State of California

Department of Justice

George Deukmejian
(PRONOUNCED DUKE-MAY-JIN)

Attorney General

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December 3, 1982

Richard E. Reavis, Chief
California Branch
Region IX
United States Environmental Protection Agency
215 Fremont Street
San Francisco, CA 94105

16 Dec
SPD

Re: California Application for Primacy,
Class II UIC Program

Dear Mr. Reavis:

The Headquarters Underground Injection Control (UIC) Primacy Review Team reviewed the responses made by the California Division of Oil and Gas (CDOG) to comments made by the Environmental Protection Agency (EPA) on CDOG's primacy application. Except for items 2 and 4, the CDOG's responses were found to be adequate. With respect to items 2 and 4, the Review Team indicated that the responses would be adequate if it could obtain from the California Attorney General's office, the legal representative of the CDOG, assurances on two matters. The first matter on which assurance is sought is that the CDOG can enforce the conditions set out in the letter of approval, which is the first step in the CDOG's two-step permitting process for underground injection. The second matter on which assurance is sought is that compliance by the operator with the letter of approval does not relieve the operator from compliance with all applicable statutes and regulations. We are able to give you the assurances you seek.

Under section 1724.6 of Title 14 of the California Administrative Code, prior approval of any underground injection or disposal project must be obtained from the CDOG before the project can begin. This prior approval is in the form of a letter setting forth the conditions upon which the approval to proceed is given. Failure of an operator to comply with any conditions set forth in the letter of approval would constitute proceeding with the project without the approval of the CDOG. This would be a violation by the operator of section 1724.6 of Title 14 of the California Administrative Code which would enable the CDOG to invoke the enforcement procedures available to it to

compel compliance with the terms of the letter of approval.

The letter of approval may set forth special operational requirements that relate specifically to the project being approved. These requirements are in addition to, not in lieu of, the requirements of statutes and regulations applicable to underground injection and disposal projects. All operators must comply with applicable provisions of the statutes and regulations, and the CDOG has no authority to exempt an operator from such compliance. The statutes and regulations (see for example section 1724.10 of Title 14 of the California Administrative Code) provide general requirements for underground injection projects. However, unique characteristics of each project site may necessitate, in addition, site-specific requirements which is the function of the letter of approval to provide.

If this office can be of any further assistance in the process of obtaining EPA approval of the CDOG's primacy application, please do not hesitate to call.

Very truly yours,

Alan V. Hager
Deputy Attorney General

AVH:mjp
cc: M. G. Mefferd

Underground Injection Control Program
Memorandum of Agreement
Between
California Division of Oil and Gas
and
the United States Environmental Protection Agency
Region 9

I. General

This Memorandum of Agreement ("Agreement") establishes the responsibilities of and the procedures to be used by the Division of Oil and Gas ("Division") and the United States Environmental Protection Agency ("EPA") in administration of wells in the Class II portion ("Class II program") of the Underground Injection Control ("UIC") program in California. In general, this Agreement supplements the program described in the demonstration submitted in accordance with Section 1425(a) of the Safe Drinking Water Act ("1425 demonstration").

After it is signed by the Supervisor and the Regional Administrator, this Agreement shall become effective on the date notice of the Class II program approval is published in the Federal Register. The parties will review this Agreement at least once each year during preparation of the annual program update, during the State-EPA agreement ("SEA") process or at other times as appropriate (e.g. at mid-year review). The annual SEA shall be consistent with this Agreement and may not override this Agreement.

This Agreement may be modified upon the initiative of either party in order to ensure consistency with State or Federal statutory or regulatory modifications or supplements, or for any other purpose mutually agreed upon. Any such modifications or supplements must be in writing and must be signed by the Supervisor and Regional Administrator.

This Agreement shall remain in effect unless EPA determines that the Division's 1425 demonstration is no longer valid. Such a determination by EPA will be in accordance with Section 1425(c) of the Safe Drinking Water Act ("SDWA").

