



Board of Minerals and Environment

523 East Capitol Avenue
Pierre, South Dakota 57501-3182
(605)773-3886

Live audio for this meeting is available at <http://www.sd.net>

AGENDA

Board of Minerals and Environment Telephone Conference Call Meeting 523 East Capitol Avenue Pierre, South Dakota

October 24, 2024

10:00 a.m. Central Time

Call to order and roll call

Approval of minutes from July 18, 2024, meeting

Mining issues consent calendar – Tom Cline

Release of liability and surety for GCC Dacotah, Exploration Notices of Intent, EXNI-428, 429, 430, and 432 – Roberta Hudson

Release of reclamation surety for Pete Lien & Sons Mine Permits 58 and 216 due to conversion of limestone mine permits to mine license – Eric Holm

Release of reclamation surety for Simon Contractors Mine Permits 14, 444, and 489 due to conversion of limestone mine permits to mine license – Eric Holm

Underground Injection Control (UIC) delegation document update – Lucy Blocker

10:15 a.m. Central Time

Enforcement hearing in the matter of Thomas L. Sunde's violations of SDCL Chapter 45-9 and ARSD Article 74:12 (Oil and Gas Permit Nos. 121, 340, 342, 348, 416, and 2066)

Public comment period in accordance with SDCL 1-25-1

Next meeting

Adjourn

The board packet is available on the Boards and Commissions website at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67>

Interested parties may participate via telephone or in the Matthew Environmental Training Center, 523 East Capitol Avenue, Pierre, SD. To participate via telephone please contact DANR at (605) 773-3886 or via email at brenda.binegar@state.sd.us no later than 4:00 p.m. Central Time on Wednesday, October 23, 2024.

Notice is given to individuals with disabilities that the meeting is being held in a physically accessible location. Individuals requiring assistive technology or other services in order to participate in the meeting or materials in an alternate format should contact Brian Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at Brian.Walsh@state.sd.us as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

The audio recording for this meeting is available on the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67>

Minutes of the
Board of Minerals and Environment
Telephone Conference Call Meeting
523 East Capitol Avenue
Pierre, South Dakota

July 18, 2024
10:00 a.m. Central Time

CALL TO ORDER: The meeting was called to order by Chairman Rex Hagg. The roll was called, and a quorum was present.

The meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

BOARD MEMBERS PRESENT: Rex Hagg, Glenn Blumhardt, Bob Ewing, Gregg Greenfield, Jessica Gruenwald, Gary Haag, Bob Morris, and Laurie Schultz.

BOARD MEMBERS ABSENT: Doyle Karpen.

OTHERS PRESENT: Mike Lees, Roberta Hudson, Eric Holm, Bret Graves, Tom Cline, and Michael Evans, DANR Minerals, Mining, and Superfund Program.

APPROVAL OF MINUTES FROM MAY 16, 2024, MEETING: Motion by Blumhardt, seconded by Schultz, to approve the minutes from the May 16, 2024, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried unanimously.

MINING ISSUES CONSENT CALENDAR: A copy of the consent calendar, which is a table listing the department recommendations for transfers of liability, transfers of liability and surety, releases of liability, release of liability and surety, was included in the board packet. (See attachment.)

Mr. Morris asked why there are so many releases of liability on the consent calendar for this meeting.

Tom Cline with the Minerals, Mining, and Superfund Program stated that this time of year is when the site inspections are done. The annual reports submitted by the operators indicated that the sites had been reclaimed during the last six to eight months, and that is the reason there are so many listed on the consent list for this meeting.

Motion by Morris, seconded by Gruenwald, to approve the consent calendar, as presented. A roll call vote was taken, and the motion carried unanimously.

PROPOSED MODIFICATION TO MEMORANDUM OF UNDERSTANDING BETWEEN THE STATE OF SOUTH DAKOTA DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES AND USDA, FOREST SERVICE REGION 2, BLACK HILLS NATIONAL FOREST: Roberta Hudson reported that in July 2023, the board approved the Memorandum of Understanding. The Memorandum of Understanding is on a five-year renewal process; however, the 2024 South Dakota Legislature revised some requirement associated with mineral exploration, mining permits, and mine licenses. The key statutory changes that impact the existing Memorandum of Understanding involve changes to the bonding limits for these operations. The changes to bonding requirements set in South Dakota Codified Law are in effect as of July 1, 2024.

Ms. Hudson stated that she contacted the Forest Service regarding amendments to the Memorandum of Understanding, which reflect the new bonding requirements in Section III of the document. Ms. Hudson noted that the board members received a copy of the proposed amendments to Memorandum of Understanding in the packet they received prior to the meeting.

Ms. Hudson stated that the State of South Dakota holds the initial bond up to the amounts indicated in the Memorandum of Understanding, and after that, if the Forest Service deems those bonding amounts inadequate it can hold an additional above and beyond that point.

Staff recommended approval of the amended Memorandum of Understanding.

Motion by Ewing, seconded by Haag, to approve the modification to Memorandum of Understanding 23-MU-11020300-043 between the State of South Dakota Department of Agriculture and Natural Resources and USDA, Forest Service Region 2, Black Hills National Forest, and to authorize Chairman Hagg to execute the document. A roll call vote was taken, and the motion carried unanimously.

ELECTION OF OFFICERS: Chairman Hagg requested that the board not elect him as chairman since he has asked that the Governor not reappoint him to the board. He noted that he will remain on the board until the Governor appoints a replacement.

Motion by Morris, seconded by Gruenwald, to nominate Glenn Blumhardt as chairman, Gregg Greenfield as vice chairman, and Laurie Schultz as secretary, and to cease nominations and cast a unanimous ballot. A roll call vote was taken, and the motion carried unanimously.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: There were no public comments.

NEXT MEETING: The next meeting is tentatively scheduled as an in-person meeting on September 19, 2024, at the Foss Building Matthew Training Center in Pierre.

Chairman Blumhardt noted that the contested case hearing that was originally scheduled to take place at the July meeting has been turned over to the Office of the Hearing Examiners.

Board of Minerals and Environment
July 18, 2024, Meeting Minutes

Mike Lees stated that there is an oil and gas enforcement case that could potentially be ready to be heard by the board at its September meeting.

Mr. Hagg thanked the board members for the privilege of being the chairman of the board for the last ten years.

ADJOURN: Motion by Hagg, seconded by Haag, to adjourn the meeting. A roll call vote was taken, and the motion carried unanimously.

Secretary, Board of Minerals
and Environment

Date

DRAFT

Consent Calendar
South Dakota Board of Minerals & Environment

July 18, 2024

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<u>Transfer of Liability:</u>					
Carl E Scott Custer, SD	89-388		\$1,500	First National Bank, Pierre First Interstate Bank, Custer	Transfer liability.
		388002	NE1/4 Section 35; T4S-R4E,	Custer County	
Transfer to:					
Michael Busskohl Custer, SD	24-1138		\$4,000	First National Bank, Rapid City	
Cody Schad Rapid City, SD	19-1047		\$20,000	Pioneer Bank & Trust, Rapid City	Transfer liability.
		1047003	Longview Claim – SW1/4 Section 7 and W1/2 Section 18; T4S-R5E,	Custer County	
Transfer to:					
Longview Minerals LLC. Custer, SD	24-1139		\$20,000	Pioneer Bank & Trust, Rapid City	
Cody Schad Rapid City, SD	19-1047		\$20,000	Pioneer Bank & Trust, Rapid City	Transfer liability.
		1047004	Beecher Lode – SW1/4 Section 7 and W1/2 Section 18; T4S-R5E,	Custer County	
Transfer to:					
Longview Minerals LLC. Custer, SD	24-1139		\$20,000	Pioneer Bank & Trust, Rapid City	

Consent Calendar
South Dakota Board of Minerals & Environment

July 18, 2024

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<u>Transfer of Liability:</u>					
Cody Schad Rapid City, SD	19-1047		\$20,000	Pioneer Bank & Trust, Rapid City	Transfer liability.
		1047005	Black Diamond Claim – SW1/4 Section 7 and W1/2 Section 18; T4S-R5E, Custer County		
Transfer to:					
Longview Minerals LLC. Custer, SD	24-1139		\$20,000	Pioneer Bank & Trust, Rapid City	
Cody Schad Rapid City, SD	19-1047		\$20,000	Pioneer Bank & Trust, Rapid City	Transfer liability.
		1047006	Dyke Lode – SW1/4 Section 7 and W1/2 Section 18; T4S-R5E, Custer County		
Transfer to:					
Longview Minerals LLC. Custer, SD	24-1139		\$20,000	Pioneer Bank & Trust, Rapid City	
<u>Transfer of Liability & Surety:</u>					
Tom Loomis dba Dakota Matrix Minerals Rapid City, SD	04-801		\$1,000	First National Bank, Pierre	Release liability & \$1,000.
		801001	SW1/4 Section 8; T4S-R4E, Custer County		
Transfer to:					
Michael Buszkohl Rapid City, SD	24-1138		\$4,000.00	First National Bank, Rapid City	

Consent Calendar
South Dakota Board of Minerals & Environment

July 18, 2024

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<u>Transfer of Liability & Surety:</u>					
Minnehaha County Highway Department Sioux Falls, SD	83-236		Exempt	NA	Release liability & close license.
		236001	E1/2 SE1/4 and NW1/4 SE1/4 Section 6; T101N-R50W,	Minnehaha County	
Transfer to:					
First Rate Excavate, Inc. Sioux Falls, SD	05-817		\$20,000	North American Specialty Insurance Company, Sioux Falls	
<u>Release of Liability:</u>					
Morris Inc. Pierre, SD	83-2		\$20,000	United Fire & Casualty Company Cedar Rapids, IA	Release liability.
		2034	SW1/4 Section 6; T41N-R36W,	Jackson County	
Morris Inc. Pierre, SD	83-2		\$20,000	United Fire & Casualty Company Cedar Rapids, IA	Release liability.
		2054	SW1/4 Section 22; T1N-20E,	Haakon County	
DOT-Aberdeen Region Aberdeen, SD	83-10.2		Exempt	NA	Release liability.
		10015	W1/2 Section 36; T116N-R72W,	Hyde County	

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South Dakota Board of Minerals & Environment

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<u>Release of Liability:</u>					
Clausen & Sons Construction LLC Watertown, SD	83-15	15014	\$20,000	Merchants Bonding Company, Des Moines, IA NE1/4 Section 9; T116N-R52W, Codington County	Release liability
Western Construction Inc. Rapid City, SD	09-880	880006	\$20,000	Western Surety Company, Chicago, IL Section 26; T2S-R12E, Pennington County	Release liability.
Western Construction Inc. Rapid City, SD	09-880	880009	\$20,000	Western Surety Company, Chicago, IL N1/2 Section 36; T1S-R8E, Pennington County	Release liability.
Western Construction Inc. Rapid City, SD	09-880	880014	\$20,000	Western Surety Company, Chicago, IL S1/2 NW1/4 Section 11; T1N-R23E, Haakon County	Release liability.
Western Construction Inc. Rapid City, SD	09-880	880015	\$20,000	Western Surety Company, Chicago, IL W1/2 SW1/4 Section 21; T2N-R11E, Pennington County	Release liability.

