

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

IN AND FOR LARAMIE COUNTY, STATE OF WYOMING

Civil Action No. 92-472

FILED

DEC 16 1982

Terri A. Lorenson, Adm. Aide
Environmental Quality Council

KERR-McGEE NUCLEAR)
CORPORATION,)
A Delaware Corporation,)
) Petitioner,)
))
) v.)
))
ROBERT E. SUNDIN, as)
Director of the Wyoming)
Department of Environmental)
Quality; JOHN CROW; TIM)
FLEMING; GLEN GOSS; LEE)
KEITH; DAVE PARK; MAXINE)
PATTERSON; RON SUDAM; THE)
ENVIRONMENTAL QUALITY)
COUNCIL; and THE STATE)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
) Respondents.)

STIPULATION

COMES NOW the parties in the above-entitled matter, by and through their attorneys, and hereby stipulate that the following interpretations of the following sections of Chapters VIII and IX, Wyoming Water Quality Rules and Regulations, are no longer a matter of dispute between the parties and may be adopted by this Court in order that this matter may be concluded without further hearings:

I. Chapter VIII, §4(d)(8)(b)

The text of this section reads as follows:

(b) A discharge into a Class V (Mineral Commercial) Groundwater of the State shall be for the purpose of mineral production and shall not result in the degradation or pollution of the associated or other groundwater unless the affected groundwater quality can be returned to background or better quality

after mining ceases, by a reduction or elimination of pollution; or in the waste of other water resources. If it has been determined by the Administrator that a return to background quality cannot be achieved, the affected groundwater will, at a minimum, be returned to a condition and quality consistent with the pre-discharge use suitability of the water.

In administering the requirements of this section, the Administrator of the Water Quality Division of the Department of Environmental Quality will use the following procedure:

1. The applicant for a discharge permit will submit data to the Division which will demonstrate the background levels of the groundwater within the area in which the applicant is applying for a discharge, i.e., within a Class V (Mineral-Commercial) groundwater use area.

2. The applicant will submit further information concerning the feasibility of restoring this groundwater to those background levels after mining ceases.

3. Based upon this information, and other information the Division may develop or receive, the Administrator will make a determination concerning whether it is feasible for the applicant to return the Class V groundwater to ambient, or background, water quality levels in existence prior to the commencement of mining.

4. If the Administrator determines that it is not feasible for the applicant to return the Class V groundwater to background levels, then the applicant will be allowed to return the groundwater to a level consistent with the class of groundwater in existence prior to the commencement of mining. For groundwater which was consistent with Class I, II, III or Special A uses, Table I, on pages 9 and 10 of Chapter VIII, Wyoming Water Quality Rules and Regulations, shall be used to establish the constituent levels to which

the applicant will be required to restore the groundwater, on a parameter-by-parameter basis.

5. Groundwater found "closely associated with" deposits of hydrocarbons and/or other minerals includes groundwater in areas where operational monitoring is required during production and in an associated buffer zone.

6. Under §4(d)(8)(b) the required restoration level for uranium concentrations consistent with Class I groundwater, is 5.0 mg/l.

7. In making his or her determination of feasibility for restoration of a Class V groundwater to background levels, the Administrator shall take the following factors into consideration:

A. The character and degree of injury to or interference with the health and well being of the people, animals, wildlife, aquatic life and plant life affected;

B. The social and economic value of the source of pollution;

C. The priority of location in the area involved;

D. The technical practicability and economic reasonableness of reducing or eliminating the source of pollution; and

E. The effect upon the environment.

II. Chapter VIII, §6(c)(4).

The text of this section reads as follows:

The underground management of wastes includes the temporary storage and the ultimate disposal of all wastes in below surface receivers. The following standards apply to any underground storage or disposal of wastes

(c) The discharge or waste . . . (4)
can be controlled at all times.

This section requires that a discharge to groundwater, either from an injection well or from a wastewater storage lagoon must be capable of being monitored and the extent of the pollution must be capable of restraint or correction. It is intended that excursions of pollution beyond a defined area must be capable of control through such processes as groundwater sweeps or pump-back systems. The requirement that a discharge must be "controlled at all times" means that such a discharge must be capable of being substantially contained or confined in a given area. This section does not require that all wastewater storage lagoons be leak-proof.

III. Chapter IX, §8(e)(7).

The text of this section reads as follows:

Permit Conditions and Content. For any subsurface discharge excepting a special process discharge

(e) All issued permits shall contain the following

(7) A requirement that the discharge or injection pressure, and annulus pressure, of a pressure-operated discharge shall be monitored on a continuous basis.

