

MEMORANDUM OF AGREEMENT ADDENDUM 3
Between
The State of Louisiana
And
The United States Environmental Protection Agency Region 6
For the Class VI UIC Program

I. General

The Memorandum of Agreement between the state of Louisiana and EPA Region 6, dated March 17, 1982, of Underground Injection Control (UIC) Program Memorandum of Agreement (program MOA), and amended by Addendum 1 and Addendum 2 on November 3, 1989, is supplemented by this Addendum 3. All terms defined in the program MOA shall have the same meanings for purposes of this Addendum 3.

This Addendum is entered into by the state of Louisiana and signed by Richard P. Ieyoub, Commissioner of Conservation and Thomas F. Harris, Secretary for the Louisiana Department of Natural Resources (hereafter, “the state” or “LDNR”) 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.

A. Lead Agency Responsibilities

The LDNR is the lead agency to coordinate the implementation of the Class VI UIC program as authorized by Section 1422 of the Safe Drinking Water Act (SDWA). The LDNR also is the lead agency overseeing Class I, III, IV and V injection wells under Section 1422 and Class II injection wells under Section 1425. LDNR coordinates the state program to facilitate communication between the EPA and any other state agencies having program responsibilities for other injection well classes. These responsibilities shall include, but not be limited to, the submission of grant applications, reporting and monitoring results, and annual report requirements. The LDNR is responsible for and has authority over all Class VI injection wells.

B. Review and Modifications

This Addendum 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 Addendum and may not override this Addendum.

This Addendum may be modified upon the initiative of the state or EPA. Modifications must be in writing and must be signed by LDNR and the Regional Administrator. Modifications become effective when signed by both parties. Modifications may be made by revision prior to the effective date of this Addendum or subsequently by addenda attached to this Addendum and consecutively numbered, signed, and dated.

C. Conformance with Laws and Regulations

The Louisiana Injection and Mining Division (IMD), a division within LDNR, 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), current federal policies

and regulations, promulgated minimum requirements, priorities established as part of the annually approved state UIC grant, state and federal law, 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.

D. Responsibilities of Parties

The parties agree to maintain a high level of cooperation and coordination between the LDNR and EPA staffs to assure successful and efficient administration of the Class VI UIC program. In this partnership, the Regional Administrator will provide to LDNR necessary technical and policy assistance on program matters.

The Regional Administrator is responsible for keeping LDNR 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.

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

It will be the policy of EPA and LDNR 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 LDNR shall promptly 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 LDNR 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 LDNR 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(f), EPA will require permittees and applicants to provide express consent for

disclosure to LDNR upon submission of confidential business information. Permittees and applicants may request confidentiality of any submittals or information provided to LDNR pursuant to LAC 43:XVII.3603.I. If permittees or applicants do not request confidentiality of information at the time of submittal to LDNR, the information shall be available to the public pursuant to La. R.S. 44:1 et seq.

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 Part 145.33, and 145.34.

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 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 LDNR or EPA, their officers or employees, or any other person. This Addendum does not direct or apply to any person outside of LDNR 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 permits under the authority of Louisiana's Class VI Injection Wells Rule LAC 43:XVII.Chapter 6. Permits issued by LDNR 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

Class VI injection depth waivers will not be permitted by LDNR
C. Post-Injection Site Care and Site Closure

LDNR will not issue a certificate of completion pursuant to LA R.S. 30:1109 until the owner or operator submits a site closure report pursuant to 40 CFR 146.93(f) and LAC 43:XVII.3633.A.6 and otherwise fully complies with the site closure requirements in 40 CFR 146.93 and LAC 43:XVII.3633.A. The state and EPA agree to coordinate prior to approving any site closure to ensure doing so is consistent with the requirements of the federal Safe Drinking Water Act.

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 state Director 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. Consolidation of Permit Issuance

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 commissioner shall not, however, proceed with joint processing of permits if this would result in unreasonable delay in the issuance of one or more permits.

