



City of Soda Springs

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DEPARTMENT OF
WATER RESOURCES

Mitchell J. Hart, Council President

November 15, 2023

Matthew Weaver, Director
Idaho Department of Water Resources (IDWR)
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Sent via e-mail:

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Re: Soda Springs Area of Drilling Concern (SSADC)

Director Weaver, et al:

I appreciate the opportunity to provide comments to the Petition to –

Designate an Area of Drilling Concern (ADC), Kerr-McGee Chemical Corporation (“KMCC”), Soda Springs Plant Superfund Site (“Site”), Soda Springs, Idaho submitted January 30, 2023, by the Greenfield Environmental Multistate Trust, LLC (“GEMT” or “Trust”).

The following comments are my own from the perspective of the Council President of the Soda Springs City Council, Soda Springs, Idaho, and a licensed professional engineer in the State of Idaho.

From an historic / legacy / background perspective –

- The Site operated from 1963 to 1999 (about 36 years). Arguably, made tens of millions (maybe hundreds of millions) of dollars from the operation.
- The Site has been known to have impacted groundwater, on- and off- Site, as far back as the early 1980s – over 40 years ago.

- The Site was listed by US EPA on the National Priorities List (NPL) in 1989.
- EPA issued the first Record of Decision (ROD) in 1995 (tailings reprocessing) which failed.
- EPA issued the second ROD in 2000 (cap and cover tailings in-place) which failed.
- Tronox was formed in 2005 under which Kerr McGee placed the Soda Springs Site and its environmental impacts and liabilities.
- Tronox filed bankruptcy in 2009.
- Multi-State Environmental Response Trust was established in 2011.
- The Anadarko Litigation / Settlement allocates almost \$100 million to site cleanup circa 2015 of which about \$70 million remains present day.
- "Round 3 Site Cleanup" assessment begins in 2015 which consisted of a Supplemental Remedial Investigation (SRI), Risk Assessments (RA) and Focused Feasibility Study (FFS)
- By 2022, certain Site cleanup projects were completed – chemical and material disposal, building demolition, 10-acre Pond Removal, Waste / Tails Removal and placed in a lined, capped and covered Repository, etc.
- By 2023 – Remedial Alternatives were evaluated with a preferred alternative to treat groundwater in-situ with added ex-situ treatment as needed.
- Summary –
 - The Site operated for about 36 years (1963 to 1999).
 - The Site has been in "investigation / clean-up" for over 40 years (1981 to present).
 - The Site is projected to take up to another 50 years to "cleanup" with the selected / preferred remedy (until 2074 and possibly beyond).

Since at least 2015, when the Litigation Trust was funded, the City perceived that we had developed a solid communication link with the Trust. On October 13, 2023, the City was caught off guard when we received the Notice of Public Hearing for the proposed creation of the Soda Springs Area of Drilling Concern (SSADC). We would have thought that the GEMT would have been more transparent and advised the City they were considering a petition to establish an ADC.

Since the ADC was allowed decades ago, it is the City's understanding that there are only two (2) ADCs in the State of Idaho, namely: 1) the Bunker Hill ADC order dated June 3, 1994, and 2) the West Boise ADC order dated May 21, 2001. Therefore, it can be said that the establishment of an ADC is infrequently petitioned and rarely ordered. The City also understands that neither of the two (2) ADCs in Idaho have been modified nor reduced in size since their establishment.

It seems that the ADC process allows for the imposition of certain restrictions on private and public lands in "one fell swoop" in lieu of negotiating with each individual landowner to come to an agreement of the desired controls. One might argue that the establishment of the SSADC by/for the Trust to "protect public safety" comes at the expense of public and private landowners' property rights.

