

**COMMISSIONER'S ORDER NO. 274-98**

Environment

**A Commissioner's Order authorizing approval of Mille Lacs Band of Ojibwe Department of Natural Resources and Environment to enter into a Memorandum of Understanding with Minnesota Pollution Control Agency and U.S. Environmental Protection Agency for the implementation of the Underground Injection Control Program.**

- WHEREAS: the Commissioner of Natural Resources has the power to regulate all matters of environmental protection within the jurisdiction of the Mille Lacs Band of Ojibwe Indians through 11 MLBSA §2002; and
- WHEREAS: the ground water is a natural resource under the jurisdiction of the Mille Lacs Band of Ojibwe ; and
- WHEREAS: the regulating of underground injection wells is an authority under the Commissioner of Natural Resources; and
- WHEREAS: the Commissioner of Natural Resources has concurred with the Spiritual Advisor of the Band; and
- WHEREAS: the use of ground water by the Mille Lacs Band of Ojibwe and its members contributes significantly to the health, welfare, and economy of the Mille Lacs Band, and
- WHEREAS: the United States Environmental Protection Agency and Minnesota Pollution Control Agency has an interest in establishing a Memorandum of Understanding with the Mille Lacs Band's Department of Natural Resources and Environment on the implementation of the Underground Injection Control Program; and
- WHEREAS: nothing herein or the application thereof shall be construed by any government, agency, person or circumstance as a waiver by the Non-Removable Mille Lacs Band of Ojibwe of the solemn, special trust obligation of the United States of America; and
- WHEREAS: pursuant to the provisions of 11 MLBSA § 2003 the Commissioner of Natural Resources is empowered to execute the said Memorandum of Understanding for the Mille Lacs Band of Ojibwe Indians Department of Natural Resources.

NOW THEREFORE, by the authority vested in me by the Mille Lacs Band of Ojibwe under tribal law, I, Don Wedll, Commissioner of Natural Resources and Environment for the Mille Lacs Band of Ojibwe hereby concur with the following Memorandum of Understanding for the implementation of Underground Control Program .

**MEMORANDUM OF UNDERSTANDING  
AMONG  
THE MINNESOTA POLLUTION CONTROL AGENCY,  
THE MILLE LACS BAND DEPARTMENT OF  
NATURAL RESOURCES AND ENVIRONMENT,  
AND  
THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
FOR IMPLEMENTATION OF  
THE UNDERGROUND INJECTION CONTROL PROGRAM**

**Preamble**

The Minnesota Pollution Control Agency ("MPCA") and the Mille Lacs Band Department of Natural Resources and Environment ("Mille Lacs DNRE") have a common interest in protecting the quality of water resources, including ground water, and desire to enter into a Memorandum of Understanding ("MOU") with Region 5 of the U.S. Environmental Protection Agency ("EPA") to assist EPA in implementing an Underground Injection Control Program.

NOW THEREFORE, the Mille Lacs DNRE, the MPCA, and EPA enter into this MOU and agree as follows:

**I. SCOPE AND PURPOSE OF THE MOU**

The purposes of this MOU are to:

- A. Establish a process by which the MPCA and the Mille Lacs DNRE will work together to assist EPA in implementing the Underground Injection Control ("UIC") Program on "UIC Lands". For purposes of this MOU, "UIC Lands" means all lands within the townships of Isle Harbor, Kathio, and South Harbor, located in Mille Lacs County, Minnesota, except for lands for which the Mille Lacs DNRE receives UIC primacy from EPA. For purposes of this MOU, the UIC Program means the provisions of Part C of the Safe Drinking Water Act ("SDWA") codified in 42 U.S.C. § 300h - 300h-5 and the implementing regulations in 40 C.F.R. Parts 124, 144, 146 and 148, as implemented under the provisions of this MOU (hereinafter the "UIC Program").
- B. Develop procedures for implementation of the UIC Program on UIC Lands that will efficiently utilize the resources of the MPCA, the Mille Lacs DNRE, and EPA.
- C. Ensure consistent implementation of Part C of SDWA.

**II. GUIDING PRINCIPLES**

The MPCA, the Mille Lacs DNRE and EPA (collectively "the parties") have a common interest in protecting the integrity of underground sources of drinking water, as defined at 40 C.F.R. § 144.3. In order to accomplish that goal, the parties agree to work together as partners in a spirit of trust, openness, and cooperation and with respect for each party's roles.

**III. OVERVIEW OF THE ROLES OF THE PARTIES**

- A. EPA will administer the UIC Program on UIC Lands.
- B. The MPCA and the Mille Lacs DNRE will assist EPA in administering the UIC Program on UIC Lands by performing, as representatives of EPA, certain activities, such as inspections and site assessments, educational outreach, compliance assistance, informal referrals to EPA for permitting and formal enforcement actions, and recommendations to EPA on permit standards. All actions taken by the MPCA and the Mille Lacs DNRE pertaining to the UIC Program on UIC Lands will be taken as representatives of EPA and not under either the MPCA's or the Mille Lacs DNRE's independent authority.

