

Memorandum of Agreement between the
U.S. Environmental Protection Agency and the State of New Mexico

UNDERGROUND INJECTION CONTROL PROGRAM
Memorandum of Agreement
between
THE STATE OF NEW MEXICO
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VI

I. General

This Memorandum of Agreement (Agreement), establishes responsibilities, and procedures pursuant to 40 CFR Parts 122, 123 and 124, for the State of New Mexico Underground Injection Control 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).

II. Parties; Effective Date

This Agreement is entered into by the New Mexico Water Quality Control Commission (Commission), the Director of the Environmental Improvement Division of the New Mexico Health and Environment Department (EID), and the Director of the Oil Conservation Division of the New Mexico Energy and Minerals Department (OCD), on behalf of the State of New Mexico (State), and the Regional Administrator, United States Environmental Protection Agency, Region VI (Regional Administrator or EPA). After it is signed by the Commission, the Directors, and the Regional Administrator, this Agreement shall become effective on the date notice of State program approval is published in the Federal Register.

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 CFR Part 123.6(C)). Modifications must be in writing and must be signed by the Commission, EID, OCD, 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, EID, OCD, 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 the 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.

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

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 modifications 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, decision, 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 § 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

The State program shall protect all groundwater 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 5-103 of the Commission's Regulations. All permanent

²40 CFR Part 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.

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 CFR Part 122.35(b)(3)).

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 groundwater which has an existing concentration of 10,000 mg/l or less total dissolved solids (TDS), and which has not been "designated" pursuant to Section 5-103 of the Commission's Regulations (40 CFR Part 122.36).

VIII. Sharing of Records and Files; Confidential Information

All information used in the administration of the State program including copies of all underground injection control (UIC) permit files shall be available for EPA review upon request (40 CFR 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 CFR, 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 CFR 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 such action is resolved.

X. Major Facilities

Every effluent disposal 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 report to EPA as specified in 40 CFR Part 122.18(c)(4). The reporting period for the annual report shall be from January 1 to December 31 with the report due to EPA no later than February 15. 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 CFR 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 CFR Part 122.18(c)(1)) on non-major facility permittees by February 28 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 CFR 122.18(c)(1) including the current status and/or outcome of any actions taken by the Director against those permittees who are not in compliance.

- C. In addition to progress and noncompliance reports, the State shall submit a mid-course evaluation report to EPA by February 28 and August 31 of each of the first 2 years of program operation after the State has been granted primary enforcement responsibility (40 CFR, Part 122.18(c)(4)(ii)). The February 28 submission shall be for the 6-month reporting period from July through December. The August 31 submission shall be for the 6-month reporting period from January through June. The initial submission shall include for each permittee the information required in 40 CFR Parts 146.15 and 146.35. Subsequent reports shall include the information required in 40 CFR Parts 146.15 and 146.35 for all permittees either by reference to previous submission or by a new submission for each permittee not covered in previous reports, and for each permittee previously covered, any updated, revised, or additional information as appropriate.

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 5-204.B.1 and 2 of the Commission's Regulations) for mechanical integrity, the State shall submit a written request to EPA and shall obtain written approval (40 CFR Part 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 that the permit or plan will be terminated and giving the date of termination (40 CFR Part 124.5(d)).

XIV. Program Evaluation

EPA shall conduct an annual evaluation of the State program as required by 40 CFR 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 CFR Part 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 CFR 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 CFR 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 CFR 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 Director at least 7 days before any such inspection, except for emergency situations when such lengthy advanced notice is impracticable (40 CFR 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 underground injection control permits, permit applications, relevant RCRA files, supporting files, and other relevant information pertaining to the underground injection control program (40 CFR 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 Water Pollution Control Bureau of the EID and the RCRA permit issuing authority will coordinate so that the requirements of 40 CFR 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 NMWQCC Regulation 3-108 for discharge plan applications and hearings related to any UIC operation regulated under Part 3 or Part 5 of the WQCC Regulations.

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 CFR 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 CFR 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, anytime after the State has been granted primary enforcement responsibility, the State shall submit to EPA upon request any relevant injection well discharge plan information.

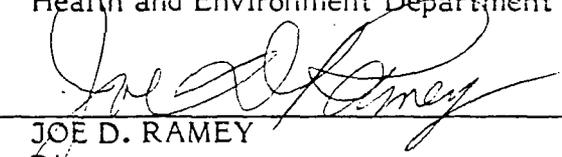
XIX. Reliance on Federal Regulations

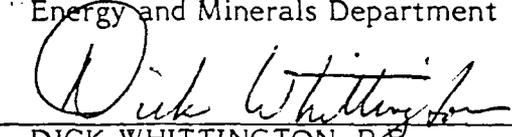
To the extent that any Federal Regulation is the basis of any requirement in this Memorandum of Agreement, such requirement shall be null and void when such regulation is repealed or stricken.

Approval:

Date 4/12/83 by 
RUSSELL F. RHOADES
Chairman
New Mexico Water Quality Control Commission

Date 4/12/83 by 
RUSSELL F. RHOADES
Director
Environmental Improvement Division
Health and Environment Department

Date 4/12/83 by 
JOE D. RAMEY
Director
Oil Conservation Division
Energy and Minerals Department

Date 4/13/83 by 
DICK WHITTINGTON, P.E.
Regional Administrator, Region VI
United States Environmental Protection Agency