

Comments to the Committee on Science Integration in Decision Making

Robert Schreiber, March 29, 2011

My comments today are a brief summary of material that was submitted to Dr. Nugent on May 27, 2010.

EPA completely fails to gather scientific data which assesses the impact of allowing municipalities to unlawfully store sewage in aquifers. The regulatory term for an aquifer is an underground source of drinking water (USDW). EPA's failure to gather data is not simply an oversight. Instead, there is extensive documentation which shows EPA's intentional effort to defy regulations which itself has promulgated; to defy an 11th Circuit Court of Appeals decision; and to defy Congress' intent to prohibit the endangerment of USDWs.

Congress passed the Safe Drinking Water Act (SDWA) to protect public health. The SDWA focuses on all waters which actually or potentially are available for drinking use, whether from above ground or underground sources. Part 144 of the SDWA establishes the Underground Injection Control program (UIC program). Under the UIC program injection activity that allows the movement of undrinkable fluids into USDWs is prohibited. Also prohibited is injection activity which may otherwise adversely affect the health of persons.

EPA covers-up their failures by making explicit false statements about the applicability of UIC regulations by making statements which fail to disclose the regulations and by refusing to provide explanations for inconsistencies with UIC regulations in determinations that the agency issues. The false statements and omissions occur in communications to the public, elected officials, consultants to at least one US District Judge and likely, soon to a second District Judge.

In 1997 the 11th Circuit Court of Appeals affirmed Congress' intent when it said, generally, (paraphrasing) "To achieve the statutory purpose of preventing underground injection which endangers drinking water sources, Congress chose the regulatory strategy of prohibiting any underground injection which is not authorized by a permit... Thus, it is clear that Congress dictated that all underground injection be regulated under the UIC programs. An applicant may receive a permit to conduct underground injection activity if the applicant shows that the activity will not endanger drinking water sources. EPA does not have the authority to make or change UIC law."

EPA's role is to implement the law but it circumvents its own UIC regulations by issuing determinations which state, generally, that tunnels which convey wastewater to treatment plants do not require permits. EPA omits that it is the shaft which fills the tunnel that requires the permit.

Failure to require UIC permits circumvents the integration of science in determining if there is potential endangerment to a USDW or human health circumvents public participation in the permit process, and circumvents regulatory requirements to monitor the injection activity. The data which is derived from monitoring becomes the physical data which assesses long-term impacts.

Since EPA is neither enforcing its own permitting regulations, nor gathering reliable data, public effort to oppose the practice of contaminating aquifers with sewage is severely impaired. Also, any litigation in regard to establishing damages sustained to USDWs or to human health becomes excessively complicated because without data any source of contamination becomes legally speculative.

There is an aspect of EPA's failure to acquire data which was not addressed in the original submittal. It involves assessing alternatives to storing sewage in aquifers. In most instances where tunnel systems are used, there is a preponderance of storm water which enters and overwhelms the capacity of the shallow-pipe collection system. If EPA were to evaluate the cost/benefits of managing storm water at the surface rather than allowing it to enter the shallow-pipes it would most likely find that there is both physical and social scientific data to support the viability of surface management over tunnel systems.