

Attachment 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 29 2015

OFFICE OF
AIR AND RADIATION

Ms. Nicole M. Abbott
Davis, Graham and Stubbs, LLP
1550 17th Street, Suite 500
Denver, Colorado 80202

Dear Ms. Abbott:

This letter is the final response to your March 1, 2015 Freedom of Information Act (FOIA) request (EPA-HQ-2015-004685) for records related to the U.S. Environmental Protection Agency's proposed rule, "Health and Environmental Protection Standards for Environmental Protection Standards for Uranium and Thorium Mill Tailings" (40 CFR Part 192) (80 FR 4156, January 26, 2015).

You requested five types of records, as follows:

- 1) Electronic copies of all EPA letters, memoranda, and reports analyzing the basis and justification of the proposed rule;
- 2) Electronic copies of all information reviewed and analyzed by EPA to determine the proposed rule's economic impact on small operators and businesses;
- 3) Electronic copies of all letters and memoranda from EPA to the Nuclear Regulatory Commission staff or from the Nuclear Regulatory Commission staff to EPA regarding the proposed rule, except for those documents identified as excluded from this FOIA request as listed in [FOIA EPA-HQ-2015-004684];
- 4) Electronic copies of all written communications with special interest groups (e.g., NRDC, Information Network for Responsible Mining, Uranium Watch, and the Powder River Basin Resource Council) regarding the proposed rule and/or groundwater quality issues relating to in situ uranium recovery operations;
- 5) Electronic copies of all records, documents, reports, studies, evidence, and correspondence supporting EPA's statements that:
 - a. "There is evidence that some communities are making efforts to utilize groundwater that is not of 'good' quality, and in our view this trend will only increase." 80 Fed. Reg. at 4164.
 - b. "[S]ome modeling studies indicate that the uranium recovery operations can result in the development of relatively slower groundwater pathways through the wellfield, as well as the persistence of injected lixiviant within the production zone." Id. at 4166.
 - c. "We have heard some concerns that upper control limits have in some cases been established at levels that would be unlikely to be exceeded under any conditions, thereby eliminating the possibility of detecting an excursion altogether." Id. at 4176.

On April 13, the EPA sent its first interim response to your request. That response indicated that, based on conversations with you, the Agency would focus its efforts on questions 4) and 5) above. The April 13 interim response included a complete response to question 5) and stated that the EPA required additional time to compile records responsive to question 4) above. The Agency completed its records search related to question 4) and released sixty-five responsive documents through FOIA online, along with the Agency's second interim response, on May 21, 2015.

In your April 20 letter (via email), you indicated that reducing the scope of your request to exclude an active search for documents related to questions 3), above, was based on a miscommunication; you also asked that the Agency provide a response to question 3). As requested, the Agency has completed its search for letters and memoranda between EPA and NRC staff regarding the proposed rule; the Agency's search did not produce any documents responsive to question 3).

Again, this is a final response to your FOIA request (EPA-HQ-2015-004685). If you have any questions concerning this response, please contact me (202-343-9775) or Ingrid Rosencrantz (202-343-9286).

If you choose, you may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the U.S. Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001.

Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30-day calendar day limit. The appeal letter should include the FOIA tracking number, EPA-HQ-2015-004685. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in blue ink, appearing to read "Alan D. Perrin".

Alan D. Perrin
Deputy Director
Radiation Protection Division

Attachment 2

Physical Address
2601 Central Avenue
Cheyenne, WY 82001

Phone: 307.635.0331



Mailing Address
PO Box 866
Cheyenne, WY 82003

Fax: 307.778.6240

May 18, 2015

NRC Freedom of Information Act and Privacy Act (FOIA/PA) Officer
U.S. Nuclear Regulatory Commission
Mail Stop T-5 F09
Washington, DC 20555-0001

Subject: Freedom of Information Act (FOIA) Request Regarding Documents Related to the Environmental Protection Agency's (EPA's) 40 CFR part 192 Rulemaking - Docket ID Number EPAHQ-OAR-2012-0788; FRL-9909-20-OAR RIN 2060-AP43 *Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings Proposed Rule* Federal Register / Volume 80, Number 16 / Monday, January 26, 2015 / Proposed Rules.

