UIC - ____2_____

UIC CLASS I & V REGULATION REVISIONS

2002

State of New Mexico
ENVIRONMENT DEPARTMENT
Ground Water Quality Bureau
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502-6110
Telephone (505) 827-2900
Fax (505) 827-2965

GARY E. JOHNSON

PETER MAGGIORE
SECRETARY

April 29, 2002

Mr. Sam Becker, Acting Director
Water Quality Protection Division
EPA Region 6 (6WQ-SG)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

RE: UIC Program Revision Package for Class I and V Underground Injection Control (UIC) Regulation Revisions

Dear Mr. Becker:

The New Mexico Environment Department (NMED), Ground Water Quality Bureau (GWQB) is submitting this UIC program revision package to demonstrate equivalency with the federal 1988 Class I regulation changes and the federal 1999 Class V regulation changes. The package addresses all of the issues required as advised in a December 2000 letter from EPA Region 6 Chief Larry Wright to GWQB Bureau Chief Marcy Leavitt. As stated in the extension agreement for Class V regulation changes between NMED and EPA Region 6, NMED believes that the regulation changes are non-substantial. According to EPA UIC Guidance 34, substantial revisions are those which: 1) modify the State's basic statutory or regulatory authority; 2) transfer all or part of the program to another state agency; 3) make the program less stringent than federal requirements; or 4) relate to aquifer exemptions of an aquifer containing water of less than 3,000 milligrams per liter. The regulation revisions do not meet these criteria of UIC Guidance 34 and therefore are non-substantial revisions.

1. Program Description Addendum

A brief description of the activities undertaken to implement Class I and Class V regulations is provided as follows, including inventory, outreach, permitting, reporting, monitoring, compliance assurance, public participation and enforcement. Staffing levels and resources are also estimated.

Activities undertaken regarding the Class I and Class V regulation changes to date have focused on getting the regulations promulgated. The UIC Coordinator spent 50% of her work hours for 12 months working on the regulation changes, performing public outreach activities, and preparing for the public hearing.

The Ground Water Quality Bureau (GWQB) has coordinated with the NMED Hazardous Waste Bureau (HWB), which regularly inspects motor vehicle waste disposal facilities and has inspected approximately 30 per year for the past five years. The HWB has provided several guidance documents that are used by the GWQB to assist in implementing best management practices at existing motor vehicle waste disposal well facilities. Attachment A contains the first pages of these lengthy documents. The GWQB has also coordinated internally with the NMED Remediation Oversight Section, which oversees remediation of sites with contaminated soil and ground water. As a result of these coordination efforts, six motor vehicle waste disposal wells have been identified for closure. GWQB has also adapted a pre-closure notification form from EPA guidance materials to be used for well closure implementation (Attachment B). GWQB also plans to develop a closure guidance document specifically to address closure of motor vehicle waste disposal wells.

It is not known how many motor vehicle waste disposal wells and large capacity cesspools exist in New Mexico but it is expected that there are fewer than 60, and notification of the wells will trickle in over time as a result of complaints and inspections. Therefore, it is difficult to estimate staffing levels and resources necessary to implement the Class V rules. No additional resources are expected to be necessary to implement Class I rules because the regulation changes prohibit Class I hazardous or radioactive waste injection wells.

In NMED's FY02 UIC grant from EPA, $14,358 has been awarded for Class V well closure program implementation. It is anticipated that these funds will cover the cost of creating additional outreach materials, inspecting suspected motor vehicle waste disposal wells and large capacity cesspools, processing closure notification forms, overseeing soil and ground water investigation reports, and coordinating with the NMED Hazardous Waste Bureau and Remediation Oversight Section on the oversight of ground water remediation. However, these funds did not contribute to the approximately $70,000 spent in salaries, benefits, contracts, travel, court reporter costs and publication costs to promulgate the Class I and V regulations during FY01. Unfortunately, this work was performed at the expense of other program tasks, such as issuing permits, conducting compliance inspections, and performing enforcement actions.

2. Certified Copy of the Regulations

A final copy of the Class I and Class V regulation changes is enclosed (Attachment C). On August 14, 2001, a public hearing was held, and the New Mexico Water Quality Control Commission (WQCC) voted to adopt GWQB's regulation revisions with minor changes. At the September 11, 2001 meeting, the WQCC approved the statement of

reasons for the regulation revisions. The regulation revisions were published in the New Mexico Register on November 1, 2001, and became effective December 1, 2001.

3. Evidence of Public Participation

The requirements for public notification of regulation changes are described in Section 74-6-6 NMSA 1978 of the Water Quality Act and in the Guidelines for Water Quality Control Commission (WQCC) Regulation hearings. The statute and guidelines require that the WQCC publish a notice at least 30 days prior to a regulation hearing in at least one newspaper of general circulation in the state and in the New Mexico Register. The guidelines also require that the WQCC mail the notice of hearing to persons who have requested advance notice of regulation changes. Evidence of public participation is provided in Attachment D, which includes: affidavits of publications and mailings; a copy of the informational pamphlet; and a summary showing public comments received by the GWQB on the regulation changes.

Public notice of the regulatory hearing was published in the Albuquerque Journal on June 18, 2001, in the New Mexico Register on June 29, 2001. The notice was mailed to the Commission's interested persons mailing list on June 27, 2001. The public notice was posted on NMED's website on June 20, 2001. The GWQB also sent the public notice to those who had already commented on the regulation changes.

The GWQB has been working on these regulation changes since September 2000. In December 2000, the Bureau sought and received comments from EPA Region 6 and EPA Headquarters. After making changes to the regulation amendments to satisfy EPA's concerns, the Ground Water Quality Bureau conducted public outreach and notification activities beyond the requirements of the Commission's Guidelines. In April 2001, the regulation amendments, as well as general information on the UIC program, were posted on the NMED website. The GWQB then sent a pamphlet describing the regulation changes to approximately 2,400 companies, individuals and agencies that might be affected by the changes. The notification lists included: all permitted hazardous waste facilities in New Mexico; all automotive maintenance and repair facilities; new and used car dealerships; car rental companies; boat, aircraft and bus maintenance companies; all cities and counties in New Mexico, and the GWQB's interested persons list for discharge permits.

The notification lists were created to inform any entity of the proposed regulation changes that might have an existing motor vehicle waste disposal well or cesspool, any company that might be interested in constructing a Class I Hazardous or Radioactive Waste Injection Well or Class IV well, local governments who issue zoning and building permits, and the list of persons who have requested to be notified about all discharge permitting actions. It is the GWQB's opinion that these are the groups most likely to be affected by the regulation changes. Comments on the proposal were requested by May 22, 2001.

On May 7 and 8, 2001, the GWQB held public meetings in Las Cruces and Albuquerque to answer questions about the regulations. Notice of the meetings was posted on the

NMED website and was published in the Albuquerque Journal and the Las Cruces Sun News two weeks prior to the meetings. The public meetings were also mentioned in the 2,400 pamphlets that were sent, along with a phone number to contact for more information. The GWQB prepared a multi-media presentation for the public meetings, including a slide show, a videotape, a 3-dimensional model of ground water flow, and numerous outreach materials. In spite of the GWQB's efforts to encourage public involvement, no one from the public or the regulated community attended the meetings. It is the Bureau's belief that the lack of public involvement indicates that the regulation changes are not controversial; in large part they only codify or clarify requirements already in place.

During the public comment period, the GWQB received one letter providing written comments on the regulation amendments, and several phone calls from motor vehicle maintenance facility operators who were concerned about whether they have injection wells. All of the verbal comments simply required answering questions about the regulation changes and how they would affect the caller's specific situation. As indicated in the summary, very few of the callers would actually be affected by the regulation changes. The Bureau received one letter from the Bernalillo County Department of Public Works, which was generally supportive of the regulation changes.

At the WQCC rulemaking public hearing on August 14, 2001, one person presented technical testimony that neither supported or opposed the proposed regulation changes, but proposed other changes. Another person who represents a development corporation read non-technical testimony supporting the regulations, and a third person who represented a mining company did not present testimony but cross-examined the NMED witness.

4. Attorney General's (AG) Statement

Attachment E is a statement from NMED's counsel (a deputy of the state attorney general) that the agency has found its existing authority sufficient to implement the rules submitted for approval.

5. Addendum to the Memorandum of Agreement (MOA)

An updated copy of the current MOA between NMED, OCD and EPA for the UIC program is enclosed (Attachment F) for EPA's approval.

6. Crosswalk

An updated crosswalk addressing EPA Region 6 and EPA Headquarter comments on the draft state Class V regulation amendments is enclosed (Attachment G). A detailed crosswalk is not necessary for the Class I rule revisions because the state regulations now prohibit Class I hazardous or radioactive waste injection wells at Section 20.6.2.5004 NMAC (Attachment C).

Several issues that were raised by Chris Lister, EPA Region 6 or Robyn Delehanty, EPA Headquarters during review of the draft regulations, have been addressed as follows:

A. A definition of *cesspool* was added at Section 20.6.2.7.G NMAC.
B. *Point of injection* was not defined because the term is not used in the regulations. The point of compliance is determined by Section 20.6.2.3103 NMAC which means the point of compliance is in ground water. As a practical permitting matter, sampling of the injectate is required to be performed at a logical point in the system after treatment but before injection.
C. The ban on cesspools now refers to *large capacity cesspools* at Section 20.6.2.5004.A(2). In addition, systems that receive less than 2,000 gallons per day of domestic sewage effluent are exempt from the WQCC Regulations and are instead regulated by the NM Liquid Waste Regulation.
D. The regulations now state that discharge to existing motor vehicle waste disposal wells and large capacity cesspools must cease immediately (upon promulgation of the regulations), and the wells must be closed by December 2002, thereby addressing the concern that the federal prohibition was effective April 5, 2000.
E. The ban on cesspools and motor vehicle waste disposal wells at Section 20.6.2.5004 NMAC now refers to new wells for which construction began after April 5, 2000.

In addition, during the WQCC rulemaking hearing, the WQCC decided to allow motor vehicle waste disposal wells by permit when the discharger can demonstrate that injection fluid does not contain a contaminant which may cause an exceedance of a drinking water maximum contaminant level, or a WQCC ground water standard, whichever is more stringent. This is a deviation from the GWQB's regulation proposal, which proposed an outright ban on motor vehicle waste disposal wells. The deviation, however, is consistent with federal regulations.

7. Any Relevant Memorandum of Understanding (MOU)

The NMED UIC program does not have an MOU with any entity therefore none is submitted.

If you have any questions about the enclosed materials, please contact me (505) 827-2936 or Maura Hanning, Program Manager of the Ground Water Pollution Prevention Section at (505) 827-2945.

Sincerely,

Karen Menetrey

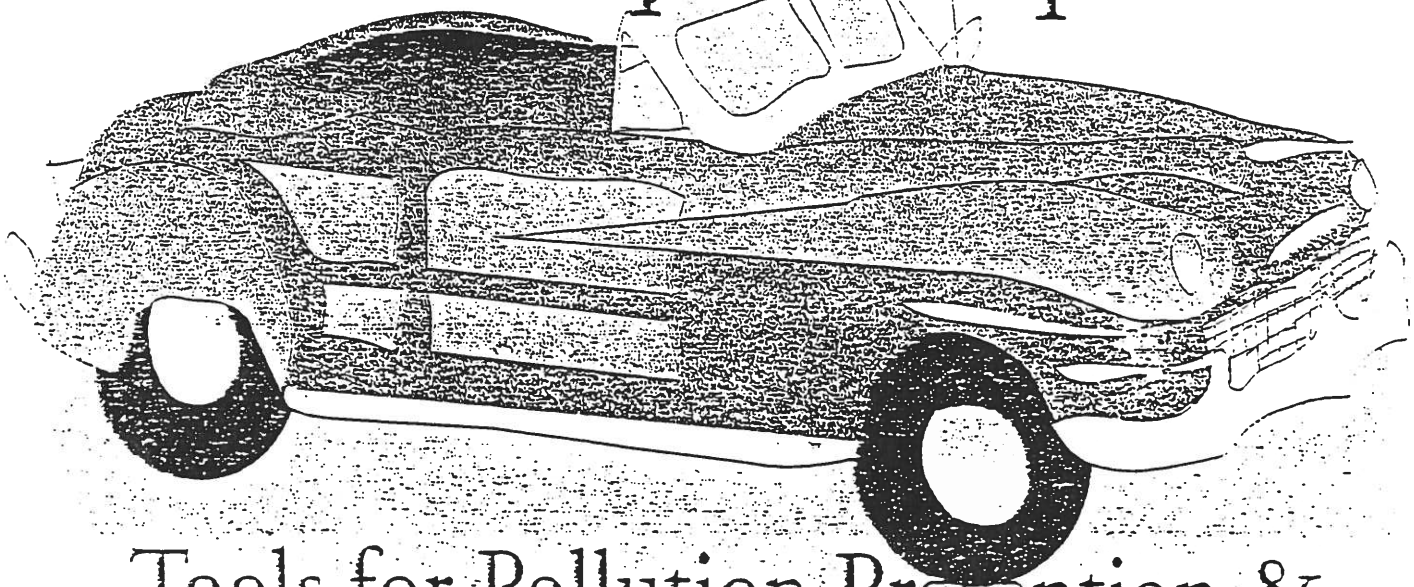
Karen Menetrey, UIC Coordinator
Ground Water Pollution Prevention Section
Ground Water Quality Bureau

Attachments:

Attachment A: Guidance Documents for Motor Vehicle Facilities
Attachment B: Pre-Closure Notification Form for UIC Wells
Attachment C: Revised WQCC Regulations
Attachment D: Evidence of Public Participation
Attachment E: Legal Statement
Attachment F: MOA Between NMED and EPA for the UIC Program
Attachment G: Crosswalk for the Class V UIC Regulation Changes

Attachment A

Auto Repair Shops



Tools for Pollution Prevention & Water Conservation

From the State of New Mexico Hazardous & Radioactive Materials Bureau
Hazardous Waste Technical Assistance Program
505-~~827-1558~~ 425-2500
505-~~827-1512~~

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POLLUTION PREVENTION RESOURCE VENDORS

FOR

Auto Repair Shops
Jewelers
Photographic Developers
Electroplaters & Surface Finishers

From the State of New Mexico Hazardous Waste Bureau
Hazardous Waste Technical Assistance Program
(505) 827-1557

Table of Appendices
Updated 2/8/01

DISCLAIMER

These lists are intended for informational purposes only. The inclusion of any company on these lists does not constitute, nor should imply, endorsement of that company by the State of New Mexico or by the New Mexico Environment Department (NMED)

FACT SHEET FOR VEHICLE REPAIR SHOP
and
CITY, COUNTY AND STATE MAINTENANCE SHOPS

The New Mexico Environment Department's Hazardous Waste Bureau (HWB) provides this fact sheet in order to provide regulatory guidance for city, county, and state maintenance shops and vehicle repair shops.

Vehicle repair shops, city, county and state maintenance shops are known to generate a variety of hazardous waste streams, primarily as a result of vehicle and parts maintenance and painting activities. These wastes may include, but are not limited to spent solvents, degreasers, cleaning fluids. Paint related wastes and thinners, used oils, used brake fluid, used transmission fluid, used antifreeze, used batteries, sump and aqueous part washer sludges, as well as sand and bead blast debris. Each facility must make a hazardous waste determination as to which of its waste streams are in fact hazardous waste. (1) collecting a representative sample of the waste analyses, or (2) using knowledge of process can do this determination. Please be aware that if the facility chooses to use option #(2), it has the burden of proving that the knowledge is adequate, and HWB inspectors may collect a sample of the waste to verify the facility's determination.

In some instances, certain wastes should be assumed to be hazardous waste. Part washer solvents are one of these materials. Even if the solvent is not a hazardous waste prior to being used, once it has been used on engine parts it typically becomes hazardous due to the metals being etched off of the parts.

Another material to assume is a hazardous waste is antifreeze. Several studies have shown that antifreeze is hazardous waste 50% of the time. It is toxic 100% of the time to children and pets, and will kill all of the good bacteria in sewer treatment plants and septic tanks and should not be poured down the drain. This determination is dependent on the type of vehicle the antifreeze has been used in, the age of the vehicle, and the temperament of the engine. However in this day and age there are many antifreeze recycling machines that can be purchased or service providers that will recycle the antifreeze back into a useable product and this is the recommended method for handling antifreeze. So, if you believed your antifreeze probably was not hazardous, it is fairly expensive to prove this with laboratory testing and is more cost effective to just recyle it.

Aqueous parts washers (using soap and hot water much like a dishwasher) are used as a replacement for the solvent parts washers, which typically produce the largest amount of hazardous waste. The aqueous parts washers reuse the soap and water many times, then when it becomes to dirty to use, the water is cooked off leaving a sludge residue. This residue is scraped into a barrel and disposed of as hazardous waste. The volume of hazardous waste is significantly reduced compared to the solvent parts washer waste.

Bead and sand blast debris, aqueous parts washer sludge, and sump or sand trap sludge may or may not be hazardous waste. This waste should be tested to determine if it has become hazardous due to the processes that occur at this facility. If painted parts are blasted or washed, these wastes should be tested initially for total metal concentration of lead, chromium, cadmium and possibly barium (depending on the paint type), using EPA method 6010, this is the less expensive testing method. This method approximates the concentration and should be used only as a rule of thumb. The "20 Times Rule" for analyzing the metals concentration basically states that **if the results of a "Totals" analysis is 20 times the regulatory limit, most likely the waste is hazardous.** As an example, if a "Totals" analysis has a result greater than 100 ppm, this value is 20 times greater than the 5 ppm regulatory limit and is therefore most likely hazardous, then a more concise test (the TCLP test) must be done (for example a TCLP test must be done if the sample concentration is 100 mg/1 for lead which has a regulatory limit of 5 md/1). The Toxicity Characteristic Leaching Procedure (TCLP) test determines more accurately the level of heavy metals in the waste. These procedures are outlined in EPA Publication SW-846.

Care should be taken to keep solvents and oily sludge out of the sludge waste streams. The solvents may also make the sludge hazardous and should be tested using the TCLP test mentioned above.

Once the facility determines which waste streams are hazardous, it is very important to calculate the total quantity of hazardous waste generated in order to determine the facility's regulatory category. The three different types of generators and their regulatory requirements are:

1. **Conditionally Exempt Small Quantity Generator (CESQG):** generates less than 220 pounds or 100 kilograms of hazardous waste per month. A **CESQG** cannot accumulate more than 2,200 pounds or 1000 kilograms. This quantity must include all waste solvents and antifreeze. But it does not include waste oil, which is not considered a hazardous waste.

   CESQG's may dispose of hazardous waste by mixing it with a solid waste to the point where it is no longer a liquid and taking it to the local landfill. Ask your local landfill if this is acceptable. Some landfills will accept it, some may not. Whenever possible HWB recommends that hazardous waste especially antifreeze be recycled, and not disposed of in the landfill.

2. **Small Quantity Generator (SQG): is** a generator of between 220 pounds and 2,200 pounds or 100 kilograms and 1000 kilograms of hazardous waste generated per month. No more than 13,200 or 6000 kilograms may be stored on site any longer than 180 days. If you exceed this quantity, you become a Large Quantity Generator. A **SQG** must comply with all applicable regulations found in 20 NMAC 4.1.301 and 801, which incorporates the federal regulations 40 CFR Parts 262 and 268. Correct storage of hazardous waste includes labeling as hazardous waste, manifesting the shipments, weekly inspections of the storage facility and more. Waste may not be stored for 180 days and must be disposed of at a facility permitted to treat, store, or dispose of hazardous waste.
3. **Large Quantity Generator (LQG):** is a facility that generates more than 2,200 pounds or 1000 kilograms of hazardous waste per month. An **LQG** must comply with all of the regulations the SQG complies with and more.

LQG's may only accumulate waste for only 90 days before it is required to be hauled off. A permit must be obtained to accumulate for longer time periods.

Above all else, avoid disposing of any hazardous waste on-site, which is illegal and may subject the facility to significant fines, unless the facility has a permit to operate a disposal facility. Please note that the regulatory requirements for a CESQG are the least burdensome. Therefore, most facilities will choose to operate as a CESQG.

The New Mexico Environment Department wishes to assist the regulated community in complying with all applicable regulations. Please contact the Technical Assistance Section of the Hazardous Waste Bureau for further information and assistance (505/827-1557). This assistance will provide information to the business owner free of fear or fines or penalties and six-month amnesty from the enforcement section is provided to those to take advantage of the program.

Attachment B

Type or print all information. See reverse for instructions.

CLASS V WELL PRE-CLOSURE NOTIFICATION FORM
NEW MEXICO ENVIRONMENT DEPARTMENT
GROUND WATER QUALITY BUREAU

1. Name of facility:_____

   Address of facility:_____

   _____

   City/Town:_____ State:_____ Zip Code:_____

   County:_____ Location:_____

2. Name of Owner/Operator:_____

   Address of Owner/Operator:_____

   _____

   City/Town:_____ State:_____ Zip Code:_____

   Legal Contact:_____ Phone Number:_____

3. Type of well(s):_____ Number of Wells:_____

4. Well construction (check all that apply):

☐ Drywell ☐ Septic Tank ☐ Cesspool
☐ Improved sinkhole ☐ Drainfield/leachfield ☐ Other:_____

5. Type of discharge:_____

   _____

6. Average flow (gallons/day):_____ Year of well Construction:_____

8. Type of well closure (check all that apply):

☐ Sample fluids/sediments ☐ Clean out well
☐ Appropriate disposal of remaining fluids/sediments ☐ Install permanent plug
☐ Remove well & any contaminated soil ☐ Conversion to other well type

☐ Other (describe):_____

9. Proposed date of well closure:_____

10. Name of preparer:_____ Date:_____

INSTRUCTIONS

You must complete this form to notify NMED that you intend to close an Underground Injection Control (UIC) well at your facility. You may complete one form for more than one of the same type of well at each facility. For example, if you will be closing two drywells that are of similar construction at your facility, you may use one form.

The numbers below correspond to the numbers on the form.

1. Supply the name and street address of the facility where the well(s) is located. Include the City/Town, State (U.S. Postal Service abbreviation) and Zip Code. If there is no street address for the well, provide the route number or locate the well(s) on a map. If available, for the "Location" provide the Latitude/Longitude of the well or the legal description of the facility.

2. Provide the name and mailing address of the owner of the facility or if the facility is operated by lease, the operator of the facility. Include the name and phone number of the legal contact for any questions regarding the information provided.

3. Indicate the type of well that you intend to close. For example, a motor vehicle waste disposal well or cesspool. Provide the number of well of this well type at your location that will be closed.

4. Mark an "x" in the appropriate box to indicate the type of well construction. Mark all that apply to your situation. For example, for a septic tank that drains into a drywell, mark both the "septic tank" and "drywell" boxes. Please provide a generalized sketch or schematic of the well construction if available.

5. List or describe the types of fluids that enter the well. If available, attach a copy of the chemical analysis results and/or the Material Safety Data Sheets for the fluids that enter the well.

6. Estimate the average daily flow in to the well in gallons per day.

7. Provide the year that the well was constructed. If unknown, provide the length of time that your business has been at this location and using this well.

8. Mark an "x" in the appropriate box(s) to indicate briefly how the well closure is expected to proceed. Mark all that apply to your situation. For example, all boxes except the "Remove well & any contaminated soil" and "Other" would be marked if: the connection of an automotive service bay drain leading to a septic tank and drainfield will be closed, but the septic system well continue to be used for washroom waste disposal only, and the fluids and sludge throughout the system will be removed for proper disposal, the system cleaned, a cement plug placed in the service bay drain and the pipe leading to the washroom connection, and the septic tank/drainfield remains open for septic use only.

9. Self explanatory.

10. Self explanatory.

The purpose of this form is to serve as the means for the well owner or operator's notice to NMED of their intent to close the well in accordance with the New Mexico Water Quality Control Commission (WQCC) Regulations. According to 20 NMAC 6.2.5005, you must notify NMED at least 30 days prior to well closure of your intent to close and abandon your well. Upon receipt of this form, if NMED determines that more specific information is required to be submitted to ensure that the well closure will be conducted in a manner that will protect ground water quality, NMED can require the owner/operator to prepare, submit and comply with a closure plan acceptable to, and approved by NMED.

Please be advised that this form is intended to satisfy WQCC Regulations regarding pre-closure notification only. Other state, or local requirements may also apply.

