September 18, 2013

Ms. Susan Hedman
Regional Administrator
USEPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Re: Testimony Submitted for USEPA's Audit of ODNR UIC Program

Dear Ms. Hedman:

My name is Roxanne Groff, resident of Bern Township, Athens County, 14222 Marietta Run Road, Amesville, Ohio 45711.

Ohio's UIC Program was granted primacy effective September 22, 1983. Its application was filed under Section 1425 of the SDWA (42 USC 300h-4), which was added to the law by amendment in 1980. As explained by Congress in the September 19, 1980, House Report No. 96-1348, Section 1425 offers States a reduced standard for gaining primacy. Under Section 1425, States applying for primacy need only demonstrate their programs are "effective" rather than equal to or exceeding the regulations adopted by USEPA. This amendment does not require USEPA to back off its regulation of primacy States that take advantage of Section 1425. If anything, USEPA must work harder in order to determine what is "effective" for each such State every time USEPA changes its own regulations and when re-demonstrations otherwise are mandated by law. Section (b) (as codified in 42 USC 300h-4) states:

> If the Administrator revises or amends any requirement of a regulation under section 300h of this title relating to any aspect of the underground injection referred to in subsection (a) of this section, in the case of that portion of a State underground injection control program for which the demonstration referred to in subsection (a) of this section has been made, in lieu of the showing required under section 300h-1(b)(1)(B) of this title the State may demonstrate that, with respect to that aspect of such underground injection, the State program meets the requirements of subparagraphs (A) through (D) of section 300h(b)(1) of this title and represents an effective program (including adequate record-keeping and reporting) to prevent underground injection which endangers drinking water sources.

Thus, since the approval of the Ohio UIC program effective September 22, 1983, every time USEPA has amended its UIC regulations, USEPA's statutory mandate has been to require Ohio either to adopt statutes and rules that equal or exceed the USEPA amendments, as required by 42 USC 300h-1(b)(1)(B), or present a new, satisfactory demonstration as required in Section 1425(a) and (b) (42 USC 300h-4(a) & (b)) assuring continued effectiveness. House Report No. 96-1348 is the only legislative history for the 1980 amendment. The House of Representatives' Committee on InterState and Foreign Commerce voted unanimously in favor of the 1980 amendment. It was passed quickly by the House and then the Senate and signed into law by the President. Congress emphasized the importance of re-demonstrations of "effectiveness" required by Section 1425 as follows:

> UNDER CERTAIN CIRCUMSTANCES, THE ADMINISTRATOR WILL BE ABLE TO REQUIRE A NEW DEMONSTRATION PERTAINING TO CERTAIN ASPECTS OF A STATE PROGRAM. A STATE COULD BE REQUIRED TO RENEW ITS APPROVED ALTERNATIVE PROGRAM UPON REVISION OR AMENDMENT BY THE ADMINISTRATOR OF REGULATIONS PERTAINING TO UNDERGROUND INJECTION RELATING TO OIL AND NATURAL GAS. THE COMMITTEE EXPECTS THAT SUCH DEMONSTRATIONS WILL BE REQUIRED WHEN THE AMENDED REGULATIONS ARE DEEMED NECESSARY TO MEET THE MINIMUM REQUIREMENTS OF SECTION 1421(B). A NEW DEMONSTRATION MAY ALSO BE REQUIRED IF THE ADMINISTRATOR DETERMINES, BY RULE AFTER PUBLIC HEARING, THAT A STATE'S DEMONSTRATION IS NO LONGER ADEQUATE. THIS AUTHORITY IS INTENDED FOR USE BY THE ADMINISTRATOR IN INSTANCES IN WHICH A STATE SIGNIFICANTLY ALTERS A PROGRAM FOR WHICH A DEMONSTRATION HAS BEEN MADE, OR IN WHICH THE ADMINISTRATOR DETERMINES THAT NEW INFORMATION ABOUT THE ENDANGERMENT OF DRINKING WATER SUPPLIES NECESSITATES A NEW DEMONSTRATION.

