

**BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA**

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IN THE MATTER OF PETITION NO.)	
100828-76G TO THE DEPARTMENT OF)	FINAL
NATURAL RESOURCES AND CONSERVATION)	ORDER
FOR DESIGNATION OF A CONTROLLED)	
GROUNDWATER AREA)	

* * * * *

A Proposal for Decision in the above-entitled matter was issued February 18, 1997. Copies of the Proposal were mailed to all interested parties. Many exceptions were received by the Department. A review of the record indicated the Hearing Examiner misunderstood or misinterpreted the testimony of Kirk Warren and there was an error concerning the number of acres in the petition. An amended Proposal for Decision (Proposal) was issued April 3, 1997. The Proposal recommended designation of a temporary controlled groundwater area for all three aquifers under the area identified on attached Figure 2 and described as follows:

the SW $\frac{1}{4}$ of Section 16, the SE $\frac{1}{4}$ of Section 17, the NE $\frac{1}{4}$ of Section 20, and the NW $\frac{1}{4}$ of Section 21, all in Township 3 North, Range 8 West, Silver Bow County, Montana. The boundaries of the area correspond closely to the boundaries of the RTFTP Operable Unit of the Silver Bow Creek-Butte Area Superfund Site near Rocker, Montana, and a small portion of the Streamside Tailings Operable Unit Superfund Site, plus an additional one-quarter mile buffer zone radius around the contaminated groundwater area, an area of approximately 160 acres.

The Department received one exception to the Proposal. The exceptions stated disagreement with Condition "E" which requires the Butte-Silver Bow Health Department (Petitioner) to send

copies of the results of the quarterly monitoring of the remedy's effectiveness to the Department. The exception states, (U)nder the current remedial action for the Rocker OU, the Atlantic Richfield Company (ARCO) is responsible for sampling and monitoring the remedy's effectiveness. . . ." Petitioner believes ARCO should be made to send the copies of the quarterly monitoring to the Department.

It is Petitioner's responsibility to get those quarterly monitoring reports to the Department. If Petitioner can arrange for ARCO to send the reports to the Department, that is acceptable. However, it is ultimately Petitioner's responsibility to ensure the quarterly monitoring results are sent to the Department. Condition "E" will not be altered.

The Director of the Department of Natural Resources and Conservation, having given the matter full consideration, hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the April 3, 1997, Proposal and incorporates them herein by reference.

WHEREFORE, based upon the record herein, the Director makes the following:

ORDER

A temporary controlled groundwater area is established for all three aquifers under the area identified on attached Figure 2 and described as follows:

the SW $\frac{1}{4}$ of Section 16, the SE $\frac{1}{4}$ of Section 17, the NE $\frac{1}{4}$ of Section 20, and the NW $\frac{1}{4}$ of Section 21, all in Township 3 North, Range 8 West, Silver Bow County,

Montana. The boundaries of the area correspond closely to the boundaries of the RTFTP Operable Unit of the Silver Bow Creek-Butte Area Superfund Site near Rocker, Montana, and a small portion of the Streamside Tailings Operable Unit Superfund Site, plus an additional one-quarter mile buffer zone radius around the contaminated groundwater area, an area of approximately 160 acres.

The above-described area shall be closed to all new appropriations of groundwater.

A. The granting of this petition for a controlled groundwater area in no way limits any claim the State of Montana, as trustees for natural resources, may have for the damage to the groundwater aquifer.

B. The granting of this petition for a controlled groundwater area does not serve as a permit for the release of hazardous substances into the groundwater aquifer.

C. The petition for a controlled groundwater area is being granted in recognition of the existing contaminated conditions and does not relieve any person from liability for contamination to the groundwater.

D. A grant of a controlled groundwater area is not an indication of a finding that the groundwater aquifer should not be remediated or restored.

E. The Butte-Silver Bow Health Department shall send a copy of the results of the quarterly monitoring of the remedy's effectiveness to the DNRC, Kirk Waren, Hydrologist, P.O. Box 201601, Helena, MT 59620-1601.