Historical

NMAC TRANSMITTAL FORM

1.24.10 NMAC

[Sequence # 2.43 c

Vol. XII No. 20 10-31-2001

1. Issuing Agency	2. Agency Code (DFA)
Water Quality Control Commission	667

3. Agency Address
P.O. Box 26110 Santa Fe, NM 87502

4. Contact Person					
Name	Marcy Leavitt	Phone #	(505) 827-2919	FAX	(505) 827-2965
E-mail	Marcy_Leavitt@nmenv.state.nm.us				

5. Type of Rule Action							
New		Amendment	X	Renumber		Repeal		Emergency	

6. Total number of pages:	35 51	7. Hearing date:	8/14/01	8. Effective date:	12/01/01

9. NMAC Number		
Title	Chapter	Part
20	6	2

10. NMAC Name		
Title	Chapter	Part
Environmental Protection	Water Quality	Ground and Surface Water Protection

11. Amendment Description	12 Amendment's NMAC Citation
Amends 35 sections of the Water Quality Control Commission Regulations, 20.6.2 NMAC	20.6.2.7, 9, 1201-1203, 3104 - 3112, 5000-5300 NMAC

13 Most recent filing date (if applicable)

11 / 30 / 00

14 Are there any materials incorporated by reference?

No X Yes ____ Please list attachments and Internet site(s) if

Reference / Internet site

1.

15 If materials are attached, has copyright permission been received?

No ☐ Yes ☐ Public domain ☐

16 Legal citation(s) that allows the Issuing Agency to regulate and the Issuing Authority to promulgate regulations on this subject (provide all that apply).

Subsection D of Section 74-6-4 NMSA 1978

17 Signature & Title of Issuing Authority (Delegated authority must be on file)

Name: Peter Maggiore Check if delegated authority ☐

Title: Chairman, Water Quality Control Commission

Peter Maggiore
Signature

10/15/01
Date Signed

FILED WITH STATE RECORDS CENTER
2001 OCT 15 PM 2:47

SRC-2000-02
5/26/2000

Explanatory paragraph: This explanatory paragraph summarizes amendments to 20.6.2 NMAC which are described as follows:
1. 20.6.2.9, 1201, 1202, 1203 NMAC - "Ground Water Protection and Remediation Bureau" changed to "Ground Water Quality Bureau"
2. 20.6.2.7, 3104, 3105, 3106, 3107, 3108, 3109, 3110, 3111, 3112, 5101, 5102, 5103, 5104, 5206, 5207, 5209, 5210 NMAC - "Discharge plan", "approved discharge plan", "approved plan", "plan" changed to "discharge permit" where appropriate to distinguish the plan submitted to the agency by the discharger from the permit issued by the agency which may incorporate all or part of the submitted plan.
3. 20.6.2.3109, 5002, 5004, 5101, 5102, 5103, 5104, 5200, 5201, 5202, 5203, 5204, 5205, 5206, 5207, 5208, 5209, 5210 NMAC - "Effluent disposal well" and "in situ extraction well" changed to "Class I non-hazardous well" and "Class III well," respectively.
4. 20.6.2.7 NMAC - Insertion of new definitions "cesspool," " drywell," " improved sinkhole," "motor vehicle waste disposal well," "subsurface fluid distribution system," and "discharge permit."
5. 20.6.2.7 NMAC - Amendment of definition "well."
6. 20.6.2.7 NMAC - Deletion of definitions "barrier well," "drainage well," "old stope leaching," "recharge well," "return flow well," "sand backfilling," "effluent disposal well," and "in situ extraction well."
7. 20.6.2.1201 NMAC - Insertion of two subsections amending notice of intent requirements.
8. 20.6.2.1201 NMAC - Amendment to closure plan requirement.
Amendments to the section titles.
9. 20.6.2.5001 NMAC - Insertion of a purpose section for underground injection control (UIC) wells.
10. 20.6.2.5002 NMAC - Insertion of a classification section for UIC wells.
11. 20.6.2.5004 NMAC - Insertion of a prohibited wells and activities section.
12. 20.6.2.5005 NMAC - Insertion of a pre-closure notification and closure requirements section for UIC wells.
13. 20.6.2.5006 NMAC - Insertion of a requirements for Class V UIC wells section.
14. 20.6.2.5101 NMAC - Amendment to requirements for Class I and III wells.
15. 20.6.2.5209 NMAC - Amendment to closure plan requirement for UIC wells.
16. 20.6.2.5300 NMAC moved to 20.6.2.5003 NMAC

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 6 WATER QUALITY
PART 2 GROUND AND SURFACE WATER PROTECTION

20.6.2.7 DEFINITIONS: Terms defined in the Water Quality Act, but not defined in this Part, will have the meaning given in the Act. As used in this Part:

A. "abandoned well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be rehabilitated for its intended purpose or other purposes including monitoring and observation;

B. "abate" or "abatement" means the investigation, containment, removal or other mitigation of water pollution;

C. "abatement plan" means a description of any operational, monitoring, contingency and closure requirements and conditions for the prevention, investigation and abatement of water pollution, and includes Stage 1, Stage 2, or Stage 1 and 2 of the abatement plan, as approved by the secretary;

D. "background" means, for purposes of ground-water abatement plans only and for no other purposes in this Part or any other regulations including but not limited to surface-water standards, the amount of ground-water contaminants naturally occurring from undisturbed geologic sources or water contaminants which the responsible person establishes are occurring from a source other than the responsible person's facility. This definition shall not prevent the secretary from requiring abatement of commingled plumes of pollution, shall not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons, and shall not preclude the secretary from exercising enforcement authority under any applicable statute, regulation or common law.

[~~**E. "barrier well"** means a well used to inject fluids into ground water to prevent the intrusion of saline or contaminated water into ground water of better quality;~~]

[~~F.~~] E. **"casing"** means pipe or tubing of appropriate material, diameter and weight used to support the sides of a well hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent fluid from entering or leaving the well other than to or from the injection zone;

[~~G.~~] F. **"cementing"** means the operation whereby a cementing slurry is pumped into a drilled hole and/or forced behind the casing;

G. **"cesspool"** means a "drywell" that receives untreated domestic liquid waste containing human excreta, and which sometimes has an open bottom and/or perforated sides. A large capacity cesspool means a cesspool that receives greater than 2,000 gallons per day of untreated domestic liquid waste;

H. **"collapse"** means the structural failure of overlying materials caused by removal of underlying materials;

I. **"commission"** means:

(1) the New Mexico Water Quality Control Commission or

(2) the Department, when used in connection with any administrative and enforcement activity;

J. **"confining zone"** means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement from an injection zone;

K. **"conventional mining"** means the production of minerals from an open pit or underground excavation. Underground excavations include mine shafts, workings and air vents, but does not include excavations primarily caused by in situ extraction activities;

L. **"daily composite sample"** means a sample collected over any twenty-four hour period at intervals not to exceed one hour and obtained by combining equal volumes of the effluent collected, or means a sample collected in accordance with federal permit conditions where a permit has been issued under the National Pollutant Discharge Elimination System or for those facilities which include a waste stabilization pond in the treatment process where the retention time is greater than twenty (20) days, means a sample obtained by compositing equal volumes of at least two grab samples collected within a period of not more than twenty-four (24) hours;

M. **"department", "agency", or "division"** means the New Mexico Environment Department or a constituent agency designated by the commission.

N. **"discharge permit modification"** means a change in requirements of a discharge permit as requested by the discharger as a result of past, present or anticipated changes in the quality or quantity of effluent or the location of the discharge; or as required by the secretary.

O. **"discharge plan"** means a description of any operational, monitoring , contingency, and closure requirements and conditions for any discharge of effluent or leachate which may move directly or indirectly into ground water.

P. **"discharge permit"** means a discharge plan approved by the department;

[~~P.~~]Q. **"disposal"** means to abandon, deposit, inter or otherwise discard a fluid as a final action after its use has been achieved;

[~~Q.~~]R. **"domestic liquid waste"** means human excreta and water-carried waste from typical residential plumbing fixtures and activities, including but not limited to waste from toilets, sinks, bath fixtures, clothes or dishwashing machines and floor drains;

[~~R.~~]S. **"domestic liquid waste treatment unit"** means a watertight unit designed, constructed and installed to stabilize only domestic liquid waste and to retain solids contained in such domestic liquid waste, including but not limited to aerobic treatment units and septic tanks;

~~[S. "drainage well" means a well used to drain storm runoff into a subsurface formation;]~~

[~~S.~~] T. **"drywell"** means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids;

~~[T. "effluent disposal well" means a well which is used for the disposal of fluids which may have the potential to cause water pollution. Wells used in the following practices are not effluent disposal wells: conventional mining, old stope leaching and sand backfilling. Wells where the emplacement of fluids is limited to natural ground water seeping or flowing into conventional mine workings are not effluent disposal wells. Barrier wells, drainage wells, recharge wells, and return flow wells are not effluent disposal wells if the discharger can demonstrate that the discharge will not adversely affect the health of persons, and~~

~~(1) the injection fluid does not contain a contaminant which may cause an exceedance at any place of present or reasonable foreseeable future use of any primary state drinking water maximum contaminant level as specified in the "Water Supply Regulations" (20.7.1 NMAC) adopted by the Environmental Improvement Board under the Environmental Improvement Act; or~~

~~(2) the discharger can demonstrate that the injection will result in an overall or net improvement in water quality as determined by the secretary.~~]

U. **"experimental technology"** means a technology which has not been proven feasible under the conditions in which it is being tested;

V. **"fluid"** means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state;

W. **"ground water"** means interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply;

X. **"hazard to public health"** exists when water which is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of such use, one or more of the numerical standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, or if any toxic pollutant affecting human health is present in the water. In determining whether a discharge would cause a hazard to public health to exist, the secretary shall investigate and consider the purification and dilution reasonably expected to occur from the time and place of discharge to the time and place of withdrawal for use as human drinking water;

Y. **"improved sinkhole"** means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface;

[~~**Y.**~~]**Z.** **"injection"** means the subsurface emplacement of fluids through a well;

[~~**Z.**~~]**AA.** **"injection zone"** means a geological formation, group of formations, or part of a formation receiving fluids through a well;

[~~**AA. "in situ extraction well"** means a well which injects fluids for mineral extraction, except 1) conventional mines, 2) old stope leaching, 3) the extraction of oil, natural gas, or gas extracted from coal gasification, 4) wells for which the discharger can demonstrate use as part of an experimental technology;~~]

BB. **"motor vehicle waste disposal well"** means a well which receives or has received fluids from vehicular repair or maintenance activities;

[~~**BB.**~~]**CC.** **"non-aqueous phase liquid"** means an interstitial body of liquid oil, petroleum product, petrochemical, or organic solvent, including an emulsion containing such material;

[~~**CC. "old stope leaching"** means the circulation of waters through the mined areas of conventional mines with or without the addition of chemicals, for the purpose of extraction of minerals;~~]

DD. **"operational area"** means a geographic area defined in a project [~~discharge plan~~] discharge permit where a group of wells or well fields in close proximity comprise a single [~~in situ extraction well~~] Class III well operation;

EE. **"packer"** means a device lowered into a well to produce a fluid-tight seal within the casing;

FF. **"person"** means an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees;

GG. **"petitioner"** means a person seeking a variance from a regulation of the commission pursuant to Section 74-6-4(G) NMSA 1978;

HH. **"plugging"** means the act or process of stopping the flow of water, oil or gas into or out of a geological formation, group of formations or part of a formation through a borehole or well penetrating these geologic units;

II. **"project discharge [~~plan~~] permit"** means a discharge [~~plan~~] permit which describes the operation of similar [~~in situ extraction wells~~] Class III wells or well fields within one or more individual operational areas;

[~~**JJ. "recharge well"** means a well used to inject fluids for the replenishment of ground water, including use to reclaim or improve the quality of existing ground water, or to eliminate subsidence associated with the overdraft of fresh water;~~]

[~~KK.~~] JJ. **"refuse"** includes food, swill, carrion, slops and all substances from the preparation, cooking and consumption of food and from the handling, storage and sale of food products, the carcasses of animals, junked parts of automobiles and other machinery, paper, paper cartons, tree branches, yard trimmings, discarded furniture, cans, oil, ashes, bottles, and all unwholesome material;

[~~LL.~~] KK. **"responsible person"** means a person who is required to submit an abatement plan or who submits an abatement plan pursuant to this Part;

~~[MM. "return flow well" means a well used to return to the supply aquifer, or to other ground water, the water used for heating or cooling for any purpose provided that the water does not receive any additional chemical or biological water contaminants other than heat or the absence thereof;]~~

~~[NN. "sand backfilling" means the injection of a mixture of water and sand, mill tailings or other solids into underground conventional mines;]~~

[~~OO.~~] LL. **"secretary"** or "director" means the secretary of the New Mexico Department of Environment or the director of a constituent agency designated by the commission;

[~~PP.~~] MM. **"sewer system"** means pipelines, conduits, pumping stations, force mains, or other structures, devices, appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

[~~QQ.~~] NN. **"sewerage system"** means a system for disposing of wastes, either by surface or underground methods, and includes sewer systems, treatment works, disposal wells and other systems;

[~~RR.~~] OO. **"significant modification of Stage 2 of the abatement plan"** means a change in the abatement technology used excluding design and operational parameters, or re-location of 25 percent or more of the compliance sampling stations, for any single medium, as designated pursuant to Paragraph (4) of Subsection E of 20.6.2.4106 NMAC;

PP. **"subsurface fluid distribution system"** means an assemblage of perforated pipes, drain tiles, or other mechanisms intended to distribute fluids below the surface of the ground;

[~~SS.~~] QQ. **"subsurface water"** means ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation;

[~~TT.~~] RR. **"TDS"** means total dissolved solids as determined by the "calculation method" (sum of constituents), by the "residue on evaporation method at 180 degrees" of the "U.S. Geological Survey Techniques of Water Resource Investigations," or by conductivity, as the secretary may determine;

[~~UU.~~] SS. **"toxic pollutant"** means a water contaminant or combination of water contaminants in concentration(s) which, upon exposure, ingestion, or assimilation either directly from the environment or indirectly by ingestion through food chains, will unreasonably threaten to injure human health, or the health of animals or plants which are commonly hatched, bred, cultivated or protected for use by man for food or economic benefit. As used in this definition injuries to health include death, histopathologic change, clinical symptoms of disease, behavioral abnormalities, genetic mutation, physiological malfunctions or physical deformations in such organisms or their offspring. In order to be considered a toxic pollutant a contaminant must be one or a combination of the potential toxic pollutants listed below and be at a concentration shown by scientific information currently available to the public to have potential for causing one or more of the effects listed above. Any water contaminant or combination of the water contaminants in the list below creating a lifetime risk of more than one cancer per 100,000 exposed persons is a toxic pollutant.

acrolein
acrylonitrile
aldrin
benzene
benzidine
carbon tetrachloride
chlordane
chlorinated benzenes
    monochlorobenzene
    hexachlorobenzene
    pentachlorobenzene
1,2,4,5-tetrachlorobenzene
chlorinated ethanes
    1,2-dichloroethane

- hexachloroethane
- 1,1,2,2-tetrachloroethane
- 1,1,1-trichloroethane
- 1,1,2-trichloroethane

chlorinated phenols
- 2,4-dichlorophenol
- 2,4,5-trichlorophenol
- 2,4,6-trichlorophenol

chloroalkyl ethers
- bis (2-chloroethyl) ether
- bis (2-chloroisopropyl) ether
- bis (chloromethyl) ether

chloroform
DDT
dichlorobenzene
dichlorobenzidine
1,1-dichloroethylene
dichloropropenes
dieldrin
2,4-dinitrotoluene
diphenylhydrazine
endosulfan
endrin
ethylbenzene
halomethanes
- bromodichloromethane
- bromomethane
- chloromethane
- dichlorodifluoromethane
- dichloromethane
- tribromomethane
- trichlorofluoromethane

heptachlor
hexachlorobutadiene
hexachlorocyclohexane (HCH)
- alpha-HCH
- beta-HCH
- gamma-HCH
- technical HCH

hexachlorocyclopentadiene
isophorone
nitrobenzene
nitrophenols
- 2,4-dinitro-o-cresol
- dinitrophenols

nitrosamines
- N-nitrosodiethylamine
- N-nitrosodimethylamine
- N-nitrosodibutylamine
- N-nitrosodiphenylamine
- N-nitrosopyrrolidine

pentachlorophenol
phenol
phthalate esters
- dibutyl phthalate
- di-2-ethylhexyl phthalate

diethyl phthalate
dimethyl phthalate
polychlorinated biphenyls (PCB's)
polynuclear aromatic hydrocarbons (PAH)
anthracene
3,4-benzofluoranthene
benzo (k) fluoranthene
fluoranthene
fluorene
phenanthrene
pyrene
tetrachloroethylene
toluene
toxaphene
trichloroethylene
vinyl chloride
xylenes
o-xylene
m-xylene
p-xylene
1,1-dichloroethane
ethylene dibromide (EDB)
cis-1,2-dichloroethylene
trans-1,2-dichloroethylene
naphthalene
1-methylnaphthalene
2-methylnaphthalene
benzo-a-pyrene

[~~VV.~~] TT. "vadose zone" means earth material below the land surface and above ground water, or in between bodies of ground water;

[~~WW.~~] UU. "wastes" means sewage, industrial wastes, or any other liquid, gaseous or solid substance which will pollute any waters of the state;

[~~XX.~~] VV. "water" means all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water;

[~~YY.~~] WW. "water contaminant" means any substance that could alter if discharged or spilled the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954;

[~~ZZ.~~] XX. "watercourse" means any river, creek, arroyo, canyon, draw, or wash, or any other channel having definite banks and beds with visible evidence of the occasional flow of water;

[~~AAA.~~] YY. "water pollution" means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property.

~~[BBB. "well" means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension; and];~~

ZZ. "well" means: (1) A bored, drilled, or driven shaft; (2) A dug hole whose depth is greater than the largest surface dimension; (3) An improved sinkhole; or (4) A subsurface fluid distribution system;

[~~CCC.~~] AAA. "well stimulation" means a process used to clean the well, enlarge channels, and increase pore space in the interval to be injected, thus making it possible for fluids to move more readily into the injection zone. Well stimulation includes, but is not limited to, (1) surging, (2) jetting, (3) blasting, (4) acidizing, (5) hydraulic fracturing.

20.6.2.9 DOCUMENTS: Documents referenced in the Part may be viewed at the New Mexico Environment Department, [~~Ground Water Protection and Remediation Bureau~~] Ground Water Quality Bureau, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

20.6.2.1201 NOTICE OF INTENT TO DISCHARGE:

A. Any person intending to make a new water contaminant discharge or to alter the character or location of an existing water contaminant discharge, unless the discharge is being made or will be made into a community sewer system or subject to the Liquid Waste Disposal Regulations adopted by the New Mexico Environmental Improvement Board, shall file a notice with the [~~Ground Water Protection and Remediation~~] Ground Water Quality Bureau of the department for discharges that may affect ground water, and/ or the Surface Water Quality Bureau of the department for discharges that may affect surface water. However, notice regarding discharges from facilities for the production, refinement, pipeline transmission of oil and gas or products thereof, the oil field service industry, oil field brine production wells, geothermal installations and carbon dioxide facilities shall be filed instead with the Oil Conservation Division.

B. Any person intending to inject fluids into a well, including a subsurface distribution system, unless the injection is being made subject to the Liquid Waste Disposal Regulations adopted by the New Mexico Environmental Improvement Board, shall file a notice with the Ground Water Quality Bureau of the department. However notice regarding injection to wells associated with oil and gas facilities as described in Subsection A of Section 20.6.2.1201 NMAC shall be filed instead with the Oil Conservation Division.

[~~B.~~] **C.** Notices shall state:

(1) the name of the person making the discharge;
(2) the address of the person making the discharge;
(3) the location of the discharge;
(4) an estimate of the concentration of water contaminants in the discharge; and
(5) the quantity of the discharge.

D. Based on information provided in the notice of intent, the department will notify the person proposing the discharge as to which of the following apply:

(1) a discharge permit is required;
(2) a discharge permit is not required;
(3) the proposed injection well will be added to the department's underground injection well inventory;
(4) the proposed injection activity or injection well is prohibited pursuant to 20.6.2.5004 NMAC.

20.6.2.1202 FILING OF PLANS AND SPECIFICATIONS--SEWERAGE SYSTEMS:

A. Any person proposing to construct a sewerage system or proposing to modify any sewerage system in a manner that will change substantially the quantity or quality of the discharge from the system shall file plans and specifications of the construction or modification with the [~~Ground Water Protection and Remediation Bureau~~] Ground Water Quality Bureau of the department for discharges that may affect ground water, and/or the Surface Water Quality Bureau of the department for discharges that may affect surface water. Modifications having a minor effect on the character of the discharge from sewerage systems shall be reported as of January 1 and June 30 of each year to the [~~Ground Water Protection and Remediation Bureau~~] Ground Water Quality Bureau of the department for discharges that may affect ground water, or the Surface Water Quality Bureau of the department for discharges that may affect surface water.

B. Plans, specifications and reports required by this Section, if related to facilities for the production, refinement and pipeline transmission of oil and gas, or products thereof, shall be filed instead with the Oil Conservation Division.

C. Plans and specifications required to be filed under this Section must be filed prior to the commencement of construction.

20.6.2.1203 NOTIFICATION OF DISCHARGE—REMOVAL:

A. With respect to any discharge from any facility of oil or other water contaminant, in such quantity as may with reasonable probability injure or be detrimental to human health, animal or plant life, or property, or unreasonably interfere with the public welfare or the use of property, the following notifications and corrective actions are required:

(1) As soon as possible after learning of such a discharge, but in no event more than twenty-four (24) hours thereafter, any person in charge of the facility shall orally notify the Chief of the

[~~Ground Water Protection and Remediation Bureau~~] Ground Water Quality Bureau of the department, or his counterpart in any constituent agency delegated responsibility for enforcement of these rules as to any facility subject to such delegation. To the best of that person's knowledge, the following items of information shall be provided:

(a) the name, address, and telephone number of the person or persons in charge of the facility, as well as of the owner and/or operator of the facility;

(b) the name and address of the facility;

(c) the date, time, location, and duration of the discharge

(d) the source and cause of discharge;

(e) a description of the discharge, including its chemical composition;

(f) the estimated volume of the discharge; and

(g) any actions taken to mitigate immediate damage from the discharge.

(2) When in doubt as to which agency to notify, the person in charge of the facility shall notify the Chief of the [~~Ground Water Protection and Remediation Bureau~~] Ground Water Quality Bureau of the department. If that department does not have authority pursuant to commission delegation, the department shall notify the appropriate constituent agency.

(3) Within one week after the discharger has learned of the discharge, the facility owner and/or operator shall send written notification to the same department official, verifying the prior oral notification as to each of the foregoing items and providing any appropriate additions or corrections to the information contained in the prior oral notification.

(4) The oral and written notification and reporting requirements contained in this Subsection A are not intended to be duplicative of discharge notification and reporting requirements promulgated by the Oil Conservation Commission (OCC) or by the Oil Conservation Division (OCD); therefore, any facility which is subject to OCC or OCD discharge notification and reporting requirements need not additionally comply with the notification and reporting requirements herein.

(5) As soon as possible after learning of such a discharge, the owner/operator of the facility shall take such corrective actions as are necessary or appropriate to contain and remove or mitigate the damage caused by the discharge.

(6) If it is possible to do so without unduly delaying needed corrective actions, the facility owner/operator shall endeavor to contact and consult with the Chief of the [~~Ground Water Protection and Remediation Bureau~~] Ground Water Quality Bureau of the department or appropriate counterpart in a delegated agency, in an effort to determine the department's views as to what further corrective actions may be necessary or appropriate to the discharge in question. In any event, no later than fifteen (15) days after the discharger learns of the discharge, the facility owner/operator shall send to said Bureau Chief a written report describing any corrective actions taken and/or to be taken relative to the discharge. Upon a written request and for good cause shown, the Bureau Chief may extend the time limit beyond fifteen (15) days.

(7) The Bureau Chief shall approve or disapprove in writing the foregoing corrective action report within thirty (30) days of its receipt by the department. In the event that the report is not satisfactory to the department, the Bureau Chief shall specify in writing to the facility owner/operator any shortcomings in the report or in the corrective actions already taken or proposed to be taken relative to the discharge, and shall give the facility owner/operator a reasonable and clearly specified time within which to submit a modified corrective action report. The Bureau Chief shall approve or disapprove in writing the modified corrective action report within fifteen (15) days of its receipt by the department.

