UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: MAY 8 1981

19,889

SUBJECT: Memorandum of Agreement (MOA) for the Underground Injection Control Program (UIC) Ground-Water Program Guidance #14

FROM: Alan Levin, Director
State Programs Division Alan Levin

TO: Water Division Directors Regions I - X
Water Supply Branch Chiefs
UIC Representatives

PURPOSE:

The following Underground Injection Control (UIC) program guidance provides the basic requirements and format for developing a Memorandum of Agreement (MOA) which will be endorsed by the State Director of the UIC program and the Regional Administrator. The MOA is the central document for setting the arrangements and provisions between the State and the Environmental Protection Agency (EPA) concerning the administration and enforcement of the State's regulatory program.

BACKGROUND

Under 40 CFR Part 123.3, any State that seeks to administer a UIC program shall submit an MOA with the State's program submission. Section 123.6," Memorandum of Agreement with the Regional Administrator," sets forth the contents that are to be included in this Agreement. The Memorandum may include, in addition to the requirements of paragraph (b) of Section 123.6, other terms, conditions, or agreements for the effective administration of a UIC program.

Programs submitted under Section 1425 of the Safe Drinking Water Act (SDWA) are required also to submit an MOA describing the agreements and terms of the UIC program.

GUIDANCE

The guidance and index for the Memorandum of Agreement is attached. As the introductory paragraph suggests, the MOA is an example, and as such, includes some sections that are universal which should be included in all Agreements, and other sections that suggest areas that can be negotiated between the Regional Administrator and the State Director.

The sections marked "discretionary" are areas in which negotiations between the Regional Administrator and the State Director may be made. The sections that remain "unmarked" are sections which should be included in the Agreement as written. If these sections are changed, care must be taken not to change the meaning of the section.

IMPLEMENTATION

The Regional Administrator (RA) must develop with the State Director an acceptable MOA that shall be used to administer the UIC program. This MOA, the annual program grant and the State/EPA agreement should be consistent.

If the State/EPA agreement indicates a change is needed in the Memorandum of Agreement, the MOA may be amended in accordance with 40 CFR Part 123.13 (Procedures for revisions of State programs). The State/EPA agreement may not override the Memorandum of Agreement.

FILING INSTRUCTIONS

This guidance should be filed as Ground Water Program Guidance No. 14.

ACTION RESPONSIBILITY

For further information on this guidance contact:

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER
AND WASTE MANAGEMENT

This is an example of the memorandum of agreement (MOA) which is necessary between a State and the Environmental Protection Agency (EPA) in the delegation of the Underground Injection Control (UIC) program. The Agreement should be used as a guidance for discussion purposes between the parties and is provided to outline certain areas of the applicable regulations that are relevant to the administration and enforcement of the State's regulatory program. Since the 1980 Amendments to the SDWA provide an alternative means for States to acquire primary enforcement responsibility for Class II well operations, those paragraphs which are applicable to the operations under the Section 1425 amendments are noted by the following words at the heading of the paragraph: "(Applicable to State programs under Section 1425)". The State Director and the Regional Administrator should detail the MOA for the particular concerns in the individual State.

UNDERGROUND INJECTION CONTROL PROGRAM

MEMORANDUM OF AGREEMENT

BETWEEN

THE STATE OF (Name of State)
(Commonwealth of)

and

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION (Numeral)

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 (Name of State) 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").

The Agreement could ...igned by the single agency ...t receives the annual program grant. All State inter-agency agreements between responsible parties should be added as appendices to the program description.

(Revise if respons...ity for injection is not s...tly by class, if the State has no injection of a certain class or if well class responsibilities are divided among agencies.)

(Modify also if the State only has a partial program. Delineate the responsibility for well classes between the State and EPA.)

This agreement is entered i to by the State of (Name of State) and signed by (State Director's Name), (State Director's Title) of the (State Agency's Name), (hereafter, "the State" or "Director") with the United States Environmental Protection Agency, Region (Numeral) and signed by (Regional Administrator), Regional Administrator (hereafter, "EPA" or "Regional Administrator"). This Agreement shall become effective when approved by the Administrator.

