

MEMORANDUM OF AGREEMENT ADDENDUM 1
CLASS VI UNDERGROUND INJECTION CONTROL PROGRAM

Between

The Wyoming Department of Environmental Quality

And

The United States Environmental Protection Agency Region 8

I. INTRODUCTION

The Memorandum of Agreement between the State of Wyoming and the EPA Region 8, dated April 26, 1983, is supplemented by this Addendum 1 (Addendum). All terms defined in the program Memorandum of Agreement (MOA) will have the same meanings for purposes of this Addendum 1.

The Wyoming Department of Environmental Quality (Department) and the United States Environmental Protection Agency, Region 8 (EPA or Regional Administrator) have entered into this Addendum to delineate the responsibility of authority for all Class VI injection well activities. Upon approval by the Regional Administrator, regulation of Class VI injection well activities will be incorporated into the current Wyoming Underground Injection Control (UIC) Program. This Addendum establishes policies, responsibilities, and procedures pursuant to 40 CFR parts 124, 144, 145, 146, and Section 1421 of the Safe Drinking Water Act (SDWA) for the State of Wyoming UIC Program as authorized by Part C of the SDWA (P.L. 93-523 as amended; 42 U.S.C 300f et seq.) This Addendum comprises only part of the Wyoming 1422 UIC Program MOA with EPA. This Addendum addresses the Wyoming Class VI UIC Program, implemented by the Department.

This Addendum is entered into by the State of Wyoming and signed by Todd Parfitt, Director of the Wyoming Department of Environmental Quality and the United States Environmental Protection Agency, Region 8 and signed by Gregory Sopkin, Regional Administrator. This Addendum shall become effective when approved by the Regional Administrator.

II. POLICIES AND AGREEMENTS

A. Agency Responsibilities

The lead agency of the Wyoming 1422 UIC Program is the Wyoming Department of Environmental Quality. As the lead agency, the Department receives the annual program grant and coordinates the State 1422 UIC Program, as designated by the Governor of the State. The Department of Environmental Quality, Water Quality Division has authority over all Class I and V injection well activities. The Department of Environmental Quality, Land Quality Division has

authority over all Class III injection well activities. The Wyoming Oil and Gas Conservation Commission (WOGCC) administers the 1425 UIC Program regulating Class II injection well activities and receives a separate program grant from the EPA to administer the 1425 UIC Program. The Department has statutory authority to regulate Class VI injection well activities under Wyoming Statute (W.S.) 35-11-313. 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, compliance, and enforcement actions. This Addendum does not change the lead agency program administration status nor the original intent of the Wyoming UIC Program. This Addendum is solely intended to add Class VI injection wells to the current Wyoming 1422 UIC Program.

B. Review and Modifications

This Addendum may be modified upon the initiative of the Department or EPA. Modifications will be in writing and will be signed by the Director of the Department of Environmental Quality and the Regional Administrator. Modifications become effective when signed by both parties. This Agreement will be reviewed annually as part of the annual program grant and State/EPA Agreement, now referenced as the Performance Partnership Agreement (PPA) process. The annual program grant and the PPA will be consistent with this Agreement and may not override this Agreement.

C. Conformance with Laws and Regulations

The Department will administer the Wyoming Class VI program consistent with the State's submission for program approval, this Addendum, the SDWA, promulgated minimum requirements, State and federal laws and regulations, and any separate working agreements which will be entered into with the Regional Administrator in concurrence by the Department as necessary for the full administration of the Class VI UIC Program.

D. Responsibilities of Parties

The parties agree to maintain a high level of cooperation and coordination between the Department and EPA staffs to assure successful and efficient administration of the Class VI UIC program. In this partnership, the Regional Administrator will provide to the Department necessary technical and policy assistance on program matters. The Regional Administrator is responsible for keeping the Department apprised, in a timely manner, of the meaning and content of federal guidelines, technical standards, regulations, policy decisions, directives, and any other factors which affect the Class VI UIC Program.

The Department will carry out the Class VI UIC Program as outlined in the Class VI primacy application and subsequent modifications to assume Class VI primacy.

It will be the policy of the EPA and the Department to minimize paperwork and interagency decision-making procedures and to make the best use of available manpower and funds so as to prevent duplication of effort and unnecessary delays to the extent allowable by law.

The strategies and priorities for issuance of permits, compliance monitoring, enforcement procedures, and implementation of technical requirements in the Class VI UIC Program will be established in the state's program description, the annual PPA, 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 Class VI UIC Program.