(8) In the event that the modified corrective action report also is unsatisfactory to the department, the facility owner/operator has five (5) days from the notification by the Bureau Chief that it is unsatisfactory to appeal to the department secretary. The department secretary shall approve or disapprove the modified corrective action report within five (5) days of receipt of the appeal from the Bureau Chief's decision. In the absence of either corrective action consistent with the approved corrective action report or with the decision of the secretary concerning the shortcomings of the modified corrective action report, the department may take whatever enforcement or legal action it deems necessary or appropriate.

(9) If the secretary determines that the discharge causes or may with reasonable probability cause water pollution in excess of the standards and requirements of Section 20.6.2.4103 NMAC, and the water pollution will not be abated within one hundred and eighty (180) days after notice is required to be given pursuant to Paragraph (1) of Subsection A of Section 20.6.2.1203 NMAC, the secretary may notify the facility owner/operator that he is a responsible person and that an abatement plan may be required pursuant to Section 20.6.2.4104 and Subsection A of Section 20.6.2.4106 NMAC.

B. Exempt from the requirements of this Section are continuous or periodic discharges which are made:

(1) in conformance with regulations of the commission and rules, regulations or orders of other state or federal agencies; or

(2) in violation of regulations of the commission, but pursuant to an assurance of discontinuance or schedule of compliance approved by the commission or one of its duly authorized constituent agencies.

C. As used in this Section and in Sections 20.6.2.4100 through 20.6.2.4115 NMAC, but not in other Sections of this Part:

(1) "discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping into water or in a location and manner where there is a reasonable probability that the discharged substance will reach surface or subsurface water;

(2) "facility" means any structure, installation, operation, storage tank, transmission line, motor vehicle, rolling stock, or activity of any kind, whether stationary or mobile;

(3) "oil" means oil of any kind or in any form including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes;

(4) "operator" means the person or persons responsible for the overall operations of a facility; and

(5) "owner" means the person or persons who own a facility, or part of a facility.

D. Notification of discharge received pursuant to this Part or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except for perjury or for giving a false statement.

E. Any person who has any information relating to any discharge from any facility of oil or other water contaminant, in such quantity as may with reasonable probability injure or be detrimental to human health, animal or plant life, or property, or unreasonably interfere with the public welfare or the use of property, is urged to notify the Chief of the [~~Ground Water Protection and Remediation Bureau~~] Ground Water Quality Bureau of the department. Upon such notification, the secretary may require an owner/operator or a responsible person to perform corrective actions pursuant to Paragraphs (5) and (9) of Subsection A of Section 20.6.2.1203 NMAC.

20.6.2.3104 DISCHARGE [~~PLAN~~] PERMIT REQUIRED: Unless otherwise provided by this Part, no person shall cause or allow effluent of leachate to discharge so that it may move directly of indirectly into ground water unless he is discharging pursuant to a discharge [~~plan approved~~] permit issued by the secretary. When a [~~plan~~] permit has been [~~approved~~] issued, discharges must be consistent with the terms and conditions of the [~~plan~~] permit. In the event of a transfer of the ownership, control, or possession of a facility for which [~~an approved discharge plan~~] a discharge permit is in effect, the transferee shall have authority to discharge under such [~~plan~~] permit, provided that the transferee has complied with Section 20.6.2.3111 NMAC, regarding transfers.

20.6.2.3105 EXEMPTIONS FROM DISCHARGE [~~PLAN~~] PERMIT REQUIREMENT: Sections 20.6.2.3104 and 20.6.2.3106 NMAC do not apply to the following:

A. Effluent or leachate which conforms to all the listed numerical standards of Section 20.6.2.3103 NMAC and has a total nitrogen concentration of 10 mg/l or less, and does not contain any toxic pollutant. To determine conformance, samples may be taken by the agency before the effluent or leachate is discharged so that it may move directly or indirectly into ground water; provided that if the discharge is by seepage through non-natural or altered natural materials, the agency may take samples of the solution before or after seepage. If for any reason the agency does not have access to obtain the appropriate samples, this exemption shall not apply;

B. Effluent which is discharged from a sewerage system used only for disposal of household and other domestic waste which is designed to receive and which receives 2,000 gallons or less of liquid waste per day;

C. Water used for irrigated agriculture, for watering of lawns, trees, gardens or shrubs, or for irrigation for a period not to exceed five years for the revegetation of any disturbed land area, unless that water is received directly from any sewerage system;

D. Discharges resulting from the transport or storage of water diverted, provided that the water diverted has not had added to it after the point of diversion any effluent received from a sewerage

system, that the source of the water diverted was not mine workings, and that the secretary has not determined that a hazard to public health may result;

E. Effluent which is discharged to a watercourse which is naturally perennial; discharges to dry arroyos and ephemeral streams are not exempt from the discharge [~~plan~~] permit requirement, except as otherwise provided in this section;

F. Those constituents which are subject to effective and enforceable effluent limitations in a National Pollutant Discharge Elimination System (NPDES) permit, where discharge onto or below the surface of the ground so that water contaminants may move directly or indirectly into ground water occurs downstream from the outfall where NPDES effluent limitations are imposed, unless the secretary determines that a hazard to public health may result. For purposes of this subsection, monitoring requirements alone do not constitute effluent limitations;

G. Discharges resulting from flood control systems;

H. Leachate which results from the direct natural infiltration of precipitation through disturbed materials, unless the secretary determines that a hazard to public health may result;

I. Leachate which results entirely from the direct natural infiltration of precipitation through undisturbed materials;

J. Leachate from materials disposed of in accordance with the Solid Waste Management Regulations (20 NMAC 9.1) adopted by the New Mexico Environmental Improvement Board;

K. Natural ground water seeping or flowing into conventional mine workings which re-enters the ground by natural gravity flow prior to pumping or transporting out of the mine and without being used in any mining process; this exemption does not apply to solution mining;

L. Effluent or leachate discharges resulting from activities regulated by a mining plan approved and permit issued by the New Mexico Coal Surface Mining Commission, provided that this exemption shall not be construed as limiting the application of appropriate ground water protection requirements by the New Mexico Coal Surface Mining Commission;

M. Effluent or leachate discharges which are regulated by the Oil Conservation Commission and the regulation of which by the Water Quality Control Commission would interfere with the exclusive authority granted under Section 70-2-12 NMSA 1978, or under other laws, to the Oil Conservation Commission.

20.6.2.3106 APPLICATION FOR DISCHARGE [~~PLAN APPROVALS~~] PERMITS AND RENEWALS:

A. Any person who, before or on June 18, 1977, is discharging any of the water contaminants listed in Section 20.6.2.3103 NMAC or any toxic pollutant so that they may move directly or indirectly into ground water shall, within 120 days of receipt of written notice from the secretary that a discharge [~~plan~~] permit is required, or such longer time as the secretary shall for good cause allow, submit a discharge plan to the secretary for approval; such person may discharge without [~~an approved discharge plan~~] a discharge permit until 240 days after written notification by the secretary that a discharge [~~plan~~] permit is required or such longer time as the secretary shall for good cause allow.

B. Any person who intends to begin, after June 18, 1977, discharging any of the water contaminants listed in Section 20.6.2.3103 NMAC or any toxic pollutant so that they may move directly or indirectly into ground water shall notify the secretary giving the information enumerated in Subsection B of Section 1201NMAC; the secretary shall, within 60 days, notify such person if a discharge [~~plan~~] permit is required; upon submission, the secretary shall review the discharge plan pursuant to Sections 20.6.2.3108 and 20.6.2.3109 NMAC; for good cause shown, the secretary may allow such person to discharge without [~~an approved plan~~] a discharge permit for a period not to extend beyond February 18, 1978; after February 18, 1978, for good cause shown the secretary may allow such person to discharge without [~~an approved discharge plan~~] a discharge permit for a period not to exceed 120 days.

C. A proposed discharge plan shall set forth in detail the methods or techniques the discharger proposes to use or processes expected to naturally occur which will ensure compliance with this Part. At least the following information shall be included in the plan:

(1) Quantity, quality and flow characteristics of the discharge;

(2) Location of the discharge and of any bodies of water, watercourses and ground water discharge sites within one mile of the outside perimeter of the discharge site, and existing or proposed wells to be used for monitoring;

(3) Depth to and TDS concentration of the ground water most likely to be affected by the discharge;

(4) Flooding potential of the site;

(5) Location and design of site(s) and method(s) to be available for sampling, and for measurement or calculation of flow;

(6) Depth to and lithological description of rock at base of alluvium below the discharge site if such information is available;

(7) Any additional information that may be necessary to demonstrate that [~~approval of the discharge plan~~] the discharge permit will not result in concentrations in excess of the standards of Section 20.6.2.3103 NMAC or the presence of any toxic pollutant at any place of withdrawal of water for present or reasonably foreseeable future use. Detailed information on site geologic and hydrologic conditions may be required for a technical evaluation of the applicant's proposed discharge plan; and

(8) Additional detailed information required for a technical evaluation [~~of effluent disposal wells or in situ extraction wells~~] of underground injection control wells as provided in Sections 20.6.2.5000 through 20.6.2.[~~5300~~] 5299 NMAC.

D. An applicant for a discharge [~~plan~~] permit shall pay fees as specified in Section 20.6.2.3114 NMAC.

E. An applicant for a permit to dispose of or use septage or sludge, or within a source category designated by the commission, may be required by the secretary to file a disclosure statement as specified in 74-6-5.1 of the Water Quality Act.

F. If the holder of [~~an approved discharge plan~~] a discharge permit submits an application for discharge [~~plan~~] permit renewal at least 120 days before the discharge [~~plan~~] permit expires, and the discharger is not in violation of the [~~approved discharge plan~~] discharge permit on the date of its expiration, then the existing [~~approved discharge plan~~] discharge permit for the same activity shall not expire until the application for renewal has been approved or disapproved. A discharge [~~plan~~] permit continued under this provision remains fully effective and enforceable. An application for discharge [~~plan~~] permit renewal must include and adequately address all of the information necessary for evaluation of a new discharge [~~plan~~] permit. Previously submitted materials may be included by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved.

20.6.2.3107 MONITORING, REPORTING, AND OTHER REQUIREMENTS:

A. Each discharge plan shall provide for the following as the secretary may require:

(1) The installation, use, and maintenance of effluent monitoring devices;

(2) The installation, use, and maintenance of monitoring devices for the ground water most likely to be affected by the discharge;

(3) Monitoring in the vadose zone;

(4) Continuation of monitoring after cessation of operations;

(5) Periodic submission to the secretary of results obtained pursuant to any monitoring requirements in the discharge [~~plan~~] permit and the methods used to obtain these results;

(6) Periodic reporting to the secretary of any other information that may be required as set forth in the discharge [~~plan~~] permit;

(7) The discharger to retain for a period of at least five years any monitoring data required in the discharge [~~plan~~] permit;

(8) A system of monitoring and reporting to verify that the [~~plan~~] permit is achieving the expected results;

(9) Procedures for detecting failure of the discharge system;

(10) Contingency plans to cope with failure of the discharge [~~plan~~] permit or system;

(11) A closure plan to prevent the exceedance of standards of Section 20.6.2.3103 NMAC or the presence of a toxic pollutant in ground water after the cessation of operation which includes: a description of closure measures, maintenance and monitoring plans, post-closure maintenance and monitoring plans, financial assurance, and other measures necessary to prevent and/or abate such contamination. The obligation to implement the closure plan as well as the requirements of the closure plan, if any is required, survives the termination or expiration of the permit. A closure plan for any underground injection control well must also incorporate the applicable requirements of Sections 20.6.2.5005 and 20.6.2.5209 NMAC.

B. Sampling and analytical techniques shall conform with the following references unless otherwise specified by the secretary:

(1) Standard Methods for the Examination of Water and Wastewater, latest edition, American Public Health Association; or

(2) Methods for Chemical Analysis of Water and Waste, and other publications of the Analytical Quality Laboratory, EPA; or

(3) Techniques of Water Resource Investigations of the U.S. Geological Survey; or

(4) Annual Book of ASTM Standards. Part 31. Water, latest edition, American Society For Testing and Materials; or

(5) Federal Register, latest methods published for monitoring pursuant to Resource Conservation and Recovery Act regulations; or

(6) National Handbook of Recommended Methods for Water-Data Acquisition, latest edition, prepared cooperatively by agencies of the United States Government under the sponsorship of the U.S. Geological Survey.

C. The discharger shall notify the secretary of any facility expansion, production increase or process modification that would result in any significant modification in the discharge of water contaminants.

D. Any discharger of effluent or leachate shall allow any authorized representative of the secretary to:

(1) inspect and copy records required by a discharge [~~plan~~] permit;

(2) inspect any treatment works, monitoring and analytical equipment;

(3) [~~.~~]sample any effluent before or after discharge;

(4) use monitoring systems and wells installed pursuant to a discharge [~~plan~~] permit requirement in order to collect samples from ground water or the vadose zone.

E. Each discharge [~~plan~~] permit for [~~an effluent disposal well or in situ extraction well~~] an underground injection control well shall incorporate the applicable requirements of Sections 20.6.2.5000 through 20.6.2.[~~5300~~]5299 NMAC.

20.6.2.3108 PUBLIC NOTICE AND PARTICIPATION:

A. Within sixty (60) days of receipt of an application for a discharge [~~plan~~] permit, modification or renewal of [~~an approved discharge plan~~] a discharge permit, the department shall review the application for administrative completeness. To be deemed administratively complete, an application must provide all of the information required for purposes of issuing a public notice pursuant to Subsection C of Section 20.6.2.3108 NMAC. If the department determines that the application is not administratively complete, the department shall notify the applicant of the deficiencies and state what additional information is necessary.

B. Within thirty (30) days of deeming the application administratively complete , the department shall notify the applicant and the following persons:

(1) the public, who shall be notified through publication of a notice in a newspaper of general circulation in this state;

(2) those persons who have requested notification, who shall be notified by mail;

(3) any local, state, federal, tribal or pueblo governmental agency affected which shall be notified by certified mail;

(4) the Governor, Chairperson, or President of each Indian Tribe, Pueblo or Nation within the state of New Mexico, as identified by the department , shall be notified by mail.

C. The public notice shall include:

(1) name of the proposed discharger;

(2) location of the discharge;

(3) brief description of the activities which produce the discharge described in the application;

(4) quantity, quality and flow characteristics of the discharge;

(5) depth to and TDS concentration of the ground water most likely to be affected by the discharge;

(6) brief description of the procedures followed by the secretary in making a final determination;

(7) statement on the comment period; and

(8) address and telephone number at which interested persons may obtain further information.

D. Following the public notice and prior to ruling on any proposed discharge [~~plan~~] permit or its modification or renewal, there shall be a period of at least thirty (30) days during which written comments may be submitted to the department and/or a public hearing requested in writing. All comments will be considered by the department. Requests for a hearing shall be in writing and shall set forth the reasons why a hearing should be held. A public hearing shall be held if the secretary determines there is significant public interest. The department shall notify the applicant of the decision and the reasons therefore in writing.

E. If a hearing is held, pursuant to Subsection D of this section, notice of the hearing shall be given by the department at least thirty (30) days prior to the hearing in accordance with Subsection B of this section. The notice shall include the information identified in Subsection C of this section in addition to the time, place and a brief description of the hearing procedures. The hearing shall be held pursuant to Section 20.6.2.3110 NMAC.

20.6.2.3109 SECRETARY APPROVAL, DISAPPROVAL, MODIFICATION OR TERMINATION OF [~~PROPOSED DISCHARGE PLANS~~] DISCHARGE PERMITS, AND REQUIREMENT FOR ABATEMENT PLANS:

A. The department shall evaluate the proposed discharge plan, modification or renewal based on information contained in the department's administrative record. The department may request from the discharger, either before or after the issuance of the public notice, additional information necessary for the evaluation of the application. The administrative record shall consist of the application, any additional information required by the secretary, any information submitted by the discharger or the general public, other information considered by the department, and, if a public hearing is held, all of the documents filed with the hearing clerk, all exhibits offered into evidence at the hearing, and the written transcript or tape recording of the hearing.

B. The secretary shall, within sixty (60) days after the administrative record is complete and all required information is available , approve, approve with conditions or disapprove the proposed discharge plan, modification or renewal based on the administrative record. The secretary shall give written notice of the action taken to the applicant or permittee and any other person who participated in the permitting action who requests a copy in writing.

C. Provided that the other requirements of this Part are met and the proposed discharge plan, modification or renewal demonstrates that neither a hazard to public health nor undue risk to property will result, the secretary shall approve the proposed discharge plan, modification or renewal if the following requirements are met:

(1) ground water that has a TDS concentration of 10,000 mg/l or less will not be affected by the discharge, or

(2) the person proposing to discharge demonstrates that approval of the proposed discharge plan, modification or renewal will not result in either concentrations in excess of the standards of Section 20.6.2.3103 NMAC or the presence of any toxic pollutant at any place of withdrawal of water for present or reasonably foreseeable future use, except for contaminants in the water diverted as provided in Subsection D of Section 3109 NMAC, or

(3) the proposed discharge plan conforms to either Subsection a or b below and Subsection c below.

(a) Municipal, Other Domestic Discharges, and Discharges from Sewerage Systems Handling Only Animal Wastes. The effluent is entirely domestic, is entirely from a sewerage system handling only animal wastes or is from a municipality and conforms to the following:

(i) the discharge is from an impoundment or a leach field existing on February 18, 1977 which receives less than 10,000 gallons per day and the secretary has not found that the discharge may cause a hazard to public health; or

(ii) the discharger has demonstrated that the total nitrogen in effluent that enters the subsurface from a leach field or surface impoundment will not exceed 200 pounds per acre per year and that the effluent will meet the standards of Section 20.6.2.3103 NMAC except for nitrates and except for contaminants in the water diverted as provided in Subsection D of Section 20.6.2.3109 NMAC.; or

(iii) the total nitrogen in effluent that is applied to a crop which is harvested shall not exceed by more than 25 percent the maximum amount of nitrogen reasonably expected to be taken up by the crop and the effluent shall meet the standards of Section 20.6.2.3103 NMAC except for nitrates and except for contaminants in the water diverted as provided in Subsection D of Section 20.6.2.3109 NMAC.

(b) Discharges from industrial, mining or manufacturing operations.

(i) the discharger has demonstrated that the amount of effluent that enters the subsurface from a surface impoundment will not exceed 0.5 acre-feet per acre per year; or

(ii) the discharger has demonstrated that the total nitrogen in effluent that enters the subsurface from a leach field or surface impoundment shall not exceed 200 pounds per acre per year and the effluent shall meet the standards of Section 20.6.2.3103 NMAC except for nitrate and contaminants in the water diverted as provided in Subsection D of Section 20.6.2.3109 NMAC; or

(iii) the total nitrogen in effluent that is applied to a crop that is harvested shall not exceed by more than 25 percent the maximum amount of nitrogen reasonably expected to be taken up by the crop and the effluent shall meet the standards of Section 20.6.2.3103 NMAC except for nitrate and contaminants in the water diverted as provided in Subsection D of Section 20.6.2.3109 NMAC.

(c) All Discharges.

(i) the monitoring system proposed in the discharge plan includes adequate provision for sampling of effluent and adequate flow monitoring so that the amount being discharged onto or below the surface of the ground can be determined.

(ii) the monitoring data is reported to the secretary at a frequency determined by the secretary.

D. The secretary shall allow the following unless he determines that a hazard to public health may result:

(1) the weight of water contaminants in water diverted from any source may be discharged provided that the discharge is to the aquifer from which the water was diverted or to an aquifer containing a greater concentration of the contaminants than contained in the water diverted; and provided further that contaminants added as a result of the means of diversion shall not be considered to be part of the weight of water contaminants in the water diverted;

(2) the water contaminants leached from undisturbed natural materials may be discharged provided that:

(a) the contaminants were not leached as a product or incidentally pursuant to a solution mining operation; and

(b) the contaminants were not leached as a result of direct discharge into the vadose zone from municipal or industrial facilities used for the storage, disposal, or treatment of effluent; [2-18-77]

(3) the water contaminants leached from undisturbed natural materials as a result of discharge into ground water from lakes used as a source of cooling water.

E. If data submitted pursuant to any monitoring requirements specified in the [~~approved discharge plan~~] discharge permit or other information available to the secretary indicates that this Part is being or may be violated or that the standards of 3103 are being or will be exceeded, or a toxic pollutant as defined in Section 20.6.2.1101 NMAC is present, in ground water at any place of withdrawal for present or reasonably foreseeable future use, or that the Water Quality Standards for Interstate and Intrastate Streams in New Mexico are being or may be violated in surface water, due to the discharge, except as provided in Subsection D of Section 20.6.2.3109 NMAC. NMAC:

(1) the secretary may require a [~~discharger to modify a discharge plan~~] discharge permit modification within the shortest reasonable time so as to achieve compliance with this Part and to provide that any exceeding of standards in ground water at any place of withdrawal for present or reasonably foreseeable future use, or in surface water, due to the discharge except as provided in Subsection D of Section 20.6.2.3109 NMAC. will be abated or prevented. If the secretary requires [~~that a discharge plan be modified~~] a discharge permit modification to abate water pollution:

(a) the abatement shall be consistent with the requirements and provisions of Sections 20.6.2.4101, 20.6.2.4103, Subsection C and E of Section 20.6.2.4106, Section 20.6.2.4107 and Section 20.6.2.4112 NMAC; and

(b) the discharger may request of the secretary approval to carry out the abatement under Sections 20.6.2.4000 through 20.6.2.4115 NMAC, in lieu of modifying the discharge [~~plan~~] permit. The discharger shall make the request in writing and shall include the reasons for the request.

(2) the secretary may terminate [~~an approved discharge plan~~] a discharge permit when a discharger fails to modify the [~~plan~~] permit in accordance with Subsection E.1. of this section.

(3) the secretary may require modification, or may terminate a discharge [~~plan~~] permit for [~~an effluent disposal well or in situ extraction well pursuant to the requirements of Sections 20.6.2.5000 through 20.6.2.5300 NMAC~~] a Class I non-hazardous waste injection well, a Class III well or other type of well specified in Subsection A of Section 20.6.2.5101 NMAC, pursuant to the requirements of Subsection I of Section 20.6.2.5101 NMAC.

F. If a discharge [~~plan~~] permit expires or is terminated for any reason and the standards of Section 20.6.2.3103 NMAC are being or will be exceeded, or a toxic pollutant as defined in Section 20.6.2.1101 NMAC is present in ground water, or that the Water Quality Standards for Interstate and Intrastate Streams in New Mexico are being or may be violated, the secretary may require the discharger to submit an abatement plan pursuant to Sections 20.6.2.4104 and Subsection A of Section 20.6.2.4106 NMAC.

G. At the request of the discharger, [~~an approved discharge plan~~] a discharge permit may be modified in accordance with Sections 20.6.2.3000 through 20.6.2.3114 NMAC.

H. The secretary shall not approve a proposed discharge plan, modification, or renewal for:

(1) any discharge for which the discharger has not provided a site and method for flow measurement and sampling;

(2) any discharge that will cause any stream standard to be violated;

(3) the discharge of any water contaminant which may result in a hazard to public health; or

(4) a period longer than five years, except that for new discharges, the term of the discharge [~~plan~~] permit approval shall commence on the date the discharge begins, but in no event shall the term of the approval exceed seven years from the date the [~~approval~~] permit was issued. For those [~~approvals~~] permits expiring more than five years from the date of issuance, the discharger shall give prior written notification to the department of the date the discharge is to commence. The term of the [~~approval~~] permit shall not exceed five years from that date.

20.6.2.3110 PUBLIC HEARING PARTICIPATION:

A. The secretary may appoint an impartial hearing officer to preside over the hearing. The hearing officer may be a department employee other than an employee of the bureau evaluating the application.

B. The hearing shall be at a place in the area affected by the facility for which the discharge [~~plan~~] permit proposal, modification or renewal is sought.

C. Any person who wishes to present technical evidence at the hearing shall, no later than ten (10) days prior to the hearing, file with the department, and if filed by a person who is not the applicant, serve on the applicant, a statement of intent to present evidence. A person who does not file a statement of intent to present evidence may present a general non-technical statement in support of or in opposition to the proposed discharge plan [~~proposal~~], modification or renewal. The statement of intent to present technical evidence shall include:

(1) the name of the person filing the statement;

(2) indication of whether the person filing the statement supports or opposes the proposed discharge plan proposal, modification or renewal;

(3) the name of each witness;

(4) an estimate of the length of the direct testimony of each witness;

(5) a list of exhibits, if any, to be offered into evidence at the hearing; and

(6) a summary or outline of the anticipated direct testimony of each witness.

