



Implementation of the Environmental Advisory Rules
Committee's (ARC) Recommendations
Cumulative Report

Oil, Gas and Minerals Division

January 2018

**Recommendation RM-9: Conformance Bond or Statement of Financial Responsibility
Requirements for Mineral Well Operators (COMPLETED)**

Recommendation:

DEQ, with input from stakeholders, should attempt to enter into a memorandum of understanding with the USEPA to utilize the same conformance bond, and if successful, should rescind any duplicative rules.

Response:

The Oil, Gas, and Minerals Division (OGMD) successfully negotiated a Memorandum of Understanding (MOU) that was signed by U.S. EPA on October 31, 2017.
Contact: Adam Wygant at 517-897-4828 or wyganta@michigan.gov

MEMORANDUM OF UNDERSTANDING BETWEEN
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY AND
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 5 FOR
CERTAIN ACTIVITIES UNDER THE FEDERAL UNDERGROUND INJECTION
CONTROL PROGRAM

This Memorandum of Understanding (MOU) is made between the Michigan Department of Environmental Quality, Oil, Gas, and Minerals Division (hereinafter MDEQ), and the United States Environmental Protection Agency; Region 5 (hereinafter EPA). This MOU replaces the previous MOU (Owner or Operator Use of the Michigan Well Bond to Satisfy the Federal Financial Responsibility Requirement for Class II Wells. effective May 2, 1986) between the Michigan Department of Natural Resources and EPA, Region 5.

OCT 31 2017

Start Date: _____
Month/Day/Year

End Date: See Section VI - "Effective Date.
Duration. and Maintaining this MOU".

EPA. Region 5 Contact:
Stephen Jann, Chief
Underground Injection Control Branch
EPA, Region 5 (WU-16.1)
phone: 312-886-2446
e-mail: jann.stephen@epa.gov

MDEQ Contact:
Adam W. Wygant, Section Manager
Permits and Technical Services Section
Oil, Gas, and Minerals Division
phone: 517-897-4828
e-mail: wyganta@michigan.gov

I. Purpose

The purpose of this MOU is to address specific areas of overlap between state and federal regulations and joint interests in the oversight of Class I, III, IV [V¹], and VI injection well activities under the federal Safe Drinking Water Act (SDWA), and ensures the best use of resources for environmental and public health protection, minimizes duplication of effort, and avoids confusion within the regulated community.

This MOU outlines the procedures and criteria for EPA to accept the financial assurance mechanisms required by Michigan law for owners or operators of a facility or activity subject to regulation under the federal Underground Injection Control (UIC) program, in order to comply with federal UIC financial responsibility requirements. These federal financial responsibility requirements provide for proper plugging and abandonment of Class I, II, III, IV/V, and VI injection wells. The financial assurance mechanisms subject to this MOU may be for a single well or for multiple wells. This MOU also outlines

¹ This MOU does not apply to Class IV wells or to shallow Class V wells unless they have permits issued by EPA with financial responsibility requirements.

sharing of information between MDEQ and EPA on topics such as plugging wells with state and federal funds, geologic sequestration, and hydraulic fracturings. For the purposes of this MOU, Class I, II, III, IV/V, and VI wells are classified as provided at 40 C.F.R § 144.6

This MOU does not apply to federal SDWA or UIC programs on "Indian lands" as defined in 40 C.F.R. §144.3, which means "Indian country" as defined in 18 U.S.C. §1151, within Michigan.

II. Financial Responsibility

a. Federal and State Requirements

i. State Financial Responsibility Requirements

Under Part 615, Supervisor of Wells, of Michigan's Natural Resources and Environmental Protection Act, 1994 PA 45 as amended (NREPA), Michigan Compiled Laws (MCL) 324.61501 et seq., MDEQ promulgated administrative rules governing oil and gas operations (including Class II wells). These rules are found at Michigan Administrative Code (MAC) Rules 324.101 through 324.1406. MAC Rule 324.212 requires a person who drills or operates a well associated with oil and/or gas activities to file a conformance bond. The amount of the conformance bond varies based on the number and depth of well(s). MAC Rule 324.212 provides the specific amounts required.

Under Part 625, Mineral wells, of the NREPA, MCL 324.62501 et seq., MDEQ promulgated administrative rules governing mineral wells. These rules are found at MAC Rules 299.2301 through 299.2531 (including Class I, III, IV, V, and VI wells). MAC Rule 299.2332 requires a person who drills or operates a mineral well to file a conformance bond with the supervisor of mineral wells. The amount of the conformance bond in each case varies based on several factors including, but not limited to, the number, depth, and type of well(s), MAC Rule 299.2332 provides the specific amounts required for different types of wells.

