UNDERGROUND INJECTION CONTROL PROGRAM
MEMORANDUM OF AGREEMENT
BETWEEN THE STATE OF WYOMING
OIL & GAS CONSERVATION COMMISSION
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

I. GENERAL

This Memorandum of Agreement ("MOA" or "Agreement") establishes policies, responsibilities, and procedures for the State of Wyoming Oil and Gas Conservation Commission ("Commission"), for the implementation of the Underground Injection Control ("UIC") program as authorized by Section 1425 of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. Section 300h-4 (Supp. 1981).

This amended Agreement is entered into by the Commission, acting through the Supervisor, and the U.S. Environmental Protection Agency ("EPA"), acting through the Regional Administrator for EPA, Region VIII. This amended Agreement updates the previous Agreement entered on June 2, 1982 (amended December 22, 1982 and June 24, 1983) as part of the Commission's application for primary enforcement authority for Class II injection wells in the State of Wyoming.

Notice of Delegation of primary enforcement authority ("Primacy") or program approval by the EPA Administrator was published in the FEDERAL REGISTER on November 23, 1982, (47 FR 52434). With this approval, the Commission is responsible for, and has authority over all Class II injection wells in Wyoming, except those Class II wells located on Indian lands. The Commission is responsible for administering the State program for injection wells under its jurisdiction; including, but not limited to reports, permits, monitoring, inspections, and enforcement actions.

This Agreement may be amended or modified upon the initiative of the Commission or the EPA, Region VIII. Modifications or amendments must be in writing and must be signed by the Supervisor and the Regional Administrator. Modifications/Amendments become effective upon signature by both parties.

This Agreement shall remain in effect as long as the Commission has primary enforcement authority for the UIC program as authorized by Section 1425 of the SDWA. Should the SDWA be amended to require changes to programs authorized for primacy

under Section 1425, the EPA will so notify the Commission. Within 270 days of notification, the Commission will submit such showings as necessary to retain primacy should it elect to do so. If changes require legislative authorization, the Commission will have until the close of the next regular non-budgetary legislative session to make a good faith attempt to secure that authorization.

The Commission shall administer the Section 1425 UIC program in accordance with the approved program application, the SDWA, and applicable regulations. The EPA shall, promptly inform the Commission of the issuance, content, and its interpretation of federal statutes, regulations, guidelines, standards, judicial decisions, policy decisions, directives, and any other factors which reasonably could affect the Section 1425 UIC program.

The Commission shall promptly inform the EPA of any proposed or pending modifications to laws, regulations, or guidelines, and any judicial decisions or administrative actions which might affect the Section 1425 UIC program, and the Commission's authority to administer the program. Any proposed changes initiated by the Commission that would affect the UIC Program will be made available for EPA review and concurrence. EPA will provide comments within thirty (30) days of receipt of any proposed changes to the delegated program.

II. DEFINITIONS

Definitions used in this Agreement shall be those defined in the approved "Application for Primacy in the Regulation of Class II Injection Wells Under Section 1425 of the SDWA". The Commission and EPA agree to mutually and promptly clarify changes in definition and/or interpretation by which approvals or enforcement actions will be implemented.

For this Agreement, the following terms are defined as follows:

(a) Exceptions List means a name-specific list of wells that have remained in significant noncompliance for two or more consecutive quarters and have not been returned to compliance or had a formal enforcement action taken.

(b) Significant Noncompliance (SNC) means the final language established in a memorandum signed by Michael B. Cook, Director, Office of Drinking Water, and dated December 4, 1986.

(c) Timely and Appropriate means that within ninety (90) days of the time an instance of SNC is identified, the delegated agency should take one of the following actions:

(1) bring the owner and/or operator back into actual (physical) compliance through formal or informal enforcement action; or

(2) place the owner and/or operator on an enforcement compliance schedule to achieve future compliance; or

(3) initiate formal administrative or judicial enforcement action.