Consent Calendar
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<u>Release of Liability:</u>					
Western Construction Inc. Rapid City, SD	09-880	880018	\$20,000	Western Surety Company, Chicago, IL SW1/4 Section 21 and NW1/4 Section 28; T3S- R9E, Custer County	Release liability.
Western Construction Inc. Rapid City, SD	09-880	880021	\$20,000	Western Surety Company, Chicago, IL NW1/4 SW1/4 Section 5; T18N-R1E, Harding County	Release liability.
Sorber Inc. Colome, SD	20-1077	1077001	\$500	First Fidelity Bank, Colome N1/2 Section 10; T95N-R75W, Tripp County	Release liability.
<u>Release of Liability & Surety:</u>					
James W Heinrich Tolstoy, SD	04-795	795001	\$500	First National Bank, Pierre S1/2 Section 33; T122N-R73W, Edmunds County	Release liability & \$500.

Consent Calendar
South Dakota Board of Minerals & Environment

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<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<u>Transfer of Liability:</u>					
Dakota Road Builders Custer, SD	83-240		\$20,000	Western Surety Company	Transfer liability.
		240025	E1/2 Section 25; T92N-R50W, Union County		
Transfer to:					
Pollman Excavation, Inc. Custer, SD	15-994		\$20,000	First Premier Bank, Wakonda, SD	
<u>Transfer of Liability & Surety Release:</u>					
Roland A Fannin Watertown, SD	18-1040		\$2,500	Dacotah Bank Watertown	Transfer liability & \$2,500.
		1040001	NE1/4 Section 18; T117N-R51W, Codington County		
Transfer to:					
Clausen & Sons Construction LLC Watertown, SD	83-15		\$20,000	Merchants Bonding Company	
Marty Lund Parker, SD	20-1088		\$1,000	Great Western Bank Lennox, SD	Transfer liability & \$1,000.
		1088001	N1/2 NW1/4 Section 25; T99N-R53W, Turner County		
Transfer to:					
Precision Dirtworks LLC Sioux Falls, SD	24-1143		\$2,000	Central Bank Sioux Falls, SD	

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<u>Transfer of Liability & Surety Release:</u>					
John C Rider Henry, SD	09-885		\$2,000	Dacotah Bank - Watertown, SD Dacotah Bank - Clark, SD	Transfer liability & \$2,000.
		885001		SE1/4 Section 28; T118N-R55W, Codington County	
Transfer to:					
Hovde Excavating & Gravel LLC Clark, SD	24-1144		\$3,500	Reliabank Dakota - Hazel, SD Dacotah Bank - Watertown, SD	
<u>Release of Liability:</u>					
Bob Bak Construction Ravina, SD	83-61		\$20,000	American State Bank - Pierre, SD First National Bank - Pierre, SD American Bank & Trust - Pierre, SD Wells Fargo Bank - White River, SD	Release liability.
		61032		Section 5; T1N-R25E, Haakon County	
Clausen & Sons Construction LLC Watertown, SD	83-15		\$20,000	Merchants Bonding Company	Release liability.
		15008		NE1/4 Section 31; T117N-R57W, Clark County	
Divine Concrete Inc Bonesteel, SD	00-698		\$2,500	First Fidelity Bank Bonesteel, SD	Release liability.
		698001		NE1/4 SW1/4 Section 24; T96N-R69W, Gregory County	

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<u>Release of Liability:</u>					
Edmunds County Hwy Dept. Ipswich, SD	83-161		Exempt	NA	Release liability.
		161015	NW1/4 SW1/4 Section 1; T125N-R73W, McPherson County		
Forest Excavating Clark, SD	08-855		\$20,000	The Ohio Casualty Ins. Co.	Release liability.
		855001	SW1/4 Section 31; T117N-R57W, Clark County		
Hamlin County Hwy Dept. Hayti, SD	83-56		Exempt	NA	Release liability.
		56005	NW1/4 Section 9; T114N-R53W, Hamlin County		
Hand County Hwy Dept. Miller, SD	83-148		Exempt	NA	Release liability.
		148002	Lot 1 SW1/4 Section 11; T115N-R66W, Hand County		
		148006	NW1/4 Section 15; T115N-R67W, Hand County		
Harding County Hwy Dept. Buffalo, SD	83-66		Exempt	NA	Release liability.
		66044	NE1/4 NE1/4 Section 34; T22N-R8E, Harding County		

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<u>Release of Liability:</u>					
J & L Ventures, LLC Mitchell, SD	17-1031		\$1,500	Security State Bank Alexandria, SD	Release liability.
		1031001	SW1/4 Section 24; T103N-R61W, Davison County		
Jensen Rock & Sand Inc Mobridge, SD	83-112		\$20,000	New Hampshire Insurance Co.	Release liability.
		112008	S1/2 NE1/4 Section 33; T124N-R78W, Walworth County		
Jerauld County Hwy Dept.	83-80		Exempt	NA	Release liability.
		80050	SE1/4 Section 34; T106N-R65W, Jerauld County		
Vickie Kitchell Ipswich, SD	09-879		\$11,500	First State Bank of Roscoe Roscoe, SD	Release liability.
		879005	NE1/4 Section 13; T122N-R68W, Edmunds County		
Miller Construction Isabel, SD	03-767		\$20,000	Western Surety Company	Release liability.
		767005	N1/2 NW1/4 Section 24; T124N-R76W, Walworth County		
		767006	SW1/4 Section 12: T125N-R76W, Campbell County		

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<u>Release of Liability:</u>					
Portland Township Clear Lake, SD	97-623		Exempt	NA	Release liability.
		623001	NW1/4 Section 26; T117-R49W, Deuel County		
Pro Crush Olivet, SD	14-975		\$9,500	The Farmer & Merchants State Bank – Scotland, SD	Release liability.
		975006	SE1/4 Section 8; T98N-R62W, Douglas County		
Vanderpol Dragline, Inc. Mitchell, SD	83-59		\$20,000	Wausau Underwriters Insurance Company	Release liability.
		59013	SW1/4 Section 31; T101N-R65W, Aurora County		
		59017	NW1/4 Section 26; T103N-R60W, Davison County		
		59019	NE1/4 Section 12; T100N-R65W, Douglas County		

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October 24, 2024

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<u>Release of Liability & Surety Release:</u>					
Blane Nagel Springfield, SD	20-1062	1062001	\$5,500	Security State Bank Tyndall, SD NE1/4 Section 17; T93N-R60W, Bon Homme County	Release liability & \$5,500.
Mehlhaff Construction Tripp, SD	83-218	218017	\$4,000	The Farmer & Merchants State Bank – Scotland, SD SW1/4 Section 17; T98N-R62W, Douglas County	Release liability & \$4,000.
Sorber Inc. Colome, SD	20-1077	1077001	\$500	First Fidelity Bank Colome, SD N1/2 Section 10; T95N-R75W, Tripp County	Release liability & \$500.

South Dakota Board of Minerals & Environment

October 24, 2024

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<u>Release of Reclamation Liability and Surety for GCC Dacotah:</u>				
GCC Dacotah Rapid City, SD	EXNI's 428, 429, 430, and 432	\$20,000	Traveler's Casualty & Surety Company of America	Release liability and Surety Bond No. 106336637, Traveler's Casualty & Surety of American, in the amount of \$20,000.
			EXNI-428 Sections 14 & 20; T2N-R7E, Pennington County Section 11; T2N-R7E, Meade County	
			EXNI-429 Sections 8 & 18; T5N-R5E, Meade County	
			EXNI-430 Sections 28 & 33; T2N-R7E, Pennington County	
			EXNI-432 Portions of Sections 1, 12, & 13; T5N-R4E & Portions of Sections 35 & 36; T6N-R4E, Lawrence County Portions of Sections 6 & 7; T5N-R5E, Meade County	
<u>Release of Reclamation Surety for Pete Lien & Sons:</u>				
Pete Lien & Sons Rapid City, SD	58	\$284,500	Western Surety Company	Release Surety Bond No. 30097847, Western Surety Company, in the amount of \$284,500 due to conversion to mine license.
			S1/2 NE1/4, Portion of SE1/4 NW1/4, NE1/4 SW1/4, & Portion of W1/2 SW1/4, N1/2 SE1/4, SE1/4 SW1/4, & S1/2 SE1/4 Section 29; T6S-R4E, Custer County	

South Dakota Board of Minerals & Environment

October 24, 2024

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
Pete Lien & Sons Rapid City, SD	216	\$10,000	Western Surety Company	Release Surety Bond No. 30097837, Western Surety Company, in the amount of \$10,000 due to conversion to mine license.
Section 12; T2N-R6E & Section 7; T2N-R7E, Meade County Sections 17, 18, & 19; T2N-R7E, Pennington County				
<u>Release of Reclamation Surety for Simon Contractors of SD Inc:</u>				
Simon Contractors of SD Inc Rapid City, SD	14	\$677,800	Liberty Mutual Insurance Company	Release Surety Bond No. 014071181, Liberty Mutual Insurance Company, in the amount of \$677,800 due to conversion to mine license.
Portions of SW1/4 NE1/4, NW1/4 SE1/4, NE1/4 SE1/4 & E1/2 NW1/4 Section 33 & Portions of SW1/4 SW1/4 & SE1/4 SW1/4 Section 28; T2N-R7E, Pennington County				
Simon Contractors of SD Inc Rapid City, SD	444	\$2,500	Liberty Mutual Insurance Company	Release Surety Bond No. 014071182, Liberty Mutual Insurance Company, in the amount of \$2,500 due to conversion to mine license.
S1/2 Section 30; T2N-R7E, Pennington County				