MAC Rules 324.102(j) and 299.2302(k) both define a "conformance bond" in relevant part as "a surety bond that has been executed by a surety company authorized to do business in this state, cash, certificates of deposit, letters of credit, or other securities that are filed by a person, and accepted by MDEQ. The cash, instruments, and other mechanisms included in the definition of conformance bond under Part 615 and Part 62.5 are the state-required financial assurance mechanisms referenced in this MOU.

ii. Federal Financial Responsibility Requirements

Pursuant to the regulations promulgated under SDWA, 42 U.S.C. §§ 300h *et seq.*, Class I, II, III, IV/V, and VI injection well owner/operators are required to maintain financial responsibility and resources to plug and abandon their underground injection operations in a manner prescribed by EPA. Under rules promulgated by EPA at 40 C.F.R. § 144.28(d) and ~~2(a)(7)~~, an owner/operator may use various financial responsibility mechanisms to satisfy the federal financial responsibility requirements. Owners or operators of Class I wells that are injecting hazardous waste must comply with the additional financial responsibility requirements of 40 C.F.R. Part 144, Subpart F. Owners or operators of Class VI wells must comply with the additional financial responsibility requirements set forth in 40 C.F.R. § 146.85.

b. Use of State-Required Financial Assurance Mechanism for Federal Requirements

Class I, II, III, IV/V and VI injection well owners/operators may use state required financial assurance mechanisms to meet the federal requirements, in part or in full, when approved by EPA on a case-by-case basis for each well. To obtain approval, an owner/operator must maintain evidence of the establishment of the required financial assurance mechanism and must submit a copy of such evidence, together with a letter requesting that the state-required mechanism be considered acceptable for meeting the federal requirements.

For Class I, II, III, IV/V and VI injection well owners/operators in Michigan who use the state-required mechanism to satisfy federal financial responsibility requirements, MDEQ will accept a financial assurance mechanism in an amount that would satisfy the federal requirements in full or, if in part, in an amount that is not less than the amounts required in MAC Rules 324.212 and 299.2332.

Pursuant to 40 C.F.R. §§ 144.28(d)(3), § 144.52(a)(7)(ii), or a permit condition, EPA may periodically reevaluate plugging and abandonment costs. If the demonstration of financial responsibility for a Class I, II, III, IV/V, or VI well is insufficient to cover revised estimated costs for plugging and abandonment for that well, EPA intends to require the owner/operator(s) to obtain additional financial assurance.

c. Reporting for Financial Responsibility

i. EPA's Responsibility List of UIC Wells Assured Using State Financial Assurance Mechanisms

Within thirty (30) days after the effective date of this MOU and continuing on a semi-annual basis thereafter, EPA intends to submit to MDEQ a list identifying all UIC wells located in Michigan assured using state-required financial assurance mechanisms to comply with the federal financial responsibility requirements. EPA intends to include the name of the owner/operator, the name of the well, the state and permit numbers, and the amount of coverage for plugging and abandonment for each well on the list. MDEQ plans to use this list to determine whether the amount of funds listed by EPA matches what it has on file for each financial assurance mechanism.

ii. MDEQ's Responsibility - Changes to State-Required Mechanisms Used to Meet the Federal Financial Responsibility Requirements

When a state-required financial assurance mechanism is used to satisfy federal financial responsibility requirements, MDEQ intends to notify EPA in writing within one week of MDEQ either: (1) initiating the release, cancellation, or modification of the state-required financial assurance mechanism; or (2) becoming aware of changes in the amount of coverage of the financial assurance mechanism or circumstances involving the well or owner/operator that are likely to require an increase in coverage of the financial assurance mechanism.

iii. Joint Responsibility

If either party identifies a shortfall or other discrepancy in the financial assurance mechanism for a well subject to this MOU, the party making the discovery intends to inform the other party of the shortfall or other discrepancy.

III. Enforcement Communication and Plugging and Abandonment of a Well Subject to this MOU

Upon determining that a UIC well or its owner/operator is in violation of the SDWA or EPA UIC regulations, EPA may initiate an enforcement action(s) to compel compliance with the federal UIC requirements, As each. action occurs. EPA intends to provide MDEQ with a written notification and a copy of all relevant correspondence involving that well and its owner/operator.

If EPA determines that a UIC well in Michigan needs to be plugged and abandoned and the owner/operator is unable to adequately plug the well, the Regional Administrator of EPA, Region 5, or his/her designee may submit a written request to MDEQ requesting that MDEQ properly plug and abandon the well. If MDEQ confirms that the well qualifies to be plugged through use of the conformance bond or funding from the Orphan Well Fund established pursuant to Part 616 of the NREPA, MCL 324.61601 *et seq.*, in accordance with the provisions of Michigan's statutes, rules, and regulations, MDEQ will proceed expeditiously to plug and abandon the well using the available funds, in accordance with applicable state contracting or procurement requirements.

