



DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

February 13, 2009

Bill Ritter, Jr.
Governor

Harris D. Sherman
Executive Director

Dick Wolfe, P.E.
Director

MEMORANDUM

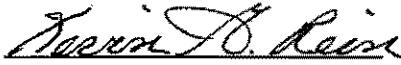
To: Division of Water Resources Well Permitting Staff

From: Kevin G. Rein, Assistant State Engineer

Subject: Guideline 2009-1 regarding the State Engineer's permitting authority over wells located on hazardous waste remediation sites

The attached Guideline 2009-1 clarifies the well permitting requirements for wells to be constructed on RCRA, CERCLA, and CHWMA remediation sites. In summary, the guideline clarifies that projects that are operated under the authority of CHWMA, which is authorized by RCRA, have no provisions that conflict with the State Engineer's Well permitting authority. On the other hand, for projects authorized as CERCLA superfund sites, provisions of that act preempt well permit provisions required by state law. The guideline covers this in detail.

For a period of time during recent years, the Division of Water Resources allowed the construction of wells on RCRA or CHWMA sites without well permits and the associated fees. As you encounter those wells, you should prompt the well owner to come into compliance with the permitting statutes, and ensure the wells are permitted pursuant to the relevant statute. This guideline supersedes any previous correspondence from the Division of Water Resources on this matter wherever it conflicts with that correspondence.


Kevin G. Rein

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FEBRUARY 13, 2009

GUIDELINE 2009-1

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CONCERNING THE STATE ENGINEERS PERMITTING AUTHORITY OVER WELLS LOCATED ON HAZARDOUS WASTE REMEDIATION SITES

Purpose:

The purpose of this guideline is to clarify previous interpretations of the State Engineer's permitting authority over wells located on hazardous waste remediation sites under the federal Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the state Colorado Hazardous Waste Management Act (CHWMA).

RCRA is delegated to the State under CHWMA

Under RCRA the Environmental Protection Agency (EPA) may authorize a state to run its own hazardous waste program which operates "in lieu" of the federal RCRA program. In 1984, the EPA authorized Colorado to operate its hazardous waste program pursuant to the provisions of CHWMA.

The State Engineer's well permitting authority does not conflict with CHWMA. There is no express conflict between the State Engineer's well permitting and CHWMA hazardous waste permitting requirements because both requirements may apply. There is no implied conflict because CHWMA does not occupy the field of hazardous waste management to the exclusion of the State Engineer's permitting authority.

There is no provision in RCRA specifically prohibiting well permitting by individual states. RCRA authorizes States to impose additional requirements beyond those imposed by RCRA and the State's well permitting requirement is a legitimate response to an issue of local concern.

Well permitting requirements for RCRA sites operating solely under CHWMA

1. Monitoring wells must comply with all the provisions of 2 CCR 402-2 Rules and Regulations for Water Well Construction, Pump Installation, Cistern Installation, and Monitoring and Observation Hole/Well Construction ("Construction Rules") Rule 14.
2. Recovery wells, that is, wells that pump ground water for treatment, will require a permit and may not cause material injury to senior vested water rights. All recovery operations on the site, including the pumping of recovery wells, must be pursuant to a court approved augmentation plan or current Substitute Water Supply Plan approved by the State Engineer or must adhere to the Policy of the State Engineer. See Policy 94-5 at the Division of Water Resources website,

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<http://www.water.state.co.us/pubs/policies/remediation.PDF>. Wells that are found to be out of compliance with Policy 94-5 and causing injury will be subject to curtailment.

3. The construction and abandonment of each well must be in compliance with the Construction Rules.

CERCLA provisions preempt state permitting requirements for ground water remediation wells

Provisions under CERCLA, commonly known as Superfund, preempt well permit and fee provisions required by state law for monitoring and remediation wells constructed as part of the cleanup of a Superfund site. Well permits will not be required for any ground water remediation project whose operator demonstrates that the project is under federal authority and supervision and directed by CERCLA requirements. Projects operating under both CERCLA and RCRA are similarly exempt.

Division of Water Resources Provisions applying to wells constructed under CERCLA

1. Monitoring wells at the site will not require that a notice of intent be filed prior to construction nor will they require a permit.
2. The operator at the site must maintain accurate information for each well that has been constructed, including the well location (UTM; or Section, Township, Range, distances from section lines), construction date, and abandonment date. In addition the operator must maintain a well construction report and a well abandonment report using the forms supplied by the Division of Water Resources or an equivalent form. This information must be available to the Division of Water Resources on request.
3. The construction and abandonment of each well must be in compliance with the Construction Rules.
4. Recovery wells, that is, wells that will actually pump ground water for treatment, also will not require a well permit. However, no well can be used to cause material injury to senior vested water rights. All recovery operations on the site, including the pumping of recovery wells, must be pursuant to a current Substitute Water Supply Plan approved by the State Engineer or must adhere to the Policy of the State Engineer. See Policy 94-5 at the Division of Water Resources website, <http://www.water.state.co.us/pubs/policies/remediation.PDF>. Wells that are found to be out of compliance with Policy 94-5 and causing injury will be subject to curtailment.

Approved:



Dick Wolfe, State Engineer

Date: 2-13-09