

**TEXAS NATURAL RESOURCE CONSERVATION COMMISSION  
TECHNICAL PEER REVIEW DOCUMENT**

<i>This Section to be Completed by Issue Initiator</i>	
<b>TITLE OR ISSUE</b>	
Discontinuing state enforcement of EPA’s “No-Migration” Petition Conditions: Elimination of unnecessary and duplicative regulatory burdens on Class I injection well operators and the State UIC Program relating to EPA’s responsibility for enforcement of “No-Migration” Petition Conditions, also known as “Land Disposal Restriction (LDR) exemption conditions”, through State Program discontinuance of compliance monitoring/enforcement of exemption conditions.	
<b>DOCUMENT INITIATED BY</b> (Name/Office/Phone Number)	<b>DATE</b>
Ben Knape, Team Leader, UIC Permits/UURW/I&HW/OWM/TNRCC	12/05/96
<b>ISSUE DESCRIPTION</b>	
<p>As documented by letter of December 20, 1995 from TNRCC to EPA Region 6, the State UIC Program will no longer continue general incorporation of federal LDR exemption conditions into Class I UIC permits. Incorporation of such conditions into UIC permits had been requested by EPA over the last several years as a means of assuring LDR enforcement through the State’s enforcement process. The exemption conditions which have been incorporated into UIC permits are of two principal types: (1) listing of EPA hazardous waste codes for wastes authorized to be injected under the exemption; and (2) specific gravity ranges for waste injected under the exemption.</p> <p>Prior to September 1, 1996, TNRCC staff conducting inspections of Class I injection wells with EPA-approved LDR exemptions, had been using a one-page form provided by EPA Region 6 to document compliance with LDR exemption conditions. Any violations of such conditions found by TNRCC inspectors were referred to the TNRCC enforcement process if the noted conditions had been incorporated into the State UIC permit, or to EPA for enforcement if the subject conditions had not yet been incorporated into the UIC permit. This general scheme for LDR Program enforcement unintentionally created unnecessary burdens on well operators through EPA-exerted pressure to repetitively amend permits to keep permit specifications in phase with the most current LDR exemption conditions, and on the State’s regulators by adding to permitting and inspection workloads in program areas experiencing chronic shortfalls in federal funding.</p>	
<b>WHO'S AFFECTED?</b>	
Class I injection well operators with EPA-approved LDR exemptions, injection well consultants, service companies, staff of TNRCC, and EPA.	
<i>This Section to be Completed by Peer Review Team</i>	

## **FACTORS CONSIDERED**

1. Authority for implementation of LDR exemptions is statutorily vested with EPA, and has never been sought by nor delegated to the State UIC Program. Further, enforcement of LDR exemption conditions has never been part of the State's authorized UIC Program as detailed in the approved Program Description and Program Memorandum of Agreement, or the 1996 updated versions of these documents. The State UIC Program is therefore unwilling to exercise its enforcement discretion on present-day short-term violations of LDR exemption conditions which may have little or no consequence on the long-term, e.g., 10,000-year, movement of the injected waste, in instances where the primary objective of the authorized State UIC Program, i.e., nonendangerment of drinking water, has not been compromised by a well operation.
2. As a result of continuing reductions in funding, the State UIC Program must eliminate all nonessential or duplicative activities. Unfortunately, neither the federal grant nor state permitting fees provide sufficient resources to fund the extra workload imposed by assuming part of EPA's responsibility for administration of the LDR Program under 40 CFR, Part 148. For the last several years, the Commission's federal UIC grant has funded less than half of the State's total investment of resources in the federally-delegated State UIC Program. From a funding standpoint, the grant would have to be increased to fund all of the delegated State Program under 40 CFR, Part 146, before any consideration could be given to applying for and taking on additional responsibility of enforcement of the 40 CFR, Part 148 LDR Program.
3. Staff involved in permit application processing for Class I injection wells have been directed to stop general incorporation of LDR exemption conditions in State permits. It is planned that LDR exemption conditions presently in State UIC permits will be removed over a period of several years, concurrent with processing of applications for permit amendment or renewal.
4. Whenever specifications of ranges or averages of specific gravity of injected wastes are provided in State permits, such specifications should be recognized as originating from LDR exemption conditions, for which EPA maintains full enforcement responsibility. It should be further noted that in such cases, the minimum and average specific gravity of injected waste have no regulatory significance within the federally-delegated State UIC Program under 40 CFR, Part 146, which in consideration of the Part 146 standards of (a) non-endangerment of drinking water, and (b) protection against formation fracturing, necessitate only regulation of maximum specific gravities of injected fluids.

## **FINDING(S) AND RECOMMENDATION(S)**

Because EPA will be fully responsible for all enforcement pertaining to the LDR Program under 40 CFR, Part 148, it is recommended that elimination of unnecessary burdens including duplicative use of limited UIC Program resources be achieved through the following actions:

1. Discontinue use of the one-page form developed by EPA for documentation of LDR exemption condition compliance;
2. Discontinue records inspection and enforcement for compliance with EPA hazardous waste code specifications in approved LDR exemptions or UIC permits; and
3. Discontinue inspection and enforcement of well operating conditions and well records of any specifications on specific gravity of injected wastes other than the maximum allowable value specified in the UIC permit.

**COMMENTS**

REVIEW COMPLETED BY	NAMES	INITIALS	DATE
<u>X</u> Technical Review Group	Ben Knape, UURW	_____	_____
	Charles Greene, UURW	_____	_____
	Jim Boswell, UURW	_____	_____
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	Mike Hull, Region 1	_____	_____
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	James Clark, DuPont	_____	_____
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- Chief Engineer     
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