III. RESPONSIBILITIES

A. Sharing of Information

All information and records obtained or used in the administration of the Wyoming 1425 UIC program, including all UIC permit files, shall be available to the EPA upon request without restriction, except that any information which is subject to a claim of confidentiality shall be treated by the EPA in accordance with the EPA regulations governing confidentiality (40 CFR Part 2).

The Commission shall retain records used in the administration of the 1425 UIC program for a minimum of three (3) years unless an enforcement action is pending. In that event, all records pertaining to such action shall be retained until such action is resolved or for three (3) years, whichever date is later.

The EPA shall furnish to the Commission information in its files which the Commission needs to implement the UIC program. This information, if any, would be subject to the regulations governing confidentiality and data transfer.

B. State Reporting

The Commission shall submit quarterly activity reports to the Regional Administrator. The quarterly reports shall be due to the EPA no later than thirty (30) days after the end of the Federal quarter. The Commission shall track and report all appropriate information on EPA reporting forms as follows:

1. tabulation of permit review and issuance (EPA Form 7520-1);

2. tabulation of compliance evaluation (EPA Form 7520-2A);

3. tabulation of compliance evaluation of all instances of significant noncompliance (EPA Form 7520-2B);

4. tabulation of inspections and mechanical integrity testing (EPA Form 7520-3);

The Fourth Quarter (or Annual) Report of each year shall consist of routine quarterly report information as indicated above, supplemented with the following:

(1) a narrative description of WYOGCC's implementation of the Program;

(2) a summary of Grant Utilization (EPA Form 7520-5); and

(3) an updated comprehensive inventory of Class II UIC wells in Wyoming.

The Fourth Quarter (or Annual) Report shall be submitted to EPA within sixty (60) days after the end of the Federal fiscal year.

The Commission agrees to prepare complete and accurate reports to provide all information as defined in Underground Injection Control Program Guidance #53: "Guidance for UIC Reporting". This would include reporting all UIC program violations and their respective resolutions.

The Commission shall maintain a current Class II injection well inventory and provide EPA summary of numbers and types of Class II wells upon request.

Information relative to the name and address of permit applicants or permittees, and information which deals with the existence, absence, or level of contaminants in drinking water shall not be kept confidential by the Commission. Furthermore, any UIC program information, whether declared confidential or not, shall be available to the EPA.

C. Program Evaluation

The EPA shall conduct an evaluation of the Wyoming Section 1425 UIC program at least every twenty-four (24) months using existing reports and reviews of program records, to determine that the program is being implemented as delegated. The evaluation will include, but not be limited to, a review of financial expenditures, progress toward program implementation, any necessary changes in the program description, and progress on work plan activities. The EPA shall give the Commission at least fifteen (15) days notice of such evaluation.

The EPA shall submit a draft of the program evaluation to the Commission for review and comment. The Commission shall have thirty (30) working days to submit comments on the draft evaluation.

D. Compliance Monitoring

For purposes of this Agreement, the term "compliance monitoring" encompasses a broad range of activities conducted by the Commission to verify compliance, by owners and operators, with applicable regulatory requirements. The Commission agrees to maintain procedures to receive, evaluate, retain and investigate all instances of noncompliance with Section 1425 UIC program requirements and take appropriate enforcement action.

The Commission or authorized representative shall conduct periodic inspections of injection facilities and activities subject to regulatory requirements. These inspections shall be performed to assess compliance with all UIC permit conditions or program requirements, and includes evaluating a facility's monitoring and reporting program.

The EPA may conduct independent inspections of the wells subject to the Class II well program, as appropriate, but not without prior notice of at least ten (10) working days given to the Supervisor of the Commission. Commission representatives may be present on these inspections, as appropriate.

The EPA agrees that review and evaluation of the Commission's compliance activities will be conducted as a part of the routine program evaluation/oversight process. Selection of the appropriate response to a violation will be determined by the Commission or an authorized representative. The Commission agrees that all violations shall be recorded and shall receive a response; all violations shall be considered for possible formal enforcement action if less formal methods do not result in compliance.

E. Enforcement

The Commission is responsible for taking timely and appropriate enforcement actions in all instances of significant non-compliance. Appropriate enforcement responses to all other violations shall be determined according to the severity of the violations and the approved UIC program.

