

be maintained on-site, or at an accessible designated location, and shall be provided, upon request, during regular business hours to representatives of the Texas Air Control Board or any air pollution control agency having jurisdiction.

According to TNRCC,

[it] agrees that a regulation limiting a site's potential to emit must be practically enforceable, but that certified registrations kept on site meet this requirement. The § 122.10 potential to emit definition specifies that "any certified registration or preconstruction authorization restricting emissions \* \* \* shall be treated as part of its design if the limitation is enforceable by the EPA." The EPA, in 40 CFR 52.21(b)(17), defines federally enforceable as "all limitations and conditions which are enforceable by the administrator, including those \* \* \* requirements within any applicable SIP." Since the commission submitted § 122.122 for incorporation into the SIP, the commission considers limits established under § 122.122 to be federally enforceable. Further, § 122.122 specifies that certain registration of emissions and records demonstrating compliance with the registration must be kept on-site, or at an accessible location, and shall, upon request, be provided to the commission or any air pollution control agency having jurisdiction. The commission does not believe that a certified registration of emissions must be submitted in order to be practically enforceable since the owner or operator must make the registration and any supporting documentation available during an inspection.

26 *TexReg* at 3761.

The TNRCC's approach to PTE limitations does not comply with the requirements of the Act. First, 30 TAC 122.122 is not part of the Texas SIP. The EPA has not approved 30 TAC 122.122, into the SIP. Therefore it is not federally enforceable.<sup>16</sup>

Even if the rule were federally enforceable, the rule must also be practically enforceable.<sup>17</sup> One of the requirements for practical enforceability

<sup>16</sup> Texas' definition of "federally enforceable" in 30 TAC 101.1(31) also supports this conclusion. Federally enforceable is defined as "all limitations and conditions which are enforceable by the EPA administrator, including those requirements developed under 40 CFR parts 60 and 61, requirements within any applicable state implementation plan (SIP), any permit requirements established under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under the approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program."

<sup>17</sup> Seitz and Van Heuvelen, *Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit* (January 22, 1996), and Stein, *Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits* (January 25, 1995)

is notice to the State.<sup>18</sup> Under 30 TAC 122.122, there is no requirement that the State be notified and the registrations are kept on site. Therefore, neither the public, TNRCC, or EPA know what the PTE limit is without going to the site. A facility could change its PTE limit several times without the public or TNRCC knowing about the change. Therefore, these limitations are not practically enforceable, and TNRCC must revise this regulation to make the regulation practically enforceable. The revised regulation must also be approved into the SIP before it, and the registrations, become federally enforceable.

### III. Effect of Notice of Deficiency

Title V of the Act provides for the approval of state programs for the issuance of operating permits that incorporate the applicable requirements of the Act. To receive title V program approval, a state permitting authority must submit a program to EPA that meets certain minimum criteria, and EPA must disapprove a program that fails, or withdraw an approved program that subsequently fails, to meet these criteria. These criteria include requirements that the state permitting authority have authority to "assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter." CAA Section 502(b)(5)(A).

40 CFR 70.10(c)(1) provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70. This section goes on to list a number of potential bases for program withdrawal, including the case where the permitting authority fails to promulgate or enact new authorities when necessary. 40 CFR 70.10(c)(1)(i)(A).

40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the notice be published in the **Federal Register**. Today's notice satisfies this requirement and constitutes a finding of deficiency. If the permitting authority has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after publication of a notice of deficiency, EPA may take action under 40 CFR

<sup>18</sup> Stein, *Guidance on Enforceability Requirements for Limits Potential to Emit through SIP and § 112 Rules and General Permits* at 6-8.

70.10(b)(2). 40 CFR 70.10(b)(3) provides that, if a state has not corrected the deficiency within 18 months of the NOD, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. Upon EPA action, the sanctions will go into effect unless the state has corrected the deficiencies identified in this notice within 18 months after signature of this notice.<sup>19</sup> 40 CFR 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months after the date of finding of deficiency, EPA must promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw Texas' title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days, at which point it will determine whether Texas has taken significant action to correct the deficiencies.

### IV. Administrative Requirements

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of today's action may be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2002.

Dated: December 20, 2001.

Gregg A. Cooke,

*Regional Administrator, Region 6.*

[FR Doc. 02-298 Filed 1-4-02; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7126-4]

### Sole Source Aquifer Determination for Glen Canyon Aquifer System, Moab, Utah

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final determination.