With that said, I would like to provide the following additional comments and/or questions with respect to the SSADC Petition for consideration by the Idaho Department of Water Resources (IDWR) –

- Institutional Controls (ICs) – In Section 4.3, it states, "Institutional controls (IC) were included as part of the groundwater remedy in the 1995 ROD and the 2000 ROD Amendment and will be included as a requirement in the forthcoming ROD Amendment. The 1995 ROD stipulated ICs "for off-Site areas to prevent exposure to groundwater for as long as the groundwater exceeds the RSLs." (USEPA, 1995). In addition, the Five-Year Reviews conducted by USEPA have recommended implementation of ICs "governing groundwater use at locations downgradient of the industrial facility where COCs are known to exceed MCLs or RBPSs."

- Question – Although pledged in 1995 and 2000 and recommended as part of Five-Year Reviews, why haven't off-site ICs been proposed, discussed, negotiated, and established before now as part of the previous attempts at site cleanup? If they have, please outline and describe for the public.
- Remedial Action Alternatives – In Table ES-1, it appears that Alternative 5 (Hybrid In-Situ and Contingent Ex-Situ Groundwater Treatment) is the Preferred Alternative.
 - Comment – It is understood that a general near-term plan for Alternative 5 will be:
 - Treatability Study Pilot Test
 - Phase 1 – Data Collection
 - Phase 1a (2023) Water Collection and Analysis
 - Phase 1b (2023/2024) Column Studies
 - Phase 1c (2024) Field Trials
 - Phase 2 – Pilot Remediation Test (2025+)
 - Phase 2a -- Design
 - Phase 2b – Installation
 - Phase 2c -- Operation
 - Questions
 - Does the Trust have sufficient funds to carry out Alternative 5 (at a cost of about \$70 million) over the next five (5) decades?
 - What happens if the funds are exhausted before the remedy is achieved?
 - Will financial assurances be required, and a bond put in-place to insure remedy completion, however long that takes?
 - Comment – Regardless of which Alternative is selected, it is projected to take up to 50 years to come into compliance with ARARs (Applicable or Relevant and Appropriate Requirements) ... almost as long as the Site has existed.
- Conceptual Site Model (CSM) – The figure that depicts the CSM projects the vertical extent of Vanadium (RSL = 86ug/L) and Molybdenum (RSL 100ug/L) to extend to depths of about 140 feet and 240 feet respectively.
 - Comments / Questions –
 - The vertical depth of both metals is unexpectedly deep.
 - The SSADC would require landowners who elect to drill a well below these depths and would be required to drill through the basalt formation into a lower geologic formation where the quality of the water is of poor quality (discolored and bad taste).
 - There is some debate as to the interpretation of direction of groundwater flow. Because of that debate, is a peer review of the CSM warranted?
- Area of Drilling Concern (ADC) – In Section 5.1, the ADC Description and Boundaries states, “The proposed Soda Springs ADC boundary is shown on Figure 5-1, along with the Site boundaries (Multistate Trust property boundary), Bayer/P4/Monsanto property boundary, Soda Springs city limits, and the groundwater molybdenum and vanadium plume outline exceeding USEPA RSLs as of October 2021 ... and extends south from the Site to the Bear River”.
 - Questions –
 - The total area encompassed by the ADC boundary on Figure 5-1 is approximately 1,800 acres. What percent of the total ADC acreage is within:
 - The City limits?
 - The Bayer/P4 Plant boundaries?