The Commission agrees to provide the public with an opportunity to participate in the enforcement process, including: intervention by any citizen having an interest and who might be affected; and providing an investigative and formal response to citizen complaints.

Procedures

Those activities determined by the Commission to be in violation of the Wyoming 1425 program will be handled in the following manner:

(a) Violations discovered during field inspections will be resolved, if possible, by contacting the operator's field personnel at the time of the inspection. If it cannot be resolved in this manner, a followup letter to the operator from the UIC Program Manager will be issued requesting the appropriate action be taken. Such violations will be reported on EPA Form 7520-2A whether or not said violations are resolved on-site.

(b) Reporting violations will be addressed by a letter and/or telephone call from the Commission requesting the proper information.

(c) Violations as in (a) or (b) above which are not resolved in thirty (30) working days and as outlined in (a) or (b), will be addressed with a letter signed by the Supervisor of the Commission requesting the necessary action.

(d) Violations as in (c) above, which are not resolved within sixty (60) working days from the violation may be issued a notice. If not resolved within one hundred twenty (120) working days, the violator shall be issued a Notice by the Supervisor requiring appearance before the Commission at the next regular hearing to discuss the non-compliance. However, if the Commission finds an emergency, it may issue an emergency order, without notice or hearing, effective for fifteen (15) days (Wyoming Statute 30-5-111(c)).

(e) If the violation continues, the Commission is empowered to file suit in an appropriate District Court to restrain an owner/operator from continuing a violation and to seek monetary penalties for the violation. However, this paragraph shall not limit other remedies available to the Commission as provided by law.

(f) The Commission shall identify and report all instances of significant noncompliance (SNC) on EPA Form 7520-2B. The SNC shall be brought into compliance or a formal enforcement action taken within ninety (90) days of discovery.

(g) If a SNC has not been returned to compliance or addressed with a formal enforcement action in two (2) consecutive quarters, well-specific information on the SNC will be reported to EPA on Form 7520-4.

Direct EPA Activities

The Commission recognizes EPA's authority to take direct Federal enforcement actions in accordance with the 1986 amendments to the Safe Drinking Water Act. The EPA must take formal enforcement action against a violator found on the SNC list for two (2) successive quarters plus a thirty (30) day notification period, if the Commission fails to take an appropriate action. In addition to the mandatory requirements of the SDWA, the EPA will consider taking a direct enforcement action in the following cases:

(1) the Commission requests EPA action;
(2) national precedent (legal or program); or
(3) violation of an EPA Order or Consent Decree by an operator(s).

The EPA agrees to notify the Commission prior to taking an enforcement action and will comply with the provisions of Section 1423 of the Safe Drinking Water Act.

The EPA agrees to the following protocol when notifying the Commission of an intended enforcement action: the Water Management Division Director will call the Supervisor of the Wyoming Oil and Gas Commission when a case is being considered.

Penalty

Various penalties for violation of the Wyoming Oil and Gas Conservation Act (Wyoming Statute 30-5) and the Commission's rules, regulations or order are established by law. Specific penalties are as follows:

(a) The Commission can assess five hundred dollars ($500) for each act of violation (30-5-119(a)).

(b) Any owner/operator who knowingly and willfully violates any rule, regulation or order of the Commission is subject to a civil penalty, to be assessed by the appropriate District Court, up to one thousand dollars ($1000) for each act of violation and for each day the violation continues (30-5-119(a)).

(c) Any owner/operator, for purposes of evading the Oil and Gas Conservation Act, a rule or order of the Commission, makes a false report is subject to conviction of a misdemeanor with a fine of not more than five thousand dollars ($5000) or imprisonment up to six (6) months or both (30-5-119(b)).

(d) In addition, any owner/operator or corporation who violates the Oil and Gas Conservation Act or the rules, or orders of the Commission, the Supervisor or his assistants is subject, upon conviction in the appropriate District Court, to a fine of up to five hundred ($500) dollars or imprisonment in the county jail up to six months.