D. At the hearing, the New Mexico Rules of Civil Procedure, SCRA 1986, 1-001 to 1-102 and the New Mexico Rules of Evidence, SCRA 1986, 11-101 to 11-1102 shall not apply. At the discretion of the hearing officer, the rules may be used as guidance. Any reference to the Rules of Civil Procedure and the Rules of Evidence shall not be construed to extend or otherwise modify the authority and jurisdiction of the department under the Act.

E. The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in the proceedings.

F. At the hearing, all persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

G. Unless otherwise allowed by the hearing officer, testimony shall be presented in the following order:

(1) testimony by and examination of the applicant or permittee proving the facts relied upon to justify the proposed discharge plan, renewal or modification and meeting the requirements of the regulations;

(2) testimony by and examination of technical witnesses supporting or opposing approval, approval subject to conditions, or disapproval of the proposed discharge plan, renewal or modification, in any reasonable order;

(3) testimony by the general public; and

(4) rebuttal testimony, if appropriate.

H. The secretary may provide translation service at a public hearing conducted in a locale where the Department can reasonably expect to receive testimony from non-English speaking people.

I. If determined useful by the hearing officer, within thirty (30) days after conclusion of the hearing, or within such time as may be fixed by the hearing officer, the hearing officer may allow proposed findings of fact and conclusions of law and closing argument. All such submissions, if allowed, shall be in writing, shall be served upon the applicant or permittee, the department and all persons who request copies in advance in writing, and shall contain adequate references to the record and authorities relied on. No new evidence shall be presented unless specifically allowed by the hearing officer.

J. The department shall make an audio recording of the hearing. If the applicant or permittee, or a participant requests a written transcript or certified copy of the audio recording, the requestor shall pay the cost of the transcription or audio copying.

K. The hearing officer shall issue a report within thirty (30) days after the close of the hearing record. The report may include findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefore. The report shall be served on the applicant or permittee, the department, and all persons who request copies in advance in writing. The report will be available for public inspection at the department's office in Santa Fe and at the field office closest to the point of the proposed discharge.

L. The secretary shall issue a decision in the matter no later than thirty (30) days of receipt of the hearing report. The decision shall be served and made available for inspection pursuant to Subsection K of this section.

M. Any person who testifies at the hearing or submits a written statement for the record will be considered a participant for purposes of Subsection 20.6.2.3113 NMAC and NMSA 1978, Section 74-6-5.N.

20.6.2.3111 TRANSFER OF DISCHARGE [~~PLAN~~] PERMIT: No purported transfer of any discharge [~~plan~~] permit shall be effective to create, alter or extinguish any right or responsibility of any person subject to this Part, unless the following transfer requirements are met:

A. Prior to any transfer of ownership, control, or possession (whether by lease, conveyance or otherwise) of a facility with [~~an approved discharge plan~~] a discharge permit, the transferror shall notify the transferee in writing of the existence of the discharge [~~plan~~] permit, and shall deliver or send by certified mail to the department a copy of such written notification, together with a certification or other proof that such notification has in fact been received by the transferee.

B. Upon receipt of such notification, the transferee shall have the duty to inquire into all of the provisions and requirements contained in such discharge [~~plan~~] permit, and the transferee shall be charged with notice of all such provisions and requirements as they appear of record in the department's file or files concerning such discharge [~~plan~~] permit.

C. Until both ownership and possession of the facility have been transferred to the transferee, the transferor shall continue to be responsible for any discharge from the facility.

D. Upon assuming either ownership or possession of the facility, the transferee shall have the same rights and responsibilities under the discharge [~~plan~~] permit as were applicable to the transferor.

E. Nothing in this section or in this part shall be construed to relieve any person of responsibility or liability for any act or omission which occurred while that person owned, controlled or was in possession of the facility.

20.6.2.3112 APPEALS [~~FROM~~] OF SECRETARY'S DECISIONS:

A. If the secretary approves, approves subject to conditions, or disapproves a proposed discharge plan, renewal or modification, or modifies or terminates [~~an approved plan~~] a discharge permit, appeal therefrom shall be in accordance with the provisions of Sections 74-6-5(N), (O) and (P), NMSA 1978. The filing of an appeal does not act as a stay of any provision of the Act, the regulations, or any permit issued pursuant to the Act, unless otherwise ordered by the secretary or the commission.

B. If the secretary determines that a discharger is not exempt from [~~filing a discharge plan~~] obtaining a discharge permit, or that the material to be discharged contains any toxic pollutant as defined in Section 20.6.2.1101 NMAC, which is not included in the numerical standards of Section 20.6.2.3103 NMAC, then the discharger may appeal such determination by filing with the commission's secretary a notice of appeal to the commission within thirty days after receiving the secretary's written determination, and the appeal therefrom and any action of the commission thereon shall be in accordance with the provisions of Sections 74-6-5(N),(O) and (P), NMSA 1978.

C. Proceedings before the commission shall be conducted in accordance with the commission's adjudicatory procedures, 20 NMAC 1.3.

20.6.2.3113 APPEALS [~~FROM~~] OF COMMISSION DECISIONS: An applicant, permittee or a person who participated in a permitting action and who is adversely affected by such action may appeal the decision of the commission in accordance with the provisions of Section 74-6-7(A), NMSA 1978.

20.6.2.5000 UNDERGROUND INJECTION CONTROL:

[~~20.6.2.5001 - 20.6.2.5100: [RESERVED]~~]

20.6.2.5001 PURPOSE: The purpose of Sections 20.6.2.5000 through 20.6.2.5299 NMAC controlling discharges from underground injection control wells is to protect all ground water of the State of New Mexico which has an existing concentration of 10,000 mg/l or less TDS, for present and potential future use as domestic and agricultural water supply, and to protect those segments of surface waters which are gaining because of ground water inflow for uses designated in the New Mexico Water Quality Standards. Sections 20.6.2.5000 through 20.6.2.5299 NMAC include notification requirements, and requirements for discharges directly into the subsurface through underground injection control wells.

20.6.2.5002 UNDERGROUND INJECTION CONTROL WELL CLASSIFICATIONS:

A. Underground injection control wells include the following.

(1) Any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids.

(2) Any septic tank or cesspool used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste.

(3) Any subsurface distribution system, cesspool or other well which is used for the injection of wastes.

B. Underground injection control wells are classified as follows:

(1) Class I wells inject fluids beneath the lowermost formation that contains 10,000 milligrams per liter or less TDS. Class I hazardous or radioactive waste injection wells inject fluids containing any hazardous or radioactive waste as defined in 74-4-3 and 74-4A-4 NMSA 1978, including any combination of these wastes. Class I non-hazardous waste injection wells inject non-hazardous and non-radioactive fluids, and they inject naturally-occurring radioactive material (NORM) as provided by Section 20.3.1.1407 NMAC.

(2) Class II wells inject fluids associated with oil and gas recovery.

(3) Class III wells inject fluids for extraction of minerals or other natural resources, including sulfur, uranium, metals, salts or potash by in situ extraction. This classification includes only in situ production from ore bodies that have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V.

(4) Class IV wells inject fluids containing any radioactive or hazardous waste as defined in 74-4-3 and 74-4A-4 NMSA 1978, including any combination of these wastes, above or into a formation that contains 10,000 mg/l or less TDS.

(5) Class V wells inject a variety of fluids and are those wells not included in Class I, II, III or IV. Types of Class V wells include, but are not limited to, the following:

(a)Domestic liquid waste injection wells

(i) domestic liquid waste disposal wells used to inject greater than 2,000 gallons per day of treated domestic liquid waste through subsurface fluid distribution systems or vertical wells;

(ii) septic system wells used to emplace greater than 2,000 gallons per day of domestic liquid waste into the subsurface, which are comprised of a septic tank and subsurface fluid distribution system;

(iii) large capacity cesspools used to inject greater than 2,000 gallons per day of domestic liquid waste, including drywells that sometimes have an open bottom and/or perforated sides.

(b) Industrial waste injection wells

(i) air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling;

(ii) dry wells used for the injection of wastes into a subsurface formation;

(iii) geothermal energy injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electrical power;

(iv) stormwater drainage wells used to inject storm runoff from the surface into the subsurface;

(v) motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities;

(vi) car wash waste disposal wells used to inject fluids from motor vehicle washing activities.

(c) Mining injection wells

(i) stopes leaching wells used for solution mining of conventional mines;

(ii) brine injection wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts;

(iii) backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines whether water injected is a radioactive waste or not;

(iv) injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.

(d) Ground water management injection wells

(i) ground water remediation injection wells used to inject contaminated ground water that has been treated to ground water quality standards;

(ii) in situ ground water remediation wells used to inject a fluid that facilitates vadose zone or ground water remediation.

(iii) recharge wells used to replenish the water in an aquifer, including use to reclaim or improve the quality of existing ground water;

(iv) barrier wells used to inject fluids into ground water to prevent the intrusion of saline or contaminated water into ground water of better quality;

(v) subsidence control wells (not used for purposes of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

(vi) wells used in experimental technologies.

(e) Agricultural injection wells - drainage wells used to inject fluids into ground water to prevent the intrusion of saline or contaminated water into ground water of better quality.

20.6.2.5003 NOTIFICATION AND GENERAL OPERATION REQUIREMENTS FOR ALL UNDERGROUND INJECTION CONTROL WELLS: All operators of underground injection control wells, except those wells regulated under the Oil and Gas Act, the Geothermal Resources Conservation Act, and the Surface Mining Act, shall:

A. For existing underground injection control wells, submit to the secretary the information enumerated in Subsection C of Section 20.6.2.1201 NMAC of this Part no later than September 20, 1983; provided, however, that if the information in Subsection C of Section 20.6.2.1201 NMAC has been previously submitted to the secretary and acknowledged by him, the information need not be resubmitted; and

B. Operate and continue to operate in conformance with Sections 20.6.2.1 through 20.6.2.5299 NMAC.

C. For new underground injection control wells, submit to the secretary the information enumerated in Subsection C of Section 20.6.2.1201 NMAC of this Part at least 120 days prior to well construction.

20.6.2.5004 PROHIBITED UNDERGROUND INJECTION CONTROL ACTIVITIES AND WELLS:

A. No person shall perform the following underground injection activities nor operate the following underground injection control wells:

(1) The injection of fluids into a motor vehicle waste disposal well is prohibited. Motor vehicle waste disposal wells are prohibited. Any person operating a new motor vehicle waste disposal well (for which construction began after April 5, 2000) must close the well immediately. Any person operating an existing motor vehicle waste disposal well must cease injection immediately and must close the well by December 31, 2002, except as provided in this Subsection.

(2) The injection of fluids into a large capacity cesspool is prohibited. Large capacity cesspools are prohibited. Any person operating a new large capacity cesspool (for which construction began after April 5, 2000) must close the cesspool immediately. Any person operating an existing large capacity cesspool must cease injection immediately and must close the cesspool by December 31, 2002.

(3) The injection of any hazardous or radioactive waste into a well is prohibited, except as provided in this Subsection.

(a) Class I hazardous or radioactive waste injection wells are prohibited, except naturally-occurring radioactive material (NORM) regulated under Section 20.3.1.1407 NMAC is allowed as a Class I non-hazardous waste injection well pursuant to Subsection B (1) of Section 20.6.2.5002 NMAC;

(b) Class IV wells are prohibited, except for wells re-injecting treated ground water into the same formation from which it was drawn as part of a removal or remedial action if the injection has prior approval from the Environmental Protection Agency (EPA) or the department under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA).

(4) Barrier wells, drainage wells, recharge wells, [~~and~~] return flow wells, and motor vehicle waste disposal wells are prohibited, except when the discharger can demonstrate that the discharge will not adversely affect the health of persons; and

(a) the injection fluid does not contain a contaminant which may cause an exceedance at any place of present or reasonable foreseeable future use of any primary state drinking water maximum contaminant level as specified in the water supply regulations, "Drinking Water" (20 NMAC 7.1) [20.7.10 NMAC], adopted by the Environmental Improvement Board under the Environmental Improvement Act or the standard of Section 20.6.2.3103 NMAC, whichever is more stringent; or

(b) the discharger can demonstrate that the injection will result in an overall or net improvement in water quality as determined by the secretary.

B. Closure of prohibited underground injection control wells shall be in accordance with Section 20.6.2.5005 NMAC and Section 20.6.2.5209 NMAC.

20.6.2.5005 PRE-CLOSURE NOTIFICATION AND CLOSURE REQUIREMENTS:

A. Any person proposing to close a Class I, III, IV or V underground injection control well must submit pre-closure notification to the department at least 30 days prior to closure. Pre-closure notification must include the following information:

(1) Name of facility
(2) Address of facility
(3) Name of Owner/Operator
(4) Address of Owner/Operator
(5) Contact Person
(6) Phone Number
(7) Type of Well(s)
(8) Number of Well(s)
(9) Well Construction (e.g. drywell, improved sinkhole, septic tank, leachfield, cesspool, other…)
(10) Type of Discharge

(11) Average Flow (gallons per day)
(12) Year of Well Construction
(13) Proposed Well Closure Activities (e.g. sample fluids/sediment, appropriate disposal of remaining fluids/sediments, remove well and any contaminated soil, clean out well, install permanent plug, conversion to other type well, ground water and vadose zone investigation, other)
(14) Proposed Date of Well Closure
(15) Name of Preparer
(16) Date

B. Proposed well closure activities must be approved by the department prior to implementation.

20.6.2.5006 DISCHARGE PERMIT REQUIREMENTS FOR CLASS V INJECTION WELLS: Class V injection wells must meet the requirements of Sections 20.6.2.3000 through 20.6.2.3999 NMAC and Sections 20.6.2.5000 through 20.6.2.5006 NMAC.

20.6.2.5007 – 20.6.2.5100: [RESERVED]

20.6.2.5101 [~~DISCHARGE PLAN~~] DISCHARGE PERMIT AND OTHER REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. [~~Effluent disposal wells~~] Class I non-hazardous waste injection wells and [~~in situ extraction wells~~] Class III wells must meet the requirements of Sections 20.6.2.5000 through 20.6.2.[~~5300 NMAC~~] 5299 NMAC in addition to other applicable requirements of the commission regulations. The secretary may also require that some Class IV and Class V wells comply with the requirements for Class I non-hazardous waste injection wells in Sections 20.6.2.5000 through 20.6.2.5299 NMAC if the secretary determines that the additional requirements are necessary to prevent the movement of water contaminants from a specified injection zone into ground water having 10,000 mg/l or less TDS. No [~~effluent disposal well~~] Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well may be approved which allows for movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC, or pursuant to a temporary designation as provided in Paragraph (2) of Subsection C of Section 20.6.2.5101 NMAC.

B. Operation of a[~~n effluent disposal well~~] Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well must be pursuant to [~~an approved discharge plan~~] a discharge permit according to the schedules in the following paragraphs:

(1) Any person who before September 20, 1982, is injecting fluids into a[~~n effluent disposal well~~] Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well without [~~an approved discharge plan~~] a discharge permit, may continue to inject without [~~an approved discharge plan~~] a discharge permit until December 19, 1982. No person who intends to begin discharging into a [~~n effluent disposal well~~] Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well after September 20, 1982 shall discharge except in conformance with a[~~n approved discharge plan~~] discharge permit.

(2) Any person who, before December 19, 1982, has a [~~discharge plan approved~~] discharge permit pursuant to Sections 20.6.2.3000 through 20.6.2.[~~3114~~] 3999 NMAC for the injection of fluids into a[~~n effluent disposal well~~] Class I non-hazardous waste injection well or a[~~n in situ extraction well~~] Class III well, may inject according to the [~~approved discharge plan~~] discharge permit until the expiration of the current [~~discharge plan approval~~] discharge permit. Upon application for renewal of the [~~discharge plan approval~~] discharge permit, such person shall comply with the requirements of Sections 20.6.2.3000 through 20.6.2.[~~3114~~] 3999 NMAC and Sections 20.6.2.5000 through 20.6.2. [~~5300 NMAC~~] 5299 NMAC in the renewal application.

(3) After December 19, 1982, any person who does not have [~~discharge plan approval~~] a discharge permit pursuant to Paragraph (2) of Subsection B of Section 20.6.2.5101 NMAC shall not discharge into a[~~n effluent disposal well~~] Class I non-hazardous waste injection well or a[~~n in situ extraction well~~] Class III well without a[~~n approved discharge plan~~] discharge permit meeting the requirements of Sections 20.6.2.3000 through 20.6.2.[~~3114~~] 3999 NMAC and Sections 20.6.2.5000 through 20.6.2.[~~5300~~] 5299 NMAC.

C. [~~Discharge plans~~] Discharge permits for [~~effluent disposal wells~~] Class I non-hazardous waste injection wells, or [~~in situ extraction wells~~] Class III wells affecting ground water of 10,000 mg/l or less TDS submitted for secretary approval shall:

(1) Receive an aquifer designation [~~as~~] if required in Section 20.6.2.5103 NMAC prior to [~~approval of the discharge plan~~] discharge permit issuance; or

(2) For [~~in situ extraction well~~] Class III wells only, address the methods or techniques to be used to restore ground water so that upon final termination of operations including restoration efforts, ground water at any place of withdrawal for present or reasonably foreseeable future use will not contain either concentrations in excess of the standards of Section 20.6.2.3103 NMAC or any toxic pollutant. [~~Approval~~] Issuance of a discharge [~~plan~~] permit or project discharge [~~plan~~] permit for [~~in situ extraction wells~~] Class III wells that provides for restoration of ground water in accordance with the requirements of this Subsection shall substitute for the aquifer designation provisions of Section 20.6.2.5103 NMAC. The approval shall constitute a temporary aquifer designation for a mineral bearing or producing aquifer, or portion thereof, to allow injection as provided for in the discharge [~~plan~~] permit. Such temporary designation shall expire upon final termination of operations including restoration efforts.

D. The exemptions from the discharge [~~plan~~] permit requirement listed in Section 20.6.2.3105 NMAC do not apply to [~~effluent disposal wells or in situ extraction wells~~] underground injection control wells except as provided below:

(1) Wells regulated by the Oil Conservation Division under the exclusive authority granted under Section 70-2-12 NMSA 1978 or under other Sections of the "Oil and Gas Act";

(2) Wells regulated by the Oil Conservation Division under the "Geothermal Resources Act";

(3) Wells regulated by the New Mexico Coal Surface Mining Bureau under the "Surface Mining Act";

(4) Wells for the disposal of effluent from systems which receive less than 2,000 gallons per day of domestic sewage effluent and are regulated under the "Liquid Waste Disposal Regulations" (20 NMAC 7.3) [20.7.3 NMAC] adopted by the Environmental Improvement Board under the "Environmental Improvement Act".

E. Project [~~Discharge Plans~~] permits for [~~In Situ Extraction Wells~~] Class III wells.

(1) The secretary may consider a project discharge [~~plan~~] permit for [~~in situ extraction wells~~] Class III wells, if the wells are:

(a) Within the same well field, facility site or similar unit,

(b) Within the same aquifer and ore deposit,

(c) Of similar construction,

(d) Of the same purpose, and

(e) Operated by a single owner or operator.

(2) A[~~n approved project discharge plan~~] project discharge permit does not allow the discharger to commence injection in any individual operational area until the secretary approves an application for injection in that operational area (operational area approval).

(3) A project discharge [~~plan~~] permit shall:

(a) Specify the approximate locations and number of wells for which operational area approvals are or will be sought with approximate time frames for operation and restoration (if restoration is required) of each area; and

(b) Provide the information required under the following Sections of this Part, except for such additional site-specific information as needed to evaluate applications for individual operational area approvals: Subsection C of Section 20.6.2.3106, Sections 20.6.2.3107, 20.6.2.5204 through 20.6.2.5209, and Subsection B of Section 20.6.2.5210 NMAC.

(4) Applications for individual operational area approval shall include the following:

(a) Site-specific information demonstrating that the requirements of this Part are met, and

(b) Information required under Sections 20.6.2.5202 through 20.6.2.5210 NMAC and not previously provided pursuant to Subparagraph (b) of Paragraph (3) of Subsection F of this Section.

(5) Applications for [~~project discharge plan approval~~] project discharge permits and for operational area approval shall be processed in accordance with the same procedures provided for discharge [~~plans~~] permits under Sections 20.6.2.3000 through 20.6.2.3114 NMAC, allowing for public notice on the project discharge [~~plan~~] permit and on each application for operational area approval

pursuant to Section 20.6.2.3108 NMAC with opportunity for public hearing prior to approval or disapproval.

(6) The discharger shall comply with additional requirements that may be imposed by the secretary pursuant to this Part on wells in each new operational area.

F. If the holder of a[~~n approved discharge plan~~] discharge permit for a[~~n effluent disposal well~~] Class I non-hazardous waste injection well, or [~~in situ extraction well~~] Class III well submits an application for discharge [~~plan~~] permit renewal at least 120 days before discharge [~~plan~~] permit expiration, and the discharger is in compliance with his [~~approved~~] discharge [~~plan~~] permit on the date of its expiration, then the existing [~~approved~~] discharge [~~plan~~] permit for the same activity shall not expire until the application for renewal has been approved or disapproved. An application for discharge [~~plan~~] permit renewal must include and adequately address all of the information necessary for evaluation of a new discharge [~~plan~~] permit. Previously submitted materials may be included by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved.

G. Discharge [~~Plan~~] Permit Signatory Requirements: No discharge [~~plan~~] permit for a[~~n effluent disposal~~ well] Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well may be [~~approved~~] issued unless:

(1) The application for a discharge [~~plan~~] permit [~~approval~~] has been signed as follows:

(a) For a corporation: by a principal executive officer of at least the level of vice-president, or a representative who performs similar policy-making functions for the corporation who has authority to sign for the corporation; or

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency: by either a principal executive officer who has authority to sign for the agency, or a ranking elected official; and

(2) The signature is directly preceded by the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

H. Transfer of [~~Effluent Disposal Well~~] Class I non-hazardous waste injection well and [~~In Situ Extraction Well~~] Class III well Discharge [~~Plans~~] Permits.

(1) The transfer provisions of Section 20.6.2.3111 NMAC do not apply to a discharge [~~plan~~] permitfor a[~~n effluent disposal well~~] Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well.

(2) A[~~n effluent disposal well~~] Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well discharge [~~plan~~] permit may be transferred if:

(a) The secretary receives written notice 30 days prior to the transfer date; and

(b) The secretary does not object prior to the proposed transfer date. The secretary may require modification of the discharge [~~plan~~] permit as a condition of transfer, and may require demonstration of adequate financial responsibility.

(3) The written notice required by Subparagraph (b) of Paragraph (2) of Subsection I above shall:

(a) Have been signed by the discharger and the succeeding discharger, including an acknowledgement that the succeeding discharger shall be responsible for compliance with the [~~approved~~] discharge [~~plan~~] permit upon taking possession of the facility; and

(b) Set a specific date for transfer of discharge [~~plan~~] permit responsibility, coverage and liability; and

(c) Include information relating to the succeeding discharger's financial responsibility required by Paragraph (17) of Subsection B of Section 20.6.2.5210 NMAC.

I. Modification or Termination of a Discharge [~~Plan~~] Permit for a[~~n Effluent Disposal Well~~] Class I non-hazardous waste injection well or [~~In Situ Extraction Well~~] Class III well: If data submitted pursuant to any monitoring requirements specified in the[~~approved plan~~] discharge permit or other information available to the secretary indicate that this Part are being or may be violated, the secretary may require modification or, if it is determined by the secretary that the modification may not be adequate, may terminate a discharge [~~plan~~] permit for a[~~n effluent disposal well~~] Class I non-hazardous waste injection

Well, or [~~in situ extraction well~~] Class III well or well field, that was approved pursuant to the requirements of this under Sections 20.6.2.5000 through 20.6.2.[~~5300~~] 5299 NMAC for the following causes:

(1) Noncompliance by the discharger with any condition of the discharge [~~plan~~] permit; or

(2) The discharger's failure in the discharge [~~plan~~] permit application or during the discharge [~~plan~~] permit review process to disclose fully all relevant facts, or the discharger's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity may cause a hazard to public health or undue risk to property and can only be regulated to acceptable levels by discharge [~~plan~~] permit modification or termination.

20.6.2.5102 PRE-CONSTRUCTION REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. Discharge [~~Plan~~] Permit Requirement for [~~Effluent Disposal Wells~~] Class I non-hazardous waste injection wells.