Thus, whenever (i) USEPA adopts amendments that become minimum requirements for Section 1421(b) of the SDWA, (ii) a State's demonstration is no longer adequate, (iii) a State alters its program significantly for which a demonstration already has been made, or (iv) the Administrator determines there is new information about the endangerment of drinking water supplies, a new demonstration is required by Section 1425 primacy States.

Demonstrations and periodic re-demonstrations of "effectiveness" by Section 1425 primacy States are not discretionary for USEPA or the States. They are statutorily mandated. That USEPA enjoys enormously broad discretion in deciding whether the demonstrations and re-demonstrations are sufficient does not excuse repeated failures to require Section 1425(b) (42 USC 300h-4(b)) re-demonstrations of "effectiveness." *See National Wildlife Federation v. USEPA*, 980 F.2d 765 (D.C. Cir. 1992). Although relaxed, such demonstrations are no small tasks. Congress defined the task in House Report No. 96-1348 when it stated:

> THE DEMONSTRATION REQUIRED BY A STATE WOULD BE COMPARABLE TO THE DEMONSTRATION REQUIRED OF THE ADMINISTRATOR IN PROMULGATING REGULATIONS UNDER SECTION 1421(B). JUDICIAL REVIEW OF THE ADMINISTRATOR'S DETERMINATION IS IN ACCORDANCE WITH SECTION 1448(A) OF THE ACT.

With that standard in mind, one would expect to see a trail of formal documents and amendments to those documents for each Section 1425 primacy State.

Apparently no such trail exists for Ohio. In response to an FOIA request submitted to District 5 by an Athens County citizen for those documents, USEPA produced only the original demonstration documents, some recent

amendments to Ohio statutes and rules, and a few documents in between. No documents were produced that even hinted of a formal re-demonstration required by Section 1425(b).

Surely USEPA has adopted at least one substantive amendment to its regulations since September 22, 1983, that would require Ohio to present a Section 1425(b) re-demonstration, a re-demonstration that is "COMPARABLE TO THE DEMONSTRATION REQUIRED OF THE ADMINISTRATOR IN PROMULGATING REGULATIONS UNDER SECTION 1421(B)."

Surely since September 22, 1983, USEPA has determined there is new information about the endangerment of drinking water supplies that would require Ohio to present a Section 1425(b) re-demonstration, a re-demonstration that is "COMPARABLE TO THE DEMONSTRATION REQUIRED OF THE ADMINISTRATOR IN PROMULGATING REGULATIONS UNDER SECTION 1421(B)."

Surely since USEPA has determined Ohio has changed its program such that Ohio must present a Section 1425(b) re-demonstration, a re-demonstration that is "COMPARABLE TO THE DEMONSTRATION REQUIRED OF THE ADMINISTRATOR IN PROMULGATING REGULATIONS UNDER SECTION 1421(B)." This letter will discuss how Ohio simply ignores the program approved by USEPA.

Surely since September 22, 1983, USEPA has determined Ohio's program is no longer adequate such that Ohio must present a Section 1425(b) re-demonstration, a re-demonstration that is "COMPARABLE TO THE DEMONSTRATION REQUIRED OF THE ADMINISTRATOR IN PROMULGATING REGULATIONS UNDER SECTION 1421(B)." Ohio has a bad reputation when it comes to disposal of toxic "brine." In 1986, HOUSE CONFERENCE REPORT NO. 99–575 (May 5, 1986) Stated with reference to wellhead protection and annular injection: "The provision, therefore, is particularly aimed at Ohio, which has proven to be remiss in its enforcement of brine-related problems." I assure you, Ohio continues to "be remiss in its enforcement of brine-related problems" even though it apparently has addressed the annular injection problem. Ohio has preserved its 1986 reputation with blind eyes, stonewalling the public in its attempts to conduct oversight of ODNR and its industry partners, and lack of meaningful penalties for substantial violations that fail to make screaming headlines in Ohio, regional and national newspapers. I guess as long as USEPA does not make such a determination, it isdoes not statutorily obligated to address it. The USEPA should open its eyes as well.

