

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY
AND THE IDAHO DEPARTMENT OF LANDS**

**RELATIVE TO OIL AND GAS CONSERVATION,
WATER QUALITY,
WASTE FACILITY PLANS, AND AIR QUALITY**

This Memorandum of Understanding ("MOU") is entered into by the Idaho Department of Environmental Quality ("IDEQ"), 1410 N. Hilton St., Boise, ID 83706, and the Idaho Department of Lands ("IDL"), 300 N. 6th St., Ste. 103, Boise, ID 83706. (IDL and IDEQ, collectively, "Parties" or "Agencies".)

WHEREAS, the Idaho Oil and Gas Conservation Commission has authority to regulate oil and gas exploration and production activities in a manner that conserves oil and gas, protects correlative rights, and protects fresh water supplies pursuant to Title 47, Chapter 3, Idaho Code, and the rule promulgated there under, IDAPA 20.07.02, Conservation of Crude Oil and Natural Gas in the State of Idaho ("Oil and Gas Rule");

WHEREAS, IDL is the administrative arm of the Idaho Oil and Gas Conservation Commission;

WHEREAS, the Oil and Gas Rule provides that IDL will consult with IDEQ on certain oil and gas matters;

WHEREAS, IDEQ has authority to set Idaho water quality standards, wastewater treatment requirements, and air quality standards pursuant to Title 39, Chapter 1, Idaho Code, and rules promulgated there under, IDAPA 58.01.02, Water Quality Standards; IDAPA 58.01.11, Ground Water Quality Rule; IDAPA 58.01.16, Wastewater Rules; and IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho

WHEREAS, IDEQ has authority to establish requirements and procedures for hazardous and solid waste management pursuant to Title 39, Chapter 1 and Chapter 44, Idaho Code, and rules promulgated there under, IDAPA 58.01.05, Rules and Standards for Hazardous Waste; IDAPA 58.01.06, Solid Waste Management Rules; and IDAPA 58.01.10, Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended;

WHEREAS, IDL is authorized to cooperate with other State agencies pursuant to Idaho Code § 58-115, and IDEQ is authorized to enter into agreements with other agencies pursuant to Idaho Code § 39-105(5); and

WHEREAS, IDEQ and IDL agree to enter into this MOU to coordinate their efforts relative to oil and gas matters, fulfill their statutory responsibilities, and serve the citizens of Idaho.

NOW THEREFORE, the Parties agree as follows:

I. WELL TREATMENT

A. Consultation in general.

1. Under IDAPA 20.07.02.055, IDL will consult with IDEQ, using the process outlined below, on all applications where an applicant proposes well treatments, including hydraulic fracturing. The parties intend to use the consultation process to reach agreement with respect to those issues subject to consultation.

2. IDL will be the primary point of contact for the agencies with the applicant and shall be responsible for conveying to the applicant final decisions regarding those matters subject to consultation. IDEQ staff, however, is encouraged to contact the applicant for clarification on the application if needed.

B. Consultation with respect to fresh water protection plans and the need for fresh water monitoring.

1. IDL will attempt to review permit applications for completeness within seven (7) days of receiving a permit application involving well treatments. Completeness for fresh water protection plans and for fresh water monitoring plans will be determined using the criteria in IDAPA 20.07.02.055.01.k. Incomplete applications will be returned to the applicant with a description of deficiencies. Only complete applications will be forwarded to IDEQ for review.

2. IDEQ shall review applications, and within thirty (30) days, shall provide comments to IDL with respect to the adequacy of the fresh water protection plan, whether fresh water monitoring will be required, and the need for additional information from the applicant. IDEQ shall thereafter continue to provide input to IDL as needed, including reviewing any additional information requested of the applicant, in order to assist IDL in making its permitting decisions with respect to the fresh water protection plan and whether monitoring is required.

3. IDEQ's review of the fresh water protection plan shall focus on whether adequate best management practices are proposed to ensure that water quality will be protected from activities associated with well treatments. At a minimum, IDEQ shall provide comments regarding whether the plan ensures compliance with the Idaho Water Quality Standards and the Idaho Ground Water Quality Rule.