(1) Prior to construction of a[~~n effluent disposal well~~] Class I non-hazardous waste injection well or conversion of an existing well to a[~~n effluent disposal well~~] Class I non-hazardous waste injection well, an approved discharge [~~plan~~] permit is required that incorporates the requirements of Sections 20.6.2.5000 through 20.6.2.[~~5300~~] 5299 NMAC, except Subsection C of Section 20.6.2.5210 NMAC. As a condition of discharge [~~plan approval~~] permit issuance, the operation of the [~~effluent disposal well~~] Class I non-hazardous waste injection well under the discharge [~~plan~~] permit will not be authorized until the secretary has:

(a) Reviewed the information submitted for his consideration pursuant to Subsection C of Section 20.6.2.5210 NMAC, and

(b) Determined that the information submitted demonstrates that the operation will be in compliance with this Part and the [~~approved discharge plan~~] discharge permit.

(2) If conditions encountered during construction represent a substantial change which could adversely impact ground water quality from those anticipated in the [~~approved discharge plan~~] discharge permit, the secretary shall require a discharge [~~plan~~] permit modification or may terminate the discharge [~~plan~~] permit pursuant to Subsection I of Section 20.6.2.5101 NMAC, and the secretary shall publish public notice and allow for comments and hearing in accordance with Section 20.6.2.3108 NMAC.

B. Notification Requirement for [~~In Situ Extraction Wells~~] Class III wells.

(1) The discharger shall notify the secretary in writing prior to the commencement of drilling or construction of wells which are expected to be used for in situ extraction, unless the discharger has previously received a discharge [~~plan~~] permit or project discharge [~~plan~~] permit for the [~~in situ extraction~~] Class III well operation.

(a) Any person, proposing to drill or construct a new [~~in situ extraction well~~] Class III well or well field, or convert an existing well to a[~~n in situ extraction well~~] Class III well, shall file plans, specifications and pertinent documents regarding such construction or conversion, with the Ground Water [~~Protection and Remediation Bureau~~] Quality Bureau of the Environment Department.

(b) Plans, specifications, and pertinent documents required by this Section, if pertaining to geothermal installations, carbon dioxide facilities, or facilities for the exploration, production, refinement or pipeline transmission of oil and natural gas, shall be filed instead with the Oil Conservation Division.

(c) Plans, specifications and pertinent documents required to be filed under this Section must be filed 90 days prior to the planned commencement of construction or conversion.

(d) The following plans, specifications and pertinent documents shall be provided with the notification:

(i) Information required in Subsection C of Section 20.6.2.3106 NMAC;

(ii) A map showing the [~~in situ extraction wells~~] Class III wells which are to be constructed. The map must also show, in so far as is known or is reasonably available from the public records, the number, name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads, that are within the expected area of review (Section 20.6.2.5202 NMAC) of the [~~in situ extraction well~~] Class III well or well field perimeter;

(iii) Maps and cross-sections indicating the general vertical and lateral limits of all ground water having 10,000 mg/l or less TDS within one mile of the site, the position of such ground

water within this area relative to the injection formation, and the direction of water movement, where known, in each zone of ground water which may be affected by the proposed injection operation;

(iv) Maps and cross-sections detailing the geology and geologic structure of the local area, including faults, if known or suspected;

(v) The proposed formation testing program to obtain an analysis or description, whichever the secretary requires, of the chemical, physical, and radiological characteristics of, and other information on, the receiving formation;

(vi) The proposed stimulation program;

(vii) The proposed injection procedure;

(viii) Schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(ix) Proposed construction procedures, including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program;

(x) Information, as described in Paragraph (17) of Subsection B of Section 20.6.2.5210 NMAC, showing the ability of the discharger to undertake measures necessary to prevent groundwater contamination; and

(xi) A plugging and abandonment plan showing that the requirements of Subsections B, C and D of Section 20.6.2.5209 NMAC will be met.

(2) Prior to construction, the discharger shall have received written notice from the secretary that the information submitted under item 10 of Subparagraph (d) of Paragraph (1) of Subsection B of Section 20.6.2.5102 NMAC is acceptable. Within 30 days of submission of the above information the secretary shall notify the discharger that the information submitted is acceptable or unacceptable.

(3) Prior to construction, the secretary shall review said plans, specifications and pertinent documents and shall comment upon their adequacy of design for the intended purpose and their compliance with pertinent Sections of this Part. Review of plans, specifications and pertinent documents shall be based on the criteria contained in Section 20.6.2.5205, Subsection E of Section 20.6.2.5209, and Subparagraph (d) of Paragraph (1) of Subsection B of Section 20.6.2.5102 NMAC.

(4) Within thirty (30) days of receipt, the secretary shall issue public notice, consistent with Subsection B of Section 20.6.2.3108 NMAC, that notification was submitted pursuant to Subsection B of Section 20.6.2.5102 NMAC. The secretary shall allow a period of at least thirty (30) days during which comments may be submitted. The public notice shall include:

(a) Name and address of the proposed discharger;

(b) Location of the discharge;

(c) Brief description of the proposed activities;

(d) Statement of the public comment period; and

(e) Address and telephone number at which interested persons may obtain further information.

(5) The secretary shall comment in writing upon the plans and specifications within sixty (60) days of their receipt by the secretary.

(6) Within thirty (30) days after completion, the discharger shall submit written notice to the secretary that the construction or conversion was completed in accordance with submitted plans and specifications, or shall submit as-built plans detailing changes from the originally submitted plans and specifications.

(7) In the event a discharge [~~plan~~] permit application is not submitted or approved, all wells which may cause groundwater contamination shall be plugged and abandoned by the applicant pursuant to the plugging and abandonment plan submitted in the notification; these measures shall be consistent with any comments made by the secretary in his review. If the wells are not to be permanently abandoned and the discharger demonstrates that plugging at this time is unnecessary to prevent groundwater contamination, plugging pursuant to the notification is not required. Financial responsibility established pursuant to Sections 20.6.2.5000 through [~~20.6.2.5300~~] 20.6.2.5299 NMAC will remain in effect until the discharger permanently abandons and plugs the wells in accordance with the plugging and abandonment plan.

20.6.2.5103 DESIGNATED AQUIFERS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. Any person may file a written petition with the secretary seeking commission consideration of certain aquifers or portions of aquifers as "designated aquifers". The purpose of aquifer designation is:

(1) For [~~effluent disposal wells~~] Class I non-hazardous waste injection wells, to allow as a result of injection, the addition of water contaminants into ground water, which before initiation of [~~effluent disposal~~] injection has a concentration between 5,000 and 10,000 mg/l TDS; or

(2) For [~~in situ extraction wells~~] Class III wells, to allow as a result of injection, the addition of water contaminants into ground water, which before initiation of [~~in situ extraction~~] injection has a concentration between 5,000 and 10,000 mg/l TDS, and not provide for restoration or complete restoration of that ground water pursuant to Paragraph (2) of Subsection C of Section 20.6.2.5101 NMAC.

B. The applicant shall identify (by narrative description, illustrations, maps or other means) and describe such aquifers, in geologic and/or geometric terms (such as vertical and lateral limits and gradient) which are clear and definite.

C. An aquifer or portion of an aquifer may be considered for aquifer designation under Subsection A. of this Section, if the applicant demonstrates that the following criteria are met:

(1) It is not currently used as a domestic or agricultural water supply; and

(2) There is no reasonable relationship between the economic and social costs of failure to designate and benefits to be obtained from its use as a domestic or agricultural water supply because:

(a) It is situated at a depth or location which makes recovery of water for drinking or agricultural purposes economically or technologically impractical at present and in the reasonably foreseeable future; or

(b) It is already so contaminated that it would be economically or technologically impractical to render that water fit for human consumption or agricultural use at present and in the reasonably foreseeable future.

D. The petition shall state the extent to which injection would add water contaminants to ground water and why the proposed aquifer designation should be approved. For [~~in situ extraction well~~] Class III wells, the applicant shall state whether and to what extent restoration will be carried out.

E. The secretary shall either transmit the petition to the commission within sixty (60) days recommending that a public hearing be held, or refuse to transmit the petition and notify the applicant in writing citing reasons for such refusal.

F. If the secretary transmits the petition to the commission, the commission shall review the petition and determine to either grant or deny a public hearing on the petition. If the commission grants a public hearing, it shall issue a public notice, including the following information:

(1) Name and address of the applicant;

(2) Location, depth, TDS, areal extent, general description and common name or other identification of the aquifer for which designation is sought;

(3) Nature of injection and extent to which the injection will add water contaminants to ground water; and

(4) Address and telephone number at which interested persons may obtain further information.

G. If the secretary refuses to transmit the petition to the commission, then the applicant may appeal the secretary's disapproval of the proposed aquifer designation to the commission within thirty (30) days, and address the issue of whether the proposed aquifer designation meets the criteria of Subsections A, B, C, and D of this Section.

H. If the commission grants a public hearing, the hearing shall be held in accordance with the provisions of Section 74-6-6, NMSA 1978.

I. If the commission does not grant a public hearing on the petition, the aquifer designation shall not be approved.

J. After public hearing and consideration of all facts and circumstances included in Section 74-6-4(D), NMSA 1978, the commission may authorize the secretary to approve a proposed designated aquifer if the commission determines that the criteria of Subsection A, B, C, and D of this section are met.

K. Approval of a designated aquifer petition does not alleviate the applicant from complying with other Sections of Sections 20.6.2.5000 through 20.6.2.[~~5300~~] 5299 NMAC, or of the responsibility for protection, pursuant to this part, of other nondesignated aquifers containing ground water having 10,000 mg/l or less TDS.

L. Persons other than the petitioner may add water contaminants as a result of injection into an aquifer designated for [~~effluent disposal, or for in situ extraction without restoration~~] injection,

provided the person receives [~~discharge plan approval~~] a discharge permit pursuant to the requirements of Sections 20.6.2.5000 through 20.6.2.[~~5300~~] 5299 NMAC. Persons, other than the original petitioner or his designee, requesting addition of water contaminants as a result of injection into aquifers previously designated only for [~~in situ extraction~~] injection with partial restoration shall file a petition with the commission pursuant to the requirements of Subsections A, B, C, and D of this Section.

20.6.2.5104 WAIVER OF REQUIREMENT BY SECRETARY FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. Where a[~~n effluent disposal well~~] Class I non-hazardous waste injection well or a[~~n in situ extraction well~~] Class III well or well field, does not penetrate, or inject into or above, and which will not affect, ground water having 10,000 mg/l or less TDS, the secretary may:

(1) [~~Approve a discharge plan~~] Issue a discharge permit for a well or well field with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than required by Sections 20.6.2.5000 through 20.6.2.[~~5300~~] 5299 NMAC; or

(2) For [~~in situ extraction wells~~] Class III wells only, [~~approve a discharge plan~~] issue a discharge permit pursuant to the requirements of Sections 20.6.2.3000 through 20.6.2.3114 NMAC.

B. Authorization of a reduction in requirements under Subsection A of this Section shall be granted only if injection will not result in an increased risk of movement of fluids into ground water having 10,000 mg/l or less TDS, except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC.

20.6.2.5105 – 20.6.2.5199: [RESERVED]

20.6.2.5200 TECHNICAL CRITERIA AND PERFORMANCE STANDARDS FOR [~~EFFLUENT DISPOSAL WELLS~~] CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND [~~IN SITU EXTRACTION WELLS~~] CLASS III WELLS:

20.6.2.5201 PURPOSE: Sections 20.6.2.5200 through 20.6.2.5210 NMAC provide the technical criteria and performance standards for [~~effluent disposal wells~~] Class I non-hazardous waste injection wells and [~~in situ extraction well~~] Class III wells.

20.6.2.5202 AREA OF REVIEW:

A. The area of review is the area surrounding a[~~n effluent disposal well~~] Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well or the area within and surrounding a well field that is to be examined to identify possible fluid conduits, including the location of all known wells and fractures which may penetrate the injection zone.

B. The area of review for each [~~effluent disposal well~~] Class I non-hazardous waste injection well, or each [~~in situ extraction well~~] Class III well or well field shall be an area which extends:

(1) Two and one half (2 1/2) miles from the well, or well field; or

(2) One-quarter (1/4) mile from a well or well field where the area of review is calculated to be zero pursuant to Paragraph (3) of Subsection B below, or where the well field production at all times exceeds injection to produce a net withdrawal; or

(3) A suitable distance, not less than one-quarter (1/4) mile, proposed by the discharger and approved by the secretary, based upon a mathematical calculation to determine the area of review. Computations to determine the area of review may be based upon the parameters listed below and should be calculated for an injection time period equal to the expected life of the [~~effluent disposal well~~] Class I non-hazardous waste injection well, or [~~in situ extraction well~~] Class III well or well field. The following modified Theis equation illustrates one form which the mathematical model may take to compute the area of review; the discharger must demonstrate that any equation or simulation used to compute the area of review applies to the hydrogeologic conditions in the area of review.

$$r = \left(\frac{2.25\, K\, H\, t}{S\, 10^{x}} \right)^{1/2}$$

Where:

$$x = \frac{4BKH\,(H_w - H_{bo})x\; S_pG_b}{2.3\,Q}$$

r = Radius of the area of review for a[~~a effluent disposal well~~] Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well (length)

K = Hydraulic conductivity of the injection zone (length/time)

H = Thickness of the injection zone (length)

t = Time of injection (time)

S = Storage coefficient (dimensionless)

Q = Injection rate (volume/time)

H_{bo} = Observed original hydrostatic head of injection zone (length) measured from the base of the lowest aquifer containing ground water of 10,000 mg/l or less TDS

H_w = Hydrostatic head of underground source of drinking water (length) measured from the base of the lowest aquifer containing ground water of 10,000 mg/l or less TDS

S_pG_b = Specific gravity of fluid in the injection zone (dimensionless)

B = 3.142 (dimensionless)

(4) The above equation is based on the following assumptions:

(a) The injection zone is homogenous and isotropic;

(b) The injection zone has infinite areal extent;

(c) The [~~effluent disposal well~~] Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well penetrates the entire thickness of the injection zone;

(d) The well diameter is infinitesimal compared to "r" when injection time is longer than a few minutes; and

(e) The emplacement of fluid into the injection zone creates an instantaneous increase in pressure.

C. The secretary shall require submittal by the discharger of information regarding the area of review including the information to be considered by the secretary in Subsection B of Section 20.6.2.5210 NMAC.

20.6.2.5203 CORRECTIVE ACTION FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. Persons applying for approval of a[~~n effluent disposal well~~] Class I non-hazardous waste injection well, or a[~~n in situ extraction well~~] Class III well or well field shall identify the location of all known wells, drill holes, shafts, stopes and other conduits within the area of review which may penetrate the injection zone, in so far as is known or is reasonably available from the public records. For such wells or other conduits which are improperly sealed, completed, or abandoned, or otherwise provide a pathway for the migration of contaminants, the discharger shall address in the proposed discharge plan such steps or modifications (corrective action) as are necessary to prevent movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC.

B. Prior to operation, or continued operation of a well for which corrective action is required pursuant to Subsections A or D of Section 20.6.2.5203 NMAC, the discharger must demonstrate that:

(1) All required corrective action has been taken; or

(2) Injection pressure is to be limited so that pressure in the injection zone does not cause fluid movement through any well or other conduit within the area of review into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC. This pressure limitation may be removed after all required corrective action has been taken.

C. In determining the adequacy of corrective action proposed in the discharge [~~plan~~] permit application, the following factors will be considered by the secretary:

(1) Chemical nature and volume of the injected fluid;

(2) Chemical nature of native fluids and by-products of injection;

(3) Geology and hydrology;

(4) History of the injection and production operation;

(5) Completion and plugging records;

(6) Abandonment procedures in effect at the time a well, drill hole, or shaft was abandoned; and

(7) Hydraulic connections with waters having 10,000 mg/l or less TDS

D. In the event that, after approval for a[~~n effluent disposal well~~] Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well has been granted, additional information is submitted or it is discovered that a well or other conduit within the applicable area of review might allow movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC, the secretary may require action in accordance with Subsection I of Section 20.6.2.5101 and Subsection B Section 20.6.2.5203 NMAC.

20.6.2.5204 MECHANICAL INTEGRITY FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. A[~~n effluent disposal well~~] Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well has mechanical integrity if there is no detectable leak in the casing, tubing or packer which the secretary considers to be significant at maximum operating temperature and pressure; and no detectable conduit for fluid movement out of the injection zone through the well bore or vertical channels adjacent to the well bore which the secretary considers to be significant.

B. Prior to well injection and at least once every five years or more frequently as the secretary may require for good cause during the life of the well, the discharger must demonstrate that a[~~n~~

~~effluent disposal well~~] Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well has mechanical integrity. The demonstration shall be made through use of the following tests:

(1) For evaluation of leaks,

(a) Monitoring of annulus pressure (after an initial pressure test with liquid or gas before operation commences), or

(b) Pressure test with liquid or gas;

(2) For determination of conduits for fluid movement,

(a) The results of a temperature or noise log, or

(b) Where the nature of the casing used for [~~in situ extraction well~~] Class III wells precludes use of these logs, cementing records and an appropriate monitoring program as the secretary may require which will demonstrate the presence of adequate cement to prevent such movement;

(3) Other appropriate tests as the secretary may require.

C. The secretary may consider the use by the discharger of equivalent alternative test methods to determine mechanical integrity. The discharger shall submit information on the proposed test and all technical data supporting its use. The secretary may approve the request if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed. For [~~in situ extraction well~~] Class III wells this demonstration may be made by submission of adequate monitoring data after the initial mechanical integrity tests.

D. In conducting and evaluating the tests enumerated in this Section or others to be allowed by the secretary, the discharger and the secretary shall apply methods and standards generally accepted in the affected industry. When the discharger reports the results of mechanical integrity tests to the secretary, he shall include a description of the test(s), the method(s) used, and the test results. In making an evaluation, the secretary's review shall include monitoring and other test data submitted since the previous evaluation.

20.6.2.5205 CONSTRUCTION REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. General Construction Requirements Applicable to [~~Effluent Disposal Wells~~] Class I non-hazardous waste injection wells and [~~In Situ Extraction Wells~~] Class III wells.

(1) Construction of all [~~effluent disposal wells~~] Class I non-hazardous waste injection wells and all new [~~in situ extraction wells~~] Class III wells shall include casing and cementing. Prior to well injection, the discharger shall demonstrate that the construction and operation of:

(a) [~~Effluent disposal wells~~] Class I non-hazardous waste injection wells will not cause or allow movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC;

(b) [~~In situ extraction wells~~] Class III wells will not cause or allow movement of fluids out of the injection zone into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC.

(2) The construction of each newly drilled well shall be designed for the proposed life expectancy of the well.

(3) In determining if the discharger has met the construction requirements of this Section and has demonstrated adequate construction, the secretary shall consider the following factors:

(a) Depth to the injection zone;

(b) Injection pressure, external pressure, annular pressure, axial loading, and other stresses that may cause well failure;

(c) Hole size;

(d) Size and grade of all casing strings, including wall thickness, diameter, nominal weight, length, joint specification, and construction material;

(e) Type and grade of cement;

(f) Rate, temperature, and volume of injected fluid;

(g) Chemical and physical characteristics of the injected fluid, including corrosiveness, density, and temperature;

(h) Chemical and physical characteristics of the formation fluids including pressure and temperature;

(i) Chemical and physical characteristics of the receiving formation and confining zones including lithology and stratigraphy, and fracture pressure; and

(j) Depth, thickness and chemical characteristics of penetrated formations which may contain ground water.

(4) To demonstrate adequate construction, appropriate logs and other tests shall be conducted during the drilling and construction of new [~~effluent disposal wells~~] Class I non-hazardous waste injection wells or [~~in situ extraction wells~~] Class III wells or during work-over of existing wells in preparation for reactivation or for change to injection use. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the secretary for review prior to well injection. The logs and tests appropriate to each type of injection well shall be based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site and the need for additional information that may arise from time to time as the construction of the well progresses.

(a) The discharger shall demonstrate through use of sufficiently frequent deviation checks, or another equivalent method, that a[~~n effluent disposal well~~] Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well drilled using a pilot hole then enlarged by reaming or another method, does not allow a vertical avenue for fluid migration in the form of diverging holes created during drilling.

(b) The secretary may require use by the discharger of the following logs to assist in characterizing the formations penetrated and to demonstrate the integrity of the confining zones and the lack of vertical avenues for fluid migration:

(i) For casing intended to protect ground water having 10,000 mg/l or less TDS: Resistivity, spontaneous potential, and caliper logs before the casing is installed; and a cement bond, or temperature log after the casing is set and cemented.

(ii) For intermediate and long strings of casing intended to facilitate injection: Resistivity, spontaneous potential, porosity, and gamma ray logs before the casing is installed; and fracture finder or spectral logs; and a cement bond or temperature log after the casing is set and cemented.

(5) In addition to the requirements of Section 20.6.2.5102 NMAC, the discharger shall provide notice prior to commencement of drilling, cementing and casing, well logging, mechanical integrity tests, and any well work-over to allow opportunity for on-site inspection by the secretary or his representative.

B. Additional Construction Requirements for [~~Effluent Disposal Wells~~] Class I non-hazardous waste injection wells.

(1) All [~~effluent disposal wells~~] Class I non-hazardous waste injection wells shall be sited in such a manner that they inject into a formation which is beneath the lowermost formation containing, within one quarter mile of the well bore, ground water having 10,000 mg/l TDS or less except as approved pursuant to Section 20.6.2.5103 NMAC.

(2) All [~~effluent disposal wells~~] Class I non-hazardous waste injection wells shall be cased and cemented by circulating cement to the surface.

(3) All [~~effluent disposal wells~~] Class I non-hazardous waste injection wells, except those municipal wells injecting noncorrosive wastes, shall inject fluids through tubing with a packer set in the annulus immediately above the injection zone, or tubing with an approved fluid seal as an alternative. The tubing, packer, and fluid seal shall be designed for the expected length of service.

(a) The use of other alternatives to a packer may be allowed with the written approval of the secretary. To obtain approval, the operator shall submit a written request to the secretary which shall set forth the proposed alternative and all technical data supporting its use. The secretary may approve the request if the alternative method will reliably provide a comparable level of protection to ground water. The secretary may approve an alternative method solely for an individual well or for general use.

(b) In determining the adequacy of the specifications proposed by the discharger for tubing and packer, or a packer alternative, the secretary shall consider the following factors:

(i) Depth of setting;

(ii) Characteristics of injection fluid (chemical nature or characteristics, corrosiveness, and density);

(iii) Injection pressure;

(iv) Annular pressure;

(v) Rate, temperature and volume of injected fluid; and

(vi) Size of casing.

C. Additional Construction Requirements for [~~In Situ Extraction Wells~~] Class III wells.

(1) Where injection is into a formation containing ground water having 10,000 mg/l or less TDS, monitoring wells shall be completed into the injection zone and into the first formation above the injection zone containing ground water having 10,000 mg/l or less TDS which could be affected by the extraction operation. If ground water having 10,000 mg/l or less TDS below the injection zone could be affected by the extraction operation, monitoring of such ground water may be required. These wells shall be of sufficient number, located and constructed so as to detect any excursion of injection fluids, process byproducts, or formation fluids outside the extraction area or injection zone. The requirement for monitoring wells in aquifers designated pursuant to Section 20.6.2.5103 NMAC may be waived by the secretary, provided that the absence of monitoring wells does not result in an increased risk of movement of fluids into protected ground waters having 10,000 mg/l or less TDS.

(2) Where injection is into a formation which does not contain ground water having 10,000 mg/l or less TDS, no monitoring wells are necessary in the injection zone. However, monitoring wells may be necessary in adjoining zones with ground water having 10,000 mg/l or less TDS that could be affected by the extraction operation.

(3) In an area that the secretary determines is subject to subsidence or collapse, the required monitoring wells may be required to be located outside the physical influence of that area.

(4) In determining the adequacy of monitoring well location, number, construction and frequency of monitoring proposed by the discharger, the secretary shall consider the following factors:

(a) The local geology and hydrology;

(b) The operating pressures and whether a negative pressure gradient to the monitor well is being maintained;

(c) The nature and volume of injected fluid, formation water, and process by-products; and

(d) The number and spacing of [~~in situ extraction wells~~] Class III wells in the well field.

20.6.2.5206 OPERATING REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. General Operating Requirements Applicable to [~~Effluent Disposal Wells~~] Class I non-hazardous waste injection wells and [~~In Situ Extraction Wells~~] Class III wells.

