

SECTION 3
MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF WEST VIRGINIA
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

UNDERGROUND INJECTION CONTROL PROGRAM

MEMORANDUM OF AGREEMENT

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REGION III

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UNDERGROUND INJECTION CONTROL PROGRAM

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BETWEEN

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REGION III

I. General

This Memorandum of Agreement ("Agreement") establishes policies, responsibilities, and procedures pursuant to 40 CFR Part 123, and Section 1425 of the SDWA for the State of West Virginia Underground Injection Control Program ("State Program") as authorized by Part C of the Safe Drinking Water Act (P. L. 93-523 as amended by P. L. 95-190 and 96-502) ("SDWA" or "the Act").

This agreement is entered into by the State of West Virginia and signed by David Robinson, Chief of the Division of Water Resources, hereafter "the State" or "Chief") with the United States Environmental Protection Agency Region III and signed by Peter N. Bibko, Regional Administrator (hereafter, "EPA" or "Regional Administrator"). This Agreement becomes effective upon the assumption of primacy for the Underground Injection Control ("UIC") program by the State.

A. Lead Agency Responsibilities

The lead agency, the Division of Water Resources ("DWR") which receives the annual program grant, as designated by the Governor of the State, is also the lead agency to coordinate the State Program. This lead agency coordinates the State Program to facilitate communication between EPA and the State agencies having program responsibilities. These responsibilities include, but are not limited to, the submission of grant applications, reporting and monitoring results and annual report requirements. The Oil and Gas Conservation Commission and the Office of Oil and Gas, Department of Mines, are responsible for and have authority over all Class II injection wells, under Section 1425 of the SDWA. All Class II injection wells must also obtain a Water Pollution Control Permit from DWR before injection of fluids. The Division of Water Resources is responsible for and has authority over all Class I, III, 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 lead agency 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 Modifications

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 Chief 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 State 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 Chief on a continuing basis technical and policy assistance on program matters.

The Regional Administrator is responsible for keeping the Chief 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 strategies and priorities for issuance, compliance monitoring and enforcement of permits, and implementation of technical requirements shall be established in the State'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 State and EPA to review specific operating procedures, resolve problems, or discuss mutual concerns involving the administration of the UIC program.

E. Sharing of Information

The Chief 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 State Program and the State's authority to administer the program. The Chief shall promptly inform EPA of any resource allocation changes (for example, personnel budget, equipment, etc.) which might affect the State's ability to administer the program.

Any information obtained or used by the State under its 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 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 2. If EPA obtains information from the State that is not claimed to be confidential, EPA may make that information available to the public without further notice.

EPA shall furnish to the State the information in its files not submitted under a claim of confidentiality which the State needs to implement its approved program. EPA shall furnish to the State information submitted to EPA under a claim of confidentiality which the State needs to implement its approved program subject to conditions in 40 CFR Part 2.

F. Duty to Revise Program

Within 270 days of any amendment to any regulation promulgated at 40 CFR Parts 122, 123, 124 or 146 revising or adding any requirement respecting State UIC programs, the State shall submit notice to EPA showing that the State program meets the revised or added requirement, a longer period of time may be allowed if necessary to comply with the provisions of the State Administrative Procedures Act, Chapter 29A of the West Virginia Code, 1931, as amended.

If the Administrator revises or amends any requirement of a regulation under Section 1421, the State may demonstrate that the State program meets the requirements of Section 1421(b) and represents an effective program under Section 1425(b). The State may make this alternative showing under Section 1425, but still must do this within 270 days after such revision or amendment.

G. Definition and Exemptions of USDW

The State agrees to define an "underground source of drinking water" (USDW) as an aquifer or its portion:

- (a) (1) which supplies any public water system; or
- (2) which contains a sufficient quantity of ground water to supply a public water system; and
 - (i) currently supplies drinking water for human consumption;
 - (ii) contains fewer than 10,000 mg/l total dissolved solids; and
- (b) which is not an exempted aquifer.

176.01 The State further agrees to exempt aquifers only in conformance with the following criteria:

An aquifer or a portion thereof which meets the criteria for an "underground source of drinking water" may be determined to be an exempted aquifer if it meets the following criteria:

- ✓ (a) It does not currently serve as a source of drinking water; and
- ✓ (b) It cannot now and will not in the future serve as a source of drinking water because:
 - ✓ (1) It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible;
 - ✓ (2) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; or
 - ✓ (3) It is so contaminated that it would be economically or technologically impractical to render the water fit for human consumption; or

- (4) It is located over a Class III well mining area subject to subsidence or catastrophic collapse; or
- (c) The Total Dissolved Solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system. *see 123.14*

The State will obtain EPA approval and will hold a public hearing prior to exempting an aquifer in conformance with the aforementioned criteria.

H. Duration of MOA

This agreement will remain in effect until such time as State primary enforcement responsibility is withdrawn by EPA, according to the provisions of 40 CFR Part 123.14.

