

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE ALASKA OIL AND GAS CONSERVATION COMMISSION,  
AND  
THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 10**

The Alaska Oil and Gas Conservation Commission ("AOGCC") and the Environmental Protection Agency, Region 10 ("EPA") hereby agree to implement the Alaska Underground Injection Control ("UIC") Program, as authorized by Section 1425 of the Safe Drinking Water Act ("SDWA"), in accordance with the terms articulated below.

This Memorandum of Agreement (Agreement) supersedes and replaces the Agreement dated January 29, 1986, and Addendum #1 to the original Agreement, dated June 21, 1988.

**General Provisions**

1. The AOGCC will carry out the UIC program as described in its application for primacy for Class II wells, and will support the program by an appropriate level of staff and resources to assure that Underground Sources of Drinking Water (USDW) in Alaska are protected from contamination by fluids injected into Class II wells.
2. This Agreement, unless revised in accordance with procedures outlined in paragraph 3, shall remain in effect for as long as the AOGCC has primacy for the Alaska Class II UIC program.
3. This Agreement shall be reviewed annually by both parties as part of the annual program plan and grant application process. The annual program plan shall be consistent with this Agreement and may not override this Agreement.

This Agreement may be modified upon the initiative of the AOGCC or EPA. Modifications must be in writing and must be signed by the Chairman of AOGCC and the Regional Administrator. Modifications may be made by addenda attached to this Agreement, and will be consecutively numbered, signed, and dated. Alternatively, this Agreement may be replaced by a subsequent Agreement should conditions warrant substantial change to its terms. Modifications will take effect when both parties sign the addenda or new Agreement.

4. EPA is responsible for apprising the AOGCC of any proposed, pending or enacted modifications of Federal guidelines, technical standards, regulations, policy decisions, directives, and any other factors which affect the UIC program. EPA will provide copies to AOGCC of all enacted Federal laws, regulations and guidelines affecting the UIC Program. EPA will inform AOGCC of any resource allocation changes which might affect AOGCC's ability to administer the

program. EPA will also notify AOGCC of any UIC training courses scheduled during the grant year and will make such training available to AOGCC personnel.

The AOGCC is responsible for apprising EPA of any proposed, pending, or enacted modifications to laws, regulations, or guidelines, and any judicial decisions or administrative actions which might affect the Alaska Class II UIC program and the AOGCC's authority to administer the program. The AOGCC shall inform EPA of any resource allocation changes (e.g.: personnel, budget, or equipment) which might affect the AOGCC's ability to administer the program.

5. When AOGCC assumed primacy, it agreed to treat any confidential information received from EPA in accordance with 40 C.F.R. Part 2. As part of its oversight responsibility, EPA reserves the right to review information and data submitted to the AOGCC by owners and/or operators of Class II injection wells pursuant to the requirements of the Alaska Class II UIC Program.

The AOGCC agrees to provide any such data requested in a timely manner after receiving a written request from EPA. In the event that EPA requests and receives data from the AOGCC that the AOGCC is treating as confidential information under AS 31.05.035, EPA will offer the operator that originally submitted the data to AOGCC the opportunity to make a separate claim of confidentiality under 40 C.F.R. Part 2. If such a claim is made, EPA will treat the data as business confidential information until EPA Region 10's Office of Regional Counsel has made the determination required by 40 C.F.R. Part 2.

6. Program reporting will be in accordance with the terms articulated in the annual program grant agreement.

#### **Performance Review & Program Grants**

7. The AOGCC will apply annually for, and to the extent eligible and subject to availability of funds, receive from EPA all program grants provided under Section 1443 of the SDWA, 42 U.S.C. §300j-2. The grant application shall be submitted no later than June 1 for the grant year starting July 1. The application shall consist of an annual work plan, a progress report, and applicable budget sheets. EPA will act on the application within 30 days of its receipt and will award funds for the grant year as they become available to the EPA. If the award of grant funds is significantly delayed beyond the beginning of the Federal fiscal year, EPA and the AOGCC will negotiate revisions in the approved grant work plan to reflect the effects of the funding delay on the ability of the AOGCC to complete the work envisioned in the plan.
8. EPA shall conduct an annual mid-year performance evaluation of the Alaska Class II UIC program to determine state program consistency with the SDWA and applicable regulations, guidance and policies.