(1) The maximum injection pressure at the wellhead shall not initiate new fractures or propagate existing fractures in the confining zone, or cause the movement of injection or formation fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC.

(2) Injection between the outermost casing and the well bore is prohibited in a zone other than the authorized injection zone.

B. Additional Operating Requirements for [~~Effluent Disposal Wells~~] Class I non-hazardous waste injection wells.

(1) Except during well stimulation, the maximum injection pressure shall not initiate new fractures or propagate existing fractures in the injection zone.

(2) Unless an alternative to a packer has been approved under Subparagraph (c) of Paragraph (3) of Subsection B of Section 20.6.2.5205 NMAC, the annulus between the tubing and the long string of casing shall be filled with a fluid approved by the secretary and a pressure, also approved by the secretary shall be maintained on the annulus.

C. Additional Operating Requirements for [~~In Situ Extraction Wells~~] Class III wells.

(1) Initiation of new fractures or propagation of existing fractures in the injection zone will not be approved by the secretary as part of a discharge [~~plan~~] permit unless it is done during well stimulation and the discharger demonstrates:

(a) That such fracturing will not cause movement of fluids out of the injection zone into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC, and

(b) That the provisions of Subsection C of Section 20.6.2.3109 and Subsection C of Section 20.6.2.5101 NMAC for protection of ground water are met.

20.6.2.5207 MONITORING REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. The discharger shall demonstrate mechanical integrity for each [~~effluent disposal well~~] Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well at least once every five years during the life of the well pursuant to Section 20.6.2.5204 NMAC.

B. Additional Monitoring Requirements for [~~Effluent Disposal Wells~~] Class I non-hazardous waste injection wells.

(1) The discharger shall provide analysis of the injected fluids at least quarterly or, if necessary, more frequently to yield data representative of their characteristics.

(2) Continuous monitoring devices shall be used to provide a record of injection pressure, flow rate, flow volume, and pressure on the annulus between the tubing and the long string of casing.

(3) The discharger shall provide wells within the area of review as required by the discharge [~~plan~~] permit to be used by the discharger to monitor pressure in, and possible fluid movement into, ground water having 10,000 mg/l or less TDS except for such ground waters designated pursuant to Section 20.6.2.5103 NMAC. This Section does not require monitoring wells for [~~effluent disposal wells~~] Class I non-hazardous waste injection wells unless monitoring wells are necessary due to possible flow paths within the area of review.

C. Additional Monitoring Requirements for [~~In Situ Extraction Wells~~] Class III wells.

(1) The discharger shall provide an analysis or description, whichever the secretary requires, of the injected fluids at least quarterly or, if necessary, more frequently to yield representative data.

(2) The discharger shall perform:

(a) Appropriate monitoring of injected and produced fluid volumes by whichever of the following methods the secretary requires:

(i) Recording injection pressure and either flow rate or volume every two weeks; or

(ii) Metering and daily recording of fluid volumes;

(b) Monitoring every two weeks, or more frequently as the secretary determines, of the monitor wells, required in Subsection C of Section 20.6.2.5205 NMAC for:

(i) Water chemistry parameters used to detect any migration from the injection zone;

(ii) Fluid levels adjacent to the injection zone; and

(c) Other necessary monitoring as the secretary for good cause may require to detect movement of fluids from the injection zone into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC.

(3) With the approval of the secretary, all [~~in situ extraction wells~~] Class III wells may be monitored on a well field basis by manifold monitoring rather than on an individual well basis. Manifold monitoring to determine the quality, pressure, and flow rate of the injected fluid may be approved in cases of facilities consisting of more than one [~~in situ extraction well~~] Class III well, operating with a common manifold, provided that the discharger demonstrates that manifold monitoring is comparable to individual well monitoring.

20.6.2.5208 REPORTING REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. Reporting Requirements for [~~Effluent Disposal Wells~~] Class I non-hazardous waste injection wells.

(1) If a[~~n effluent disposal well~~] Class I non-hazardous waste injection well is found to be discharging or is suspected of discharging fluids into a zone or zones other than the permitted or authorized injection zone, the discharger shall within 24 hours notify the secretary of the circumstances and action taken. The discharger shall provide subsequent written reports as required by the secretary.

(2) The discharger shall provide reports quarterly to the secretary on:

(a) The physical, chemical and other relevant characteristics of injection fluids;

(b) Monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure; and

(c) The results of monitoring prescribed under Subsection B of Section 20.6.2.5207 NMAC.

(3) The discharger shall report, no later than the first quarterly report after completion, the results of:

(a) Periodic tests of mechanical integrity as required in Sections 20.6.2.5204 and 20.6.2.5207 NMAC;

(b) Any other test of the [~~effluent disposal well~~] Class I non-hazardous waste injection well conducted by the discharger if required by the secretary;

(c) Any well work-over; and

(d) Any changes within the area of review which might impact subsurface conditions.

B. Reporting Requirements for [~~In Situ Extraction Wells~~] Class III wells.

(1) The discharger shall notify the secretary within 48 hours of the detection or suspected detection of a leachate excursion, and provide subsequent reports as required by the secretary.

(2) The discharger shall provide to the secretary:

(a) Reports on required monitoring quarterly, or more frequently as required by the secretary; and

(b) Results of mechanical integrity testing as required in Sections 20.6.2.5204 and 20.6.2.5207 NMAC and any other periodic tests required by the secretary. These results are to be reported no later than the first regular report after the completion of the test.

(3) Where manifold monitoring is permitted, monitoring results may be reported on a well field basis, rather than individual well basis.

C. Report Signatory Requirements.

(1) All reports submitted pursuant to this Section shall be signed and certified as provided in Subsection G of Section 20.6.2.5101 NMAC, or by a duly authorized representative.

(2) For a person to be a duly authorized representative, authorization must:

(a) Be made in writing by a signatory described in Paragraph (1) of Subsection [~~H~~] G of Section 20.6.2.5101 NMAC.;

(b) Specify either an individual or a position having responsibility for the overall operation of that regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent, or position of equivalent responsibility; and

(c) Have been submitted to the secretary.

20.6.2.5209 PLUGGING AND ABANDONMENT FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. The discharger shall submit as part of the discharge [~~plan~~] permit application, a plan for plugging and abandonment of a[~~n effluent disposal well~~] Class I non-hazardous waste injection well or a[~~n in situ extraction well~~] Class III well that meets the requirements of Subsection C of Section 20.6.2.3109 and Subsection C of Section 20.6.2.5101 NMAC and 20.6.2.5005 NMAC for protection of ground water. If requested, a revised or updated abandonment plan shall be submitted for approval prior to closure. The obligation to implement the plugging and abandonment plan as well as the requirements of the plan survives the termination or expiration of the permit.

B. Prior to abandonment of a well used in a[~~n effluent disposal or in situ extraction~~] Class I non-hazardous waste injection well or Class III well operation, the well shall be plugged in a manner which will not allow the movement of fluids through the well bore out of the injection zone or between other zones of ground water. Cement plugs shall be used unless a comparable method has been approved by the secretary for the plugging of [~~in situ extraction wells~~] Class III wells at that site.

C. Prior to placement of the plugs, the well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method approved by the secretary.

D. Placement of the plugs shall be accomplished by one of the following:

(1) The Balance Method; or

(2) The Dump Bailer Method; or

(3) The Two-Plug Method; or

(4) An equivalent method with the approval of the secretary.

E. The following shall be considered by the secretary in determining the adequacy of a plugging and abandonment plan.

(1) The type and number of plugs to be used;

(2) The placement of each plug, including the elevation of the top and bottom;

(3) The type, grade and quantity of cementing slurry to be used;

(4) The method of placement of the plugs;

(5) The procedure to be used to plug and abandon the well; and

(6) Such other factors that may affect the adequacy of the plan.

F. The discharger shall retain all records concerning the nature and composition of injected fluids until five years after completion of any plugging and abandonment procedures.

20.6.2.5210 INFORMATION TO BE CONSIDERED BY THE SECRETARY FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. This Section sets forth the information to be considered by the secretary in authorizing construction and use of [~~an effluent disposal well~~] a Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well or well field. Certain maps, cross-sections, tabulations of all wells within the area of review, and other data may be included in the discharge [~~plan~~] permit application submittal by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved.

B. Prior to the [~~approval of a discharge plan~~] issuance of a discharge permit or project discharge [~~plan~~] permit allowing construction of a new [~~effluent disposal well~~] Class I non-hazardous waste injection well, operation of an existing [~~effluent disposal well~~] Class I non-hazardous waste injection well, or operation of a new or existing [~~in situ extraction well~~] Class III well or well field, or conversion of any well to injection use, the secretary shall consider the following:

(1) Information required in Subsection C of Section 20.6.2.3106 NMAC;

(2) A map showing the [~~effluent disposal well~~] Class I non-hazardous waste injection well, or [~~in situ extraction well~~] Class III well or well fields, for which approval is sought and the applicable area of review. Within the area of review, the map must show, in so far as is known or is reasonably available from the public records, the number, name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads;

(3) A tabulation of data on all wells within the area of review which may penetrate into the proposed injection zone. Such data shall include, as available, a description of each well's type, the distance and direction to the injection well or well field, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the secretary may require;

(4) For wells within the area of review which penetrate the injection zone, but are not properly completed or plugged, the corrective action proposed to be taken under Section 20.6.2.5203 NMAC;

(5) Maps and cross-sections indicating the general vertical and lateral limits of all ground water having 10,000 mg/l or less TDS within the area of review, the position of such ground water within the area of review relative to the injection formation, and the direction of water movement, where known, in each zone of ground water which may be affected by the proposed injection operation;

(6) Maps and cross-sections detailing the geology and geologic structure of the local area, including faults, if known or suspected;

(7) Generalized maps and cross-sections illustrating the regional geologic setting;

(8) Proposed operating data, including:

(a) Average and maximum daily flow rate and volume of the fluid to be injected;

(b) Average and maximum injection pressure;

(c) Source of injection fluids and an analysis or description, whichever the secretary requires, of their chemical, physical, radiological and biological characteristics;

(9) Results of the formation testing program to obtain an analysis or description, whichever the secretary requires, of the chemical, physical, and radiological characteristics of, and other information on, the receiving formation, provided that the secretary may issue a conditional approval of a discharge [~~plan~~] permit if he finds that further formation testing is necessary for final approval;

(10) Expected pressure changes, native fluid displacement, and direction of movement of the injected fluid;

(11) Proposed stimulation program;

(12) Proposed or actual injection procedure;

(13) Schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(14) Construction procedures, including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program;

(15) Contingency plans to cope with all shut-ins or well failures so as to prevent movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC;

(16) Plans, including maps, for meeting the monitoring requirements of Section 20.6.2.5207 NMAC; and

(17) The ability of the discharger to undertake measures necessary to prevent contamination of ground water having 10,000 mg/l or less TDS after the cessation of operation, including the proper closing, plugging and abandonment of a well, ground water restoration if applicable, and any post-operational monitoring as may be needed. Methods by which the discharger shall demonstrate the ability to undertake these measures shall include submission of a surety bond or other adequate assurances, such as financial statements or other materials acceptable to the secretary, such as: (1) a surety bond; (2) a trust fund with a New Mexico bank in the name of the State of New Mexico, with the State as Beneficiary; (3) a non-renewable letter of credit made out to the State of New Mexico; (4) liability insurance specifically covering the contingencies listed in this paragraph; or (5) a performance bond, generally in conjunction with another type of financial assurance. Such bond or materials shall be approved and executed prior to discharge [~~plan approval~~] permit issuance and shall become effective upon commencement of construction. If an adequate bond is posted by the discharger to a federal or another state agency, and this bond covers all of the measures referred to above, the secretary shall consider this bond as satisfying the bonding requirements of Sections 20.6.2.5000 through 20.6.2.[~~5300~~] 5299 NMAC wholly or in part, depending upon the extent to which such bond is adequate to ensure that the discharger will fully perform the measures required hereinabove.

C. Prior to the secretary's approval that allows the operation of a new or existing [~~effluent disposal well~~] Class I non-hazardous waste injection well or [~~in situ extraction well~~] Class III well or well field, the secretary shall consider the following:

(1) Update of pertinent information required under Subsection B of Section 20.6.2.5210 NMAC;

(2) All available logging and testing program data on the well;

(3) The demonstration of mechanical integrity pursuant to Section 20.6.2.5204 NMAC;

(4) The anticipated maximum pressure and flow rate at which the permittee will operate;

(5) The results of the formation testing program;

(6) The physical, chemical, and biological interactions between the injected fluids and fluids in the injection zone, and minerals in both the injection zone and the confining zone; and

(7) The status of corrective action on defective wells in the area of review.

20.6.2.5211 – 20.6.2.5299: [RESERVED]

~~**[20.6.2.5300 INJECTION WELL NOTIFICATION REQUIREMENT:** All operators of injection wells, except those wells regulated under the Oil and Gas Act, the Geothermal Resources Conservation Act, and the Surface Mining Act, shall:~~

~~**A.** Submit to the secretary the information enumerated in Subsection B of Section 20.6.2.1201 NMAC of this Part no later than September 20, 1983; provided, however, that if the information in Subsection B of Section 20.6.2.1201 NMAC has been previously submitted to the secretary and acknowledged by him, the information need not be resubmitted; and~~

~~**B.** Operate and continue to operate in conformance with Sections 20.6.2.1000 through 20.6.2.1220 NMAC and Sections by Sections 20.6.2.3000 through 20.6.2.3114 NMAC of this Part. [9-20-82, 12-1-95]]~~

Attachment D

July 17, 2001 10:00 a.m. – 1:00 p.m.
Roswell Independent School District

AESC, Room 227 – New Wing
300 N. Kentucky
Roswell, New Mexico 88201

Public Hearing To Receive Comments on Proposed Statewide Adequacy Standards (Rules)

August 2, 2001 10:00 a.m. – 1:00 p.m.

Mr. Willard H. Davis Jr, Hearing Officer:
University of New Mexico
Lecture Hall- ground floor
801 University SE
Albuquerque, New Mexico 87131

Copies of the Proposed Rules may be obtained from:

Ms. Lisa Martinez, Legislative Council Service, (FAX: 505-986-4680) (voice 986-4657), 411 State Capitol, Santa Fe, NM 87501.

The public is invited to attend any of the regional meetings and the Public Hearing. Written comments may be submitted by anyone at the regional meetings or mailed or faxed to the attention of: Mr. William Davis, Statewide Adequacy Stands for Public Schools Hearing Officer, in care of Ms. Martinez. Written comments must be received no later than 5:00 p.m., August 2, 2001. If anyone requires special accommodations, please advise Ms. Lisa Martinez of such need no later than 5:00 pm, June 25, 2001.

Robert M. Unthank, Chair
Standards and Facilities Subcommittee
Public School Capital Outlay Council
725 St. Michael's Drive
Santa Fe, New Mexico 87505
505-827-7035

NEW MEXICO WATER QUALITY CONTROL COMMISSION

NOTICE OF PUBLIC MEETING AND PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.6.2 NMAC – UNDERGROUND INJECTION CONTROL WELL REQUIREMENTS

The New Mexico Water Quality Control Commission will hold a public meeting beginning on August 14, 2001 at 9:00 a.m. in room 321 at the State Capitol Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico. Immediately following the meeting, a hearing will be held to consider proposed amendments to Sections 20.6.2.1-3999 and 20.6.2.5000-5300 NMAC. The proposal is to amend underground injection control well requirements of the Water Quality Control Commission Regulations. The New Mexico Environment Department is the proponent of the proposed amendments.

The proposal may be viewed on the Department's web site at www.nmenv.state.nm.us or during regular business hours in the office of the Commission Secretary, 1190 St. Francis Drive, Room N-4075, Santa Fe, New Mexico.

The hearing will be conducted in accordance with NMSA 1978, § 74-6-6, the Guidelines for Water Quality Control Commission Regulation Hearings, and other specific statutory procedures that may apply. A copy of the Guidelines for Water Quality Control Commission Regulation Hearings may be obtained from Maria Voyles at the Commission's office, Room N-4075, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-2425.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce relevant exhibits and to examine witnesses testifying at the hearing.

Persons desiring to present technical testimony at the hearing must file with the Commission a written notice. The written notice shall:

- identify the person for whom technical testimony will be presented;
- identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their education and work background;
- summarize or include a copy of the direct testimony of each technical witness;
- state the anticipated duration of the testimony of each witness;
- include the text of any recommended modifications to the proposed amendment; and
- list and describe, or attach, all exhibits anticipated to be offered by the person at the hearing.

The deadline for filing written notices shall be July 31, 2001, at 5:00 p.m. Written notices must be filed in the Commission's office and should reference 20.6.2 NMAC and the date of the hearing.

Any person who wishes to submit a non-technical written statement in lieu of oral testimony may do so at or before the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. translator or sign-language interpreter, to participate in any aspect of this process, please contact Cliff Hawley by July 17, 2001, at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-2850 (TDD or TDY users please access his number via the New Mexico Relay Network. Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.) Copies of the proposed amendment will be available in alternative forms, e.g. audiotape, if requested by July 17, 2001.

The Commission may deliberate and rule on the proposed amendments at the close of the hearing.

END OF NOTICES & PROPOSED RULES SECTION

STATE OF NEW MEXICO
County of Bernalillo SS

Bill Tafoya, being duly sworn, declares and says that he is Classified Advertising Manager of **The Albuquerque Journal**, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 times, the first publication being on the 18 day of June, 2001 and the subsequent consecutive publications on _____, 2001.

Sworn and subscribed to before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 18 day June of 2001.

PRICE 54.47

Statement to come at end of month.

ACCOUNT NUMBER 83171

OFFICIAL SEAL
Samantha Weiss
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 10/2/04

Samantha Weiss

CLA-22-A (R-1/93)

NEW MEXICO WATER QUALITY CONTROL COMMISSION NOTICE OF PUBLIC MEETING AND PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.6.2 NMAC - UNDERGROUND INJECTION CONTROL WELL REQUIREMENTS

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The Commission may deliberate and rule on the proposed amendments at the close of the hearing.
Journal: June 18, 2001

GWQB Exhibit 6

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF THE PETITION TO AMEND 20.6.2 NMAC – UNDERGROUND INJECTION CONTROL

WQCC 01-12 (R)

AFFIDAVIT

I hereby certify that the Notice of Hearing in the above captioned case was sent to the New Mexico Register, the Albuquerque Journal and the Newsline for the Blind along with a request for publication on June 14, 2001. The Notice was also mailed out to the Water Quality Control Commission interested persons list on June 27, 2001.

Maria Voyles, Administrator
Water Quality Control Commission

Notary Public

2/25/2004
My commission expires:

WHO SHOULD READ THIS BROCHURE?

Businesses and organizations that are potentially affected by the proposed revisions to the Underground Injection Control (UIC) regulations include:

- automotive service and repair stations (including oil & lube, transmission repair, muffler repair, and auto body repair shops);
- car, truck, and equipment dealers and rental agencies;
- corporate and municipal fleet vehicle service stations;
- light airplane repair facilities;
- boat yards;
- cities and counties that issue permits for floor drains;
- campgrounds with outhouses over dry wells;
- housing clusters and small communities discharging to large capacity cesspools; and
- industrial facilities that discharge to deep injection wells.

For information on reducing waste and discharges, call the Green Zia at:

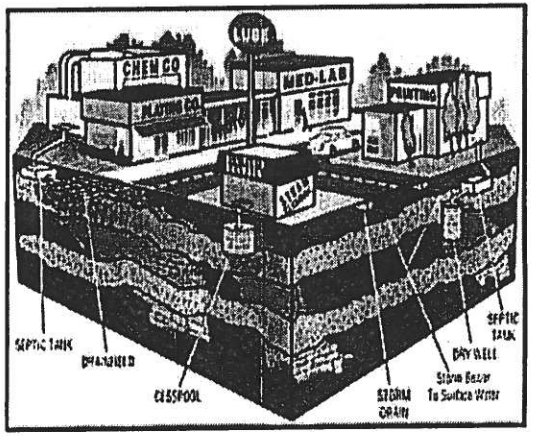
(505) 827-2855

IMPORTANT NOTICE

State of New Mexico
ENVIRONMENT DEPARTMENT
GROUND WATER QUALITY BUREAU
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502

New Mexico Environment Department
Ground Water Quality Bureau

Proposed Revisions to the New Mexico Water Quality Control Commission Regulations for Underground Injection Control (UIC) Wells



HOW THE NEW RULES WILL AFFECT YOU AND YOUR BUSINESS

GWQB Exhibit 8

SUMMARY OF PUBLIC COMMENTS ON NMED NOTIFICATION OF CLASS I, IV &V UIC WELL WQCC REGULATION CHANGES

Date	Name	Comment	Phone Call or Letter	NMED's Response
4/23/01	Jim Johnson, Sandia BMW, 884-0066	Owns a motor vehicle sales company. Asked whether runoff from a parking lot to a depression filled with rock is a UIC.	Phone call	Facility does not have a UIC well and is not affected by the regulation changes.
4/23/01	Tori Robins, Robins Auto, Farmington 327-7760	Owns a motor vehicles maintenance company. Asked whether an enclosed concrete sump is a UIC.	Phone call	Facility does not have a UIC well and is not affected by the regulation changes.
4/23/01	Robert Morse, Comanche Auto Service, 293-1091	Works at a motor vehicle repair company. Asked whether a sand trap connected to city sewer is a UIC.	Phone call	Facility does not have a UIC well and is not affected by the regulation changes.
4/25/01	Rick Orzell, Diesel Tune, Inc. 325-7100	Owns a motor vehicle repair company. Asked if the regulation changes affect a business that is connected to city sewer.	Phone call	Facility does not have a UIC well and is not affected by the regulation changes.
4/30/01	Link Summers, Taos	Does environmental consulting for Class V wells. Asked whether the Class V regulation changes affect domestic waste septic tank/leachfield systems, and how incidental motor vehicle waste will be addressed (eg. mechanics' hand and clothes washing). Expressed concern that NMED is proposing to make only the minimum UIC regulation changes required by EPA.	Phone call	Explained that the regulation changes would not affect regulation of septic tank/leachfield systems, we would not address incidental waste, and NMED is not proposing only the minimum changes.
5/1/01	Moises Gonzalez, Planning Dept., Rio Arriba County, 753-7774	Works for Rio Arriba County. Requested a public forum on the regulation changes be held in Rio Arriba County at the Regional Water Planning meeting. Said he would call back with the next meeting date.	Phone call	Expressed willingness to attend a meeting but the caller did not call back to extend an invitation.

5/3/01	Mary Murnane, Water and Facilities Planner, Bernalillo County Public Works	Bernalillo County Public Works is in support of the proposed revisions, in particular, the banning of Class I and IV wells, because revisions will further protect our aquifers and public drinking water supply. The County questions whether higher quality water (< 1,500 mg/l TDS) should be afforded more protection given the precious nature of drinking water resources.	Letter	The WQCC Regulations provide equal protection for all ground waters < 10,000 mg/l TDS. The County's suggestion is not consistent with the Commission's philosophy on ground water protection.
6/21/01	Peter Shoenfeld, Water Rights Attorney	Represents municipalities and water utilities. Asked how these regulation changes would affect a project where potable water is pumped and re-injected into a Class V UIC well.	Phone call/Meeting	Explained that injection of potable water without water contaminants is exempted by 20.6.2.3105 NMAC, and proposal would not change exemption.
6/22/01	Bob Beers, Los Alamos National Laboratory	Works for an Environmental team at LANL. Asked questions about how Class I Hazardous wells are regulated nationally.	Phone call	Discussed federal Class I UIC program.

Attachment E

ATTORNEY GENERAL STATEMENT

The Water Quality Act, Section 74-6-1 et seq NMSA 1978, the Geothermal Resources Act, Section 71-5-1 et seq NMSA 1978, the Surface Mining Act, Section 69-25A-1 NMSA 1978 and the regulations promulgated pursuant to them, provide the State of New Mexico with authority equivalent to that provided in federal requirements for underground injection control. The amendments to the Water Quality Control Commission Regulations adopted by the Water Quality Control Commission ("WQCC") September 11, 2001 satisfy and incorporate *Revisions to the Underground Injection Control Regulations for Class V Injection Wells* final rule published in the Federal Register on December 7, 1999, as well as those published in the Federal Register on July 26, 1988. After internal review, the New Mexico Environment Department and its Office of General Counsel have found that our existing authorities (after the September 11, 2001 WQCC amendments) are sufficient to support the amended regulations submitted to you for your approval, and the amended regulations may be implemented using existing authorities.

