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UNDERGROUND INJECTION CONTROL PROGRAM

MEMORANDUM OF AGREEMENT

BETWEEN

The State of North Dakota
Department of Health
Division of Water Supply and Pollution Control

AND

The United States
Environmental Protection Agency
Region VIII

2015-007702-0000188_0001

I. INTRODUCTION

Region VIII of the Environmental Protection Agency (EPA or Regional Administrator) and the North Dakota State Department of Health, Environmental Health Section (Department) have entered into this Memorandum of Agreement to delineate the responsibilities of each agency for the ongoing operation of the Underground Injection Control Program (UIC) for Class I, III, IV, and V injection wells, as described in Part C of the Safe Drinking Water Act (Public Law 93-523 as amended by Public Law 95-190 and 96-502) (SDWA). The Agreement established policies, responsibilities, and procedures pursuant to 40 CFR Part 145 for the State of North Dakota UIC Program. The Agreement specifies areas of cooperation, standards of performance, and guidelines for achievement of the goals set forth in the SDWA. This Agreement shall become effective when signed by both parties and approved by the Administrator of the Environmental Protection Agency.

II. POLICIES AND AGREEMENTS

A. Lead Agency Responsibilities

The North Dakota State Department of Health has been designated by the Governor as the lead agency. As lead agency, it will receive the annual program grant and shall coordinate the UIC Program to facilitate communication between EPA and the other state agencies having program responsibilities. The Industrial Commission acting through the Oil and Gas Division has authority over all Class II injection wells. The Industrial Commission acting through the Office of the State Geologist has authority over all Class III injection wells and the State Health Department has authority over all Class I, IV, and V injection wells. Each state agency is responsible for administering the state program for the injection wells under its jurisdiction including, but not limited to, reports, permits, monitoring and enforcement actions. The Department of Health shall assure the equitable and efficient distribution of UIC grant funds to the participating agencies which have responsibilities under this Agreement for the UIC program.

B. Review and Modification

This Agreement shall be reviewed annually as part of the annual program grant and State/EPA Agreement ("SEA") process. The annual program grant and the SEA shall be consistent with this Agreement and may not override this Agreement.

This Agreement may be modified upon the initiative of the Department or the EPA. Modifications must be in writing and must be signed by the Chief, Environmental Health Section, Department of Health, the State Geologist, and the Regional Administrator. Modifications become effective when approved by the Administrator.

C. Conformance with Laws and Regulations

The Department shall administer the UIC program in accordance with the State's submission for program approval, this MOA, the SDWA, current federal policies and regulation, promulgated minimum requirements, priorities established as part of the annually approved State UIC grant, and any separate working agreements which shall be entered into with the Regional Administrator as necessary for the full administration of the UIC program.

D. Responsibilities of Parties

The parties agree to maintain a high level of cooperation and coordination between the Department and EPA staffs to assure successful and effective administration of the UIC program. In this partnership the Regional Administrator will provide the Department with technical and policy assistance on program matters.

The Regional Administrator is responsible for keeping the Department apprised of the meaning and content of Federal guidelines, technical standards, regulations, policy decisions, directives, and any other factors which affect the UIC program.

The Department commits to carry out the UIC Program as outlined in the State's application to assume UIC primacy.

It shall be the policy of the EPA and the Department to minimize paperwork and interagency decision procedures and to make the best use of available manpower and funds, so as to prevent duplication of effort and unnecessary delays.

E. Sharing of Information

The Department shall promptly inform the EPA of any proposed, or enacted modification to laws, regulations or guidelines, and any judicial decisions or administrative actions which might affect the UIC Program and the Department's or the Office of State Geologist's authority to administer the program. The Department shall promptly inform EPA of any resource allocation changes which might affect the state's ability to administer the program.

Any information obtained or used by the Department or the Office of State Geologist under the UIC program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit the claim to EPA when providing EPA such information. Any information obtained from the State and subject to a claim of confidentiality will be treated in accordance with 40 CFR Part 2.

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EPA shall furnish to the Department the information in its files which the Department needs to implement its approved program. Information submitted to EPA under a claim of confidentiality shall be subject to conditions in 40 CFR Part 2 and Federal provisions governing data transfer.

F. Duty to Revise Program

Within 270 days of any amendment to any regulation promulgated under 40 CFR Parts 144, 145, 124 or 146 as issued under Section 1421 of the SDWA, the Department shall submit notice to EPA showing that the State Program meets the revised or added requirements.

G. General Provisions

Nothing in this Agreement is intended to affect any UIC or program requirement, including any standards or prohibitions, established by State or local law as long as the State or local requirements are not less stringent than: (1) any set forth in the UIC regulations; and (2) other requirements or prohibitions established under the SDWA or applicable regulations.

Nothing in this Agreement shall be construed to limit the authority of the EPA to take action pursuant to Sections 1421, 1422, 1423, 1424, 1425, 1431 or other Sections of the SDWA.

III. PERMITTING

A. General

The Department and the Office of the State Geologist are responsible for drafting, circulating, issuing, modifying, reissuing, and terminating UIC permits, and shall do so pursuant to State and Federal Laws, Rules and Regulations. The procedures are detailed in the State's application for UIC primacy.

