

MEETING WITH OFFICE OF MANAGEMENT AND BUDGET
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 40 CFR PART 61, SUBPART
W FINAL RULE
ENERGY FUELS RESOURCES (USA), INC.

1. About Energy Fuels

- Energy Fuels Resources (USA), Inc. (EFR) owns the only operating conventional uranium mill in the US, which has active mill tailings impoundments, and is one of the largest US uranium producers.
- EFR currently holds:
 - a State of Utah (Agreement State) Atomic Energy Act (AEA) license for the White Mesa Mill in the State of Utah;
 - a United States Nuclear Regulatory Commission (NRC) AEA license for the Nichols Ranch *in situ* leach uranium recovery (ISR) facility in Wyoming; and
 - a State of Texas (Agreement State) AEA license for the Alta Mesa ISR facility in Texas.
- EFR also is in the process of licensing the Sheep Mountain heap leach project in the State of Wyoming, which currently would be regulated by the NRC.

2. Existing Subpart W

- The existing Clean Air Act (CAA) 40 CFR Part 61, Subpart W (Subpart W) rule for radon emissions from *active* uranium mill tailings impoundments was enacted in 1989:
 - Under Section 275(d) of the AEA, EPA CAA authority limited to 11e.(2) byproduct material;
 - Work practice standards (“phased” or “continuous” disposal) for expeditious covering of uranium mill tailings to minimize radon emissions;
 - Only two (2) impoundments in operation at any one time;
 - Application of construction and management requirements to impoundments at uranium mills, as determined by NRC, in accordance with Section 275(b)(1) of the AEA; and
 - Rescission of Subpart T defines that jurisdiction transfers from EPA to NRC during closure.

3. Proposed Rulemaking

- The United States Environmental Protection Agency (EPA) has proposed revisions to the existing Subpart W rules:
 - Maintained existing work practice standards and only two (2) impoundments in operation at any one time;
 - New requirement to have at least one meter of solutions in evaporation ponds;
 - Changed definitions of “operation” and “closure” which confuses when jurisdiction transfers from EPA to NRC; effectively “re-instates” Subpart T;
 - Deletion of “as determined by NRC” introduces dual jurisdiction;
 - Application of construction and management requirements to evaporation ponds at *all* uranium recovery facilities, including ISR facilities; and
 - Application to heap leach facilities.

4. Little or No Public or Occupational Health and Safety Benefits

- The proposed revisions to these regulations present a number of key changes that present benefits (by clarifying the existing rules) or detriments (by imposing new rules) to NRC/Agreement State licensees.
- The beneficial attributes of the revised rule do not significantly alter past practices. However, the detrimental attributes of the revised rule provide little or no public or occupational health and safety benefits, yet impose prohibitive costs on licensees.

5. Costs of the Proposed Rules are Prohibitive

- Proposed minimum one (1) meter of water cover over evaporation ponds likely to be prohibitively burdensome with little or no benefit:
 - EPA admits “saturated tailings” only 2% of radon emissions from dry tailings;
 - the cost of maintaining this one meter of liquid would be significantly greater than EPA has estimated, given the high evaporation rates and scarcity of water at facilities such as the White Mesa Mill;
 - this requirement will seriously impact, and may eliminate, a uranium mill’s ability to recirculate tailings solutions back into the process, because the addition of fresh water will change the chemistry of the solutions;
 - evaporative and holding capacity at a uranium mill is at a premium, and adding fresh water to the system would displace needed capacity for process solutions. This would upset the engineered water balance at the facility and would generally require design, permitting and construction of additional evaporative and holding capacity, at significant capital cost and time delay, with a resultant interruption to operations; and
 - a uranium mill will be prevented from reducing solution levels in evaporation ponds from time to time to inspect and, if necessary, perform maintenance activities.
- Application of construction and management requirements to certain ISR evaporation ponds not necessary and would require retrofitting or replacement at substantial capital cost.

6. Dual/duplicative jurisdiction concerns and regulatory efficiency:

- Uranium recovery licenses would now be required to obtain an EPA permit for the design of each impoundment and evaporation pond *as well as* an NRC license for the same facilities.
- Current uranium recovery facilities have been and currently are operating in a manner that is adequate to protect public health and safety and the environment under NRC regulatory authority; there is no need for two regulatory regimes requiring the expenses of two licenses/permits when one would be sufficient with no corresponding increase in risk to public health and safety.
- EFR believes that discussions between the NRC and EPA officials would help eliminate unnecessarily duplicative regulation without an increase in potential risk to public health and safety consistent with NRC’s AEA statutory mission.

7. Proposed Rule Technically Infeasible

- Proposed application of Subpart W to heap leach facilities:
 - Unclear whether EPA has the CAA authority to regulate such facilities; and
 - 30% moisture content is not technically feasible and would also have the effect of diluting process solutions and impacting operations.

8. The National Mining Association (NMA) has proposed rescission of Subpart W in a manner similar to past NRC/EPA joint efforts to rescind 40 CFR Part 60, Subparts I and T:

- Dual/duplicative regulation is a critical focus for this proposal.
- In the 1980s and 1990s, as a result of a lawsuit filed against EPA by the American Mining Congress (AMC) (now the National Mining Association (NMA)) relating to 40 CFR Part 40 Subpart T, the Commission entered into negotiations with EPA to rescind 40 CFR Part 60, Subparts I and T.
- At the conclusion of these negotiations, EPA agreed to rescind Subparts I and T if NRC would engage in a rulemaking to harmonize its regulations to reflect EPA’s requirements.
- The same type of action could be pursued here without the need for a lawsuit.