Ohio's UIC program is in need of meticulous scrutiny as Ohio has disregarded its mandates to deal with violations and the public process, two important criteria required by law. Circumstances of the nature of the waste, now toxic and radioactive and the quantity, soon to be billions of gallons a year (new information), are of increasing concern to Ohio citizens. Public trust has been shattered, and we no longer feel the UIC program can meet the federal mandates and the threat to drinking water sources is inevitable. The citizens through direct experience, with ODNR and our legislators, are painfully aware that this agency is more interested in letting EVERY permit be approved than protecting the USDWS in our State.

40 CFR 145.33 establishes criteria for withdrawal of State programs. If the USEPA finds a State program fails to comply with terms of the MOA, it may begin procedures for withdrawal of the State program. Ohio's UIC program has failed to comply with the public participation process, its enforcement fails to comply with the

mandate to prevent harm to USDWS, and it has failed to act on violations of permits. (See testimony regarding Ginsberg Well API 3400922704 and Hahn Well API 3400921899.)

I have never had the level of frustration at the lack of attention to public participation requirements as with ODNR and the UIC permit application process. Ohio law, OAC 1501:9-3-06(E)(2)(c), says if an objection (to a permit) is received, the chief shall rule upon the validity of the objection. If in the opinion of the chief, such objection is not relevant to the issues of public health or safety or to good conservation practices or is without substance, a permit shall be issued. If the chief finds an objection to be relevant a hearing SHALL be called. By contrast, USEPA's regulations require *a public hearing* if the Director finds, based upon requests*, a significant degree of public interest.* In practice, the ODNR chief is never required to grant (and never does grant) a public hearing, even in the face of overwhelming public interest.

The chief of the oil and gas division abuses his discretionary power interpreting that HE can overrule and DENY a request for a public hearing based upon his opinion of what is significant, relevant or substantive. USEPA's State Submission Guidance Document #19 mandates Ohio grant a public hearing if there *is significant interest.* Can a program be effective if 260 or more citizen comments on permit applications, most requesting public hearings, are considered without substance? In the face of such comments and requests, ODNR denied requests for formal hearings. Instead ODNR performed a "dog and pony show" they called an Open House where armed guards were in place and the event was so noisy and unstructured that there could be no informative discourse of any permit in question. Most importantly, no public record was made of comments. Thereafter, they sent elementary, often irrelevant written comments to those who attended and posed questions. (See public comment concerning rock formation as an example of the kind of ridiculous response returned to a person seeking information.) Most alarming was the directive for a "free speech zone" reserved in the parking lot outside the Open House (with the armed guards) for those wishing to express concerns about ODNR and the permits in question.

This abuse of discretion allows all SWIW permits to be approved by default. USEPA UIC Guidance #34 references an inadequacy in the (primacy) States' permitting process is that of public participation. When a State limits the definition of that participation the problem can usually be solved in the MOA to taking whatever additional measures necessary to assure adequate participation. Ohio made that commitment. USEPA needs to look into the Ohio's interpretation of the law and realize that this certainly does not in any way meet the terms of the "effective" way to assure the public that there will be NO endangerment to any USDW..

USEPA Region 5 has policies far stricter than Ohio law. That is why the Pennsylvania and West Virginia toxic radioactive waste is coming to Ohio in never ending strings of truck convoys and river barges. Ohio FUNDS its UIC program with the waste! ODNR endeavors to grant every permit for an injection well quickly. The governor and legislators have assured ODNR has a pecuniary conflict of interest. Now BILLIONS of gallons of waste a year are welcomed into Ohio injection wells with extremely lax regulation to fill the agency coffers. The ODNR SWIW program has not been effective as evidenced by the number of violations that have no connective trail for enforcement or correction. How the hell does a well like the Ginsberg Well API 3400922704

remain functioning? This well CANNOT possibly meet the federal standards to mitigate endangering a USDW. This well needs to be shut down!