**SUMMARY:** Pursuant to section 1424(e) of the Safe Drinking Water Act, the Acting Regional Administrator of the U.S. Environmental Protection Agency (EPA) in Region VIII has determined that the Glen Canyon Aquifer System at Moab, Utah and the immediately adjacent recharge area is the sole or principal source of drinking water for the area. The area is located in southeast Utah extending from the City of Moab, southeast, encompassing approximately 76,000 acres in Townships 25 through 28 South and Ranges 21 through 24 East

<sup>19</sup> The EPA is developing an Order of Sanctions rule to determine which sanction applies at the end of this 18 month period.

SLB&M. The area is irregularly shaped with maximum dimensions of about 22 miles from southeast to northwest and approximately 9 miles from southwest to northeast. The entire area is within Grand County, Utah. No viable alternative sources of drinking water with sufficient available supply exist within the area for which this application for sole source designation has been submitted. If this aquifer becomes contaminated, a significant hazard to public health would occur.

The boundaries of the designated area have been reviewed and approved by EPA. As a result of this action, federal financially assisted projects constructed in the approximately 119 square mile area mentioned above will be subject to EPA review to ensure that these projects are designed and constructed in a manner which does not create a significant hazard to public health. For the purposes of this designation the Aquifer Service Area and the Project Review Area are the same as the Designated Area.

**DATES:** This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Mountain Standard Time on January 7, 2002.

**ADDRESSEES:** The data upon which these findings are based, and a map of the designated area are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, CO 80202-2466 or the Moab City Library, 25 South 100 East, Moab Utah 84523.

**FOR FURTHER INFORMATION CONTACT:** William J. Monheiser, Regional Sole Source Aquifer Coordinator, Ground Water Program, 8P-W-GW, USEPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, Phone: 303.312.6271, Fax: 303.312.7084, E-mail: [monheiser.william@epa.gov](mailto:monheiser.william@epa.gov).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300f, 300h-3(e), Public Law 93-523 as amended, the Acting Regional Administrator of the U.S. Environmental Protection Agency, Region 8 has determined that the Glen Canyon Aquifer System is the sole or principal source of drinking water for the Moab area of southeast Utah described above. Pursuant to section 1424(e), federal financially assisted projects constructed anywhere in the Sole Source Aquifer area described above will be subject to EPA review.

## I. Background

Section 1424(e) of the Safe Drinking Water Act states:

"If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of the law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer."

Effective March 9, 1987, authority to make a Sole Source Aquifer Designation was delegated to the U.S. EPA Regional Administrators.

On May 7, 2001 a petition was received from the City of Moab, 115 West 200 South, Moab Utah 84532, requesting that EPA designate the ground water resources of the Glen Canyon Aquifer System near the City of Moab as a Sole Source Aquifer. In response to this petition, EPA published a notice of a Public Meeting in the Times-Independent, a newspaper of general circulation in the Moab area. This notice announced receipt of the petition and requested public comment in writing or oral comments at the public meeting held August 14, 2001 and for a 34 day comment period following the meeting. Comments received by mail, telephone, Fax and e-Mail were also accepted. The public comment period extended from August 14, 2001 to September 17, 2001.

Subsequently, EPA determined that the petition is both administratively and technically complete and adequate.

## II. Basis for Determination

Among the factors considered by the Regional Administrator for designation of a Sole Source Aquifer under section 1424(e) are: (1) Whether the aquifer is the area's sole or principal source of drinking water, (2) if the designated area has been adequately delineated and, (3) whether contamination of the aquifer would create a significant hazard to public health.

On the basis of information available to EPA, the Regional Administrator has made the following findings of fact, which are the basis for this determination:

1. The Glen Canyon Aquifer System serves as the "sole source" of drinking

water for approximately 6000 permanent residents within the City of Moab. Most domestic wells and stock wells in the area derive their water from the shallow valley fill aquifer and are not affected by this action. There is no unappropriated alternative drinking water source or combination of sources which could provide fifty percent or more of the drinking water to the designated area, nor is there any projected future alternative source capable of supplying the area's drinking water needs at an economical cost.

2. Although the Glen Canyon Aquifer System underlies much of southeast Utah, in the Moab area the aquifer is of very high quality, able to be used as a drinking water source with the minimal treatment required by the State of Utah. This constitutes a limited resource in this immediate area that if contaminated would create a significant hazard to public health and result in significant economic, social and environmental costs. Potential sources of contamination include: (1) Petroleum, mineral exploration, and geophysical drilling, (2) poorly designed development (3) accidental spills along roadways, (4) abandoned but unplugged petroleum, mineral and geophysical wells, tunnels and (5) non-sustainable agricultural and forestry practices.

3. The City of Moab's petition and supporting documentation have appropriately delineated the boundaries of the subject aquifer.