South Dakota Board of Minerals & Environment

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<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
Simon Contractors of SD Inc Rapid City, SD	489	\$883,000	Liberty Mutual Insurance Company	Release Surety Bond No. 015218607, Liberty Mutual Insurance Company, in the amount of \$883,000 due to conversion to mine license.
Portions of Sections 33 & 34; T5S-R4E, Custer County				

MEMORANDUM OF AGREEMENT BETWEEN

**The State of South Dakota
Department of Agriculture and Natural Resources**

AND

**The United States Environmental Protection Agency
Region 8**

October 24, 2024

I. Introduction

Region 8 of the Environmental Protection Agency (EPA or Regional Administrator) and the South Dakota Department of Agriculture and Natural Resources (State, Secretary, or Department) have entered into this Memorandum of Agreement to delineate the responsibilities of each agency for the delegation and operation of the Underground Injection Control Program (UIC) for Class II Injection wells, as authorized by Section 1425 of the Safe Drinking Water Act (SDWA) (Public Law 93-523 as amended by Public Law 95-190 and 96-502) (SDWA). The Agreement establishes policies, responsibilities, and procedures for the South Dakota Class II UIC Program. The Agreement specifies areas of cooperation, standards of performance, and guidelines for achievement of the goals set forth in the SDWA. This Agreement shall become effective when signed by both parties and approved by the Administrator of the Environmental Protection Agency.

II. Policies and Agreements

A. Lead Agency Responsibilities

The South Dakota Department has been designated by the Governor¹ as the lead agency for implementation of the South Dakota Class II UIC Program. As lead agency, it will receive the annual program grant and shall coordinate the UIC Program to facilitate communication between EPA and the other state organizations having program responsibilities. The Department's Minerals, Mining, and Superfund Program, Oil and Gas Team is responsible for, and has authority over all Class II Injection wells. This Office is responsible for administering the State Program for injection wells under its jurisdiction including, but not limited to, reports, permits, monitoring, inspection and enforcement actions.

B. Review and Modification

This Agreement shall be reviewed annually as part of the annual program grant and State/EPA Agreement ("SEA") process. The annual program grant and the SEA shall be consistent with this Agreement and may not override this Agreement.

This Agreement may be modified upon the initiative of the Department or the EPA. Modifications must be in writing and must be signed by the Secretary of the Department and the Regional Administrator. Modifications become effective when signed by both parties.

C. Conformance with Laws and Regulations

The Secretary shall administer the UIC program in accordance with the State's UIC October 24, 2024 Program Description, this MOA, the SDWA, applicable South Dakota Codified Law, the applicable Administrative Rules of South Dakota, current federal policies and regulations, priorities established as part of the annually approved State UIC grant, and any separate

¹ State of South Dakota, Office of the Governor, Executive Order 2021-01. <https://sdsos.gov/general-information/executive-actions/executive-orders/assets/2021-03.PDF>.

working agreement which shall be entered into with the Regional Administrator as necessary for the full administration of the UIC program.

D. Responsibilities of Parties

The parties agree to maintain a high level of cooperation and coordination between the Department and EPA to assure successful and effective administration of the UIC program. In this partnership the Regional Administrator will provide the Department with technical and policy assistance on program matters.

The Regional Administrator is responsible for keeping the Department apprised of the meaning and content of Federal regulations, guidelines, technical standards, policy decisions, directives, and any other factors which affect the UIC program.

The Department shall promptly inform the EPA of any proposed, or enacted modifications to laws, regulations or guidelines, and any Judicial decisions or administrative actions which might affect the UIC Program and the Department's authority to administer the program. The Department shall promptly inform EPA of any resource allocation changes which might affect the State's ability to administer the program.

E. Sharing of Information

Any information obtained or used by the Department under the UIC program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit the claim to EPA when providing EPA such information. Any information obtained from the State and subject to a claim of confidentiality will be treated in accordance with 40 CFR Part 2.

EPA shall furnish to the Department the information in its files which the Department needs to implement its approved program. Information submitted to EPA under a claim of confidentiality shall be subject to conditions in 40 CFR Part 2 and Federal provisions governing data transfer.

The State shall retain records used in the administration of the UIC program for three years unless an enforcement action is pending. In that case all records pertaining to such action shall be retained until such action is resolved. The State shall assure retention and availability of all monitoring records from one mechanical integrity test to the next.

F. Duty to Revise Program

Within 270 days of revisions or amendments to requirements under Section 1421, the State shall demonstrate that the State program meets the requirement of Section 1421 (b) and represents an effective program under Section 1425 (b).

G. General Provisions

Nothing in this Agreement is intended to affect any UIC program requirement, including any standards or prohibitions, established by State or local law as long as the State or local requirements are not less stringent than: (1) any set forth in the UIC regulations; and (2) other requirements or prohibitions established under the SDWA or applicable regulations.

Nothing in this Agreement shall be construed to limit the authority of the EPA to take action pursuant to Sections 1421, 1422, 1423, 1424, 1425, 1431 or other Sections of the SDWA.

The Regional Administrator assigns responsibility for implementation of this Agreement to the Manager of the Drinking Water Branch, Water Division, EPA, Region 8.

H. Public Notification and Hearing

Applications for injection are subject to statutory requirements pursuant to South Dakota Codified Law (SDCL) § 45-9-58 and regulatory requirements pursuant to Administrative Rules of South Dakota (ARSD) Chapter 74:12:09.

The Secretary must publish a Notice of Recommendation of the Department's decision to issue, deny, suspend, revoke, transfer, or renew any permit application or petition filed for an injection well in a newspaper of general circulation in the county where the affected land, or some part thereof, is situated. The Department shall provide a copy of the notice of recommendation to the applicant before publication.

The applicant must give notice of any hearing that may affect property interests by mailing the notice by certified mail, return receipt requested, to any person whose property may be affected by the hearing. As proof of service, the applicant shall file with the South Dakota Board of Minerals and Environment (Board) an affidavit declaring that the notice was mailed and the certified mail return receipt. Any person who cannot be served notice by certified mail may be served notice of the hearing by publication.

The Notice of Recommendation must indicate whether the Secretary is recommending approval or denial of an application and include any recommended permit conditions.

Unless an interested person files a petition to initiate a contested case hearing in accordance with ARSD Chapter 74:09:01 within 20 days after the final date of publication of the notice of recommendation, the Secretary's recommendation is final. If the Secretary's recommendation is for approval or conditional approval, the permit or approval shall be issued as final. If a hearing is scheduled on the application, the final agency decision may be issued by the Board.

The Notice of Recommendation must include the information in the previous paragraph.

I. Specific Agreements

- (1) ***Aquifer Exemptions.*** An aquifer or portion thereof which would otherwise meet the definition of underground source of drinking water (USDW) in Section I(3)d may be exempted from protection under ARSD Chapter 74:12:07 by the Secretary under the

provision of ARSD § 74:12:07:24 after conducting the Notice of Recommendation procedure in ARSD Chapter 74:12:09. When aquifer exemptions are needed, the Department will provide to the EPA, at the earliest possible date, all information submitted by the applicant or assembled by the State relevant to the proposed exemption. The EPA agrees to review this information and comment to the Department within 30 days of receipt, or by the date of the public hearing, whichever date occurs latest. The comments will address the adequacy of the showing relative to ARSD § 74:12:07:24, EPA guidance documents and regulations, and the need to protect USDWs. Objection raised by EPA will be resolved before any aquifer exemption is issued as final by the Board. Aquifer exemption for Class II wells will be consistent with exemptions made by the State under the Section 1422 program. The Department recognizes that the State's 20-day public comment period may not be adequate to fulfill the EPA requirement for a 30-day public comment period for aquifer exemptions. Therefore, the Department acknowledges that the EPA may need to initiate its own public review process for approvals of aquifer exemptions.

(2) **Mechanical Integrity.** The State shall not allow any mechanical integrity tests other than those specified in ARSD § 74:12:07:18. For both new and converted injection wells, mechanical integrity must be demonstrated by pressure testing before annulus pressure monitoring will be accepted. Mechanical integrity must be maintained at all times, demonstrated at least once every five years, and must be proven on all injection wells which receive corrective action before the well can be brought back online.

(3) **Applicable Regulations/Requirements**

a. **Casing and Cementing Requirements.** ARSD § 74:12:07:10 requires that wells used for the injection of any substance must be constructed with adequate casing, tubing, and packer. There shall be no leak in the casing, tubing, or packer that results in the well failing a mechanical integrity test. The wells must be cased and cemented to prevent fluid movement into freshwater resources. Operators shall repair or plug wells with defective casings, in compliance with ARSD §§ 74:12:02:13, 74:12:03:01, and 74:12:03:02.

The Department agrees that surface casing shall be completed to reach a depth below all known or reasonably estimated utilized domestic freshwater levels within a 5-mile radius of the injection well. Surface casing shall be set in or through an impervious formation and shall be cemented with sufficient cement to fill the annulus to the top of the hole. Procedures for setting surface casing are found at ARSD § 74:12:02:12. In areas where freshwater aquifers are of such depth to make it impractical to set the full amount of surface casing necessary to isolate freshwater aquifers as discussed above, the owner may choose to cement the production string to accomplish the same results. If unanticipated freshwater zones are encountered after setting the surface casing, the

zones shall be protected by cementing the production string with a solid cement plug extending 50 feet above and below each freshwater aquifer.

- b. **Plugging and Abandonment.** The operator must notify the Secretary before plugging and abandoning of a well. This notification must include the proposed plugging method. Before a well is abandoned, it must be plugged in a manner that will permanently confine all oil, gas, water, and other fluids to the strata in which they originally occurred. Plugging requirements may vary from area to area depending on geological characteristics. Prior to the plugging and abandonment of an injection well, approval must be obtained from the Secretary. Plugging must conform to the following requirements in ARSD § 74:12:03:02. The operator must file a complete plugging record within 30 days after plugging and abandonment operations are complete on a form provided by the Secretary.
- c. **Completion Reports/Injection Activities.** The Order of the Board of Minerals and Environment approves injection for disposal of produced waters or enhanced recovery according to the content of the application and a showing that the project will not cause degradation of a freshwater resource, except where an aquifer exemption is approved (ARSD § 74:12:07:01). The operator shall notify the Department upon start of injection (ARSD § 74:12:07:11(1)). A completion report must be filed with the Department within 30 days of well completion (ARSD § 74:12:02:17).