To whom it may concern:

The Wyoming Mining Association (WMA) is an industry association representing mining companies, contractors, vendors, suppliers and consultants in the State of Wyoming. Among its mining industry members are uranium recovery licensees, including four (4) operating in-situ uranium recovery licensees, one conventional uranium recovery operator in standby, several companies planning new uranium recovery operations that are currently in the permitting process and several companies conducting final reclamation/restoration operations. Total uranium concentrate production in the United States in 2013 was 4,659,000 pounds (U.S. Energy Information Administration - *2013 Domestic Uranium Production Report*). 2013 Wyoming uranium production was 2,600,000 pounds (Wyoming State Geological Survey), accounting for 56% of United States production. Wyoming contributes the largest share of any state to the total production of uranium in the United States. As such the *Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings Proposed Rule* is of special concern to the WMA and its uranium recovery industry members.

Given the above facts, the WMA is very concerned about the Environmental Protection Agency's (EPA's) 40 CFR part 192 Rulemaking (Docket ID Number EPAHQ-OAR-2012-0788; FRL-9909-20-OAR RIN 2060-AP43 *Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings Proposed Rule* Federal Register / Volume 80, Number 16 / Monday, January 26, 2015 / Proposed Rules) and its impact on the uranium recovery industry in Wyoming and is requesting the following records pertaining to it:

- Electronic copies of all Nuclear Regulatory Commission (NRC) letters, memoranda, correspondence and reports analyzing the basis and justification of the proposed rule including copies of any and all correspondence regarding the proposed rule with the Environmental Protection Agency (EPA);
- Electronic copies of all information reviewed and analyzed by NRC regarding the proposed rule;

www.wyomingmining.org

- Electronic copies of all letters and memoranda from EPA to the Nuclear Regulatory Commission staff or from the Nuclear Regulatory Commission staff to EPA regarding the proposed rule, except for those documents identified as excluded from this FOIA request as listed in [FOIA EPA-HQ-2015-004684];
- Electronic copies of all written communications with special interest groups (e.g., National Resources Defense Council (NRDC), Information Network for Responsible Mining, Uranium Watch, Powder River Basin Resource Council, Wyoming Outdoor Council (WOC), Colorado Citizens Against Toxic Waste (CCAT), and Coloradans Against Resource Destruction (CARD)) regarding the proposed rule and/or groundwater quality issues relating to in situ uranium recovery operations;
- Electronic copies of all records, documents, reports, studies, evidence, and correspondence regarding the Environmental Protection Agency's statements in the Preamble to the proposed rule that:
 - *"There is evidence that some communities are making efforts to utilize groundwater that is not of 'good' quality, and in our view this trend will only increase."* 80 Fed. Reg. at 4164.
 - *"[S]ome modeling studies indicate that the uranium recovery operations can result in the development of relatively slower groundwater pathways through the wellfield, as well as the persistence of injected lixiviant within the production zone."* Id. at 4166.
 - *"We have heard some concerns that upper control limits have in some cases been established at levels that would be unlikely to be exceeded under any conditions, thereby eliminating the possibility of detecting an excursion altogether."* Id. at 4176.

The Wyoming Mining Association is willing to pay the applicable fees up to \$250, if any, associated with processing this request. If the applicable fees exceed \$250, the Association requests that it be notified in writing of the estimate of cost. The Wyoming Mining Association thanks you for your attention in this matter. If you have any questions please do not hesitate to contact me.

Sincerely yours,



Jonathan Downing
Executive Director

cc: Katie Sweeney - National Mining Association (NMA)

Attachment 3

Oscar Paulson

Subject: FW: FOIA 2015-0274
Attachments: 2015-0274.pdf; FOIA 2015-0274 Forms 509 and 629.pdf

From: Burkhalter, Cornelia [<mailto:Cornelia.Burkhalter@nrc.gov>]
Sent: Friday, May 29, 2015 1:00 PM
To: tdeti@vcn.com
Cc: FOIA Resource; Burkhalter, Cornelia
Subject: FOIA 2015-0274

Dear Mr. Deti,

We have received the cost estimate for the search and review time of your FOIA case referenced above which was dated May 18, 2015. The Office of Nuclear Material Safety and Safeguards has indicated that a total of 50 professional hours of search time and 75 professional hours of review time, will be necessary to complete your request. The Office of the General Counsel has indicated that a total of 14.5 professional hours of search time, 13.5 hours of professional review time, 3.5 SES Commissioner hours of search time and 3.5 hours of review time which is expected to result in approximately 3800 pages of records from both offices.