4. IDEQ's review with respect to whether monitoring shall be required shall focus on whether the proposed treatment poses a threat to the pollution of fresh waters. IDL shall require fresh water monitoring before and after a well treatment unless IDL determines, after consultation with IDEQ, that the proposed treatment does not pose a threat to the pollution of fresh waters.

C. Consultation with respect to Fresh Water Monitoring Plans.

1. If fresh water monitoring is required, the applicant must develop a monitoring plan and submit that plan to IDL. IDL shall request the applicant submit the plan to both IDL and IDEQ.

2. IDEQ shall review the monitoring plan, and within thirty (30) days, shall provide comments to IDL with respect to the adequacy of the plan. IDEQ shall thereafter continue to provide input to IDL as needed, including reviewing any additional information requested of the applicant, in order to assist IDL in making its permitting decisions with respect to the fresh water monitoring plan.

3. IDEQ's review of the monitoring plan shall focus on whether the monitoring program will adequately characterize the background condition of the fresh waters, and identify any potential impacts from the well treatment process.

4. The operator shall provide sample results collected pursuant to an approved monitoring program within thirty (30) days to both agencies. IDL will post the data to the Risk Based Data Management System (RBDMS) system or allow the operator or this agent to self report to the RBDMS system.

D. Aquifer Categorization, site specific ground water quality levels and points of compliance.

As of the date of this MOU, all aquifers in Idaho (with the exception of the Spokane Valley Rathdrum Prairie Sensitive Resource Aquifer) are classified as General Resource aquifers. Therefore, DEQ shall apply the standards applicable to General Resource Aquifers in its review of applications and associated plans. In addition, IDEQ shall apply the ground water quality standards in the Idaho Ground Water Quality Rule (IDAPA 58.01.11). An applicant, however, may petition the Board of Environmental Quality to initiate rulemaking for aquifer recategorization. An applicant may also request IDEQ allow site-specific ground water quality levels or points of compliance. IDEQ shall be responsible for responding to such petitions and requests. IDEQ shall notify IDL of any such petitions or requests submitted by applicants proposing well treatment.

II. PIT PLAN AND SPECIFICATION REVIEW

A. Review requirements.

1. Under IDAPA 20.07.02.085, IDL requires that pits storing fluids associated with oil and gas activities meet certain minimum requirements. Under Idaho Code § 39-118, IDEQ reviews plans and specifications for waste treatment and disposal facilities prior to construction. The agencies agree that plans and specifications for pits used for waste treatment or disposal

associated with oil and gas activities must be submitted to, and approved by, IDEQ prior to construction and must meet the applicable standards in IDAPA 20.07.02.085.

2. IDEQ will review plans and specifications to determine whether the pits meet the standards under Idaho Code § 39-118, IDAPA 58.01.16.401, and IDAPA 20.07.085.

B. Review Process.

1. When IDL receives a permit application which includes a proposed pit, IDL will review the application for completeness within seven (7) days of receiving the application. Completeness will be determined using the criteria in IDAPA 20.07.02.085.05 or 06 that applies to the permit application. IDL will forward complete plans and specifications to IDEQ.

2. IDEQ will review plans and specifications and will make a proposed determination regarding whether the pits meet the standards under Idaho Code § 39-118, IDAPA 58.01.16.401, and IDAPA 20.07.085. IDEQ shall transmit its proposed determination to IDL as soon as possible so that IDEQ and IDL may reach agreement on the adequacy of the plans and specifications in time for IDEQ to provide its approval of the documents to the applicant within 42 days of receipt, as provided in Idaho Code § 39-118.

3. IDEQ shall be responsible for responding to the plans and specifications as provided in Idaho Code § 39-118, and IDL shall be responsible for responding as required in IDAPA 20.07.02.085.

III. LOSSES OF RADIOACTIVE TOOLS

Under IDAPA 20.07.02.125, if either agency is notified of a tool lost by an operator, then the notified agency will ensure that the other agency is also aware of the lost tool. The agencies will coordinate a response to the operator, if needed.

IV. SPILL RESPONSE AND LEAK DETECTION

A reportable spill or release includes leaks from a pit or pond, and is defined as a release of any hazardous material that has or is likely to affect surface or ground water. The responsible party is to notify DEQ of releases of hazardous materials (IDAPA 58.01.02.800) and petroleum (IDAPA 58.01.02.851), by calling the State Communications Center for the release **(800) 632-8000 or (208) 846-7610**. If a hazardous substance release occurs in excess of a reportable quantity, notification of the National Response Center is also necessary (40 CRF 302.4).

