

AMENDED EXHIBIT 2B

**TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 42 UNDERGROUND INJECTION CONTROL PROGRAM**

[NEW MATERIAL]

19.15.42.1 ISSUING AGENCY: Oil Conservation Commission.
[19.15.42.1 NMAC – N, XX/XX/XXXX]

19.15.42.2 SCOPE: 19.15.42 NMAC applies to persons constructing, operating or closing a sequestration facility or engaged in the injection of carbon dioxide for the purposes of geologic sequestration under the Geologic Carbon Dioxide Storage Stewardship Act.
[19.15.42.2 NMAC – N, XX/XX/XXXX]

19.15.42.3 STATUTORY AUTHORITY: 19.15.42 NMAC is adopted pursuant to the Geologic Carbon Dioxide Storage Stewardship Act, Sections 74-14-1 through 74-14-7 and the Oil and Gas Act, Section 70-2-6, 70-2-11, and Paragraph (15) of Subsection B of Section 70-2-12 NMSA 1978.
[19.15.42.3 NMAC – N, XX/XX/XXXX]

19.15.42.4 DURATION: Permanent.
[19.15.42.4 NMAC – N, XX/XX/XXXX]

19.15.42.5 EFFECTIVE DATE: [RESERVED].
[19.15.42.5 NMAC – N, XX/XX/XXXX]

19.15.42.6 OBJECTIVE: To regulate the permitting, construction, operation and closure of sequestration facilities, the injection of carbon dioxide for the purposes of geologic sequestration and to maintain primary enforcement authority for Safe Drinking Water Act (42 U.S.C. 300f et seq.) Underground Injection Control (UIC) program for UIC Class VI wells.
[19.15.42.6 NMAC – N, XX/XX/XXXX]

19.15.42.7 DEFINITIONS: The following definitions apply to this subpart for underground injection control programs:

A. Definitions beginning with the letter “A”.

(1) “Application” means a submission by an individual or entity, using the prescribed forms, to request authorization for underground injection activities, inclusive of any subsequent amendments, updates, or supplements to the original submission.

(2) “Aquifer” means a geological “formation,” group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(3) “Area of review” means the area surrounding an injection well described according to the criteria set forth in § 40 CFR 146.06 or in the case of an area permit, the project area plus a circumscribing area the width of which is either ¼ of a mile or a number calculated according to the criteria set forth in Section 40 CFR 146.06.

B. Definitions beginning with the letter “B”. [RESERVED].

C. Definitions beginning with the letter “C”.

(1) “Cesspool” means a “drywell” that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

(2) “Contaminant” means any physical, chemical, biological, or radiological substance or matter in water.

D. Definitions beginning with the letter “D”.

(1) “Director” means the director of the New Mexico energy, minerals and natural resources department, oil conservation division.

(2) “Draft permit” means a document prepared under Subsection C of 19.15.41.8 NMAC indicating the director's decision to issue or deny, modify, revoke and reissue, terminate, or reissue a “permit.” A

notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in Subsection B of 19.15.41.8 NMAC are types of “draft permits.” A denial of a request for modification, revocation and reissuance, or termination, as discussed in Subsection B of 19.15.41.8 NMAC is not a “draft permit.”

(3) **“Drilling mud”** means a heavy suspension used in drilling an “injection well,” introduced down the drill pipe and through the drill bit.

(4) **“Drywell”** means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

E. Definitions beginning with the letter “E”.

(1) **“Eligible indian tribe”** is a tribe that meets the statutory requirements established at 42 U.S.C. 300j-11(b)(1).

(2) **“Emergency permit”** means a UIC “permit” issued in accordance with Section 40 CFR 144.34.

(3) **“Environmental protection agency (“EPA”)”** means the United States Environmental Protection Agency.

(4) **“Exempted aquifer”** means an “aquifer” or its portion that meets the criteria in the definition of “underground source of drinking water” but which has been exempted according to the procedures in Subsection D of 19.15.42.8 NMAC.

(5) **“Existing injection well”** means an “injection well” other than a “new injection well.”

F. Definitions beginning with the letter “F”.

(1) **“Facility or activity”** means any UIC “injection well,” or any other facility or activity that is subject to regulation under these regulations.

(2) **“Fluid”** means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

(3) **“Formation”** means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth’s surface or traceable in the subsurface.

(4) **“Formation fluid”** means “fluid” present in a “formation” under natural conditions as opposed to introduced fluids, such as “drilling mud.”

G. Definitions beginning with the letter “G”.

(1) **“Generator”** means any individual or entity, identified by a specific site location, whose actions or operations result in the creation of hazardous waste as defined under the New Mexico Hazardous Waste Management Regulations (Section 20.4.1 NMAC), or who is responsible for producing or causing the production of any fluid intended for subsurface injection under applicable New Mexico Oil Conservation Division rules (Section 19.15 NMAC).

(2) **“Geologic sequestration”** means the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations. This term does not apply to carbon dioxide capture or transport.

(3) **“Groundwater”** means water below the land surface in a zone of saturation.

H. Definitions beginning with the letter “H”.

(1) **“Hazardous waste”** means a hazardous waste as defined in Section 40 CFR 261.3.