By my signature below, I certify that I have full authority to represent the state in court on matters pertaining to its Underground Injection Control Program.

Paul R. Ritzma
Special Assistant Attorney General
General Counsel, New Mexico Environment Department

9/14/01
Date

Jennifer J. Pruett
Attorney at Law
5 Ortiz Lane
Santa Fe, New Mexico 87508
(505) 466-7139 (telephone)
(505) 466-2533 (facsimile)

Confidential; Attorney-Client Privilege
Not for Public Distribution

Memorandum
To: Karen Menetrey, Maura Hanning, Marcy Leavitt, Paul Ritzma
From: Jennifer Pruett
Date: September 14, 2001
Re: Legal Analysis of UIC Regulations

Pursuant to the Scope of Work approved by the Bureau, I have completed my legal analysis of the amended UIC Regulations, which is detailed below. After reviewing this Memorandum, the Office of General Counsel should be able to prepare a statement indicating that the revisions are supported by existing authorities and may be implemented. This should satisfy EPA's requirement for an Attorney General's Statement in the primacy revision package.[1]

1. State Authority for Regulation Revisions.

Authority for promulgating the regulation amendments is found in the Water Quality Act, Section 74-6-1 et seq. NMSA 1978. The Water Quality Control Commission's authority "to prevent or abate water pollution in the state or in any specific geographic area, aquifer or watershed of the state or in any part thereof, or for any class of waters..." covers the UIC program and regulations. Section 74-6-4.D NMSA 1978. Section 75-6-5 NMSA 1978 allows the WQCC to require permits for the discharge of any water contaminant, such as those covered in UIC ground water discharge permits.

2. Summary of NMED UIC Primacy Agreement with EPA.

UIC wells in New Mexico are regulated by the Oil Conservation Division of the Energy Minerals and Natural Resources Department ("OCD"), NMED and EPA. On non-Indian lands, OCD has jurisdiction over all wells associated with oil and gas production, brine mining, geothermal and oil field service-related

[1] In an undated letter from Larry D. Wright to Marcy Leavitt listing what the Bureau must submit to EPA for approval of its Class V UIC program, EPA indicated that, "[a]n AG Statement may not be necessary provided the State Agency's Counsel can provide a signed statement indicating that, after internal review, the agency has found its existing authorities sufficient to implement the rules submitted for approval." If you or OGC would like, I would be happy to draft a statement for OGC signature. As a contract attorney, I do not believe I have authority to sign such a statement on the Department's behalf (and my signature would probably not satisfy EPA).

facilities (primarily Class II wells), and NMED covers all other Class I, III, IV and V wells. EPA regulates all wells on Indian lands. OCD's program approval was published in the Federal Register February 5, 1982, NMED's was published July 11, 1983.

NMED's original UIC program requirements were found in: WQCC Regulations, the Water Quality Act (Sections 74-6-1 et seq. NMSA 1978), the Geothermal Resources Act (Sections 71-5-1 et seq. NMSA 1978), and the Surface Mining Act (Sections 69-25 a-1-69-25A-35 NMSA 1978). Also included in the program were a Memorandum of Agreement between USEPA Region VI and the WQCC, NMEID and OCD signed April 13, 1983, and letter from EID's Director and OCD's Director to EPA's Regional Administrator signed February 10, 1983, as well as an Attorney General's Statement signed by attorneys for NMEID and OCD and submitted December 8, 1982. The Program Description submitted by the two New Mexico agencies also comprised part of the program requirements approved by EPA.

The main feature of the original UIC program was the WQCC discharge plan requirements found in Parts 3 and 5 of the WQCC regulations. At that time, the regulations did not contain sections requiring Abatement Plans nor some of the other current requirements. Nonetheless, the basic structure, outline and requirements for discharge plans were similar to current requirements. Enforcement for the UIC program followed the provisions of the Water Quality Act, and included assurances of discontinuance, administrative orders and both civil and criminal enforcement in district court. Civil or criminal penalties, as well as injunctions could be demanded.

The Attorney General's Statement concluded that the above-described statutes and regulations provided adequate authority for the State of New Mexico to regulate Classes I, III, IV and V UIC wells as required by federal requirements.[2]

3. Federal Requirement for UIC Regulation Revisions.

EPA's authority to regulate UIC wells comes from the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq. and the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. EPA published in the Federal Register on Tuesday December 7, 1999 federal revisions to the UIC regulations for Class V Injection Wells. In 1988, EPA revised the Code of Federal

[2] The Attorney General's Statement only refers to "four classes of wells specified in 40 C.F.R. Section 122.32. The Governor's letter which accompanied the application referred to Class 1, III, IV and V wells, and the MOU signed by the agencies also only discusses Class I, III, IV and V wells. This Memorandum does not address or discuss OCD's authority and primacy for Class II wells, as they are not part of the current proposal.

Regulations to provide additional requirements for Class I hazardous waste injection wells in response to the Hazardous and Solid Waste Amendments of 1984 ("HSWA").[3] EPA required states to make these changes by April 24, 1989, or to demonstrate that they already prohibit Class 1 hazardous waste injection wells.[4] New Mexico has never revised its regulations to reflect these changes, and must do so now in order to retain primacy. New Mexico is scheduled this year for its first primacy review since obtaining primacy almost ten years ago.

4. How the Draft Regulations Satisfy EPA's Requirements.

The federal regulations are summarized below, with the companion New Mexico requirements in italics:

A. New motor vehicle waste disposal wells are banned as of April 5, 2000, based on their high potential to endanger or contaminate underground drinking water sources. Existing motor vehicle wells must close or get a permit demonstrating no threat to underground drinking water sources, to continue operation after April 5, 2000.[5] EPA provides a series of phased in closure dates for motor vehicle disposal wells, based on whether the well is in a ground water protection area or sensitive ground water area (in a state that has delineated these areas). In states which elect not to complete assessments for these types of areas, EPA has a later date for permits or closure.

The WQCC protects all ground water equally and does not have different standards for drinking water aquifers. The amended regulations define new motor vehicle waste disposal wells in Section 20.6.2.7.BB (the definition section) and bans them in Section 20.6.2.5004.A.1, unless the discharger can demonstrate that the injectate meets ground water standards and drinking water maximum contaminant levels. New motor vehicle wells are defined in Section 20.6.2.5004.A.1 as those for which construction began after April 5, 2000. Existing motor vehicle wells must cease injection immediately, and must be closed by December 31, 2002. These wells technically are already illegal under WQCC regulations, as they are a discharge which affects groundwater, which requires a groundwater discharge permit. However, no permit would be issued, as these types of wells would likely violate groundwater standards.

B. New and existing large capacity cesspools are banned as of April 5, 2000, based on their high potential to endanger or contaminate underground drinking water sources. EPA defines "existing" to mean operational or under construction by April 5, 2000.

The amended regulations define large capacity cesspools in Section 20.6.2.7.G (receives greater than 2,000 gallons per day) and bans them in

[3] Federal Register Tuesday July 26, 1988, page 28117.
[4] Id. at 28120.
[5] Federal Register, Tuesday December 7, 1999, page 68570-71.

Section 20.6.2.5004.A.2. New large capacity cesspools are defined in Section 20.6.2.5004.A.2 as those for which construction began after April 5, 2000, and must be closed immediately. Existing large capacity cesspools must cease injection immediately, and must be closed by December 31, 2002. Like motor vehicle waste disposal wells, large capacity cesspools are illegal under current WQCC regulations, but the amendments make their prohibition explicit, as required by EPA for primacy.

C. EPA's revisions include a permitting system for Class I hazardous waste wells.[6]

The amended regulations include a prohibition on injection of any combination of hazardous or radioactive wastes into an injection well. 20 NMAC 6.2.5004.A.3, as well as prohibiting Class I hazardous waste injection wells, 20 NMAC 6.2.5004.A.3.a, and Class IV wells, 20 NMAC 6.2.5004.A.3.b (with the exemption below for treated ground water as part of certain supervised remediation projects). Additionally, the regulations allow discharge of NORM (Naturally Occurring Radioactive Material), which is currently allowed and regulated by OCD.

D. EPA's revisions include the addition of numerous definitions, including cesspool, drywell, improved sinkhole, point of injection, sanitary waste, septic system, subsurface fluid distribution system, well, and well injection.

These definitions are included in the proposal in Section 20.6.2.7 (the definitions section) as follows: cesspool at G; drywell at T; improved sinkhole at Y; subsurface fluid distribution system at PP; and well at ZZ. Point of injection is not applicable, as this term is not used in the regulations as a method of determining compliance. New Mexico's regulations use the term "domestic liquid waste," which has a definition that generally matches EPA's for sanitary waste.

E. EPA added a number of new categories of Class V wells, with a definition and examples to the types of UIC wells classified and regulated. Additionally, EPA requires specific steps for closure of Class V wells.

The amended regulations also list and describe a number of types of Class V wells in Section 20.6.2.5002.B.5. In general, for both EPA and the amended regulations, Class V wells are those not included in Classes I, II, III or IV.

F. EPA provided an exemption from regulation for Class IV wells injecting treated ground water in certain situations, if pursuant to an approved remediation project under CERCLA (42 U.S.C. Section 9601 et seq.) or RCRA (42 U.S.C. Section 6901 et seq.)

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[6] 40 CFR Parts 124, 144, 146 (effective August 25, 1988) and 148 (effective July 26, 1988).

The amended regulations include this same exemption in Section 20.6.2.5004.A.3.b, which states that Class IV wells are prohibited, except for these exempted wells.

G. EPA added regulations for Class V wells that prohibit fluid movement, add closure and other technical requirements. Also, Class V wells must provide sufficient data to allow them to be included in the Inventory of Injection Wells compiled by each state. Some Class V wells are authorized by rule and need not have a permit; other types of Class V wells must procure permits.

Section 20.6.2.5006 clarifies that Class V wells must meet the requirements of Sections 20.6.2.3000 through 20.6.2.3114 of the regulations (which describe the requirements for a ground water discharge permit) and Sections 20.6.2.5000 through 20.6.2.5006 (which specify general operation requirements, prohibited UIC activities and wells, pre-closure and closure requirements).

5. Consistency of the Revisions with Other WQCC Regulations.

The UIC Regulations fit into the Water Quality Control Commission Regulations, and are generally found in Part 5 of those Regulations: 20.6.2.5000: Underground Injection Control (20.6.2.5001 through 20.6.2.5300). However, numerous provisions of other sections that apply to UIC wells have been modified to ensure that the UIC regulations dovetail efficiently and consistently with other regulations affecting ground water.

Definitions for the UIC revisions are integrated into the general WQCC Regulations definitions found in Section 20.6.2.7. Notice of intent to discharge into a UIC well are located with the general notice of intent section (20.6.2.1201). General UIC requirements have been placed throughout Section 3's requirements for ground water discharge permits (formerly called "discharge plans"). (See particularly Sections 20.6.2.3106 Application for Discharge Permit and Renewals; 20.6.2.3107 Monitoring, Reporting and Other Requirements; 20.6.2.3109 Secretary Approval, Disapproval, Modification or Termination of Discharge Permits, and Requirement for Abatement Plans.)

The major revisions concerning UIC wells are found in Part 5, which parallel and follow the requirements for other ground water discharge permits. However, Part 5 contains the classification system for UIC wells (Section 20.6.2.5002), general requirements for UIC wells (Section 20.6.2.5003), and particular prohibited activities and types of UIC wells (Section 20.6.2.5004). Pre-closure notification and closure requirements are included in Section 20.6.2.5005, which are similar to those for regular discharge permits in Section 20.6.2.3107.A(11).

Discharge permit requirements for Class 1 non-hazardous waste injection wells and Class III wells are contained in Section 20.6.2.5101. Many of the requirements of this section refer back to Sections 20.6.2.3000-3114 for regular discharge permits, ensuring consistency with other regulations. Section 20.6.2.5102 contains pre-construction requirements for Class 1 non-hazardous waste injection wells and Class III wells, which are tailored to the detailed specialized needs of UIC wells.

A designated aquifer program, which confers special UIC discharge provisions and requirements, is in Section 20.6.2.5103. Similarly, waiver provisions (specially determined case-by-case) that reduce requirements for a UIC well are found in Section 20.6.2.5104. Section 20.6.2.5200-5209 contains specific technical, mechanical integrity, construction, operating, monitoring, reporting, plugging and abandonment and corrective action requirements for different types of UIC wells. These requirements arise from the different needs and consequences of UIC wells; these sections, therefore, parallel but are different from the requirements for regular discharge permits. As different issues must be considered for UIC wells and their discharge permits, Section 20.6.2.5210 lists information to be considered by the Secretary in evaluating UIC discharge permits for approval.

6. Non-Substantial Nature of Regulation Revisions.

EPA distinguished between "substantial" and "non-substantial" revisions, in terms of what types of documents must be submitted, what may be approved at the Regional level, and what type of review from the Attorney General's Office is required. In a Memorandum dated July 8, 1984[7] from EPA's Office of Drinking Water to Water Division Directors, EPA lists the activities considered to be "substantial" revisions:

1. Modifications to the State's basic statutory or regulatory authority which may affect the State's authority or ability to administer the program;
2. A transfer of all or part of any program from the approved State agency to any other State agency;
3. Proposed changes which would make the program less stringent than the Federal requirements under the UIC regulations.... And
4. Proposed exemptions of an aquifer containing water of less than 3,000 mg/l TDS.....[8]

[7] The stamped date on the Memorandum is difficult to read, although the month and year are fairly clear.
[8] Memorandum, page 6.

None of the revisions to the UIC Program fit these definitions, and therefore they will be considered by EPA to be "non-substantial" changes.[9] As a result, EPS will allow the revisions to be submitted with a statement from an Office of General Counsel attorney that the proposal meeting the requirements of the first paragraph of this Memorandum; this will satisfy EPA's requirement for an Attorney General Statement on the revisions. If the revisions were to be considered "substantial," then a more formal and detailed Attorney General would be required, such as that submitted with the initial UIC Primacy package.

7. Potentially Controversial Issues Arising from the Amended Regulations.

A. Banning Motor Vehicle Waste Disposal Wells ("MVWD wells") 20 NMAC 6.2.5004.A.1

EPA's regulations do not ban MVWD wells (a type of Class V well per 20 NMAC 6.2.5002.B.5.b(5)), but set up a permitting system for them. New Mexico's revision uses a different regulatory method, which imposes a ban on these wells, unless the discharge into the wells meets drinking water standards (20.6.2.5004.A(4). Although staff had originally sought an outright ban on motor vehicle waste disposal wells, the Commission modified that proposal, largely in response to concerns raised about limiting the options available for owners of these wells. The Commission also expressed concern about NMED's past experience with motor vehicle waste disposal wells, and the high propensity of those wells for contaminating ground water. The Water Quality Act does not limit regulations to being "no more stringent than" federal regulations,[10] and there is no federal counter-part to New Mexico's discharge plan requirement. Thus, it is within the Water Quality Control Commission's power and authority to ban or limit motor vehicle disposal wells, even if this requirement is more stringent that the federal requirement. However, it is not necessarily the case that New Mexico's limitations on motor vehicle waste disposal wells are more stringent than the federal permitting system.

Even as modified, Commissioner Howard Hutchinson, objected to the limitations on motor vehicle waste disposal wells, both on the basis that they amount to an unfunded mandate for municipalities, and also because they might place an insurmountable financial burden on small businesses located in rural areas, as well as on municipalities and counties. However, no industry members or members of the public testified against this part of the regulations, although the City of Albuquerque submitted written comments which were generally

[9] See memoranda from Chris Lister to Marcy Leavitt 1/22/01 and 2/26/01.

[10] A number of environmental statutes do contain this requirement, including the Hazardous Waste Act in Section 74-4-44.A and C NMSA 1978 ("regulations equivalent to and no more stringent than federal regulations") and the Air Quality Control Act, Section 74-2-5 NMSA 1978.

supportive of the regulation revisions. The other Commissioners countered that MVWD wells are already prohibited by the regulations, and that this provision is required to keep primacy, a high priority WQCC goal. Nonetheless, Hutchinson ultimately voted against the amendments.

WQCC regulations require a discharge plan or permit for any discharge that could affect ground water (such as injection into a MVWD well), and a permit would not be granted for a MVWD well. However, some MVWD wells have been permitted in the past and are still active. Most of these wells receive multiple waste streams (domestic waste as well as motor vehicle waste). As a result of the amended regulations, these facilities will have to separate out their motor vehicle waste and dispose of it in a different manner, such as a licensed commercial hazardous waste disposal service, collection in a holding tank, etc.

In testimony supporting these requirements for MVWD wells, staff described alternate disposal methods, including: discharge to city sewers, conversion to dry wash-down systems, holding tanks, and synthetically lined lagoons. Staff also provided testimony on the availability and cost of these alternate methods.

B. Banning Class I Hazardous Waste Wells. 20 NMAC 6.2.5004.A.3.a.

Again, EPA does not require New Mexico to ban these wells in order to keep primacy, and they are not banned in the federal regulations. Instead, EPA sets up a permitting system, requiring proof that these wells will not harm any source of drinking water in the future. According to technical staff, we have none of these wells in New Mexico, and banning them will have little practical or economic impact.

The Bureau's basis for banning these wells was primarily a programmatic priority and economic decision: this would be an expensive program for which to develop regulations and to analyze permits. Given that no one has ever asked for or needed one of these, the Bureau has determined it cannot put the resources into this program, and that its resources would better serve the regulated community if allocated elsewhere. Additionally, staff provided testimony that this program is very technically complex and expensive, requiring a high number of man-hours to oversee annual mechanical integrity tests and to analyze models demonstrating the wells will not allow migration. Staff indicated that other programs which regulate Class I hazardous waste wells are having trouble keeping up with the resulting program and budget demands.

The Bureau did not use a ground water protection argument to support a ban on Class I hazardous waste wells. OCD was also extremely concerned that any argument that these wells are "dangerous" threats to ground water would

reflect poorly on OCD's own program approval of some of these wells (in areas where jurisdiction is divided between the two agencies). However, as the Bureau agreed not to raise this argument to justify the ban, OCD agreed in return not to oppose the regulations.

As it turned out, this ban was not controversial, and no witnesses appeared at the hearing to challenge or complain about this ban. One or two Commissioners were somewhat concerned about limiting future options for industry in New Mexico, but were easily reassured by other Commission member and NMED that if the need arises in the future, the WQCC could revise these regulations accordingly, if the situation so warranted.

C. Ban on Barrier, Drainage and Return Flow Wells Unless of Drinking Water Quality. 20 NMAC 6.2.5004.A.4.

Barrier, drainage and return flow wells are classified under the amended regulations as a type of Class V well (20 NMAC 6.2.5002.B.5). This feature comes from the former version of the regulations, and was put in primarily at request of dischargers and potential dischargers. This section allows dischargers who want to get return flow water rights credits to inject water into these sorts of wells, as long as the water is of drinking water quality. Although requiring drinking water quality standards for a discharge permit, rather than ground water standards, may exceed the Bureau and WQCC's authority, this is only a voluntary opportunity for regulated industry and not something that is required of them. Technical staff believe it is important to retain this section in the revised regulations, to provide the program and the regulated community with additional flexibility. Staff projects that this option will become increasingly important and popular, as water rights become more expensive and scarce, encouraging water rights holders to secure return flow credits wherever possible. In fact, this was the one area of proposed changes that generated supporting testimony at the hearing.

Additionally, staff testified that since this section allows the direct injection of liquid into an aquifer, a higher level of protection is required. With other injection wells, the injection area is above or below drinking water aquifers, providing at least some measure of separation and protection, which are absent from this section's situation.

Again, this section did not turn out to be controversial, and was supported by at least one witness representing a developer in Santa Fe County who intends to use this option in the future. Likewise, the Commission ended up making this section more stringent than initially proposed by NMED. Instead of requiring the discharge to meet only drinking water standards, the WQCC required that it meet drinking water or ground water standards, whichever is more stringent

(recognizing that these sets of standards overlap in some instances, and include some different standards).

D. Non-Substantial Classification of the Changes to Regulations, for EPA Purposes

EPA classifies UIC regulation changes as either "substantial" or "non-substantial," and this classification determines what type of review and support the regulation revision must include. EPA Region 6 staff has suggested to the Bureau that these regulations be classified as non-substantial,[11] and EPA Regional will recommend this classification to Headquarters.

If the regulation revision package is classified as non-substantial, a statement from an Office of General Counsel attorney that the proposal does not violate New Mexico law and meets EPA's requirements will suffice. On the other hand, if the regulation changes are substantial, then a full-blown Attorney General Statement is required, and perhaps a re-submission of the primacy package. The Bureau strongly supports the non-substantial classification, and EPA agrees. However, industry and the public may be misled by these terms, as it certainly seems that these changes are substantial, as this word is generally used by laymen. This seems to be one of those EPA terms of art that is not always clear.

E. Ban on Large and Small Capacity Cesspools. 20 NMAC 6.2.5004.A.2.

No objections were made at the hearing on injection into large capacity cesspools. These have been prohibited for quite some time, as large capacity cesspools would not be granted a discharge permit by WQCC regulations. Small capacity cesspools, regulated by EIB, have been banned by Section 301 of the Liquid Waste Regulations since approximately 1979. Staff testified that cost-effective alternatives are available, including septic tanks, lagoons, treatment wetlands, and package treatment plants. Cesspools are classified as Class V wells in 20 NMAC 6.2.5002.B.5.a.

F. Addition of Closure Requirements for UIC wells. 20 NMAC 6.2.3107.A(11) and 20 NMAC 6.2.5005.

The amended regulations clarify and extend pre-closure notification and closure requirements for UIC wells, which places some additional economic burdens on regulated industry. However, these requirements have long been part of most ground water discharge permits, and there is no logical reason why

[11] Chris Lister to Leavitt 1/22/01 and 2/26/01.

UIC discharge permits should be any different. Additionally, the amendments extend closure requirements, so that they are effective even after a discharge permit is terminated or expired. The Bureau has had difficulty in the past with claims that once a permit is expired, it can no longer take enforcement for failure to implement closure requirements in the permit. The Bureau does not want to have to choose between terminating an out-of-compliance discharge permit and enforcing closure requirements. This change clearly allows the Bureau to do both.

Attachment F

UNDERGROUND INJECTION CONTROL PROGRAM
SUBSTITUTE MEMORANDUM OF AGREEMENT BETWEEN
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, 123 and 124 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).[1]

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 123.6 (C)). 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.

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

[1] All references to federal and state statutes and regulations are to statutes and regulations as in effect at the time this Agreement is signed.

authorization is not granted, the State may terminate this Agreement upon written notice from the State to EPA. The State's decision as to whether sufficient appropriations are available shall be final, binding and 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.[2] 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 122.36).

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[2] 40 C.F.R. 123.3. 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 122.35(b)(3)).

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 123.10). 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 122.18(c)(4). 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 122.18(a)) 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 122.18(c)(1)) 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. 122.18(a)(1) 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. 146.08(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 123.6(c)).

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 123.8).

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 123.4(g)).

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 123.6(b)(4)(ii)). 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 123.6(b)(1)).

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. 122.45 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 123.6 "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 123.6(b)(2)). 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 4-11-02 by _____
Peter Maggiore, Chairman
Water Quality Control Commission

Date _____ by _____
Peter Maggiore, Cabinet Secretary
New Mexico Environment Department

Date 4.2.02 by _____
William B. Mackie, Administrative Services Division Director
New Mexico Energy, Minerals & Natural Resources Department

Date _____ by _____
Gregg A. Cooke
Regional Administrator, Region VI
United States Environmental Protection Agency

Attachment G

UIC Program Revision Crosswalk - New Mexico Environment Department
9/4/01

Program Revision Crosswalk for the Class V Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** **Document title; page #; and § or ¶**	**If different than federal requirement, note here and explain on a separate sheet**
1. GENERAL REQUIREMENTS - §144.1 - 144.26			
PURPOSE AND SCOPE			
Specific inclusions to UIC regulations	§144.1(g)(1)(iii)	20.6.2.5002.A NMAC	NM does not have territorial waters.
Specific exclusions to UIC regulations	§144.1(g)(2)(v)	20.6.2.5101.D NMAC	The regulations are geared toward discharges. It is implicit that a dug hole not receiving fluids would be excluded.
DEFINITIONS			
Unless all Class V injection is banned by existing state statute and/or rule, including septic systems, the definitions must be updated to allow appropriate use of terms for compliance determinations.	§144.3/146.3	20.6.2.5002 NMAC or 20.6.2.7 NMAC as follows:	
New or revised definitions to be included in revision are: • cesspool; • drywell; • improved sinkhole; • point of injection; • sanitary waste; • septic system • subsurface fluid distribution system; • well; and, • well injection.		20.6.2.7.G NMAC 20.6.2.7.T NMAC 20.6.2.7.Y NMAC N/A 20.6.2.7.R NMAC 20.6.2.5002 NMAC 20.6.2.7.PP NMAC 20.6.2.7.ZZ NMAC 20.6.2.7.Z NMAC	"Domestic liquid waste" definition is equivalent to "sanitary waste." "Point of injection" is not used in the WQCC Regulations. "Injection" is equivalent to "well injection."