E. Sharing of Information

The Department will timely inform the EPA of any proposed, pending, or enacted modifications to laws, regulations, or guidelines, and any judicial decisions or administrative actions, which might affect the Department's Class VI UIC Program and the Department's authority to administer the Class VI UIC Program.

Any information obtained or used by the Department under its Class VI UIC Program will be available to EPA upon request without restriction. If the information has been submitted to the Department under a claim of confidentiality, the Department will submit that claim to EPA when providing EPA such information. Any information obtained from the Department and subject to a claim of confidentiality will be treated in accordance with 40 CFR parts 2 and 40 CFR § 144.5. If EPA obtains information from the Department that is not claimed to be confidential, EPA may make that information available to the public without further notice.

EPA will furnish to the Department the information in its files not submitted under a claim of confidentiality which the Department needs to implement its Class VI Program. EPA will furnish to the Department information submitted to EPA under a claim of confidentiality, which will be subject to conditions found in 40 CFR part 2.

F. Duty to Revise Program

As stated in 40 CFR § 145.32(e), within 270 days of any amendment to any regulation promulgated at 40 CFR part 124, 144, 145 or 146 revising or adding any requirement respecting state UIC programs, the Department must submit notice to EPA showing that the state program meets the revised or added requirements.

G. Duration of Addendum

This Addendum will remain in effect until such time as State primacy enforcement responsibility is returned to EPA by the State, or withdrawn by EPA, according to the provisions of 40 CFR §145.34.

H. General Provisions

Nothing in this Addendum is intended to affect any UIC Program requirement, including any standards or prohibitions, rules, regulations, or policies, established by the Department, as long as the State requirements are no less stringent than or are deemed equally protective as:

- i. Any set forth in the Class VI UIC regulations; or

- ii. Other requirements or prohibitions established under the SDWA or applicable regulations.

Nothing in this Addendum shall be construed to limit the authority of the EPA to act pursuant to Sections 1421, 1422, 1423, 1424, 1425, 1431, or other sections of the SDWA.

III. PERMITTING

A. General

The Department is responsible for all Class VI injection well permitting procedures as detailed in the approved Class VI UIC Program Description, and pursuant to State and federal laws, rules, and regulations.

Permits for Class VI injection wells will be issued under the authority of Wyoming Water Quality Rules and Regulations Chapter 24. Class VI injection well permits will be issued by the Department.

Permits issued by the Department shall be in compliance with state and federal requirements. All Class VI permits shall meet the public participation requirements at 40 CFR parts 25 and 124, interstate coordination requirements at 40 CFR §146.82(b), and permitting procedures at 40 CFR part 124 for Class VI wells.

B. Class VI Injection Depth Waivers

The Department shall provide all information received through the injection depth waiver application process described in 40 CFR § 146.95, to the Regional Administrator. Based on the information provided, the Regional Administrator will provide written concurrence or non-concurrence regarding waiver issuance. If the Regional Administrator is unable to provide written concurrence or non-concurrence within ninety (90) days of the Department's submittal, the Regional Administrator will notify the Department in writing to request additional information to support a decision and/or provide a date beyond ninety (90) days by when he/she expects to make a decision. The Department shall not issue a Class VI injection depth waiver without receipt of written concurrence from the Regional Administrator.

C. Post-Injection Site Care and Site Closure

The state and EPA agree to consult on any alternative post-injection site care timeframes (other than the 50-year default timeframe required by 40 CFR § 146.93) if an owner or operator can demonstrate during the permitting process that an alternative post-injection site care timeframe is appropriate and ensures non-endangerment of USDWs. Pursuant to 40 CFR § 145.1(g), nothing in this Addendum precludes the state from adopting or enforcing requirements which are more stringent or more extensive than those required under federal regulations, and if the state program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the federally approved program.

D. Compliance Schedule 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.

E. Environmental Justice

Consistent with its Environmental Justice Policy, the Department agrees to examine the potential risks of a proposed Class VI well to identify and address any particular impacts on minority and low-income populations.

IV. COMPLIANCE MONITORING

A. General

The Department will operate a timely and effective compliance monitoring system to track compliance with permit conditions and program requirements as outlined in the Class VI UIC Program Description. For purposes of this Addendum, the terms “compliance monitoring” or “compliance evaluation” will refer to all efforts associated with determining compliance with Class VI UIC Program requirements.