(2) **“Hazardous waste management facility (“HWM facility”)”** means all contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

I. Definitions beginning with the letter “I”.

(1) **“Improved sinkhole”** means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

(2) **“Indian lands”** means “Indian country” as defined in Section 18 U.S.C. 1151. That section defines Indian country as: (a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

(3) **“Indian tribe”** means any Indian tribe having a federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

(4) **“Injection well”** means a “well” into which “fluids” are being injected.

(5) **“Injection zone”** means a geological “formation,” group of formations, or part of a formation receiving fluids through a “well.”

J. Definitions beginning with the letter “J”. [RESERVED].

K. Definitions beginning with the letter “K.” [RESERVED].

L. Definitions beginning with the letter “L”. [RESERVED].

M. Definitions beginning with the letter “M”.

(1) **“Major facility”** means any UIC “facility or activity” classified as such by the director, in conjunction with the EPA regional administrator.

(2) **“Manifest”** means the shipping document EPA Form 8700-22 (including, if necessary, EPA Form 8700-22A), originated and signed in accordance with the applicable requirements of Section 20.4.1.500 NMAC (incorporating Section 40 CFR Part 2362).

N. Definitions beginning with the letter “N”. **“New injection well”** means a well which began injection after the New Mexico Class VI Underground Injection Control program is approved and the applicable New Mexico Oil Conservation Division rules and regulations are promulgated.

O. Definitions beginning with the letter “O”. **“Owner or operator”** means the owner or operator of any “facility or activity” subject to regulation under the UIC program.

P. Definitions beginning with the letter “P”.

(1) **“Permit”** means an authorization, license, or equivalent control document issued by the EPA or an approved State to implement the requirements of Sections 19.15.41 NMAC, 19.15.42 NMAC and 19.15.43 NMAC. Excluding Class VI UIC, “permit” includes an area permit or any permit which has not yet been the subject of final agency action, such as a “draft permit.”

(2) **“Person”** means an individual, association, partnership, corporation, municipality, state, federal, or tribal agency, or an agency or employee thereof.

(3) **“Plugging”** means the act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

(4) **“Point of injection”** means the last accessible sampling point prior to waste fluids being released into the subsurface environment through a Class V injection well. For example, the point of injection of a Class V septic system might be the distribution box—the last accessible sampling point before the waste fluids drain into the underlying soils. For a dry well, it is likely to be the well bore itself.

(5) **“Project”** means a group of wells in a single operation.

Q. Definitions beginning with the letter “Q”. [RESERVED].

R. Definitions beginning with the letter “R”.

(1) **“Radioactive waste”** means any waste which contains radioactive material in concentrations which exceed those listed in Section 10 CFR 20, Appendix B, Table II, column 2.

(2) **“RCRA”** means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580, as amended by Pub. L. 95–609, Pub. L. 96–510, 42 U.S.C. 6901 et seq.).

S. Definitions beginning with the letter “S”.

(1) **“SDWA”** means the Safe Drinking Water Act (Pub. L. 93– 523, as amended; 42 U.S.C. 300f et seq.).

(2) **“Site”** means the land or water area where any “facility or activity” is physically located or conducted, including adjacent land used in connection with the facility or activity.

(3) **“State”** means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or an Indian Tribe treated as a State.

(4) **“Stratum”** (plural strata) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

(5) **“Subsurface fluid distribution system”** means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

T. Definitions beginning with the letter “T”.

(1) **“Total dissolved solids”** means total dissolved (filterable) solids as determined by the use of the method specified in 40 CFR Part 136.

(2) “**Transferee**” means the owner or operator receiving ownership and/or operational control of the well.

(3) “**Transferor**” means the owner or operator transferring ownership and/or operational control of the well.

U. Definitions beginning with the letter “U”.

(1) “**UIC**” means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an “approved State program.”

(2) “**Underground injection**” means a “well injection.”

(3) “**Underground source of drinking water (USDW)**” means an aquifer or its portion:

(a) Which supplies any public water system; or

(b) Which contains a sufficient quantity of groundwater to supply a public water system; and

(i) Currently supplies drinking water for human consumption; or

(ii) Contains fewer than 10,000 mg/l total dissolved solids; and

(iii) Which is not an exempted aquifer.

V. Definitions beginning with the letter “V”. [RESERVED].

W. Definitions beginning with the letter “W”.

(1) “**Well**” means a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or, a subsurface fluid distribution system.

(2) “**Well injection**” means the subsurface emplacement of fluids through a well.

X. Definitions beginning with the letter “X”. [RESERVED].

Y. Definitions beginning with the letter “Y”. [RESERVED].

Z. Definitions beginning with the letter “Z”. [RESERVED].

[19.15.42.7 NMAC – N, XX/XX/XXXX]

19.15.42.8 GENERAL PROVISIONS:

A. General provisions for underground injection control programs.

(1) Note that Section 19.15.43.9 NMAC sets forth requirements for owners or operators of Class VI injection wells.

(2) Such aquifers are those which would otherwise qualify as “underground sources of drinking water” to be protected, but which have no real potential to be used as drinking water sources. Therefore, they are not USDWs. No aquifer is an exempted aquifer until it has been affirmatively designated under the procedures at Subsection D of 19.15.42.8 NMAC. Aquifers which do not fit the definition of “underground source of drinking water” are not “exempted aquifers.” They are simply not subject to the special protection afforded USDWs. During initial Class VI program development, the director shall not expand the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption for Class VI injection wells and EPA shall not approve a program that applies for aquifer exemption expansions of Class II-Class VI exemptions as part of the program description. All Class II to Class VI aquifer exemption expansions previously issued by EPA must be incorporated into the Class VI program descriptions pursuant to requirements at Section 40 CFR 145.23(f)(9).