(e) Outside the actual monetary penalties established in Statute, the Commission/Supervisor has other types of sanctions that can be used to create a deterrence to violations. These sanctions certainly have a direct economic impact on a violator and can be used as effectively as more formal penalty proceedings. These alternative sanctions include shuttling-in wells and fields and placing under seal any property or equipment for failure to comply with orders or rules of the Commission. The EPA recognizes the significance of these alternative sanctions from an economic impact/deterrence value. The Commission agrees to use its monetary (cash) penalty authority in situations where an alternative is not effective in establishing and maintaining compliance or is not sufficient to recover the economic gain of noncompliance.

Attorney General Role

The Commission has an Assistant Attorney General assigned to assist with legal matters. This attorney is accessible and will be consulted on matters of violation at the discretion of the Supervisor. F.

F. Mechanical Integrity Demonstration

The Commission shall not allow any mechanical integrity tests other than those specified in the approved program application unless the Supervisor supplies the EPA with a description of the proposed test that is sufficient to make a decision about its usefulness and reliability, and receives approval from EPA. EPA agrees to review and either approve or deny an alternative mechanical integrity test proposal submitted by the Commission in a reasonable period of time.

The Commission agrees to witness at least twenty-five percent (25%) of the mechanical integrity tests performed each year pursuant to the Wyoming OGCC UIC program.

The procedures for determining if either a mechanical integrity test (MIT) failure or an excess injection pressure violation qualify as a significant noncompliance, are defined in UIC Guidance #58 (dated September 9, 1987). It is agreed that these procedures will be used as standard protocol for determining compliance with UIC requirements.

Seventy-five percent (75%) of injection wells that fail MITs, but are not considered as an SNC, should be brought into compliance within ninety (90) days of discovery of failure. The remaining twenty-five percent (25%) of these injection wells should be brought into compliance no later than one-hundred eighty (180) days after discovery of failure.

G. Aquifer Exemptions

The aquifer exemption procedures for Class II wells are outlined in Item j of the primacy application and are consistent with the rules and regulations of the Commission. The Commission agrees that it will not exempt aquifers which are currently being used for drinking water.

When in receipt of a request for an exemption of an aquifer with a TDS value less than 10,000 mg/l, the Commission will provide the data submitted by the applicant and other relevant information to EPA for review and comment. EPA agrees to review and comment on this information at least one day prior to the hearing before the Commission. Objections, raised by the EPA, will be resolved before any aquifer exemption is issued by the Commission. The above discussion applies only to salt water disposal wells. The Commission shall process aquifer exemption requests for enhanced recovery projects without concurrent EPA review and comment.

Aquifer exemption hearings may be conducted by the Commission's hearing examiners instead of the full Commission. If an applicant objects to an examiner hearing, it shall be heard by the full Commission. The hearing examiner may refer a matter to the full Commission at his/her discretion. Examiner hearings will be held the day before regular monthly Commission hearings and notice will be given as provided in the program description. A transcript shall be made of the examiner hearings.

H. Variances

The Commission/Supervisor is authorized to grant variances to regulations under the terms specified in Rule 406. Prior to

approving the variance request, the Commission/Supervisor will provide the request to EPA for review and comment. EPA will provide verbal comment and prepare a record of communication. Written comments will be provided by EPA when necessary to document the record or when requested by the Commission/Staff. The Commission/Supervisor agrees to disallow any variance request that may endanger fresh water as defined in this program.

I. Preservation of Rights

This Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed herein, which the Commission or EPA may have under other laws or regulations.

Nothing in this Agreement shall be construed to constitute a valid defense by regulated parties in violation of any State or Federal environmental statute, regulation or permit.

J. Effective Date

This agreement shall become effective upon signature of both Agencies. The Agreement may be modified, from time to time, upon mutual consent of the signatories or their successors.

Donald B. Basko, Supervisor
Wyoming Oil and Gas Conservation
Commission

1/25/90
Date

James J. Scherer
Regional Administrator
U.S. Environmental Protection Agency
Region VIII

12/14/89
Date