**RECEIVED**

NOV 20 1991

- A. The review will include an examination of financial expenditures, progress towards program implementation, changes in the program description, and progress on program elements. Each mid-year review will include a meeting with AOGCC representatives to discuss program progress and performance. The review may also include the examination of any AOGCC files pertaining to the Alaska Class II UIC program.
- B. After the completion of its mid-year performance review, EPA will submit a draft of its findings to the AOGCC, outlining any deficiencies in program performance and recommendations for improving AOGCC operations. The draft report may also provide guidance for the development of the upcoming grant application. After receipt of the AOGCC's comments on these proposed findings, EPA will develop a final report of the mid-year performance evaluation and provide the AOGCC with a copy of this report.
- C. EPA may conduct not more than one performance audit of the Alaska Class II UIC program each grant year. These audits will follow essentially the same procedures as the regular mid-year review but will include more thorough examinations of AOGCC's records and more extensive discussion of program performance. EPA will notify AOGCC at least 30 days in advance of conducting a performance audit and specify the subject matter to be audited and the date of the audit.

**Definition of Class II Wells and Fluids**

- 9. The AOGCC and EPA agree that Class II wells are defined as wells which inject fluids:
  - a) which are brought to the surface in connection with natural gas storage operations, or with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified, at the time of injection, as a hazardous waste under 40 C.F.R. §261.3 (A II-D well under EPA's classification system);
  - b) for enhanced recovery of oil or natural gas (A II-R well under EPA's classification system); and
  - c) for storage of hydrocarbons which are liquid at standard temperature and pressure (A II-H well under EPA's classification system).
- 10. The pumping away of drilling muds and precipitation from reserve pits (not runoff) into an exploratory or stratigraphic test well, or into the annuli of any well approved in accordance with 20 AAC 25.005, is an operation incidental to the drilling of the well, and is not a disposal operation subject to regulation as a Class II well.

RECEIVED

NOV 20 1991

11. The term "fluids" as used in this Agreement shall have the same meaning as the term "fluid" under 40 C.F.R. § 144.3. To determine whether a waste fluid from oil and gas production is a hazardous waste the following procedures shall be followed:
  - A. AOGCC will determine whether the fluid would fall within the scope of the exemption from RCRA regulation for "drilling fluids, produced wastes, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy." See the Regulatory Determination for Oil and Gas and Geothermal Exploration, Development and Production Wastes (RCRA Regulatory Determination). 53 Fed. Reg. 25446, 25453-54 (1988). (Resource Conservation and Recovery Act § 3001(b)(2)(A), 42 U.S.C. § 6921(b)(2)(A)).
  - B. If the fluid is not one of the listed exempt wastes under the RCRA Regulatory Determination, the AOGCC will determine whether the waste is listed as hazardous or if it exhibits one of the hazardous characteristics under 40 C.F.R. Part 261.
  - C. If the fluid is a listed or characteristic waste under 40 C.F.R. Part 261, then AOGCC will determine whether the fluid may still fall within the scope of the RCRA exemption by ascertaining if the fluid is: 1) intrinsic to exploration, development or production activities; 2) uniquely associated with these activities, or; 3) not generated as part of a transportation or manufacturing operation.
12. For enhanced recovery injection wells, AOGCC and EPA agree that the injected fluids must function primarily to enhance recovery of oil and gas and must be recognized by AOGCC as being appropriate for enhanced recovery. In determining fluids appropriate for enhanced recovery, the AOGCC will promote waste minimization by encouraging the beneficial recycling of fluids, which if not used in this manner would otherwise be considered a waste.
13. AOGCC shall immediately notify, by telephone or facsimile transmission, the Chief of the Drinking Water Programs Branch at EPA if it learns of hazardous waste injection in what would otherwise be considered a Class II well.