B. Compliance Schedule

The Department 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 will also include the necessary elements to investigate the failure of persons required to submit such notices and reports. The Department will initiate appropriate compliance actions when required information is not received or when the reports are not submitted.

C. Review of Compliance Reports

The Department will conduct a timely and thorough review of all such reports to determine compliance status. The Department will operate a tracking system to determine if:

- i. The reports required by permits and program regulations are submitted;
- ii. The submitted reports are complete and accurate; and
- iii. The permit conditions and program requirements are met.

The reports and notices will be evaluated for compliance status in accordance with the State compliance program and the program requirements.

D. Inspection

The Department agrees to have inspection and surveillance procedures to determine compliance or noncompliance with the applicable requirements of the Class VI UIC Program. Surveys or other methods of surveillance will include targeting 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 Department shall conduct periodic inspections of the facilities and activities subject to regulatory requirements. These compliance monitoring inspections will be performed to assess compliance with all Class VI UIC Program requirements and include selecting and evaluating a facility's monitoring and reporting program. These inspections will be conducted to determine compliance or noncompliance with the issued permits, to verify the accuracy of information submitted by operators in reporting forms and monitoring data, and to verify the adequacy of sampling, monitoring, and other methods to provide the information. These inspections may be announced or unannounced.

E. Information from the Public

The Department shall provide the opportunity 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

The Department (and other State agency designees) engaged in compliance monitoring and evaluation shall have access to and 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. Admissibility

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.

V. ENFORCEMENT

A. General

The Department is responsible for taking timely and appropriate enforcement action against persons in violation of Class VI UIC Program requirements, permit conditions, compliance schedules, and technical requirements. This includes violations detected by state or federal inspections.

The EPA will be notified of any enforcement actions taken by the Department. Failure by the Department to initiate appropriate enforcement action against a substantive violation may be the basis for EPA's determination that the Department has failed to take timely enforcement action. Such a determination may result in EPA filing an action to enforce the State's rules in accordance with Section 1423 of the SDWA, but conference will occur between both parties prior to this action.

B. Enforcement Mechanisms

The Department shall have the mechanism 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 UIC Program requirement. Additionally, the State is authorized to sue to recover civil penalties and criminal remedies as established in Wyoming Statute (W.S.) § 35-11-901 and 35-11-904.

The Department will proceed in any enforcement action against persons in violation of Wyoming Statute (W.S.) § 35-11-901, any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under Wyoming Statute (W.S.) § 35-11-901; any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under Wyoming Statute (W.S.) § 35-11-901, or any permit condition, rule, order, limitation, or other applicable requirement implementing W.S. § 35-11-901, resulting in any adverse impact to waters of the State.

C. EPA Enforcement

Nothing in this Addendum shall affect EPA's authority or responsibility to take enforcement actions under Sections 1423 and 1431 of the SDWA. The State has primary enforcement responsibility for the State UIC Program. EPA will not take enforcement actions without providing prior notice to the State and otherwise complying with Sections 1423 and 1431 of the SDWA and all applicable regulations.

D. Assessment of Fines

The Department agrees to assess civil penalties in amounts appropriate to the violation as required in W.S. § 35-11-901.

VI. EPA OVERSIGHT

A. General

EPA shall oversee the Department's administration of the Class VI UIC Program on a continuing basis to assure that such administration is consistent with this Addendum, the program MOA, the state UIC grant application, and all applicable requirements embodied in current regulations, statutes, and federal law. In addition to the specific oversight activities listed in this section, EPA may from time to time request pertinent information related to the oversight of the Class VI UIC Program, and the Department will submit and provide access to files necessary for evaluating the Department's administration of the Class VI UIC Program.

B. Immediate Reporting of Noncompliance

The Department will notify the Regional Administrator, of any major, imminent hazard to public health resulting from the endangerment of an underground source of drinking water of the State by Class VI injection well activities.