B. Confidentiality of information.

(1) Any information submitted pursuant to these regulations may be claimed as confidential by the submitter in accordance with applicable provisions of state law. A claim of confidentiality must be made at the time of submission, either in the manner prescribed by the applicable application form or instructions, or by clearly marking each page containing such information with the phrase “confidential business information.” Failure to assert a confidentiality claim at the time of submission may result in the division making the information available to the public without further notice. Information properly designated as confidential shall be handled in accordance with the procedures set forth in applicable state law and any incorporated federal confidentiality provisions, including but not limited to Section 40 CFR Part 2.

(2) Claims of confidentiality for the following information will be denied:

(a) The name and address of any permit applicant or permittee.

(b) Information which deals with the existence, absence, or level of contaminants in drinking water or zones other than the approved injection zone.

C. Classification of wells.

(1) *Class VI* Injection wells are classified as follows: Wells that are not experimental in nature that are used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a

USDW or wells used for geologic sequestration of carbon dioxide that have been granted a waiver of the injection depth requirements pursuant to requirements at Subsection P of 19.15.43.9 NMAC or wells used for geologic sequestration of carbon dioxide that have received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to Subsection A of 19.15.43.8 NMAC and Section 40 CFR 144.7(d).

D. Identification of underground sources of drinking water and exempted aquifers.

(1) The director may identify (by narrative description, illustrations, maps, or other means) and shall protect as underground sources of drinking water, all aquifers and parts of aquifers which meet the definition of “underground source of drinking water” in Section 19.15.42.7 NMAC, except to the extent there is an applicable aquifer exemption under Paragraph (2) of this section or an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration under Paragraph (4) of this section. Other than EPA approved aquifer exemption expansions that meet the criteria set forth in Subsection A of 19.15.43.8 NMAC, new aquifer exemptions shall not be issued for Class VI injection wells. Even if an aquifer has not been specifically identified by the Director, it is an underground source of drinking water if it meets the definition in Section 19.15.42.7 NMAC.

(2) The director may identify (by narrative description, illustrations, maps, or other means) and describe in geographic or geometric terms (such as vertical and lateral limits and gradient) which are clear and definite, all aquifers or parts thereof which the director proposes to designate as exempted aquifers using the criteria in Subsection A of 19.15.43.8 NMAC.

(3) No designation of an exempted aquifer submitted as part of a UIC program shall be final until approved by the administrator as part of a UIC program. No designation of an expansion to the areal extent of a Class II enhanced oil recovery or enhanced gas recovery aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration shall be final until approved by the administrator as a revision to the applicable Federal UIC program under Part 147 or as a substantial revision of an approved State UIC program in accordance with Section 40 CFR 145.32 and Section 19.15.42.13 NMAC.

(4) **Expansion to the areal extent of existing Class II aquifer exemptions for Class VI wells.** Owners or operators of Class II enhanced oil recovery or enhanced gas recovery wells may request that the director approve an expansion to the areal extent of an aquifer exemption already in place for a Class II enhanced oil recovery or enhanced gas recovery well for the exclusive purpose of Class VI injection for geologic sequestration. Such requests must be treated as a substantial revision to the state’s UIC program and will not be final until approved by EPA.

(a) The owner or operator of a Class II enhanced oil recovery or enhanced gas recovery well that requests an expansion of the areal extent of an existing aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration must define (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) that are clear and definite, all aquifers or parts thereof that are requested to be designated as exempted using the criteria in Subsection A of 19.15.43.8 NMAC.

(b) In evaluating a request to expand the areal extent of an aquifer exemption of a Class II enhanced oil recovery or enhanced gas recovery well for the purpose of Class VI injection, the director must determine that the request meets the criteria for exemptions. In making the determination, the director shall consider:

(i) current and potential future use of the USDWs to be exempted as drinking water resources;

(ii) the predicted extent of the injected carbon dioxide plume, and any mobilized fluids that may result in degradation of water quality, over the lifetime of the GS project, as informed by computational modeling performed pursuant to Section 40 CFR 146.84(c)(1), in order to ensure that the proposed injection operation will not at any time endanger USDWs including non-exempted portions of the injection formation;

(iii) whether the areal extent of the expanded aquifer exemption is of sufficient size to account for any possible revisions to the computational model during reevaluation of the area of review.

(c) Any information submitted to support a waiver request made by the owner or operator, if appropriate.

E. Noncompliance and program reporting by the director. The director shall submit any reports required under this section to the regional administrator.

(1) **Quarterly reports.** The director shall submit quarterly narrative reports for major facilities as follows:

(a) Provide an alphabetized list of permittees. When two or more permittees have the same name, the lowest permit number shall be entered first.

(b) For each entry on the list, include the following information in the following order:

(i) Name, location, and permit number of the noncomplying permittees.
(ii) A brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one or more of the kinds set forth in Paragraph (2) of this section. When a permittee has noncompliance of more than one kind, combine the information into a single entry for each such permittee.

