I would like to introduce at this time.

E.I.D. Exhibit Number One, I have an affidavit from Jeanette B. Arquero, and this affidavit testifies that Ms. Arquero mailed notice of this hearing to approximately one hundred and eighty parties who are on the list, and who have

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

expressed an interest in notice for underground injection control matters; and also, the ten newspapers that have been mailed the notice of this hearing by Ms. Arguero for publication.

As E.I.D. Exhibit Number Two, I have Affidavits of Publication from nine newspapers in the state, and these affidavits assert that the notice of this hearing has been published in those newspapers.

As E.I.D. Exhibit Number Three, I have the full set of the applications for Primacy to the Environmental Protection Agency by the State of New Mexico for the underground injection program.

THE HEARING OFFICER: Are there any objections to the introduction of E.I.D. Exhibits One through Three? Without objection they will be received.

Does the Division wish to present a witness at this time, Mr. Garber?

MR. GARBER: Mr. Hearing Officer, we do have one witness, and Mr. Boyer is our witness.

THE HEARING OFFICER: All right, thank you, Mr. Boyer.

DAVID G. BOYER

1  
2 was called as a witness by the Division, and having been  
3 first duly sworn, testified upon his oath as follows, to-wit:

4  
5 DIRECT EXAMINATION

6 BY MR. GARBER:

7 Q Mr. Boyer, do you have a statement that you wish to  
8 make?

9 A Yes. I have a short statement. The importance of  
10 protecting ground water quality in New Mexico is underscored  
11 by the fact that public water supply systems in this state  
12 obtain almost ninety-five percent of their water from ground  
13 water sources. Drinking water for over three-fourths of our  
14 state's population comes from ground water sources. Even  
15 more important, ground water is the only source of water in  
16 many areas of the state. The control of underground injec-  
17 tion is one way to protect this important resource.

18 Underground injection deals with wells or other  
19 man-made pathways which pump fluids beneath the surface of  
20 the earth into porous zones where the fluid can be stored, or  
21 used to recover resources.

22 Systematic underground injection began about fifty  
23 years ago in the petroleum industry, and came to be widely  
24 used to dispose of salt water, which frequently accompanies

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

the production of oil and gas.

The New Mexico Oil Conservation Division administers approximately thirty-five hundred injection wells used in connection with oil and gas production including secondary oil recovery wells, and natural gas storage reservoirs.

Underground injection is also used to dispose of potentially hazardous, or polluting, substances. In many cases this practice may be far less hazardous and also less expensive than treatment and disposal of such substances on the surface.

The Environmental Improvement Division in an inventory has identified over two hundred injection wells throughout the state, which are under the jurisdiction of the New Mexico Water Quality Act.

The wells regulated by the Water Quality Control Commission under the Water Quality Act include industrial disposal wells, salt solution mining wells, and uranium mining wells, among others.

To date no hazardous or industrial waste disposal well applications have been submitted to E.I.D. for approval. One early industrial disposal operation has been inactive since 1977, and will be required to obtain a permit before

1  
2 recommencing injection.

3 In New Mexico the mining industry employs injection  
4 wells to extract substances such as salt and uranium from  
5 under the earth's surface. Other types of minerals such as  
6 potash and copper may be extracted under proper geologic and  
7 hydrologic conditions.

8 These in situ extraction wells inject a fluid which  
9 is capable of dissolving the ore while adjacent wells pump  
10 out the fluid and the dissolved ore.

11 Almost ninety injection, production, and monitoring  
12 wells associated with in situ uranium production are under  
13 construction at this time in the Grants Mineral Belt; thirty  
14 such wells already exist in that area.

15 Other types of injection wells also exist in New  
16 Mexico today, and these include drainage wells, return flow  
17 wells, barrier wells, mine backfill wells, and ground water  
18 recharge wells.

19 Regulation of underground injection is clearly a  
20 desirable activity, since improperly handled injection can  
21 lead to aquifer pollution.