Reporting to federal entities may also be required:

<http://www.epa.gov/emergencies/content/reporting/index.htm>

The agencies will coordinate any necessary enforcement actions resulting from spills or releases.

V. WASTE MANAGEMENT

IDEQ will review and provide comments to IDL for any well treatment applications and/or pit requirement designs that include waste management methods. IDEQ will provide waste management technical assistance to IDL as it pertains to oil and gas drilling.

VI. SOURCE WATER ASSESSMENTS

IDEQ will provide IDL information regarding source water assessment or protection areas for public drinking water supplies and other water supplies. In addition to the reports provided by IDEQ on their internet site, IDEQ will help IDL to evaluate source water protections areas for single wells or other water supplies not covered by a published report. The agencies will enlist the assistance of the Idaho Department of Water Resources when needed.

VII. AIR QUALITY

Oil and Gas exploration and production facilities may include sources subject to state and/or federal air quality standards, rules, and/or regulations. Per IDAPA 20.07.02.001.03.b, owners and operators must comply with Idaho air quality standards established in IDAPA 58.01.01 et al (Rules for the Control of Air Pollution in Idaho). IDAPA 58.01.01 establishes state air quality standards and Incorporates by Reference federal air quality standards. For example, internal combustion (IC) engines may be used to provide mechanical power for electrical generators, etc. IC engines are subject to federal air quality standards. IDL will direct operators to contact DEQ to ensure owners and operators comply with the Rules for the Control of Air Pollution in Idaho.

VIII. STATUS MEETINGS

The Parties will hold a meeting in Boise, whenever mutually agreed to be necessary, to discuss policies, standards, and procedures of mutual interest, and to consider the adequacy of the terms of this MOU.

IX. AGENCY CONTACTS AND NOTICE

Any notice given in connection with this MOU shall be in writing and shall be delivered either by hand to the other party, by certified mail, postage prepaid, return receipt requested, to the addressee provided below or by facsimile transmission to the other party at the facsimile number below. Notice shall be deemed delivered immediately upon personal service or facsimile transmission or forty-eight (48) hours after depositing notice or demand in the United States

mail. Either party may change its address by giving written notice of the change to the other party.

IDEQ:

Attn: Edward Hagan, Ground Water Program Manager

Address: 1410 North Hilton, Boise, ID 83706

Telephone Number: 208-373-0356

Fax Number: 208-373-0576

IDL:

Attn: Bobby Johnson, Oil and Gas Program Manager

Address: 300 N. 6th Street, Ste. 103 Boise, ID 83706

Telephone Number: 208-334-0243

Fax Number: 208-334-3698

X. TERM

This MOU shall begin on the date of last signature and shall remain in force until terminated.

XI. TERMINATION

Either party may terminate this MOU by providing written notice thirty (30) days prior to the termination date.

XII. MODIFICATION

No change, modification, or waiver of any term of this MOU shall be valid unless it is in writing and signed by both Parties.

XIII. FISCAL NECESSITY AND NON-APPROPRIATION

The Agencies are government entities and it is understood and agreed that the Parties performance under this MOU shall be paid from Idaho State Legislative appropriations. The Legislature is under no legal obligation to make appropriations to fulfill this MOU. This MOU

shall in no way or manner be construed so as to bind or obligate IDEQ and IDL beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time.

The Parties have the right to terminate this MOU in whole or in part if, in the judgment of either party, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds, or requires any return or "give back" of funds, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available, or if either party discontinues or makes a material alteration of the program under which funds were provided for either party to perform the agreed-upon responsibilities in the MOU. The Parties shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable.

All affected future rights and liabilities of the parties shall thereupon cease within ten (10) calendar days after a party gives notice to the other party under this section. Further, in the event of non-appropriation, neither party shall be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting there from.



Curt Fransen
Director, Idaho Department of Environmental Quality

1/13/14

Date



Tom Schultz
Director, Idaho Department of Lands

1/15/14

Date