It is agreed that the Department will use the well completion report to verify that the well complies with the application and its approval by the Board. If there is a significant difference, the owner/operator will be required to provide immediate explanation or the Department will initiate enforcement action.

- (4) Additional Definitions. The following terms defined in this section are used in the Program Description, or this MOA or the ARSD, but are not defined in the ARSD or SDCL.

Confining Zone: Geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above or below an injection zone.

Injection zone: Geological formation, group of formations, or part of a formation receiving fluids through a well.

Underground Source of Drinking Water: An aquifer or its portion:

- (a)
 - (1) Which supplies any public water system; or
 - (2) Which contains a sufficient quantity of ground water 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
- (b) Which is not an exempted aquifer.

III. COMPLIANCE MONITORING

A. General

The Department operates and maintains a database management system that provides a timely and effective compliance monitoring system to track compliance with permit conditions and program requirements. For purposes of this Agreement the term "compliance monitoring" or "compliance evaluation" shall refer to all efforts associated with determining compliance with UIC program requirements.

B. Compliance Schedule

The Department agrees to maintain procedures to receive, evaluate, retain and investigate all notices and reports that are required by permit compliance schedules and program regulations. These procedures shall also include the necessary elements to investigate the failure of persons required to submit such notices and reports. The Department shall initiate appropriate compliance actions when required information is not received or when the reports are not submitted.

C. Review of Compliance Reports

The Department shall conduct a timely and thorough review of all such reports to determine compliance status. The Department shall operate a system to determine if: (1) the reports required by permits and program regulations are submitted; (2) the submitted reports are complete and accurate; and (3) the permit conditions and program requirements are met.

D. Inspection and Surveillance

The Department agrees to inspection and surveillance procedures to determine compliance or noncompliance with the applicable requirements of the UIC program. Surveys or other methods of surveillance shall be utilized to identify persons who have not complied with permit applications or other program requirements. Any index, or inventory obtained for such facilities or activities shall be made available to the Regional Administrator upon request.

The Department shall conduct periodic investigations of the facilities and activities subject to regulatory requirements. These compliance monitoring inspections shall be performed to assess compliance with all UIC permit conditions and program requirements. These inspections shall be conducted to determine the compliance or noncompliance with the issued permits, verify the accuracy of the information submitted by permittees in reporting forms and

monitoring data, and to verify the adequacy of sampling, monitoring and other methods used to provide information.

E. Information from the Public

The Department shall provide opportunity for the public to submit information on alleged violations. Such information shall be dealt with in a manner ensuring proper consideration.

F. Authority to Enter

State officials engaged in compliance monitoring and evaluation have the authority to enter any site or premise subject to regulation, or to review and copy the records of relevant program operations where such records are kept.

G. Admissibility

Any investigatory inspection shall be conducted and samples and other information collected in a manner to provide evidence admissible in an enforcement proceeding, including in court.

IV. ENFORCEMENT

A. General

The Department is responsible for taking timely and appropriate enforcement action against persons in violation of program requirements, compliance schedules, technical requirements, and permit conditions. This includes violations detected by State or Federal inspections.

Failure by the State to initiate enforcement actions against a substantive violation may be the basis for EPA's determination that the State has failed to take timely enforcement action.

B. Enforcement Mechanism

The Department shall restrain immediately and effectively any person engaging in any unauthorized activity or operation which is endangering or causing damage to public health or the environment as applicable to the program requirements. When administrative action fails to produce the desired results the state has the authority, under SDCL § 45-9-70, to shut down any operation and place under seal any property or equipment. In addition, injunctive action may be filed by the Department on behalf of the Board to restrain violations of SDCL Ch. 45-9 or any rule, regulation, or Order of the Board. Administrative action is normally filed first, although injunctive action may be filed at any time.

The State also has the means to sue in courts of competent jurisdiction to prohibit any threatened or continuing violation of any program requirement. Additionally, the State has authority to sue to recover civil penalties and criminal remedies as necessary.

C. Public Participation

The Department shall provide the public an opportunity to comment on the State enforcement process, including comment by any citizen having an interest which may be affected. The Department agrees to publish adequate legal notice at least twenty days prior to the hearing in accordance with ARSD § 74:09:01:03.

V. EPA OVERSIGHT

A. General

The EPA, Region 8 shall oversee the Department's administration of the UIC program on a continuing basis to assure that such administration is consistent with this MOA, the State's UIC grant application, the State/EPA Agreement, and all applicable requirements embodied in current regulations, policies and Federal law.

In addition to the specific oversight activities listed in this section, EPA may, from time to time request, and the State shall submit specific information and provide access to files necessary for evaluating the Department's administration of the UIC program.

B. Review of Permits

The EPA may periodically request the opportunity to review and comment on a sampling of State permits.

C. EPA Inspections of Facilities

EPA may conduct periodic site and activity inspections on a sample of injection wells. Operations having the greatest potential to endanger USDWs will receive priority in making site inspection decisions.

If possible, facility inspections will be conducted jointly with the State. The EPA shall give the Department adequate notice (minimum of fourteen (14) working days) to facilitate joint facility inspections.

The Regional Administrator may choose to conduct inspections independently. In that case, the Regional Administrator shall notify the Department of any proposed facility inspections within the State of South Dakota at least fourteen (14) working days before any inspection. The Regional Administrator may waive this procedure for emergency situations or other reasons where it is impossible to give advance notification. The State must not use advance notification information to inform the person whose property is to be entered of the pending inspection.

D. Program Evaluation

EPA shall conduct at least annually, performance evaluations of the Department's UIC Program using State Reports and occasional reviews of State Program records to determine State Program consistency with the primacy program agreements, the SDWA, and applicable regulations, guidance, and policies. The review will not include a review of financial expenditures, but reviews on progress toward program implementation, changes in the program description, and efforts toward progress on program elements.

DRAFT

VII. SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement.

The State of South Dakota by:

Approved: _____
Hunter Roberts, Secretary
Department of Agriculture and Natural Resources
Date

Approved: _____
Glenn Blumhardt, Chairman - At Large
Board of Minerals and Environment
Date

United States Environmental Protection Agency by:

Approved: _____
KC Becker, Regional Administrator
U.S. Environmental Protection Agency Region 8
Date

UNDERGROUND INJECTION CONTROL PROGRAM FOR CLASS II WELLS

ATTORNEY GENERAL'S STATEMENT

The State of South Dakota Underground Injection Control (UIC) Program relating to Class II wells was approved by the EPA pursuant to Section 1425 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f et seq. Notice of this approval was published in the Federal Register on October 24, 1984; the effective date of this program is December 7, 1984. There have been changes to the South Dakota Codified Laws (SDCL), the Administrative Rules of South Dakota (ARSD) and the name of the regulating agency since the approval date of the original primacy program. Therefore, the State has submitted for EPA review an updated Program Description and Memorandum of Agreement. I hereby certify, pursuant to the provisions of Part C of the SDWA and 40 C.F.R. § 145.24(a), that in my opinion the laws of the State of South Dakota provide adequate authority to apply for, assume and carry out the program set forth in the Program Description and the Memorandum of Agreement submitted by the State of South Dakota pursuant to Section 1425 of the SDWA.

I. PROHIBITION OF UNAUTHORIZED INJECTION.

A. Statutes: SDCL §§ 45-9-2, 45-9-11, 45-9-13, 45-9-14, 45-9-57, 45-9-58, 45-9-63; SDCL §§ 1-26-16 through 1-26-37, inclusive.

B. Regulation: ARSD § 74:12:07:01.

C. Remarks of Attorney General: It is my opinion that SDCL §§ 45-9-2, 45-9-11, 45-9-13, 45-9-14, and 45-9-63 provide authority for the Board of Minerals and Environment, hereinafter "Board," to regulate:

- 1) underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production;
- 2) any underground injection for the secondary or tertiary recovery of oil or natural gas; and,
- 3) any activities relating to Class II wells as defined in 40 C.F.R. § 144.6(b).

SDCL §§ 45-9-1.1 and 45-9-11 give the Board specific authority to regulate, inter alia: the drilling, producing, plugging, and all other operations for the production of oil or gas; operations to increase ultimate recovery, including the introduction of gas, water or other substances into producing formations; and the disposal of salt water and oil field wastes. SDCL § 45-9-13 grants the Board authority to promulgate and enforce all regulations and orders necessary to prevent waste. Waste, as defined at SDCL § 45-9-2(15)(f), includes the underground or above-ground waste in the production or storage of oil or gas. SDCL § 45-9-14 grants the Board authority to require the drilling, casing, operation, and plugging of wells to, inter alia, prevent the pollution of freshwater supplies by oil, gas, or salt water. There is no definition of

"wells;" therefore, the word to be defined as per its ordinary meaning, and would include any pit, hole, or shaft sunk into the earth.

Therefore, the scope of the State's authority is equal to that necessary to seek the Administrator's approval of its UIC Program for Class II wells pursuant to Section 1425 of the SDWA.

The Board has exercised that requisite authority by promulgating ARSD § 74:12:07:01 which, in my opinion, prohibits any underground injection by a Class II well without a permit, as required by SDWA Section 1421(b)(1)(A). The permitting process, which includes public notice and hearing (see ARSD Ch. 74:12:09 and SDCL §§ 45-9-58 and 45-9-74), results in a permit which I find to be an enforceable permit in a court of law.

II. PROHIBITION OF ENDANGERING DRINKING WATER SOURCES.

- A. Statutes: SDCL §§ 45-9-11 and 45-9-14.
- B. Regulations: ARSD §§ 74:12:02:11; 74:12:02:12(1); 74:12:07:01; 74:12:07:03(13); 74:12:07:10; 74:12:07:16; and 74:12:07:17.
- C. Remarks of Attorney General: SDCL §§ 45-9-11 and -14 provide, in my opinion, adequate authority for the Board to require that an applicant for a Class II underground injection well permit satisfy the State that the proposed injection will not endanger drinking water sources. See description of those statutes in Paragraph I(c), supra.