(iii) The date(s) and a brief description of the action(s) taken by the Director to ensure compliance.

(iv) Status of the instance(s) of noncompliance with the date of the review of the status or the date of resolution; and

(v) Any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) **Instances of noncompliance to be reported.** Any instances of noncompliance within the following categories shall be reported in successive reports until the noncompliance is reported as resolved. Once noncompliance is reported as resolved it need not appear in subsequent reports.

(a) **Failure to complete construction elements.** When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction or a construction step (for example, begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the required elements of the schedule within 30 days from the date a compliance schedule report is due under the permit.

(b) **Modifications to schedules of compliance.** When a schedule of compliance in the permit has been modified under Subsection H of 19.15.42.11 NMAC or Subsection J of 19.15.42.11 NMAC because of the permittee's noncompliance.

(c) **Failure to complete or provide compliance schedule or monitoring reports.** When the permittee has failed to complete or provide a report required in a permit compliance schedule (for example, progress report or notice of noncompliance or compliance) or a monitoring report; and the permittee has not submitted the complete report within 30 days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for monitoring reports.

(d) **Deficient reports.** When the required reports provided by the permittee are so deficient as to cause misunderstanding by the director and thus impede the review of the status of compliance.

(e) **Noncompliance with other permit requirements.** Noncompliance shall be reported in the following circumstances:

(i) Whenever the permittee has violated a permit requirement (other than reported under Subparagraph (a) or (b) of paragraph (2) of this section), and has not returned to compliance within 45 days from the date reporting of noncompliance was due under the permit; or

(ii) When the director determines that a pattern of noncompliance exists for a major facility permittee over the most recent four consecutive reporting periods. This pattern includes any violation of the same requirement in two consecutive reporting periods, and any violation of one or more requirements in each of four consecutive reporting periods; or

(iii) When the director determines significant permit noncompliance or other significant event has occurred, such as a migration of fluids into a USDW.

(f) **All other.** Statistical information shall be reported quarterly on all other instances of noncompliance by major facilities with permit requirements not otherwise reported under Paragraph (2) of this section.

(3) **Annual reports.**

(a) **Annual noncompliance report.** Statistical reports shall be submitted by the Director on nonmajor UIC permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in Paragraph (2) of this section.

(b) In addition to the annual noncompliance report, the state director shall submit each year a program report to the administrator (in a manner and form prescribed by the administrator) consisting of the following:

(i) A detailed description of the State's implementation of its program;
(ii) Suggested changes, if any to the program description (see Section 40 CFR 145.23(f)) which are necessary to reflect more accurately the State's progress in issuing permits;
(iii) An updated inventory of active underground injection operations in the State.

(c) **For all annual reports.** The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later.

(4) In addition to complying with the requirements of Subparagraph (b) of Paragraph (3) this section, the director shall provide the administrator, on February 28 and August 31 of each of the first two years of program operation, the information required in Sections 40 CFR 146.13, 146.23, and 146.33.

(5) All Class VI program reports shall be consistent with reporting requirements set forth in Subsection L of 19.15.43.9 NMAC.

(6) **Schedule.** For all quarterly reports. On the last working day of May, August, November, and February, the state director shall submit to the regional administrator information concerning noncompliance with permit requirements by major facilities in the state in accordance with the following schedule. The regional administrator shall prepare and submit information for EPA-issued permits to EPA Headquarters in accordance with the same schedule. Dates for completion of reports are as follows: January, February, and March: 1, May 31, April, May, and June: 1 Aug. 31, July, August, and September: 1, Nov. 30, October, November, and December: 1, Feb. 28. Reports must be made available to the public for inspection and copying on this date.
[19.15.42.7 NMAC – N, XX/XX/XXXX]

19.15.42.8 GENERAL PROGRAM REQUIREMENTS:

A. Prohibition of unauthorized injection. Any underground injection, except into a well authorized by rule or except as authorized by permit issued under the UIC program, is prohibited. The construction of any well required to have a permit is prohibited until the permit has been issued.

B. Prohibition of movement of fluid into underground sources of drinking water.

(1) No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under Section 40 CFR 141 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

(2) For Class I, II, III, and VI wells, if any water quality monitoring of an underground source of drinking water indicates the movement of any contaminant into the underground source of drinking water, except as authorized under Section 19.15.43 NMAC, the director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with Subsection H of 19.15.42.11 NMAC, or the permit may be terminated under Subsection I of 19.15.42.11 NMAC if cause exists, or appropriate enforcement action may be taken if the permit has been violated. In the case of wells authorized by rule, see Sections 40 CFR 144.21 through 144.24 and Subsection A of 19.15.42.10 NMAC.

(3) Notwithstanding any other provision of this section, the director may take emergency action upon receipt of information that a contaminant which is present in or likely to enter a public water system or underground source of drinking water may present an imminent and substantial endangerment to the health of persons.

C. Prohibition of non-experimental Class V wells for geologic sequestration. The construction, operation or maintenance of any non-experimental Class V geologic sequestration well is prohibited.

D. Records. The director may require, by written notice on a selective well-by-well basis, an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with Part C of the SDWA or its implementing regulations.

