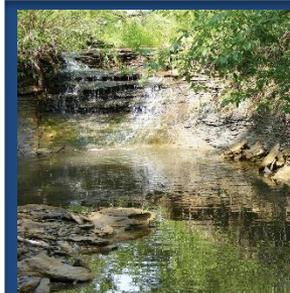




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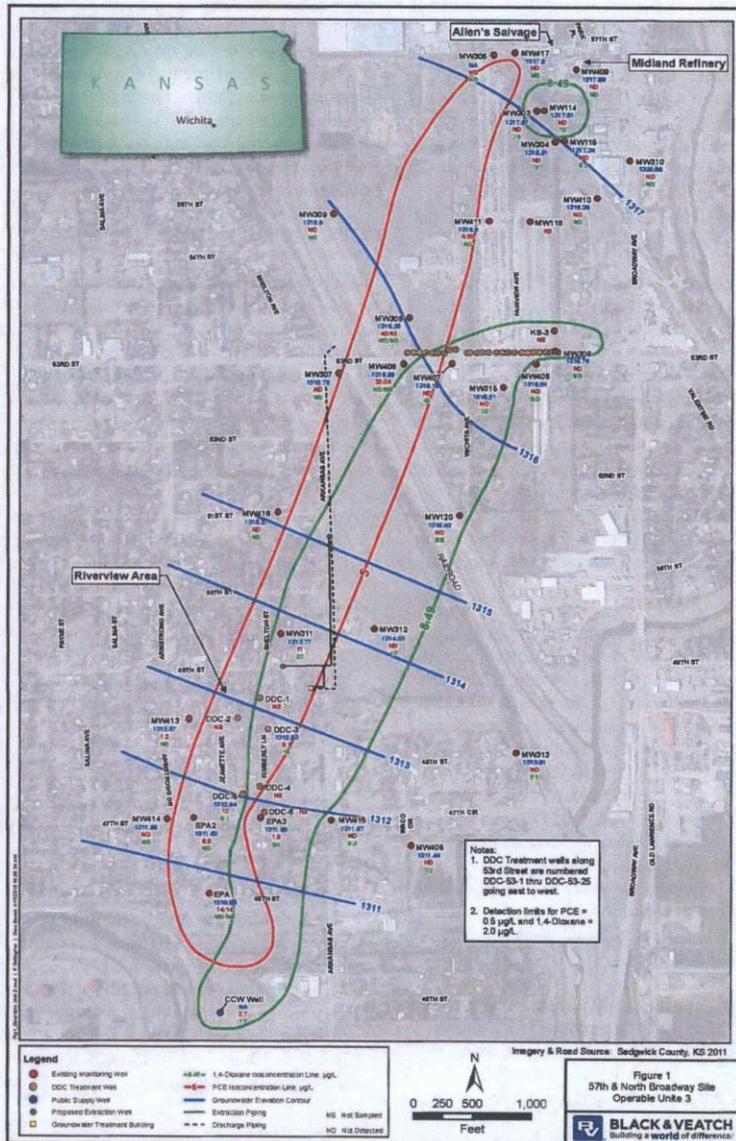


# CERCLA Permits and State Water Rights

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# Superfund Site in Kansas

- Groundwater contamination plume located north of Wichita, Kansas.
- Plan calls for two (2) extraction wells pumping at 300 gpm, which would result in approximate withdrawal of 1,000 acre-feet per year.
- Kansas Department of Health and Environment is coordinating agency and has recommended seeking a groundwater permit.
- Refusing to consider a permit could cause harm to other water rights and the source of supply.



# CERCLA Permitting Requirements

- Reason for refusing to get a permit.
- CERCLA §121(e)(1) – 42 U.S. Code § 9621
  - No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section.

# EPA Memo – February 19, 1992

## PURPOSE

The purpose of this directive is to clarify the Environmental Protection Agency (EPA) policy with respect to attaining permits for activities at CERCLA sites. CERCLA response actions are exempted by law from the requirement to obtain Federal, State or local permits related to any activities conducted completely on-site. It is our policy to assure all activities conducted on sites are protective of human health and the environment. It is not Agency policy to allow surrogate or permit equivalency procedures to impact the progress or cost of CERCLA site remediation in any respect.

## BACKGROUND

In implementing remedial actions, EPA has consistently taken the position that the acquisition of permits is not required for on-site remedial actions. However, this does not remove the requirement to meet (or waive) the substantive provisions of permitting regulations that are applicable or relevant and appropriate requirements (ARARs). (For further discussion on ARARs in general, see the attachment to this directive. For definitions of "substantive" and "administrative," see 55 FR 8756-57 and the CERCLA Compliance with Other Laws Manual, Part I, pages 1-11-12.) The proposed and final 1982 National Oil and

# ARAR Definitions

- “Applicable” or “Relevant and Appropriate”
- CERCLA Compliance with Other Laws Manual (1988) seems to only consider federal environmental laws and state environmental laws as they pertain to pollution and water quality as ARARs.

# Activities Not Subject to Regulation

- Activities Conducted Completely On-Site
  - EPA takes the position that permits are not required for on-site remedial actions.
  - Does this include the withdrawal of groundwater?
  - Does this include the discharge of water either directly or indirectly offsite?
  - Does the discharge relate to the withdrawal as far as determining whether an action is on-site?

# Solutions

- See reference to WSWC Letter between Arizona Department of Water Resources to Norm Johnson (1988).
  - Superfund site manager ultimately voluntarily agreed to apply for a DWR groundwater withdrawal permit.
- Based on the actions of the site manager in Kansas, the only way to get compliance is if the site manager chooses to cooperate.
- Other Superfund sites in Kansas have voluntarily cooperated with groundwater permitting in the past.