Pursuant to that authority, the Board promulgated ARSD §§ 74:12:07:01 and 74:12:07:03, which require the applicant for a Class II well injection permit to make a showing that the injection will not cause any degradation of a freshwater resource.

"Freshwater resource" is defined at ARSD § 74:12:01:01(10). In Section I(4) of the Memorandum of Agreement the term "underground source of drinking water" is defined in a manner identical to the definition of "underground source of drinking water" in 40 C.F.R. Part 144.3. Although "degradation" is not specifically defined by state statute or regulation, state law provides that words are to be given their ordinary meaning unless otherwise specifically defined. In its ordinary sense, "degradation of freshwater resources" means to lower the quality of such water. Thus, in my opinion, the requirement of ARSD § 74:12:07:01 that the applicant show that the injection will not degrade freshwater resources is equivalent to a showing that the injection will not endanger drinking water sources.

This satisfies the requirement of Section 1421(b)(1)(B) of the SDWA.

III. INSPECTION, MONITORING, RECORD-KEEPING AND REPORTING.

- A. Statutes: SDCL §§ 45-9-11; 45-9-13; 45-9-14; 45-9-17; 45-9-18; 45-9-19; 45-9-55.

- B. Regulations: ARSD §§ 74:12:07:12; 74:12:07:13; 74:12:07:14; 74:12:07:15; 74:12:07:16; 74:12:02:17; 74:12:07:22; and Ch. 74:12:08.
- C. Remarks of Attorney General: SDCL § 45-9-11 and 45-9-13 provide broad general authority to the Board to promulgate regulations reasonably necessary to administer SDCL Ch. 45-9. SDCL § 45-9-11 and 45-9-14 provide additional general rule-making authority to the Board for the purpose of regulating underground injection. Those statutes provide adequate authority for the Board to enact regulations concerning inspection, monitoring, record-keeping and reporting in connection with underground injection activities. SDCL §§ 45-9-17, 45-9-18 and 45-9-55 provide specific authority for the Board to require reports or record-keeping as needed and to conduct inspections whenever the Board determines inspections are necessary. Finally, SDCL § 45-9-19 provides that it is a Class 1 misdemeanor to provide false information in any of the reports or records required by the chapter or rules promulgated thereunder.

The foregoing statutes provide, in my opinion, the necessary authority for the Board to have adopted the regulations cited above relating to inspection, monitoring, record-keeping and reporting. These regulations and statutes meet the requirements for inspection, monitoring, record-keeping, and reporting set forth at Section 142I(b)(1)(C) of the SDWA.

IV. AUTHORITY OVER FEDERAL AGENCIES AND LANDS.

- A. Statutes: SDWA Section 1447(a); SDCL 45-9-53.
- B. Remarks of Attorney General:
- 1) Lands - By SDCL § 45-9-53, the state program applies to all lands located in the State, including those owned by any government unless specifically exempted by federal statutes. I am aware of no federal statute exempting any federal lands in South Dakota from the state law concerning oil and gas conservation. In my opinion, then, the State UIC Program extends to all federal land in South Dakota outside the Indian reservations.
 - 2) Federal Agencies - Section 1447(a) of the SDWA provides that federal agencies may be subject to state regulation of activities which involve underground injection endangering drinking water. The State has clearly asserted its authority to regulate those activities, even when conducted by federal agencies. The statutes in SDCL Ch. 45-9 uniformly address regulation of oil and gas activity without regard to who or what entity may be conducting them. No exception for activities conducted by the federal government is found in any state statute or regulation, and the comprehensive nature of the regulatory program leads me to the opinion that federal agencies are intended to be governed by the state program.

Because the State UIC Program extends to underground injections by federal agencies and to underground injection throughout the state regardless of

whether the land is owned or leased by the United States, South Dakota's UIC Program satisfies the requirements of Section 142l(b) (1) (D) of the SDWA.

V. ENFORCEMENT.

A. Statutes: SDCL §§ 45-9-54 through 45-9-72, inclusive.

B. Regulations: ARSD § 74:12:08:04.

C. Remarks of Attorney General: It is my opinion that the above-referenced statutes and regulations give the Board substantial remedies with which to enforce SDCL Ch. 45-9 and the regulations promulgated thereunder. SDCL § 45-9-54 specifically grants the Board the jurisdiction and authority necessary to effectively enforce the chapter. SDCL § 45-9-55 and ARSD § 74:12:08:04 establish procedures for the investigation of complaints and the initiation of legal proceedings as required by the circumstances and the Board.

SDCL § 45-9-59 gives the Board specific authority to subpoena witnesses and require the production of records, books, and documents for examination at any hearing or investigation; this is enforceable by punishment for contempt pursuant to SDCL § 45-9-60. SDCL § 45-9-64 gives the Board specific authority to issue an emergency order, which may be effective for no more than fifteen days, without notice or hearing. SDCL §§ 45-9-68 and 45-9-69 subject any person violating the provisions of SDCL Ch. 45-9 or the regulations promulgated thereunder, to a civil penalty of no more than five hundred dollars for each act of violation and for each day of the violation(s). SDCL § 45-9-70 authorizes the Department, pursuant to an order of the Board: to shut down any operation and place under seal any property or equipment for failure to comply with SDCL Ch. 45-9; to enter upon any land and perform any operation which the operator fails to perform when ordered to do so in writing; to recommend cancellation of any state lease and forfeiture under the bond for noncompliance with the applicable law, lease terms, and regulations. As a matter of procedure, the Board, prior to utilizing this remedy, would hold a hearing pursuant to SDCL Ch. 1-26 (the South Dakota Administrative Procedure Act). (Notice to the operator would be given pursuant to SDCL § 45-9-58.) The Board would then order the operator to perform the required action; if the action is not performed within a specified time limit, the Department would perform the act or shut down and place the operation under seal.

Finally, SDCL § 45-9-71 authorizes the Board to file injunctive action, after all administrative remedies have been exhausted, to restrain violations of SDCL Ch. 45-9 or of any rule, regulation, or order of the Board. This same statute authorizes the involved court to issue injunctions, including temporary restraining orders and preliminary injunctions, as warranted. (Note: In addition, SDCL § 45-9-72 gives any person adversely affected by a violation, authority to bring an injunctive action if the Board fails to act.)

These statutes and regulation provide sufficient remedies to the Board to enable it to effectively enforce SDCL Ch. 45-9 and the regulations promulgated thereunder.

VI. SUMMARY.

I have reviewed the Program Description and the Memorandum of Agreement submitted by the State of South Dakota Department of Agriculture and Natural Resources. It is my opinion that the UIC Program contained therein and the enforcement procedures described herein are fully authorized by state law. The Program represents an effective program to prevent underground injection which endangers drinking water sources as contemplated by Section 1425 of the SDWA.

Dated this ____ day of October, 2024

SOUTH DAKOTA ATTORNEY GENERAL'S OFFICE

By: Steven R. Blair, Deputy Attorney General

PROGRAM DESCRIPTION

SOUTH DAKOTA

DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

UNDERGROUND INJECTION CONTROL

SAFE DRINKING WATER ACT SECTION 1425

KRISTI NOEM, GOVERNOR

October 24, 2024

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STATE OF SOUTH DAKOTA

SAFE DRINKING WATER ACT SECTION 1425

CLASS II UNDERGROUND INJECTION CONTROL PROGRAM

INTRODUCTION

The 1980 amendments to the Safe Drinking Water Act (SDWA) added Section 1425 which provides an alternative means for States to acquire primary enforcement responsibilities for the control of underground injection related to the recovery and production of oil and natural gas. In enacting Section 1425, Congress intended that States be offered an alternative to the detailed requirements of the regulations promulgated at 40 CFR Parts 122, 123, 124 and 146. Nevertheless, Section 1425 does require a state to demonstrate that such portions of its Underground Injection Control program:

- 1) Meet the requirements of Section 1421 (b)(1)(A-D); and
- 2) Represent an effective program to prevent injection which endangers underground sources of drinking water (USDWs). Since South Dakota has had an existing program for controlling underground disposal from oil and gas related activities, the state chose to fulfill the requirements for primary enforcement under Section 1425.

Under this alternative a state must make a demonstrable showing that its program meets five conditions:

- A. Section 1421 (b)(1)(A) requires that an approvable program prohibit any underground injection in the State which is not authorized by permit or rule.
- B. Section 1421 (b)(1)(B) provides that an approvable State program require that:
 1. The applicant for a permit must satisfy the State that the underground injection will not endanger drinking water sources; and
 2. No rule may be promulgated which authorizes any underground injection which endangers drinking water sources.
- C. Section 1421 (b)(1)(C) requires that an approvable State program include inspection, monitoring, record keeping, and reporting requirements.
- D. Section 1421 (b)(1)(D) requires that an approvable State program apply to: 1) underground injection by Federal Agencies; and 2) underground injections by any other person, whether or not occurring on property owned or leased by the United States.
- E. Section 1425 (a) requires that an approvable state program represent an effective program to prevent underground injection which endangers USDWs.¹

The UIC program for Class II wells in the State of South Dakota, except those on Indian lands, is the program administered by the South Dakota Department of Agriculture and Natural

¹ U.S. ENV'T PROT. AGENCY, *Guidance for State Submissions under Section 1425 of the Safe Drinking Water Act*, Ground Water Program Guidance #19. https://www.epa.gov/sites/default/files/2020-02/documents/guidanceforstatesubmissionsundersection1425ofthesdwa_0.pdf.

Resources (DANR). The original primacy program was approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the Federal Register on October 24, 1984; the effective date of this program is December 7, 1984.²

In the State of South Dakota the Board of Minerals and Environment is charged with regulation of the petroleum industry in South Dakota through SDCL Ch. 45-9. The Board assumed the functions in this area previously performed by the Board of Water and Natural Resources. (SDCL § 45-9-1.1). The Board was created by the South Dakota Legislature and is authorized to promulgate rules and issue permits in the following areas: air quality, solid waste, hazardous waste, mining, and oil and gas exploration and production activities (SDCL §§ 1-41-19, and SDCL Chs. 34A-01, 34A-06, 34A-11, 45-06, 45-06B, 45-9). The Board consists of nine members appointed by the Governor, not all from the same political party, for a term of four years (SDCL § 1-41-19).

