July 16, 2002

MEMORANDUM TO: Daniel M. Gillen, Chief
Fuel Cycle Facilities Branch
Division of Fuel Cycle Safety and Safeguards
Office of Nuclear Material Safety
And Safeguards

FROM: Michael Layton, Hydrogeologist **/RA/**
Fuel Cycle Facilities Branch
Division of Fuel Cycle Safety and Safeguards
Office of Nuclear Material Safety
And Safeguards

SUBJECT: MEETING SUMMARY, *IN SITU* LEACH PERMITTING STATES, EPA AND NRC MEETING OF JUNE 11, 2002

Attached is the summary of the June 11, 2002, meeting among representatives from the States of Colorado, Nebraska and Wyoming; the US Environmental Protection Agency; and the US Nuclear Regulatory Commission (NRC) regarding NRC's reliance on individual State's Underground Injection Control Program for the protection of ground-water at NRC-licensed *In Situ* Leach Uranium Extraction Facilities. This meeting summary was reviewed by the participants. The meeting was conducted to partially fulfill the requirements of the Commission's Staff Requirements Memorandum SECY-99-013, issued on July 26, 2000 and SRM SECY-01-00026 issued on May 30, 2001.

Attachment 1: Meeting Summary
Attachment 2: Meeting Talking Points
Attachment 3: Attendance List

CONTACT: Michael Layton, NMSS/FCSS
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cc: Distribution Sheet

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NAME	MLayton		GJanosko		DGillen			
DATE	711/02		7/11/02		7/16/02			

OFFICIAL RECORD COPY

Meeting Summary

Topic: States, EPA, and NRC Discussions: NRC's reliance on ground-water protection reviews performed by non-Agreement States for licensing actions at *In Situ* Leach (ISL) Uranium Extraction Facilities

Date/Time: June 11, 2002; 6:30 pm to 7:30 pm

Location: Curtis Meeting Room, Executive Tower Hotel Conference Center, Denver, Colorado

Meeting Agenda: (see Attachment 2)

Attendees: (see attendance sheet, Attachment 3)

Dave Carlson - Nebraska DEQ
David Miesbach - Nebraska DEQ
Rick Chancellor - Wyoming LQD
Steve Ingle - Wyoming LQD
Roberta Hoy - Wyoming LQD
Phil Egidi - Colorado DOH
Mario Salazar - EPA HQ
Loren Setlow - EPA HQ
Paul Osborne - EPA Reg. 8

Dan Gillen - NRC
Gary Janosko - NRC
Michael Layton - NRC
James Lieberman - NRC
Maria Schwartz - NRC
William vonTill - NRC (not signed in)
John Lusher - NRC (not signed in)
Diana Diaz-Toro - NRC

Discussions:

Mr. Layton opened the meeting with introductions, and passed the sign-in sheet to the attendees. He continued by stating that this was a closed meeting of State and federal regulators to discuss the topic of dual regulation at *in situ* leach (ISL) uranium extraction facilities, which are licensed by the NRC under authority of the Atomic Energy Act (AEA) and permitted by EPA-authorized States, under the Safe Drinking Water Act (SDWA) Underground Injection Control (UIC) Program. Although this was a closed meeting Mr. Layton asked whether all attendees would be agreeable to having a meeting summary drafted, reviewed by the attendees, and placed in the public record. All attendees agreed.

The purpose of the meeting was to update the attendees on the status of NRC's efforts to finalize the Standard Review Plan (SRP) for ISLs (NUREG-1569), discuss additional options for reducing or eliminating dual regulation at ISLs, inform State attendees of EPA's view of challenges regarding approval of alternate feed requests for uranium milling at conventional mills, and receive feedback from the attendees on the items presented.

<u>NUREG-1569, ISL Standard Review Plan</u>

The NRC staff received public and stakeholder comments on NUREG-1569 in April 2002, and is now in the process of compiling, reviewing and addressing the comments. The schedule is to provide the Commission with an information paper in October 2002; which will transmit NUREG-1569 and NUREG-1620, (SRP for conventional mills) along with the comments received , and staff's analysis of the comments. The paper will request Commission approval to issue the SRPs as final documents and use them as the regulatory framework *in lieu* of a Part 41 rulemaking.

