Underground Injection Control/Safe Drinking Water Act: U.S. EPA Environmental Appeals Board Addresses Challenge to Activities Associated with South Dakota Uranium Mining



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

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The United States Environmental Protection Agency ("EPA") Environmental Appeals Board ("EAB") issued a September 12th Order addressing a Petition for Review of two Underground Injection Control Permit decisions EPA Region 8 had issued. See UIC Appeal No. 25-01.

EPA Region 8 reissued the Permits pursuant to the Safe Drinking Water Act following remand by the EAB.

EPA Region 8 issued to Powertech (USA) Inc. two Underground Injection Control ("UIC") area Permits for the Dewey Burdock project site located in the Black Hills of South Dakota. The project activities include uranium mining.

UIC Permits were first issued by EPA Region 8 in 2020. They were challenged by the Oglala Sioux Tribe through a Petition to the EAB.

The EAB denied that Petition for Review in part, preserving two issues, and therefore remanding the Permit decisions in part. EPA Region 8 was directed to ensure that the administrative record was complete and provides its response to comments.

EPA Region 8 reissued the Permits to Powertech with no changes. The Oglala Sioux Tribe, along with the Black Hills Clean Water Alliance, and others subsequently petitioned for review of the reissued UIC area Permit decisions.

The EAB denies the second Petition, stating:

- Concludes that with respect to the administrative record, Region 8 complied with EAB's directive to ensure that the administrative record was complete under 40 C.F.R. part 124, and the Petition does not demonstrate that the Region improperly excluded documents.
- The document identified by Petitioners as de facto rulemaking is based on is based on and consistent with existing regulatory requirements, does not set forth any new or additional requirements that have a "binding effect" on EPA, and was not relied on as a basis for the Region 8's decision (rejecting the argument that Region 8 developed a de facto rule in respect to how the agency will implement

the Safe Drinking Water Act UIC Permitting Program related "to In-Situ leeching mining and processing of uranium").

- Failed to demonstrate that the baseline data in hydrogeological analysis that underlie the EPA Region 8's permitting decisions were insufficient, or that its technical determinations with respect to that data and analyses were clearly erroneous (including a failure to demonstrate that EPA Region 8 clearly erred in analyzing the project's cumulative effects under the UIC permitting regulations).
- A National Historic Preservation Act issue is outside of the scope of EAB's review and regardless, EPA Region 8 met its National Historic Preservation Act Section 106 obligations.

A copy of the Order can be downloaded here.