Because you were determined to be a "Commercial" requester, you will be responsible for all search, review, and duplication fees. Duplication costs may be reduced by requesting records on a CD ROM.

As such, your fee costs are as follows: 64.5 hours of professional search @ \$56.36/hour = \$3635.22, 88.5 hours of professional review @ \$56.36/hour = \$4987.86, 3.5 hours of SES Commissioner search rate @ \$90.53 per hour = \$316.86, 3.5 hours of SES Commissioner review rate @ \$90.53 per hour = \$316.86 for a total of 3800 pages of duplication @ .20/page = \$760. As such, the total fee estimate for processing your request is \$10,0161.80.

Pursuant to 10 C.F.R. 9.40(e), we will not continue processing your request until we receive a response from you of your willingness to pay the above-referenced fee. Additionally, because the estimated fee exceeds \$250, the NRC will not process your request without the advance payment of the estimated fee.

Please review the attached documents. If we have not received a response from you within 10 business days of this email date, we will administratively close your request. You also may narrow the scope of your request to reduce both the estimated search and review fees associated with processing your request.

Thank you.

Cornelia Burkhalter, Gov't. Info. Specialist
FOIA/PA & Information Collection Branch
Customer Service Division
Office of Information Services
Wisdom is found in those who take advice.
Proverbs 13:10




301-415-6600



T-5F09



Cornelia.Burkhalter@nrc.gov

NRC FORM 509 (12-2014)		U. S. NUCLEAR REGULATORY COMMISSION APPROVED BY OMB: 3150-0043 EXPIRES: 12/31/2017		REQUEST NUMBER FOIA/PA - 2015 - 0274	
		STATEMENT OF ESTIMATED FEES FOR FREEDOM OF INFORMATION ACT (FOIA) REQUEST		DATE 05/29/2015	
REQUESTER Jonathan Downing		NRC CONTACT Cornelia Burkhalter		TELEPHONE (301) 415-6600	
<p>Pursuant to the NRC's regulations, 10 CFR 9.40, 52 FR 49350, the NRC notifies a requester when estimated applicable fees exceed \$25.00 or a limit stated in an FOIA request. The estimated fees for processing your FOIA request are noted below. If you wish to re-scope your request to reduce fees, you may telephone the NRC contact identified above to discuss re-scoping the request. Otherwise, please provide a written response on required action noted below. If the NRC does not receive notice from you on re-scoping your request or the required written response within 10 working days from the date of this notice, the NRC will presume that you have no further interest in NRC processing your request and will close the file on your request.</p>					
ESTIMATED FEES					
SEARCH	\$ 3,952.08	64.5 hours of prof search @ \$56.36/hour; 3.5 hours of SES search \$90.53/hour			
REVIEW	\$ 5,304.72	88.5 hours of prof review @ \$56.36/hour; 3.5 hours of SES review \$ 90.53/hour			
DUPLICATION *	\$ 760.00	3800 pages @ .20/page			
TOTAL	\$ 10,016.80				
<p>* Duplication estimate is based on the assumption that you want copies of disclosed records mailed directly to you. Please specify paper copy or a CD-Rom. If you choose a CD-Rom, the cost will be the cost of the CD-Rom to the NRC. If you prefer, the NRC will make disclosed records available, if appropriate, at the NRC Electronic Reading Room accessible from NRC's web site at http://www.nrc.gov/reading-rm.html. Please note your preference in the Response section below.</p> <p><input type="checkbox"/> Please note the comments provided on the attached NRC Form 509A.</p> <p><input type="checkbox"/> Your request for a waiver or reduction of fees does not provide sufficient information under 10 CFR 9.41 for the NRC to make a determination to waive or reduce fees. If you want the NRC to consider this matter further, please submit a written request pursuant to 10 CFR 9.41 within 10 working days from the receipt of this notice.</p>					
REQUIRED ACTION					
<p><input checked="" type="checkbox"/> Please agree by signing below to pay fees as high as estimated by signing and dating the Response section of this form and returning the form to the NRC contact identified above at the U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001, or by fax to (301) 415-5130, within 10 working days from the date of this notice.</p> <p><input checked="" type="checkbox"/> Please provide an advance payment of the estimated fees by one of the methods described on the attached NRC Form 509A within 10 working days from the date of this notice. Any overpayment of fees will be refunded to you.</p>					
SIGNATURE - FOIA/PA SPECIALIST <div style="text-align: center; margin-top: 20px;"> <i>Cornelia Burkhalter</i> </div>				SIGNATURE DATE <div style="text-align: center; margin-top: 20px;"> <i>05/29/2015</i> </div>	
RESPONSE					
<p>As required above, I agree to pay fees as high as estimated. I agree to pay estimated search fees even if the NRC conducts an unsuccessful search for responsive records or determines records located are exempt from disclosure. I prefer that copies of disclosed records be provided as stated below.</p> <p> <input type="checkbox"/> Mailed directly to me. <input type="checkbox"/> Placed in the NRC Electronic Reading Room. </p> <p> <input type="checkbox"/> Paper copy <input type="checkbox"/> CD-Rom </p>					
SIGNATURE - FOIA/PA REQUESTER				DATE	