This section does not apply to wells involved in in-situ mining, since such wells are special process discharge wells. For other discharge wells, this section merely requires that a monitoring device of some sort, using a device such as a graph, strip chart, or rotating disc, be maintained at the plant or well site so that a continuous record of maximum injection pressure will be available for

examination by the permittee, and by the Department of Environmental Quality personnel. A continuous pressure indicator is acceptable for monitoring annulus pressure.

IV. Chapter VIII, §3(c).

The text of Section 3(c) reads as follows:

Protection shall be afforded all underground water bodies (including water in the vadose zone). Water being used for a purpose identified in W.S. 35-11-102 and 103(c)(i) shall be protected for its intended use and uses for which it is suitable. Water not being put to use shall be protected for all uses for which it is suitable.

This section of Chapter VIII was written for the purpose of protecting water which is actually being used in Wyoming. Such uses include human consumption, domestic use, irrigation, stock water uses, industrial and other agricultural uses. The desire was to protect water which may not have met all the criteria for a Class I, II, III, or Special A groundwater (but which is being used for one of those purposes within one of those classes) from being degraded any further.

For example, suppose a person was using well water for drinking and domestic purposes. But that water did not have all of its constituent parts come within Class I parameters. The water would nevertheless, under §3(c), be protected from getting any worse for any of those parameters not falling within the Class I criteria. Degradation of that water could take place for any parameter falling within Class I, up to Class I limits. But no degradation would be allowed for any parameters already found to be exceeding, as a matter of ambient quality, Class I limitations.

The purpose of §3(c) was to protect water as it is being used, regardless of whether or not all constituents in

the water came within the designated parameters for the class of water which matched the actual use. Thus, if a rancher was drinking from a water supply which had a total dissolved solid level of 700, that water would still be protected as domestic (Class I) water for all parameters. Those parameters not exceeding Class I limitations would be allowed to rise to Class I limits, (the water still being protected as a Class I water). But for parameters already above Class I limits, no degradation would be allowed. Total dissolved solids, in this example, would not be allowed to rise above 700.

V. Chapter VIII, §4(d)(6)

The text of §4(d)(6) reads as follows:

A discharge into an aquifer containing Class I, II, III or Special (A) Groundwater of the State shall not result in variations in the range of any parameter, or concentrations of constituents in excess of the standards of these regulations at any place or places of withdrawal or natural flow to the surface. A discharge which results in concentrations in excess of standards shall be permitted if post-discharge water quality can be returned to water quality standards or better quality; excepting that the uranium concentration in any Class I Groundwater of the State shall not exceed the pre-discharge background concentration.

The intent of this section is to protect water at a point of withdrawal or natural flow to the surface. This could include water being put to a beneficial use, or it could include springs or other artesian flows at the surface. This water is protected from any degradation, through a class of groundwater, on a parameter-by-parameter basis.

Degradation will be allowed, however, as long as the permittee is able to assure the Department of Environmental Quality, Water Quality Division, that once permitted

discharges to groundwater have terminated, the water quality of the groundwater in the aquifer which has received the discharge can be restored to a designated class of groundwater comparable to the class of groundwater in existence prior to the commencement of the permitted discharges.

VI. Chapters VIII and IX as applied
to the regulation of uranium mill
tailings.

The question of the constitutionality of the application of Chapters VIII and IX in the area of regulation of uranium mill tailings is not ripe. The Department of Environmental Quality has not yet sought to apply these regulations to uranium mill tailings operation. The parties, therefore, agree that this matter should properly arise under a contested case involving the specific application of these regulations to uranium mill tailings operations.

VII. Uranium concentrations in Class I Groundwater.

Section 4(d)(6), Chapter VIII, Wyoming Water Quality Rules and Regulations, as cited in Part IV above, contains a requirement that no discharge to groundwater may cause a uranium concentration for Class I groundwater to exceed the concentration in that groundwater existing prior to discharge. As set forth in Part I, this requirement does not apply to the provisions of §4(d)(8)(b) of Chapter VIII, since the groundwater found "closely associated with"

deposits of hydrocarbons and/or other minerals will be classified as Class V, (and not Class I) groundwater.

For any groundwater that has been designated as Class I groundwater by the Department of Environmental Quality, any discharge into such an aquifer must not increase the uranium concentrations in that groundwater above background, or "pre-discharge" levels. Groundwater of the State is to be classified when there is a threat of pollution or physical alteration to a given aquifer (See §5(c)), Chapter VIII, Wyoming Water Quality Rules and Regulations). For groundwater, however, that has not been designated as Class I, this last proviso of §4(d)(6) is not applicable.

SUMMARY

The parties agree that the above interpretations of Chapter VIII and IX, Wyoming Water Quality Rules and Regulations, are accurate and are acceptable to all litigants and in the interest of limiting the issues to be litigated in this matter, and respectfully request this Court to adopt the interpretations set forth herein as interpretations of law applicable to the case at bar.

Respectfully submitted this _____ day of _____,
1982.

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