Nothing in this Agreement shall be construed to alter any requirements of SDWA or to restrict EPA's authority to fulfill its oversight and enforcement responsibilities under SDWA or other Federal laws, or to restrict the Division's authority to fulfill its responsibilities under State statutes. Nothing in this Agreement shall require or be construed to require EPA to violate Federal law or the Division to violate State law.

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II.

A. Policy Statement

The purpose of the UIC program is to prevent any underground injection that endangers an underground source of drinking water ("USDW").

The Division has primary responsibility and authority over all Class II injection wells in the State of California. This includes Class II wells drilled and operated on Federally owned lands, but does not include such wells on Indian lands. The Division is responsible for administering the Class II program including but not limited to reports, permits, monitoring and enforcement actions. Implementation of the Class II program will be as described in the 1425 demonstration and will be supported by an appropriate level of staff and resources.

The Supervisor and the Regional Administrator agree to maintain a high level of cooperation and coordination between Division and EPA staff to assure successful and effective administration of the Class II program.

The Division shall promptly inform EPA of any proposed or pending modifications to laws, regulations, or guidelines, and any judicial decisions or administrative actions that might affect the program and the Division's authority to administer the program. The Division shall promptly inform EPA of any resource allocation changes (e.g. personnel, budget, equipment) that might affect its ability to administer the program.

EPA shall promptly notify the Division of the issuance, content, and meaning of Federal statutes, regulations, guidelines, standards, judicial decisions, policy decisions, directives, and other factors (including budgetary changes) that might affect the Class II program.

B. Information Sharing

1. Division

The Division agrees that all information and records obtained or used in the administration of the Class II program including all UIC permit files shall be available for inspection by EPA or its authorized representative upon request. Division records may be copied by the EPA only when they are required by EPA to bring an enforcement action or for other such specific purpose. Any information obtained from the Division by EPA that is subject to a claim of confidentiality shall be treated by EPA in accordance with EPA regulations governing confidentiality (40 CFR Part 2 and 40 CFR 122.19).

The Division shall retain records used in the administration of the program for at least three years (40 CFR 30 and 40 CFR 35). If an enforcement action is pending, then all records pertaining to such action shall be retained until such action is resolved or the previously mentioned time period is met.

2. EPA

Copies of any written comments about the Division's program administration received by EPA from regulated persons, the public, and Federal, State, and local agencies will be provided to the Supervisor within thirty (30) days of receipt.

3. Emergency Situations

Upon receipt of any information that any Class II injection operation is endangering human health or the environment and requires emergency response, the party in receipt of such information shall immediately notify by telephone the other party of the existence of such a situation.

C. Permits

1. Division

Within 10 working days of receipt, the Division shall provide a written response to any written notice of intent to commence drilling.

2. EPA

Upon receipt by EPA, any Class II permit application and supporting information shall be immediately forwarded to the Division.

Some facilities and activities may require permits from the Division and EPA (and/or other State agencies) under different programs. When appropriate, the Division and EPA will participate in a joint permit processing procedure. The procedure will be developed on a case by case basis.

D. Compliance, Monitoring and Enforcement

1. Division

The Division shall adhere to the compliance monitoring, tracking, and evaluation program described in the 1425 Demonstration. The Division shall maintain a timely and effective compliance monitoring system including timely and appropriate actions on non-compliance.

Each year, 100% of the disposal wells will be inspected for mechanical integrity.

2. EPA

EPA shall conduct periodic site and activity inspections on injection operations, giving priority to operations having the greatest potential to endanger public health.

EPA may participate with the Division in the inspection of wells or operator records. EPA shall notify the Division usually at least ten (10) days prior to any proposed inspection and shall describe the well(s) or record (s) to be inspected and the purpose of such inspection. If the Division fails to take adequate enforcement action against a person violating the requirements for a Class II well, EPA may take Federal enforcement action. Federal enforcement actions will be in accordance with the State, facility and public notification procedures in Section 1423 of SDWA.

3. Emergency Situations

Situations endangering human health will receive immediate and paramount attention by the Division and EPA. The party with initial knowledge of such situation shall immediately notify the other party by telephone.