F. Within 30 days after the determination that the Rocker plume has been effectively mitigated to halt the threat of

further migration, the Butte-Silver Bow Health Department shall submit a petition to the Department for the removal of the controlled groundwater area designation.

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within 30 days after service of the Final Order.

If a petition for judicial review is filed and a party to the proceeding elects to have a written transcription prepared as part of the record of the administrative hearing for certification to the reviewing district court, the requesting party must make arrangements with the Department of Natural Resources and Conservation for the ordering and payment of the written transcript. If no request is made, the Department will transmit a copy of the tape of the oral proceedings to the district court.

Dated this _____ day of May, 1997.

Arthur Clinch, Director
Department of Natural Resources
and Conservation
1625 Eleventh Avenue
Helena, Montana 59620
(406) 444-2074

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Proposal for Decision was duly served upon all parties of record, first class mail, at their address or addresses this ___ day of May, 1997, as follows:

Daniel T. Dennehy
Rick Larson
Matt Vincent
25 W. Front Street
Butte-Silver Bow Health
Dept.
Butte, MT 59701

Sandra Stash
Atlantic Richfield Company
307 East Park, Suite 400
Anaconda, MT 59711

Mike Bishop
US EPA Federal Building
301 S. Park
Helena, MT 59626

Montana Dept. Fish,
Wildlife & Parks
P.O. Box 200710
Helena, MT 59620

Bob Davis
US Geological Survey
Federal Building
Helena, MT 59626

Jack Lynch, Chief Executive
Butte-Silver Bow Government
Butte, MT 59702

County Water & Sewer
District of Rocker
Albert Molygoni, Chairman
RR 3 Box 274
Butte, MT 59701

Marvin Miller
Montana Bureau of Mines
and Geology
1300 West Park St.
Butte, MT 59701-8997

John Arrigo

MSE, Inc.
P.O. Box 4078
Butte, MT 59702

Burlington Northern Inc.
1600 Continental Plaza
777 Main St.
Fort Worth, TX 76102-5384

Robert Kearney
422 W. Virginia St.
Butte, MT 59701

Dailey Oil Tools Inc
Marketing Division
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Conroe, TX 77305

John L. & Lori L. Hamner
Syndicate Land Bldg-Rocker
P.O.Box 3334
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Dennis Markovich
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Butte, MT 59701

Mary H. & Richard H.
McLaren
75 Rocker Rd
Butte, MT 59701

P & G Enterprises
2 Cedar Lake
Butte, MT 59701

Caroline Peterson
Francis E. Peterson
RR Rocker Box 265
Butte, MT 59701
Ann & Rudy T. Richter
RR 3 Box 275 Rocker
Butte, MT 59701

Rocker Holdings

Andy Young
MT Dept. Environmental
Quality
Water Quality Division
1520 E. 6th Ave.
Helena, MT 59620-0901

Candace West
Department of Justice
P.O. Box 201425
Helena, MT 59620-1425

MT Water Well Drillers
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Hardin, MT 59034

Lindsey Drilling
Clancy, MT 59634

O'Keefe Drilling
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Butte, MT 59702

Dynamite Drilling
3015 Moulton
Butte, MT 59701

Brazill Drilling
P.O. Box 4286
Butte, MT 59702

Braun Intertec Engineering
1901 Meadowlark Lane
P.O. Box 3026
Butte, MT 59702-3026

600 S. Main
Butte, MT 59701

Rocker Inn
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Butte, MT 59701

Connie J. and Ray Palmer
RR 2 Box 226
Butte, MT 59701

Bonnie L. Petersen
Rt 3
Rocker, MT 59701

Town Pump of Rocker, Inc.
600 S. Main
Butte, MT 59701

T.J. Reynolds, Manager
Water Resources Regional
Office
21 N. Last Chance Gulch
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(via electronic mail)

Kirk Waren
Water Management Bureau
48 Last Chance Gulch
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(hand delivered)

Bob Rudio
Water Operations Bureau
48 Last Chance Gulch
Last Chance Gulch
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Cindy G. Campbell
Legal Assistant

FIGURE 2