**STATEMENT OF ESTIMATED FEES FOR
FREEDOM OF INFORMATION ACT (FOIA) REQUEST
COMMENTS**

FOIA/PA - 2015 - 0274

Payment may be made to the USNRC by check or credit card. If paying via credit card, the enclosed NRC Form 629 must be completed and forwarded to the address listed below. Please be sure to reference the number assigned to your request (i.e., FOIA/PA-2003-0120) on your check or in the box marked "Invoice Number or Description" on the enclosed NRC Form 629 if you are paying by credit card.

Your check or NRC Form 629 should be mailed to the attention of the NRC Contact identified on the previous page at the following address:

Mail Stop T-5 F09
USNRC
11555 Rockville Pike
Rockville, MD 20852-2738

Payments sent via an overnight delivery method should be sent to the NRC Contact identified on the previous page to the same address.

COMMENTS

**AUTHORIZATION FOR PAYMENT
BY CREDIT CARD**

Estimated burden per response to comply with this voluntary collection request: 5 minutes. Requested information will allow respondents to transfer funds electronically. Send comments regarding burden estimate to the FOIA, Privacy, and Information Collections Branch (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by internet e-mail to Infocollections.Resource@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0190), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

The NRC is currently accepting credit card payment of fees and other debts. The maximum amount accepted on a credit card per invoice is \$49,999.99. Splitting of a payment on multiple credit cards is not allowed. If you wish to pay by credit card, complete the authorization below. If you have any questions, contact NRC's collection service provider, Deva and Associates at (301) 415-3878.

NAME OF CARDHOLDER		ACCOUNT NUMBER	CARD EXPIRATION DATE
ADDRESS		CARDS ACCEPTED (Check card you are using) <input type="checkbox"/> VISA <input type="checkbox"/> MASTERCARD <input type="checkbox"/> NOVUS (DISCOVER) <input type="checkbox"/> AMERICAN EXPRESS	
TELEPHONE	LICENSE NUMBER	SECURITY CODE - 3 DIGITS	
INVOICE NUMBER OR DESCRIPTION	TOTAL AMOUNT OF TRANSACTION	SIGNATURE OF CARDHOLDER	

If you are paying an application or registration fee (including new licenses, amendments, etc.), mail the completed form with your application to the appropriate regional office. For all other payments, send completed form to:

**U.S. Bank
U.S. Nuclear Regulatory Commission
Accounts Receivable Team
P. O. Box 979051
St. Louis, MO 63197-9000**

**PRIVACY ACT STATEMENT
NRC FORM 629
AUTHORIZATION FOR PAYMENT BY CREDIT CARD**

Pursuant to 5 U.S.C. 552a(e)(3), enacted into law by Section 3 of the Privacy Act of 1974 (Public Law 93-579), the following statement is furnished to individuals who supply information to the U.S. Nuclear Regulatory Commission (NRC) on NRC Form 629. This information is maintained as part of a system of records designated as NRC-32 and described at 77 *Federal Register* 67225 (November 8, 2012), or the most recent *Federal Register* publication of the NRC's "Republication of Systems of Records Notices" that is available in the NRC's Agencywide Documents Access and Management System.

1. **AUTHORITY:** 5 U.S.C. 552a; 5 U.S.C. 5514; 15 U.S.C. 1681; 26 U.S.C. 6103; 31 U.S.C. Chapter 37; 31 U.S.C. 6501-6508; 42 U.S.C. 2201; 42 U.S.C. 5841; 31 CFR 900-904; 10 CFR Parts 15, 16, 170, 171; Executive Order (E.O.) 9397, as amended by E.O. 13478; and E.O. 12731.

2. **PRINCIPAL PURPOSE(S):** To collect credit card account information and provide authorization for its use to collect a payment or debt.

