



## URANIUM PRODUCERS OF AMERICA

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October 30, 2015

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator McCarthy:

On January 26, 2015, the Environmental Protection Agency (EPA) issued a proposed rule setting groundwater protection standards for in-situ uranium recovery facilities (Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings, 80 Fed. Reg. 4155). At the time the rule was published, we expressed concern that the agency failed to justify the need for the rulemaking and provided no evidence demonstrating in-situ uranium recovery poses a risk to local groundwater sources. In light of new information showing the EPA deliberately misled its Science Advisory Board (SAB), ignored data and input from the Nuclear Regulatory Commission (NRC), and dismissed NRC's concerns that the rulemaking overstepped the EPA's authority, the underpinnings of the proposed rule are highly suspect. Therefore, we urge the EPA to withdraw the rulemaking.

The concerns outlined below are serious and require immediate attention. While we want to call your attention to these issues, please note we have a number of other concerns with the substance of the rulemaking that are documented in comments previously submitted to the agency.

- Unlike other recent rulemakings, the **EPA failed to consult industry stakeholders and state regulators** who have more than forty years of experience regulating in situ recovery (ISR) uranium operations. The EPA also ignored the existing state and federal regulations governing ISR operations. According to NRC staff, the EPA appeared to "lead the SAB to conclude the

absence of specific ISR regulations in 40 CFR Part 192 equates to the absence of the regulation of ISR sites.”<sup>1</sup>

- **EPA deliberately misled the SAB.** According to NRC staff, the EPA claimed an “excursion was movement of ISR production fluids outside the exempted aquifer.” We understand EPA staff have made similar statements in briefings with congressional staff. However, as the EPA should be well aware, excursions are only indicators of the unintended movement of production fluids toward the ring of monitoring wells. The requirement to detect and report excursion events allows for corrective action to be taken *before* fluids impact surrounding groundwater sources. For example, a 2009 NRC review of three ISR facilities found 60 excursion events. Most were short-lived events and none resulted in environmental impacts.<sup>2</sup>
- **EPA failed to provide the SAB with NRC restoration reports and other data.** The NRC shared valuable restoration data for three ISR sites where the NRC approved the restoration. Unfortunately, the EPA failed to share this information with its SAB. When asked why the EPA did not share the files, EPA responded that “the files were too large.”<sup>3</sup> This raises legitimate questions whether the EPA deliberately withheld information that did not support the agency’s rulemaking.
- **EPA ignored NRC’s concerns about the scope and practicality of EPA’s rulemaking.** While the EPA does have standard-setting authority under the Uranium Mill Tailings Radiation Control Act (UMTRCA), the NRC is charged with implementation of such standards. The EPA rulemaking goes far beyond setting standards. For example, the EPA proposed a new requirement for 30 years of post-restoration groundwater monitoring – a time period that would typically be set by the NRC. Not only did the NRC express concern that the 30 years was longer than necessary, the NRC noted that the alternative modeling option proposed by the EPA calls for an “unattainable standard” and “may not be implementable in a meaningful way.”<sup>4</sup>
- **EPA provided no evidence to contradict the 2009 NRC staff assessment that found no groundwater impacts from ISR uranium facilities.** According to the 2009 NRC staff memo:

*“Routine regional aquifer monitoring programs are conducted by the existing ISR facilities as a license condition. The data from those monitoring programs do not show impacts attributable to the ISR facility. The staff is unaware of any situation indicating that: (1) the quality of groundwater at a nearby water supply well has been degraded; (2) the use of a water supply well has been discontinued; or (3) a well has been relocated because of impacts attributed to an ISR facility.”*<sup>5</sup>

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<sup>1</sup> House Oversight and Government Reform Committee letter to EPA Administrator Gina McCarthy, October 6, 2015 (<https://oversight.house.gov/wp-content/uploads/2015/10/In-Situ-EPA-Letter.pdf>).

<sup>2</sup> NRC staff assessment of groundwater impacts from previously licensed in-situ uranium recovery facilities, July 10, 2009 (<http://pbadupws.nrc.gov/docs/ML0917/ML091770187.pdf>).

<sup>3</sup> House Oversight and Government Reform Committee letter, October 6, 2015.

<sup>4</sup> Ibid.

<sup>5</sup> NRC staff assessment, July 10, 2009.

EPA's rulemaking makes no reference to the NRC analysis, and the agency provides no evidence that groundwater contamination is a problem. Even the EPA acknowledges the agency is unable to quantify the benefits of the rulemaking.

- **EPA ignored key recommendations from the SAB.** In a February 2012 letter, the SAB urged the EPA to “survey the extensive monitoring data available for ISL uranium mines to identify data sets suitable for building an evidence base that could inform EPA’s regulations.”<sup>6</sup> Unfortunately, EPA failed to follow that recommendation – there is no evidence EPA conducted a review of the reams of available data maintained by NRC and state regulators. The industry submitted considerable data in our formal comments. While we are hopeful the EPA will carefully review the data we submitted, this data is all publicly available and should have been used to inform the development of the proposed rule.
- **EPA ignored an offer from the Texas Commission on Environmental Quality and the industry to sample current and former wellfields.** While the existing data should obviate the need for EPA’s proposed rule, to the extent the EPA continues to have concerns about long-term stability of groundwater surrounding ISR projects, the industry is willing to work with the EPA to collect additional data. In a May 2015 letter to the EPA, the industry supported a recommendation made by the Texas Commission on Environmental Quality to sample a series of groundwater wells surrounding current and former ISR uranium recovery projects where we have historical baseline records. Unfortunately, EPA never responded to this offer and the agency appears to be moving forward with a rule based on suppositions rather than relying on actual data.

Given EPA’s failure to justify this rulemaking and in light of the new information showing the EPA deliberately misled its SAB, we respectfully request the agency withdraw the rulemaking. We would welcome the opportunity to participate in a more thoughtful and meaningful discussion regarding ISR uranium operations.

Sincerely,

National Mining Association  
Uranium Producers of America  
New Mexico Mining Association  
Wyoming Mining Association  
Colorado Mining Association  
Texas Mining and Reclamation Association

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<sup>6</sup> Letter from Dr. Debra Swackhamer, Chair, Science Advisory Board and Dr. Bernad Kahn, Chair, Radiation Advisory Committee, Science Advisory board to EPA Administrator Lisa Jackson, February 17, 2012 (EPA-SAB-12-005).