The functions of the Board include the quasi-legislative, and quasi-judicial functions associated with the enforcement of SDCL Ch. 45-9.³ Thus the Board is responsible for the permitting, enforcement and regulatory functions associated with SDCL Ch. 45-9.

The South Dakota UIC Program is implemented by the Oil and Gas Team under the DANR Minerals, Mining and Superfund Program and is responsible for fulfilling the directives of the Board of Minerals and Environment. This entails not only the regulation of injection wells through permitting, monitoring, inspections, record keeping, and enforcement, but also serving as the professional staff in assisting the Board of Minerals and Environment. DANR's headquarters office is located at 523 East Capitol Avenue, Pierre, SD. The DANR organizational structure is shown in Figure 1.

SDCL § 45-9-53 extends the authority of the Board to regulate oil and gas operations, including injection activities, on all lands located in the state, however owned, including any lands owned or administered by any government or any agency or political subdivision thereof, excepting only such land as shall be specifically exempted by federal statute.

² Title 40 of the Code of Federal Regulations § 147.2100 State-administered program—Class II wells.

³ South Dakota Codified Law, Chapter 45-9, Oil and Gas Conservation. Law <https://sdlegislature.gov/Statutes/45-9>

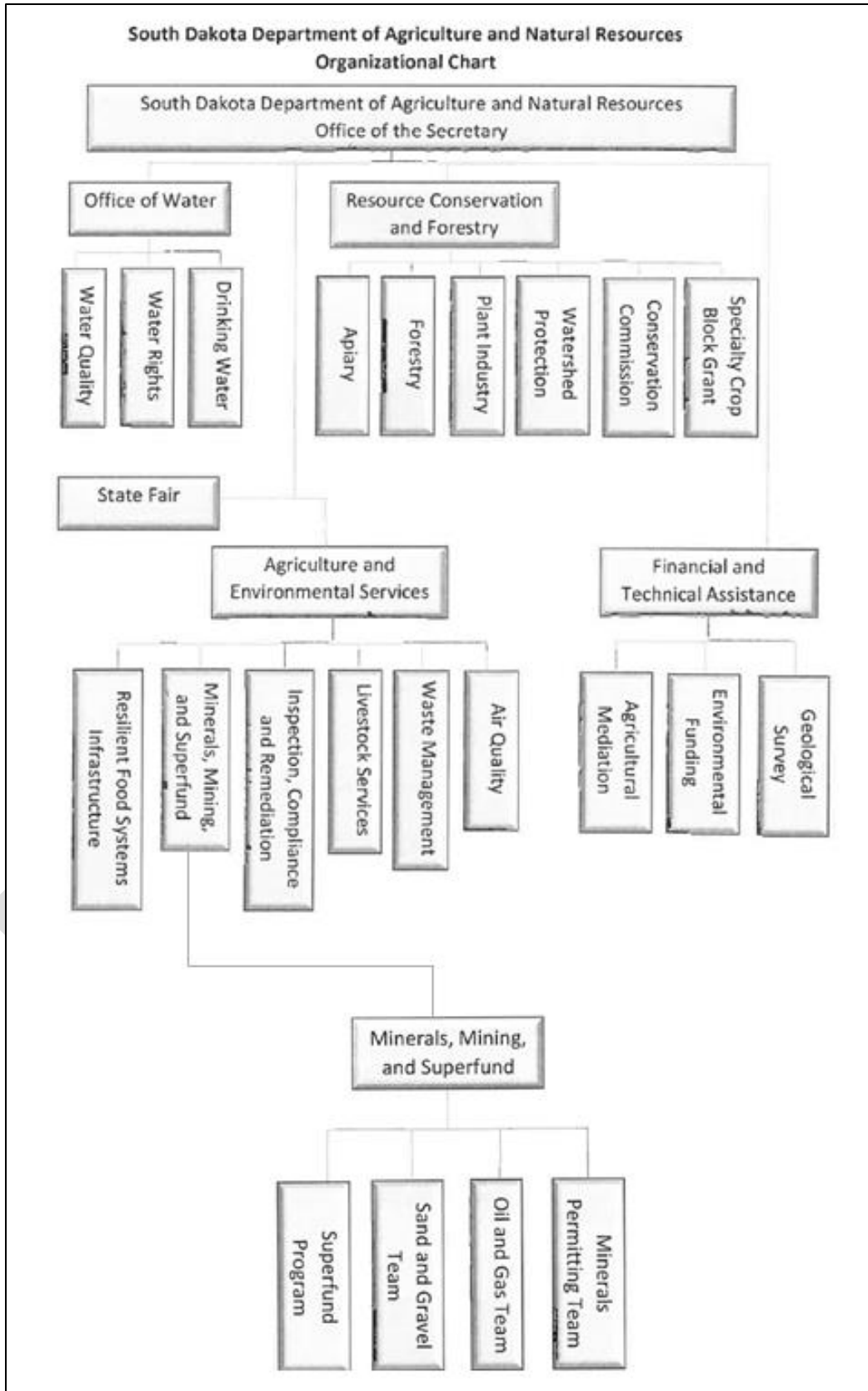


Figure 1. South Dakota DNR Organizational Chart

UIC REGULATIONS

On May 28, 1974, the Administrative Rules of the Board of Natural Resources Development for the conservation of oil and gas in South Dakota were adopted. These rules, with subsequent amendments, govern the oil and gas industry in South Dakota.

In September 1981 and September 1983, the Board of Minerals and Environment adopted amendments to ARSD Ch. 74:10:09 providing for regulation of underground injection. These amendments made it possible for South Dakota to meet the requirements of Section 1425.

In 2012, the Board of Minerals and Environment repealed South Dakota's Oil & Gas Conservation rules, ARSD Art. 74:10, and adopted ARSD Art. 74:12⁴ in replacement of ARSD Art. 74: 10. This adoption streamlined and refined South Dakota's regulatory requirements and incorporated the current best management practices of industry and environmental protection. The Department was able to update citations to other rule chapters, correct form and style errors, and eliminate outdated rules. ARSD Chapter 74:12:07 is the current rules for underground injection in South Dakota; Chapter 74:12:07 replacing the repealed Chapter 74:10:09.

PERMIT REQUIREMENTS

Any company interested in utilizing a Class II injection well in South Dakota must submit an application to the DANR. The minimum required elements of an application are listed in ARSD § 74:12:07:03.

They include:

- (1) Area of Review Map
 - a. For vertical wells, the area of review which is determined by a plat extending at least one-half mile from and showing the location of the existing and proposed injection well or wells, the location of all oil and gas wells, and location of water wells, including abandoned and drilled wells, dry holes and current drilling locations, the names of operators and surface and mineral owners and each offset operator;
 - b. For horizontal wells, the information listed in (1) above within one-half mile extending in all directions from the horizontal well and any sidetracks;
- (2) The formations from which wells are producing or have produced;
- (3) The name, description, and depth of the injection zone or zones and overlying confining zone or formations;
- (4) Information regarding well type, construction, date of drilling, depth, formation tops, record of plugging or completion, and any additional pertinent information which the Secretary determines is necessary to make an informed judgment, including but not

⁴ Administrative Rules of South Dakota, Article 74:12, Oil and Gas Conservation.
<https://sdlegislature.gov/Rules/Administrative/74:12>

limited to drill stem tests, water quality analyses, and well logs for any of the wells identified in the area of review;

- (5) Information on abandoned and active water wells;
- (6) A description of the injection well's casing or the proposed casing program and the proposed methods for demonstrating mechanical integrity of the injection wells;
- (7) The geologic name and the interval and depth to the bottom of all freshwater resources which may be affected by the injection;
- (8) The names and addresses of the operators of the project;
- (9) Schematic drawings of surface and subsurface construction details of the well;
- (10) The source and nature of the substance to be injected, its compatibility with the receiving formation, and the estimated average and maximum daily amounts to be injected;
- (11) The average and maximum estimated injection pressure;
- (12) A narrative description of any proposed production stimulation program;
- (13) An analysis of any corrective action on wells identified on the map described in (1) above;
- (14) The injection zone characteristics, including porosity, compressibility, and intrinsic permeability;
- (15) The expected project life; and
- (16) The surface owner's contact information.

In addition, ARSD § 74:12:07:04 requires that an applicant submit a copy of the application to each operator in the pool on or before the date the application is filed with the Board.

A UIC permit application may not be processed unless it is complete (ARSD § 74:12:07:03).

A UIC permit application may be issued for the operating life of the well. The Secretary is required to review each UIC permit at least once every five years to determine whether modifications to the permit are necessary, or whether the permit should be terminated (ARSD § 74:12:07:05).

A UIC permit may be transferred from one operator to another. To transfer a UIC permit a notice of transfer form must be completed and submitted to the Secretary. The transfer form must be accompanied by an organization report, a plugging and performance bond, information on the bonding company, the certification of applicant form, and a permission to inspect form. (ARSD § 74:12:04:18). If there will be a major modification in permitted injection volumes, pressures, or fluid characteristics, the new owner or operator must submit an application, to be approved by the Secretary, for a permit to inject modification before initiating the proposed changes at the well (ARSD § 74:12:07:06).

PUBLIC NOTIFICATION AND HEARING REQUIREMENTS

Applications for injection are subject to statutory requirements for opportunity of public hearing and for notice of a public hearing pursuant to SDCL §§ 45-9-58 and 45-9-74 and the notice of recommendation procedure pursuant to ARSD Ch. 74:12:09. These require:

- (1) A notice of the Secretary's recommendation be served by an applicant via certified mail to any person whose property may be affected by the hearing or by publication in a newspaper of general circulation in the country where the affected land, or some part thereof, is situated;
- (2) A minimum twenty-day intervention period;
- (3) If an interested person files a petition to intervene in the case within the 20-day intervention period, the board will hold a contested case hearing to consider testimony provided by the applicant and intervening parties, and determine whether the application is approved, denied, or conditionally approved;
- (4) Any person who files a petition requesting a contested case hearing by the deadline established by the board shall be entitled to be heard during the hearing SDCL § 45-9-74.