## III. Description of the Petitioned Aquifer

The designated area of the Glen Canyon Aquifer System encompasses about 76,000 acres in an irregularly shape area approximately 22 miles long by 9 miles wide. Drinking water production is from one developed spring from the Wingate Sandstone and three developed springs and five drilled wells from the Navajo Sandstone. The lower Jurassic Wingate Sandstone, overlain by the lower Jurassic Kayenta Sandstone, overlain by the lower Jurassic Navajo Sandstone comprise the approximately 800 feet thick Glen Canyon Aquifer System. Water production is primarily due to fracture flow. Combined production of the water system can be greater than 4,775 gallons per minute with 3,000,000 gallons of storage. The boundaries of the aquifer were determined by hydrogeologic mapping, which is the area interpreted to contribute water to the springs and well. The aquifer is exposed at the surface within its service area and considered to be moderately to very vulnerable.

#### IV. Information Utilized in Determination

The information utilized in this determination includes the petition from the City of Moab, review of available literature, and the results of ground water investigations conducted by the State on the ground water resources of the area. These data are available to the public and may be inspected during normal business hours at EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466 or at the Moab City Library, 25 South 100 East, Moab, Utah, 84532.

#### V. Project Review

EPA, Region VIII, will work with the Federal Agencies that may, in the future, provide financial assistance to projects in the designated area. Interagency procedures will be developed in which EPA will be notified of proposed funding commitments for projects which could contaminate the aquifer. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should EPA determine that a project may contaminate the aquifer, so as to create a significant hazard to public health, no commitment for federal assistance may be entered into. However, a commitment for federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not contaminate the aquifer.

Although the project review process cannot be delegated to state or local agencies, the EPA will rely upon any existing or future state and local control mechanisms, to the maximum extent possible, in protecting the ground-water quality of the aquifer. Included in the review of any federal financially assisted project will be coordination with local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support state and local ground water quality protection mechanisms.

#### VI. Public Comments

In response to the Public Notice and Public Meeting, a detailed discussion of all questions, a transcript of the public meeting as well as all written comments can be found in the Administrative Record and may be inspected during normal business hours at EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Participants at the Public Meeting voiced unanimous support for designation. Of the 52

written comments received all were supportive of designation except for one. All comments are addressed in EPA's Responsiveness Summary, which is part of the Administrative record.

No additional data were presented during the public comment period regarding aquifer characteristics, boundary delineation or potential errors of fact presented in the petition.

#### VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that this designation will not have a significant impact on a substantial number of small entities. For purposes of this Certification, "small entity" shall have the same meaning as given in section 601 of the RFA. This action is only applicable to projects with the potential to impact the Glen Canyon Aquifer System Sole Source Aquifer as designated.

The only affected entities will be those businesses, organizations or governmental jurisdictions that request federal financial assistance for projects which have the potential for contaminating the Sole Source Aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Many projects subject to this review will be preceded by a ground water impact assessment required pursuant to other federal laws, such as the National Environmental Policy Act (NEPA) as amended 42 U.S.C. 4321, *et seq.* Integration of those related review procedures with sole source aquifer review will allow EPA and other federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effects on those small entities which are affected. Finally, today's action does not prevent grants of federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12866, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of \$100 million or more on the economy, will not cause any major

increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Glen Canyon Aquifer System in Grand County, Utah. It provides an additional review of ground water protection measures, incorporating state and local measures whenever possible, for only those projects which request federal financial assistance.

#### VIII. Summary

This determination affects only the Glen Canyon Aquifer System, located in Moab Utah. As a result of this designation all federal financially assisted projects proposed in the delineated area will be subject to EPA review to ensure that they do not create significant hazard to public health,

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

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#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-7126-6]

#### Program Requirement Revisions related to the Public Water System Supervision Program for the States of Connecticut, Rhode Island, Vermont and the Commonwealth of Massachusetts

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the States of Connecticut, Rhode Island, Vermont and the Commonwealth of Massachusetts are in the process of revising their approved Public Water System Supervision Programs to meet the requirements of the Safe Drinking Water Act (SDWA).

EPA has determined that the Revised Public Water System Definitions for the State of Connecticut and the Commonwealth of Massachusetts are no less stringent than the corresponding revised Federal definition, as authorized under the Safe Drinking Water Act Amendments of 1996 and final rule provided on April 28, 1998 (63 FR 23362). Therefore, EPA intends to approve this Public Water System Supervision Program requirement for both Connecticut and Massachusetts.

The State of Connecticut has adopted drinking water regulations for Synthetic