A. Lead Agency Responsibilities (Discretionary)

The lead agency, (Name of Lead Agency) 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 shall coordinate the State 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 (State Agency's Name) is responsible for and has authority over all Class II injection wells. The (State Agency's Name) 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.

This Agreement may be modified upon the initiative of the State or the EPA. Modifications must be in writing and must be signed by the Director and the Regional Administrator. Modifications become effective when signed by the Regional Administrator. Modifications may be made by revision prior to the effective date of this

should be regulated was reopened and received a great deal of consideration within OWWM.

The regulations reproposed this month contain a new approach to the regulation of these wells explained in the preamble of reproposed Part 264, Subpart A. Basically the Agency decided to resolve the problems of which criteria and standards to apply by applying both. Both acts are now cited in the Authority section of the preamble to the reproposal for "Hazardous Waste Management System; General and Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities and EPA Administered Permit Programs, The Hazardous Waste Permit Program" 40 CFR Parts 260, 264 and 122.

Under this approach only certain wells would be eligible for exclusive jurisdiction under the UIC program (i.e. a UIC permit would be deemed sufficient justification for a permit by rule under RCRA) while for all other wells the RCRA standard would have to be applied and a RCRA permit obtained. This is explained in the preamble to the proposed amendments to §122.26:

> "The permit by rule allows UIC exclusive jurisdiction in those circumstances when it is clear that the RCRA standard will be complied with. Those circumstances exist only when no waste will enter a surficial aquifer and no water will be withdrawn for use from the zone of containment within the injection zone. In all other circumstances, the RCRA criteria and standards will apply. Due to the choice to promulgate under both laws, permits using the RCRA rule may be issued by those administering the UIC program."

The RCRA standard referred to in this paragraph is that "leachate and other subsurface discharges that will enter into and migrate within a ground water aquifer will not mingle with and thereby affect any ground water which is being or may in the future be collected or withdrawn for domestic, agricultural, industrial, commercial or other uses."

Under this proposed new approach, UIC permits could only be issued for:

1. Class I wells injecting below all USDWs; and

2. Class I wells injecting into an exempted aquifer or a non USDW but below the uppermost aquifer;

administrative actions which might affect the State Program and the State'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 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 States 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 States information submitted to EPA under a claim of confidentiality which the States 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.

(Applicable to State programs under Section 1425)
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

(Applicable to State programs under Section 1425)
The State agrees to define an "underground source of

drinking water" (USDW) in a manner consistent with Sections 122.3, 122.31(d) and 146.03 of the UIC regulations. The State further agrees to exempt "underground sources of drinking water" only in conformance with Sections 146.04 and 122.35 of the UIC regulations.

[NOTE --- The State may revise and modify, as appropriate, the above paragraph to reflect the State's criteria for considering aquifers as underground sources of drinking water, and for identifying aquifers or portions thereof which might be identified as exempted aquifers. However, the State's criteria must be at least as stringent as the above Federal requirements.]

H. Duration of MOA

(Applicable to State programs under Section 1425) 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. The Director shall review and issue permits based on the permit conditions of 40 CFR Parts 122.41, 122.42 and 123.7. Permits shall be issued

which comply with applicable Federal and State requirements.

B. Transfer of Responsibility from EPA

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 State Director when a State assumes primacy for the program.

[NOTE --- If a State lacks the authority to directly administer permits issued by the Federal government, a procedure should be established to transfer responsibility for these permits.

For example, EPA and the State and the permittee could agree that the State would issue a permit(s) identical to the outstanding Federal permit which would simultaneously be terminated.]

C. Coordination with EPA (Discretionary)

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.

[NOTE --- To promote efficiency and to avoid duplication and inconsistency, States are encouraged to enter into joint processing agreements with EPA for permit issuance. Likewise, States are encouraged to coordinate or consolidate their own permit programs and activities.]

D. Consolidation of Permit Issuance (Discretionary)

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 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

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 Director 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 conditons 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.

(State programs under Section 1425 <u>only</u>)
The State agrees to witness each year at a minimum, 25% of the mechanical integrity tests conducted by permittees.