A notice of the Secretary's recommendation must include the Secretary's recommendation for approval, conditional approval, or denial of an application and any recommended permit conditions (ARSD § 74:12:09:02). The notice of the Secretary's recommendation must also state that unless an interested person files a petition to initiate a contested case hearing in accordance with ARSD Ch. 74:09:01 within 20 days after the final date of publication of the notice of recommendation, no hearing is held and the Secretary's recommendation is final (SDCL §§ 45-9-73 and 45-9-74; ARSD §§ 74:12:09:02 and 74:12:09:05). If the Secretary's recommendation is for approval or conditional approval, the permit or approval shall be issued in accordance with SDCL § 45-9-73.

If a hearing is scheduled for the application, it is subject to a final decision by the Board. Following a hearing, if the Board approves the application, an Order of the Board will be issued which authorizes the commencement of injection. Any conditions specific to the injection well will be recorded in the recommendation or order.

In addition to the public notice process set out in law and rule, the Oil and Gas Team announces draft permits on DANR's *Public Notices* webpage.⁵ Draft permits are posted on this webpage with links to permit documents. The public is able to submit comments in writing via mail or electronically through the DANR *One-Stop Public Notice Page and Comment Form* webpage. These webpages provide instructions on how to file a comment or petition and provide tips for submitting effective public comments. The public can subscribe to weekly email notifications listing new public notices added to the webpages. There is also a separate web page that

⁵ DANR, Oil & Gas in South Dakota, Public Hearing and Notices of Recommendation webpage. <https://danr.sd.gov/public/default.aspx>.

provides information on contested cases.⁶ The public is allowed to attend Board hearings and provide comments; however, the comments are not part of the record. Members of the public must submit a petition to become interveners to provide comments for the record.

Interveners become a party to the case and can attend a hearing to provide testimony before the Board. Testimony becomes part of the record. The Board adopts written findings of fact, conclusions of law, and orders that constitute their final decision, which the DANR serves on all parties.

Modifications to permits to inject may be made upon the request of an injection well operator, DANR, or private individual. Minor modifications may be enacted by the Secretary with the consent of the owner or operator of the injection well provided they will not threaten or degrade freshwater resources. ARSD § 74:12:07:09 describes minor modifications, including:

- (1) Correction of typographical errors and language changes that have no legal or substantive effect;
- (2) A requirement for more frequent monitoring or reporting by the permittee;
- (3) A change in ownership or operational control of a well if the Secretary determines that no other change in the permit is necessary, provided all other transfer of operator requirements are met;
- (4) A change in quantities or types of fluids injected which are within the capacity of the injection well as permitted and would not interfere with the operation of the injection well or its ability to meet conditions described in the permit and would not change its classification;
- (5) A change in construction requirements approved by the Secretary if the alteration complies with the conditions of the permit to inject;
- (6) Amendment of a plugging and abandonment plan which has been updated;
- (7) Recementing, reworking, or reconditioning a well; and
- (8) Deepening, extending, or sidetracking an existing well within the permitted injection horizon.

Any other modifications of permits to inject that cannot be processed as a minor modification are considered major modifications under ARSD § 74:12:07:08 and must conform to the application and notice of the Secretary's recommendation procedure in ARSD Ch. 74:12:09.

REQUIREMENTS FOR INJECTION OPERATIONS

ARSD Ch. 74:12:07 contains numerous requirements that an operator must comply with prior to, during and following an injection operation. This chapter specifies requirements for casing and cementing, notification, reporting and monitoring, recordkeeping, operating and plugging, drilling, and abandonment requirements.

⁶ DANR, Contested Case Proceedings webpage. <https://danr.sd.gov/public/ContestedCase.aspx>

(1) Casing and Cementing of Injection Wells (ARSD § 74:12:07:10)

Wells used for the injection of any substance must be constructed with adequate casing, tubing, and packer. There shall be no leak in the casing, tubing, or packer that results in the well failing a mechanical integrity test. The wells must be cased and cemented to prevent fluid movement into freshwater resources. Operators shall repair or plug wells with defective casings, in compliance with §§ 74:12:02:13, 74:12:03:01, and 74:12:03:02.

(2) Notification (ARSD § 74:12:07:11)

The following requirement for notice of commencement and discontinuance of injection operations shall apply to all injection projects:

- a. Immediately upon the commencement of injection, the operator shall notify the Minerals, Mining, & Superfund Program of the injection date;
- b. Within ten days after the discontinuance of injection operations, the operator shall notify the Minerals, Mining, & Superfund Program of the date of discontinuance and the reason for it; and
- c. Before an injection well is plugged, the plugging method shall be proposed by the operator and approved by the Secretary. The operator shall propose a procedure for well plugging prescribed in ARSD Ch. 74:12:03.

(3) Monitoring, Recordkeeping, Reporting, and Inspection

- a. ARSD § 74:12:07:13. The operator of an injection project shall keep accurate records and shall report monthly to the Minerals, Mining, and Superfund Program:
 - i. The amount of fluid produced;
 - ii. The volumes of fluid injected; and
 - iii. The average and maximum injection pressure.
- b. ARSD § 74:12:07:12. The owner or operator shall monitor the nature of the injected fluids at least once within the first year of injection activity and thereafter when changes are made to the fluid. All water quality analyses of the fluid must be submitted to the Secretary.
- c. ARSD § 74:12:07:14. The owner or operator 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 and copies of all reports required by this chapter for a period of at least three years from the date of the sample, measurement, or report; and
 - ii. The nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified in this chapter.
- d. ARSD § 74:12:07:15. The Secretary may sample all injection fluids at any time during the inspection operation and may inspect all injection facilities.

- e. ARSD § 74:12:07:16. The operator of an injection project shall orally report to the Secretary any downhole mechanical problems or well failures as soon as the owner or operator becomes aware of the circumstances, but no later than the end of the next business day. A written submission must be provided within five days from the time the owner or operator becomes aware of the circumstances. The written report must include:
 - i. A description of the problem and its cause;
 - ii. The period of the problem, including exact dates and times, and, if the problem has not been corrected, the anticipated time it is expected to continue; and
 - iii. Steps taken or planned to reduce, eliminate, and prevent recurrence of the problem.
- f. ARSD § 74:12:08:02. Inspections -- Scope. The secretary may inspect all oil, gas, or injection wells;
- g. ARSD § 74:12:02:01. Requirements to drill for oil or gas. (11) A completed permission to inspect form required by § 74:12:08:03;
- h. ARSD § 74:12:08:03. Inspections -- Permission. All applications for permits, approvals, or orders filed under SDCL chapter 45-9 or this article shall contain a notarized statement of the operator granting permission to the secretary for the performance of inspections required or authorized by SDCL chapter 45-9 or this article.

(4) Injection Prohibition (ARSD § 74:12:07:17)

Injection between the outermost casing protecting freshwater resources and well bore is prohibited.

(5) Mechanical Integrity (ARSD § 74:12:07:18)

- a. Demonstration of mechanical integrity required.
 - i. The operator of an injection project shall demonstrate the mechanical integrity of a new or converted injection well prior to operation.
 - ii. All injection wells must be tested at least once every five years thereafter as directed by the Secretary.
 - iii. Mechanical integrity must be maintained at all times and must be proven on all injection wells which receive corrective action before the well can be brought back online.
 - iv. The Secretary shall witness the mechanical integrity tests. The operator shall contact the Secretary at least 72 hours before each test.
 - v. The owner or operator shall demonstrate mechanical integrity by:
 - A. Monitoring the annulus pressure during a 15-minute pressure fall-off test, a 15-minute wellhead pressure test, or another Secretary approved test; and

- B. By submitting cementing records, which include cement bond logs and completion or recompletion records that demonstrate adequate cement is present to prevent vertical fluid migration adjacent to the well bore.
- b. ARSD § 74:12:07:19. Cessation of injection upon notice of lack of mechanical integrity.
 - i. If the Secretary determines, pursuant to § 74:12:07:18, that an injection well permitted under this chapter lacks mechanical integrity, the Secretary shall notify the owner or operator in writing.
 - ii. Unless the Secretary requires immediate cessation of the injection, the owner or operator shall cease injection into the well within 48 hours after receipt of the Secretary's notice.
 - iii. The Secretary shall require the owner or operator to either plug the well in accordance with the requirements of chapter 74:12:03, or perform any operation, monitoring, reporting, or corrective action necessary to prevent the movement of fluid into or between freshwater aquifers caused by the lack of mechanical integrity.
 - iv. The owner or operator may resume injection upon receipt of written notice from the Secretary that the owner or operator has demonstrated mechanical integrity pursuant to § 74:12:07:18.

(6) Correction of adverse effects required (ARSD § 74:12:07:20)

If monitoring or testing indicates that a freshwater resource may be degraded by the injection activities, the operator of an injection well shall make corrections on existing wells within the area of review which may serve as an avenue of contamination from proposed injection activities. The corrections shall be specified by the Secretary and may include recementing, reworking, reconditioning, redrilling, or a similar correction.

(7) Secretary to set permit limits (ARSD § 74:12:07:21)

- a. Maximum injection pressure.

The Secretary shall set a maximum injection pressure for each well which assures that the pressure in the injection zone during injection does not initiate new fractures in the confining zone, propagate existing fractures in the confining zone, or cause the movement of fluids into a freshwater resource. The injection pressure at the wellhead may not exceed the maximum permitted pressure, which must be calculated by methods approved by the Secretary. If requested by the operator, the Secretary may allow an increase in the maximum injection pressure utilizing the notice of recommendation procedure in chapter 74:12:09.
- b. Discretion to set maximum injection volume (ARSD § 74:12:07:22)

The Secretary may set a maximum volume of fluid to be injected to ensure that the injection will not cause cross-contamination of aquifers. The Secretary shall

determine the maximum injection volume based on radius-of-influence calculations, pressure buildup calculations, well construction data from wells in the radius of influence, or any other information considered necessary by the Secretary. The injection volume may not exceed the maximum permitted amount. The operator shall monitor injection volume monthly and shall report the injection volumes to the Secretary according to § 74:12:07:13. If requested by the operator, the Secretary may allow an increase in the injection volume, utilizing the notice of recommendation procedure in chapter 74:12:09.

(8) Drilling Requirements (ARSD § 74:12:07:23)

All wells drilled for the purpose of injection of any substance must meet the requirements of ARSD §§ 74:12:02:01 to 74:12:02:03, inclusive; 74:12:02:09 to 74:12:02:11, inclusive; and 74:12:02:12 to 74:12:02:18, inclusive. Not all of these requirements are related to the protection of USDWs.

