{In Archive} TCEQ testimony on exemptions

Ray Leissner to: David Gillespie, Patrick Rankin 06/07/2012 09:51 AM

Cc: Stacey Dwyer, Philip Dellinger

From: Ray Leissner/R6/USEPA/US

To: David Gillespie/R6/USEPA/US@EPA, Patrick Rankin/R6/USEPA/US@EPA

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Archive: This message is being viewed in an archive.

Have you seen Brian Shaw's (TCEQ Commissioner) congressional testimony on exemptions yesterday?
I cut and pasted the part about exemptions from the link in Scott's email below.

In Situ Uranium Mining – Aquifer Exemptions

EPA Region 6 is reversing over 30 years of precedent by mandating modeling that is not required in EPA or state rules or indicated in EPA guidance on the subject. This new, ad hoc requirement is being applied to the state's Underground Injection Control (UIC) program. As a result, Region 6 has *sua sponte* decided that new aquifer exemptions for two in situ uranium mining projects are incomplete without computer modeling to demonstrate that the aquifer or portion thereof proposed for exemption does not currently serve as a source of drinking water.

EPA's specification that modeling should simulate groundwater conditions throughout all uranium production and groundwater restoration phases of a uranium mining operation ignores the rule criterion's focus on current conditions rather than on future events.

Such modeling is not required in EPA or state rules or indicated in EPA guidance on the subject. In fact, EPA ignores its own guidance. The TCEQ relied upon the EPA memorandum "Guidance for Review and Approval of State Underground Injection Control Programs and Revisions to Approved State Programs, GWDB Guidance #34" in preparing its program revisions to reflect the designation of the aquifer exemptions. Guidance 34 makes no reference of any modeling analysis required to demonstrate that a proposed exempted area does not currently serve as a source of drinking water.

Accordingly, the EPA did not implement any changes to aquifer exemption regulations through a rulemaking process or follow its obligations under the TCEQEPA Memorandum of Agreement for proper communication to TCEQ of any proposed or pending modifications to federal statutes, rules, guidelines, policy decisions, etc.

Such modeling has no precedent in any of the over 30 aquifer exemptions approved by EPA for in situ uranium mining in Texas during the 30-year history of the UIC program in Texas. Furthermore, such modeling is not consistent with applicable case law from *Western Nebraska Resources Council v. United States Environmental Protection Agency* , 943F.2d 867.

In requiring such modeling, EPA Region 6 ignores the applicable UIC program in Texas. Thereby EPA is disregarding the state program's statutes and rules; detailed application technical review by licensed TCEQ staff; opportunity for public

participation including public meetings; consideration and response to comment; and opportunity for contested case hearing and judicial review of commission decisions. **For Class III injection wells for uranium mining, the TCEQ's rules are more specific and more protective of groundwater than EPA's regulations.**

TCEQ received a letter from EPA dated May 16, 2012, persisting in their request for computer modeling. The EPA Region 6 did not deny the application, but rather refused to approve it until computer modeling is provided. However, by refusing to grant the aquifer exemption until such a time that all of EPA's "requirements" are satisfied is an effective denial.

In the TCEQ's response dated May 24, 2012, the following points are made:

- As stated in previous communications, EPA regulations, EPA guidance, and EPA precedent **do not require** groundwater modeling to consider a non-substantial UIC program revision to identify an exempted aquifer.
- Although the groundwater outside of the designated exempted aquifer is not relevant to the aquifer exemption criteria, such groundwater is protected by compliance with TCEQ injection well permits, production area authorizations, and enforcement of TCEQ's rules.
- There have been 43 Class III injection well permits issued for uranium mining in Texas. After completion of mining, restoration and reclamation activities, concurrence from the United States Nuclear Regulatory Commission is required to approve the final decommissioning, including groundwater restoration, of an *in situ* uranium mine. **There has not been one instance of documented off-site pollution of a USDW from *in situ* uranium mining activities.**
- EPA has **never** commented to TCEQ that a pending permitting action for an *in situ* uranium mining project would lead to the contamination of a USDW outside of an exempted aquifer. EPA has **never** informed TCEQ that the authorized UIC program is out of compliance with the Safe Drinking Water Act because Class III injection well operators are failing to protect USDWs or groundwater outside of exempted aquifers. And **never** has EPA notified TCEQ that EPA intended to take an enforcement action against a Class III injection well operator for failing to protect USDWs as required by TCEQ permit or rule.
- It appears that EPA may be swayed by the unsubstantiated allegations and fears of uranium mining opponents who have contacted them regarding TCEQ's program revision.
- The TCEQ remains committed to the approved UIC program and believes the permits and authorizations protect USDWs in the area as required in the Safe Drinking Water Act.

Ground Water / UIC Section (6WQ-SG)
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USEPA, Region 6

The FIRST STEP in protecting your ground water is to have your well tested.

----- Forwarded by Ray Leissner/R6/USEPA/US on 06/07/2012 09:43 AM -----

From: Scott Ellinger/R6/USEPA/US
To: Ray Leissner/R6/USEPA/US@EPA
Cc: Philip Dellinger/R6/USEPA/US@EPA, Stacey Dwyer/R6/USEPA/US@EPA
Date: 06/07/2012 08:03 AM
Subject: Fw: Statements: Per our discussion this morning

Just click the link at the bottom.

----- Forwarded by Scott Ellinger/R6/USEPA/US on 06/07/2012 08:01 AM -----

From: Susan Spalding/R6/USEPA/US
To: Scott Ellinger/R6/USEPA/US@EPA
Date: 06/06/2012 12:52 PM
Subject: Fw: Statements: Per our discussion this morning

You might find Mr. Shaw's testimony interesting.

Susan Spalding
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EPA Region 6
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----- Forwarded by Susan Spalding/R6/USEPA/US on 06/06/2012 12:52 PM -----

From: William Luthans/R6/USEPA/US
To: spalding.susan@epa.gov
Date: 06/06/2012 11:33 AM
Subject: Fw: Statements: Per our discussion this morning

I tried to send this to you earlier, but must have had a mistake in the address. Here it is again.

----- Forwarded by William Luthans/R6/USEPA/US on 06/06/2012 11:32 AM -----

From: Diane Taheri/R6/USEPA/US
To: Lynda Carroll/R6/USEPA/US@EPA, William Luthans/R6/USEPA/US@EPA, William Honker/R6/USEPA/US@EPA, Cheryl Seager/R6/USEPA/US@EPA, Jeannine Hale/R6/USEPA/US@EPA, Stephen Gilrein/R6/USEPA/US@EPA, Connie Suttice/R6/USEPA/US@EPA
Cc: David Gray/R6/USEPA/US@EPA, Sam Coleman/R6/USEPA/US@EPA
Date: 06/06/2012 10:41 AM
Subject: Statements: Per our discussion this morning

All:

Per our discussion this morning, I am forwarding the following link which includes the testimony to be reviewed. Please look at each and provide brief statements on any issue brought forward under your purview. If it is a cross issue (Navaho - OEJTA and PD), please coordinate with one another.

I need to ask for these by 1:00pm, no later than 2:00pm, please. I will route these up the chain.

Let me know if you have questions. Thank you.

http://energycommerce.house.gov/hearings/hearingdetail.aspx?NewsID=9552

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