E. <u>Information from the Public</u>

The Director 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. <u>Authority to Enter</u>
The State Director (and other State officials) engaged in compliance monitoring and evaluation shall have the authority to enter any site or premises subject to regulation, or to review and copy the records of relevant program operations where such records are kept.

G. <u>Admissibility</u>

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.

unreasonable delay in the issuance of one or more permits.

E. Compliance Schedules and Reports

The Director 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 Director agrees to have inspection and surveillance

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.

B. Enforcement Mechanisms

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 agency administering the program 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 either: 1) the authority which allows intervention as of right by any citizen having an interest which is or may be adversely affected in any civil or administrative action to obtain remedies as specified in the paragraph above, or 2) 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

(Applicable to State programs under Section 1425) 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 assess 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 Director'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:

Quarter	Report Due to Regional Administrator*
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 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 Director against those who are not in compliance.

For purposes of the program reporting requirements under §122.18, the State Director and EPA shall use Ground Water Program Guidance #18 to define injection operations as major or minor facilities.

C. Annual Noncompliance Reports

The State shall submit 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 Director 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 §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.

(Applicable to State programs under Section 1425)
As part of this Memorandum of Agreement, the State shall agree to submit to EPA an annual report on the operation

*The reports are also to be made available to the public on this date for inspection and copying.

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 Director 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 (Discretionary)

Arrangements between the Regional Administrator and the State Director may be made within the context of the MOA for EPA to review and comment on a sampling of draft or issued permits. The following are circumstances in which EPA may want to review and comment on State permits.

(1) Special conditions or additional requirements incorporated in a permit, and prescribed by the Director to prevent the migration of fluids into underground sources of drinking water [40 CFR Parts 122.34(b), 122.40(b)(6), 122.42(f), and (i), and 122.44(a)];

(2) Permits issued by the Director through a waiver of the requirements [40 CFR 122.43];

(3) Permits of a major facility;

(4) Any permits reported in noncompliance with permit conditions in accordance with program reporting [40 CFR Part 122.18(a)(2)];

(5) Permits being reviewed for modification including reissuance or revocation [40 CFR Parts 122.15 and 122.17];

(6) Permits issued when all relevant facts were not considered, misrepresented, or were not fully disclosed [40 CFR Part 122.16 (a)(2)];

(7) Facilities permitted under more than one program and found to be in noncompliance [40 CFR Part 122.18(a)(1)(ii)];

(8) Permits issued on an area permit basis [40 CFR Part 122.39];

(9) Changes of status in the authorization by rule [40 CFR Part 122.37(b)(1) and (3)];

(10) Permits issued to a Class V operation [40 CFR Part 122.34(c) and (d)].

The sampling of permits agreed upon between the State and Region should be based on a definite number of well permits or a percentage of well permits which are submitted. For example, for facilities found to be in noncompliance, as in (4) above, the Region may want to specify that 10% of all wells found in noncompliance shall be reviewed and commented on. However, in cases where the numbers, perhaps are small, as in (3) or (10) above, the Region may want to review all those permits. The method selected for specifying a minimum number or percentage should be based on a random sampling of well permits.

I. <u>Inspection and Surveillance by EPA</u>
(Discretionary)

(Applicable to State programs under Section 1425) 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 III solution mining wells (uranium only);

(3) Class II wells permitted on an area permit basis;

(4) Class II salt water disposal wells;

(5) Permits issued under a waiver (§122.43);

(6) Class IV wells;

(7) Class II wells authorized by rule.

EPA may conduct such inspections jointly with the State. The Director 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.

The Regional Administrator and State Director may set additional review periods to evaluate the effectiveness of the program, either in an administrative or technical manner.

J. <u>Annual Performance Evaluation</u>

(Applicable to State programs under Section 1425) 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 Environmentral Protection Agency shall submit a summary of the evaluation findings to the State outlining the deficiencies in program performance, and recommendations for improving State operations. 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

State Department of _____	U.S. Environmental Protection Agency
By _____	By _____
Title	Title
Date _____	Date _____