Message

From: DeLaquil, Mark [mdelaquil@bakerlaw.com]
Sent: 8/14/2018 10:07:36 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]
Subject: FW: Florence Copper's Memorandum of Position on the Petition for Judicial Review of the 1997 Aquifer Exemption
Attachments: ATT00001.txt

Flag: Follow up

Dear David,

I hope all is well. I do not know if you have heard, but the Ninth Circuit petitioners dismissed their cases with prejudice a few weeks ago. A just outcome, but we remain interested in the broader issue of when it is and is not appropriate to revisit minerals-based aquifer exemptions that are currently the subject of development. Please let me know when you have a few minutes to discuss. Also, I understand that Byron has left the Agency, so if there is anyone else who should be brought into the loop on this please do so (or let me know and I will).

Best regards,

Mark

Mark DeLaquil
Partner

Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1527

mdelaquil@bakerlaw.com
bakerlaw.com

From: gtsiolis@nj.rr.com <gtsiolis@nj.rr.com>
Sent: Wednesday, July 18, 2018 8:22 AM
To: brown.byron@epa.gov; fotouhi.david@epa.gov; 'Baynes, Sheila (ENRD)' <Sheila.Baynes@usdoj.gov>
Cc: DeLaquil, Mark <mdelaquil@bakerlaw.com>; 'Rita Maguire' <rmaguire@mpwaterlaw.com>
Subject: Florence Copper's Memorandum of Position on the Petition for Judicial Review of the 1997 Aquifer Exemption

Folks,

As a follow-up to our June 20 meeting regarding the petition for judicial review of the 1997 aquifer exemption which is currently before the Ninth Circuit Court of Appeals (Attachment 1), attached please find Florence Copper's memorandum of its position on the regulatory merits of the petition (Attachment 2).

The memorandum explains the legal basis of Florence Copper's position that EPA's rules necessitate that an aquifer exemption established under 40 C.F.R. §§ 146.4(a)-(b)(1) and 144.7(b)-(c)—i.e., a minerals-based aquifer exemption—cannot be diminished or revoked while (i) there are activities ongoing that a UIC permit issued based on the exemption

authorizes within the boundaries of the exemption or (ii) activities in material reliance on the exemption are reasonably expected to occur within the boundaries of the exemption.

Florence Copper respectfully requests that EPA apprise Florence Copper of EPA's position on the regulatory merits of the petition, and whether EPA will take a position that is substantially similar to Florence Copper's position. We request that EPA do so within the next 2-3 weeks, as merits briefing concerning the other petition for judicial review that is before the Ninth Circuit (Attachment 3) has been scheduled (the petitioners' opening brief is due August 13) and it is conceivable that the court will consolidate its review of the two petitions.

We look forward to your response.

If you have any questions, please do not hesitate to let us know.

Thank you and best regards,

George A. Tsiolis
Attorney at Law
602-319-4021
201-408-4256
www.gtsiolis.com

Counsel for Florence Copper, Inc.

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