The draft NUREG-1569, includes a proposed framework for reducing dual regulation at ISLs by using the State's technical review as a basis to support NRC's licensing action. NRC would not do a separate technical review, but would examine the State's review against the SRP and determine whether the State's review addressed all the acceptance criteria the NRC would need to support the licensing action. This would not be an oversight review of the State's analysis, but would be similar to the current "Acceptance Review" or a completeness review that initially NRC performs on incoming licensee's amendment requests before the detailed technical review commences. NRC would still be responsible for NEPA review and would use the State's review to support the environmental review if the State's review was acceptable for this use.

Dual Regulation at ISLs

In past meetings with the States and EPA, several questions and concerns to this approach had been expressed:

1) What would be NRC's oversight role in non-Agreement States ?

2) What would happen if an NRC licensing action, which was based on a State's review, went to hearing?

3) There are limited State resources for entering into a protracted negotiation for a formalized agreement for this approach, given the potential obstacles.

The NRC clarified that it would have no programmatic oversight of the non-Agreement State, since the authority to regulate ISLs for those States came from the EPA under the SDWA, and not the NRC under the AEA. Any oversight would be performed under EPA's current program.

In the past, the States indicated that a State would not expend resources to defend its technical review, if NRC relied on a State's review for a licensing action and that action was challenged in an adjudicatory hearing. NRC reliance on a State's review would be purely, "let the buyer beware." NRC indicated in this meeting that it understood the States' position and would likely have to expend its resources to do some analyses to support a licensing decision, if it were brought to a hearing.

The States indicated they were not supportive of entering into a formal agreement, such as a Memorandum of Understanding (MOU), with the NRC at this time, given the shortcomings of the framework to reduce dual regulation proposed in the SRP, and the resources needed to support that effort.

The NRC then asked Nebraska and Wyoming if they would be supportive of a proposal that NRC retain its authority to regulate ground-water protection at ISLs, but defer active regulation of ground-water protection to the States; given their delegated authority from the EPA's UIC program. Part of the basis for this proposal is a draft legal opinion from NRC's Office of General Counsel (OGC), which concluded that NRC could defer active regulation of ground-water protection at ISLs to another federal program. This proposal is a logical extension of the OGC conclusion, given the federal program has been delegated to the State from the EPA. The NRC could implement this deferral by negotiating an individual MOU with each State. The NRC did not see the need to develop a MOU with EPA, at this time, since Nebraska and Wyoming have full authority to implement the federal UIC program from EPA. In response to a request from EPA to be kept informed on the progress of any negotiations with the states, Mr.

Layton responded that NRC would appreciate and encourage EPA to participate in the MOU negotiations with the States in a coordinating or consultation role, if it desired to do so.

EPA indicated two concerns with NRC deferring all active ground-water regulation. One item was that EPA relies on NRC's detailed National Environmental Policy Act environmental review, in addition to information submitted by the State, as a basis for granting the aquifer exemption and other technical aspects for the UIC permit. Currently, the federal EPA program does not have the resources to conduct the detailed environmental reviews needed for the ISL aquifer exemptions in programs directly implemented by EPA. Secondly, the SDWA does not provide the EPA with the authority to address impacts to the surface, like spills. The NRC indicated that these are issues that would have to be worked out in the MOU with each State. As far as surface impact, NRC would retain its authority over the surface features and directly regulate those activities, including spills and discharges of licensed material. The State would continue its oversight of surface activities such as topsoil protection, re-vegetation success, and other activities which NRC does not directly regulate.

The EPA also clarified that when it delegates a program to a State, the EPA doesn't necessarily do inspections, but does have oversight responsibility to ensure licensees are doing an adequate job. The NRC indicated that this seemed similar to how the NRC relinquishes authority to Agreement States and conducts oversight of the Agreement State program without doing specific inspections of facilities. The one difference between the EPA and NRC delegation is that if NRC is dissatisfied with the Agreement State program, that entire program is pulled back for federal implementation. If EPA is dissatisfied, it can take direct enforcement action with or without the State participation or can withdraw the portion of the UIC program delegated under Section 1422 of the Safe Drinking Water Act from the State.

The NRC indicated that once a MOU was signed with a State under the full deferral option, the NRC would amend the existing license(s) in that State to require the licensee to comply with the ground-water protection provisions in the UIC permit. Inspection of ground-water protection would reside with the State, and NRC would continue to inspect the licensed surface activities.

The NRC clarified that this proposal to defer active ground-water regulation to the States through a MOU has not yet been raised to the Commission. If the States are agreeable with the proposed MOU framework, the staff could send some information to the Commission describing the position of the non-Agreement States, and potentially provide the proposal for Commission consideration along with the SECY Paper transmitting the final SRPs to the Commission for approval.