More specifically these sections include:

ARSD § 74:12:02:01. Requirements to drill for oil or gas. A person drilling for oil and gas must obtain a permit to drill before initiating drilling activities. The Secretary may issue a permit to drill upon receipt of the following:

- (1) Organization report;
- (2) Application for permit to drill;
- (3) A plat map certified by a registered surveyor or engineer;
- (4) One hundred dollars permit fee required by SDCL 45-9-4;
- (5) Surety bond in the amount of \$50,000 per well or \$100,000 blanket bond set by SDCL 45-9-15;
- (6) A surface restoration bond consisting of a financial instrument approved by the Department, if the surface owner or lessee or a successor is not a party to the oil and gas leasing agreement;
- (7) Certification of negotiation with surface owner or lessee;
- (8) A bonding company information sheet;
- (9) Plans and specifications showing the construction details for any proposed site, including the size and location of all pits on the site, as well as a cross-section of the pit, showing the soil types;
- (10) A completed certification of applicant form required by SDCL 1-40-27;
- (11) A completed permission to inspect form required by § 74:12:08:03;
- (12) The source of the applicant's legal right to enter and initiate drilling on the affected land.

ARSD § 74:12:02:02. Requirements to drill a directional or horizontal well. In addition to the requirements set forth in § 74:12:02:01, an application for a permit to drill a directional or horizontal well shall include the following information:

- (1) Size, weight, and amount of all casing strings;
- (2) Top of cement behind each casing string;
- (3) Mud program;
- (4) Coordinates of the casing shoe;
- (5) Coordinates of the terminus;
- (6) Depth of kick-off point for horizontal well;
- (7) Azimuth of the horizontal segment;
- (8) Down-hole survey frequency;
- (9) Name and address of surveying contractor; and
- (10) Location of cementing tool.

The Secretary may issue a permit to drill a directional or horizontal well upon order of the board, or for areas not appropriately spaced, utilizing the notice of recommendation procedure in chapter 74:12:09.

ARSD § 74:12:02:03. Failure to commence drilling cancels permit -- Extensions. Failure to commence drilling, deepening, or reentering a well within one year after issuance of a permit cancels the permit unless an extension is granted in writing by the Secretary.

ARSD § 74:12:02:09 Identification sign required at each well.

ARSD § 74:12:02:10. Pit Construction and reclamation.

74:12:02:11 Oil, gas, and water strata required to be sealed. During construction of oil, gas, and injection wells all oil and gas bearing strata and freshwater resources must be sealed to preclude vertical migration of fluids or gas between strata. Freshwater or freshwater muds must be used from the surface to no less than 50 feet below the base of all locally utilized freshwater resources when drilling.

ARSD § 74:12:02:12. Procedures for setting surface casing and production casing.

The procedure for setting surface and production casing must meet the following conditions:

- (1) The surface hole must be drilled with fresh water. Surface casing must be set to protect freshwater resources as determined by the Secretary. Cement must be used in the annulus to circulate to the surface. Unless otherwise waived by the Secretary, no less than 100 feet of surface casing may be set under any circumstances; and
- (2) Freshwater resources not presently utilized must be protected by production casing and cement. Cementing in stages, if necessary, must be done for the purpose of sealing or separating aquifers with cement that circulates in the annulus.

The Secretary shall prescribe variations in the casing and cementing procedures from area to area. The operator shall file a cement bond log within 60 days after completion of a well.

ARSD § 74:12:02:13. Operators to seal off or plug wells with defective casings or cement. In any well that appears to have defective casing which will permit or may create underground waste or contamination, the operator must immediately seal off or plug and abandon the well according to § 74:12:03:02.

ARSD § 74:12:02:14. Blowout prevention equipment required. In all drilling operations proper and necessary precautions shall be taken for keeping the well under control, including the use of blowout preventers and high-pressure fittings attached to properly cemented casing string. If the drilling operation is in an area where a blowout preventer may not be needed an exception to the blowout preventer requirement may be granted by the Secretary.

ARSD § 74:12:02:15. Vertical deviation test. When a well is drilled or deepened, it must be done so that the deviation from the vertical distance between the top and bottom of the hole is at all times a minimum. The Secretary may require a test to determine the deviation from the vertical and may require the hole to be straightened, unless it is permitted as a directional or horizontal well.

ARSD § 74:12:02:16. Wellhead pressure testing equipment. Christmas tree fittings or well-head connections with a working pressure at least equivalent to the calculated or known pressure to which the equipment will be subjected shall be installed and maintained on all operating oil, gas, and Class II injection wells. Valves shall be installed and maintained in good working order to permit pressure readings to be obtained on both casing and tubing. The Secretary may at any time require a demonstration proving the effectiveness of the equipment.

ARSD § 74:12:02:17. Well logs, completion/recompletion reports, and sundry notice reports to be filed with Secretary.

74:12:02:18. Cores and samples required to be sent to the state geologist.

DESIGNATION OF EXEMPTED AQUIFER

ARSD § 74:12:07:24 states that the Secretary may exempt a freshwater resource from protection under Chapter 74:12:07 and designate it as an exempted aquifer if it does not currently serve as a source of drinking water, if the total dissolved solids content of the groundwater is more than 3,000 and less than 10,000 milligrams per liter, and if it cannot now and will not in the future serve as a source of drinking water for any of the following reasons:

- a. It produces hydrocarbons;
- b. It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; or
- c. It is so contaminated that it would be economically or technologically impractical to render the water fit for human consumption.

As part of the permit application review process, the Secretary will notify the injection well applicant/operator and EPA when an aquifer exemption is needed and follow the notice of

recommendation procedure in ARSD, Ch. 74:12:09. The Secretary will prepare the aquifer exemption request and submit the request to EPA for review and approval.

PLUGGING AND ABANDONMENT OF INJECTION WELLS

Any Injection well that will be abandoned shall follow the requirements of ARSD Ch. 74:12:03.

ARSD Ch. 74:12:03:05 Operators of wells responsible for plugging. The operator of any well drilled for oil or gas, whether cased or uncased, is liable and responsible for plugging.

REPORTING

DANR shall submit a narrative report to EPA semiannually and annually on the operation of its Class II program. DANR shall also submit reports in accordance with section 1425 of the SDWA to EPA using the UIC reporting application.⁷ Semiannual reports shall cover program activities from October 1 through March 31. Annual reports shall cover program activities from October 1 through September 31. Narrative reports shall be submitted to the Regional Office and reports shall be submitted to the EPA UIC reporting application no more than 60 days after the end of the reporting period. DANR will also submit the UIC injection wells inventory numbers to the EPA UIC reporting application by December 31st each year.

A copy of the UIC well inventory is supplied to EPA with the narrative reports. A summary of UIC well inventory numbers is reported annually to the EPA UIC reporting application.

ENFORCEMENT

Enforcement provisions for action against a violation of the oil and gas regulations are addressed in SDCL §§ 45-9-54 through SDCL 45-9-72.

Enforcement proceedings may be initiated by an interested party, the Secretary, or by the Board, upon its own motion. Immediately upon receipt of a complaint or at the request of the Board the Secretary shall cause an investigation of the complaint to be made. If the Secretary finds that sufficient cause exists for the complaint, written notice of the finding of the investigation shall be mailed to the well operator and to the Board. The Board shall instigate whatever legal proceedings which, at their discretion, they believe are necessary to enjoin the activities which resulted in the violation complained of.

If, in the opinion of the Board, emergency conditions exist requiring immediate action, the Board may issue an emergency order effective upon promulgation to prevent further violation. Such order shall be effective for no more than fifteen days.

⁷ EPA UIC Program reporting application. <https://uicdata.epa.gov/ords/uicin/v/f?p=212:1:9625982931275:::>

If emergency conditions do not exist, the Board shall set a date for a hearing. Adequate legal notice shall be published in an area newspaper at least twenty days prior to the hearing in accordance with ARSD §§ 74:09:01:03 and 74:09:01:11.

The Board possesses the authority to subpoena witnesses, administer oaths, and require the production of records, books, and documents for examination at the hearing. In the case of refusal or failure of an involved party to witness or testify or produce records or documents, the Board may make application to any circuit court which shall compel the party to comply with the subpoena.

The Board, following the hearing, may issue an order, modify an existing order, or terminate an existing order. All actions documented by the Board shall become public record open for inspection (ARSD § 74:12:07:07. Termination of permit to inject).

It is DANR policy that once a violation is identified, the operator must shut-in the well within 48 hours. No injection is allowed until the violation is corrected. The Oil and Gas Team sends a Warning Letter notifying the operator of a violation and includes a schedule for returning the well to compliance. If it appears that any person is violating or threatening to violate any provision of this chapter, or any rule or order of the Board of Minerals and Environment, and unless the board without litigation can effectively prevent violation or threat of violation, the board shall bring suit against the person in the circuit court for any county where the violation is occurring or is threatened, to restrain the person from continuing the violation or from carrying out the threat of violation. Upon the filing of any such suit, summons issued to the person may be directed to the sheriff of any county in this state for service by the sheriff. In any such suit, the court has jurisdiction to grant to the board, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders and preliminary injunctions.

SDCL § 45-9-68 provides for penalties for each person of up to five hundred dollars for each violation and for each day the violation continues, or for liability for damages to the environment, or both.

UIC FUNDING AND STAFF REQUIREMENTS

The personnel involved with the regulation of underground injection related to Class II operations are also involved with the other regulatory aspects of the Minerals, Mining, & Superfund Program. The Oil and Gas Team, which also administers the delegated Class II program, includes three FTEs, including two geologists and one support staff.

PUBLIC PARTICIPATION

Throughout the development of the UIC program, comments have been solicited from the public. As required by SDCL §1-26-4.1, a notice of public hearing and public hearing occurred prior to the adoption of the original rules providing authority for the State to regulate Class II injection wells. This hearing was held on September 17, 1981, with both written and oral testimony received, and rules being adopted. A public notice of the state's intent to assume primacy was also published. Due to insufficient interest no hearing was scheduled.

Prior to the adoption of ARSD Art. 74:12, a notice of hearing was published in five South Dakota newspapers, and a hearing was held before the Board of Minerals and Environment on November 16, 2011. Both written and oral comments and testimony were received. After ARSD Art. 74:12 was adopted by the board, the rules became provisionally effective February 19, 2012, and finally effective July 1, 2012.

DRAFT