**IV. ROLE OF EPA**

- A. EPA will administer the UIC Program on UIC Lands while this MOU is in effect and until it authorizes another authority to implement the UIC Program on UIC Lands.
- B. EPA will seek out and consider the recommendations of the MPCA and the Mille Lacs DNRE in administering the UIC Program on UIC Lands.
- C. EPA will hold in-person work sessions at least once a year jointly with the MPCA and the Mille Lacs DNRE to discuss and address UIC Program implementation issues for UIC Lands.
- D. EPA will provide technical assistance to the MPCA and the Mille Lacs DNRE to perform their roles under this MOU if requested and as EPA resources permit.

**V. JOINT ROLE OF THE MPCA AND THE MILLE LACS DNRE**

- A. The MPCA and the Mille Lacs DNRE will work together to jointly advise and assist EPA in the implementation of the UIC Program on UIC Lands. In taking any action on UIC Lands pertaining to the UIC Program, the MPCA and the Mille Lacs DNRE will act as representatives of EPA and only carry out functions approved by EPA.
- B. The Commissioner of the MPCA and the Commissioner of the Mille Lacs DNRE will jointly select a UIC Lands Work Group, subject to approval by EPA, to advise the MPCA, the Mille Lacs DNRE and EPA in carrying out the provisions of this MOU. The persons selected must have a technical background and understanding of the UIC Program and must represent various governmental units in the geographic area of the UIC Lands. The representation will include persons from the MPCA, the Mille Lacs DNRE, EPA, Mille Lacs County, and Isle Harbor Township, Kathio Township, and South Harbor Township.
- C. The Commissioners of the MPCA and the Mille Lacs DNRE, or their designees, will meet in person or by telephone conference call at least quarterly to plan joint actions, inform each other of significant events, and discuss ongoing activities.

**VI. COMMUNICATION AND COOPERATION**

- A. EPA will consult and work jointly with the MPCA and the Mille Lacs DNRE on all proposed EPA administered UIC Program activities on UIC Lands. Such consultation will include, at a minimum, the following:
  - 1. Proposed Actions. EPA will notify both the MPCA and the Mille Lacs DNRE of any action it intends and/or proposes to take with respect to UIC wells on UIC Lands, including requirements for monitoring, closure, issuance of administrative orders, requests for information, public notices, notices of non-compliance, consent orders, and permits (including applications for permits, draft permits and permit call-ins) to the extent that such notice is not prevented by emergency circumstances or prohibited by EPA regulations or criminal procedures.
  - 2. Meetings. EPA will notify both the MPCA and the Mille Lacs DNRE of all upcoming meetings that EPA plans with owners and operators of UIC wells on UIC Lands, except for meetings concerning criminal violations.
  - 3. EPA Regional UIC Guidance. EPA will consult with and seek input from the MPCA and the Mille Lacs DNRE prior to issuing EPA Regional UIC guidance.
- B. The MPCA and the Mille Lacs DNRE will coordinate education and outreach on behalf of EPA to local governments, the regulated community, and to the public on UIC Program matters on UIC Lands.
- C. EPA, the MPCA, the Mille Lacs DNRE will send copies to each other of all correspondence related to the UIC Program on UIC Lands.
- D. The MPCA and the Mille Lacs DNRE will jointly send to EPA a summary of their quarterly meetings, including recommendations to EPA for permitting and enforcement.

E. All information that is required to be sent to the parties under this MOU will be sent to the following contact persons. A party may change its contact person upon written notice to all other parties.

Gretchen Sabel  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, Minnesota 55155  
(612) 297-7574

Ryan Rupp  
Mille Lacs Department of Natural Resources  
and Environment  
HCR 67 Box 194  
Onamia, MN 56359  
(320) 532-7442

Rebecca Harvey  
U.S. EPA  
Region 5  
77 West Jackson Boulevard (WU-16J)  
Chicago, Illinois 60604  
(312) 886-6594

#### **VII. UIC PROGRAM FOR CLASS I, II, III, AND IV WELLS.**

As of the effective date of this MOU and on the parties' knowledge and belief, there are no existing Class I, II, III or IV wells, within the definition in 40 C.F.R. § 144.6 (1996), on UIC Lands. In implementing the UIC Program, EPA will not allow the construction, operation, maintenance or conversion of any Class I, II, III or IV wells on UIC Lands.

#### **VIII. IMPLEMENTATION OF THE UIC PROGRAM FOR CLASS V WELLS.**

##### **A. Inspection and Inventory**

1. EPA will maintain an inventory of all Class V wells on UIC Lands and will send copies of such inventory to the MPCA and the Mille Lacs DNRE on a quarterly basis. The MPCA and the Mille Lacs DNRE may also work with Mille Lacs County in identifying Class V wells on UIC Lands.