MDEQ reserves the right to submit a written request to EPA requesting that a UIC well be properly plugged and abandoned in accordance with this MOU and EPA intends to not unreasonably withhold its consent,

When a subject well has both state and federal financial assurance mechanisms, EPA intends, upon MDEQ's request, to cause the release of funds from the federal financial assurance mechanism to MDEQ or a contractor which MDEQ has hired to plug the well, MDEQ agrees to provide EPA with at least seven (7) days' advance notice as to when it intends to plug and abandon such well, and EPA reserves the right to witness the plugging and abandonment of the subject well. The subject well shall not be considered properly plugged and abandoned until an authorized representative of either MDEQ or EPA has signed a plugging affidavit. Upon said signing, any remaining state conformance bond funds shall no longer constitute part of the federal financial responsibility requirement for the subject plugged and abandoned well.

If ever EPA and MDEQ disagree on specific actions, timing, or the necessity to plug and abandon an injection well, the parties to this MOU or their designees may meet to discuss and attempt to resolve this disagreement,

IV. Other Financial Assurances

Nothing in this MOU shall be interpreted to preclude the owners/operators of UIC wells in Michigan from separately meeting state and federal financial responsibility requirements by any methods allowed under the applicable state and federal laws and regulations respectively.

V. Other Areas of Joint Interest

a, Communication Regarding Hydraulic Fracturing

If MDEQ becomes aware of any proposed or existing hydraulic fracturing operations using diesel fuel, MDEQ intends to notify EPA of these operations and agrees to notify the owner/operator^{01R} of the need to apply for a federal permit,

b. Communication Regarding Geologic Sequestration

The regulations at 40 C.F.R. 144.19(b) establish, and complementary guidance discuss, risk-based factors that should be considered when determining if a Class II operation that uses carbon dioxide for enhanced oil or gas recovery has changed such that the regulated operation may need to transition to a Class VI permit to address risks to Underground Sources of Drinking Water (USDW). If MDEQ or EPA becomes aware of any such operation that cannot be appropriately managed under the Class II requirements to adequately address risks to USDW and may need a Class VI permit} the first agency to become aware of the problem intends to contact the other agency to discuss the need for the owner/operator to obtain a Class VI permit-

VI. Effective Date, Duration, and Maintaining this MOU

This MOU becomes effective on the date of execution by the last signatory and shall remain in effect until EPA delegates to MDEQ primary enforcement responsibility for the UIC program pursuant to Sections 1422 or 1425 of SDWA, 42 U.S.C. §§ 300h-1 or 300h-4, at which time this MOU will terminate for those Classes of wells covered by such delegation and the applicable provisions of this MOU shall survive and remain in effect for those Classes of wells not covered by that delegation.

Either party may unilaterally withdraw from this MOU after a 60-day written notice period, provided that any well(s) MDEQ agreed to plug prior to the expiration of the 60-day withdrawal notice remains covered by this MOU until plugging and abandonment is completed and payment rendered in accordance with this MOU,

This MOU may be extended or modified, at any time, through mutual agreement of the parties. If the parties determine that such changes are necessary, they will modify this MOU accordingly and obtain new signatures, However the contacts listed for EPA and MDEQ may be updated at any time by written notice of one party to the other party without amending the MOU. The parties intend to review this MOU at least once every five years.

VII. Legal Framework.

This MOU is a voluntary agreement that expresses the good-faith intentions of the parties, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party. Nothing contained in this MOU serves to limit, alter, or amend a party's duties, rights, or responsibilities as set out in any applicable state or federal statute, law, or regulation.

This MOU does not create any rights or benefits, substantive or procedural, enforceable by law or equity, by persons and entities who are not party to this agreement, against

MDEQ or EPA, their officers or employees, or any other person. This MOU does not apply to any person or entity outside of MDEQ and EPA.

All commitments made by EPA and MDEQ in this MOU are subject to the availability of appropriated funds. Nothing in this MOU, in and of itself, obligates EPA or MDEQ to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations that would be inconsistent with the respective EPA or MDEQ budget priorities. MDEQ agrees not to submit a claim for compensation for services rendered to EPA in connection with any activities it carries out in furtherance of this MOU. Any transaction involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

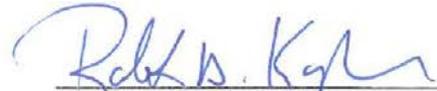
SIGNED:

The individuals signing below certify by their signatures that they are authorized to sign this MOU on behalf of his or her agency and that the parties intend to fulfill the terms of this MOU.

For the Michigan Department of
Environmental Quality


C. Heidi Grether
Director

For the United States Environmental
Protection Agency, Region 5


Robert A. Kaplan
Acting Regional Administrator

Date: 9.19.17

Date: 10-31-17