C. Program Reports

The Department shall submit program reports to the Regional Administrator in accordance

with 40 CFR § 144.8. All Class VI program reports shall be consistent with reporting requirements set forth in 40 CFR § 146.91 and shall be submitted to the Regional Administrator in accordance with 40 CFR § 144.8. The reports are to be submitted quarterly using the specified 7520 reporting forms and include a narrative. Federal requirement 40 CFR § 146.91(e) requires that regardless of whether a State has primacy enforcement responsibility, owners or operators must submit all required reports, submittals, and notifications under Subpart H of part 146 to EPA in an electronic format approved by EPA. Additional State regulations require the owner or operator to submit reports, submittals, and notifications to the Department. In order to assure both the State, as the primacy authority, and EPA, as the oversight authority, have consistent data throughout program implementation, the Department agrees to submit to EPA or allow EPA viewing access to all Class VI reports, submittals, and notifications submitted to the State. The Department will assist the EPA in owner or operator compliance with 40 CFR § 146.91(e) by submitting to EPA or allowing EPA viewing access to all required reports, submittals, and notifications under Subpart H of part 146 through the Department's database in an electronic format approved by EPA.

D. Quarterly Program Reports

The Department shall submit to the Regional Administrator quarterly program reports as specified in 40 CFR § 144.8(a).

Quarterly reports will be submitted in accordance with the following schedule:

<u>Quarter</u>	<u>Report Due to Regional Administrator</u>
October, November, December	January 30
January, February, March	April 30
April, May, June	July 30
July, August, September	October 30

E. Annual Program Reports

The Department shall submit an annual program report as specified by 40 CFR §144.8 to the Regional Administrator sixty (60) days after the end of the federal fiscal year. The report is for the period of October 1 through September 30 (federal fiscal year) and will consist of the following:

- i. A well inventory consisting of the facility name and ID, location, well type, and well status.
- ii. A written summary of the major program activities completed and in progress during the fiscal year as identified in the work plan.

The Department will provide the EPA any information or data necessary to assist in the development of the State/EPA PPA.

F. Major Facilities

Major facilities will include: All Class VI Facilities.

G. Aquifer Exemptions

Other than EPA approved aquifer exemption expansions that meet the criteria for exempted aquifers, new aquifer exemptions shall not be issued for Class VI injection well activities. Even if an aquifer has not been specifically identified by the Department, it is an underground source of drinking water if it meets the definition at 40 CFR § 144.3.

H. Mechanical Integrity

The Department may allow the use of a test to demonstrate mechanical integrity other than those listed in the Class VI UIC Program description. Any alternative mechanical integrity test must receive written approval from the US EPA Administrator prior to implementation and be consistent with the requirements of 40 CFR § 146.89(e).

I. Inspection and Surveillance by EPA

Provision may be made within the context of this Agreement for EPA to select facilities and activities within the State for EPA inspection. EPA will endeavor to conduct such inspections jointly with the State. The Regional Administrator may also choose to conduct inspections independently of the State's schedule. In such cases, the EPA will notify the Department at least seven (7) days before any inspection that EPA determines to be necessary in order to allow coordination of scheduling and allow joint inspection. However, if an emergency exists, or for some reason, it is impossible to give advance notification, the Regional Administrator may waive advance notification and instead provide immediate notice of the facility inspection and will allow the State the opportunity to accompany EPA on any such inspection. The State understands not to inform the person whose property is to be entered of the pending inspection if the EPA waives advance notice and inspects the property and the State does not accompany the EPA.

The EPA will be responsible for attaining their own access to collect resource data as defined by W.S. § 6-3-414, to inspect and photograph the facility, collect samples for analysis, review records, and perform any other function authorized by law.

J. Annual Performance Evaluation

EPA will conduct, at least annually, performance evaluations of the Wyoming Class VI UIC Program using the Department's quarterly reports, annual noncompliance reports, program reports, and other requested information to determine State program consistency with its UIC Program submission, the SDWA, and applicable State and federal regulations. The review will include progress towards program implementation, changes in the Class VI UIC Program description, and efforts towards progress on program elements.

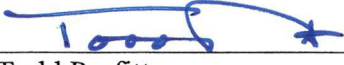
EPA will submit a summary of the evaluation findings to the Department outlining the deficiencies in program performance and recommendations for improving State operations. The report also might provide guidance for the development of an upcoming grant application, should federal funds become available for Class VI activities. The Department will have thirty (30)

working days from the date of receipt to concur with or comment on the findings and recommendations.

VII. SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Addendum.

Wyoming Department of Environmental Quality

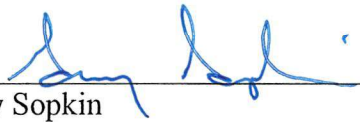


Todd Parfitt
Director

3/13/2020

Date

United States Environmental Protection Agency, Region 8



Gregory Sopkin
Regional Administrator

3/20/20

Date