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Dedicated to protecting our nation's ground water

February 4, 2015

Mr. Peter Grevatt, Director
Office of Ground Water and Drinking Water
US Environmental Protection Agency

RE: Memo dated July 24, 2014, on Enhanced Coordination and Communication with States on Review and Approval of Aquifer Exemption Requests under SDWA and the attached Aquifer Exemption Checklist

Dear Mr. Grevatt:

This letter follows up on our letter of April 7, 2014, which discussed the efforts of the Ground Water Protection Council (GWPC) Aquifer Exemption/Aquifer Storage and Recovery Working Group (Working Group) and the U.S. Environmental Protection Agency's (EPA's) draft Aquifer Exemption Checklist. GWPC appreciates the efforts of you and your staff in responding to our request in GWPC Resolution 13-1 for your participation in an advisory role to the Working Group, which is comprised of State UIC 1422 and 1425 program managers. This letter highlights what we believe to be the positive outcomes of this collaboration and reiterates outstanding issues the Working Group has with the memorandum dated July 24, 2014, and EPA's final Aquifer Exemption Checklist (Checklist).

The following positive outcomes can be attributed to the collaborative efforts of EPA staff and the Working Group:

- improvement in communication between state program managers and EPA program managers, facilitating a better understanding of aquifer exemption issues and concerns;
- a recognition that some conditions lead to 'complex' aquifer exemptions where early and frequent communication between primacy state programs and EPA is especially important;
- a consensus that a checklist of needed information can help ensure that aquifer exemption materials presented by the primacy states for EPA consideration provide the documentation and analysis necessary to support EPA's review of the state's determination regarding an exemption request; and
- a consensus that a dispute resolution process between primacy states and EPA can help assure that decisions regarding aquifer exemptions are made in a timely manner.

The following issues remain outstanding with respect to the memorandum dated July 24, 2014, the Checklist, and EPA's implementation of the Checklist:

- The Working Group reiterates its objection to EPA's new approach to determining the "current" use of an aquifer. We believe that this new approach is inconsistent with EPA's current UIC regulations, including the definition of "underground sources of drinking water", and guidelines for aquifer exemptions, may conflict with current state/EPA program agreements, and is a departure from the approach that both EPA and states have been following for many years. The memorandum dated July 24, 2014, and the Checklist's direction for determining current use and the methodology to be used in determining the potentially affected area is problematic. In primacy states, the checklist seems to minimize both the primacy state's water resource planning processes and the aquifer protection provisions included in the state UIC permit associated with the aquifer exemption, ; and, instead, recommends the use of modeling. In one initial implementation of this checklist, EPA staff used a 1994 WHP model that was based upon what the Working group believes to be unrealistic assumptions of potential domestic water well life and UIC facility life. We renew our request to work with EPA to determine what constitutes current groundwater use consistent with the definitions in the UIC regulations, as well as groundwater that will be used in the future, in primacy states. We urge EPA to recognize the full value of state water resource planning and groundwater protection programs which include permit previsions for monitoring; preventing excursions of injection fluids; and, for Class III, aquifer restoration requirements.

- EPA's role with respect to aquifer exemptions is to make a determination on approval based on the primacy state's recommendation. However, we are concerned that early implementation of the Checklist at the Region Office level has resulted in EPA duplicating, and in some cases, expanding the work performed by the primacy state. We are also concerned with EPA's direct contact with the permit applicant; a responsibility that more appropriately rests with the primacy state. This is not consistent with the UIC regulations, Guidance 34, the July 24, 2014, memorandum, or the Checklist.

- We understand that EPA has both a direct implementation role and a state partnership role in reviewing and approving aquifer exemption requests. The current EPA evaluation process as contained in the Checklist does not definitively distinguish between EPA's duties in reviewing a request for an aquifer exemption as a direct implementer and EPA's duties in reviewing a determination made by a primacy state in response to a request for an aquifer exemption. As such, we are concerned that the Checklist might be misinterpreted to imply that EPA must duplicate the primacy state's review of the aquifer exemption request. States, as part of their request for a program revision, evaluate requests for aquifer exemptions to ensure that the requested exemptions are consistent with the requirements under the Safe Drinking Water Act and EPA's regulations. The UIC regulations, Guidance 34, and the July 24, 2014, memorandum, do not imply that EPA must duplicate the efforts of the primacy state, rather they state that EPA will review the primacy state's determination and, either accept or reject the state's recommendation or, if they have questions or need

additional information, communicate directly with the primacy state, rather than the permit applicant.

- Implementation of the checklist may result in state regulatory agencies not being able to meet their legislatively mandated deadlines for permit processing and EPA not meeting their regulatory processing deadlines. The memo calls for early communication between the primacy states and EPA when complex aquifer exemptions are identified by either the state or EPA. However, recent experiences indicate that pre-submittal communication with the EPA Region Office on potential aquifer exemption requests may not result in a faster process and may result in the aquifer exemption processes being more complicated, because the state must know all of EPA's concerns related to the aquifer exemption prior to a public hearing being held on a UIC Class III permit application which includes an aquifer exemption.

We also request clarification as to whether EPA intends for the memorandum and the Checklist to replace or supplement Guidance 34.

One additional concern has come to our attention as a result of the EPA Office of Radiation and Indoor Air, Radiation Protection Division's recently announced draft rules under 40 CFR Part 192 regarding Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings (for implementation by the Nuclear Regulatory Commission). These draft rules explicitly address the alteration of groundwater that occurs during the Class III in-situ uranium recovery process and groundwater restoration and monitoring requirements at facilities. These rules, if adopted, will need to be harmonized with the Class III program under the Safe Drinking Water Act to be consistent with Guidance 34 and state program delegations and state permits.

We urge EPA to continue to work with GWPC and the states to determine the appropriate process and methodology for evaluating aquifer exemptions for all classes of injection wells. We offer our ongoing assistance as this process continues to move forward and thank you for your assistance in addressing these important issues.

We very much appreciate the continued participation of your UIC staff in an advisory role to GWPC's Aquifer Exemption/Aquifer Storage and Recovery Working Group and believe that these remaining issues can be worked out to the satisfaction of all.

Sincerely,

Leslie Savage

Leslie Savage, PG
Railroad Commission of Texas
President, Ground Water Protection Council

cc: Ron Bergman, EPA
GWPC Board of Directors