I. 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, 1425, 1431 or other Sections of the SDWA.

II. Permitting

A. General

The State is responsible for expeditiously drafting, circulating, issuing, modifying, reissuing, and terminating UIC permits and shall do so in accordance with 40 CFR Part 123.7 and applicable State regulations. The Chief shall review and issue permits based on the permit conditions required under 40 CFR 123.7 and applicable State regulations. Permits shall be issued which comply with applicable Federal and State requirements.

B. Transfer of Responsibility from EPA *123.14(b)*

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 Chief when the State assumes primacy for the program.

C. Coordination with EPA *123.14(b) EPA*

EPA and the State may coordinate when appropriate the processing of permits for facilities or activities that require permits from both EPA and the State under different programs.

D. Consolidation of Permit Issuance

The State and EPA may agree on provisions for joint processing of permits for facilities or activities which require permits from both EPA and the State *123.14*

under different programs. The State and EPA may consolidate draft permits, fact sheets, public comment periods, and any public hearings on those permits which are jointly processed. The Director shall not, however, proceed with joint processing of permits if this would result in unreasonable delay in the issuance of one or more permits.

E. Compliance Schedules and Reports

The Chief agrees to establish compliance schedules in permits where appropriate and to require periodic reporting on compliance with compliance schedules and other permit conditions.

III. Compliance Monitoring

A. General

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

B. Compliance Schedule

The State agrees 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 State shall initiate appropriate compliance actions when required information is not received or when the reports are not submitted.

C. Review of Compliance Reports

The State shall conduct a timely and substantive review of all such reports to determine compliance status. The State 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. The reports and notices shall be evaluated for compliance status in accordance with the State compliance program and the program requirements.

D. Inspection and Surveillance

The Chief agrees 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 compilations, index, or inventory obtained for such facilities or activities shall be made available to the Regional Administrator upon request.

The Chief shall conduct periodic inspections of the facilities and activities subject to regulatory requirements. These compliance monitoring inspections shall be performed to assess compliance with all UIC permit conditions or UIC program requirements and include selecting and evaluating a facility's monitoring and reporting program. These inspections shall be conducted to determine the compliance or noncompliance with the issued permits, verify the accuracy

of the information submitted by the permittees in reporting forms and monitoring data, and to verify the adequacy of sampling, monitoring and other methods to provide the information.

123.4
123.9(3)

The State agrees to witness each year at a minimum, 25% of the mechanical integrity tests conducted by permittees.

E. Information from the Public 123.8(f)

The Chief shall establish a mechanism for the public to submit information on violations, and to have procedures for receiving, investigating and ensuring proper consideration of the information.

F. Authority to Enter 123.8(c)

The Chief (and other State officials) engaged in compliance monitoring and evaluation have the authority to enter any site or premises subject to regulation, and to review and copy the records of relevant program operations where such records are kept in accordance with State regulations (Chapter 25-A3(d) of the West Virginia Code, 1931, as amended).

G. Admissibility

123.9(d) ✓

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

IV. Enforcement

A. General

The State is responsible for taking timely and appropriate enforcement action against persons in violation of program requirements, compliance schedules, technical requirements, permit conditions, and other UIC program requirements. This includes violations detected by State or Federal inspections.

Failure by the State to initiate appropriate enforcement action against a substantive violation may be the basis for EPA's determination that the State has failed to take timely enforcement action in accordance with Section 1423 of the SDWA.

B. Enforcement Mechanisms 123.9(b)(1)

The State shall have the mechanisms to 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 shall also have the means to sue in courts of competent jurisdiction to prohibit any threatened or continuing violation of any program requirement. Additionally, the State agency administering the program shall have the mechanism to assess or sue to recover in court civil penalties and criminal remedies as established in 40 CFR Part 123.9.

C. Public Participation

The State shall provide for public participation in the State enforcement process by providing assurance that the State agency or enforcement authority will:

- (i) investigate and provide written responses to all citizen complaints; (ii)

not oppose intervention by any citizen when permissive intervention may be authorized by statutes, rule, or regulation; and (iii) publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

Nothing in this agreement shall affect EPA's authority or responsibility to take enforcement actions under Section 1423 of the SDWA.

D. EPA Enforcement

When the State has a fully approved program the EPA will not take enforcement actions without providing prior notice to the State and otherwise complying with Section 1423 of the SDWA. EPA retains primary enforcement responsibility whenever the State program is disapproved in whole or in part. A State which has a partially approved program has the authority to enforce against any violation of the approved portion of its program. A State whose program has been approved under Section 1425 has primary enforcement responsibility for that part of the program.

E. Assessment of Fines

The State shall agree to seek civil penalties in amounts appropriate to the violation as required in Section 123.9(c) of the regulations.

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 this MOA, the State UIC grant application, 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 Chief's administration of the UIC program.