2. The MPCA and the Mille Lacs DNRE will each maintain one qualified representative to be trained and issued UIC Program inspector credentials by EPA. As approved by EPA, credential representatives of the MPCA and the Mille Lacs DNRE may participate in, or conduct, inspections of UIC facilities on behalf of EPA on UIC Lands as part of the UIC Program.

3. EPA, the MPCA, and the Mille Lacs DNRE will coordinate inspections to avoid duplication of efforts and may develop joint inspection programs. The parties will give priority to site inspections related to EPA permitting and closure orders. All inspection activities conducted as part of the UIC Program must be approved by EPA.

##### **B. Closure**

1. The MPCA and the Mille Lacs DNRE will, as resources permit, jointly perform assessments of Class V wells on UIC Lands in accordance with *Region 5 Guidelines on Conducting Site Assessments at Class IV and Class V Injection Well Facilities* and will consult with EPA when determining the need for remediation.

2. The MPCA and the Mille Lacs DNRE may jointly negotiate with owners/operators of non-residential Class V wells on UIC Lands to obtain an agreement to achieve well closure, but any agreement entered into with owners/operators must receive the prior approval of EPA and must be consistent with the requirements of EPA guidelines for closure of Class V wells. The MPCA and the Mille Lacs DNRE will jointly notify EPA of all well closures and well closures negotiated on UIC Lands and will provide EPA with documentation of such closures.

3. The MPCA and the Mille Lacs DNRE will, as resources permit, jointly oversee closure activities on UIC Lands to insure that such closures meet EPA guidelines for closure of Class V wells. The MPCA and the Mille Lacs DNRE will inform owners/operators of Class V wells that EPA has final authority to approve closure. EPA will include well closures overseen by MPCA and the Mille Lacs DNRE in applicable reports to EPA Headquarters.

C. Enforcement

1. The Federal government retains sole enforcement authority for the UIC Program on UIC Lands. The MPCA and the Mille Lacs DNRE will refer matters that require formal enforcement actions to EPA.

2. The MPCA and the Mille Lacs DNRE will work together on compliance related activities which may include inspections, issuance of letters of warning, assistance to owners and operators to achieve compliance, and education in pollution prevention.

D. Emergency Actions

If any party becomes aware of a condition that may present an imminent and substantial threat of endangerment to an underground source of drinking water beneath UIC Lands, the party will immediately notify the other parties as the circumstances allow and the MPCA and the Mille Lacs DNRE will also notify the EPA "Spill Phone" at (312) 353-2318. The parties will make reasonable efforts to coordinate their responses to such a threat. When such a threat occurs from a release of hazardous substances or petroleum, the parties will coordinate response in keeping with applicable provisions of the Memorandum of Understanding between the Minnesota Ojibwe Tribe, the State of Minnesota and the United States Environmental Protection Agency regarding the Implementation of Title III Emergency Planning and Providing for Emergency Response to Release of Hazardous Substances and Petroleum.

**IX. EFFECTIVE DATE OF THE MOU AND MOU AMENDMENT**

This MOU will be effective upon its signature by all of the parties hereto. This MOU may be amended only by written agreement of the parties.

**X. TERMINATION OF MOU**

This MOU may be terminated by any party upon thirty (30) days written notice to all other parties. Prior to such notice, however, the parties agree to discuss issues related to termination.

**XI. OTHER**

A. This MOU is not a contract and is not enforceable by any party hereto nor by any other person or entity.

B. By entering into this MOU, neither the MPCA nor the Mille Lacs DNRE intends to alter its position or waive any rights regarding its jurisdiction and authority.

C. By entering into this MOU, EPA does not intend to take any position regarding the jurisdiction or authority of any party.

**BY THEIR SIGNATURES, THE UNDERSIGNED REPRESENT THAT THEY HAVE THE AUTHORITY TO BIND THE PARTIES THEY REPRESENT.**

MILLE LACS BAND DEPARTMENT  
OF NATURAL RESOURCES AND ENVIRONMENT

By: \_\_\_\_\_  
Don Wedll, Commissioner

Date: \_\_\_\_\_

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MINNESOTA POLLUTION CONTROL AGENCY

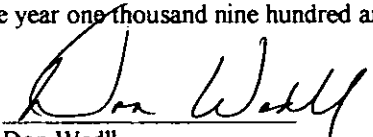
By: \_\_\_\_\_  
Peder Larson, Commissioner

Date \_\_\_\_\_


U.S. ENVIRONMENTAL PROTECTION AGENCY

By: \_\_\_\_\_ Date \_\_\_\_\_  
David A. Ullrich  
Acting Regional Administrator

DATED at Vineland, Minnesota this 25th day of February in the year one thousand nine hundred and ninety-eighty.

  
Don Wedll  
Commissioner of Natural Resources

APPROVED AS TO FORM,  
EXECUTION AND NUMBERING

  
Jim Genia  
Solicitor General

OFFICIAL SEAL OF THE BAND