

*NOTES: This document correlates to 40 CFR Part 124; tentatively numbered as Part RESERVE1 NMAC. To (hopefully) limit confusion, any section cross references within the tentatively numbered NMAC sections have been changed (from the CFR reference to the new, tentative NMAC section). These are highlighted yellow. Any paragraph cross references have been updated (and not highlighted). Any EPA-specific language or NMAC/CFR cross references outside of this section have been left as is and highlighted blue.*

**TITLE X            RESERVE**  
**CHAPTER X       RESERVE**  
**PART X           PROCEDURES FOR DECISION MAKING**

**RESERVE1        PROCEDURES FOR DECISION MAKING**

**A.**        *Definitions.* The following definitions apply to this subpart for underground injection control programs:

(1) *Administrator* means the Administrator of the United States Environmental Protection Agency (U.S. EPA), or an authorized representative.

(2) *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.

(3) *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.

(4) *Area of review* means the area surrounding an injection well described according to the criteria set forth in § 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 § 40 CFR 146.06.

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

(6) *Contaminant* means any physical, chemical, biological, or radiological substance or matter in water.

(7) *Director* means the director of the New Mexico Energy, Minerals and Natural Resources Department, Oil Conservation Division.

(8) *Draft permit* means a document prepared under § RESERVE1.C 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 § RESERVE1.B NMAC are types of “draft permits.” A denial of a request for modification, revocation and reissuance, or termination, as discussed in § RESERVE1.B NMAC is not a “draft permit.”

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

(10) *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.

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

**(12) *Emergency permit*** means a UIC “permit” issued in accordance with [§ 40 CFR 144.34](#).

**(13) *Environmental Protection Agency*** (“EPA”) means the United States Environmental Protection Agency.

**(14) *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 [§ RESERVE2\(A\).E NMAC](#).

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

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

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

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

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

**(20) *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 ([§ 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 ([§ 19.15 NMAC](#)).

**(21) *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.

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

**(23) *Hazardous waste*** means a hazardous waste as defined in [§ 40 CFR 261.3](#).

**(24) *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).

**(25) *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.

**(26) *Indian lands*** means “Indian country” as defined in [§ 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.

**(27) *Indian Tribe*** means any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

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

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

(30) *Major facility* means any UIC “facility or activity” classified as such by the Director

(31) *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 § 20.4.1.500 NMAC (incorporating 40 CFR Part 2362).

(32) *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.

(33) *Owner or operator* means the owner or operator of any “facility or activity” subject to regulation under the UIC program.

(34) *Permit* means an authorization, license, or equivalent control document issued by the Director to implement the requirements of these regulations. A permit includes but is not limited to: area permits and emergency permits. Permit does not include UIC authorization by rule or any permit which has not yet been the subject of final agency action, such as a “draft permit.”

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

(36) *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.

(37) *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.

(38) *Project* means a group of wells in a single operation.

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

(40) *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. 95–3609, Pub. L. 96–510, 42 U.S.C. 6901 et seq.).

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

(42) *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.

(43) *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.

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

(45) *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.

(46) *Total dissolved solids* means total dissolved solids as determined by the “calculation method” (sum of constituents), by the “residue on evaporation method at 180 degrees” of the

“U.S. Geological Survey techniques of water resource investigations,” or by conductivity, as the Director may determine.

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

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

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

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

(51) *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.

(52) *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.

(53) *Well injection* means the subsurface emplacement of fluids through a well.

**B.** *Application for a permit.*

(1) Any person who requires a permit under the UIC programs shall complete, sign, and submit to the Director an application for each permit required under § 20.6.2.5.6.2 NMAC.

(2) The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. See § RESERVE2(D).A NMAC.

(3) Permit applications must comply with the signature and certification requirements of § RESERVE2(D).B NMAC.

**C.** *Modification, revocation and reissuance, or termination of permits.*

(1) Upon request by the Director, the permittee must furnish any relevant information within 30 days to support the Director’s review of potential grounds for permit modification, termination, or reissuance, or to verify compliance with permit conditions.

(2) If the Director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(3) If the Director tentatively decides to modify or revoke and reissue a permit under § RESERVE2(D).G NMAC, he or she shall prepare a draft permit under § RESERVE1.D NMAC incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.

(4) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During

any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(5) “Minor modifications” as defined in § RESERVE2(D).I NMAC are not subject to the requirements of this section.

(6) If the Director tentatively decides to terminate a permit under § RESERVE2(D).H NMAC of this chapter, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § RESERVE1.D NMAC.

**D.** *Draft permits.*

(1) Once an application is complete, the Director shall prepare a draft permit or deny the application.

(2) If the Director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the following information:

- (a) All conditions under § RESERVE2(E).A NMAC
- (b) All compliance schedules under § RESERVE2(E).C NMAC
- (c) All monitoring requirements under § RESERVE2(E).D NMAC and
- (d) UIC permits, permit conditions under § RESERVE2(E).B NMAC.