B. Transfer of Responsibilities from EPA

The Regional Administrator shall transfer from EPA to the State any pending permit, applications and any other information relevant to program operation not already in the possession of the Department when North Dakota assumes primacy for the program.

C. Class III Wells

The State Geologist will require UIC permits for all existing Class III wells, and will issue permits to all such wells that meet applicable requirements within one year after program approval by EPA.

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Permits for Class III wells will be issued under the authority of both Chapter 61-28 and 38-12 of the North Dakota Century Code. The permits will be issued by the State Geologist and co-signed by the North Dakota Department of Health, Environmental Health Section.

IV. COMPLIANCE MONITORING

A. General

The Department and the Office of the State Geologist shall operate a timely and effective compliance monitoring system to track compliance with permit conditions and program requirements. For purposes of this Agreement the term "compliance monitoring" or "compliance evaluation" shall refer to all efforts associated with determining compliance with UIC program requirements.

B. Compliance Schedule

The Department and the Office of the State Geologist agree to maintain procedures to receive, evaluate, retain and investigate all notices and reports that are required by permit compliance schedules and program regulations. These procedures shall also include the necessary elements to investigate the failure of persons required to submit such notices and reports. The Department shall initiate appropriate compliance actions when required information is not received or when the reports are not submitted.

C. Review of Compliance Reports

The Department and the Office of the State Geologist shall conduct a timely and thorough review of all such reports to determine compliance status. The permitting agency shall operate a system to determine if: (1) the reports required by permits and program regulations are submitted; (2) the submitted reports are complete and accurate; and (3) the permit conditions and program requirements are met.

D. Inspection and Surveillance

The Department and the Office of the State Geologist agree to have inspection and surveillance procedures to determine compliance or noncompliance with the applicable requirements of the UIC program. Surveys or other methods of surveillance shall be utilized to identify persons who have not complied with permit applications or other program requirements. Any index, or inventory obtained for such facilities or activities shall be made available to the Regional Administrator upon request.

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The Department and the Office of the State Geologist shall conduct periodic investigations of the facilities and activities subject to regulatory requirements. These compliance monitoring inspections shall be performed to assess compliance with all UIC permit conditions and program requirements. These inspections shall be conducted to determine the compliance or noncompliance with the issued permits, verify the accuracy of the information submitted by permittees in reporting forms and monitoring data, and to verify the adequacy of sampling, monitoring and other methods to provide information.

E. Information from the Public

The Department and the Office of the State Geologist shall provide opportunity for the public to submit information on violations, and shall establish procedures for receiving, investigating and ensuring proper consideration of the information.

F. Authority to Enter

State officials engaged in compliance monitoring and evaluation have the authority to enter any site or premises subject to regulation, or to review and copy the records of relevant program operations where such records are kept.

G. Admissibility

Any investigatory inspection shall be conducted and samples and other information collected in a manner to provide evidence admissible in an enforcement proceeding or in court.

V. ENFORCEMENT

A. General

The Department and the Office of the State Geologist are responsible for taking timely and appropriate enforcement actions against persons in violation of program requirements, compliance schedules, technical requirements, and permit conditions. This includes violations detected by State or Federal inspections.

Failure by the State to initiate enforcement actions against a substantive violation may be the basis for EPA's determination that the State has failed to take timely enforcement action.

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B. Enforcement Mechanism

The Department and the Office of the State Geologist shall restrain immediately and effectively any person engaging in any unauthorized activity or operation which is endangering or causing damage to public health or the environment as applicable to the program requirements. The State also has the means to sue in courts of competent jurisdiction to prohibit any threatened or continuing violation of any program requirement. Additionally, the State is authorized to sue to recover civil penalties and criminal remedies as established in 40 CFR 145.13.

C. Public Participation

The Department and the Office of the State Geologist shall provide the public an opportunity to participate in the State enforcement process as specified in 40 CFR 145.13 (d)(2).

D. Assessment of Fines

The State has authority to seek civil penalties that are appropriate to the violation as required in 40 CFR 145.13 (c).

VI. EPA OVERSIGHT

A. General

EPA, Region VIII shall oversee the Department's administration of the UIC program on a continuing basis to assure that such administration is consistent with this MOA, the State's UIC grant application, the State/EPA Agreement, and all applicable requirements embodied in current regulations, policies and Federal law.

In addition to the specific oversight activities listed in this section, EPA may, from time to time request, and the State shall submit specific information and provide access to files necessary for evaluating the Department's administration of the UIC program.

B. Reports

The Department will prepare and submit to EPA the following underground injection control program reports:

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1. Quarterly Noncompliance Reports

The Department shall submit to the Regional Administrator quarterly noncompliance reports (as specified in 40 CFR Part 144.8(a)) on major facilities in accordance with the following schedule:

Quarter	Report Due to Regional Administrators
January, February March	- due May 31
April, May, June	- due August 31
July, August, September	- due November 30
October, November, December	- due February 28

The Department shall submit the noncompliance reports in the required format (40 CFR Part 144.8 (a)(1)) including the current status and outcome of any actions taken by the Director against those who are not in compliance.