In 2010 Ohio received and injected 8,500,000 barrels of toxic waste. That is approximately 357,000,000 gallons of waste. One well in Athens County, newly permitted with the second permit pending will be allowed to inject up to 60 to 80 million gallons of waste a year. That is ONE SIXTH of the total waste injected into ALL wells in 2010. We in Ohio do not accept that Ohio's UIC program is effective enough now and certainly not in the future to effectively monitor and regulate these monster wells!!

The permit applications that are accepted into theODNR UIC office are a joke. Engineering firms are not required to complete or even certify parts of the applications. Geological, engineering and hydrological studies of the formations into which the toxic waste is injected are not required. There are no MPI formulas to demonstrate appropriate pressure for the amount of toxic radioactive waste destined for these new wells. When Ohio EPA submits comments of concern, they are rudely tossed aside by ODNR.

When Ohio submitted its request for primacy, a public hearing was required. If Ohio had to resubmit its application today and had a public hearing concerning whether Ohio has an effective SWIW program, you would find the people of Ohio responding with a resounding NO as an answer. Ohioans would demand that EPA remove the primacy status of this State and subject injection wells to the same policies as USEPA does in Region 5. Moreover, Ohio should be subjected to classifying SWIW wells as commercial and non-commercial and be subjected to the regulations applicable to those classifications.

Remember the Aristech Class I well in Haverhill, Ohio, which was subjected to the strictest of federal laws? The hazardous waste was injected to a depth of 4.000 feet from which depth phenol migrated upward and was discovered when a new well was being drilled. Inspectors had NOT discovered this migration or problem during their routine inspections. It was determined that the amount of waste under constant pressure caused cracks in the rock formation allowing migration of the phenol. The MPI of the well was IN COMPLIANCE with regulations, but the problem occurred anyway. THIS is what we the public know, and THIS is what we know will happen to the SWIW wells in Ohio. One might say: ITPS……. "It's The PRESSURE Stupid" (and I hate that word).

The Administrator has the responsibility and broad discretion to take an in depth review of Ohio's UIC program. Minimum requirements meeting federal law does not mean elimination of the meaningful safeguards in the permitting process or in the regulatory obligations to keep USDWS from becoming contaminated. Insert some of these synonyms for "effective": "impressive," "powerful," "direct," "competent," "forceful," "sound," "virtuous." Is this Ohio's UIC program? Certainly not!

One of the very major reasons Congress passed revolutionary environmental legislation in the latter part of the 20th century was to prevent the States from competing with each other by lowering or eliminating environmental oversight in order to attract business to the States. Unfortunately, that is exactly what has happened in Ohio. Lax oversight at the federal and state levels have allowed Ohio to attract business with its "no-touch, no-tell" regulations. Heaven forbid that a regulator will seek to enforce the law in Ohio. The

Governor will have that person fired (this happened recently to a veteran "by-the-book" regulator at the Ohio EPA). Comments of oil and gas personnel about Ohio's lax "no fines" regulatory atmosphere are rampant on the Internet. The Governor and some in the legislature openly taut this favorable low regulation business climate as they seek to attract industry.

If one State in all of the United States fails to enforce the spirit and intent of the SDWA, the USEPA becomes an abject failure. Region 5, you have that State—Ohio. The day will come when, just as with exposure to radioactive materials, asbestos, and tobacco, there will be widespread litigation targeting those who have caused injury and suffering arising out of the current wave of oil and gas exploration. The day will come when many innocents will die or be caused to suffer lifelong illnesses as a result of the environmental (water and air, to be sure) contamination arising out of the current wave of oil and gas exploration. When that time comes, Ohio's serious transgressions and USEPA's blind eyes will no longer be ignored. USEPA administrators in Washington, D.C., fearing the blame themselves, will quickly look for those at fault in the agency. By that time, Administrator Hedman, you may have retired or those events may necessitate your early retirement. Whatever the circumstances, unless Region 5 takes swift, proactive, corrective action with respect to the Ohio program, Region 5 will be in the crosshairs.

I respectfully request a copy of the audit at its completion.

Respectfully submitted,

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Attachments