

**CLASS VI UNDERGROUND INJECTION CONTROL PROGRAM
MEMORANDUM OF AGREEMENT**

Between

The Railroad Commission of Texas, Oil and Gas Division

And

The United States Environmental Protection Agency Region 6

ADDENDUM 1

I. GENERAL

The Memorandum of Agreement between the State of Texas and EPA Region 6 for the Section 1422 Underground Injection Control (UIC) Program signed by the EPA Regional Administrator on October 23, 2001, is supplemented by this Addendum 1. All terms defined in the program MOA shall have the same meanings for purposes of this Addendum 1. This MOA comprises only part of the Texas 1422 UIC program MOA with EPA. This MOA addresses the Texas Class VI UIC program, implemented by the Railroad Commission.

This Addendum is entered into by the State of Texas and signed by Danny Sorrells, Director of the Oil and Gas Division of the Railroad Commission of Texas (hereafter, “the state” or “RRC”) with the United States Environmental Protection Agency, Region 6, and signed by Dr. Earthea Nance, Regional Administrator (hereafter, “EPA” or “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 Texas 1422 UIC program is the Texas Commission on Environmental Quality (TCEQ). As the lead agency, the TCEQ receives the annual program grant and coordinates the State 1422 UIC program, as designated by the Governor of the State of Texas. TCEQ has authority over all Class I and some Class III and Class V injection well activities.

The Railroad Commission administers the 1425 Class II UIC program, as well as the 1422 UIC Class III brine mining, and Class V geothermal and tar sands injection well programs. The Railroad Commission receives a separate program grant from the EPA to administer the 1425 UIC program.

The Railroad Commission has statutory authority to regulate Class VI injection well activities under the Texas Water Code, Chapter 27.

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 MOA does not change the lead agency program administration status, nor the original intent of the Texas UIC program. This MOA is solely intended to add Class VI injection wells to the current Texas 1422 UIC program.

B. Review and Modifications

This Addendum may be reviewed annually as part of the annual program grant and State/EPA Agreement (“SEA”) process. This Addendum may be modified upon the initiative of the state or EPA. Modifications must be signed by the Director of the Oil and Gas Division and the Regional Administrator. Modifications become effective when signed by both parties.

C. Conformance with Laws and Regulations

The Oil and Gas Division of the Railroad Commission shall administer the Class VI UIC program consistent with the state’s submission for program approval, the program MOA, this Addendum, the Safe Drinking Water Act (SDWA), promulgated minimum requirements, State and federal laws and regulations, 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 Class VI UIC program by the Commission.

D. Responsibilities of Parties

The parties agree to maintain a high level of cooperation and coordination between the Commission 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 Commission necessary technical and policy assistance on program matters.

The Regional Administrator is responsible for keeping the Commission apprised, in a timely manner, of the meaning and content of the federal guidelines, technical standards, regulations, policy decisions, directives, and any other factors which affect the Class VI UIC program.

The Commission will carry out the Class VI UIC Program as outlined in the Class VI primacy application and any subsequent modifications.

It will be the policy of EPA and Commission 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, compliance, monitoring and enforcement of Class VI permits, and implementation of technical requirements shall be established in the state’s program description, the annual SEA, 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 Commission shall timely 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 Class VI UIC program. The Commission 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 Class VI 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 and 40 CFR §144.5. 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 the state the information in its files not submitted under a claim of confidentiality which the state needs to implement its approved Class VI UIC program. EPA shall furnish to the Commission 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.

As required by 40 CFR §2.209(1), EPA will require permittees and applicants to provide express consent for disclosure to the Commission upon submission of confidential business information. Permittees and applicants may request confidentiality of any submittals or information provided to the Commission pursuant to Texas Government Code, §552.305, relating to Information Involving Privacy or Property Interests of Third Party. If permittees or applicants do not request confidentiality of information at the time of submittal to the Commission, the information may be made available to the public pursuant to Chapter 552, relating to Public Information.

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 124, 144, 145 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 requirements.

G. Duration of MOA

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 145.31.

H. General Provisions

Nothing in this Addendum is intended to affect any Class VI UIC or program requirement, including any standards or prohibitions established by state or local law, as long as the state or local requirements are no less stringent than or are deemed equally protective as:

- (1) any set forth in the Class VI UIC regulations; or
- (2) other requirements or prohibitions established under SDWA or applicable regulations.

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

This Addendum does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against the Commission or EPA, their officers or employees, or any other person. This Addendum does not direct or apply to any person outside of the Commission and EPA.

II. Permitting

A. General

The state is responsible for expeditiously drafting, circulating, issuing, reissuing, and terminating Class VI permits as detailed in the approved Class VI UIC Program Description, and pursuant to State and federal laws, rules, and regulations.

The Director shall review and issue Class VI UIC permits under the authority of Texas' Class VI Injection Wells Rule 16 Texas Administrative Code Subchapter B, Chapter 5.

Permits issued by the Director shall be in compliance with applicable federal and state requirements.

