

RESOLUTION

by the

GROUND WATER PROTECTION COUNCIL

Board of Directors

Pertaining to the Eleventh Circuit Court of

Appeals Decision in Case No. 95-6501

Whereas, Congress, in enacting the Safe Drinking Water Act of 1974, made it clear that the EPA could not promulgate underground injection regulations that impede the production of oil and gas unless essential to protect underground source of drinking water; and

Whereas, following a long rulemaking process, including public comment and hearings, the EPA did promulgate regulations in 1980 that would have unnecessarily impacted oil and gas-related injection well operations and state regulatory programs; and

Whereas, Congress amended the Safe Drinking Water Act in 1980 by enacting Section 1425, thereby prohibiting the EPA from imposing those regulations on injection well operations associated with oil and gas production in states with effective UIC programs;

and

Whereas, pursuant to the intent of Congress in passing Section 1425, the EPA consulted with State regulatory officials and others, and developed and published Guidance for the States and EPA to use in preparing and evaluating applications for State UIC programs for primary enforcement authority over oil and gas-related injection well operations; and

Whereas, throughout the legislative history of the SDWA, rulemaking and guidance development, State program authorization, MidCourse Evaluation, Peer Review process, and Federal Advisory Committee deliberations, the States have demonstrated effective, existing UIC programs for oil and gas-related injection well operations, and have never viewed hydraulic fracturing as underground injection; and

Whereas, the plain language of Section 1421 and Section 1425 of the SDWA shows Congress' intent to regulate only the following categories of oil and gas-related practices as underground injection:

- (a) underground injection of brine or other fluids that are brought to the surface in conjunction with oil or natural gas production or natural gas storage operations; or
- (b) any underground injection for the secondary or tertiary recovery of oil or natural gas; and

Whereas, hydraulic fracturing is not included as an underground injection practice under Section 1421 and 1425 of the SDWA; and

Whereas, the States and EPA have been working in partnership to ensure safe and environmentally sound operations of oil and gas related injection wells; and

Whereas, the EPA has sought input from the GWPC on UIC and other ground water issues;

Now, Therefore, Be It Resolved that the Ground Water Protection Council supports the EPA in its interpretation of "hydraulic fracturing" in the Eleventh Circuit Court of Appeals matter of Legal Environmental Assistance Foundation, Inc. v. United States Environmental Protection Agency, and

Be It Further Resolved that the GWPC will work with the EPA to ensure a meaningful and responsible conclusion of this matter.