#### **Aquifer Exemptions**

14. Aquifer exemptions shall be processed in the following manner:
  - A. The AOGCC agrees to encourage applicants for aquifer exemptions to submit any aquifer exemption application in conjunction with a permit application or an application to amend an existing permit.

- B. The AOGCC shall provide public notice in accordance with 20 AAC 25.540 offering the public the opportunity to comment and to request a hearing for each application for an aquifer exemption.
- C. The AOGCC shall notify EPA in writing when it has received an application for an aquifer exemption, within 14 days of the application's receipt.
- D. EPA will take all possible steps to act on a request for an aquifer exemption within 30 days of receiving a complete application from the AOGCC. A completed application must include (1) a complete copy of the application, (2) a copy of the public notice, (3) a summary of all public comments received and the AOGCC's responses, and (4) a copy of the transcript of any public hearings held.
- E. In accordance with established national guidance, EPA will treat the following types of requests for aquifer exemptions, under 40 C.F.R. § 146.4(b), as "minor" exemptions:
- All exemptions considered as a part of a single permit application
  - Exemptions associated with an **existing** enhanced recovery well or project (limited to a single well or field) (Emphasis supplied)
- F. Additionally, EPA will normally treat each of the proposed aquifer exemptions submitted under 40 C.F.R. § 146.4(c) as requests for minor aquifer exemptions under current EPA guidance. For proposed aquifer exemptions submitted under 40 C.F.R. § 146.4(c), the exemption becomes final if the administrator of the EPA (Region 10) does not disapprove the designation within 45 days.
- G. EPA reserves the right to treat any request for an aquifer exemption as a major exemption, and process the request as a proposed program revision under 40 C.F.R. § 145.32, if the circumstances warrant.

### Enforcement Provisions

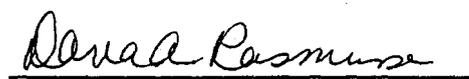
15. EPA and the AOGCC entered into a Compliance Assurance Agreement (CAA) for the Alaska Class II UIC program on November 2, 1987. The CAA defines the specific procedures that EPA and the AOGCC will use to assure compliance with the requirements of the UIC program. The provisions in this section define general principles and conditions that apply to these compliance assurance efforts. Where the language of the CAA and the language of this MOA conflict, the MOA will be determinative.

RECEIVED

NOV 20 1991

16. The AOGCC shall immediately notify, by telephone or facsimile transmission, the Chief of the Drinking Water Programs Branch at EPA if it learns of any imminent hazard to public health resulting from USDW contamination by fluids injected into a Class II well.
17. The AOGCC may allow the use of mechanical integrity tests that are listed in 40 C.F.R. § 146.8. If the AOGCC wishes to allow the use of alternative mechanical integrity tests, it shall follow the procedures for obtaining approval of alternative tests outlined in 40 C.F.R. § 146.8(d). The AOGCC shall witness each year a minimum of 25% of the mechanical integrity tests required of wells that inject through USDWs.
18. When seeking injunctive relief for UIC violations, the AOGCC shall request the court, when appropriate, to order the violator to cease or curtail its oil and gas production operations.
19. EPA may conduct inspections of Class II operations. The AOGCC shall participate with the EPA in these inspections of Class II wells or operator records to the fullest practicable extent. EPA will usually notify the AOGCC at least ten days before any proposed inspection and will describe the well(s) or record(s) to be inspected and the purpose of the inspection. EPA will provide the AOGCC with a copy of the inspection report. EPA reserves the right to inspect Class II operations without notification to AOGCC as provided in Section 1445 of the SDWA.
20. EPA may take federal enforcement action under Section 1423 of the SDWA in cases where the AOGCC fails to take timely and appropriate enforcement actions against a person violating the applicable requirements of the Alaska Class II UIC program. EPA will follow all applicable procedures contained in Section 1423. EPA may also take federal enforcement action under Section 1431 of the SDWA, if applicable.

  
David W. Johnston  
Chairman, Alaska Oil and Gas  
Conservation Commission

  
Dana A. Rasmussen  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 10

DATE: Nov. 22, 1991

DATE: NOV 15 1991

RECEIVED

NOV 20 1991

Alaska Oil & Gas Cons. Commission  
Anchorage