

## **THE PROJECT RULISON DECISION.**

Court issued its memorandum opinion and order on 16 March 1970, supporting the plaintiff COSCC on most points of law, but finding in favor of the Atomic Energy Commission on most issues of fact. The systems testimony was the exception, and the court wrote,

“The plaintiffs” challenge to the defendants claim that the planned release of radionuclides will not present a threat to health is on two levels. At the one level, they challenge the assertion that the plans themselves provide adequate protection for health and safety. At the other level, they claim that although the plans may be adequate in terms of the AEC standards and other accepted

standards, the standards themselves do not provide adequate protection for health and safety.

“The only significant evidence introduced by the plaintiffs in challenging the adequacy of the plans [to flare the radioactive natural gas from Project Rulison] was through the witness, Dr. Orie Loucks.

“Dr. Loucks is a Professor of Botany and Forestry at the University of Wisconsin who has been working as a systems analyst in environmental problems. His opinion is that the AEC has made an inadequate ecological study, that distribution and resultant concentration of the radionuclides cannot be predicted, and that therefore

the potential threat from the release is not accurately predicted in the plans. He thinks that a major study is necessary of tritium, its activity and movement through the atmosphere, water, and the biological transport systems. Such a study would cost \$4 million and would take about four years.

“Defendants countered by offering the opinion of Dr. Vincent Schultz, formerly of the Division of Biology and Medicine of the AEC and currently a Professor of Zoology at Washington State University. His opinion is that the release of tritium from the Rulison flaring is of such an insignificant amount that no detectable ecological effect will

result. This opinion is in agreement with the results of the AEC study found in Exhibit N, Appendix 13.

“The Court is not in a position to evaluate a scientific controversy of great sophistication, and this controversy as to methodology is certainly more sophisticated than the conventional problems with which we are faced.

However, we fortunately need not make such an evaluation to decide the issues presented in this case. The question that we must resolve here is whether or not the evidence establishes that the plans for the release and flaring of the gas are inadequate to provide a reasonably certain and rational basis for predicting that no

danger to health and safety will result therefrom. The controversy as to the necessity of a complete ecological analysis of tritium distribution need not here be resolved if in fact an accurate prediction can be made from the information provided by the defendants' studies.”

Chief Judge Arraj concluded his decision by stating that:

“ ... plaintiffs have failed to show the probability of irreparable damage if the flaring is not enjoined and have failed to establish a right to the specific injunctive relief sought.”

However, he then qualified the decision by emphasizing:

“... This opinion, our findings, conclusions and ruling apply

only to the specific factual situation presented by this litigation. We approve only of the flaring of the gas from the one well in the Rulison unit in which a nuclear device was detonated on September 10, 1969. We are not here and now approving continued detonations and flaring operations in the Rulison field. Such determination must be made in context of a specific factual situation, in light of contemporary knowledge of science and medicine of the dangers of radioactivity, at the time such projects are conceived and executed.

“Further, although we have found that the plans for the flaring do provide reasonably for the health and safety of the

public and that the specific plans for surveillance are reasonable, we determine that the Court should retain jurisdiction in order to ensure that the plans we today approve as reasonable are in fact reasonably and safely executed.

The final action of the decision was to order that:

“... defendant Glenn Seaborg [Chairman of the AEC] or his responsible agent comply fully with the information and data dissemination plan outlined in Appendix A to this opinion, ensuring the distribution of such data to the Rulison Open File as indicated, the Colorado State Public Health Department, and also to this Court, when they first become available.”

As a result of the brief introduction of modern methods of environmental systems science into the Project Rulison litigation, the Court retained jurisdiction of the post-shot release plans and required more extensive ““off-site”” monitoring of radiological safety data than had been proposed initially in the Project Rulison post-shot plans, and there was some assurance that this monitoring would now be organized in accordance with the methods of environmental systems science to follow all of the radionuclide through the atmospheric, hydrologic, and biological transport systems they enter.