All Class VI permits shall meet the public participation requirements at 40 CFR 25 and 124, interstate coordination requirements at 40 CFR §146.82(b) and permitting procedures at 40 CFR 124 for Class VI wells.

B. Class VI Injection Depth Waivers

The RRC 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 nonconcurrence within ninety (90) days of the Department's submittal, the Regional Administrator will notify the RRC 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 RRC 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. Transfer of Responsibility from EPA

The Regional Administrator shall transfer to the state any pending permits, applications, and any other information relevant to Class VI UIC program operation not already in the possession of the Commission when a state assumes primacy for the Class VI UIC program.

E. Coordination with 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.

F. Compliance Schedule and Reports

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

G. Environmental Justice

The state agrees to examine the potential risks of a proposed Class VI well within his or her jurisdiction to identify and address any particular impacts on minority and low-income populations.

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 Addendum the terms “compliance monitoring” or “compliance evaluation” shall refer to all efforts associated with determining compliance with Class VI 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 tracking system to determine if:

- (1) the reports required by 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 Commission 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 shall be utilized to identify persons who have not complied with permit applications and program requirements. Any compilations, index, or inventory obtained for such facilities or activities shall be made available to the Regional Administrator upon request.

The Commission 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 Class VI UIC program requirements and include selecting and evaluating a facility's monitoring and reporting program. These inspections shall be conducted to determine compliance or noncompliance with 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 Commission shall provide the opportunity for the public to submit information on violations and shall have procedures for receiving, investigating, and ensuring proper consideration of the information.

F. Authority to Enter

The Commission (and other State designees) 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. 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.

IV. Enforcement

A. General

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

EPA shall be notified of any enforcement actions taken by the state. 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 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 Commission 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 Commission shall have the mechanism to access or sue to recover in court civil penalties and criminal remedies as established in the Texas Water Code, Chapter 27, Subchapter F, and 40 CFR §145.13.

C. EPA Enforcement

Nothing in this Addendum shall affect EPA's authority or responsibility to take enforcement actions under Sections 1423 and 1431 of SDWA. When the state has a fully approved Class VI UIC program, EPA will not take enforcement actions without providing prior notice to the state and otherwise complying with Sections 1423 and 1431 of SDWA.

D. Assessment of Fines

The state shall agree to assess civil penalties in amounts appropriate to the violation as required in the Texas Water Code, Chapter 27, Subchapter F and 40 CFR §145.13(c).

V. EPA Oversight

A. General

EPA shall oversee the state'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, policies, and federal law.

In addition to the specific oversight activities listed in this section, EPA may from time-to-time request specific information, and the state shall submit and provide access to files necessary for evaluating the state's administration of the Class VI UIC program.

B. Immediate Reporting on Noncompliance

The Commission shall immediately notify the Regional Administrator by telephone, or otherwise, of any major, imminent hazard to public health resulting from the endangerment of a USDW of the state by Class VI injection well activities.

C. Program Reports

Federal 40 CFR §146.9 1(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 Commission. To assure both the State, as the primacy authority, and EPA, as the oversight authority, have consistent data throughout program implementation, the Commission agrees to submit to EPA or allow EPA viewing access to all Class VI reports, submittals, and notifications submitted to the State. The Commission will assist EPA in owner or operator compliance with 40 CFR §146.9 1(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 Commission's database in an electronic format approved by EPA.

D. Quarterly Program Reports

The Commission shall submit to the Regional Administrator quarterly non-compliance reports as specified in 40 CFR §144.8(a).

Quarterly reports will be submitted in accordance with the following schedule (or as otherwise specified in the Commission's FY UIC workplan):

- October, November, December due January 30
- January, February, March due April 30
- April, May, June due July 30
- July, August, September due October 30

E. Annual Program Reports

The Commission 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:

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

The Commission will provide the EPA any information or data necessary to assist in the development of the State/EPA SEA process.

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 Commission, it is an underground source of drinking water if it meets the definition at 40 CFR §144.3.

H. Mechanical Integrity

The Commission 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 EPA Administrator prior to implementation and be consistent with the requirements of 40 CFR §146.89(e).

I. Inspection and Surveillance by EPA

The Regional Administrator may select facilities and activities within the state for EPA inspection. EPA may conduct such inspections jointly with the state. The Commission 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, EPA shall notify the state at least seven (7) days before any inspection that EPA determines to be necessary 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 to inspect a facility. In keeping with Section 1445(b)(2) of SDWA, the state understands not to inform the person whose property is to be entered during the pending inspection.

J. Annual Performance Evaluation

EPA shall conduct, at least annually, performance evaluations of the state program using program reports and other requested information to determine state program consistency with the program submission, SDWA 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.

EPA shall submit a summary of the evaluation findings to the state outlining any deficiencies in program performance and recommendations for improving state operations. The report also might provide guidance for the development of an 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

IN WITNESS WHEREOF, the parties have executed this Addendum.

Railroad Commission of Texas, Oil and Gas Division

By _____ Danny Sorrells, Director

Date: _____

United States Environmental Protection Agency, Region 6

By _____ Dr. Earthea Nance, Regional Administrator

Date: _____