



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

June 17, 2014

Mr. Richard A. Hyde, P. E.
Executive Director,
Texas Commission on Environmental Quality (TCEQ)
Post Office Box 13087
Austin, Texas 78711-3087

RE: Partial Withdrawal and Partial Reaffirmation of a UIC Program Revision establishing an Aquifer Exemption for uranium mining in a portion of the Goliad Aquifer near Ander, Texas in Goliad County

Dear Mr. Hyde:

The U.S. Environmental Protection Agency (EPA) has completed its review of the Goliad aquifer exemption requested by the Texas Commission on Environmental Quality (TCEQ), on behalf of Uranium Energy Corp. (UEC), approved by the EPA on December 4, 2012, by letter from Mr. William Honker to Mr. Zac Covar. EPA revisited this decision as a result of a petition for review filed by a group of interested citizens (Petitioners) on January 18, 2013, challenging EPA's final agency action in the Fifth Circuit Court of Appeals (Case No. 13-60040). Petitioners requested that the Court vacate the aquifer exemption. Of particular concern to the Petitioners was the water level data that UEC submitted to EPA after the conclusion of the State's public notice and comment period. In response, EPA asked the Court for a voluntary remand of the aquifer exemption decision without vacating the exemption to allow the Agency to offer its own opportunity for public notice and comment. The Court granted EPA's request, and therefore, EPA solicited the submission of any data, including any comments on the UEC submitted data not previously made widely available, which could assist EPA in its review. EPA also held a public hearing on the approval of the aquifer exemption at which it received numerous oral comments.

A thorough review of the public comments raised uncertainty regarding the quality of existing water level data, as well as the accuracy of the original methods used to survey existing wells. As a result of these concerns, on March 24 and 25, 2014, EPA traveled to Goliad, Texas, to witness the acquisition of additional survey data. Following the re-surveying of existing wells by a state licensed and certified surveyor, UEC collected a new set of fluid level measurements with EPA witnesses. Using the data acquired from the March 2014 field excursion, EPA made additional contour maps for comparison to previously existing contour maps and data sets.

In the area of the Goliad aquifer exemption, there are two near-parallel faults (the Northwest Fault and the Southeast Fault), which are almost vertical in orientation, and trend in an approximate southwest to northeast direction. The two fault planes place the majority of the requested Goliad aquifer exemption area within a geologic feature known as a graben, a land mass between the faults that has dropped over time. Based on the prior information available to EPA, the analysis of the March 2014 data set, and additional data received during public comment period, EPA is reaffirming its original interpretation of a general west to east ground water flow direction with localized variations within the graben.

Moreover, EPA believes there is sufficient geologic data and ground water elevation data to characterize the ground water flow direction in the graben. The March 2014 data reinforces EPA's December 2012 conclusion that the capture zones of nearby drinking water wells do not intersect the exemption area within the graben. As such, EPA is reaffirming its approval of an aquifer exemption under the criteria provided in Title 40 of the Code of Federal Regulations (C.F.R.) § 146.4 for the previously exempted area within the graben. However, for the previously exempted area north of the Northwest Fault outside the graben, EPA is withdrawing its approval of that portion of the aquifer exemption.

EPA concludes that the portion of the aquifer reaffirmed for exemption meets the criteria for exemption as follows:

- 40 C.F.R. § 146.4 (a): It does not currently serve as a source of drinking water; and
- 40 C.F.R. § 146.4 (b)(1): It cannot now and will not in the future serve as a source of drinking water because it has been demonstrated by permit application to contain minerals that, considering their quantity and location, are expected to be commercially producible.

The extent of the exempted portions of the Goliad Formation are described and depicted in the Statement of Basis (enclosed) and attachments thereto.

With respect to the portion of the exemption north of the Northwest Fault, EPA agrees with the comments presented during its notice and comment period that there is a significant lack of ground water elevation data for this area. Additionally, the potential recharge area and concerns about the potential effects from the fault on the ground water flow direction north of the Northwest Fault are considerations that warrant additional data and analysis. Of the four domestic wells of concern north of the fault, only two have known depths and are considered to be completed in the B sand. Additionally, current fluid levels are below those previously measured. EPA cannot accurately determine whether the area would currently act as a source of drinking water because of the lack of data needed to determine the ground water flow direction north of the Northwest Fault. EPA finds that insufficient technical data north of the Northwest Fault are available to warrant proceeding with the request as approved on December 4, 2012. As stated above, EPA is withdrawing the portion of the approved aquifer exemption north of the Northwest Fault outside the graben area. EPA is open to reconsidering an exemption request for the area north of the Northwest Fault in the future if sufficient data and analysis are developed to warrant reconsideration.

EPA and TCEQ share the mutual goal of assuring the protection of underground sources of drinking water. We look forward to continuing our work together to meet that goal. Please feel free to contact me or have your staff contact Mr. Philip Dellinger, Chief of the Ground Water/UIC Section at (214) 665-8324, if you'd like to discuss this decision.

Sincerely yours,

A handwritten signature in black ink, appearing to read "W K Honker". The signature is written in a cursive, slightly slanted style.

William K. Honker, P.E.

Director

Water Quality Protection Division

Enclosure

cc: Brent Wade, TCEQ