E. Requirements for Class VI wells. Owners or operators of Class VI wells must obtain a permit. Class VI wells cannot be authorized by rule to inject carbon dioxide.

F. Transitioning from Class II to Class VI.

(1) Owners or operators that are injecting carbon dioxide for the primary purpose of long-term storage into an oil and gas reservoir must apply for and obtain a Class VI geologic sequestration permit when

there is an increased risk to USDWs compared to Class II operations. In determining if there is an increased risk to USDWs, the owner or operator must consider the factors specified within this section.

(2) The director shall determine when there is an increased risk to USDWs compared to Class II operations and a Class VI permit is required. In order to make this determination the Director must consider the following:

- (a) increase in reservoir pressure within the injection zone(s);
- (b) increase in carbon dioxide injection rates;
- (c) decrease in reservoir production rates;
- (d) distance between the injection zone(s) and USDWs;
- (e) suitability of the Class II area of review delineation;
- (f) quality of abandoned well plugs within the area of review;
- (g) the owner's or operator's plan for recovery of carbon dioxide at the cessation of injection;
- (h) the source and properties of injected carbon dioxide; and
- (i) any additional site-specific factors as determined by the director.

19.15.42.9 AUTHORIZATION OF UNDERGROUND INJECTION BY RULE:

Existing Class II enhanced recovery and hydrocarbon storage wells. Injection of carbon dioxide through Class VI wells shall not be authorized by rule. A permit must be secured by the owner or operator prior to conducting injection operations under this well classification. For any existing Class II enhanced recovery or hydrocarbon storage well that is authorized by rule, such authorization shall terminate upon the effective date of a Class VI permit issued in accordance with Subsection F of 19.15.42.9 NMAC upon approved plugging and abandonment of the well, or at the time the well is converted to another use.
[19.15.42.9 NMAC – N, XX/XX/XXXX]

19.15.42.10 AUTHORIZATION BY PERMIT:

A. Application for a permit; authorization by permit.

(1) No person shall conduct any underground injection activity unless authorized by a permit issued pursuant to these regulations. Effective on the date these regulations become enforceable, the construction or operation of any well for which a permit is required under this part is strictly prohibited unless and until such permit has been duly issued by the director.

(2) **Who applies?** When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

(3) **Time to apply.** Any person who performs or proposes an underground injection for which a permit is or will be required shall submit an application to the director in accordance with the UIC program as follows: For new injection wells, except new wells in projects authorized under Section 40 CFR 144.21(d) or authorized by an existing area permit under Section 40 CFR 144.33(c), a reasonable time before construction is expected to begin.

(4) **Completeness.** The director shall not issue a permit before receiving a complete application for a permit. An application for a permit is complete when the director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

(5) **Information requirements.** All applicants for Class VI permits shall provide the following information to the director, using the application form provided by the director.

(a) The activities conducted by the applicant which require it to obtain permits under RCRA, UIC, the National Pollution Discharge Elimination System (NPDES) program under the Clean Water Act, or the Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(d) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(e) Whether the facility is located on Indian lands.

- (f) A listing of all permits or construction approvals received or applied for under any of the following programs:
- (i) Hazardous Waste Management program under RCRA.
 - (ii) UIC program under SDWA.
 - (iii) NPDES program under CWA
 - (iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.
 - (v) Nonattainment program under the Clean Air Act.
 - (vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.
 - (vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.
 - (viii) Dredge and fill permits under section 404 of CWA.
 - (ix) Other relevant environmental permits, including State permits.
 - (g) A brief description of the nature of the business.
 - (h) The names and addresses of all property owners within the area of review and ¼ mile of the Class VI well or project.

B. Signatories to permit applications and reports.

(1) Applications. All permit applications shall be signed as follows:

- (a) For a corporation, by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - (i) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or
 - (ii) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (b) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively.
- (c) For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official.
- (d) The chief executive officer of the agency, or
- (e) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the division.

(2) Reports. All reports required by permits, other information requested by the director, and all permit applications submitted for Class II wells under Subsection A of 19.15.42.11 NMAC shall be signed by a person described in Paragraph (1) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (a) The authorization is made in writing by a person described in Paragraph (1) of this section;
- (b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and
- (c) The written authorization is submitted to the director.

(3) Changes to authorization. If an authorization under Paragraph (1) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Paragraph (1) of this section must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under Paragraph (1) or (2) of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the

best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

C. Area permits. The director may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells other than Class VI wells. Area permits are expressly prohibited for Class VI injection wells.

D. Effect of a permit.

(1) Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Part C of the SDWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in Subsections H and I of 19.15.42.11 NMAC.

(2) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

E. Duration of permits.

(1) Permits for Class VI UIC wells shall remain in effect for the duration of the facility’s operational life and the post injection site care period. The director shall conduct a permit review no less frequently than once every five years to assess whether the permit requires modification, revocation and reissuance, termination, or the incorporation of minor modifications, consistent with applicable permitting standards and procedures.

(2) The term of a permit shall not be extended by modification beyond the maximum duration specified in Subsection F of 19.15.42.11 NMAC.

(3) The director may issue any permit for a duration that is less than the full allowable term under this section.

F. Continuation of expiring permits.

(1) **Continuation of permits.** The conditions of an expired permit may continue in force until the effective date of a new permit if the permittee has submitted a timely and a complete application for a new permit or, if the Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(2) **Effect.** Permits continued under this section remain fully effective and enforceable.