G. 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.

H. Environmental Justice

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

The state will work within its legal authority to support communities through a variety of approaches, including:

Implementing an Inclusive Public Participation Process. The state will fully incorporate robust and ongoing opportunities for public participation, especially for lower-income people, communities of color and those experiencing a disproportionate burden of pollution

and environmental hazards, as described in the Program Description. For example, the state will provide notice of proposed Class VI wells and tailor public participation to specific community needs and interests. Tailored public participation activities may include scheduling public meetings at times convenient for residents with appropriate translation services where needed, enabling face-to-face or written feedback on permit applications early in the review process, convening local stakeholders and community groups for safety planning, or supporting the development of community benefits agreements.

Considering Environmental Justice & Civil Rights Impacts on Communities. As described in the Program Description, the state will include environmental justice as a core element in implementing their Class VI programs. For example, in their review of permit applications, the state will evaluate whether the siting of a Class VI project at the proposed location will create any new risks or exacerbate any existing impacts on lower-income people and communities of color. Such evaluations will consider the presence of existing environmental hazards, cumulative impacts, potential exposure pathways, and susceptible sub-populations, as well as the likely distribution of any environmental and public health benefits from the proposed Class VI project in affected communities. EPA's EJScreen will be employed to identify environmental and social stressors in specific communities, as described in the Program Description. EPA encourages the use of other tools to calculate impacts to communities, including but not limited to the most up-to-date versions of EPA-published EJ guidance documents.

Enforcing Class VI Regulatory Protections. The Safe Drinking Water Act UIC program Class VI regulations include strong protections for communities to prevent contamination of underground drinking water sources. These regulatory protections include a variety of measures, including proper site characterization and strict construction, operating, and monitoring requirements to ensure well and formation integrity, proper plugging of wells, and long-term project management and post-injection site care to ensure leakage prevention. The state will properly implement and enforce these requirements to protect communities from potential harms associated with injection wells. The state will post regular reports of enforcement activities in a manner accessible to the public.

Incorporating Other Mitigation Measures. The state will proactively work within its legal authority to prevent and/or reduce any adverse impacts to underground sources of drinking water from well construction and operational activities. While the UIC program is designed to protect underground sources of drinking water, there are a range of mitigation measures that the state may incorporate to ensure Class VI projects do not increase environmental impacts and public health risks in already overburdened communities. Measures designed to protect residential areas could include carbon dioxide monitoring and release notification networks, and installation of enhanced pollution controls. Additionally, the state could encourage the adoption of other measures to offset impacts by improving other environmental amenities for the communities identified within the delineated area and providing resources for clean-up of previously degraded public areas.

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 LDNR 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 and the public upon request.

The LDNR 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.

E. Information from the Public

The LDNR 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 and reporting back to the public how information was used.

F. Authority to Enter

The LDNR (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. Such a determination shall result in EPA filing an action to enforce the state's rules consistent with Section 1423 of the SDWA.

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. LDNR 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, LDNR shall have the mechanism to access or sue to recover in court civil penalties and criminal remedies as established in La. R.S. 30:1106, La. R.S. 30:18, 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 La. R.S. 30:1106, La. R.S. 30:18, 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 including permits and the accompanying environmental justice reviews, 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 LDNR 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 requirement 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 LDNR. In order to assure both the State, as the primacy authority, and EPA, as the oversight authority, have consistent data throughout program implementation, LDNR agrees to submit to EPA or allow EPA viewing access to all Class VI reports, submittals, and notifications submitted to the State. LDNR 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 Department's database in an electronic format approved by EPA.

D. Quarterly Program Reports

The LDNR 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 LDNR'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

LDNR 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.

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

H. Mechanical Integrity

LDNR 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 LDNR 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 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. 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.

Louisiana Department of Natural Resources

Richard P. Ieyoub
Commissioner of Conservation, Department of Natural Resources

Date

Thomas F. Harris
Secretary, Department of Natural Resources

Date

United States Environmental Protection Agency, Region 6

Earthea Nance, PhD, PE
Regional Administrator, R6

Date