22 While formulating the Safe Drinking Water Act in  
23 1974, the U. S. Congress recognized both the need for  
24 protection of underground drinking water sources from

1  
2 contamination by underground injection, and the need for  
3 effective state regulatory programs.

4 Congress directed the United States Environmental  
5 Protection Agency to develop underground injection  
6 regulations to guide states in establishing their own  
7 programs. In May of 1980 E.P.A. published final regulations  
8 in that area.

9 Since, 1979, the State of New Mexico has received  
10 grants from the Environmental Protection Agency to develop  
11 and submit for E.P.A.'s approval a program that would allow  
12 the State of New Mexico to administer directly the  
13 Underground Injection Control Program of the Safe Drinking  
14 Water Act (PL 93-523 as amended).

15 In February of this year New Mexico received E.P.A.  
16 approval to administer those portions of the Federal U.I.C.  
17 program dealing with underground injections that relate to  
18 the production of oil and natural gas.

19 The principal part of the New Mexico program to  
20 protect ground water from contamination by non-oil and gas  
21 underground injection has been the New Mexico Water Quality  
22 Control Commission Regulations first adopted in 1977, under  
23 the authority of the New Mexico Water Quality Act, and  
24 adopted before the adoption of similar federal provisions.

1  
2 Additional U.I.C. amendments to the state  
3 regulations were adopted by the Commission on July 21st,  
4 1982, after extensive public input in 1981, followed by a  
5 public hearing in March of 1982.

6 Further ground water protection from underground  
7 injection is provided by the New Mexico Geothermal Resources  
8 Conservation Act, and the Surface Mining Act, and the  
9 regulations adopted thereunder.

10 The adoption of regulations such as the Water  
11 Quality Control Commission Regulations and other regulations  
12 are not under discussion at this Primacy hearing. Those  
13 regulations are currently in place.

14 The final step the state must undertake to receive  
15 federal delegation in the U.I.C. program is the formal  
16 submission to E.P.A. of an application for Primary  
17 Enforcement Authority, and this is commonly called Primacy,  
18 and that will allow the state to administer the program in  
19 New Mexico.

20 As required by 40 CFR, Part 123, of the federal  
21 regulations, the approval application consists of the  
22 following parts:

23 1. A letter from the Governor requesting program  
24 approval.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

2. A program description stating how New Mexico intends to carry out its responsibilities under the U.I.C. portion of the Safe Drinking Water Act and applicable federal requirements.

3. An Attorney General's statement describing the state's regulatory authority under state law.

4. A Memorandum of Agreement with the E.P.A. Regional Administrator detailing E.P.A. and state responsibilities once the program is approved.

5. Copies of all applicable state statutes and regulations.

6. A showing of public participation which this hearing is a part of.

The final application is expected to be submitted in late October 1982, followed by an E.P.A. public hearing on the application in December. New Mexico hopes for final E.P.A. approval and completion of the delegation process in February of 1983.

The Primacy application was made available at least thirty days prior to this hearing at the following locations for review and public comment:

The Environmental Improvement Division's, and Oil Conservation Division's offices in Santa Fe; the Environ-

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

mental Improvement Division's offices in Albuquerque, Grants, Gallup, Farmington, Las Cruces, Roswell, and Hobbs, and also at the Oil Conservation Division's office in Artesia.

A public notice encouraging public comment on the draft state U.I.C. Primacy application was issued and published in a number of state newspapers, and also mailed to approximately a hundred and eighty persons on the U.I.C. mailing list.

Affidavits of these publications, and mailings, have been introduced as E.I.D.-O.C.D. exhibits.

This concludes my comments at this time. I have no further comments.

MR. GARBER: Mr. Boyer, just for the record would you indicate what your position is with the E.I.D.?

MR. BOYER: Yes, I am a Ground Water Hydrologist with the Environmental Improvement Division, and I have been in charge of the U.I.C. program in developing this application, and also developing regulations since April of 1980.