(3) **Enforcement.** When the permittee is not in compliance with the conditions of the expiring or expired permit the Director may choose to do any or all of the following:

(a) Initiate enforcement action based upon the permit which has been continued;

(b) Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(c) Issue a new permit under this chapter with appropriate conditions; or

(d) Take other actions authorized by these regulations.

G. Transfer of permits.

(1) **Transfers by modification.** Except as provided in Paragraph (2) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under Subsection H of 19.15.42.11 NMAC), or a minor modification made (under Subsection J of 19.15.42.11 NMAC), to identify the new permittee and incorporate such other requirements as may be necessary under the Safe Drinking Water Act.

(2) Automatic transfers of Class VI permits are prohibited.

H. Modification or revocation and reissuance of permits. When the director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see Subsection A of 19.15.42.12 NMAC of this chapter), receives a request for modification or revocation and reissuance under Subsection B of 19.15.41.8 NMAC, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in Paragraphs (1) and (2) of this section for modification or revocation and reissuance or both exist. If cause exists, the director may modify or revoke and reissue the permit accordingly, subject to the limitations of Paragraph (3) of this section and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See Subsection B of 19.15.41.8 NMAC. If cause does not exist under this section or Subsection J of 19.15.42.11 NMAC, the director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria

in Subsection J of 19.15.42.11 NMAC for “minor modifications” the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared (Subsection C of 19.15.41.8 NMAC).

(1) Causes for Modification. The following are causes for modification and may be causes for revocation and reissuance of permits:

(a) Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(b) Information. The director has received information. Permits other than for Class II and III wells may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For UIC area permits (Section 40 CFR 144.33), this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(c) New regulations. The standards or regulations on which the permit was based have been changed by promulgation of new or amended standards or regulations or by judicial decision after the permit was issued. Permits for Class VI wells may be modified during their terms only as follows:

(i) the permit condition requested to be modified was based on a promulgated regulation or guideline;

(ii) there has been a revision, withdrawal, or modification of that portion of the rule or regulation on which the permit condition was based, and

(iii) a permittee requests modification within 90 days after New Mexico Register notice of the action on which the request is based.

(d) For judicial decisions, a court of competent jurisdiction has remanded and stayed oil conservation division regulations if the remand and stay concern that portion of the regulations on which the permit condition was based and a request is filed by the permittee in accordance with Subsection B of 19.15.41.8 NMAC within 90 days of judicial remand.

(e) Compliance schedules. The director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(f) Basis for modification of Class VI permits. Additionally, for Class VI wells, whenever the Director determines that permit changes are necessary based on:

(i) Area of review reevaluations under Subsection E of 19.15.43.9 NMAC;

(ii) Any amendments to the testing and monitoring plan under Subsection K of 19.15.43.9 NMAC;

(iii) Any amendments to the injection well plugging plan under Subsection M of 19.15.43.9 NMAC;

(iv) Any amendments to the post-injection site care and site closure plan under Subsection N of 19.15.43.9 NMAC;

(v) Any amendments to the emergency and remedial response plan under Subsection O of 19.15.43.9 NMAC; or

(vi) A review of monitoring and testing results conducted in accordance with permit requirements.

(2) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

(a) Cause exists for termination under Subsection I of 19.15.42.11 NMAC, and the director determines that modification or revocation and reissuance is appropriate.

(b) The director has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (Subsection G(2) of 19.15.42.11 NMAC) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(c) A determination that the waste being injected is a hazardous waste as defined in Section 40 CFR 261.3 either because the definition has been revised, or because a previous determination has been changed.

(3) Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

I. Termination of permits.

(1) The director may terminate a permit during its term, or deny a permit renewal application for the following causes:

- (a) noncompliance by the permittee with any condition of the permit;
- (b) the permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or
- (c) a determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(2) The director shall follow the applicable procedures in Subsection C of 19.15.41.8 NMAC in terminating any permit under this section.

J. Minor modifications of permits. Upon the consent of the permittee, the director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Subsection B of 19.15.41.8 NMAC. Any permit modification not processed as a minor modification under this section must be made for cause and with Subsections C and E of 19.15.41.8 NMAC draft permit and public notice as required in Subsection H of 19.15.42.11 NMAC. Minor modifications may only:

- (1) correct typographical errors;
 - (2) require more frequent monitoring or reporting by the permittee;
 - (3) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
 - (4) Allow for a change in ownership or operational control of a facility where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the director;
 - (5) Change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification;
 - (6) Change construction requirements approved by the director pursuant to Subsection B of 19.15.42.12 NMAC (establishing UIC permit conditions), provided that any such alteration shall comply with the requirements of this part and Section 19.15.43 NMAC;
 - (7) Amend a Class VI injection well testing and monitoring plan, plugging plan, post-injection site care and site closure plan, or emergency and remedial response plan where the modifications merely clarify or correct the plan, as determined by the Director.
- [19.15.42.10 NMAC – N, XX/XX/XXXX]

19.15.42.11 PERMIT CONDITIONS:

A. Conditions applicable to all permits. The following conditions apply to all UIC permits. All conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations.

