



The State
of Wyoming



Department of Environmental Quality

Dave Freudenthal, Governor

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June 9, 2003

Ms. Susan Frant, Branch Chief
Fuel Cycle Facilities Branch
Division of Fuel Cycle Safety and Safeguards
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Rockville, MD 20852

RE: Site Closure Plan for Western Nuclear Incorporated Split Rock, Wyoming Site
Source Material License SUA-56

Dear Ms. Frant:

As you know, representatives from the Nuclear Regulatory Commission (NRC), Wyoming Department of Environmental Quality (DEQ), and Wyoming State Engineer's Office (SEO) met on February 4, 2003 in Cheyenne to discuss technical and administrative concerns that Wyoming has voiced regarding the proposed Western Nuclear Incorporated (WNI) site closure plan. We would like to take this opportunity to identify and relay those concerns and to suggest an approach for working to resolve major issues of concern to us.

First, let us state that the Wyoming DEQ has statutory responsibility to protect and, where necessary, to restore the quality of groundwater for all existing and potential uses; the Wyoming SEO has statutory responsibility to control and appropriate groundwater for all beneficial uses. The WNI site closure plan under consideration by NRC will ultimately entail relinquishing that control and responsibility to the federal government (Department of Energy). Such an action is certainly an important issue to the Wyoming DEQ and SEO.

In this particular case the proposed action, if accepted by the NRC, will lead to an irretrievable loss of state control and management of relatively high quality groundwater underlying roughly 3500 acres, into perpetuity. This also happens to be an area where groundwater within aquifers adjacent to and contiguous with those underlying the WNI site is currently under evaluation by the SEO to supplement water needed elsewhere in the North Platte River Basin. The scope and extent of the proposed action, coupled with our pressing need to identify and develop supplemental water supplies in our semiarid state elevates the significance and interest in the proposed action to the highest levels of state government. Similarly, we believe that the analysis and evaluation of all aspects of the

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proposed action, as well as all practical alternatives to that action, warrant a commensurate degree of consideration and scrutiny by our respective agencies. To date, we do not believe that this standard has been achieved.

The major concerns that we believe require more in-depth consideration and analysis are briefly described as follows:

1. A rational approach acceptable to both the NRC and state agencies for full and complete consideration and evaluation of all practical alternatives to the proposed action is needed. Additionally, our agencies must work together to identify criteria and procedures to evaluate the practicality and reasonableness of the proposed action and alternatives in terms of tangible and intangible costs and benefits. One important objective in evaluating actions must be to provide full and fair consideration for the benefits realized by minimizing the volume of groundwater impaired and, as a result, the size of the area to be managed by federal agencies. In particular, establishing the present and future 'value' of the groundwater resource to be contained within the federal control area requires further consideration and consultation.
2. Current land use agreements with landowners to restrict existing and future access to groundwater do not provide complete and adequate protection within the proposed federal control area. Land use agreements must be protective of both existing and future use of groundwater for domestic purposes. The need for protection of other uses for groundwater, especially stock watering, requires further analysis. Comprehensive land use agreements must be established for owners of all non-federal surface and mineral estates within the control area, including those estates owned by the state of Wyoming. Engineering controls that may be needed in the future (e.g. an alternative well for Red Mule Subdivision) must be fully described and included within formal agreements with appropriate residents, with provisions for appropriate permitting, operation, and monitoring costs.
3. Deliberations must occur with our State Engineer's Office to determine which, if any administrative mechanisms or regulatory options are available to restrict access to the unappropriated groundwater to be contained within the federal control area.

We would also like to inform you that on March 20, 1981 the DEQ and WNI were parties to a Stipulation before the Wyoming Environmental Quality Council (Ref. Docket No. 643-79). That Stipulation contains several conditions establishing performance requirements and options for each party. Depending upon our collective abilities to craft an action acceptable to both the NRC and to the state of Wyoming, we may wish to re-examine our options for administrative and/or legal challenges in the future. This may be an important area for future discussions.

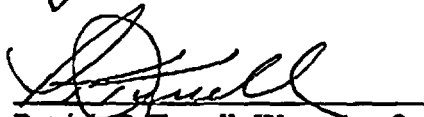
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In closing, we understand that DEQ and NRC staff are planning to meet in Denver on June 12th to further discuss Wyoming's interests and concerns with proposed actions involving the WNI site. We remain hopeful that their efforts will help lead to a resolution that is satisfactory to both the NRC, DEQ, and the State Engineer's Office.

Thank you for your consideration of these concerns. Please feel free to contact either of us should you have any comments or questions about this matter.

Sincerely,


John V. Corra, Director, WDEQ


Patrick T. Tyrrell, Wyoming State Engineer

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