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EPA sued for allowing radioactive roads

These roads cannot be abandoned to prevent homes being built on radioactive land

- By BETSY CALVERT Staff Writer
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A coalition of advocacy groups is fighting a recent decision by the U.S. Environmental Agency to allow radioactive phosphate waste to be used in the building of roads.

The EPA has already said that such roads cannot be abandoned because homes might then be built on the radioactive land.

Eight environmental and social justice groups along with one construction trade union group filed suit in December in the U.S. Court of Appeals in Washington D.C. They also filed a 46-page petition with EPA Administrator Andrew Wheeler asking that he reconsider his agency's October decision.

Coalition members include an Arcadia group, People for Protecting the Peace River. The Peace River, which supplies drinking water to Charlotte, DeSoto and Sarasota counties, runs near giant phosphogypsum stacks maintained by Mosaic Fertilizer.

Any road construction from phosphate waste is expected to have a greater impact on Florida because most of these roads would be within 200 miles of existing phosphate manufacturing facilities. Most of the world's phosphate manufacturing and mining is in Central Florida.

Asked why the coalition would expect Wheeler to reverse the EPA decision, petition author Jaclyn Lopez of the Center for Biological Diversity said they don't expect Wheeler to change his mind. Filing a request for reconsideration is a required step in filing a suit against the federal agency.

Lawsuit Details

The petition called TFI's assertion indefensible that radioactivity would take 10,000 years to migrate into ground water and 100,000 years to surface water. Real world examples have shown it takes just a few decades, the petition states.

Also, she said, the petition lays out the flaws in the agency's ruling, which will be useful when the new presidential administration takes over.

The petition asserts that the EPA violated its regulations requiring public notice of a rule change when it reversed a decades old policy in October. The petition also accuses the EPA of using dramatically inaccurate estimates of how likely a person is to die of cancer if they are exposed to the radioactive waste during or after the building of the roads.

In other parts of the world, phosphate waste can be used in road construction. The phosphate industry has been lobbying for the ability to divert some of the tons of waste they generate annually into road projects rather than stacking the waste on giant stacks that tower over the landscape.

Those phosphogypsum stacks are also considered environmental hazards with leaks of highly acidic water into the landscape or into the underground water supply due to occurrence of sinkholes.

Phosphate production concentrates low level radioactive isotopes or radium and uranium found naturally in phosphorus. In the 1980s, the EPA banned the use in road work. They calculated the risk of death for construction workers, drivers, bicyclists and home dwellers.

The EPA changed its mind, if not its official rules, in October after a year-long negotiation with The Fertilizer Institute, an industry-backed organization. TFI recalculated the odds of getting cancer from phosphogypsum exposure to be a lower level than what the EPA had calculated in the 1980s.

So the EPA in 2020 decided to allow the roadwork use, citing President Donald Trump's goal of working more closely with industry on environmental regulations.

It set some restrictions, including stating that these roads can never be abandoned, so that homes can never be built on that land.

The coalition called a rule preventing road abandonment a "fig leaf," saying the half-life of the most common radioactive element in the waste, radium-226, takes thousands of years to lose its radioactivity.

The coalition states that the EPA's sidestepped public notice by calling the decision an approval.

"EPA did not provide public notice and opportunity for comment on its (phosphogypsum) approval; therefore, the PG approval is unlawful ...," the petition states.

As for environmental hazard, the 47-page petition asserts in mathematical detail that the EPA accepted erroneous calculations of risk from TFI. The EPA went with TFI's calculations of the risk of death, rather than the calculations done by the consultant it hired to review TFI's petition, the coalition states.

"The experts raised numerous concerns and multiple recommendations that EPA failed to meaningfully address or require of TFI," the petition states.

For example, TFI did not accurately assess the much higher exposure and risk to a backhoe operator or heavy-duty truckers, compared with its assessment of construction workers, the EPA's consultant reported.

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Mosaic responded to the lawsuit, stating: "More than 30 years ago, (phosphogypsum) stacks became regulated due to hypothetical and unrealistic exposure risk scenarios. Meanwhile, the rest of the world charged ahead with extensive analysis and determined the material to be safe, which is why (it) is widely used for a variety of purposes globally. EPA's actions align the U.S. with long-standing international standards.

"...This decision allows for not only building more sustainable roadways but enabling the reduction of stacks over time, which seems to be a shared goal with those bringing the challenge."