B. Quarterly Noncompliance Reports

The State shall submit to the Regional Administrator quarterly noncompliance reports (as specified in 40 CFR Part 122.18(a)) on major facilities as determined in accordance with the following schedule:

<u>Quarter</u>	<u>Report Due to Regional Administrator*</u>
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 reports are also to be made available to the public on this date for inspection and copying.

The State shall submit the noncompliance reports in the required format (40 CFR Part 122.18(a)(1)) including the current status and outcome of any actions taken by the Chief against those who are not in compliance.

For purposes of the program reporting requirements under Section 122.18, the Chief and EPA shall use Ground Water Program Guidance #18 to define injection operations as major or minor facilities. This guidance is attached.

C. Annual Noncompliance Reports

The State shall submit an annual noncompliance reports (as specified in 40 CFR Part 122.18(c)(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.

D. Immediate Reporting on Noncompliance

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

E. Annual Program Report

The State shall submit an annual program report to the Regional Administrator in accordance with Section 122.18(c)(4)(i). 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.

As part of this Memorandum of Agreement, the State shall agree to submit to EPA an annual report on the operation of its Class II program in accordance with Section 1425 of the SDWA. Under Section 1425, the annual report may cover noncompliance reporting and reporting for the mid-course evaluation. This report shall cover the calendar year ending December 31, and be available to the public and submitted to the Regional office no more than 60 days later.

F. Mid-Course Evaluation Reports

In addition to the annual program report and noncompliance reports, the State shall submit the mid-course evaluation information (as required by 40 CFR Section 122.18(c)(4)(ii) and Sections 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.

G. Class V Reports

Within 3 years of program approval, the Chief shall complete and submit to EPA a report on Class V wells in the State as specified in Section 146.52(b).

H. Review of Permits

The following arrangement has been made between the Regional Administrator and the State Director for the yearly review and comments by EPA on a sampling

of draft and issued permits. The circumstances upon which EPA will want to review and comment on State permits and the number of permits per category follows:

- (1) All well permits issued with special conditions or additional requirements incorporated in a permit and prescribed by the Director to prevent the migration of fluids into an USDW (40 CFR Parts 122.34(b), 122.40(b)(6), 122.42(f), and (i), and 122.44(a));
- (2) All permits issued by the Director through a waiver of the requirements (40 CFR 122.43);
- (3) The issuance and reissuance of all class I and emergency permits;
- (4) The issuance and reissuance of 10% of the class II enhanced recovery and Hydrocarbon (liquid) storage permits;
- (5) The issuance and reissuance of 30% of the Class III and Class II disposal permits;
- (6) All permits issued whereby all relevant facts were not considered, misrepresented, or were not fully disclosed (40 CFR Part 122.16(a)(2));
- (7) All facilities permitted under more than one program and found to be in noncompliance (40 CFR Part 122.18(a)(ii));
- (8) All permits issued on an area basis (40 CFR Part 122.39);

This arrangement is subject to modification upon the agreement of both parties.

I. Inspection and Surveillance by EPA
(Discretionary)

Provisions also may be made within the context of the MOA for the Regional Administrator to select facilities and activities within the States for EPA inspection.

The following priorities should be considered in selecting facilities for inspection and review as a function of EPA's responsibility:

- (1) Class I injection wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous wastes, other than Class IV wells;
- (2) Class II wells permitted on an area permit basis;

- (3) Class II salt water disposal wells;
- (4) Permits issued under a waiver (Section 122.43);
- (5) Class II wells authorized by rule.

EPA may conduct such inspections jointly with the State. The Chief shall give the Regional Administrator adequate notice to participate in any compliance evaluation inspection scheduled by the State.

The Regional Administrator may also choose to conduct inspections independently of the State's schedule. In such cases, the EPA shall normally notify the State at least seven (7) days before any inspection which EPA determines to be necessary. However, if an emergency exists, or for some other reason it is impossible to give advance notification, the Regional Administrator may waive advance notification to inspect a facility. In keeping with Section 1445(b)(2) of the SDWA, the State undertakes not to use such information to inform the person whose property is to be entered of the pending inspection.

J. Annual Performance Evaluation

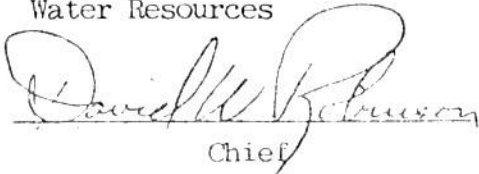
EPA shall conduct, at least annually, performance evaluations of the State program using the State quarterly reports, annual noncompliance reports, program reports, and other requested information to determine State program consistency with the program submission, SDWA and applicable regulations, and 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.

The Environmental Protection Agency shall submit a copy of the evaluation findings to the State outlining the deficiencies in program performance, and recommendations for improving State operations within thirty days of receipt of the annual program report. 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.

VI. Signatures

West Virginia Division of
Water Resources

By:


Chief

Date: 5/11/82

U. S. Environmental
Protection Agency

By: _____

Regional Administrator

Date: _____