

Underground Injection Control Program

(Document Received: Apr. 12, 1983

EPA Region VIII Drinking Water Branch)

Memorandum of Agreement

Between

The State of Wyoming
Department of Environmental Quality
Water Quality Division

and

The United States Environmental
Protection Agency
Region VIII

Introduction

The Regional Administrator of Region VIII of the Environmental Protection Agency (hereinafter referred to as the Administrator), and the Director of the State of Wyoming Department of Environmental Quality (hereinafter referred to as the Director), have entered into this Memorandum of Agreement to delineate the responsibilities of Region VIII of the Environmental Protection Agency (hereinafter referred to as EPA), and the State of Wyoming, Department of Environmental Quality, Water Quality Division (hereinafter referred to as the Division) for the ongoing operation of the Underground Injection Control Program (hereinafter referred to as the UIC Program) 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 hereinafter referred to as SDWA). The agreement establishes policies, responsibilities, and procedures pursuant to 46 CFR Part 123 for the State of Wyoming UIC Program. The agreement specifies areas of cooperation, standards of performance and guidelines for achievement of the goals set forth in the SDWA.

I. Policies and Agreements

A. Lead Agency Responsibilities

Wyoming Department of Environmental Quality, Water Quality Division, which receives the annual program grant, as designated by the Governor of the State, is also the lead agency to coordinate the UIC Program. This lead agency shall coordinate the UIC Program to facilitate communication between EPA and the State agencies having program responsibilities. These responsibilities shall include, but not be limited to, the submission of grant applications, reporting and monitoring results and annual report requirements. The Wyoming Oil and Gas Conservation Commission is responsible for and has authority over all Class II injection wells. The Division, DEQ Land Quality Division, and the State Engineer are responsible for and have authority over all Class I, III, IV and V injection wells. The Wyoming Oil and Gas Commission and the Division are 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 Wyoming Oil and Gas Commission shall enter into a separate MOA with EPA for Class II wells under Section 1425 of SDWA.

B. Transfer of Responsibility from EPA

The Administrator shall transfer from EPA to the Division any pending permit, applications and any other information relevant to program operation not already in the possession of Director when Wyoming assumes primacy for the program.

C. EPA Review of Permits

The Division recognizes EPA's oversight authority allowing review of permits. The procedures for submitting proposed or final permits to EPA for review and comment will be outlined in the State application for primacy. The State/EPA Agreement will be revised to reflect this process.

D. Classification of Ground waters

When it becomes necessary to classify groundwater as Class V (Mineral), the DEQ and EPA shall proceed upon the following schedule:

1. Upon determination by LQD that a complete application has been received, WQD will submit the information shown in Appendix A. to EPA for review.
2. Concurrent with No. 1, above WQD will provide to EPA its findings regarding:
 - a. Current use of the affected aquifer as a drinking water source, and
 - b. That the aquifer contains commercially producible minerals.
3. EPA will review the information and findings submitted for consistency with the criteria established in 40 CFR 146.04 and 40 CFR 122.35, including the current use of the aquifer, existence of commercially producible minerals, and opportunity for public participation in the classification process.
4. Within 45 days from EPA receipt of the information and findings referred to in Nos. 1 and 2, above, EPA will respond to WQD/LQD in writing. This response will be an interim response pending receipt and review by EPA of the results of the public participation process conducted by LQD/WQD. This interim response will become final if there are no comments related to the classification of the ground water during either the comment period or the public hearing, if held. If comments are received during the comment period or the public hearing the interim response will become final if not modified within 20 days of the receipt of all the comments by Region VIII.

With regard to other ground water classification actions concerning injection wells, the DEQ and EPA shall proceed upon the following schedule:

1. Upon determination by WQD that an application to inject is complete, WQD will submit a copy of that complete application to EPA.
2. Concurrent with No. 1, above, WQD will provide its findings regarding:

- a. Current use of the affected aquifer as a drinking water source, and
 - b. The criteria for the classification proposed to be made.
 - c. When available, affidavits of notice to the public and summary of comments received.
3. EPA will review the information and findings submitted for consistency with the criteria established in 40 CFR 146.04 and 40 CFR 122.35, including the current use of the aquifer, criteria for the proposed classification, and opportunity for public participation in the classification process.
 4. Within 45 days from EPA receipt of the information and findings referred to in Nos. 1 and 2) above, EPA will respond to WQD in writing. This response will be an interim response pending receipt and review by EPA of the results of the public participation process conducted by WQD. This interim response will become final if there are no comments related to the classification of the ground water during either the comment period or the public hearing, if held. If comments are received during the comment period or the public hearing, the interim response will become final if not modified within 20 days of the receipt of all the comments by Region VIII.

III. Compliance Monitoring

A. General

The Division will operate a timely and effective compliance monitoring system to track compliance with permit conditions and UIC Program requirements. This tracking system will be outlined in the application for State primacy. The tracking system shall consist of 1) review of compliance reports, 2) inspection and surveillance, 3) complaint investigation, and 4) compliance schedules.

IV. Enforcement

A. General

The Division is responsible for taking timely and appropriate enforcement action against persons in violation of UIC program requirements, compliance schedules, technical requirements, and permit conditions. The State enforcement program will be described in the application to assume UIC Program primacy.