MR. GARBER: Thank you very much.

THE HEARING OFFICER: Are there questions of Mr. Boyer? Mr. Boyer, I have just a couple of questions for clarification.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

You noted that the final Environmental Protection Agency regulations governing underground injection and control were promulgated in May of 1980, and have there been amendments, or modifications, to that final promulgation?

MR. BOYER: The promulgation of the procedures to be used was done on May 19th, 1980, and the final technical requirements were done on June 24th, 1980, and there were some modifications to those regulations that were published in the Federal Regulations in February of 1982.

THE HEARING OFFICER: Okay, fine. Do I understand that there will be an additional hearing on the application conducted by the Environmental Protection Agency in December?

MR. BOYER: Yes, sir, they will conduct their own hearing on this application.

THE HEARING OFFICER: Do you know where that hearing has been scheduled for?

MR. BOYER: No, I do not. I believe it will be scheduled for Santa Fe. The Environmental Protection Agency, I don't believe, has set a date, or a place, but I believe they held one in Santa Fe for the Oil Conservation Division for their portion of the program, and I certainly would encourage them to have it in Santa Fe.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

THE HEARING OFFICER: I would join you in that encouragement, Mr. Boyer.

Are there any other questions of Mr. Boyer? If not thank you, Mr. Boyer.

(THEREUPON, the witness was excused.)

THE HEARING OFFICER: Does the Division have other witnesses that they wish to present, Mr. Garber?

MR. GARBER: No.

THE HEARING OFFICER: Does the Oil Conservation Division wish to present any witnesses?

Is there anyone else in the audience that wishes to make a statement at this time?

Mr. Garber, would you and Mr. Boyer come here a minute and we will talk about whether or not we need to keep the record open?

(THEREUPON, a short discussion was held off the record.)

THE HEARING OFFICER: We will leave the record open one week to be closed officially at five a.m., next Monday the 27th, for the submittal of any relevant statements, views, arguments, or so forth, regarding the state

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

application.

I will give everybody one more chance -- is there any one here who wishes a last chance for a statement? If not this hearing is over.

(THEREUPON, the hearing was concluded.)

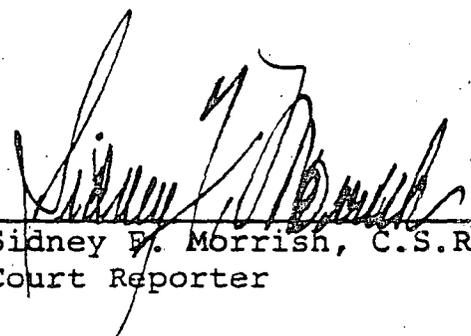
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

REPORTER'S CERTIFICATE

I, Sidney F. Morrish, do hereby certify that I recorded the above proceedings, and that this is a true and correct record of the proceedings had at that time and place to the best of my knowledge and ability.

Further, that I am neither attorney nor counsel for, nor related to or employed by any of the parties to these proceedings.

Further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

  
\_\_\_\_\_  
Sidney F. Morrish, C.S.R.  
Court Reporter

I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

	<u>Page</u>
1. -Appearances	2
2. The Witness, Mr. David G. Boyer Direct Examination by Mr. Garber	4
3. Witness Excused	13
4. Hearing Concluded	14
5. Reporter's Certificate	15

EXHIBIT INDEX

E.I.D. Exhibit No. 1, Affidavit	3
E.I.D. Exhibit No. 2, Affidavits of Publication	4
E.I.D. Exhibit No. 3, Applications for Primacy	4

EID &  
EXHIBIT  
NO. 1

AFFIDAVIT

I, Jeanette B. Arquero, hereby certify that NOTICE OF PUBLIC HEARING to obtain public comment on the draft state application to the U.S. Environmental Protection Agency (EPA) for Primary Enforcement Authority (Primacy) to administer the Federal Underground Injection Control (UIC) program in New Mexico, were mailed on August 16, 1982 to the following:

1. approximately 180 parties who have expressed interest on UIC matters whose names appear on a listing compiled by the Underground Injection Control staff which also includes those parties whose names appear on the Discharge Plan Mailing List; and,
2. the following newspapers:

Albuquerque Journal  
Artesia Daily Press  
Farmington Daily Times  
Gallup Independent  
Grants Daily Beacon

Hobbs Daily News-Sun  
Las Cruces Sun-News  
Roswell Daily Record  
Santa Fe-The New Mexican  
Carlsbad Current-Argus

*Jeanette B. Arquero*

Jeanette B. Arquero  
Secretary II - Ground-Water Section  
Water Pollution Control Bureau

Subscribed and sworn to before me this 20th day of September, 1982.

*Laura M. Vigil*  
Laura Vigil, Notary Public

My Commission Expires August 26, 1984

PLEASE NOTE: EID Exhibit #2, Affidavits of Publication for ten New Mexico newspapers not included in this document.

STATE OF NEW MEXICO

NOTICE OF PUBLIC HEARING TO PROVIDE OPPORTUNITY FOR PUBLIC COMMENT

A public hearing before the Environmental Improvement Division of the Health & Environment Department and the Oil Conservation Division of the Energy and Minerals Department has been scheduled for 10 a.m., September 20, 1982 in Abodaca Hall (second floor auditorium) PERA Building, Capitol Complex, Santa Fe, New Mexico, to obtain public comment on the draft State application to the U.S. Environmental Protection Agency (EPA) for Primary Enforcement Authority (Primacy) to administer the Federal Underground Injection Control (UIC) program in New Mexico. Underground injection is the emplacement into wells of fluids for disposal or other purposes. The improper injection of such fluids can cause ground water used for drinking or other purposes to be contaminated.

Since 1979 the state of New Mexico has received grants from the EPA to develop and submit for EPA approval a program that would allow the state of New Mexico to administer directly the UIC provisions of the Federal Safe Drinking Water Act (PL 93-523 as amended). In February of this year New Mexico received EPA approval to administer those portions of the Federal UIC program dealing with underground injections that relate to the production of oil and natural gas. Comments at this hearing will therefore be limited to New Mexico's program to control fluid injection practices other than those related to oil and natural gas production.

The principal part of the New Mexico program to protect ground water from contamination by non-oil and gas underground injection has been the New Mexico Water Quality Control Commission Regulations first adopted in 1977 under the authority of the New Mexico Water Quality Act. Additional UIC amendments were adopted by the Commission July 21, 1982. Additional ground water protection from underground injection is provided by the New Mexico Geothermal Resources Conservation Act and the Surface Mining Act and the regulations adopted thereunder.

Copies of the UIC Primacy Application will be available for public review during regular business hours at the Water Pollution Control Bureau, Environmental Improvement Division, Crown Building, 725 St. Michael's Drive and the Oil Conservation Division, State Land Office Building, 310 Old Santa Fe Trail, Santa Fe, New Mexico and at the following Environmental Improvement Division and Oil Conservation Division offices:

Albuquerque (EID)  
4219 Montgomery Blvd., NE  
Albuquerque, New Mexico 87109

Grants-Milan (EID)  
708 Uranium Avenue  
Milan, New Mexico 87020

Artesia (OCD)  
324 W. Main  
Petroleum Building  
Artesia, New Mexico 88210

Hobbs (EID)  
414 W. Taylor  
Hobbs, New Mexico 88240

# Mobil Oil Corporation

P.O. BOX 5444  
DENVER, COLORADO 80217

URANIUM/MINERALS DIVISION

September 17, 1982

RECEIVED

SEP 20 1982

EID: WATER  
POLLUTION CONTROL

Mr. Roy D. McKeag, Chief  
Water Pollution Control Bureau  
Environmental Improvement Division  
Health & Environment Department  
725 St. Michael's Drive  
Crown Building  
Santa Fe, New Mexico 87503

Dear Mr. McKeag:

Please find enclosed "Statements for the Public Record of the UIC Hearing of September 20, 1982" submitted on behalf of Mobil Oil Corporation's Uranium/Minerals Division.

