

MEMORANDUM OF AGREEMENT  
BETWEEN

New Mexico Environment Department  
and

The United States Environmental Protection Agency  
Region 6

I. GENERAL

In 1984, Congress added Subtitle I to the Solid Waste Disposal Act (SWDA), which required EPA to develop a comprehensive regulatory program for UST systems storing petroleum or certain hazardous substances to protect the environment and human health from UST releases. EPA promulgated the Underground Storage Tank (UST) regulations in 1988 (40 CFR Part 280). These regulations set minimum standards for new tanks and required owners and operators of existing tanks to upgrade, replace, or close them. In addition, owners and operators were required to monitor their UST systems for releases using release detection and maintain financial responsibility for petroleum USTs to ensure that they are financially able to pay for any releases that occur. In 1988, EPA also promulgated regulations for state program approval (40 CFR Part 281). In 2005, the Energy Policy Act further amended Subtitle I of SWDA. The Energy Policy Act requires states that receive Subtitle I funding from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published grant guidelines for states regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems. In 2015 EPA published Revisions to the UST regulations in the *Federal Register*. These revisions strengthen the 1988 federal underground storage tank (UST) regulations by increasing emphasis on properly operating and maintaining UST equipment, among other things. The revisions will help prevent and detect UST releases, which are a leading source of groundwater contamination. The revisions also amended the regulations for state program approval in 40 CFR Part 281. This is the first major revision to the federal UST regulations since 1988.

AUTHORITIES AND PURPOSE

This Memorandum of Agreement (hereinafter "Agreement") establishes policies, responsibilities, and procedures pursuant to 40 CFR 281 for the New Mexico Environment Department's Petroleum Storage Tank Bureau (hereinafter "State Program") approved under Section 9004 of Subtitle I of the Resource Conservation and Recovery Act (hereinafter "RCRA" or "the Act") of 1976 (Public Law 98-616, USC §6901 et seq.), as amended, and the United States Environmental

Protection Agency (hereinafter "EPA") Regional office for Region 6. This Agreement further sets forth the manner in which the State and EPA will coordinate in the State's administration of the State program.

This Agreement is entered into by the Secretary of the New Mexico Environment Department (hereinafter "the State") and the Regional Administrator, EPA Region 6 (hereinafter "Regional Administrator" or "EPA").

Nothing in this Agreement shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under Subtitle I of RCRA. Nothing in this Agreement shall be construed to contravene any provision of 40 CFR Parts 280 and 281.

The parties will review the Agreement jointly at least once a year. This Agreement may be modified upon the initiative of either party in order to ensure consistency with State program modifications made or for other purposes mutually agreed upon. Any revisions or modifications must be in writing and must be signed by the State and the Regional Administrator.

This Agreement will remain in effect until such time as State program approval is withdrawn by or is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR Part 281.60 and 281.61.

This Agreement shall be executed by the State and the Regional Administrator and shall become effective at the time specified in the *Federal Register* notice announcing EPA's final decision to grant approval of the State program (or State program revision).

This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against the State or EPA, their officers or employees, or any other person. This MOA does not direct or apply to any person outside of and EPA.

## II. POLICY STATEMENT

Each of the parties to this Agreement is responsible for ensuring that its obligations under Subtitle I of RCRA are met. Upon award of final approval by EPA, the State assumed primary responsibility for implementing the Subtitle I Underground Storage Tank Program within its boundaries. EPA retains its responsibility to ensure full and faithful execution of the requirements of Subtitle I of RCRA, including direct implementation in the event the State is unwilling or unable to act. The State and the Regional Administrator agree to maintain a high level of cooperation and coordination between their respective staffs in a partnership to assure successful and effective administration of the State program. In particular, the State and EPA acknowledge that the Energy Policy Act of 2005 added additional requirements for states receiving funding from EPA.



EPA assumes a management role upon granting final approval to the State. EPA will review the State program in order to assist the State in implementing its program; to allow EPA to report to the President, the Congress, and the public on the achievements of the underground storage tank program; and to encourage the State and EPA to agree on desirable technical support and targets for joint efforts to prevent and mitigate environmental problems associated with improper management of underground storage tanks. Management will be accomplished by EPA through written reporting requirements, compliance and enforcement overview, and annual review of the State's program.

### III. STATE PROGRAM REVIEW

The Regional Administrator will assess the State administration and enforcement of the State underground storage tank program on a continuing basis for stringency with Subtitle I requirements, with this Agreement, and with all applicable Federal requirements and policies and for adequacy of enforcement. This assessment will be accomplished by EPA review of information submitted by the State in accordance with this Agreement and annual review of State program activities. The Regional Administrator may also consider, as part of this regular assessment, written comments about the State's program administration and enforcement that are received from regulated persons, the public, and Federal, State, and local agencies. Copies of any such comments received by the Regional Administrator will be forwarded to the State upon receipt by the EPA.

To ensure effective State program review, the State agrees to allow EPA access to all files and other information requested by the Regional Administrator and deemed necessary for reviewing State program administration and enforcement.

Review of State files may be scheduled as needed. State program review meetings between the State and the Regional Administrator or their assignees will be scheduled at reasonable intervals, not less than annually, to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns. These meetings will be scheduled at least 15 days in advance unless agreed to differently. A tentative agenda for the meeting will be prepared by EPA.