3. **ROUTINE USE(S):** Information contained in this system may be disclosed to debt collection contractors or to other Federal agencies for the purpose of collecting and reporting on delinquent debts and to banks enrolled in the Automated Clearinghouse (ACH) Network to collect a payment or debt when the individual has given his or her authorization for this purpose. Information may be disclosed in accordance with any of the Routine Uses listed in the Prefatory Statement of General Routine Uses, including to an appropriate Federal, State, local or Foreign agency in the event the information indicates a violation or potential violation of law; in the course of an administrative or judicial proceeding; to an appropriate Federal, State, local and Foreign agency to the extent relevant and necessary for an NRC decision about you or to the extent relevant and necessary for that agency's decision about you; in the course of discovery under a protective order issued by a court of competent jurisdiction and in presenting evidence; to a Congressional office to respond to their inquiry made at your request; to NRC-paid experts, consultants, and others under contract with the NRC, on a need-to-know basis; and to appropriate persons and entities for purposes of response and remedial efforts in the event of a suspected or confirmed breach of data from this system of records.

4. **WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL OF NOT PROVIDING INFORMATION:** Providing this information is voluntary. However, not providing the requested information will not provide the NRC the information and authorization required to use your credit card to collect a payment or debt.

5. **SYSTEM MANAGER(S) AND ADDRESS:** Controller, Division of the Controller, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Attachment 4

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051

<http://oversight.house.gov>

July 9, 2015

The Honorable Stephen G. Burns
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Burns:

On January 26, 2015, the Environmental Protection Agency (EPA) proposed new ground water protection standards at facilities that extract uranium using the in-situ recovery process. The proposed standard was open to comment until May 27, 2015. We are concerned about the dialogue and process undertaken prior to the creation of this standard and the impact that this will have on the uranium industry.

In order to better understand what information was used and analyzed in creating the revised standard, please provide the following documents and information:

1. Electronic copies of all Nuclear Regulatory Commission (NRC) letters, memoranda, correspondence, and reports analyzing the basis and justification of the proposed rule including copies of any and all correspondence regarding the proposed rule with EPA.
2. Electronic copies of all information reviewed and analyzed by NRC regarding the proposed rule.
3. Electronic copies of all letters and memoranda from EPA to NRC staff or from the NRC staff to EPA regarding the proposed rule.
4. Electronic copies of all written communications with special interest groups (including but not limited to National Resources Defense Council (NRDC), Information Network for Responsible Mining, Uranium Watch, Powder River Basin Resource Council, Wyoming Outdoor Council (WOC), Colorado Citizens Against Toxic Waste (CCAT), and Coloradans Against Resource Destruction (CARD)) regarding the proposed rule and/or groundwater quality issues relating to in-situ uranium recovery operations.
5. Electronic copies of all records, documents, reports, studies, evidence, and correspondence regarding the Environmental Protection Agency's statements in the Preamble to the proposed rule that:

- a. "There is evidence that some communities are making efforts to utilize groundwater that is not of 'good' quality, and in our view this trend will only increase."¹
- b. "[S]ome modeling studies indicate that the uranium recovery operations can result in the development of relatively slower groundwater pathways through the wellfield, as well as the persistence of injected lixiviant within the production zone."²
- c. "We have heard some concerns that upper control limits have in some cases been established at levels that would be unlikely to be exceeded under any conditions, thereby eliminating the possibility of detecting an excursion altogether."³

We request that you provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on July 23, 2015. When producing documents to the Committee, please deliver production sets to the Majority staff in Room 2157 of the Rayburn House Office Building and the Minority staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request.

The Committee on Oversight and Government Reform is the principal investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, the Committee has authority to investigate "any matter" at "any time."

Please contact Ryan Hambleton of Chairman Chaffetz' staff at (202)225-5074 with any questions about this request. Thank you for your prompt attention to this important matter.

Sincerely,



Jason Chaffetz
Chairman



Cynthia Lummis
Chairman
Subcommittee on the Interior

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Brenda L. Lawrence, Ranking Member
Subcommittee on the Interior

¹ 80 Fed Reg. 4156, 4164 (April 24, 2015).

² *Id.* at 4166.

³ *Id.* at 4176.