PUBLIC RECORD STATEMENT

UIC PUBLIC HEARING

Sincerely,

G. A. Cresswell

Manager

Hydrological & Environmental Affairs

Wasteingraber:dp

Enclosure

P.F. 0.1.I.4.e.1

cc: W. L. Luthy, Nufuels

D. G. Macaulay, U/M

D. Walker, U/M

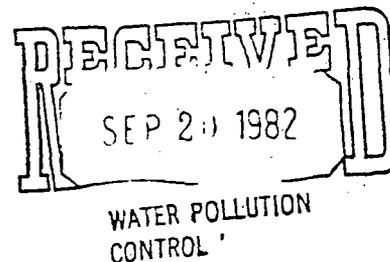
RECEIVED  
SEP 20 1982

WATER POLLUTION  
CONTROL

STATEMENTS FOR THE PUBLIC RECORD OF THE  
UIC HEARING OF SEPTEMBER 20, 1982

BY

MOBIL OIL CORPORATION  
URANIUM/MINERALS DIVISION



This statement is made on behalf of Mobil Oil Corporation, Uranium/Minerals Division, Denver, Colorado. The Uranium/Minerals Division conducts in-situ uranium solution mining operations within the State of New Mexico, and, therefore the Underground Injection Control (UIC) Regulations and the State of New Mexico's application to the U. S. Environmental Protection Agency (EPA) for Primary Enforcement Authority to administer the Federal UIC Program in New Mexico, are of considerable interest to us. I thank you for the opportunity to be able to present a statement.

For the past year, Mobil has worked with the New Mexico Environmental Improvement Division, the U. S. Environmental Protection Agency, various environmental groups, other mineral producing companies, and members of the public at large, in order to develop a set of practical, economically viable and environmentally sound Underground Injection Control Regulations for the State of New Mexico. We are generally pleased with the UIC Regulations presently adopted by the New Mexico Water Quality Control Commission, as we feel that they protect the environment while allowing industry to operate in an economical manner. We favored adoption of such regulations by the New Mexico Water Quality Control Commission, and we support the State's application for Primary Enforcement Authority to administer the Federal UIC Program in New Mexico, rather than be subject to dual regulations by both the State and the EPA.

With respect to the question of implementation of the UIC Program on "Indian Lands", it is our belief that the State of New Mexico should apply for Primary

Enforcement Authority for all UIC activities on such lands. We strongly believe that it is unnecessary and unwarranted for another federal agency, specifically the EPA, to involve itself in such activities when such involvement would only be duplicative of the State's efforts as well as the efforts of at least two other federal agencies involved in the regulation of Underground Injection activities on "Indian Lands". We support the State of New Mexico's application for Primary Enforcement Authority to Administer the Federal Underground Injection Control Program in New Mexico - ALL of New Mexico.

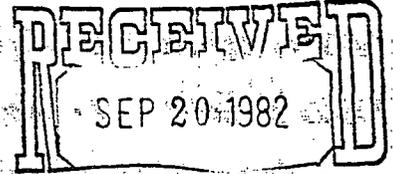


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VI

1201 ELM STREET  
DALLAS, TEXAS 75270

September 17, 1982



Mr. Roy McKeag, Chief  
Water Pollution Control Bureau  
Environmental Improvement Division  
P.O. Box 968  
Santa Fe, NM 87504-0968

WATER POLLUTION  
CONTROL

RE: Statement for the Public Record of the UIC Public Hearing of  
September 20, 1982

Dear Mr. McKeag:

At the June 8, 1982, Water Quality Control Commission (WQCC) meeting, Dick Whittington, EPA Regional Administrator, discussed the six issues on the New Mexico Underground Injection Control (UIC) application which must be addressed prior to EPA approval. Of the six issues, three have been resolved and three issues remain which could prevent EPA from approving (all or part of) the New Mexico UIC program.

