



THE STATE OF WYOMING

JIM GERINGER  
GOVERNOR



## Department of Environmental Quality

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March 17, 2003

U.S. Nuclear Regulatory Commission  
Document Control Desk  
Mailstop T8 A33  
11545 Rockville Pike,  
Rockville, MD 20852-2738  
Attn: Mr. Daniel M. Gillen, Chief

40-1162

RE: Western Nuclear, Splitrock Mill Site ACL

Dear Mr. Gillen:

Thank you for taking the time to meet with us to discuss issues relating to the NRC's plans for long term site management at the Western Nuclear Splitrock Mill Site. As you requested during our February 4, 2003 meeting here in Cheyenne, we are providing you with our thoughts concerning the use of institutional controls (ICs) on off-site residential properties within the proposed long-term care boundary (LTCB), and the need for an alternative drinking water supply for the Red Mule subdivision.

In general, we believe that ICs should be considered measures that enhance or assure the integrity of response actions, but should not be used as the sole method of addressing a release if there are response actions that are cost-effective and technically feasible. As we mentioned during our meeting we have remaining questions as to whether these criteria have been thoroughly evaluated, and have agreed to meet and discuss these at a later date. We also mentioned our preference that a good faith effort to purchase all of the affected or potentially affected property be made prior to accepting the use of ICs as they might apply to potential human health and environmental exposure pathways.

Because we have only recently received copies of the IC proposed for the Splitrock Mill site we have not had sufficient time for a complete and thorough review of the documents. We can however, provide the following initial comments:

1. In all of the agreements, except for the Walker property, wording is included that will allow for the continued use of the groundwater in the area for livestock and agricultural purposes. Pursuant to the groundwater use and suitability criteria

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established under Chapter 8 of Wyoming Water Quality Rules and Regulations, concentrations of uranium in groundwater in excess of 5 mg/L are not suitable for either livestock or agricultural use, and such uses should also be restricted.

- a. For the Walker property, the agreement only precludes use of a 'new' water well, not use of existing wells. Has the appropriate research been conducted to determine whether there are any existing wells currently located on the Walker property?
2. The two "Quitclaim Deeds" for the Claytor properties do not specifically address 'existing' wells that are currently being used as domestic water supplies.
3. It appears that all of the private property except for the Red Mule area and that area south of the highway in Section 14 is covered. The missing part of Section 14 may be an error in the legal description on the Walker Agreement and should be reviewed for accuracy
4. A final comment on institutional controls concerns ownership of rights to minerals underlying these properties, as well as for the entire area within the LTCB. It is our belief that surface ownership cannot preclude mineral development where the surface owner does not own all rights to the mineral estate. In such cases there appears to be no mechanism, short of purchasing the mineral estate, that could preclude future exposures to contaminated groundwater. We suggest that the NRC confirm that surface ownership and/or IC agreements with the surface owner can, in all cases, restrict access to the mineral estate where the ownership is severed.
5. The question of which governing body (e.g. federal, state, county) has authority to enforce violations of institutional control restrictions remains unresolved. What enforcement options are available to that governing body to ensure compliance with those restrictions?

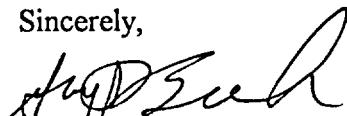
During our meeting, you also presented recent information concerning groundwater sampling for uranium in, and around the Red Mule subdivision area. Based upon that information you indicated that the source of elevated uranium levels in groundwater used by residents of the Red Mule subdivision is unknown. Until this question can be resolved we believe that an alternative drinking water supply should be provided now since these residents may be exposed to potentially harmful levels of uranium in their drinking water. We also would like to have assurance that residents within the Red Mule subdivision who have had their wells sampled have been properly informed of the potential health risks, if any, based upon the information used to develop the new federal safe drinking water standard for uranium.

During our discussions we agreed to arrange a meeting between NRC and DEQ staff to further discuss and clarify technical issues regarding WNI's ACL application. We continue to be especially concerned with the potential for degradation of high quality groundwater underlying some 5000 acres, and suggest that a loss of resource of this magnitude requires closer scrutiny. Please contact Kevin Frederick at 307-777-7781 at your earliest convenience to begin making arrangements for this meeting.

I hope that we can continue to meet on a regular basis to discuss uranium mill tailings site issues that are of mutual interest to both the NRC and the DEQ. The annual meeting in Denver, as you pointed out, would be a convenient opportunity for us to meet to discuss issues and plans for on-going and anticipated activities at the Wyoming sites.

Please feel free to contact me at 307-777-7781 should you have any questions concerning this letter or our expectations for the Splitrock facility.

Sincerely,



Gary Beach  
Administrator  
Water Quality Division

c: Mr. Bill von Till, NRC  
Mr. Rick Chancellor, LQD Administrator, Cheyenne  
Mr. David Finley, SHWD Administrator, Cheyenne  
Mr. Kevin Frederick, WQD Cheyenne  
Mr. Mark Thiesse, WQD Lander  
Ms. Roberta Hoy, LQD, Cheyenne