(3) Draft permits prepared by a State shall be accompanied by a fact sheet if required under § RESERVE1.E NMAC.

**E.** *Fact sheet.*

(1) A fact sheet shall be prepared for every draft permit for a major, UIC facility or activity, and for every draft permit which the Director finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

(2) The fact sheet shall include, when applicable:

- (a) A brief description of the type of facility or activity which is the subject of the draft permit;
- (b) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;
- (c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;
- (d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
- (e) A description of the procedures for reaching a final decision on the draft permit including:
  - (i) The beginning and ending dates of the comment period under § RESERVE1.F NMAC and the address where comments will be received;
  - (ii) Procedures for requesting a hearing and the nature of that hearing; and
  - (iii) Any other procedures by which the public may participate in the final decision.
- (f) Name and telephone number of a person to contact for additional information;

**F.** *Public notice of permit actions and public comment period.*

(1) The Director shall give public notice that the following actions have occurred:

- (a) A draft permit has been prepared under § RESERVE1.D(2) NMAC;
- (b) A hearing has been scheduled under § RESERVE1.H NMAC;
- (c) An appeal has been granted under § 40 CFR 124.19(c);

(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under § RESERVE1.C(2) NMAC. Written notice of that denial shall be given to the requester and to the permittee.

(3) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (1) of this section shall allow at least 30 days for public comment.

(4) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(5) Public notice of activities described in paragraph (1)(a) of this section shall be given by the following methods:

(a) Electronic mailing (email) or by mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

(i) The applicant;

(ii) Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), NPDES, 404, sludge management permit, or ocean dumping permit under the Marine Research Protection and Sanctuaries Act for the same facility or activity (including the EPA).

(iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, the New Mexico Energy, Minerals, and Natural Resources Department (EMNRD), State Historic Preservation Officers, including any affected States (Indian Tribes). (For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States.)

(iv) Persons on a mailing list developed by:

(A) Including those who request in writing to be on the list;

(B) Soliciting persons for “area lists” from participants in past permit proceedings in that area; and

(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to such a request.)

(v) Any unit of local government having jurisdiction over the area where the facility is proposed to be located;

(vi) Each State agency having any authority under State law with respect to the construction or operation of such facility.



(b) For Class VI injection well UIC permits, mailing or emailing a notice to State and local oil and gas regulatory agencies and State agencies regulating mineral exploration and recovery, the Director of the Public Water Supply Supervision program in the State, the BLM, the office of the state engineer, the state land office, all tribal authorities, and all agencies that oversee injection wells in the State.

(c) For major permits, publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity.

(d) When the program is being administered by an approved State, in a manner constituting legal notice to the public under State law.

(e) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other form or medium to elicit public participation.

(6) All public notices issued under this part shall contain the following minimum information:

(a) Name and address of the Division of EMNRD office processing the permit action for which notice is being given;

(b) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(c) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(d) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application;

(e) A brief description of the comment procedures required by § RESERVE1.G NMAC and § RESERVE1.H NMAC and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and

(f) Any additional information considered necessary or proper.

(7) In addition to the general public notice described in paragraph (5) of this section, the public notice of a hearing under § RESERVE1.H NMAC shall contain the following information:

(a) Reference to the date of previous public notices relating to the permit;

(b) Date, time, and place of the hearing;

(c) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures;

(8) In addition to the general public notice described in paragraph (5) of this section, all persons identified in paragraph (5)(a) of this section shall be mailed a copy of the fact sheet, the permit application (if any), and the draft permit (if any).

**G.** *Public comments and requests for public hearings.* During the public comment period provided under § RESERVE1.F NMAC, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in § RESERVE1.J NMAC.

**H.** *Public hearings.*

(1) The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit(s).

(2) The Director may also hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(3) Public notice of the hearing shall be given as specified in § RESERVE1.F NMAC.

(4) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under § RESERVE1.F NMAC shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(5) A tape recording or written transcript of the hearing shall be made available to the public.

**I.** *Issuance and effective date of permit.*

(1) After the close of the public comment period under § RESERVE1.F NMAC on a draft permit, the Director shall issue a final permit decision. The Director shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a UIC permit under § 40 CFR 124.19. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(2) A permit to construct a Class VI injection well issued by the Oil Conservation Division (OCD) shall be valid for a period of two years from the date of issuance. If drilling operations have not commenced within the two year period, the permit shall automatically terminate without further notice. The owner or operator may request an extension by submitting a written request to the OCD Engineering Bureau at least 30 days prior to the expiration of the initial two-year period. Such a request must demonstrate good cause for the delay and include a revised timeline for drilling, a detailed explanation of the circumstances necessitating the extension, and any relevant supporting documentation. The OCD may approve the extension if it determines that the delay is justified and consistent with the objectives of the Class VI program.

**J.** *Response to comments.*

(1) At the time that a final permit is issued, the Director shall issue a response to comments. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(2) The response to comments shall be available to the public.