The three remaining issues are:

1. The Attorney General's (AG) Statement asserts jurisdiction over non-Indian injection operations on Indian Lands.

The AG's legal demonstration of authority may not be sufficient to allow EPA to delegate its regulatory functions on Indian Lands. EPA Region 6 is exploring the possibility of joint permit issuance on Indian Lands if delegation is not possible.

2. The WQCC preconstruction regulatory requirement (5-102.B) for in situ wells differs from the EPA requirement of 40 CFR 122.33.

In order to gain program approval, the State must show that WQCC 5-102.B meets the EPA requirements. A State need not impose a requirement in precisely the same way as the Federal regulations, if the State can demonstrate that its provision is as stringent.

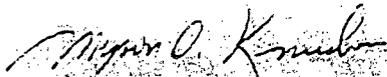
EPA Region 6 is available for any assistance you might require in preparing a "stringency" argument to resolve the issue. This argument may require additional language in the AG statement.

3. The Memorandum of Agreement (MOA) does not provide for EPA approval of temporary aquifer designations.

EPA has not yet decided whether New Mexico's temporary aquifer designations require EPA approval and, if so, what the approval process entails. Section VII of the MOA may therefore, need to be revised to provide for EPA approval of temporary aquifer designations.

I greatly appreciate the spirit of cooperativeness which you have shown in working with us to resolve issues. I trust it will continue as we work to resolve these final issues. Please call me or my staff if we may be of any assistance.

Sincerely yours,



Myron O. Knudson  
Director, Water Management Division (6W)

cc: Joe D. Ramey, Director, New Mexico Oil Conservation Division,  
Santa Fe, NM

Cubia L. Clayton, Chairman, New Mexico Water Quality Control Commission,  
Santa Fe, NM

## RESPONSIVENESS SUMMARY

### PRESENTATION OF THE NEW MEXICO PLAN FOR UNDERGROUND INJECTION CONTROL

The New Mexico Environmental Improvement Division (NMEID) presented its program for the assumption of Primary Enforcement Responsibility (primacy) to protect ground water from contamination through the Underground Injection Control (UIC) program at a public hearing on September 20, 1982. This presentation included statements concerning:

- (1) the importance of protecting ground water,
- (2) the results of a preliminary statewide inventory of injection wells including location and classification,
- (3) the division of responsibilities between New Mexico state agencies for different types of injection wells, and
- (4) the relevant state legislation protecting ground water from contamination including the N.M. Water Quality Act authorizing the adoption Water Quality Control Commission Regulations, the New Mexico Geothermal Resources Conservation Act, and the Surface Mining Act.

The State presentation also included a short history of the development of UIC amendments to State Water Quality Control Commission Regulations, which were drafted and adopted after extensive public input. Representatives from environmental groups, industries which have been involved in underground injection, and the public at large were all actively involved with the drafting of these regulations.

### PUBLIC COMMENT ON THE NEW MEXICO'S PROPOSAL TO ASSUME PRIMARY ENFORCEMENT RESPONSIBILITY FOR UIC ACTIVITIES

Public comment on New Mexico's proposal to assume primary enforcement responsibility for underground injection control (UIC) was provided in the form of written statements submitted by the Mobil Oil Corporation, Uranium/Minerals Division and by the U.S. Environmental Protection Agency (EPA).

Mobil's statement indicates that they have worked with the New Mexico Environmental Improvement Division and also with the EPA, various environmental groups, and other mineral producing companies to agree upon a set of UIC regulations which protect the environment while allowing industry to operate in an economic manner. Mobil feels that it is desirable that the State assume primary enforcement authority over UIC activities in order that they not be subject to different sets of Federal and State regulations. Mobil also supports the State of New Mexico in its assertion of primary enforcement authority on Indian Lands within the State.