E. Program Review and Evaluation

1. Division

The Division shall provide EPA with an annual report on the recent operation of the Class II program. Specific contents of the report are described in Attachment #1 and may be renegotiated from time to time. The period to be covered by the annual report shall be the calendar year ending December 31, with reports completed and available to EPA no more than 60 days later (March 1).

In addition, the Division shall provide a separate report of preventive actions taken by operators of new Class II wells. At minimum, this report shall include:

a. the number and general type (e.g. injection pressure limit) of preventive actions proposed in the applications;

b. the number and general type of preventive actions actually taken; and

c. if necessary, a brief summary explaining the reason(s) for any differences between proposed and actual preventive actions (e.g., pending actions).

The report is due within 3 months after the second anniversary of the effective date of this Agreement. The final format will be negotiated at least 3 months prior to the due date.

If the Division proposes to allow any mechanical integrity tests other than those specified or justified in the 1425 Demonstration, the Division shall provide in advance to EPA sufficient information about the proposed test that a judgment about its usefulness and reliability can be made.

2. EPA

EPA shall conduct mid-year evaluations at least during the first 2 years of the Division's operation of the program. In part, the mid-year evaluations will be based on the reports provided above. At least 10 days prior to the evaluation, EPA shall notify the Division regarding the information, material, and program areas that will be covered. This may include selected permit files, budget records and public notification and complaint files. The evaluation may be conducted at either the Division's headquarters or one of its district offices.

F. Public Participation

1. Division

The Division shall provide adequate public notice for its proposed actions as described in the Division's 1425 Demonstration. At minimum, the Division shall provide a 15 day public comment period, and make the non-confidential portions of the project plan and the representative Report on Proposed Operations available for review. If the Supervisor determines that a public hearing is necessary, public notice shall be provided at least 30-days prior to the public hearing.

If there are any substantial changes to the approved project plan or representative Report on Proposed Operations, additional public notice will be provided. Examples of substantial changes include significant increases in injection pressures, changes in injection zone, or significant changes in injection fluid.

Copies of such notices shall also be sent to:

a. Director, Water Management Division, EPA-Region 9;

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b. Chairperson, State Water Resources Control Board; and

c. Chairperson of the affected Regional Water Quality Control Board.

The Division's final decision on proposed actions shall contain a response to comments that summarizes the substantive comments received and the disposition of the comments. This shall become a part of that particular project file.

At a minimum, the Division shall apply these public participation procedures to applications for new underground injection projects, significant modifications to existing permits, and to aquifer exemptions.

2. EPA

EPA shall participate at any scheduled public hearing at the request of the Division. Such requests shall be made at least 10 days prior to the hearing.

Any appropriate comments on the proposed action shall be made by EPA within the normal fifteen day comment period. The exception is the designation of exempted aquifers (see the section on Aquifer Exemptions).

G. Program Revision

A program revision may be necessary when the Division's or EPA's statutory authority is modified or when there is a substantial modification to the program. The procedure for revising the program shall be that described in 40 CFR 123.13(b).

H. Aquifer Exemption

An Underground Source of Drinking Water (USDW) may be exempted for the purposes of a Class II injection well if it meets the criteria in 40 CFR 146.04.

Aquifers exempted by the Division and EPA under this Agreement shall only be applicable for the injection of fluids related to Class II activities defined in 40 CFR 146.05(b).

Aquifer exemptions made subsequent to the effective date of this Agreement shall not be effective until approved by the Administrator or Regional Administrator (if delegated) in writing.

After the effective date of this Agreement, an aquifer exemption must be in effect prior to or concurrent with

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the issuance of a Class II permit for injection wells into that aquifer.

Aquifers which were proposed for exemption in the 1425 Demonstration and exempted are identified in Attachment #2. Any aquifer or portion of an aquifer denied an exemption may be resubmitted for consideration. At minimum, the resubmission should include either new data, new boundaries or other modification to the original proposal.

All exempted aquifers are subject to review by the Division and by EPA. For good reason and by mutual agreement between the Division and EPA, the exemption status of an aquifer can be withdrawn. The public participation procedures in the 1425 Demonstration shall be applied prior to the withdrawal of any exemption status.

