



The State
of Wyoming



Department of Environmental Quality

Herschler Building • 122 West 25th Street • Cheyenne, Wyoming 82002

Dave Freudenthal, Governor

ADMIN/OUTREACH (307) 777-7758 FAX 777-3610	ABANDONED MINES (307) 777-6145 FAX 777-6462	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7368 FAX 777-6937	LAND QUALITY (307) 777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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March 12, 2004

Mr. John Lusher
Fuel Cycle Facilities Branch
Division of Fuel Cycle Safety and Safeguards
Office of Nuclear Material Safety and Safeguards
Nuclear Regulatory Commission
Mail Stop 8 A33
Washington, DC 20555-0001

Re: Preliminary Comments on a Draft Memorandum of Understanding (Draft MOU)
between the Nuclear Regulatory Commission (NRC) and
the Wyoming Department of Environmental Quality (WDEQ) on
In Situ Uranium Mining

Dear Mr. Lusher:

A Draft MOU on the respective regulatory responsibilities of the NRC and WDEQ for in situ uranium mining was included as Attachment F to the NRC document labeled SECY.03-0186. As discussed during our phone conversation of January 29, 2004, the WDEQ Land Quality and Water Quality Divisions and the Wyoming Attorney General's Office have reviewed the Draft MOU and prepared preliminary comments. These comments are included in Attachment I to this letter and follow the order of the topics in the Draft MOU. Most of the comments ultimately relate to ensuring that the State's responsibilities under the Environmental Protection Agency's (EPA's) Underground Injection Control Program and under the Wyoming Environmental Quality Act are given adequate recognition.

The NRC's process for work on the Draft MOU was outlined in the January 29th conversation. As noted during that conversation, we may be able to discuss some of the State concerns during the NRC workshop with National Mining Association in Denver, which is currently scheduled for the 3rd week in May 2004. In addition, as noted in Attachment I, other concerns may best be

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discussed while NRC staff are in Wyoming this summer for the proposed review of the State program. Therefore, we believe it will be mutually beneficial to provide you with preliminary comments as early as possible in this process.

If you have any questions or need additional information, please call.

Sincerely,



Roberta Hoy
WDEQ Land Quality Division

Attachment (Preliminary Comments)
cc: Mike Barrash, WY A.G.'s Office
Richard A. Chancellor, WDEQ LQD
John V. Corra, WDEQ
Kevin Frederick, WDEQ WQD
Paul Osborne, EPA Region 8
Mario Salazar, EPA Headquarters
Maria Schwartz, NRC
Loren Setlow, EPA Headquarters
John Wagner, WDEQ WQD
NRC/LQD MOU File

Attachment I

Preliminary Comments from the Wyoming Department of Environmental Quality (WDEQ) on the Draft Memorandum of Understanding (MOU) with the Nuclear Regulatory Commission (NRC) on In Situ Uranium Mining March 2004

Note: Strike-and-underline format is used to show changes to the Draft MOU text.

Sources of NRC and State Authority

The following language needs to be added to the MOU:

“The actual authorities of the NRC and State respectively are the authorities provided by applicable law, and the characterizations contained in this MOU cannot reduce or enlarge such authorities.”

In addition, the State suggests that the MOU include more specific citations to the EPA documents granting authority to the State for Underground Injection Control (UIC) Program, and specifically Class III UIC wells. In Section 1 of the MOU, the description of in situ leach uranium extraction facilities (i.e., ISL facilities) should clarify that extraction facilities, for purposes of this MOU, are UIC Class III wells. These more specific citations would be very helpful for future reference. For example, if the State's regulatory authority were ever called into question per the provisions of Section 4.F of the MOU, then the EPA authorizing documents could be more readily identified.

Comparison of NRC and State Requirements

The phrases used to describe the relative level of the NRC and State requirements need to be consistent and need to reflect that, while the State must be at least as stringent as the NRC, the State may also be more stringent. In fact, because of the State's interest in protection of water rights and existing and potential ground water uses, the State requirements on ground water protection have generally proven more stringent to date. Specific phrases of concern include:

- ▶ Section 3.A, 1st sentence: “...the State program for groundwater protection at ISL facilities provides adequate protection . . . at least equivalent to the NRC program.”
- ▶ Section 3.A, last sentence: “...as long as the State is able to provide at least an equivalent level of protection . . . ”
- ▶ Section 3.B: “...where the State program does not provide at least the same level an equivalent level protection as the NRC program.”
- ▶ Section 4.E, last sentence: “...to determine whether the program and its implementation remains at least equivalent to the NRC's program.”
- ▶ Section 4.F: “...2) the State is not providing at least an equivalent level of protection...”