Nebraska and Wyoming indicated an initial positive response to the proposal; however, Wyoming was concerned about the potential for taking on additional responsibility without the accompanying resources. The NRC indicated that it would follow up with the States within the next few weeks, after the State representatives had an opportunity to confer with their respective department managers.

The EPA emphasized that the EPA and NRC programs were viewed as complimentary, not duplicative. The NRC agreed that at the federal level the programs were complimentary, but the NRC program is very duplicative in several areas with the ground-water protection programs implemented by the States. EPA mentioned that it did not want to have any regulatory gaps result from NRC deferring active ground-water regulation, and the specific responsibilities would need to be explicit in the MOUs. The EPA also asked how financial assurance would be addressed under this proposal. NRC replied that there likely would be no change from the

current practice. The current surety review practice for ISLs is to have both NRC and the State review the financial assurance submittals annually, and have the licensee provide one financial instrument with one agreed-upon dollar amount, with the instrument defaulting to the State. This eliminates the burden of requiring the licensee to fund two instruments with different dollar amounts.

A question arose about how this MOU proposal would work for an NRC Agreement State. The NRC responded that the Agreement State already has the program authority from the NRC, so there would be no need for NRC to negotiate a MOU with an Agreement State. If the State did not have full UIC authority from the EPA, it would be a matter between the State and EPA. NRC would not be involved.

The NRC asked the attendees if there were any concerns with Mr. Layton sharing some of the details of the MOU proposal and the States' feedback at tomorrow's Workshop presentation. The attendees indicated that sharing the details of this meeting with the Workshop would be fine.

Wyoming asked about the status of the legislation appropriating $10 million for DOE to conduct energy research (Nuclear Energy Electricity Supply Assurance Act of 2001 [S 472], sec. 127. Cooperative Research and Development and Special Demonstration Projects for the Uranium Mining Industry) including research for ground-water restoration at ISLs. Some attendees replied that the legislation passed the House, but is being deliberated in the Senate.

Alternate Feed Issues

Mr. Setlow led a discussion of the potential concerns that States should be aware of when reviewing alternate feed requests for conventional uranium mills. Some attendees noted that only one NRC-licensed mill, located in Utah, is accepting alternate feed material. Colorado added that the Cotter mill can also receive alternate feed. Mr. Setlow clarified that the alternate feed issue also impacts States where the material originates, because of challenges with classifying and permitting removal and transportation of the material under the Resource Conservation and Recovery Act (RCRA). The material is not classified as AEA material until it enters the mill for processing, making the coordination for transportation classification among parties potentially difficult. Mr. Setlow emphasized that EPA would continue to provide assistance in working through this issue with States.

Adjournment

The meeting was adjourned at 7:30 pm. No programmatic agreements or commitments were made by any of the parties in attendance.

Proposed Discussion Topics
Regulators Meeting
June 11, 2002; 6:30 pm - 7:30 pm

NRC reliance on State Technical Reviews for NRC licensing actions. (States' feedback on NRC's view)

NRC recognizes that much of the duplicative regulation at ISLs resides between NRC and States.

1) Monitoring well placement, completion, and sampling;
2) Injection/production well integrity testing;
3) Setting upper control limits & excursion control;
4) Impoundment leak and spill reporting;
5) Financial assurance; and
6) Wellfield ground-water restoration.

NRC would conduct its review after the State has completed its analysis and use the State's analysis as part of the basis for the licensing action.

NRC would still perform its NEPA review, but may use the State's detailed review to support the NEPA documentation.

NRC would use the Standard Review Plan (NUREG-1569) as a guideline for examining the State's review.

NRC would accept the State's review as a basis for NRC's licencing action if the review adequately addressed the acceptance criteria outlined in the Standard Review Plan (NUREG 1569).

NRC does not see itself in the role of an oversight authority for the non-Agreement State programs, EPA fills that role.

Current licensing/permitting challenges and impacts to fellow regulators (States & NRC).

Wellfield restoration approval under the above framework.

Operator's analysis and demonstration that restoration is not needed.

Need for formal agreement between NRC and Non-Agreement States.

Alternate Feed at Uranium Mills (EPA).

Regulators
Meeting
June 11, 2002
6:30 - 7:30pm
Curtis Room

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