- The KMCC Site?
 - and Outside City Limits (e.g., in Caribou County)?
 - Was the Bayer/P4 Plant (also dealing with adjacent environmental groundwater matters) consulted in the establishment of the SSADC boundary?
- Figures -- Figures 5.1 (Proposed Area of Drilling Concern Boundary), 5.1a (Proposed Area of Drilling Concern Boundary, South Detail), 5.1b (Proposed Area of Drilling Concern Boundary, Central Detail), 5.1c (Proposed Area of Drilling Concern Boundary, North Detail), 5.2 (Existing Wells within Proposed Area of Drilling Concern Boundary) and 5.3 (City of Soda Springs Water Service Area and Proposed Area of Drilling Concern Boundary)
 - Comment -- The Proposed Area of Drilling Concern depicted in the referenced Figures impact lands held by the City of Soda Springs and numerous property owners within and without City limits.
 - Question – Because of the restrictions the Proposed Area of Drilling Concern imposes on the landowners, will this constitute a real or perceived “Regulatory Taking”?
 - Note -- a “Regulatory Taking” occurs when governmental regulations limit the use of private property to such a degree that the landowner is effectively deprived of economically reasonable use or value of their property. The general rule is that, if regulation goes too far, it will be recognized as a taking for which compensation must be paid. If so, under the Fifth Amendment to the United States Constitution, governments are required to pay just compensation for such takings.
 - Request – A “environmental mitigation fund” should be required by IDWR and established by the Trust to compensate private and public landowners as they seek to develop their lands saddled with added restrictions under the SSADC. The landowners didn't create the on-site and off-site problems, nor should they have to pay any additional costs because of it. Mitigations could include but not be limited to –
 - to pay all well drilling permit application expenses and well drilling costs over and above the normal.
 - pay for the cost for landowners (within the SSADC) to connect to City water services at the time of development of the land(s),
 - establish a formal Good Neighbor Agreement (GNA) with the City to mitigate and compensate for the effects of the SSADC to City owned lands,
 - and/or other mitigative measures that are deemed appropriate.
- Concerns of the City
 - Looking toward the long-term, as the City grows, additional water sources may be required to meet the future drinking water demands. With the proximity of the SSADC to the City water source to the east (Ledge Creek Springs), our concerns are:
 - What if the Kerr-McGee Site groundwater plume precludes the City from locating and developing a culinary well in a preferred area? We have likely exhausted our ability to capture artesian spring water and we will be forced to drill and operate more costly groundwater wells.
 - Who will pay the additional costs if we must seek future waters at greater distances from the SSADC and/or the groundwater plume?
 - There is a significant amount of City acreage (City Industrial Park, Kelly Park, etc.) being impacted by the proposed SSADC boundaries. There is a reasonable potential of drilling groundwater wells in these areas which will be restricted by the SSADC and developed at a much greater cost. This further justifies certain mitigative measures to be considered mentioned above.

Summary --

- I am generally opposed to the establishment of the SSADC as petitioned by GEMT.
- Those landowners (public and private) affected by the establishment of an ADC, were not the cause of the contamination to the environment and therefore should not be penalized by historical / legacy actions. With that, mitigative offsets and compensation need to be considered. With the potential of the GEMT and the City being linked by the Site for another 50 years or more, a Good Neighbor Agreement (GNA) needs to be considered and established to set more formal terms and conditions going forward.
- If IDWR elects to levy an ADC layered over the plume emanating from the Kerr-McGee Chemical Corporation Soda Springs Plant Superfund Site, then the following conditions should be imposed:
 - The boundaries of the SSADC need to be further vetted with – Bayer/P4, City of Soda Springs, Caribou County and private landowners and adjusted as appropriate.
 - Sufficient funds need to be placed in trust to mitigate adverse effects to public and private landowners – i.e., tying private lands into City services as warranted, preventing the City from expanding culinary water capacity, etc.

References:

- IDWR Areas of Drilling Concern –
 - Link: [Areas of Drilling Concern | Idaho Department of Water Resources](#)
- Greenfield Environmental Trust Group (GETG), Kerr-McGee Chemical Corporation Soda Springs Superfund Site, Soda Springs, Idaho --
 - Link: [Greenfield Soda Springs \(greenfieldenvironmental.com\)](#)

These comments are my own and are respectfully submitted.

Best Regards,

s/ *Mitch*

Mitchell J. Hart, P.E.
Council President
City of Soda Springs

Cc: Mayor, City of Soda Springs
City Clerk and Treasurer, City of Soda Springs
Current and Members Elect of the City Council, City of Soda Springs
Director, Water and Wastewater, City of Soda Springs
City Engineer and Planner, City of Soda Springs
City Attorney, City of Soda Springs