Also, as discussed at the previous NRC and WDEQ meetings listed in SECY 03-0186, it would be helpful for NRC to prepare a draft "cross walk" of the provisions of NUREG-1569 ("Standard Review Plan for In Situ Leach Uranium Extraction License Applications") and State documents. (Copies of the State documents have been forwarded to NRC (letter of December 15, 2003 from R. Hoy (LQD) to J. Lusher (NRC)).

Surface Facilities

Per Item 3.C, the NRC would retain regulation of surface facilities, including those related to waste disposal. The WDEQ has specific concerns about some of the surface waste disposal facilities in the State, including selenium contamination in "irrigation circles" and ground water impacts from leaky evaporation ponds. The extent of NRC regulation of these facilities needs to be clarified, and the WDEQ recommends that these concerns be discussed when the NRC reviews the State program this summer.

Financial Assurances

The use of a "single financial assurance instrument," acceptable to both LQD and NRC, for a given mine has not been uncommon, and this instrument has usually been held by LQD. However, one of the operators (Power Resources, Inc. (PRI)) now has three mines in the State. Within about the last year, the NRC has decided that there should be a single "instrument" for all three mines. The LQD does not consider this approach advisable or practical, in particular because LQD's reclamation bond covers items over which NRC does not have authority (e.g., revegetation of surface disturbance). Furthermore, this is less an issue of "reducing or eliminating active regulation and oversight" of a licensee than it is one of assuring there will be funding as needed for the government to carry out site remediation or closure obligations if the licensee is no longer available or solvent. Therefore, the following change is needed in Section 3.D:

"...a single such financial assurance instrument(s) as needed to meet NRC's both parties' respective responsibilities and program obligations, and which shall be directly available to each party if/when needed under section 161x. of the Atomic Energy Act of 1954, as amended."

NRC Resumption of Active Regulation

Section 4.F lists circumstances under which the NRC would consider it necessary to resume active regulation of ground water protection at in situ uranium mines. The third listed circumstance allows for NRC to resume active regulation "at the request of an ISL licensee." To prevent an operator from "shopping" for less stringent regulatory requirements, this item needs to be removed from the list. (The other items in the list would then need to be renumbered.)

Access to State Records and Staff

The proposed wording in Section 4.E on access to State records and staff needs to be revised as follows:

The first sentence should read: "NRC will have access to public records which are available under the Wyoming Public Records Act (W.S. 16-4-201 through 205)."

With respect to staff, WDEQ staff will be "available" to NRC staff in Wyoming or by telephone by mutual arrangement. While NRC does most of its business at its office in Maryland, NRC should not expect that the State staff will travel to the NRC office in Maryland.

In addition, given the size of some of the permits, it should be clarified that the operator, rather than the State, will ultimately be responsible for providing any additional copies to NRC of documents prepared by the operator. Also, given the increasing use of electronic media, protocols for mutually acceptable electronic formats may need to be developed in the future.

EPA and NRC Reviews

In Section 4.E, the basis for NRC's review of the State program needs to be clarified. In particular, the State program must also meet the requirements of the EPA's UIC program. Therefore, the WDEQ recommends the following change to the proposed language:

"...NRC may will rely on the EPA review of its [State's] ground-water protection program as necessary...."

In Section 4.G, we feel the responsibility for notification of UIC program recission is more appropriately between sister federal agencies, and recommend the following change to the proposed language:

"...The State EPA shall notify the NRC if EPA has notified the State State's that its EPA authorization for UIC permitting is in jeopardy of recission."

Amendment and Termination

The following sentence needs to be added to the section titled "Amendment and Termination," particularly in view of NRC's suggestion in Section 4.F, Item 3 (about which the State has serious

concerns) that NRC shall reinstate its own active regulation within the State "at the request of an ISL licensee":

"No such termination shall invalidate or render ineffective any State action taken under this MOU prior to such termination."

Editorial Note

The last two sections in the Draft MOU ("Points of Contact" and "Amendment and Termination") should be numbered Sections 5 and 6, respectively.