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

Attachment 5

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051

<http://oversight.house.gov>

October 6, 2015

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

Dear Administrator McCarthy:

On January 26, 2015, the Environmental Protection Agency issued a proposed rule titled “Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings,” which set groundwater protection standards for uranium in-situ recovery facilities.¹ The proposed rule would add a new subpart to EPA’s regulations that implement the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). While EPA establishes health and environmental standards of general applicability associated with uranium processing, the Nuclear Regulatory Commission (NRC) is responsible for implementing and enforcing those standards. The Committee recently learned that the NRC has concerns with the scope and breadth of the proposed rule, and that, as written, the proposed rule oversteps EPA’s authority under the Atomic Energy Act.²

In a July 28, 2015 letter to the EPA’s General Counsel, the NRC’s General Counsel stated, “the EPA’s proposed rule may encroach upon the Nuclear Regulatory Commission’s (NRC) authority.”³ The letter further stated:

Our concern with the proposed 95 percent confidence level is that such a level does not equate to reasonable assurance but to essentially, absolute assurance. In essence the proposed rule goes beyond establishing a general standard such that it affects how the standard is met—a role reserved for the NRC. Moreover, a 95 percent confidence level is extremely difficult to demonstrate, leaving virtually no room for margin of error. Given the difficulty in demonstrating compliance with a 95 percent confidence level,

¹ Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings, 80 Fed. Reg. 4155 (Jan. 26, 2015).

² Letter from Margaret M. Doane, Gen. Counsel, Nuclear Regulatory Comm’n, to Avi S. Garbow, Gen. Counsel, Env’tl. Prot. Agency (July 28, 2015).

³ *Id.*

the provision may not be implementable in a meaningful way, and as such, the NRC may not be able to grant a final alternate concentration limits.⁴

The NRC also expressed concern that the proposed rule's 30-year monitoring period "may be longer than needed to assure protection for groundwater resources."⁵

Documents obtained by the Committee show NRC staff also raised concerns that EPA did not provide accurate information to the Science Advisory Board (SAB) regarding these regulations. The staff believed EPA's presentation to the SAB was factually incorrect at times, which prompted the SAB to request answers from NRC at the last minute. NRC staff also believed EPA's presentation omitted key information that NRC provided specifically for the SAB's benefit. When asked why EPA staff did not provide this information to the SAB, they stated that the "documents were too large."⁶

NRC staff also stated concerns that EPA's proposed regulations may be "requirements" instead of "general standards," in which case NRC questioned whether EPA should be promulgating these regulations at all.⁷

To better understand the EPA's process for developing the proposed rule, please provide all documents and communications referring or relating to the proposed rule, prior versions of the rule, and related guidance, including, but not limited to, documents and communications between and among EPA and NRC personnel, as soon as possible, but no later than 5:00 p.m. on October 20, 2015.

When producing documents to the Committee, please deliver production sets to the Majority staff in room 2157 of the Rayburn House Office Building and the Minority staff in room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request.

The Committee on Oversight and Government Reform is the principal investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, the Committee has authority to investigate "any matter" at "any time."

⁴ *Id.*

⁵ *Id.*

⁶ "Notes on EPA SAB meeting July 18-19, 2011," Nuclear Regulatory Comm'n, on file with Committee staff.

⁷ Email from Joan Olmstead, Nuclear Regulatory Comm'n, to Melissa Zudal, Nuclear Regulatory Comm'n, *et al.*, Dec. 5, 2012.

The Honorable Gina McCarthy

October 6, 2015

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Please contact William McGrath or Ryan Hambleton of the Committee staff at (202) 225-5074 with any questions about this request. Thank you for your cooperation in this matter.

Sincerely,



Jason Chaffetz
Chairman



Cynthia M. Lummis
Chairman
Subcommittee on the Interior



Jim Jordan
Chairman
Subcommittee on Health Care,
Benefits and Administrative Rules

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Brenda L. Lawrence, Ranking Member
Subcommittee on the Interior

The Honorable Matthew Cartwright, Ranking Member
Subcommittee on Healthcare, Benefits and Administrative Rules

The Honorable Ken Calvert, Chairman
Subcommittee on Interior, Environment, and Related Agencies
Committee on Appropriations

The Honorable Betty McCollum, Ranking Member
Subcommittee on Interior, Environment, and Related Agencies
Committee on Appropriations

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 28, 2015

GENERAL COUNSEL

Avi S. Garbow, General Counsel
Environmental Protection Agency
1200 Pennsylvania Avenue
Mail Code 2310A
Washington D.C. 20460

Dear Mr. Garbow:

My office has recently reviewed the Environmental Protection Agency's (EPA) January 26, 2015 proposed rule, "Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings," which sets forth groundwater protection standards for uranium in-situ recovery facilities. The proposed rule would add a new Subpart F to EPA's regulations at 40 CFR Part 192. EPA's Part 192 regulations implement EPA's responsibilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA).

