

Public Testimony: Kevin Frederick, Administrator, WDEQ/WQD
EPA Public Hearing - Proposed 40 CFR Part 192
Casper WY
May 13, 2015

Introduction and Background

Good evening. I'm Kevin Frederick, Administrator of the Water Quality Division with the Wyoming Department of Environmental Quality, or 'DEQ'. On behalf of the Department's Director, Todd Parfitt, I would like thank the EPA for the opportunity to provide comment on the proposed rule (40 CFR Part 192) here in Casper. We believe it's important that EPA hear the comments of those most affected by the proposed rule, including those of landowners, industry, and state and local governments here in Wyoming, the largest producer of uranium in the country. For that reason, DEQ would also like to offer the following comments and observations on EPA's proposed rule.

The State of Wyoming has been involved in the regulation and oversight of in-situ uranium mining, including post-mining groundwater restoration, since the Wyoming Legislature first passed a series of laws more than thirty (30) years ago governing the permitting of in-situ mining operations, requirements for monitoring and reporting requirements, and provisions to ensure that groundwater impacted by mining operations is restored through the application of 'best practical technology'.

Statutes, Rules, and Guidelines have been developed and are updated to meet the challenges of protecting the environment. Notably, in many ways Wyoming already requires more stringent groundwater restoration than the federal Safe Drinking Water Act. Wyoming requires restoration of groundwater affected by in-situ mining operations regardless if the operation occurs within underground sources of drinking water, or other groundwater not suitable for drinking water.

To my knowledge, the proposed rule is EPA's first foray into regulation in this area. And DEQ has had a long and successful relationship with the EPA's regional office in Denver, who have historically recognized the Department's long-standing authority in this area. DEQ is surprised that EPA did not consult with our state program officials familiar with groundwater restoration technologies and challenges prior to developing this proposed rule. Consultation would have given EPA the benefit of Wyoming's expertise, and given EPA a better understanding of the effectiveness of Wyoming's regulation. At a minimum, consultation with states should have occurred to allow the proposed rule to implement the most effective practices of existing state programs. Consultation is mandated by Executive Order and is consistent with the principles of cooperative federalism. Unfortunately, EPA's failure to engage in meaningful dialogue with the states is an ongoing problem, particularly in the area of environmental regulation.

DEQ is not comfortable that the proposed rule adequately evaluates the environmental benefit alleged to accrue from the proposed rule, nor the additional expense required to pursue that benefit.

It is important to understand that, regardless of the level of any groundwater restoration standard, the ability to achieve those standards is ultimately dependent upon the degree to which remediation technologies can achieve those levels of cleanup. Even under ideal conditions, some contaminants are extremely recalcitrant to restoration to even baseline quality. While the proposed rule allows for Alternative Concentration Limits, or ACLs, complete restoration may simply not be technically or economically feasible in all situations. The public should be provided an opportunity to comment on any proposed ACL under this proposed rule.

In 2009, with the support of our Governor and industry, Wyoming's Legislature appropriated \$1.6 million to the University of Wyoming, School of Energy Resources (SER) to, in part, begin development and testing of new in-situ mining remediation technologies that could be more effective, efficient, and affordable than is presently the case. We would encourage EPA to seriously consider whether the additional costs to industry and regulators to implement the proposed rule may

be better invested in expediting the development and implementation of these, and other new and emerging technologies.

We've identified other areas of concern that I will mention just briefly, but with the understanding that more detailed written comment will be provided before the close of the public comment period. Namely:

- The proposed rule should provide more flexibility to allow science to guide regulation by accounting for site-specific conditions which may differ significantly from one location to another. For instance, the proposed regulation should take into account each site's unique characteristics in setting requirements for post closure monitoring and other monitoring requirements.
- Eliminate confusion of which groundwater restoration standards are applicable (i.e. SDWA, NRC, RCRA) by simply adopting one reference, rather than several.
- There are also comments and questions that we will provide regarding the basis for, and efficacy of the 30-year stabilization monitoring requirement.

To address DEQ's and others' comments, DEQ believes that EPA should withdraw the proposed rule and consult with state regulators with scientific and practical experience in this field. Withdrawal would also allow EPA to gather more scientific support and foundation for any future proposed rule. Greater knowledge would allow EPA to better determine the most effective regulatory path forward.

Thank you.