Program Revision Crosswalk for the Class V Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** **Document title; page #; and § or ¶**	**If different than federal requirement, note here and explain on a separate sheet**
CLASSIFICATION OF WELLS			
Class I Radioactive Disposal Well	§144.6(a)(3),144.80(a)(3), 146.5	20.6.2.5002.B.1 NMAC	
CLASS IV WELLS			
Expansion of allowable wells to include remediation approved by State CERCLA and RCRA programs. The allowance of Class IV remediation wells may not be expanded beyond CERCLA and RCRA cleanups.	§144.23(c), 144.80(e)	20.6.2.5002.B.4 NMAC	
INVENTORY REQUIREMENTS			
Clarify inventory requirement for Class V radioactive waste disposal wells (that are not Class I wells)	§144.26(b)(1)(iii)(B)	20.6.2.5002.B.5 NMAC	
2. SUBPART G - REQUIREMENTS FOR OWNERS AND OPERATORS OF MOTOR VEHICLE WASTE DISPOSAL WELLS AND LARGE CAPACITY CESSPOOLS §144.79 - 144.89			
DEFINITION OF CLASS V INJECTION WELLS			
APPLICABILITY			
Definition of motor vehicle waste disposal well.	§144.81(16)	20.6.2.5002.B.5 NMAC	
REQUIRING A PERMIT			
General Authorization by Rule. Rule must include exceptions of §144.84(b).	§144.84(a)	20.6.2.1201 NMAC	Facilities are notified whether they must have a permit or are authorized to discharge without a permit, based on information

Program Revision Crosswalk for the Class V Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** **Document title; page #; and § or ¶**	**If different than federal requirement, note here and explain on a separate sheet**
			submitted in the notice of intent to discharge.
Applicability to Large Capacity Cesspools Applicability to Existing Motor Vehicle Waste Disposal Wells	§144.85(a), §144.84(b)(2) §144.85(b), 144.87(a), §144.84(b)(2)	20.6.3104 NMAC 20.6.5001 NMAC 20.6.3104 NMAC 20.6.5001 NMAC	
Applicability to New Motor Vehicle Waste Disposal Wells	§144.85(c), §144.84(b)(2)	20.6.3104 NMAC 20.6.5001 NMAC	
Large Capacity Cesspools: • Existing wells closed by April 5, 2005 • 30-day pre-closure notification • New construction prohibited as of April 5, 2000	§144.88	20.6.2.5004 NMAC 20.6.2.5005 NMAC	
Well Conversions: Must be authorized by the UIC Director. Conversions of motor vehicle waste disposal wells requires: pre-closure notification: segregation of all motor vehicle fluids by physical barriers and prohibits such fluids entering well; Injection of motor vehicle waste unlikely based on facility compliance history, and records demonstrating proper waste disposal. Semi-permanent plug not acceptable to qualify as conversion.	§144.89(b)	N/A	WQCC will ban motor vehicle waste disposal wells state-wide unless a demonstration can be made that the injected fluid meets standards; then the well would be authorized by a permit. See attached supplemental information.

Program Revision Crosswalk for the Class V Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** **Document title; page #; and § or ¶**	**If different than federal requirement, note here and explain on a separate sheet**
3. STATE UIC PROGRAM REQUIREMENTS for *GROUND WATER PROTECTION AREAS*			
DEFINITIONS			
Ground Water Protection Areas. Definition must match language of Federal rule, such that the term corresponds to delineation of areas near and/or surrounding community and non-transient non-community water systems.	§144.86(c)	Not Defined	WQCC selected one date for closure of MVDWs statewide. See attached supplemental information.
APPLICABILITY OF GROUND WATER PROTECTION AREAS			
Applicability to Motor Vehicle Waste Disposal Wells	§144.87(a)	20.6.2.5001.A NMAC	
Requirements in Ground Water Protection Areas • States required to complete delineation by January 1, 2004. • Motor Vehicle Disposal Well owners required to close or permit well within one year after a local assessment is completed. • If State does not meet January 1, 2004 deadline, requirements apply to all existing motor vehicle waste disposal wells in the state. • States may be able to receive a one year extension from EPA if making reasonable progress	§144.87(b)	20.6.2.5004 NMAC	

Program Revision Crosswalk for the Class V Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** **Document title; page #; and § or ¶**	**If different than federal requirement, note here and explain on a separate sheet**
How owners and operators can determine location of ground water protection areas.	§144.87(d)	N/A	One closure date statewide eliminates the need for determining local GWPA locations. See attached supplemental information.
Impact of Changes in Status of State Drinking Water Source Assessment and Protection Program on motor vehicle waste disposal wells owners and operators. Compliance with closure or permitting required within a year of delineation. One year extension possible for connection to sewer in treatment installation.	§144.87(e)	N/A	
Motor Vehicle Waste Disposal Wells: - In ground water protection area, close or obtain permit within 1 year of local source water assessment completion, subject to 1 year extension to connection to sewer or installation of treatment. - Permitted wells and wells for which permit being sought must meet MCLs at point of injection. - Comply with all permit conditions, including meet MCLs and other health based standards at point of injection, follow specified best management practices in permit, and monitor injectate and sludge quality in accordance with permit conditions. - If State does not complete ground water protection area delineations by January 1, 2004 (or January 1, 2005 with extension), obtain permit or	§144.88	20.6.2.5004	No 1 year extension offered because MVDWs are already illegal under existing regulations. See attached supplemental information.

Program Revision Crosswalk for the Class V Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** **Document title; page #; and § or ¶**	**If different than federal requirement, note here and explain on a separate sheet**
close well by January 1, 2005 (or January 1, 2006 if state receives extension). 1-year extension available for connection to sewer or installation of treatment. • Notify State UIC Program at least 30 days prior to closing well. • New or converted wells prohibited effective April 5, 2000.			
STATE UIC PROGRAM REQUIREMENTS for *OTHER SENSITIVE GROUND WATER AREAS*			
DEFINITIONS Other Sensitive Ground Water Areas: If the State has other protected ground water areas, and it believes the definition meets the definition of "Other Sensitive Ground Water Areas", please provide the definition and a discussion per the right hand column of this form.	§144.86(g)	N/A	
APPLICABILITY OF OTHER SENSITIVE GROUND WATER AREAS Applicability to Motor Vehicle Waste Disposal Wells	§144.87(a)	N/A	
Other Sensitive Ground Water Areas • Delineation by January 1, 2004. • Existing motor vehicle waste disposal wells permitted or closed by January 1, 2007 (or 2008, with state extension). • Statewide implementation effective January 1, 2007 if delineations not completed on time. • Ground water protection areas subject to different compliance schedule (per §144.87(b))	§144.87(c)	N/A	
How owners and operators can determine location of other sensitive	§144.87(d)	N/A	

Program Revision Crosswalk for the Class V Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** **Document title; page #; and § or ¶**	**If different than federal requirement, note here and explain on a separate sheet**
ground water areas. Motor Vehicle Waste Disposal Wells: • In sensitive ground water area, close or obtain permit by January 1, 2007; no time extensions for permitting. 1-year extension available for connection to sewer or installation of treatment. • Permitted wells and wells for which permit being sought must meet MCLs at point of injection. • Comply with all permit conditions, including meet MCLs and other health based standards at point of injection, follow specified best management practices in permit, and monitor injectate and sludge quality in accordance with permit conditions. • If State does not delineate other sensitive ground water areas by January 1, 2004, and well is not in a ground water protection area, obtain permit or close well by January 1, 2007 (or January 1, 2008 if State receives extension). • Notify State UIC Program at least 30 days prior to closing well. • New or converted wells prohibited effective April 5, 2000.	§144.88	N/A 20.6.2.5004 NMAC	
4. STATE PROGRAM REQUIREMENTS AS FOUND IN SECTION 145			
REQUIREMENTS FOR PERMITTING Addition of §145.11(a)(32) reference to list of regulations required to be at least as stringent as Federal regulation.	§145.11(b)(1)		Provisions are not identical to CFR, but are equivalent or more stringent.

Program Revision Crosswalk for the Class V Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** **Document title; page #; and § or ¶**	**If different than federal requirement, note here and explain on a separate sheet**
OTHER SENSITIVE GROUND WATER AREAS - STATE PROGRAM DESCRIPTION			
Description and schedule for State's plan to identify and delineate other sensitive ground water areas. List of factor to be considered include: • geologic and hydrogeologic settings • ground water flow and occurrence • topographic and geographic features • depth to ground water • significance as a drinking water source • prevailing land use practices • other existing information on susceptibility of ground water to contamination from Class V injection wells.		N/A	WQCC Regs. will not define OSGWAs. See attached supplemental information.
State must commit to complete OSGWA delineations by January 1, 2004; make delineations available to the public; implement the Class V regulations in delineated areas no later than January 1, 2007.	§145.23(f)(12)	N/A	
States choosing not to delineate other sensitive ground water areas must implement motor vehicle waste disposal well requirements statewide by January 1, 2007.	§145.23(f)(12)	20.6.2.5004 NMAC	WQCC Regulation revisions were approved August 14, 2001 and are expected to become effective during November 2001.

mlr\horsley&witten\task3\cross_202.wpd

Supplemental Information to the New Mexico Environment Department's Class V Federal/State Class V Regulation Revision Crosswalk

New Mexico will apply the ban on motor vehicle waste disposal wells and cesspools statewide. This approach is consistent with New Mexico Water Quality Control Commission (WQCC) Regulations and New Mexico Environment Department (NMED) policies for the protection of ground water quality for current and future use as a statewide resource. Therefore, no Other Sensitive Ground Water Areas will be identified for New Mexico.

The WQCC Regulations will allow motor vehicle waste disposal wells to be authorized by permit, if the discharger can make a demonstration that the injected fluid does not exceed a drinking water maximum contaminant level or WQCC ground water standard, whichever is more stringent. However, NMED has a long-standing policy of prohibiting large capacity cesspools and motor vehicle waste disposal wells, and does not believe many motor vehicle waste disposal wells will meet these criteria.

New Mexico proposes one deadline for closure of all existing motor vehicle disposal wells and cesspools, because numerous deadlines tied to the completion of Ground Water Protection Area (GWPA) delineations would be unnecessarily burdensome to both NMED and the regulated community. The proposed deadline for closure is December, 2002, approximately one year following promulgation of the regulation revisions, however, exising motor vehicle waste disposal wells and large capacity cesspools are required to cease discharge immediately when the regulations become effective. The proposed deadline is conservative because it will still be early in the completion of New Mexico's GWPA delineations.

A protocol will be established between NMED's Drinking Water Quality Bureau and Ground Water Quality Bureau for the referral of Class V UIC wells and any other discharges discovered during the GWPA delineations. Any existing cesspools or motor vehicle disposal wells will be ordered closed under the authority of existing WQCC Regulations.

In addition, the Ground Water Quality Bureau will consult with the Hazardous Waste Bureau of NMED for Resource Conservation and Recovery Act (RCRA) inspection reports on automotive repair and maintenance shops.

Karen McCormack

From: Lister.Chris@epamail.epa.gov
Sent: Thursday, June 12, 2003 4:56 PM
To: karen_menetrey@nmenv.state.nm.us
Cc: Leissner.Ray@epamail.epa.gov
Subject: Class V Rule Revisions

Karen,

In order to get the NM Class V Revision Package moving again I would like to request that you slightly amend April 29, 2002 letter which accompanied the revision package to address several concerns raised by Regional Counsel.

In item 1. Program Description Addendum please add some verbage that describes how NMED will address permitting, reporting, monitoring, and enforcement. Also clarify staffing levels.

One RC comment that may give you a feel for their issues: "...the N. Mexico program description addendum fails to adequately state how it's large capacity cesspool and motor vehicle well regulations will be implemented and enforced in a manner as stringent as the federal regulations. This information (implementation and enforcement of well permitting, well operation and well/cesspool closure) should be adequately explained pursuant to 40 C.F.R. 145.23(e), and the failure to do so calls into question the completeness of the program description addendum. Per language included in the N. Mexico program description addendum (p. 2), it appears that for approximately six (6) months, there was no one available to issue UIC permits, conduct compliance inspections, and enforce UIC regulations in N. Mexico. Such action calls into question the State's capability to administer the UIC program und 40 C.F.R. 145.33".

You may wish to explain that the UIC program has more staff than just you and that while you spent 50% of your time for twelve months working on the regulation changes, the program was staffed and functioning.

Ray Leissner (214 665-7183) will call sometime early next week and discuss some of the items that Regional Counsel has brought up. I would be involved but fortunately (I mean unfortunately) I'll be on vacation. I think with adding some additional information and explanation will resolve RCs issues.

Thanks,
Chris

DATE: October 28, 2003

TO: Tracy Hughes, General Counsel, OGC

FROM: Karen Menetrey, Hydrologist, GWPPS

THROUGH: Maura Hanning, Program Manager, GWPPS
Jerry Schoeppner, Bureau Chief, GWQB

RE: UIC Primacy Revision Package

The Ground Water Quality Bureau requests legal assistance in preparing a response document to EPA Region 6 on our Class V Underground Injection Control program revision package. In 2001, the GWQB proposed and the Water Quality Control Commission (WQCC) promulgated revisions to the WQCC Regulations in order to be consistent with federal regulations as required to retain program primacy. Jennifer Pruett was the attorney contracted for the regulation hearing and related tasks. The GWQB submitted the primacy package to EPA Region 6 and after several months EPA responded with comments and requested a response to their comments. The GWQB has responded but EPA's attorney will not be satisfied with our comments unless they are signed by an attorney.

This project involves reviewing background information on the UIC regulation changes, reviewing EPA's comments and the GWQB's response, and drafting a document responding the EPA's concerns. Upon receipt of the response document, EPA Region 6 will then send our primacy package to EPA headquarters for final review.

Attorney General of New Mexico

PATRICIA A. MADRID
Attorney General

STUART M. BLUESTONE
Chief Deputy Attorney General

GLENN R. SMITH
Deputy Attorney General

June 24, 2004

Mr. Miguel Flores, Director
Water Quality Protection Division
EPA Region 6 (6WQ-SG)
1445 Ross Avenue, Suite 1200

Re: UIC Program Revision Package

ATTORNEY GENERAL STATEMENT
(Addendum to September 14, 2001 Statement)

The Water Quality Act, NMSA 1978, § 74-6-1 et seq ("WQA"), the Geothermal Resources Act, NMSA 1978, § 71-5-1 et seq, the Surface Mining Act, NMSA 1978, § 69-25A-1, and the regulations promulgated pursuant to them, provide the State of New Mexico with authority equivalent to that provided in federal requirements for underground injection control. The amendments to the Water Quality Control Commission Regulations adopted by the Water Quality Control Commission ("WQCC") September 11, 2001 satisfy and incorporate *Revisions to the Underground Injection Control Regulations for Class V Injection Wells* final rule published in the Federal Register on December 7, 1999, as well as those published in the Federal Register on July 26, 1988. After internal review, the New Mexico Attorney General's Office, the New Mexico Environment Department ("NMED") and its Office of General Counsel have found that our existing authorities (after the September 11, 2001 WQCC amendments) are sufficient to support the amended regulations submitted to you for your approval, and the amended regulations may be implemented using existing authorities. This addendum

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to the original Attorney General's Statement of September 14, 2001 addresses several additional issues concerning New Mexico's existing authority as follows;

I. Definition of Point of Injection

The term *point of injection* is not defined in New Mexico's regulations because the term is not used in the regulations. The term p*oint of injection* is defined in federal regulations to mean "the last accessible sampling point prior to wastes being released into the subsurface environment". 40 C.F.R. § 144.3 The term is used in 40 C.F.R. § 144.88(B)Table 2, (1)(iii), and (iv) to require that MCLs be met through sampling prior to injection of waste and therefore ensure attainment of the non-endangerment provision in 40 C.F.R. § 144.12(a).

The existing WQA and WQCC Regulations provide equivalent authority to require sampling of wastes after treatment but before injection and to ensure attainment of the non-endangerment provision in 40 C.F.R. § 144.12(a). Instead of using the term *point of injection*, the GWQB uses the following existing language within the WQA and WQCC Regulations to require sampling of injectate and prevent contamination from any injection well.

> Determination of a discharges' effect on ground water shall be measured at any place of withdrawal of water for present or reasonably foreseeable future use. (NMSA 1978, § 74-6-5.E(3) (1999)).
>
> The purpose of [the WQCC Regulations for discharge permits] controlling discharges onto or below the surface of the ground is to protect all groundwater of the state of New Mexico which has an existing concentration of 10,000 mg/l or less [total dissolved solids] for present and

> potential future use as domestic and agricultural water supply... (20.6.2.3101 NMAC)
>
> Barrier wells, drainage wells, recharge wells, return flow wells and motor vehicle waste disposal wells are prohibited, except when the discharger can demonstrate that the injection will not adversely affect the health of persons, and
>
> (a) the injection fluid does not contain a contaminant which may cause an exceedance at any place of present or reasonable foreseeable future use of any primary state drinking water maximum contaminant level as specified in the water supply regulations, "Drinking Water" (20 NMAC 7.1) [20.7.10 NMAC], adopted by the Environmental Improvement Board under the Environment Improvement Act or the standard of Section 20.6.2.3103 NMAC, whichever is more stringent;
>
> (b) The discharger can demonstrate that the injection will result in an overall or net improvement in water quality as determined by the secretary. (20.5.2.5004 NMAC)
>
> The secretary shall not approve a proposed discharge plan, modification, or renewal for:
>
> (1) any discharge for which the discharger has not provided a site and method for flow measurement and sampling. (20.5.2.3109.H NMAC)

To comply with these regulations a discharger subject to a discharge permit (including injection wells) would be required to sample both the injectate (after treatment, but before injection) and ground water near the injection well to determine that ground water standards would not be exceeded. In fact, a permit could not be issued without a site and method of effluent sampling. As a matter of policy, practice, and interpretation, NMED has long required injectate from motor vehicle waste disposal wells to meet ground water standards by requiring sampling as indicated above. EPA can reasonably rely on NMED's practice and interpretation of these regulations when approving a state program. *See* Defenders of Wildlife, et al. vs. U.S.E.PA., No. CIV 02-

150, slip op. at 29 (D.N.M. May 21, 2004) (holding that EPA reasonably relied on the WQCC's interpretation of its own regulations when approving state water quality standards).

The above cited provisions of the WQA and WQCC Regulations provide the State of New Mexico with authority equivalent to the federal regulations for the definition and use of the term *point of injection*. Because of these pre-existing legal authorities and the longstanding interpretation of them, it is unnecessary to have a definition for *point of injection* in the WQCC Regulations.

II. Federal vs. State Effective Dates

Since 1968, all new dischargers in the State of New Mexico were required to notify the state of any discharge that could affect ground water quality. Since 1977, New Mexico has required permits for new discharges to ground water to prevent ground water contamination. All new motor vehicle waste disposal wells and large capacity cesspools were subject to these regulations and were required to submit a notice of intent to discharge pursuant to 20.6.2.1201.B NMAC and to obtain a discharge permit pursuant to 20.6.2.3000 - 3114 NMAC or cease operations and close. The GWQB has used this pre-existing authority for years to prohibit or to close out large capacity cesspools and motor vehicle waste disposal wells.

The WQCC Regulations at 20.6.2.5004.A NMAC explicitly prohibit any further discharge of fluid into large capacity cesspools and motor vehicle waste disposal wells (except as provided for under 20.6.2.5004.A(4) NMAC). This prohibition was effective on December 1, 2001. Existing motor vehicle waste disposal wells or large capacity

cesspools and new motor vehicle waste disposal wells or large capacity cesspools for which construction began after April 5, 2000, were required to close by December, 2002 under 20.6.2.5004.A NMAC.

In theory, the different effective dates for the state and federal ban on motor vehicle waste disposal wells or large capacity cesspools would have allowed construction and operation during the intervening time period (April 5, 2000 to December 1, 2001). *See* 40 C.F.R. § 144.84(b)(2) and 20.6.2.5004.A NMAC). In fact, no new motor vehicle waste disposal wells or large capacity cesspools were permitted in New Mexico after April 5, 2000. To legally operate, any motor vehicle waste disposal well or large capacity cesspool would have been required to submit a notice of intent to discharge and obtain a permit pursuant to 20.6.2.1201.B and 3000 - 3114 NMAC. The fact that New Mexico did not permit the construction or operation of any new motor vehicle waste disposal well or large capacity cesspool during this time period makes this a moot issue (i.e. there is no actual issue because there is no person or class of persons to which New Mexico could have applied the earlier federal ban). If there was any illegal construction or operation of a motor vehicle waste disposal well or large capacity cesspool during this time period, New Mexico can enforce its preexisting regulations and require closure of the violating injection well for failure to submit a notice of intent and operation without a permit. Therefore, New Mexico's existing regulations provide an enforcement mechanism equivalent to the date of the federal ban.

III. Territorial Waters

40 CFR § 144.1(g)(1)(i) includes in the scope of the UIC program "any injection well located on a drilling platform inside the State's territorial waters". The term "territorial waters" is not defined in federal statute or regulation. However, federal case law indicates that state "territorial waters" is the common term for the former territorial waters of the U.S. granted to a state under 43 U.S.C. § 1301(a)(2), that extend three miles beyond a state's coastline. *See* U.S. v. Alaska, 117 S.Ct. 1888, 1894 and 1906-1907 (1997); Submerged Lands Act of 1953, 43 U.S.C. § 1301 *et seq.*

State "territorial waters" are distinguished from "inland waters" granted at statehood under the "equal footing doctrine" and later by 43 U.S.C. § 1301(a)(1). *See* U.S. v. Alaska, 117 S.Ct. at 1907. "Equal footing lands" are navigable waters (e.g. the Rio Grande River) defined by state boundaries and subject to state jurisdiction at statehood. *See* Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co. 97 S.Ct. 582, 587 (1977); North Dakota v. Andrus, 506 F. Supp. 619 (D. North Dakota 1981). "Equal footing lands" are limited to inland navigable waters and tidelands to the low water mark. *See* U.S. v. California, 67 S.Ct. 1658, 1654 (1947).

The Submerged Lands Act allowed states to extend their state boundaries three miles into the former territorial waters of the U.S., thereby asserting authority over offshore oil and gas drilling. *See* 43 U.S.C. § 1312; North Dakota v. Andrus, 506 F. Supp. at 625; Bonelli Cattle Company v. Arizona, 94 S.Ct. 517, FN19 (1973). When promulgating 40 CFR § 144.1(g)(1)(i), EPA simply ensured that state UIC programs would extend jurisdiction over any injection wells on offshore drilling platforms in state territorial waters. *See* 44 Fed. Reg. 23738, 23741 (April 20, 1979); 45 Fed. Reg. 42472,

42474 (June 24, 1980); 45 Fed. Reg. 33290, 33328 and 33436-7 (May 19, 1980) (formerly 40 C.F.R. § 122.31 now codified at 40 C.F.R. § 144.1 by 48 Fed. Reg. 14146, 14189 (April 1, 1983).

The State of New Mexico does not have any territorial waters granted pursuant to 43 U.S.C. § 1301(a)(2). Any navigable water in New Mexico which also borders another state or Mexico is not a "territorial water", but is an "equal footing land" which has been subject to state jurisdiction from statehood.

IV. Audit Privilege or Immunity Laws

New Mexico has not promulgated any law or adopted any regulation providing an audit privilege or immunity for self disclosure of violations that is applicable to the statutes and regulations which implement the UIC program.

By my signature below, I certify that I have full authority to represent the state in court on matters pertaining to its Underground Injection Control Program.

Zachary Shandler
Assistant Attorney General
WQCC counsel

6/24/04
Date

cc: Chris Lister, Environmental Engineer
Water Quality Protection Division
EPA Region 6 (6WQ-SG)
1445 Ross Avenue, Suite 1200