1. EPA

Within 10 days after receipt of the information on the aquifer(s) proposed by the Division for exemption, EPA shall notify the Division if any additional information is deemed appropriate. EPA shall either approve or disapprove the aquifer exemption within 60 days after receipt of all appropriate information. Any disapproval by EPA shall state the reasons for the decision. Requests for additional information and final determinations on aquifer exemptions shall be in written form.

If the new aquifer proposed for exemption is a non-hydrocarbon bearing USDW, EPA will coordinate its public participation activities on aquifer exemptions with the Division's public participation activities during project review.

I. Other Agency Involvement

The Division shall administer the Class II program and maintain close cooperation with California's State Water Resources Control Board (SWRCB) and the Minerals Management Service.

J. Definitions

1. Class II well is defined in 40 CFR 146.05(b).

2. Aquifer is defined in 40 CFR 146.03 and 122.3.

3. Day in this Agreement is defined as a working day.

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4. Underground Source of Drinking Water (USDW) is defined in 40 CFR 146.03 and 122.3.

5. 1425 Demonstration includes:

a. the Division's primacy application dated April, 1981;

b. the additional information provided by letter dated March, 1982; and

c. the clarifying information provided by letter dated September, 1982.

Sonia F. Crow
Regional Administrator
Environmental Protection Agency
Region 9

Date: Sept. 20, 1982

for M.G. Merferd
State Oil and Gas Supervisor
California Division of Oil and Gas

Date: Sept. 20, 1982

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Attachment 1

Annual Report Contents

At a minimum, the Annual Report shall include:

a. an updated inventory;

b. a summary of surveillance programs including results of monitoring and mechanical integrity testing, the number of inspections conducted, the number of new wells, corrective actions ordered and witnessed, instances of wells out of compliance and their current status;

c. an account of all complaints reviewed by the Division and the actions taken;

d. results of the review of existing wells made during the year;

e. a summary and status of the enforcement actions taken;

f. number of emergency permits issued and current status; and

g. instances of variances and discretionary exemptions during the year.

Attachment 2

Exempted 1425 Demonstration Aquifers

All oil and gas producing aquifers identified in Volumes I, II, and III of the California Oil and Gas Fields submitted in the 1425 Demonstration dated April 20, 1981 are exempted.

In addition, the following aquifers are also exempted.

DISTRICT	FIELD	FORMATION/ZONE
2	Ramona	Pico
2	Oat Mountain	Undiff.
2	O South Tapo Canyon	Pico Injection started 1/48 (a)
2	Simi	Sespe
2	San Ardo	Santa Margarita
3	San Ardo	Monterey "D" Sand
3	San Ardo	Monterey "E" Sand
3	Monroe Swell	Santa Margarita
4	O Blackwell's Corner	Tumey Oil since 1975 - inj. started '75
4	O Kern Bluff	Kern River 7/80
4	O Kern Front	Santa Margarita 9/75
4	O Kern River	Chanac 6/77 Reclamation plant
4	O Kern River	Santa Margarita 9/73
4	O Mount Poso	Walker 9/75
4	O Round Mountain	Olcese 7/74
4	O Round Mountain	Walker 8/72
4	Buena Vista	Tulare
4	Kern Bluff	Vedder
4	Kern River	Vedder*
4	Mountain View	Kern River
4	Pleito	Chanac
4	Pleito	Kern River
4	Poso Creek	Santa Margarita
5	Coalinga	Santa Margarita
5	Coalinga	Etchegoin-Jacalitos
5	Guijarral Hills	Etchegoin-Jacalitos*
5	Helm	Tulare-Kern River
5	Riverdale	Pliocene
5	Turk Anticline	San Joaquin
6	Sutter Buttes Gas	Koine*
6	O Bunker Gas	Undiff. 1/75
6	O Wild Goose	Undiff. 11/69

*Oil and/or gas producing

O Aquifers not to be exempted in October 30 submittal, and ones to which the 18 month phase out was to effect according to MOA

a - dates are date injection started according to Attachment 2 to March 29, 1982 letter from Proffitt to Sam.