

UNDERGROUND INJECTION CONTROL PROGRAM

MEMORANDUM OF AGREEMENT

BETWEEN

THE STATE OF OHIO

and

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

I. General

This Memorandum of Agreement ("Agreement") establishes policies, responsibilities, and procedures pursuant to Section 1425 of the SDWA for the State of Ohio 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 applicable to the State Program for Class II wells only.

This Agreement is entered into by the State of Ohio and signed by Myrl H. Shoemaker, Director of the Ohio Department of Natural Resources, (hereafter, "the State" or "Director") with the United States Environmental Protection Agency, Region V and signed by Valdas V. Adamkus, Regional Administrator (hereafter, "EPA" or "Regional Administrator"). This Agreement shall become effective when approved by the Administrator.

A. Lead Agency Responsibilities

The lead agency, Ohio Department of Natural Resources 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 requirement. The Ohio Department of Natural Resources is responsible for and has authority over all Class II injection wells. In addition, the Ohio Department of Natural Resources will be responsible for administering the State Program for Class II wells including, but not limited to, reports, permits, monitoring and enforcement actions.

B. Review and Modifications

This Agreement may be modified upon the initiative of the State of 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 Agreement or subsequently by addenda

attached to this Agreement and consequently numbered, signed, and dated.

C. Conference with Laws and Regulations

The Director shall administer the UIC program consistent with the State's submission for program approval, this Agreement, the SDWA, current Federal policies and regulations, promulgated minimum requirements, 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 Director on a continuing basis technical and policy assistance on program matters.

The Regional Administrator is responsible for keeping the Director 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, 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 Director shall promptly 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 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 the 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 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

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) in a manner consistent with Section 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 Section 146.04 and 122.35 of the UIC regulations.

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.

II. Compliance Monitoring

General

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 conditions or UIC program requirements and include selecting and evaluating a facility's monitoring and reporting program. The 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 information. The State agrees to witness each year at a minimum, 25% of the mechanical integrity tests conducted by permittees.

III. 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 mechanisms to assess or sue to recover in court civil penalties and criminal remedies.

C. 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.

IV. EPA Oversight

A. Annual Program Report

The State shall submit an annual report on the operation of its Class II program to EPA. At a minimum the annual report shall contain:

1. An updated inventory;
2. A summary of surveillance programs, including the results of monitoring and mechanical integrity testing, the number of inspections, and corrective actions ordered and witnessed;
3. An account of all complaints reviewed by the State and the actions taken;
4. An account of the results of the review of existing wells made during the year; and
5. A summary of enforcement actions taken.
6. A tabulated summary of all variances, discretionary exemptions and/or waivers of any kind from any regulatory requirement(s), identified by permit number, with a brief discussion of mitigating circumstances for each instance.

B. Periodic Program Information and Reports

The State shall submit periodic information on the variances sought for well construction and alternate mechanical integrity tests (MIT'S) as applications are received or tests developed that do not meet previously approved well construction and testing. Information to EPA shall include:

1. copy of the application,
2. diagram showing well construction and variance sought,
3. explanation of variance (well construction or MIT) and reasons for approval, and
4. other information EPA feels pertinent to make a determination.

EPA shall make a determination concerning variance sought and respond to the State in writing within two weeks of receiving request.

C. Inspection and Surveillance by EPA

The Regional Administrator may choose to conduct inspections of Class II facilities or operator records within the State.

In such cases, the EPA shall notify the State at least seven (7) days before any inspection which EPA determines to be necessary.

D. 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 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 fifteen (15) working days from the date of receipt to concur with or comment on the findings and recommendations.

V. Plugging of Wells

Regarding the use of prepared clay as a borehole sealant, the State agrees not to deviate from in-house guidelines on the amount of clay and sand sized particles. An acceptable prepared clay consists of a minimum of 45 percent clay sized material and a maximum of 30 percent sand or greater size material.

VI. Public Notification and Participation

A. Saltwater Injection Wells and Enhanced Recovery Projects

Rules 1501:9-3-06 and 1501:9-5-05 of the Ohio Administrative Code will be amended in order to eliminate the option to an applicant of giving notice by hand delivered or registered or certified mail. After the rule change, public notice will be by publication in a local newspaper. However, until these rule changes are effective, the State will see to it that notice is published in a local newspaper for those applicants that choose the personal service option.

B. Annular Disposal Wells

The State agrees to change Rule 1501:9-3-11 O.A.C. to allow for public participation in the issuance of an annular disposal permit (see attachment 1 for the proposed language).

In accordance with paragraph (e) of Section 5.6 of the federal guidelines for submittal under Section 1425, the rule change will include the following:

1. the procedure or procedures for public notification,
2. the contents of the public notice,
3. the procedures for a public hearing, and
4. the procedure for the State's response to comments.

Public notification of an applicants request for annular disposal shall be through the Division's official application listing known as the weekly circular. Section 1509.06 of the Ohio Revised Code, statutorily requires the Division to publish this list. In the future, a clear notation will be made on the list indicating if annular disposal has been requested. This list is sent to the county engineer's office in each county of proposed drilling. (See attachment 2, Section 1509.06 R.C.) In addition, a rule change shall be made requiring a 15 day comment period and public hearing if valid comments are received during the comment period. Finally, the Division will publish a description of the list, comment period and hearing procedure with respect to annular disposal in 5 newspapers across the State upon approval of this program. This publication will put the general public on notice as to the list and comment procedure.

C. Time Frame for Rule Changes

The proposed rule changes outlined in paragraphs (a) and (b) above will be initiated in conjunction with rule changes for the Class III injection program and will become effective prior to the primacy approval for the total UIC program.