As explained below, we are concerned that, in certain respects, the EPA's proposed rule may encroach upon the Nuclear Regulatory Commission's (NRC) authority. Our agencies for many decades have worked closely together on EPA's rulemakings that pertain to the regulation of the commercial nuclear industry and we would like at an early date to meet with your staff to discuss our concerns.

As you know, section 275 of the Atomic Energy Act established a dual regulatory scheme over the uranium processing industry. EPA sets standards of general applicability for the protection of public health and the environment from the radiological and nonradiological hazards associated with uranium processing, and the NRC implements and enforces those standards. There are two provisions in EPA's proposed rule that we wish to discuss with you because they may encroach upon NRC's authority.

Proposed 40 CFR 192.52(c)(3)(i)-(ii) allows for the NRC or other regulatory agency (i.e., a NRC Agreement State) to establish "final alternate concentration limits" provided that groundwater stability, after uranium in-situ recovery operations had ceased, be demonstrated at a 95 percent confidence level, based upon quarterly sampling, for three consecutive years. This proposed provision appears to be beyond the UMTRCA authority to set general standards, as it can be construed as imposing either a management or an engineering method upon licensees. The very high statistical rigor (95 percent confidence level) imposed by the proposed provision relates to how the licensee will demonstrate compliance, which the NRC views as an implementation issue, and thus a NRC responsibility, rather than a general standard. In this regard, the NRC's statutory duty is to provide reasonable assurance. Reasonable assurance is not expressed in terms of a particular level of statistical rigor. Our concern with the proposed 95 percent confidence level is that such a level does not equate to reasonable assurance but to essentially, absolute assurance. In essence the proposed rule goes beyond establishing a general standard such that it affects how the standard is met – a role reserved for the NRC.


Moreover, a 95 percent confidence level is extremely difficult to demonstrate, leaving virtually no room for a margin of error. Given the difficulty in demonstrating compliance with a 95 percent confidence level, the provision may not be implementable in a meaningful way, and as such, the NRC may not be able to grant a final alternate concentration limits.

Proposed 40 CFR 192.53 establishes extensive monitoring requirements upon uranium in-situ recovery licensees. In particular, proposed 40 CFR 192.53(b) requires the monitoring of all constituents in the event an "excursion" is detected. Notably, the proposed provision does not account for the different speeds at which the various constituents may move through the aquifer—thus raising the question as to whether monitoring the slower-moving constituents is necessary. Similar to our concerns with the 95 percent confidence level requirement, this provision may be construed as imposing either a management or an engineering method upon licensees, and thus be beyond the scope of a general standard.

We also have substantive concerns with one provision. Following the three-year post-operational "stability phase" in which the licensee must demonstrate constituent stability at a 95 percent confidence level, the licensee must, under proposed 40 CFR 192.53(e)(iii), continue to monitor the site for an additional 30 years. Although establishing a monitoring period's term may be within the scope of general standard setting, a 30-year monitoring period may be longer than needed to assure protection of groundwater resources.

The NRC wishes to discuss its concerns more fully with your staff as part of EPA's development of a final rule. Please contact Andrew Pessin, of my office, at 301-415-1062. We look forward to working with you on this matter.

Sincerely,



Margaret M. Doane
General Counsel

cc: Janet G. McCabe, Acting Assistant Administrator for the Office of Air and Radiation

Zudal, Melissa

From: Olmstead, Joan
Sent: Wednesday, December 05, 2012 7:05 AM
To: VonTill, Bill; Striz, Elise; Comfort, Gary
Subject: RE: 40 CFR 192.32

There is also the question if these provisions are "general standards" or "requirements." If they are not general standards there is a question on whether they should be promulgating these provisions at all for an ISR facility. I'm pulling the 10th Circuit case this morning and will see you in the lobby at 7:30. Joan

This message may contain Attorney Work Product and/or Attorney-Client Privileged Material. Please do not release without prior consent from the Commission.