### IV. INFORMATION SHARING

#### A. General

As the respective information needs of the State and EPA evolve, changes to this section of the Agreement may be appropriate. During the annual review of this agreement, the State and

Regional Administrator will carefully examine the following information sharing provisions for necessary revisions.

B. EPA

1. EPA will keep the State informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the State program. EPA will also provide general technical guidance to the State. EPA will share with the States any national reports developed by EPA from the data submitted through State reporting requirements.
2. EPA will make available to the State other relevant information as requested that the State needs to implement its approved program.

C. State

1. The State agrees to inform the Region of any proposed or adopted program changes that would affect the State's ability to implement the approved program. State program changes of concern include modification of the State's legal authorities (for example, statutes, regulations, and judicial or legislative actions affecting those authorities), modifications of memoranda of agreement or understanding with other agencies, and modifications of resource levels (for example, available or budgeted personnel and funds). The State recognizes that State program revisions must be made in accordance with the provisions of 40 CFR Part 281.
2. The State will provide compliance monitoring and enforcement information to the Regional Administrator, as specified in the annual grant guidance. The State agrees to provide EPA with copies of reports on data resulting from any compliance inspection and subsequent enforcement actions, if EPA requests such copies.

D. National Data

EPA maintains certain national data on underground storage tanks. This data is used to report to the President, the Congress, and the public on the achievements of the underground storage tank program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information, EPA will first seek to obtain this information from the States. The State agrees to supply the Regional Administrator with this information if readily available and as resources allow. If the State is unable to provide the underground storage tank information or if it is necessary to supplement the State information, EPA may conduct a special



survey or perform information collection site visits after notifying the State. EPA will share with the State any national reports developed by EPA as a result of such information collection.

E. Confidentiality

The State will make available to EPA upon request any information obtained or used in the administration of the State program without restriction. If the UST owner/operator has submitted the information to the State under a claim of business confidentiality, the State will clearly identify that claim of confidentiality to EPA in writing when providing the information. EPA will not disclose, copy, reproduce or otherwise make available to anyone any information obtained from a State that is subject to a claim of confidentiality without the UST owner's/operator's consent, unless otherwise required by law.

V. COMPLIANCE MONITORING AND ENFORCEMENT

A. EPA

Nothing in this agreement shall restrict EPA's right to inspect any underground storage tank facility or bring enforcement action against any person believed to be in violation of the approved State underground storage tank program. Before conducting an inspection of a facility, the Regional Administrator will normally give the State at least 7 days' notice of the intent to inspect. The Regional Administrator and State may agree on a longer period of time in order to allow the State the opportunity to conduct the inspection. If the State performs a compliance inspection and submits a report and relevant data thereto within that time to EPA, no EPA inspection will be made, unless the Regional Administrator deems the State report and data to be inadequate. In case of an imminent hazard to human health or the environment, the Regional Administrator may shorten or waive the notice period.

The Regional Administrator may take enforcement action against any person determined to be in violation of Subtitle I of RCRA in accordance with section 9006. EPA also retains its right to issue orders and bring actions under Section 9003(h) or 9006 of Subtitle I of RCRA and any other applicable Federal statute. With regard to Federal enforcement, it is EPA's policy not to take such action where a State has taken appropriate enforcement action. Before issuing a compliance order under Section 9006, EPA will give notice to the State.

B. State

The State agrees to carry out an effective State program for monitoring the compliance by owners and operators of facilities with applicable State program requirements. As part of this State program, the State will conduct compliance inspections and use other mechanisms to assess compliance with underground storage tank standards, compliance schedules, and all other State

program requirements. The State agrees to develop an appropriate enforcement response against all persons in violation of underground storage tank standards (including notification requirements), compliance schedules, and all other State program requirements, including violations detected by State compliance inspections. The State will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public and the State will not object to public participation in administrative or civil enforcement actions. The State agrees to retain all records for at least 3 years unless there is an enforcement action pending. In that case, all records will be retained until such action is resolved.

The State will:

1. conduct inspections.
2. meet the requirements as laid out in EPA grant guidelines on the Energy Policy Act of 2005 such as guidelines on secondary containment, operator training, public record and delivery prohibition. ([www.epa.gov/ust/energy-policy-act-2005-and-underground-storage-tanks-usts#grant](http://www.epa.gov/ust/energy-policy-act-2005-and-underground-storage-tanks-usts#grant))

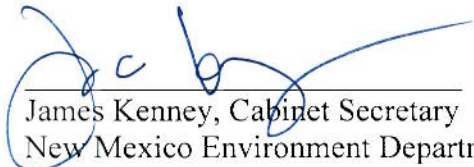
## VI. SIGNATURES

The terms set forth in this Agreement are intended solely for the purpose of memorializing the parties' understanding of their respective roles and commitments in the administration of the New Mexico Underground Storage Tank Program. They are not intended, and cannot be relied upon, to create any rights, substantive or procedural, enforceable by any other party in litigation with either of the parties to this agreement. The parties reserve the right to modify this agreement in accordance with its terms without public notice.



Regional Administrator  
U.S. Environmental Protection Agency  
Region 6

Date 7/29/19


By:   
James Kenney, Cabinet Secretary  
New Mexico Environment Department

Date: 7/22/19

By:   
Marlene Velasquez, Chief Financial Officer,  
New Mexico Environment Department

Date: 7/11/19

Approved for legal sufficiency:

By:   
Jennifer Hower, General Counsel  
New Mexico Environment Department

Date: 7/16/19