VII. Signatures

OHIO DEPARTMENT OF NATURAL RESOURCES

By *Floyd W. Starnes*
Director

Date *3/27/84*

U.S. ENVIRONMENTAL PROTECTION AGENCY

Robert Springer
Regional Administrator

Date *3-30-84*

Proposed Changes to 1501:9-3-11 O.A.C.

Annular Disposal

The proposed rule change to incorporate both public notification and a comment in the annular disposal permitting process will be in Rule 1501:9-3-11 O.A.C. and will include a new paragraph lettered (F). Proposed language follows:

(F) Public notification and participation.

(1) All annular disposal applications submitted to the Division shall be listed in the weekly circular as described in Section 1509.06 O.R.C. Such listing shall contain at least the following information:

- (a) The name and address of the applicant,
- (b) The location of the proposed well,
- (c) The fact that further information may be obtained by contacting either the applicant or the Division,
- (d) The address and phone number of the Division, and
- (e) The fact that for full consideration all comments or objections must be received by the Division, in writing, within twenty calendar days of the date the weekly circular was received or posted.

(2) The weekly circular shall be made available to the general public or any other interested party at each county engineer's office where the proposed well is located and must be posted at the engineer's office and at each division office. In addition, the circular shall be available to subscribers or to anyone that requests the information for a minimal printing and administrative cost.

(3) Comments and objections.

- (a) Any person desiring to comment or to submit an objection with reference to an application for a permit to construct, convert to, or operate an annular disposal well shall file such comments or objections, in writing, with the "Underground Injection Control Section, Division of Oil and Gas, Fountain Square, Columbus, Ohio 43224." Such comments or objections shall be filed with the Division no later than twenty calendar days from receipt of the circular at the county engineer's office or division offices.
- (b) If no objections are received within the twenty-day period the Chief shall consider that no objection exists and shall issue a permit unless he finds that the application does not comply with this rule or other applicable laws and rules, is in violation of law, jeopardizes public health or safety, or is not in accordance with good conservation practices.
- (c) If an objection is received, the Chief shall rule upon the validity of the objection. If, in the opinion of the Chief, such objection is not relevant to the issues of public health or safety, or to good conservation practices, or is without substance and the permit otherwise meets all other requirements of this rule, a permit shall be issued. If the Chief considers any objection to be relevant to the issues of public health or safety, or to good conservation practices, or to have substance, a hearing may be called

1509.06 Application for permit;
fee.

An application for a permit to drill a new well, drill an existing well deeper, reopen a well, convert a well to any use other than its original purpose, or plug back a well to a different source of supply, shall be filed with the chief of the division of oil and gas upon such form as the chief prescribes and shall contain if applicable, the following information:

(A) The name and address of the owner, and if a corporation, the name and address of the statutory agent;

(B) The signature of the owner or his authorized agent. When an authorized agent signs an application it shall be accompanied by a certified copy of his appointment as such agent;

(C) The names and addresses of all persons holding the royalty interest in the tract upon which the well is located or is to be drilled or within a proposed drilling unit;

(D) The location of the tract or drilling unit on which the well is located or is to be drilled identified by section or lot number, city, village, township, and county;

(E) Designation of well by name and number;

(F) The geological formation to be tested or used and the proposed total depth of the well;

(G) The type of drilling equipment to be used;

(H) The name and address of the corporate surety and the identifying number of the bond;

(I) The plan for disposal of water and other waste substances resulting, obtained, or produced in connection with exploration, drilling, or production of oil or gas;

(J) If the well is for the injection of a liquid, identity of the geological formation to be used as the injection medium and the composition of the liquid to be injected;

(K) A sworn statement that the owner has in force and will maintain until abandonment of his oil or gas wells in this state, liability insurance coverage in an amount of not less than three hundred thousand dollars bodily injury coverage and one hundred thousand dollars property damage coverage to pay damages for injury to persons or damage to property caused by the drilling, operation, or plugging of such wells.

(L) A sworn statement that all requirements of any municipal corporation, county, or township having jurisdiction over any activity related to the drilling or operation of an oil or gas well that have been filed with the division of oil and gas and are in effect at the time the application is filed, including but not limited to zoning ordinances and resolutions and the requirements of section 4513.34 of the Revised Code, will be complied with until abandonment of the well.

(M) A plan for restoration of the land surface disturbed by drilling operations. Such plan shall provide for compliance with the restoration requirements of division (A) of section 1509.072 of the Revised Code and any rules adopted by the chief pertaining to such restoration.

(N) A description by name or number of the county, township, and municipal corporation roads, streets, and highways that the applicant anticipates will be used for access to and egress from the well site.

Each such application shall be accompanied by a map, on a scale not smaller than four hundred feet to the inch, prepared by an Ohio registered surveyor, showing the location of such well and containing such other data as may be prescribed by the chief. If the well is or is to be located within the excavations and workings of a mine the map shall also include the location of such mine, the name of the mine, and the name of the person operating the mine.

The chief shall cause a copy of the weekly circular prepared by the division of oil and gas to be provided to the county engineer of each county which contains active or proposed drilling activity. The weekly circular shall contain the name and location in the manner prescribed by the chief of all applicants for and recipients of permits, the information required by division (N) of this section, and any additional information the chief prescribes. The chief shall not issue a permit for at least ten days after the date of filing of the application for such permit unless he, upon reasonable cause shown, waives such period. However, the chief shall issue a permit within twenty-one days of the filing of the application unless he, by order, denies the application.

A well shall be drilled and operated in accordance with the plans, sworn statements, and other information sub-