V. EPA Oversight

A. General

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

B. Review

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.

C. Conformance with Laws and Regulations

The Director shall administer the UIC program consistent with the State's submission for program approval, this MOA, the SDWA, current Federal policies and regulations, 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

Each of the parties has responsibilities to assure that the UIC requirements are met. The parties agree to maintain a high level of cooperation and coordination between Division and EPA staffs in a partnership to assure successful and effective administration of the UIC program. In this partnership, the Regional Administrator will provide to the Director on a continuing basis technical and policy assistance on program matters.

It is recognized that the primary responsibility for issuance of UIC permits in the State of Wyoming is with the Division; that the EPA will provide policy guidance, financial and technical assistance, and aid in the issuance of permits, and that both EPA and the Division share responsibility for enforcement actions necessary for protection and enhancement of the State's waters.

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

The strategies and priorities for Issuance, compliance monitoring and enforcement of permits, and implementation of technical requirements shall be established in the Division's program description, the annual State/EPA Agreement, or in subsequent working agreements. If requested by either party, meetings will be scheduled at reasonable intervals between the Division and EPA to review specific operating procedures, resolve problems, or discuss mutual concerns involving the administration of the UIC program.

The Department agrees that any applications or permit forms submitted as part of the primacy application will not be modified without notification and approval by EPA provided however, the applications or forms shall be deemed approved unless disapproved by EPA in writing within 45 days from receipt of the proposed modification.

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

The Division commits to support all activities with the appropriate level of staff and resources.

In addition to the specific oversight activities listed in 40 CFR 122) the State recognizes EPA's right to access files necessary for evaluating the Director's administration of the UIC Program.

It shall be the policy of the EPA and the Division 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.

The Department stipulates that the language contained in W.S. 35-11-404 and 427 will not be used to reduce aquifer protection inasmuch as such action would adversely affect the interests of the State of Wyoming. Furthermore, all EPA Class III designated wells will require a permit from WQD or LQD prior to construction.

E. Sharing of Information

The Director shall promptly inform EPA of any proposed, pending or enacted modifications to laws, regulations, or guidelines, and any judicial decisions or administrative actions which might affect the UIC Program and the Division's authority to administer the program. The Director shall promptly inform EPA of any resource allocation changes (for example, personnel budget, equipment, etc.) which might affect the Division's ability to administer the program.

Any information obtained or used by the Division under its UIC program shall be available to EPA upon request without restriction. If the information has been submitted to the Division under a claim of confidentiality, the Division must submit that claim to EPA when providing EPA such information. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with 40 CFR Part 122.19. If EPA obtains information from the Division that is not claimed to be confidential, EPA may make that information available to the public without further notice.

EPA shall furnish to the Division the information in its files not submitted under a claim of confidentiality which the Division needs to implement its approved program. EPA shall furnish to the Division information submitted to EPA under a claim of confidentiality which the Division needs to implement its approved program subject to conditions in 40 CFR Part 122.19.

F. 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; or (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, 1431 or other Sections of the SDWA.

VI. Permitting

A. General

The Division is responsible for drafting, circulating, issuing, modifying, reissuing, and terminating permits and shall take appropriate action pursuant to State and federal law and rules and regulations. These procedures will be detailed in the State application for UIC primacy.

VII. EPA Inspections of Facilities

A. General

EPA shall notify the Division of any proposed facility inspection within the State of Wyoming at least seven (7) days before any inspection which EPA determines to be necessary. This procedure will allow coordination of scheduling and allow joint inspections. This procedure may be waived for emergency situations.

VIII. Effect, Rescission, and Modification

This Agreement shall take effect upon program approval by the Administrator pursuant to 40 CFR 123.6 and shall remain in effect for the duration of such approved program or until this Agreement is rescinded by mutual agreement of the parties. This Agreement may be modified upon the initiative of the Division, EPA or the Governor of the State of Wyoming. Modifications must be in writing and must be signed by the Director and the Regional Administrator. Modifications become effective when signed by all parties to the Agreement. Modifications may be made by revision prior to the effective date of this Agreement or subsequently by addenda attached to this Agreement and consecutively numbered, signed and dated.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Approved Original signed by Governor Ed Herschler 3/30/83
Governor Ed Herschler Date
State of Wyoming

Approved Original signed by Stephen J. Durham 4/26/83
Steven J. Durham Date
Region VIII
U.S. Environmental Protection Agency

Approved Original signed by Robert E. Sundin 3/30/83
Robert E. Sundin, Director Date
Wyoming Department of
Environmental Quality

(Document rescanned by Paul S. Osborne
June 28, 2003—A correct copy of the original
signed document)

Appendix A

- I. Information requirements for EPA Class III wells.
 - A. Definition of permit area with map.
 - B. Application Appendix D-5 (Description of regional and site specific geology including the mineralized zone).
 - C. Application Appendix D-6 (Description of the groundwater within the permit area including map and description of groundwater uses).
 - D. Mine Plan
 1. Description of mineralized zone including extraction techniques.
 2. Process description including:
 - a. Well Field
 - b. Monitoring Plan
- II. As soon as available, affidavits of notice to the public and copies of comments related to the ground-water classification.