- (1) **Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Safe Drinking Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
- (2) **Duty to reapply.** If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.
- (3) **Duty to halt or reduce activity.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- (4) **Duty to mitigate.** The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.
- (5) **Proper operation and maintenance.** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(6) **Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) **Property rights.** This permit does not convey any property rights of any sort, or any exclusive privilege.

(8) **Duty to provide information.** The permittee shall furnish to the Director, within 30 days, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(9) **Inspection and entry.** The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the SDWA, any substances or parameters at any location.

(10) **Monitoring and records.**

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including the following:

(i) Calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time; and

(ii) The nature and composition of all injected fluids until 3 years after the completion of any plugging and abandonment procedures specified under Subsection B of 19.15.42.12 NMAC, or under 40 CFR 146, Subpart G as appropriate. The director may require the owner or operator to deliver the records to the director at the conclusion of the retention period.

(c) Records of monitoring information shall include:

(i) the date, exact place, and time of sampling or measurements;

(ii) the individual(s) who performed the sampling or measurements;

(iii) the date(s) analyses were performed;

(iv) the individual(s) who performed the analyses;

(v) the analytical techniques or methods used; and

(vi) the results of such analyses.

(d) Owners or operators of Class VI wells shall retain records as specified in Section 19.15.43.9 NMAC, including Subsection E of 19.15.43.9 NMAC, Subsection L of 19.15.43.9 NMAC, and Subsection M of 19.15.43.9 NMAC.

(11) **Signatory requirement.** All applications, reports, or information submitted to the Director shall be signed and certified (See Subsection B of 19.15.42.11 NMAC).

(12) **Reporting requirements.**

(a) **Planned changes.** The permittee shall give notice to the director as soon as possible of any planned physical alterations or additions to the permitted facility.

(b) **Anticipated noncompliance.** The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) **Transfers.** This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Safe Drinking Water Act (See Subsection G of 19.15.42.11 NMAC); in some cases, modification or revocation and reissuance is mandatory.

(d) **Monitoring reports.** Monitoring results shall be reported at the intervals specified elsewhere in this section.

(e) **Compliance schedules.** Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 30 days following each schedule date.

(f) **24-hour reporting.** The permittee shall report any noncompliance which may endanger health or the environment, including:

(i) Any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW; or

(ii) Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs.

(g) Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(h) **Other noncompliance.** The permittee shall report all instances of noncompliance not reported under Subparagraphs (a) (d), (e), and (f) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in Subparagraph (f) Paragraph (12) of this section.

(i) **Other information.** Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the director, it shall promptly submit such facts or information.

(13) **Requirements prior to commencing injection.** Except for all new wells authorized by an area permit under Section 40 CFR 144.33(c), a new injection well may not commence injection until:

(a) construction is complete; and

(b) the permittee has submitted notice of completion of construction to the director;

and

(c) the director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or

(d) the permittee has not received notice from the director of his or her intent to inspect or otherwise review the new injection well within 13 days of the date of the notice in Subparagraph (b) of Paragraph (13) of this section, in which case prior inspection or review is waived and the permittee may commence injection. The director shall include in his notice a reasonable time period in which he shall inspect the well.

(14) The permittee shall notify the director at such times as the permit requires before conversion or abandonment of the well or in the case of area permits before closure of the project.

(15) A Class VI permit shall include conditions which meet the requirements set forth in Subsection M of 19.15.43.9 NMAC. Where the plan meets the requirements of Subsection M of 19.15.43.9 NMAC, the director shall incorporate it into the permit as a permit condition. For purposes of this paragraph, temporary or intermittent cessation of injection operations is not abandonment.

(16) **Duty to establish and maintain mechanical integrity.**

(a) The owner or operator of a Class VI well permitted under this part shall establish mechanical integrity prior to commencing injection or on a schedule determined by the director. The owner or operator of Class VI wells must maintain mechanical integrity as defined in Subsection J of 19.15.43.9 NMAC.

(b) When the director determines that a Class VI well lacks mechanical integrity pursuant to Section 40 CFR 146.89 or Subsection J of 19.15.43.9 NMAC for Class VI, the director shall give written notice of his/her determination to the owner or operator. Unless the director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the director's determination. The director may allow plugging of the well pursuant to the requirements of Section 40 CFR 146.92 or require the permittee to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon written notification from the director that the owner or operator has demonstrated mechanical integrity pursuant to Section 40 CFR 146.89.

(c) The director may allow the owner or operator of a well which lacks mechanical integrity pursuant to Section 40 CFR 146.8(a)(1) to continue or resume injection, if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs.

B. Establishing permit conditions.

(1) In addition to conditions required in Subsection A of 19.15.42.12 NMAC, the director shall establish conditions, as required on a case-by-case basis under § 19.15.42.11.E NMAC (duration of permits), Subsection C of 19.15.42.12 NMAC (schedules of compliance), Subsection D of 19.15.42.12 NMAC (monitoring).