NOTE: REQUESTS FOR OGC REVIEW OF DOCUMENTS **MUST BE SENT TO THE OGC MAILROOM USING THE FOLLOWING EMAIL ADDRESS: RIDSOGCMAILCENTER.RESOURCE@NRC.GOV. FAILURE TO SEND TO THE OGC MAILROOM MAY MEAN REVIEW OF YOUR DOCUMENT WILL BE DELAYED.**

From: VonTill, Bill
Sent: Wednesday, December 05, 2012 6:09 AM
To: Striz, Elise; Comfort, Gary; Olmstead, Joan
Subject: RE: 40 CFR 192.32

Good eye Elise,

Yes, these references directly to RCRA are problematic and I don't believe they were well thought out. EPA needs to develop standards that the NRC can fully implement without referencing sections where an EPA Administrator/Regional Administrator has a decision making function. I would suggest to them that if there are certain parts in 264 that they want used in the new Subpart F that they cut and paste them rather than referencing them – without the Administrator decision part. For excursion monitoring corrective action they need something more specific to that circumstance. Elise – you may think about what is the best language for excursion corrective actions after looking at NUREG-1569.

Thanks

From: Striz, Elise
Sent: Tuesday, December 04, 2012 6:26 PM
To: Comfort, Gary; VonTill, Bill; Olmstead, Joan
Subject: 40 CFR 192.32

I have been reading this 40 CFR192.32 regulations. These regulations incorporate a lot of other standards including all of 264.92, 264.93, 264.94, 264.95, 264.98, 264.221 which are very lengthy, reference other regs and are hidden from our review at this point. They include giving the Administrator of EPA authority over setting site specific standards for groundwater, detection, correction and monitoring. In 192.32a(2) (v) it clearly states EPA must concur on all ACLs.

I have substantial concerns with direct inclusion of these regulations in the EPA rulemaking. I do not believe they meet the bar of generally applicable standards.

Thanks,
Elise

Elise A. Striz, Ph.D.
Hydrogeologist
US Nuclear Regulatory Commission
11545 Rockville Pike
MS T8F5
Rockville, MD 20852

email:elise.striz@nrc.gov
Phone:301-415-0708

NOT FOR PUBLIC DISCLOSURE

Notes on EPA SAB meeting July 18-19, 2011

- (1) EPA's presentation of information appeared to lead the SAB to conclude the absence of specific ISR regulations in 40 CFR Part 192 equates to an absence of the regulation of ISR sites. At one point the SAB said these sites appear poorly regulated and therefore a threat and EPA should take regulatory action immediately to correct the situation. The SAB also stated that it believed it was only "by luck" that these sites had not contaminated USDW. EPA did not make an effort to ensure the SAB understood that NRC regulation of these sites was comprehensive and effective using the ISR Standard Review plan in NUREG 1569 and license conditions.
- (2) EPA's presentation contained numerous factual errors on specific definitions which are critical to SABs understanding of ISR operations. Some errors were very serious including a statement made by EPA that "an excursion was movement of ISR production fluids outside the exempted aquifer."
- (3) EPA was not able to answer numerous technical and regulatory questions posed by SAB members. On the afternoon of the first day NRC staff was asked if they would be willing to answer questions from the SAB. NRC staff said they would answer technical questions to facilitate the process. NRC staff answered numerous technical and regulatory questions posed by the SAB. NRC staff attempted to correct the factual errors made by EPA in earlier presentations.
- (4) EPA allowed the SAB to state/conclude there was no or limited data available for the SAB to examine how a licensee determines baseline water quality to establish GWPS for restoration or data to demonstrate stability of restored ground water quality at ISR sites. Prior to the SAB meeting NRC had provided EPA with all the restoration reports/data for the three existing ISR sites where NRC has approved the restoration (over 20 files with all ML numbers). These reports included all of the baseline water quality and restored water quality stability data and analysis for all three NRC approved restorations. EPA did not provide these reports to the SAB and did not reference the majority of them in the EPA technical report provided to the SAB. When NRC staff stated all of these restoration reports and data had been provided to EPA, the SAB asked why EPA had not provided it to them. EPA responded that the files were too large.
- (5) In its conclusions, the SAB stated EPA had not provided it with the information that was needed to answer the charge questions. It stated that it was apparent that a substantial amount of information was available and EPA had failed to provide the data or an analysis of the data to the SAB so that it could answer the charge questions. The SAB asked EPA to evaluate the data and to work with NRC.
- (6) At no point was any mention made by EPA or NRC staff concerning NRC's ISR Rulemaking effort.