The U.S. Environmental Protection Agency stated its concern about three remaining unresolved issues which could prevent EPA from approving all or part of the New Mexico UIC program. These issues are:

- (1) The State of New Mexico's assertion of jurisdiction over non-Indian underground injection on Indian Lands. The EPA feels that the demonstration of legal authority over such land may not be sufficient.
- (2) The N.M. Water Quality Control Commission preconstruction regulatory requirements for in situ injection wells differs from the EPA requirements of 40 CFR Part 122.33. EPA believes that State requirement may not be stringent enough.
- (3) The Memorandum of Agreement (MOA) between the EPA and the State does not provide for EPA approval of temporary aquifer designations. EPA is still uncertain as to their position on whether temporary aquifer designations require EPA's approval.

New Mexico Environmental Improvement Division (NMEID)  
Response to Public Comment

The NMEID is happy to note Mobil's support for the State assumption of primary enforcement responsibility for the Underground Injection Control program and concurs with Mobil's statement.

In regard to the EPA comments on the State of New Mexico's primacy application, the State responds as follows:

- (1) State jurisdiction over UIC activities by non-Indians on Indian Lands is justified by the two-pronged test mentioned in the State Attorney General's Statement. This asserts that UIC is not an activity whose regulation has been historically pre-empted by the Federal government and that UIC applied to non-Indians would not interfere with tribal self-government. Precedents for this belief are cited in the Attorney General's statement.
- (2) In regard to the difference in pre-construction requirements the State feels that it has demonstrated its capacity and willingness to abate discharges which would be made in violation of the State's Water Quality Regulations, and the requirement of a pre-construction permit for in situ injections is not necessary. Additional discussion of this point is found in Table 3 of the Primacy application and in the Attorney General's statement.
- (3) In regard to the EPA hesitancy to allow the State of New Mexico to temporarily allow aquifer contamination by in situ mining without EPA approval, New Mexico is confident that its regulations (WQCC Section 5-101.C.2) and enforcement abilities allow it to be certain that such aquifers will be restored to state standards for human health, domestic, and use. The transcript of the March 3-5, 1982, UIC Regulation hearing contains testimony concerning the success of aquifer restoration in New Mexico. In requiring aquifer restoration New Mexico's requirements are more stringent than EPA's and dual EPA approval for this activity is not necessary.

It is the opinion of the State of New Mexico that the purpose of primacy is to put the permit decision-making process in the hands of the State. EPA approval of temporary aquifer designations would be dual permitting--without question. If EPA insists upon approval of temporary aquifer designations, the EID wonders what it has gained by primacy. The EID has discussed this with EPA Region 6 staff and they are aware of our strong feelings on this issue. Therefore, there it is not our intention to rewrite the appropriate section in the Memorandum of Agreement.

The EID is not in a position to accept EPA's position on this issue. The EID is not in a position to accept EPA's position on this issue. The EID is not in a position to accept EPA's position on this issue.

Memorandum of Understanding  
Between the State of New Mexico and the Environmental Impact Department

The purpose of this Memorandum of Understanding is to establish the terms and conditions under which the State of New Mexico and the Environmental Impact Department will cooperate in the implementation of the National Pollutant Discharge Elimination Act (NPDES) program.

The State of New Mexico and the Environmental Impact Department agree to cooperate in the implementation of the NPDES program. The State of New Mexico and the Environmental Impact Department agree to cooperate in the implementation of the NPDES program.

The State of New Mexico and the Environmental Impact Department agree to cooperate in the implementation of the NPDES program. The State of New Mexico and the Environmental Impact Department agree to cooperate in the implementation of the NPDES program.

The State of New Mexico and the Environmental Impact Department agree to cooperate in the implementation of the NPDES program. The State of New Mexico and the Environmental Impact Department agree to cooperate in the implementation of the NPDES program.

The State of New Mexico and the Environmental Impact Department agree to cooperate in the implementation of the NPDES program. The State of New Mexico and the Environmental Impact Department agree to cooperate in the implementation of the NPDES program.