U.S. EPA Environmental Appeals Board: Petition Filed Challenging Class III/Class V Underground Injection Permits for South Dakota Uranium Recovery Project

Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The Oglala Sioux Tribe ("Petitioner") filed a December 24th Petition for Review ("Petition") challenging the United States Environmental Protection Agency's ("EPA") issuance of an underground injection control ("UIC") Class III area permit and Class V area permit for the Powertech (USA) Inc. ("Powertech") Dewey-Burdock Uranium In-Situ Recovery Project ("Project").

The Project is located in Custer and Fall River Counties, South Dakota.

The federal Safe Drinking Water Act UIC program regulates six classes of injection wells. Each well class is based on the type and depth of the injection activity. Also addressed is the potential for the injection activity to result in endangerment of an underground source of drinking water. Note that:

- Class III wells are used to inject fluids to dissolve and extract minerals
- Class V wells are used to inject nonhazardous fluids underground

The Petition states that EPA approved a UIC program area permit for the Project to construct and operate up to 14 Class III injection wellfields within the Project area. This is described as involving surface facilities and ground disturbance that includes the following construction:

- 1,461 separate injection wells
- 869 separate production wells
- Related operations/maintenance infrastructure

The Petitioner states 14 wellfields will be used for the injection of a chemical lixiviant to dissolve uranium from ore deposits in an underlying aquifer. It is also noted that Powertech was granted a UIC program Class V area permit to allow the construction and operation of up to four deep injection wells within the Project to be used for the disposal of treated uranium ISL processed wastewater into a separate underlying aquifer.

The challenges in the Petition raised by the Petitioner include:

1. Failure to demonstrate compliance with the requirements of the National Historic Preservation Act, 16 U.S.C. §§ 470, et seq. and implementing regulations;

2. Failure to demonstrate compliance with the cumulative effects analysis required by 40 C.F.R. § 144.33(c)(3), the "functional equivalence" doctrine, and NEPA's "systematic, interdisciplinary approach" to federal decisionmaking. 42 U.S.C. § 4332((A)).

3. Failure to demonstrate compliance with the Safe Drinking Water Act and implementing regulations, including 40 CFR § 144.12, 40 CFR § 146.33(a), and 40 CFR § 146.6(a)(ii), regarding demonstration of ability to contain the mining fluid within the exempted aquifer and protect underground sources of drinking water.

4. Failure to abide by the procedural rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. §§ 701, et seq.

A copy of the Petition can be downloaded here.