Underground Injection Control/Class V: Petition to Review Filed Challenging Ponderosa County, Montana Permit

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

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Angela Otero filed on June 2nd a petition for review ("Petition") before the United States Environmental Protection Agency ("EPA") Environmental Appeals Board seeking review under 40 C.F.R. § 124.19 of two final Underground Injection Control ("UIC") Class V permit decisions issued by U.S. EPA Region 8 authorizing injection of produced fluid and non-hazardous industrial wastewater from the Montalban Oil & Gas Operations, Inc. ("MOGO") Montana Renewables ("MR") refinery into the Madison Formation in Pondera County, Montana.

By way of introduction, the Petition states:

… The grounds below identify defects on the face of the permits and gaps in EPA's reasoned response to comments. The injectate is characterized in the application by a 2022 bench-scale projection, yet the record contains measured data that conflicts with it; the permits set no enforceable chemical limit on the injected fluid; the permits declare the stream "non-hazardous" in the same provision that makes testing the determinant of hazard; the permits' central USDW-protection condition is triggered by monitoring the permits never require; and EPA concedes that an unidentified chemical additive enters the injection zone. Each ground is framed to 40 C.F.R. § 124.19(a)(4).

The Petition identifies the injectate as the water phase from MR's renewable-feedstock pretreatment unit. The injectate is stated to project a raw pH of approximately 3 and TDS of 5,000–8,000 mg/L. This is stated to be expressly identified as based on bench-scale analyses and projections from ARA. Further, the Petition states that:

… for a system the application described as then "currently under construction" with "final water quality data … not available" — and states that the pH will be adjusted prior to injection, which will increase TDS by 5 to 10 percent.

The Petition argues as grounds for objection:

- The injectate pH is internally contradicted and left unconstrained; EPA did not reconcile the conflict.
- The hazard determination is internally contradictory on the face of the permit: the permit pre-labels the injectate "non-hazardous" in the same provision that makes TCLP the test for whether it is hazardous.
- The permits' USDW-protection condition is illusory: corrective action is conditioned on USDW monitoring the permits never require, leaving the adjacent, nonexempted USDWs without a backstop.
- EPA authorized injection of an admittedly unidentified chemical additive without characterizing it.

- The permits' characterization is inconsistent with EPA's simultaneously issued final documents.

The Petition requests that the Environmental Appeals Board grant review of the final permit decisions and remand the permits to EPA Region 8 with instructions to:

- reconcile the injectate characterization, including pH, on the measured record, and impose enforceable limits on the design-critical injectate parameters;
- make and document a non-circular hazard determination supported by an adequate analytical basis, including for constituents raised in comments such as PFAS and volatile organics;
- require contaminant monitoring of the adjacent, non-exempted USDWs sufficient to give Section I.1 operative effect;
- identify and characterize all additives introduced into the injected fluid; and
- reconcile the inconsistent injectate characterizations across EPA's final documents.

A copy of the Petition can be found here.