(2) Permits for owners or operators of Class VI injection wells shall include conditions meeting the requirements of 19.15.43.9 NMAC. Permits for other wells shall contain the following requirements, when applicable:

(a) **Construction requirements as set forth in 19.15.43 NMAC.** Existing wells shall achieve compliance with such requirements according to a compliance schedule established as a permit condition. The owner or operator of a proposed new injection well shall submit plans for testing, drilling, and construction as part of the permit application. Except as authorized by an area permit, no construction may commence until a permit has been issued containing construction requirements (see Subsection A of 19.15.42.9 NMAC). New wells shall be in compliance with these requirements prior to commencing injection operations. Changes in construction plans during construction may be approved by the administrator as minor modifications (Subsection J of 19.15.42.11 NMAC). No such changes may be physically incorporated into construction of the well prior to approval of the modification by the director.

(b) **Corrective action** as set forth in Section 40 CFR 144.55 and 146.7 and Subsection E of 19.15.43.9 NMAC.

(c) **Operation requirements** as set forth in 19.15.43 NMAC. The permit shall establish any maximum injection volumes and/or pressures necessary to assure that fractures are not initiated in the confining zone, that injected fluids do not migrate into any underground source of drinking water, that formation fluids are not displaced into any underground source of drinking water, and to assure compliance with the 19.15.43 NMAC operating requirements.

(d) **Monitoring and reporting requirements** as set forth in 19.15.43 NMAC. The permittee shall be required to identify types of tests and methods used to generate the monitoring data.

(e) **Financial responsibility.**

(i) The permittee, including the transferor of a permit, is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the director until (a) the well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to Subsection A of 19.15.42.12 NMAC, Subsection M of 19.15.43.9 NMAC, and 40 CFR 146.10, and submitted a plugging and abandonment report pursuant to Subsection A of 19.15.42.12 NMAC; or (b) the well has been converted in compliance with the requirements of Subsection A of 19.15.42.12 NMAC; or (c) the transferor of a permit has received notice from the director that the owner or operator receiving transfer of the permit, the new permittee, has demonstrated financial responsibility for the well.

(ii) The permittee shall show evidence of such financial responsibility to the director by the submission of a surety bond, or other adequate assurance, such as a financial statement or other materials acceptable to the director. The owner or operator of a well injecting hazardous waste must comply with the financial responsibility requirements of Section 40 CFR 144, Subpart F.

(iii) For Class VI wells, the permittee shall show evidence of such financial responsibility to the director by the submission of a qualifying instrument (see Subsection F of 19.15.43.9 NMAC), such as a financial statement or other materials acceptable to the director. The owner or operator of a Class VI well must comply with the financial responsibility requirements set forth in Subsection F of 19.15.43.9 NMAC.

(f) **Mechanical integrity.** A permit for any Class VI well which lacks mechanical integrity shall include a condition prohibiting injection operations until the permittee shows to the satisfaction of the director that the well has mechanical integrity.

(g) **Additional conditions.** The director shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into underground sources of drinking water.

(3) In addition to conditions required in all permits the director shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the SDWA and Parts 144, 145, 146 and 124.

(4) An applicable requirement refers to any State statutory or regulatory provision that becomes effective prior to the final administrative action on a permit application. An applicable requirement also includes any provision that becomes effective prior to the modification or revocation and reissuance of a permit, consistent with the authority provided under Subsection H of 19.15.42.11 NMAC.

(5) New or reissued permits, and to the extent allowed under Subsection H of 19.15.42.11 NMAC modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in Subsection B of 19.15.42.12 NMAC.

(6) **Incorporation.** All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

C. Schedule of compliance.

(1) **General.** The permit may, when appropriate, specify a schedule of compliance leading to compliance with the SDWA and Sections 19.15.41 NMAC, 19.15.42 NMAC, 19.15.43 NMAC, and 40 CFR 145.

(2) **Time for compliance.** Any schedules of compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit.

(3) **Interim dates.** Except as provided in paragraph (b)(1)(ii) of 40 CFR 144.53, if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(a) The time between interim dates shall not exceed one year.

(b) If the time necessary for completion of any interim requirement is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(4) **Reporting.** The permit shall be written to require that if Paragraph (2) of this subsection is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

D. Requirements for recording and reporting of monitoring results. All permits shall specify:

(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including when appropriate, continuous monitoring;

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in Section 19.15.43 NMAC. Reporting shall be no less frequent than specified in the above regulations. [19.15.42.11 NMAC – N, XX/XX/XXXX]

19.15.42.12 STATE UIC PROGRAM REQUIREMENTS:

A. Requirements for enforcement authority.

(1) The energy, minerals and natural resources department oil conservation division shall have available the following remedies for violations of State program requirements:

(a) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or environment;

(b) To sue in New Mexico district court to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit, as authorized under Subsection A of Section 70-2-6 and Paragraph (2) of Subsection A of Section 70-2-31 NMSA 1978.

(c) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) For all wells except Class II wells, civil penalties shall be recoverable for any program violation in at least the amount of \$2,500 per day. For Class II wells, civil penalties shall be recoverable for any program violation in at least the amount of \$1,000 per day.

(ii) Criminal fines shall be recoverable in at least the amount of \$5,000 per day against any person who willfully violates any program requirement, or for Class II wells, pipeline (production) severance shall be impossible against any person who willfully violates any program requirement.

(2) Enforcement related to Parts 41, 42 and 43 of Title 19, Chapter 15 shall be conducted pursuant to the processes and penalties described in Section 19.15.5.10 NMAC. [19.15.42.12 NMAC – N, XX/XX/XXXX]

History of 19.15.42 NMAC: [RESERVED]