For purposes of the program reporting requirements under 40 CFR Part 144.8 a major facility will be defined as the following:

- All Class I injection wells
- Class III solution mining wells

2. Annual Noncompliance Reports

The Department shall submit annual noncompliance reports (as specified in 40 CFR Part 144.8 (b)(1)) on nonmajor permittees. The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later.

3. Annual Program Report

The Department shall submit an annual program report to the Regional Administrator in accordance with 40 CFR Part 144.8 (b)(2). This report shall be for the calendar year ending December 31, with the report completed and available to the public no more than 60 days later.

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4. Mid-Course Evaluation Reports

In addition to the annual program report and noncompliance reports, the Department shall submit the midcourse evaluation information (as required by 40 CFR Part 144.8 (b)(2)(ii) and Parts 146.15, and 146.35) to EPA by February 28, and August 31, of each of the first two years of program operation after State Program approval. The August 31, submission shall be for the six-month reporting period from January through June and the February 28, submission shall be for the six-month reporting period from July through December. After the first submission, the subsequent three reports may reference the original submission.

5. Class V Reports

Within three years of program approval, the Department shall complete and submit to EPA a report on Class V wells in the State as specified in 40 CFR 146.52 (b).

6. Immediate Reporting on Noncompliance

The Department shall immediately notify the Regional Administrator by telephone, or otherwise, of any major imminent hazard to public health resulting from endangerment of an underground source of drinking water by well injection.

C. Review of Permits

EPA, Region VIII will review and comment on a sampling of State permits. The specific numbers and types of permits to be reviewed will be developed in the context of the UIC Oversight Strategy and its implementation.

D. EPA Inspection of Facilities

EPA may conduct periodic site and activity inspections on a sample of injection wells operated under permit or authorized by rule. Operations having the greatest potential to endanger underground drinking water sources (USDW) will receive priority in making site/inspection decisions. The following operations will be considered in selecting facilities for inspection and review as a part of EPA's oversight responsibilities:

1. All Class I injection wells including hazardous waste disposal wells.

2. Class III solution mining wells (including uranium, potash, and salt).

3. Any Class V well that receives a permit during the first three years after program approved.

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If possible, facility inspections will be conducted jointly with the State, both parties to this agreement shall give the other adequate notice (minimum of seven (7) working days) to facilitate joint facility inspections.

The Regional Administrator may choose to conduct inspections independently. In that case, the Regional Administrator shall notify the Department of any proposed facility inspections within the State of North Dakota at least seven (7) working days before any inspection. The Regional Administrator may waive this procedure for emergency situations or other reasons where it is impossible to give advance notification. The State will not use advance notification information to inform the person whose property is to be entered of the pending inspection.

E. Aquifer Exemptions

Any aquifer (USDW) designated by the Department for exempt status under the criteria of 40 CFR 146.04 (and submitted as a part of UIC primacy application) will not be final until approved by the Administrator as part of the State program.

Following program approval, the Department may after notice and opportunity for public hearing, identify additional exempted aquifers. If the Department proposes to exempt the aquifer under the criteria of 40 CFR 146.04 (b), the designation will be considered a program revision to be reviewed under 40 CFR 145.32 (b). If the Department proposes to exempt the aquifer under the criteria of 40 CFR 146.04 (c), the Department will submit a written request for exemption to the Administrator. If the Administrator does not disapprove the exemption request within 45 days of receipt, the exemption will become final.

F. Mechanical Integrity

The Department may allow the use of a test to demonstrate mechnical integrity other than those listed in the Program Description. Any alternative mechnical integrity test must receive written approval from the Administrator prior to implementation. Approval will be obtained according to the procedures specified in 40 CFR 146.08 (d).

G. Program Evaluation

EPA shall conduct at least annually performance evaluations of the State Program using the State quarterly reports, annual noncompliance reports, program reports, and other requested information to determine State Program consistency with the program submission, SDWA and applicable regulations, and applicable guidance and policies. The review will not only include a review of financial expenditures, but reviews on progress towards program implementation, changes in the program description, and efforts towards progress on program elements.

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The Environmental Protection Agency shall submit a summary of the evaluation findings to the State outlining the deficiencies in program performance, and recommendations for improving State operations. The report also might provide guidance for the development of upcoming grant application. The State shall have 15 working days from the date of receipt to concur with or comment on the findings and recommendations.

VII. SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement.

The State of North Dakota by:

Approved: Gene A. Christianson — 4-18-84

Gene A. Christianson, Chief Engineer
Environmental Health Section
North Dakota State Department of Health

Date

The State Geologist

Approved: Don L. Halvorson — 4-13-84

Don L. Halvorson
State Geologist
North Dakota Geological Survey

Date

United States Environmental Protection Agency by:

Approved: Mary H Dodson for — MAY 8 1984

John G. Welles, Regional Administrator
Region VIII
U.S. Environmental Protection Agency

Date

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